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San Diego City Attorney Mara Elliot,

Thank you for initiating a meeting between you and San Diego County Gun Owners PAC to discuss the process and standards used to issue Gun Violence Restraining Orders (GVRO). In your [March 8<sup>th</sup> Washington Post op-ed](#) you describe GVROs as a tool “in which law enforcement agencies, families and household members can quickly remove firearms from individuals deemed unstable or unfit to own them.” The article goes on to describe several real-world scenarios where your office executed GVROs. The article concludes that California GVROs are “proving that effective and balanced solutions exist”.

To ensure that our meeting is productive I am asking for clarification on specific areas to better understand your process, policies, and procedures.

1. What is the specific, clearly defined burden of proof required to initiate a GVRO?
2. What safeguards are in place to ensure that a GVRO is never abused?
3. The examples given in the op-ed showed GVROs initiated by co-workers and neighbors. What is the clearly defined relationship required between someone initiating a GVRO and the receiver of a GVRO? Or can just anyone initiate a GVRO to remove firearms from owners?
4. What is the process and how have you streamlined the process for returning firearms to people after due process if they are shown to not be a danger to their self or others and are mentally fit?
5. Is the City Attorney’s Office committed to prosecuting individuals who file a GVRO knowing the information in the petition to be false or with intent to harass?
6. Has the City Attorney’s office received any claims that a GVRO has been filed with false information or intent to harass? If so, has the City Attorney’s officer prosecuted the matter?
7. The real-world example scenarios you describe when issuing the GVROs your office has issued all describe instances where laws were clearly broken. In some cases, multiple laws were clearly broken. In every scenario the laws were broken to the extent that law enforcement officers would have no legal barrier to confiscating firearms. This would suggest that a GVRO was not required to remove firearms from gun owners who commit a crime or gun owners who are mentally unfit. If they are breaking the law or mentally unfit, why was a GVRO required? If they were not breaking the law or mentally unfit, why are we taking guns away?

Below we have taken each scenario described in your op-ed and included which California law was broken that would result in law enforcement confiscating firearms while they go through due process.

### **Scenario #1 - Threatening auto dealer employee**

**PC 422.** - (a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

**WIC 5150.** - (a) When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention.

### **Scenario #2 – Drunken neighbor shooting at animals**

**PC 246.3.** - (a) Except as otherwise authorized by law, any person who willfully discharges a firearm in a grossly negligent manner which could result in injury or death to a person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.  
Depending on his location, county or municipal regulations would likely also apply.

### **Scenario #3 – Threats of murder texted to fiancée**

**PC 422.** - (a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

**PC 646.9.** - (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison. This scenario would warrant a Domestic Violence Emergency Protection Order (EPO) where I have no doubt that the responding officer or Judge would automatically add on a firearm prohibition. The EPO would be served pending a full restraining order and the firearms would be seized then.

**PC 18250.** - Authority of peace officer to take temporary custody of firearm at scene of domestic violence. (a) If any of the following persons is at the scene of a domestic violence incident involving a threat to human life or a physical assault, is serving a protective order as defined in § 6218 of the Family Code, or is serving a gun violence restraining order issued pursuant to Division 3.2 (commencing with § 18100), that person shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present.

**Scenario #4 – Elderly man with dementia (unclear about weapon or threat)**

(If murder attempt) **PC 664/187** or **PC 245.** - (a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

Assault as defined by **PC 240.** - An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

(Weapon but didn't point it at her) **PC 417.** - (a) (2) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses a firearm in any fight or quarrel is punishable, etc (defines punishment)

(Dementia symptoms) **WIC 5150.** - (see above)

**PC 18250.** - Authority of peace officer to take temporary custody of firearm at scene of domestic violence. (a) If any of the following persons is at the scene of a domestic violence incident involving a threat to human life or a physical assault, is serving a protective order as defined in § 6218 of the Family Code, or is serving a gun violence restraining order issued pursuant to Division 3.2 (commencing with § 18100), that person shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present.

## **Scenario #5 – Armed attacker caused laceration on girlfriend with history of domestic abuse**

**PC 664** - Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts, as follows: (a) If the crime attempted is punishable by imprisonment in the state prison, or by imprisonment pursuant to subdivision (h) of Section 1170, the person guilty of the attempt shall be punished by imprisonment in the state prison or in a county jail, respectively, for one-half the term of imprisonment prescribed upon a conviction of the offense attempted. However, if the crime attempted is willful, deliberate, and premeditated murder, as defined in Section 189, the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole. If the crime attempted is any other one in which the maximum sentence is life imprisonment or death, the person guilty of the attempt shall be punished by imprisonment in the state prison for five, seven, or nine years. The additional term provided in this section for attempted willful, deliberate, and premeditated murder shall not be imposed unless the fact that the attempted murder was willful, deliberate, and premeditated is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

**PC 664** (attempt qualifier) - Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts

**PC 187.** - (a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

**PC 245.** - (a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment.

**PC 243.** - (e) (1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment.

**PC 18250.** - Authority of peace officer to take temporary custody of firearm at scene of domestic violence. (a) If any of the following persons is at the scene of a domestic violence incident involving a threat to human life or a physical assault, is serving a protective order as defined in § 6218 of the Family Code, or is serving a gun violence restraining order issued pursuant to Division 3.2 (commencing with § 18100), that person shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present: Return- must appeal to DOJ for clearance letter (takes a while)

## **Scenario #6 - Wielded guns while threatening suicide**

**WIC 5150.** - (a) When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention.

**WIC 8103.** - (f)(1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (5), found that the people of the State of California have not met their burden pursuant to paragraph (6).

**PC 18400.** - Initiation of petition to prevent return of firearm. (a) When a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon seized under this division would be likely to result in endangering the victim or the person who reported the assault or threat, the agency shall so advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

Thank you again for the opportunity to talk about GVROs and the important balance between due process and civil rights. I hope to continue our dialog to ensure that the vast majority of gun owners who are law-abiding, responsible adults are not abused or vilified while making sure that proven criminals and those who are mentally unfit do not have access to firearms.

Thank you.

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