California State Assembly

PUBLIC SAFETY

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AGENDA

Tuesday, March 19, 2024
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	AB 1800	Jones-Sawyer	Controlled substances: social media companies.
2.	AB 1848	Davies	Controlled substances: fentanyl.
3.	AB 1898	Flora	Crimes: child pornography: early release credits.
4.	AB 1959	Grayson	Innocence Commission Pilot Programs: Post-Conviction Justice Unit.
5.	AB 2040	Waldron	Prison and parole: California Reentry Officer.
6.	AB 2120	Chen	Trespass.
7.	AB 2307	Davies	California Victim Compensation Board: reimbursement: self-defense courses.
8.	AB 2321	Ortega	Prisons: employee accommodations.
9.	AB 2336	Villapudua	Controlled substances: armed possession: fentanyl.
10.	AB 2420	Lowenthal	Criminal records: sealing.
11.	AB 2475	Haney	Parole.
12.	AB 2527	Bauer-Kahan	Incarceration: pregnant persons.
13.	AB 2541	Bains	Peace officer training: wandering.
14.	AB 2546	Rendon	Law enforcement and state agencies: military equipment: funding, acquisition, and use.
15.	AB 2740	Waldron	Incarcerated persons: prenatal and postpartum care.
16.	AB 2766	Low	Public records: parole calculations and inmate release credits.

Date of Hearing: March 19, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1800 (Jones-Sawyer) – As Introduced January 8, 2024

SUMMARY: Creates a new crime of operating a social media platform on which users offer controlled substances for sale. Specifically, **this bill**:

1) Defines "social media company" as a person or entity that owns or operates one or more social media platforms.

2) Provides that it is a misdemeanor for a social media company to operate a social media platform on which users offer controlled substances for sale. This offense would be punished by up to six months imprisonment in the county jail, or by fine up to $1,000, or by both.

3) Increases the penalty to a wobbler if an individual overdoses and requires medical care because of the violation. This offense would be punished as a misdemeanor by imprisonment in the county jail for up to one year, or as a felony by imprisonment in the county jail for 16 months, two or three years.

4) Increases the penalty to felony if an individual dies because of the violation. This offense would be punished by imprisonment in state prison for two, three, or six years.

5) Imposes civil penalties, as specified.[1]

6) Exempts authorized cannabis sales, as specified.

EXISTING FEDERAL LAW:

1) States that no provider of an interactive computer service shall be treated as the publisher or speaker of any information provided by another content provider. No cause of action may be brought and no liability may be imposed under any state or local law that is inconsistent with this provision. (47 U.S.C., §§ 230, subds. (c)(1), (e)(3).)

2) Provides that it is unlawful for any person to knowingly or intentionally use the Internet to advertise sale of, or to offer to sell, distribute, or dispense, a controlled substance, except as specified. A person is not prohibited from advocating the use of a controlled substance. (21 U.S.C. § 829(c)(2)(A)-(C).)

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[1] This bill is double referred to the Assembly Committee on Privacy and Consumer Protection. Accordingly, the primary focus of this analysis is the criminal penalties that fall within this committee's jurisdiction. However, it should be noted that this bill lacks specificity concerning the imposition of civil penalties.

3) Provides that Congress shall make no law abridging the freedom of speech. (U.S. Const. Amend. I.)

EXISTING STATE LAW:

1) Provides that every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech. (Cal. Const., art. I § 2, subd. (a).)

2) Defines "Social media company" as a person or entity that owns or operates one or more social media platforms. (Bus. & Prof. Code, § 22675, subd. (d).)

3) Defines "Person" as any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company. "Person" includes a corporation as well as a natural person. (Health & Safe. Code, § 19; Pen. Code, §§ 7.5, 7.)

4) Defines "Social media platform" as an internet-based service or application that has users in California and substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application and allows its users to do all of the following:

   a) Construct a public or semipublic profile for purposes of signing into and using the service or application;

   b) Populate a list of other users with whom an individual shares a social connection within the system; and,

   c) Create or post content viewable by other users, including, but not limited to, on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users. (Bus. & Prof. Code, § 22675, subd. (e).)

5) Establishes social media content moderation requirements for social media companies. (Bus. & Prof. Code, § 22675-22681.)

6) Requires social media companies to post terms of service (TOS) in a manner reasonably designed to inform users of the existence and contents of the TOS. (Bus. & Prof. Code, § 22676.)

7) Requires social media companies to submit to the Attorney General (AG), on a semiannual basis, a TOS report that must include, among other things, a statement of the company's policies on controlled substance distribution and a detailed description of content moderation policies including, among other things, how the company would remove individual pieces of content, users, or groups that violate the TOS, or take broader action against individual users or against groups of users that violate the TOS. (Bus. & Prof. Code, § 22677.)

8) Requires a social media platforms that operate in the state to create and publicly post a policy statement that includes, among other things, their policy pertaining to the illegal distribution a controlled substance and a link to the social media platform's reporting mechanism for

illegal or harmful content or behavior. (Bus. & Prof. Code, § 22945.)

9) Authorizes a person to seek an order requiring a social media platform to remove content that includes an offer to transport, import into this state, sell, furnish, administer, or give away a controlled substance. (Bus. & Prof. Code, § 22945.5.)

10) Establishes the Fentanyl Misuse and Overdose Prevention Task Force, to, among other things, evaluate strategies to improve coordination and collaboration between social media platforms, public health entities, and law enforcement. (Health & Safe. Code, § 11455.)

11) Defines "Controlled substance," as a drug, substance, or immediate precursor enumerated in any of the Schedules listed in the Health and Safety Code. (Health & Safe. Code, § 11007.)

12) Enumerates controlled substances in Schedule I through Schedule V of the Health and Safety Code. (Health & Safe. Code, §§ 11053 – 11059.)

13) Prohibits the possession and sale of controlled substances. (Health & Safe. Code, §§ 11350 – 11392.)

14) Provides that possession of a controlled substance that is a narcotic for sale is a felony punishable by imprisonment in the county jail for two, three, or four years. (Health & Safe. Code, § 11351.)

15) Provides that selling, or offering to sale, a controlled substance that is a narcotic is a felony, punishable by imprisonment in the county jail for three, six, or nine years. (Health & Safe. Code, § 11352.)

16) Provides that possession of a controlled substance that is not a narcotic for sale is a felony, punishable by imprisonment in county jail for 16 months, or two or three years. (Health & Safe. Code, § 11378.)

17) Provides that selling or offering to sale a controlled substance that is not a narcotic is a felony, punishable by imprisonment in the county jail for two, three, or four years. (Health & Safe. Code, § 11379.)

18) Provides that every person over 18 who offers to sell or give any controlled substance to a minor is guilty of a felony, punishable by imprisonment in the state prison for three, six, or nine years. (Health & Safe. Code, § 11353.)

19) Provides that, opening or maintaining any place for the purpose of unlawfully selling, giving away, or using any specified controlled substance is a misdemeanor punishable by imprisonment in the county jail for not more than one year or as a felony punishable by imprisonment in the state prison. (Health & Safe. Code, § 11366.)

20) Provides that a person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony, or attempted commission of a felony, shall be punished by an additional and consecutive term of imprisonment in state prison for three years. (Pen. Code, § 12022.7, subd. (a).)

21) Requires that a person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony, or attempted commission of a felony, which causes the victim to become comatose due to brain injury or to suffer paralysis of a permanent nature to be punished by an additional and consecutive term of imprisonment in the state prison for five years. (Pen. Code, § 12022.7, subd. (b).)

22) States that, except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both. (Pen. Code, § 19.)

23) Requires, to constitute a crime, a unity of act and intent. (Pen. Code, § 20.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Across California and the United States the story of overdose has changed. More and more, the victims of overdose are teens and young people who bought counterfeit pills tainted with fentanyl on social media. At the same time, social media companies are making billions of dollars from their underage users. In 2022, one social media company had approximately 18 million users under the age of 18 in the United States and made over $2.1 billion dollars from advertising to that age group. The Legislature has taken steps to target fentanyl dealers but social media platforms give dealers easy access to adolescents and features like encrypted or disappearing messages offer them privacy. If this was happening in a physical location, law enforcement and the Legislature would immediately take action but, because it's happening on social media, the market has been allowed to thrive. AB 1800 will help shut down the social media drug market and ensure that social media companies are held accountable for facilitating the spread of deadly drugs."

2) **This Bill is Likely Preempted by Section 230 of the Communications Decency Act, 47 U.S.C. § 230**: The United States Constitution's Supremacy Clause provides that federal law is "the supreme Law of the Land." (U.S. Const., art. VI, cl.2.) This language is the foundation for the doctrine of federal preemption, according to which federal law supersedes conflicting state laws. (*Gade v. Nat'l Solid Wastes Mgmt. Ass'n* (1992) 505 U.S. 88, 108.)

   This bill is likely preempted by Section 230 of the federal Communications Decency Act. (47 U.S.C. § 230.) Section 230 provides federal immunity to providers of interactive computer services, including social media platforms. The statute generally precludes providers from being held liable for information provided by another person.

   In enacting Section 230, Congress recognized that online services could not possibly monitor the massive volume of third-party content hosted on their sites. To ensure that online services would remain willing to accept such content, Congress barred imposing liability on such services arising from their carrying of that content. Under Section 230's terms: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." The federal law further

states, "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." (47 U.S.C. § 230, subd. (e)(3).)

As the Ninth Circuit states, the question that Section 230 asks is "whether the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker' [of third-party content]. If it does, section 230(c)(1) precludes liability." (*Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1101–02.) A state law would violate Section 230 by treating service providers or users as the publisher of another person's content. (Compare, e.g., *HomeAway.com, Inc. v. City of Santa Monica* (9th Cir. 2019) 918 F.3d 676, 683 [holding that an ordinance regulating home rentals is not inconsistent because it would not impose a duty on websites to monitor third-party content], with, e.g., *Backpage.com, LLC v. McKenna* (W.D. Wash. 2012) 881 F. Supp. 2d 1262, 1273 [holding that a state criminal law is inconsistent with and therefore expressly preempted by Section 230 if it would impose liability on websites for third-party content].)

This bill seeks to impose criminal liability upon social media companies for third-party content that includes offers to sell controlled substances. In so doing, this bill would impermissibly treat the social media company as the publisher or the speaker by making them criminally liable for speech made by someone else on their platform. Section 230 expressly preempts claims that treat the social media provider as the publisher of "information provided by another information content provider." (47 U.S.C. § 230, subd. (c)(1), (e)(3).)

Preemption is particularly likely here, as the bill seeks to impose upon social media companies the very obligations that Congress recognized were impossible—monitoring a staggering amount of third-party content, and identifying and prohibiting such content that is related to the sale of controlled substances, before it is ever published on the platform. A line of court precedent bars the imposition of such obligations. (E.g., *Zeran v. Am. Online, Inc.* (4th Cir. 1997) 129 F.3d 327, 330–31; *Green v. Am. Online (AOL)* (3d Cir. 2003) 318 F.3d 465, 471.)

In background material submitted by the Author, the Author claims that, "the 9th circuit ruled in *Lemmon v. Snap* (2021) that Snapchat is not immune from responsibility because features of the app encourage dangerous behavior" and that "product liability suggests social media companies can be held liable for features known to attract illegal activity." Reliance on *Lemmon v. Snap* is inapposite as it concerns the design of the application developed by the social media company, not content made by its third-party users.

In *Lemon*, the surviving parents of two boys who died in a high-speed accident alleged that Snap, Inc. encouraged their sons to drive at dangerous speeds and caused the boys' deaths through its negligent design of its smartphone application Snapchat. (*Lemmon v. Snap* (9th.Cir. 2001) 995 F. 3d 1085.) To determine whether Section 230 applied to immunize Snap, Inc. from the plaintiffs' claims, the court held that the plaintiffs' claim did not treat Snap, Inc. as a "publisher or speaker" because the plaintiffs' claims turned on Snap, Inc.'s design of Snapchat, with a defect (the interplay between Snapchat's reward system and its Speed Filter). (*Ibid.*) The duty to design a reasonably safe product was fully independent of Snap, Inc.'s role in monitoring or publishing third-party content. (*Ibid.*) The court also held that the plaintiffs had not relied on "information provided by another information content provider." (*Ibid.*) In short, Snap, Inc. was sued for the predictable consequences of designing

Snapchat in such a way that it allegedly encouraged dangerous behavior. (*Ibid.*) Accordingly, the panel concluded that Snap, Inc. did not enjoy immunity from a product liability suit under Section 230. (*Ibid.*) Unlike the claims in *Lemmon*, this bill involves third-party content—specifically speech made by third-party users on the platform. (*Ibid.*) Accordingly, this bill is likely preempted by Section 230.

3) **This Bill Would Create Strict Liability Offenses**: One of the most basic tenets of our justice system is that no one should be subject to a criminal conviction unless they acted with a criminal intent. A nexus between a guilty mind and the wrongful act provides a moral justification for punishment. (See, e.g., Larry Alexander, *Insufficient Concern: A Unified Conception of Criminal Liability* (2000) 88 Cal. L. Rev. 931.)

California's general mens rea statute, Penal Code section 20, states, "[i]n every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence." The modern trend is to require proof of a guilty mind in every criminal offense. (*In re Jorge M.* (2000) 23 Cal.4th 866, 879.) However, courts have determined that the statute does not apply when the purpose of laws is to protect public health and the penalties are not substantial. (*Ibid.*) Relatively light penalties can be associated with strict liability offenses. (*People v. Simon* (1995) 9 Cal.4th 493, 521.)

Strict liability offenses are denoted where "qualifying words such as knowingly, intentionally, or fraudulently are omitted from provisions creating the offense." (*People v. Martin* (1989) 211 Cal.App.3d 699, 713.) The absence of words such as "knowingly," "intentionally," or "willfully" indicates a legislative intent that these offenses be considered strict liability crimes. (*People v. Allen* (1993) 20 Cal.App.4th 846, 850.) The provisions of this bill punish conduct as a felony without specifying intent or knowledge is required. The bill would make it unlawful to "operate a social media platform on which users offer controlled substances for sale" without requiring that the social media company knowingly, intentionally, or willfully operated such a platform and without any need to show that the accused intended that users sell controlled substances. The penalty is a felony is a person overdoses or dies as a result of the violation.

In *People v. Gonzalez*, the California Court of Appeal reviewed provisions of the Los Angeles Municipal Code that were intended to safeguard public health, and determined that the penalties provided are comparatively light and "far less than that provided for felonies, which can subject a defendant to years in state prison." (*People v. Gonzalez* (2020) 53 Cal.App.5th Supp. 1, 14-15.) Six months punishment in jail and up to a $1,000 fine for a violation of Los Angeles Municipal Code was sufficiently light to militate against finding an intent to require mens rea. (*Ibid.*)

On the other hand, the United States Supreme Court has emphasized that felony offenses which bear harsh punishment are not the type of "public welfare" offenses for which courts will readily dispense with the mens rea requirement when construing a statute. (*Staples v. United States* (1994) 511 U.S. 600, 616-617; *People* v. Simon (1995) 9 Cal.4th 493, 520.)

Unlike the municipal ordinances under review in *People v. Gonzalez*, the felony penalties proposed by this bill, which include substantial imprisonment in county jail and state prison, are not "sufficiently light" as to not require a culpable mens rea.

4) **This Bill Would Include Precursors**: This bill would criminalize social media companies whenever any of their users "offer controlled substances for sale" on the platform. This bill does not define "controlled substances." As such, the existing definition in the Health and Safety Code would apply. The Health and Safety Code defines "controlled substance" as a drug, substance, or immediate precursor which is listed in any schedule. (Health & Safe. Code, § 11007.) Accordingly this bill would include offers to sell precursors.

   Drug precursors, also referred to as precursor chemicals or simply precursors, are substances used to manufacture illicit drugs. Most precursors also have legitimate commercial uses and are legally used in a wide variety of industrial processes and consumer products, such as, flavorings, fragrances, pharmaceuticals, cosmetics, cleaning agents, pesticides, insecticides, fertilizers, and various other industries. (United Nations Office on Drugs and Crime, *Fact Sheet on Precursor Control*. (2014). Available at: <https://www.unodc.org/documents/wdr2014/Fact_Sheet_Chp2_2014.pdf> [as of March 1, 2024].) This bill would could include precursors, even if the offer to sell the precursor was for a legitimate commercial use.

5) **Increased Penalties for Overdoses and Deaths**: This bill would increase the penalties for a social media company if a person overdoses or dies as a result of a sale of a controlled substance on a social media platform. If a person overdoses and requires medical care, the offense is a wobbler punishable as a misdemeanor by up to one year in the county jail or as a felony, punishable by 16 months, two years, or three years in a county jail. If a person died as a result of the sale, the offense is a felony punishable by a two, three, or six years in a state prison.

   Setting aside the question of how, realistically, an overdose requiring medical attention or death could be causally connected to a social media company when a third party offers to sale a controlled substance on a social media, it must be noted that in each of these instances the existing Great Bodily Injury (GBI) or death enhancement could already apply to the seller. (Pen. Code, § 12022.7.)

   This bill seeks to overturn part of the California Supreme Court's decision in *People v. Ollo* (2021) 11 Cal.5th 682. In that case, the California Supreme Court was asked to decide "whether a defendant who furnishes a controlled substance 'personally inflicts' great bodily injury as a matter of law whenever a person to whom he or she provides drugs dies or suffers other great bodily injury from using drugs" under Penal Code section 12022.7. (*Ollo, supra*, 11 Cal.5th at p. 687.) The Court observed that the purpose of the GBI enhancement is to punish "gratuitous harm not inherent in the crime itself." (*Id.* at p. 691.) According to the court:

   > When a defendant administers the drugs without the victim's consent, the defendant has participated in the injury-causing act and thus may be held liable for personal infliction of the overdose. Where a defendant simply provides the drugs to a user who subsequently overdoses, the defendant facilitates but does not personally inflict the overdose. This distinction recognizes the importance of the voluntariness of a victim's ingestion in the determination of whether a defendant personally inflicts great bodily injury in the drug furnishing context. To be eligible for the great bodily injury enhancement, ***a defendant's participation in the act of ingestion must occur in circumstances in which the victim is not an independent "intermediary" capable of breaking the "personal" nexus between***

> ***the defendant and the overdose injury***. Whereas a victim with full capacity who voluntarily chooses to ingest a controlled substance is an independent intermediary, a victim who ingests drugs as a result of coercion or with diminished capacity is not.

(*Id.* at pp. 690-691, emphasis added.) This bill seeks to overrule the California Supreme Court's unanimous decision in *People v. Ollo* as applied to social media companies. It would make the GBI enhancement automatic as a matter of law anytime a person a person dies or overdoses after consuming a drug that was offered for sale on social media platform, even if the owner of the social media platform has no connection whatsoever to the user or the seller. This bill rejects the Supreme Court's reasoning that application of the GBI enhancement requires an analysis of the defendant's culpable conduct in ***personally inflicting*** the overdose or death.

6) **This Bill Would Not Be Limited to Conduct that Occurs in California**: Under Penal Code section 777, a person is "liable to punishment by the laws of this State, for a public offense ***committed by him therein*** [...] the jurisdiction of every public offense is in any competent court ***within the jurisdictional territory of which it is committed***." (Emphasis added.)

   The bill requires that the social media company have "users in California," but it does not require any of the criminal conduct to be committed in this state.

   For example, Facebook has a worldwide user base and has users in California. (World Population Review, *Facebook Users by Country 2024*. Available at: <https://worldpopulationreview.com/country-rankings/facebook-users-by-country> [as of March 1, 2024].) This bill would make the owners of Facebook criminally liable in California, if a user in Canada offers a controlled substances for sale to a user in Mexico, even though none of the conduct was committed by the social media company or its owners in California, and even if the substance was not illegal in either of those countries. This bill would create confusion as to what court would have jurisdiction to prosecute this offense and which county should be responsible for incarcerating the defendant.

7) **Faulty Comparisons to Existing Penalties for "Operating a Drug House"**: In background materials provided by the author, the author of this bill inaccurately claims that, "If a drug deal occurred on private property, the property owner would be held liable, however, because these transactions take place on unregulated social media sites, the market place has been allowed to thrive."

   Under existing law, opening or maintaining any place for the purpose of unlawfully selling, giving away, or using any specified controlled substance is punishable by imprisonment in the county jail for a not more than one year or the state prison. (Health & Safe. Code, § 11366.) "A person can only be convicted of maintaining or operating a drug house if they open or maintained the property ***with the intent*** to sell, give away or allow others to use a controlled substance on a continuous and repeated basis at that place." (CALCRIM No. 2440, emphasis added.)

   The defendant must have the intent that drugs are sold on the property and drugs must actually be sold there on a continuous and repeated basis. Evidence of a single instance of drug use or sales at the house, without circumstances supporting a reasonable inference that

the house was used for the prohibited purposes continuously or repetitively, does not suffice to sustain a conviction of the opening-or-maintaining offense. (*People v. Shoals* (1992) 8 Cal.App.4th 475, 491-492; *People v. Hawkins* (2004) 124 Cal.App.4th 675, 682.)

Existing law does not make criminal the owners of Walmart if a person offers drugs for sale in the bread aisle. This bill seeks to hold social media companies more culpable than individuals who purposefully intend to operate a drug house.

8) **First Amendment Implications and Potential Chilling Effect**: There is no doubt offering to sell unlawful controlled substances is not speech protected by the First Amendment. The Supreme Court has consistently held that "offers to engage in illegal transactions are categorically excluded from First Amendment protection." (*United States v. Williams* (2008) 553 U.S. 285, 297.) First Amendment concerns would remain even if this bill were to be amended to only include unlawful offers of controlled substances for sale as it would still inhibit the exercise of First Amendment freedoms and have a chilling effect by causing speakers to "steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked." (*Reno v. ACLU* (1997) 521 U.S. 844, 874–879; *Dombrowski v. Pfister* (1965) 380 U.S. 479, 494.) This bill would still risk stifling otherwise permissible free speech because it is not clear what conduct would be considered "unlawful" and would ask social media companies to be the arbiter of legal versus illegal sales.

As drafted, this bill could stifle any offer of a controlled substance for sale, even potentially legal offers, such as advertisements for prescription medication, which is protected speech (See, *Sorrell v. IMS Health, Inc.*, (2011), 131 S.Ct. 2653, 2659- 2667 ["speech in aid of pharmaceutical marketing is a form of expression protected by the First Amendment].) Likewise, it is not clear what speech "offering" a controlled substance for sale includes. For example, would it include conversations about "sharing" a controlled substance with a friend? Could parody, creative speech such as song lyrics, protest speech, educational speech helping people with addiction or withdrawal effects, attempts to sell or distribute fentanyl testing strips, all be stifled for fear that the owners of the social media company would be prosecuted?

Content-based speech restrictions are subject to "strict scrutiny"—that is, the government must show that the regulation at issue is narrowly tailored to serve or promote a compelling government interest. (*R.A.V. v. City of St. Paul* (1992) 505 U.S. 377, 395). Content-based government regulations are "presumptively invalid." (*Id.* at 382.) Criminal laws, moreover, warrant even more careful scrutiny. (*City of Houston v. Hill* (1987) 482 U.S. 451, 459 (1987) ["Criminal statutes must be scrutinized with particular care].)

In *Smith v. California* (1959) 361 U.S. 147, the owner of a bookstore, was convicted of violating a city ordinance which was construed by the state courts as making him absolutely liable criminally for the mere possession in his store of a book later judicially determined to be obscene -- even if he had no knowledge as to the contents of the book. The United States Supreme Court held that the ordinance violated the First Amendment. (*Id.*, at 148-155.) The court reasoned that the publication and dissemination of books obviously are within the constitutionally protected freedom of the press, and a retail bookseller plays a most significant role in the distribution of books. (*Ibid.*) Although obscene expression is not constitutionally protected speech, the Court determined that the ordinance imposed an unconstitutional limitation on the public's access to constitutionally protected matter. "For, if

the bookseller be criminally liable without knowledge of the contents, he will tend to restrict the books he sells to those he has inspected, and thus a restriction will be imposed by the States upon the distribution of constitutionally protected, as well as obscene, books." (*Ibid.*) Like in *Smith*, the vagueness of this bill raises noteworthy First Amendment concerns because of its obvious chilling effect on free speech. Similar to the bookseller in *Smith*, social media companies would more than likely over-restrict speech, including, possibly constitutionally protected speech, to shield themselves from criminal liability that would be imposed by this bill.

9) **Existing Requirements on Social Media Companies Relating to Controlled Substances**: Business and Professions Code section 2294, which became effective January 1st of this year, requires social media platforms that operate in this state to create and publicly post a policy statement that includes their policy on the use of the social media platform to illegally distribute a controlled substance and a general description of the social media platform's moderation practices to prevent users from posting or sharing electronic content pertaining to the illegal distribution of a controlled substance. Social media platforms are required to retain data on content it has taken action to take down or remove for a violation of a policy prohibiting the unlawful sale, distribution, amplification, or otherwise proliferation of controlled substances and related paraphernalia and retain the content that violated a policy and the username of the violating account at issue for a period of 90 days. (Bus. & Prof. Code, § 22945.) In addition, Business and Professions Code section 22945.5 allows a person to seek a court order requiring a social media platform to remove content that includes an offer to transport, import into this state, sell, furnish, administer, or give away a controlled substance and the court is required to award court costs and reasonable attorney's fees to a prevailing plaintiff in the action. (Bus. & Prof. Code, § 22945.5.)

Business and Professions Code sections 26675 through 22681, which became effective January 1, 2023, require social media companies to post TOS in a manner designed to inform all users of the social media platform of its existence and contents. (Bus. & Prof. Code, § 22676.) A TOS is a set of policies adopted by a social media company that specifies the user behavior and activities that are permitted on the service and the user behavior and activities that may subject the user or an item of content to being acted upon by the company. (Bus. & Prof. Code, § 22675.) Effective this year, the law requires, social media companies to submit a TOS report to the AG on a semiannual basis. The report must include a statement of whether the TOS defines specified categories of content including controlled substance distribution and a detailed description of content moderation practices used by the social media company including how the social media company responds to violations of the TOS. (Bus. & Prof. Code, § 26677.) A social media company that violates these provisions is liable for a civil penalty not to exceed $15,000 per violation per day. (Bus. & Prof. Code, § 22678.)

Additionally, AB 33 (Bains), Chapter 887, Statutes of 2023, recently established the Fentanyl Addiction and Overdose Prevention Task Force to, among other things, collect and organize data on the nature and extent of fentanyl abuse in California; identify and assess sources and drivers of legal and illicit fentanyl activity in California; analyze existing statutes for their adequacy in addressing fentanyl abuse and, if the analysis determines that those statutes are inadequate, recommend revisions to those statutes or the enactment of new statutes that specifically define and address fentanyl abuse. The task force is also statutorily mandated to evaluate strategies to improve coordination and collaboration between social media

platforms, public health entities, and law enforcement. (Health & Safe. Code, § 11455.)

10) **Potential Unintended Consequences**: As discussed above, the state recently passed legislation that encourages and requires social media companies to collect and retain information about controlled substances on their platforms. This bill could have the unintended consequence of disincentivizing social media companies from preserving third-party content related to controlled substances and from working with law enforcement to investigate and deter controlled substance related crimes, as to not incriminate themselves under the law proposed by this bill. If a social media company reveals to law enforcement that any of their users of has offered a controlled substance for sale on their platform, they could be subject to civil penalties, criminal prosecution fines, and imprisonment based on the provisions of this bill. Accordingly, any expected progress from recent legislation could be undercut by this bill.

11) **Argument in Support**: According to the *California Narcotic Officers' Association*, "As you know, fentanyl has become the leading cause of death for Americans age 18-45. More people in this age group are killed by fentanyl than from gun violence, homicides, suicides, and traffic collisions. This deadly epidemic must be attacked from all sides. AB 1800 provides an important tool for law enforcement to root out those who seek to peddle this poison for profit."

12) **Arguments in Opposition**:

a) According to *Oakland Privacy*, "Firstly, California's list of controlled substances is vast. The bill exempts authorized sales of cannabis, but there is still a long list of relatively commonplace and widely used drugs, that for better or worse, people do not always obtain with prescriptions. These range from anabolic steroids for athletic training, codeine which is often used for menstrual pain, xanax and valium for anxiety, unauthorized cannabis sales, psilocybin and other psychedelics, hormonal treatments and many others. We are not condoning use of these things without prescriptions, but realistically many people self-medicate and do not or are unable to use the health care system.

"We are concerned that civil and criminal penalties will simply drive this kind of commerce even further underground, namely off of the common social media platforms which at least are fairly public and moderated to some extent, and on to the dark web. On the dark web, there are no rules and shoppers are much more likely to encounter hardened criminals, scammers or fake drugs that say they are one thing when they are actually something else. [...]

"Secondly, drug dealing is already illegal, whether conducted online or at a park behind some dark bushes. We do not arrest the park for harboring drug dealing, we arrest the human beings who engage in a criminal act in a public common space. While Internet companies are private corporations, the spaces they facilitate are, in essence, public forums. Any public forum can potentially be used in a criminal way, but civil and criminal liability is generally not ascribed to the public forum, but to those who commit crimes in that place.

"This general principle is what underlies Section 230 of the Communications Act, which

declines to hold platform operators legally liable for the content their users post. As has been exhaustively discussed, it is Section 230 which has made an interactive Internet possible. Without Section 230, it would be economically infeasible for anyone to operate an interactive website, including a discussion forum, a comment feature or a social network. Bearing civil liability, and potentially criminal liability for the content any user posts would make a social network uninsurable and inoperable.

"There is no doubt that drug sales are not free speech, and no one is making any claims to the contrary. Section 230 does not protect against violations of federal law and it isn't supposed to. But to connect inept or inadequate moderation, especially at the scale of the largest modern-day social networks, with imprisonment should be a bridge too far. [...]

"But the stick envisioned in AB 1800 is the wrong stick. It will undermine current attempts to control drug sales on social media by pushing traffic to the dark web, breaking AB 1027, and encouraging social media networks to do the wrong thing, namely suppressing and hiding content that could connect them to an illegal drug sale that ends badly."

b) According to *TechNet*, "This bill would make a social media company criminally liable of a misdemeanor if controlled substances are sold on their platform. Setting aside the ambiguity of whether every California based employee of the company, the CEO, or other named agent of the company would be guilty of this misdemeanor, the bill imposes no fault, strict liability for this crime. Despite expending millions of dollars and employing teams of people to combat this issue, if a controlled substance is sold, then the company is criminally liable. If this wasn't enough, the company shall be imprisoned for up to three years if the individual overdoses and up to six years if they die. [...]

"This extreme amount of liability will not protect Californians because there is no way for a company to change their practices and achieve the level of perfection required to avoid liability. Even completely ceasing operations in California or severely limiting access would not be enough. The bill does not require the sale to have happened in California or have been sold to a Californian. It just has to have happened on the platform."

13) **Related Legislation**:

a) AB 2657 (Arambula), would establish the Social Media Commission to investigate the impacts on the mental health of children and adolescents of the methods and tools used by social media companies and to make recommendations on how best to mitigate these impacts. AB 2657 is pending referral by Assembly Rules Committee.

b) AB 1804 (Jim Patterson), would lower the requisite amount of fentanyl to support probable cause to obtain a wiretap order. AB 1804 is pending in Assembly Appropriations Committee.

14) **Prior Legislation**:

a) AB 587 (Gabriel), Chapter 269, Statutes of 2021, requires social media companies to post their TOS, which must include policies on controlled substances, on their platform and to

submit reports to the AG regarding their TOS and data related to the violations of their TOS.

b) AB 1628 (Ramos), Chapter 432, Statutes of 2022, requires a social media platform that operates in the state to create and publicly post a policy statement that includes, among other things, the social media platform's policy on illegal distribution a controlled substance and a link to the social media platform's reporting mechanism for illegal or harmful content or behavior.

c) AB 2408 (Cunningham), of the 2021-2022 Legislative Session, would have prohibited a social media platform from using a design that causes child users, to experience addiction to the social media platform. AB 2408 was held under submission in Senate Appropriations Committee.

d) SB 60 (Umberg), Chapter 698, Statute of 2023, authorizes a person to seek an order requiring a social media platform to remove content that includes an offer to transport, import into this state, sell, furnish, administer, or give away a controlled substance in violation of specified law.

e) AB 1027 (Petrie-Norris), Chapter 824, Statutes of 2023, requires social media companies to submit reports to the AG that include the current version of the TOS for each social media platform owned by the company, including policies the company has to address the distribution of controlled substances on the platform.

f) AB 836 (Essayli), of the 2023-2024 Legislative Session, would have declared that a social media platform shall be considered a traditional First Amendment forum and required a social media platform to develop a policy or mechanism to address content or communications that constitute unprotected speech, including incitement of imminent lawless action. AB 836 was not heard in Assembly Judiciary Committee at the request of the author.

g) AB 955 (Petrie-Norris), of the 2023-2024 Legislative Session, would have made the sale of fentanyl on a social media platform in California punishable as a felony by imprisonment in a county jail. AB 955 failed passage in Assembly Public Safety Committee.

h) SB 287 (Skinner), of the 2023- 2024 Legislative Session, was substantially similar to AB 2408. SB 287 died on the Senate inactive file.

i) SB 680 (Skinner), of the 2023- 2024 Legislative Session, was substantially similar to SB 287. SB 680 was held under submission in Assembly Apportions Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association

California Coalition of School Safety Professionals
California Narcotic Officers' Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
League of California Cities
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

Cal Chamber
California Chamber of Commerce
Chamber of Progress
Computer & Communications Industry Association
End Overdose
Oakland Privacy
TechNet

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: March 19, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1848 (Davies) – As Introduced January 17, 2024

PULLED BY COMMITTEE

Analysis Prepared by: Kimberly Horiuchi / PUB. S. / (916) 319-3744

Date of Hearing: March 19, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1898 (Flora) – As Introduced January 23, 2024

SUMMARY: Eliminates custody credits for any person convicted and sentenced to a charge of felony child pornography, as specified. Specifically, **this bill**:

1) Prohibits custody credits for any person convicted of:

   a) Bringing or sending child pornography into the state;

   b) Brining or sending child pornography into the state with the intent to distribute;

   c) Child sexual exploitation;

   d) Use of a minor to perform sexual acts;

   e) Advertising obscene matter depicting a person under the age of 18 for sexual purposes; or

   f) Possession of child pornography.

2) Eliminates custody credits for any person convicted of any charge of child molestation even where there is no force or fear element.

EXISTING LAW:

1) States any person who willfully and lewdly commits any lewd or lascivious act, as specified, upon or with the body, or any part or member of, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony punishable by imprisonment in state prison for three, six, or eight years. (Pen. Code, § 288, subd. (a).)

2) Sentences any person who uses fear, violence, duress, menace, or fear of imminent or unlawful bodily harm to the person under the age of 14 or someone else to a term of imprisonment of five, eight, or ten years in state prison. (Pen. Code, § 288, subd. (b)(1).)

3) States any person who willfully commits any lewd or lascivious acts on a child either 14 or 15 years of age and the person is at least 10 years older is guilty of an alternate felony-misdemeanor punishable by up to one year in county jail or a term of one, two, or three years in state prison. (Pen. Code, 288, subd. (c).)

4) Punishes any person who knowingly sends or brings obscene matter into the state depicting a person under the age of 18 personally engaged in or simulating sexual conduct by a term of imprisonment of up to one year in the county jail and a fine not to exceed $1,000 or a term of sixteen, two, or three in state prison, and a fine of not more than $10,000. (Pen. Code, § 311.1, subd. (a).)

5) States any person who knowingly brings or sends obscene material for sale depicting a person under the age of 18 obscene material depicting a person under the age of 18 engaging in sexual conduct is guilty of a felony punishable by imprisonment in state prison for two, three, or six years, and a fine of up to $100,000. (Pen. Code, § 311.2, subd. (b).)

6) Imposes an additional one, two, or three year enhancement on any person who solicits a minor who is at least four years younger than the defendant. (Health & Saf. Code, § 11353.1, subd. (a)(3).)

7) States any person convicted of a specified violent felony including murder, manslaughter, mayhem, kidnapping, rape, assault, as specified, and rape, and who was previously convicted two or more times, on charges separately brought and tried, and who previously served two or more separate prior prison terms, as specified, is ineligible to earn credits. (Pen. Code, § 2933.5, subd. (a).)

8) States for each for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp. (Pen. Code, § 4019, subd. (b).)
9) Requires any person convicted of a nonviolent felony offense and sentenced to state prison be eligible for parole consideration after completing the full term for his or her primary offense. (Cal. Const. Art. 1, § 32, subd. (a)(1).)

10) Defines "full term for the primary offense" as the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence. (Cal. Const. Art. 1, § 32, subd. (a)(1)(A).)

11) States the California Department of Corrections and Rehabilitation ("CDCR") shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements. (Cal. Const. Art. 1, § 32, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, " "This bill would add convicted non-violent child sex predators who commit specified non-violent felonies involving the knowing depiction, production, distribution, advertising, possession, control, and use of material depicting a person under 18 years of age engaging in or simulating sexual conduct (child pornography), to the list of felonies that make a person ineligible for early release credits against their sentence as provided by existing law. This bill expands the current law to include offenders who commit lewd and lascivious acts on a child under 14 years of age

without the use of force, violence, duress, menace, or fear with violent offenders who commit the same crimes but with violence."

2) **Penalties for Child Pornography:** Possession and distribution of child pornography, in most cases, may be charged as a felony subject to a state prison sentence. (See e.g., Pen. Code, § 311.1, subd. (a) [up to three years in state prison]; Pen. Code, § 311.2, subd. (b) [up to six years in state prison]; Pen. Code, § 311.3, subd. (d) [up to three years in state prison].) These statutes remained mostly unamended by Realignment and are not subject to sentencing in the county jail pursuant to Penal Code section 1170, subdivision (h).

3) **County Jail Credits:** California permits a person to receive credits against their county jail or state prison sentence for time spent in pre-trial custody. (See Pen. Code, § 2933; § 4019.) County jail conduct credits, both pre-sentence and post-sentence, are authorized under Penal Code Section 4019. The purpose of Section 4019 is to authorize good behavior and work participation credits for certain prisoners confined in jail. (Pen. Code, § 4019; *People v. Sage* (1980) 26 Cal.3d 498.)

   Although Section 4019 originally applied only to misdemeanor-detainees, it was amended in 1982 to include felony-detainees. The legislative intent was both to eliminate the inequality suffered by indigent defendants who might serve a longer period of confinement because of their inability to post pretrial bail and to equalize the time served in custody for given offenses. (See *In re Atiles* (1983) 33 Cal. 3d 805, 812, disapproved on other grounds; *In re Joyner* (1989) 48 Cal. 3d 487, and overruled on other grounds by *People v. Bruner* (1995) 9 Cal. 4th 1178, 1194.)

   In addition to credits awarded pursuant to Section 4019, a sheriff or county director of corrections may also award credits pursuant to an educational or work program. (Pen. Code, § 4019.4.) A county sheriff who elects to participate in this credit reduction program must create guidelines that provide for credit reductions for an inmate who successfully complete specific program's performance objectives for approved rehabilitative programming, including, but not limited to, credit reduction of not less than one week to credit reduction of not more than six weeks for each performance milestone. (Pen. Code, § 4019.4, subd. (a), (e) (stating that program credits are also available to inmates sentenced to county jail pursuant to Penal Code section 1170, subdivision (h).) Approved rehabilitative programming for this purpose includes, but is not limited to, academic programs, vocational programs, vocational training, substance abuse programs, and core programs such as anger management and social life skills. (Pen. Code, § 4019.4, subd. (d).)

4) **State Prison Credits:** Penal Code section 2930, *et seq.,* governs the application of custody credits when a person is incarcerated in state prison, which, as explained below, is likely subject to approval by CDCR. Penal Code Section 2933 credits were formerly awarded for performance in work assignments and educational programs, and were called "worktime" credits. However, effective January 25, 2010, Section 2933 was amended to provide for the award of credits on the basis of continuous incarceration. (See former Pen. Code, § 2933(a) (operative until Jan. 25, 2010.) The amendment to Section 2933 were accompanied by the enactment of Penal Code Section 2933.05, which authorizes the awarding of credits for completion of specific program objectives for approved rehabilitative programming. Certain restrictions may apply to the amount of credits a person may earn, or reduction of sentence that may be awarded. An inmate convicted of murder or a violent felony, as defined

in Penal Code section 667.5, subd. (c), may only be entitled to 15% credit depending on what the person was convicted of and when the conviction occurred. (Former Pen. Code, § 190, subd. (a) and §§ 190, subd. (c); Pen. Code, §§ 667.70, 2933, 2934; *People v. Jenkins* (1995) 10 Cal. 4th 234 [murderer subject to sentencing under Penal Code § 667.7 is to be sentenced under that statute and not under Penal Code § 190, but credit restrictions under Penal Code § 2933 still apply as if sentenced under Penal Code § 190].)

A person sentenced to state prison may also be entitled to "continuous incarceration credits." For every six months of continuous incarceration, an eligible person may be awarded credit reductions of six months. (Pen. Code, § 2933, subd. (b).)

People sentenced to CDCR may also be entitled to "program credits." In addition to any credit awarded pursuant to Penal Code Section 2933, CDCR may also award a prisoner program credit reductions from their term of confinement pursuant to Penal Code Section 2933.05. Section 2933.05 requires CDCR to promulgate regulations that provide for credit reductions for inmates who successfully complete specific program performance objectives for approved rehabilitative programming, ranging from credit reduction of not less than one week to credit reduction of no more than six weeks for each performance milestone.(See Pen. Code, § 2933.05, subd. (a).)

5) **Proposition 57 and CDCR Exclusive Authority to Adopt Credits:** Proposition 57, the "The Public Safety and Rehabilitation Act of 2016" (hereinafter "Prop. 57") of the November 2016 election changed the rules governing parole and the granting of custody credits to incarcerated person in state prison. Prop. 57 authorized CDCR to award credits earned for good behavior and approved rehabilitative or educational achievements. Voters approved Proposition 57 by a margin of nearly 30 points.[1]

Before Prop. 57, the matter of conduct credits earned in prison was governed by statute. (See e.g., Pen. Code, §§ 2933 and 2933.1.) Specifically, Prop. 57 added section 32 to article I of the California Constitution which states, in pertinent part:

> "§32. (a) The following provisions are hereby added to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law....
>
> (2) Credit Earning: The Department of Corrections and Rehabilitation **shall have authority** to award credits earned for good behavior and approved rehabilitative or educational achievements.
>
> (b) The Department of Corrections and Rehabilitation **shall adopt regulations in furtherance of these provisions**, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and

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[1] Located at https://ballotpedia.org/California_Proposition_57,_Parole_for_NonViolent_Criminals_and_Juvenile_Court_Trial_Requirements_(2016).

> enhance public safety." (Emphasis added.) (Cal. Const., art. I, § 32, subd. (a)(2).)

As required, CDCR issued regulations to effectuate Prop. 57 purpose. (Cal. Const., art. I, § 32, subd. (b); 15 CCR § 3043, *et seq.*) Awarding credits is based on several different eligibilities including Good Conduct, Milestone Completion, Rehabilitative Achievement, Educational Merit, and Extraordinary Conduct.

Furthermore, appellate courts are currently interpreting section 32 as granting **exclusive authority** to CDCR to decide when, and under what circumstances, a person may receive conduct credits. Judge J. Richard Couzens (Ret.) and Presiding Justice of the 2nd Appellate District both held that it appears Prop 57 granted CDCR ***sole authority*** to decide credits – not the Legislature. Both Judge Couzens and Justice Bigelow are the Judicial Council statewide experts on Realignment and felony sentencing post-2014.

> "[I]t is not clear whether the credits awarded by CDCR for good behavior are in addition to the credits currently authorized under sections 2933 and 2933.05, or whether CDCR has exclusive jurisdiction to determine all good conduct and rehabilitation credits earned by inmates. It is unlikely that it was the intent of the sponsors of the Act to simply confirm CDCR's existing authority to grant conduct credits. Rather, the Act is intended to increase the authority of CDCR to grant conduct credits for good behavior and participation in rehabilitation programs. At a minimum, therefore, the Act likely gives CDCR authority to award credits in addition to those already provided by statute, and not to be limited because of the nature of the current crime. If CDCR has exclusive jurisdiction to determine conduct credits, presumably it may set credits at a higher or lower rate than currently provided by statute. It is at least arguable that CDCR is given total control over credits because the Act specifies that CDCR 'shall have authority to award credits notwithstanding . . . any other provision of law.'"

Additionally, in *People v. Brown* (2016) 63 Cal.4th 335, the Supreme Court considered the scope of Elections Code section 9002, which permits amendments to an initiative if they are "reasonably germane" to the measure's theme, purpose, or subject. In opining the proposed amendments to Proposition 57 which would grant CDCR the power to award credits violated this section, Justice Chin's dissenting opinion discussed the implications:

> "The constitutional amendment would also give the Department of Corrections and Rehabilitation (department) constitutional authority to award behavior and other credits. The Legislature has already enacted detailed mandatory provisions for the department to award conduct and participation credits. (See Pen. Code, § 2931 et seq.) But the amended measure's proposed constitutional language is

> permissive. Presumably, authority to award credits includes authority not to award credits or to award lower credits than the statutes currently require. Because the Constitution prevails over mere statutes, it appears the proposed constitutional amendment would displace the current statutory provisions for credits and shift authority over such credits from the legislative to the executive branch of government. For the moment, I will assume that altering the balance of power between the two branches of government in this way would not be an impermissible constitutional revision. … But shifting power from one branch of government to another is not reasonably germane to the original measure, which left the separation of powers between the branches of government untouched." (*Brown, supra*, 63 Cal.4th at p. 359.)

Justice Chin's dissent further states:

> "The proposed constitutional amendment gives the department "authority to award credits earned for good behavior and approved rehabilitative or educational achievements." (Amended measure, § 3, adding art. I, proposed § 32, subd. (a)(2).) But it does not explain how this new, apparently permissive constitutional provision would interact with the detailed, mandatory provisions for credits the Legislature has enacted. As I have already discussed, the constitutional provision would seem to displace the statutory scheme. But I am not sure that is the intent. Displacing the statutory credit scheme might be one of the measure's "unintended consequences"…. (*Brown, supra,* 63 Cal.4th at p. 361.)

It remains an open question whether the Legislature still has the authority to enact statutes pertaining to credits. However, as noted by Justice Chin, it is possible that one of the "unintended consequences" of Prop. 57 was to shift this authority exclusively to the executive branch.

This bill directs CDCR to eliminate credits for anyone sentenced for child pornography and specified child molestation crimes, as specified. It is not clear the Legislature has the authority to make such a mandate and any proposed changes to the manner in which CDCR awards credits may be stricken as unconstitutional and an unlawful violation of the delegation of powers.

6) **Rehabilitative Programs Are Critical to Reduce Recidivism and Combat Violence:** In 2019, the California State Auditor ("CSA") reported that CDCR needed additional oversight to ensure that rehabilitative programs are effective in preparing incarcerated people for success upon release. (CSA (January 2019) CDCR: Several Poor Administrative Practices have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs, Report 2018-113, p. 1-2.) A significant concern outlined in the

report was how CDCR had neither developed any performance measures for its rehabilitation programs, such as a target reduction in recidivism, nor assessed program cost-effectiveness. Further, as the State Auditor's report noted, in order to analyze whether CDCR's rehabilitation programs reduce recidivism, CDCR needs to collect additional data and take steps to ensure it delivers specified programs as intended across all its facilities. The report also recommended that CDCR ensure it has reliable tools for assessing the needs of its incarcerated persons. "Research shows that rehabilitation programs can reduce recidivism by changing inmates' behavior based on their individual needs and risks." (Id.)

CDCR contracted with PPIC for a multi-year and multi-phased longitudinal research study of the department's rehabilitative programming. The 2022-23 Budget Act provided $6 million to CDCR, Office of Research to enhance CDCR's existing data collection and evaluation capabilities regarding the outcomes of individuals released from prison. Specifically, CDCR engaged PPIC to evaluate CDCR's rehabilitative programs and their effects on offender outcomes in a variety of areas including recidivism, employment, and housing. (2022-23 Budget Act, p. 114.) One key element: PPIC intends to explore is how racial inequality can impact program outcomes." Available research indicates a positive correlation between rehabilitation programs and reduced recidivism rates. One of the most notable interventions is access to higher education opportunities in state prisons that equip inmates with the necessary tools to compete in the job market. Since 2014, all state prisons have offered associate degrees.

There are also programs through the California Prison Industry Authority (CALPIA), a self-funded state entity that aims to provide real-world job skills to over 6,500 individuals incarcerated in prison. Those who participate and graduate from the program can also receive sentence reductions. CALPIA recently held a graduation ceremony for inmates at the Avenal State Prison who received job certificates. Avenal has poultry, egg production, general fabrication, furniture, laundry and healthcare facility maintenance. Avenal also has administrative, warehouse and maintenance and repairs support functions. By allowing inmates to learn new trades and skill sets, they will also be able to better compete in the job market, similar to those in educational credit programs. "CALPIA proudly reported that individuals who participate in their programs have lower rates of recidivism, compared to those who were qualified to, but did not participate." (Moreno, Inmates at Avenal State Prison Celebrate Job Certification with CalPIA programs, Hanford Sentinel, January 26, 2023, p. B1.) CALPIA also operates a dive school for inmates at the California Institute for Men in Chino. It is a six to 18 month program offering classes of roughly 15 inmates multiple certifications in commercial diving. The school has proven to reduce recidivism rates below 6%, indicating that rehabilitative programs have a positive correlation to recidivism reductions.

Finally, the Legislative Analyst's Office reported in 2017 that programming, and the credits that incentivize participation in programming is critical for controlling violence and protecting correctional officers.

"In addition to reducing recidivism, rehabilitation programs can also serve other related goals, such as making it easier to safely manage the inmate population, improving overall inmate wellbeing, and improving inmate educational attainment. These secondary goals can also result in direct and indirect fiscal benefits. For example, an easier-to-manage inmate

population could result in fewer inmates needing to be housed in higher security units, which could minimize the need and costs for additional security staff."[2]

5) **Argument in Support**: According to *Sacramento County Sheriff Jim Cooper*: Currently, non-violent criminals convicted of possession, manufacture and distribution of child pornography and exploitation of are eligible to earn early release credit; this bill would correct that and make these offenders ineligible. Child sex exploitation and trafficking has a become a rampant crime in the state of California and children are injured physically, mentally, and emotionally by predators who exploit and abuse them daily via the many avenues available innocent children by the manufacture, distribution, possession, and use of child pornography ineligible for early prison release credits. This legislation is needed to heighten penalties for these unspeakable crimes.

6) **Argument in Opposition**: According to the *California Public Defenders Association*: AB 1898 would amend Penal Code section 2933.5 to render an additional crime and an additional category of crimes ineligible to earn credit on the person's term of imprisonment pursuant to the Penal Code's "Credit on Term of Imprisonment" article, Penal Code section 2930 – 2936. Section 2933.5 currently applies to people convicted of any of 14 listed offenses or categories of offenses, who have previously been twice convicted and twice served prior prison terms for any of the enumerated offenses. The 14 crimes, or categories of crimes, range from murder to kidnapping to rape to forcible child molestation and several other of the most heinous crimes.

   AB 1898 would add to that list persons convicted of lewd and lascivious acts on a child under age 14 accomplished by acts that do not require the use of force, violence, duress, menace, or fear. The category of crimes added to that list would be persons convicted of pornography in violation of Penal Code sections 311.1, 311.2, 311.3, 311.4, 311.10, or 311.11, that is, among other things, the knowing depiction, production, distribution, advertising, possession, control, and use of material depicting a person under 18 years of age engaging in or simulating sexual conduct, as defined. The offenses that would be added to section 2933.5 are unlike the existing offenses.

   The offenses currently listed in section 2933.5 either involve violence or threat of violence, i.e., the intent to injure or murder, etc. or an ongoing course of child molestation lasting at least three months. None of the offenses that AB 1898 would add involve such conduct. Section 2933.5 should be reserved for the worst conduct that is already covered. Conduct that is not the worst should not be added. Credit on the person's prison term serves rehabilitative, safety, and security purposes. An incarcerated individual who is motivated to evidence good behavior and successful programming to get credit against their sentence is more likely to be rehabilitated and is less likely to be a danger to the safety of other incarcerated individuals or guards. The potential to earn credits makes prisons safer environments for everyone.

   Additionally, these individuals will be released back into our communities. Californians have a compelling interest in providing the opportunities and incentivizing participation so that incarcerated individuals will be able to find gainful employment utilizing the skills from their prison classes. Rehabilitation will benefit not only the formerly incarcerated but their

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[2] https://lao.ca.gov/Publications/Report/3720

families and the community. Conversely, if incarcerated individuals are denied credits, they are less likely to take part in rehabilitative programs and will have less incentive to keep the prison safe and secure. AB 1898 is bad public policy because it wastes government resources on creating the need for additional prison guards and ultimately will endanger Californians by reducing the public safety benefit of rehabilitating incarcerated individuals."

7) **Related Legislation**:

a) ACA 15 (Alanis) specifies that CDCR does not have authority to control credits for registered sex offenders. ACA 15 was never referred to committee.

b) AB 15 (Dixon) states CDCR records pertaining to an inmate's release date and their earned release credits are public records subject to disclosure under the California Public Records Act. AB 15 failed passage in this Committee.

c) ACA 17 (Fong) authorizes the Legislature to enact legislation to prescribe the earning of credits by those convicted of offenses related to fentanyl. ACA 17 was never referred to committee.

d) AB 367 (Maienschein) applies the "great bodily injury" enhancement to any person who sells, furnishes, administers, or gives away fentanyl or an analog of fentanyl when the person to whom the fentanyl was sold, furnished, administered or given suffers a significant or substantial physical injury from using the substance.

e) AB 1848 (Davies) expands an existing one year sentencing enhancement for any person over the age of 18 who induces a minor to transport, carry, sell, give away, prepare for sale, or sell heroin, cocaine, or cocaine base on any church, synagogue, youth center, day care, or public swimming pool grounds to include the transport, carry, sell, give away, prepare for sale, or sell heroin, cocaine, cocaine base, and fentanyl either on the grounds of, or within 1000 feet from a church, synagogue, youth center, day care, or public swimming pool. AB 1848 is set for hearing today in this committee.

f) AB 2024 (Hoover) applies enhancements for sales of a controlled substance on or near a school to fentanyl. AB 2024 is pending in this committee.

g) AB 2341 (V. Fong) eliminates custody credits for any person incarcerated for the manufacture, possession, sale, transfer, transportation, administration, or inducing a minor to possess or sell fentanyl, or any fentanyl-related analog, or any substance containing fentanyl or any fentanyl-related analog. AB 2341has been pulled by the author.

h) SB 359 (Umberg) requires CDCR to compile data regarding the relationship between the awarding of credits and the recidivism rates of inmates who were awarded credits for good behavior and approved rehabilitative or educational achievements and to submit an annual report to the Legislature commencing on or before January 1, 2025. SB 359 failed passage in this committee.

8) **Prior Legislation**:

a) AB 1688 (Calderon), of the 2019-2020 Legislative Session, would have required the CDCR to contract with a researcher to conduct a recidivism analysis of the effectiveness of rehabilitation programs and to submit a report to the Legislature. AB 1688 was vetoed by the Governor.

b) AB 3105 (Waldron), of the 2017-2018 Legislative Session, would have made sale of fentanyl punishable by a term of 10 years to life in a case involving 20 grams or more of a mixture or substance containing a detectable amount of fentanyl, as defined, or 5 grams or more of a mixture or substance containing an analogue. AB 3105 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen
California Police Chiefs Association
Peace Officers Research Association of California (PORAC)

Oppose

ACLU California Action
California Public Defenders Association
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Initiate Justice
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LA Defensa
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San Francisco Public Defender

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Date of Hearing: March 19, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1959 (Grayson) – As Amended March 11, 2024

SUMMARY: Establishes a pilot program for three district attorney offices, to be chosen by the Attorney General (AG), to establish Innocence Commissions to identify and reexamine cases involving allegations of factual innocence or wrongful conviction. Specifically, **this bill**:

1) Requires the AG to choose three counties in which to establish Innocence Commission Pilot Programs to further the district attorneys' commitment to justice, professional ethics, and integrity, and to effectuate their duty to prevent and rectify the conviction of innocent persons. In selecting the counties, priority should be given to counties that do not already have a conviction integrity unit.

2) Requires each participating district attorney's office to establish an Innocence Commission as an outside advisory board to identify and reexamine cases involving allegations of factual innocence or wrongful conviction.

3) Provides that the commission shall consist of at least six members who represent a cross section of the criminal justice system.

4) States that members may include, but are not limited to, an academic, an assistant district attorney, an assistant public defender, a retired judge, a medical or mental health professional, and a representative from an innocence project or other nonprofit community-based organization dedicated to criminal justice reform or post-conviction litigation.

5) Requires that members be chosen for their professional experience, commitment to public service, and willingness to exercise independence.

6) Requires members to have experience with criminal law, forensic issues, or post-conviction litigation, although experts may be brought in, as needed, to provide additional technical assistance.

7) Requires that the chairperson of the committee be chosen from the appointed members.

8) Requires the commission to meet at least bimonthly, but allows additional meetings as necessary.

9) Requires the commission to develop and implement a written policy which, at minimum, outlines the factors, criteria, and processes that shall be used to identify, investigate, and recommend relief for individuals who are factually innocent or whose conviction was obtained as a result of a constitutional error.

10) Requires the commission to review cases submitted to it for review by petitioners, defense counsel, or other nonprofit or community-based organizations dedicated to criminal justice reform or post-conviction litigation.

11) Allows cases to be reviewed for one or more of the following reasons:

a) Actual innocence, in that the applicant alleges a plausible claim that they are actually innocent of one or more crimes of conviction; and,

b) Wrongful conviction, in that the applicant alleges a constitutional error in the trial, including but not limited to, the presentation of false scientific evidence, coerced testimony, ineffective assistance of counsel, at trial or during plea negotiations, or prosecutorial misconduct rendered the conviction fundamentally unfair.

12) States that the chairperson may also choose to undertake an investigation of a case in the interests of justice.

13) Grants the commission subpoena power to compel the production of documents and testimony, as specified.

14) Requires the superior court to designate a judge to oversee the process and resolve disputes.

15) Requires the commission to make a recommendation to the district attorney's office as to the disposition of the case.

16) Provides that the Innocence Commission Pilot Programs do not limit the discretion and authority granted to district attorneys to request recall and resentencing, as specified.

17) Grants the district attorney the authority to make the final decision as to whether it is in the interests of justice for the office to seek relief from an applicant's conviction or sentence.

18) Entitles a district attorney's decision to seek relief based on the recommendation from the commission to great deference by the court.

19) Requires each participating district attorney's office to track the following:

a) The factors and criteria used to identify cases to be considered for investigation and review by the commission;

b) The total number of cases considered for review and investigation by the commission, with the information collected for each case to include the date of consideration, the defendant's race, ethnicity, gender, age at commitment, groups of controlling offenses, age at time of reinvestigation, time served, time remaining, and alleged wrongful conviction claim;

c) The total number of cases reviewed and investigated by the commission. For each case, information collected shall include the date of review and reinvestigation, the defendant's race, ethnicity, gender, age at commitment, groups of controlling offenses, age at time of

reinvestigation, time served, time remaining, and alleged wrongful conviction claim;

d) The total number of cases reviewed for which the prosecutor recommended relief from a conviction or sentence;

e) The total number of cases for which the recommended relief from a conviction or sentence was denied by the court, and for each case, the date of denial, the reason for denial, and the information on the defendant's race, ethnicity, gender, age at commitment, groups of controlling offenses, age at time of reinvestigation, time served, time remaining, and alleged wrongful conviction claim; and,

f) A summary of any implementation delays or challenges, as well as steps being taken to address them.

20) Requires the AG to develop a template to track data available on or before March 1, 2026. The template must include a set of definitions so that data reported at the case level by each commission can be evaluated effectively.

21) Requires participating district attorneys' offices to report the required data on a quarterly basis.

22) Requires the AG to collect the data reported by the participating district attorneys' offices and create an annual progress report that allows for comparison between the participating programs.

23) Requires the California Department of Corrections and Rehabilitation (CDCR), the State Department of Social Services (DSS), and the Department of Child Support Services (DCSS) to provide information needed for completion of the AG's analysis.

24) Requires the AG to submit the annual report to the Legislature every January 31, beginning on January 31, 2027, with the final report due on January 31, 2029.

25) Sunsets the pilot programs on January 1, 2029 and the provisions of law on January 1, 2030.

26) Creates within the Department of Justice (DOJ) a Post-Conviction Justice Unit, whose purpose includes to work with local district attorneys to conduct investigations and reviews aimed at resolving wrongful or improper criminal convictions and to identify cases that may be suitable for resentencing.

27) Requires the unit to develop protocols and standards by July 31, 2026.

EXISTING LAW:

1) Provides that the court can recall the defendant's sentence within 120 days of the defendant's commitment, or at any time if applicable sentencing laws at the time of the original sentence are subsequently changed, or if the Secretary of CDCR or the Board of Parole Hearings (BPH) (for prison sentences) or the county correctional administrator (for jail sentences), or the district attorney of the county in which the defendant was sentenced, or the AG if the DOJ originally prosecuted the case make a recommendation to the court. (Pen. Code, §

1172.1, subd. (a)(1).)

2) States that if a resentencing request is from the Secretary of CDCR, the BPH, a county correctional administrator, a district attorney, or the AG, all of the following shall apply:

   a) The court shall provide notice to the defendant and set a status conference within 30 days after the date that the court received the request and appoint counsel to represent the defendant; and,

   b) There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant currently poses an unreasonable risk of danger to public safety. (Pen Code § 1172.1, subd. (b.)

3) Establishes the County Resentencing Pilot Program to support and evaluate a collaborative approach to exercising prosecutorial resentencing discretion, as specified. Participants in the pilot shall include a county district attorney's office, a county public defender's office, and may include a community-based organization in each county pilot site. (Pen. Code, § 1172, subd. (a).)

4) Requires each participating district attorney's office to develop and implement a written policy which outlines the factors, criteria, and processes that shall be used to identify, investigate, and recommend individuals for recall and resentencing, as well as identify, investigate, and recommend the recall and resentencing of incarcerated persons consistent with its written policy. (Pen. Code, § 1172, subd. (b).)

5) Establishes procedures for the filing and hearing of a petition for a writ of habeas corpus, which allows a person to challenge their incarceration or related restraint as unlawful. (Pen. Code, §§ 1473-1509.1.)

6) States that a writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

   a) False evidence that was substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration;

   b) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person; or,

   c) New evidence, as defined, exists that is credible, material, presented without substantial delay, and is admissible and is sufficiently material and credible that it would have more likely than not changed the outcome at trial. (Pen. Code, § 1473, subd. (b).)

7) Authorizes a person no longer unlawfully imprisoned or restrained to prosecute a motion to vacate a judgment for any of the following reasons:

a) Newly discovered evidence of fraud by a government official that completely undermines the prosecution's case, is conclusive, and points unerringly to his or her innocence;

b) Newly discovered evidence that a government official testified falsely at the trial and that the testimony of the government official was substantially probative on the issue of guilt or punishment; or,

c) Newly discovered evidence of misconduct by a government official committed in the underlying case that resulted in fabrication of evidence that was substantially material and probative on the issue of guilt or punishment. Evidence of misconduct in other cases is not sufficient to warrant relief. (Pen. Code, § 1473.6, subd. (a).)

8) Authorizes a person who is no longer in criminal custody to file a motion to vacate a conviction or sentence when:

a) The conviction or sentence is legally invalid, as specified;

b) Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice; or,

c) A conviction or sentence was sought, obtained, or imposed on the basis of race, ethnicity, or national origin in violation of the Racial Justice Act of 2020. (Pen. Code, § 1473.7, subd. (a)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The pursuit of justice requires us to seek the truth. The incarceration of a wrongfully convicted individual undermines our criminal justice system, and violates the fundamental principles of justice and due process. AB 1959 would provide an important tool to help investigate and address credible claims of wrongful conviction raised by an incarcerated person. This would help resolve historic biases and ensure that all people have equitable access to justice. This bill would create the Innocence Commission Pilot Program that would establish innocence commission in three counties to review credible claims of wrongful conviction on behalf of the District Attorney. The Innocence Commissions established under this pilot program will act as an outside advisory board whose members are appointed by the District Attorney, and would include individuals from a wide cross-section of individuals within the criminal justice system. The Innocence Commissions will investigate cases where a convicted person asserts they have been wrongfully convicted, and would have the ability to issue subpoenas and testimony in order to effectively investigate the wrongful conviction. After evaluating all of the available evidence and conducting any necessary reinvestigation, the innocence commission will provide a recommendation to the district attorney about whether to seek relief for the applicant. This will help advance California's commitment to truth and justice."

2) **Duties of a Prosecutor:** As the United States Supreme Court recognized in *Berger v. United States* (1935) 295 U.S 78, the twofold aim of the prosecutor "is that guilt shall not escape nor innocence suffer." (*Id.* at p. 88.) The Innocence Commissions proposed by this bill would be

tasked with identifying and investigating claims of factual innocence or wrongful convictions. The goals are therefore consistent with prosecutorial duties. Arguably it is also something prosecutors should be doing without the need for a pilot program or legislation.

3) **Prosecutorial Authority to Request Recall and Resentencing**: Historically, Penal Code section 1170, subdivision (d)(1) authorized courts to recall felony sentences on their own motion within 120 days of a defendant's commitment to custody, or anytime upon recommendation of the Secretary of CDCR. As of January 1, 2019, a defendant's sentence may be recalled "at any time upon the recommendation of the . . . district attorney of the county in which the defendant was sentenced[.]" (See former Pen. Code, § 1170, subd. (d)(1).)

However, these recall and resentencing provisions were moved to a new Penal Code provision in 2022. (See AB 200 (Committee on Budget), Chapter 58, Statutes of 2022.) Penal Code section 1172.1 now provides that authority:

> When a defendant, upon conviction for a felony offense, has been committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or to the custody of the county correctional administrator pursuant to subdivision (h) of Section 1170, the court may, on its own motion, within 120 days of the date of commitment or at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law, at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of a defendant incarcerated in state prison, the county correctional administrator in the case of a defendant incarcerated in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice originally prosecuted the case, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, whether or not the defendant is still in custody, and provided the new sentence, if any, is no greater than the initial sentence.... (Pen Code, § 1172.1, subd. (a)(1).)

This newly recast provision of law now requires the court to appoint counsel for the defendant when a request for recall is made by the Secretary of CDCR, BPH, a county correctional administrator, a district attorney, or the Attorney General. (Pen Code, § 1172.1, subd. (b)(1).) It also creates a presumption in favor of resentencing if one of these parties requests resentencing. (*Ibid.*)

4) **The County Resentencing Pilot Program**: AB 145 (Committee on Budget), Chapter 80, Statutes of 2021, established the County Resentencing Pilot Program to support and evaluate a collaborative approach to exercising prosecutorial resentencing discretion under currently existing statutory authority given to district attorneys. Participants in the pilot at each county pilot site include a county district attorney's office, a county public defender's office, and may also include a community-based organization. The purpose of the pilot program is to identify, investigate, and recommend the recall and resentencing of incarcerated persons. (See Pen. Code, § 1172.) The pilot term began on September 1, 2021 and ends on September 1, 2024. The counties chosen for this pilot program are: Los Angeles, Santa Clara, San Francisco, Contra Costa, Riverside, San Diego, Yolo, Merced, and Humboldt. (See AB 128 (Committee on Budget), Chapter 21, Statutes of 2021.) The 2021-2022 Budget appropriates

$18 million in General Funds to these nine counties to engage in Prosecutor-Initiated Resentencing. (See AB 128 (Committee on Budget) Chapter 21, Statutes of 2021.) The parameters of the pilot program do not place limits on what type of cases a participating district attorney's office can consider for recall and resentencing.

This bill would establish a three county pilot program for district attorney offices to review cases reexamine cases involving allegations of factual innocence or wrongful conviction. Because cases involving claims of factual innocence and wrongful conviction arguably do not fall within the scope of the County Resentencing Pilot Program these pilot programs do not appear to be duplicative.

5) **San Francisco's Innocence Commission:** AB 2706 appears to be premised on the Innocence Commission established by San Francisco District Attorney Chesa Boudin in September 2020. The San Francisco District Attorney's Innocence Commission evaluates cases in which an incarcerated person asserts that they were wrongfully convicted in a San Francisco case. The Commission is comprised of scholars, legal practitioners, and experts who volunteer their time. If the Commission, after evaluating all of the available evidence and conducting any necessary re-investigation, votes by a majority to vacate the conviction, the Commission prepares a "findings of fact and conclusions of law memorandum" that serves as the basis to seek to vacate the conviction. The District Attorney retains the final decision-making power on each case. (https://www.sfdistrictattorney.org/policy/innocence-commission/)

   The San Francisco District Attorney's Office is not alone in having a unit which evaluates prior cases for potentially wrongful convictions. The Santa Clara District Attorney's Office established a Conviction Integrity Unit in 2011 to examine wrongful convictions where new evidence casts doubt as to the truth of the underlying convictions. (https://countyda.sccgov.org/santa-clara-county-district-attonrey-jeff-rosen-announces-creation-conviction-integrity-unit) Today, conviction integrity units are becoming common throughout the State. Other counties having conviction integrity units include Los Angeles, Contra Costa, Orange, Napa and Ventura. This list is not exhaustive.

   This bill would create a pilot program in three counties chosen by the Attorney General to further these efforts. This bill would require the Attorney General to prioritize selecting counties that do not already have an innocence commission/conviction integrity unit.

6) **Current Innocence Projects**: Innocence Projects investigate cases and represent people who believe they are factually innocent of the crimes for which they were convicted. Currently, there are three Innocence Projects in California dedicated to reviewing allegations of wrongful convictions.

   Founded in 1999, the California Innocence Project (CIP) is a clinical program at California Western School of Law.[1] CIP reviews more than 2,000 claims of innocence from California

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[1] In early December 2023, the California Innocence Project temporarily shut down because of a change in directorship. It is expected to reopen in July of this year. (San Diego Union Tribune, T. Figueroa, "*California Innocence Project shutting its doors for several months amid leadership void*" Dec. 2, 2023, https://www.sandiegouniontribune.com/news/courts/story/2023-12-02/california-innocence-project-hiatus [as of March 8, 2024].)

inmates each year. CIP has secured the release of dozens of innocent people who otherwise may have spent the rest of their lives wrongfully incarcerated. Selected students work alongside CIP staff attorneys on cases where there is strong evidence of factual innocence. They assist in case investigation and litigation by locating and re-interviewing witnesses, visiting crime scenes, examining new evidence, filing motions, securing experts, and providing support to attorneys during evidentiary hearings and trials. (https://californiainnocenceproject.org/about-the-project/)

Similarly, the Northern California Innocence Project (NCIP) is a non-profit clinical program of Santa Clara University School of Law. NCIP was founded in 2001when new legislation was adopted in California to permit convicted inmates to seek DNA testing that would prove their innocence. To date, NCIP has won justice for 34 individuals. (https://ncip.org/mission-vision-and-history/)

Finally, there is the Project for the Innocent at Loyola Law School (LPI). LPI is the only wrongful conviction clinic dedicated to serving Los Angeles County. (https://www.lls.edu/academics/experientiallearning/clinics/projectfortheinnocent/)

Given that two of the three goals of the pilot program proposed by this bill, i.e., to review cases of factual innocence and wrongful convictions, are covered by the above-listed Innocence Projects, should the proposed work be done by the three already-established Innocence Projects?

7) **Department of Justice Post Conviction Justice Unit**: In February 2023, Attorney General Rob Bonta announced the establishment of a DOJ Post Conviction Justice Unit. The unit will work in partnership with district attorney offices to conduct investigations and reviews of cases where there may be wrongful or improper convictions, as well as to identify cases that may be suitable for possible resentencing. (See "*Attorney General Bonta Establishes First-Ever Post-Conviction Justice Unit within the California Department of Justice*" https://oag.ca.gov/news/press-releases/attorney-general-bonta-establishes-first-ever-post-conviction-justice-unit

This bill would codify the establishment of DOJ's post-conviction unit.

8) **Argument in Support**: According to *Initiate Justice*, "Wrongful convictions undermine our criminal justice system, and violate the fundamental principles of justice and due process. According to the National Registry of Exonerations, which has been tracking wrongful convictions since 1989, there have been 290 known wrongful convictions in California. This has caused innocent Californians to lose a total of 2,302 years of their lives while costing the State hundreds of millions of dollars. These wrongful convictions occurred as the real perpetrators of crime avoided consequences for their actions and victims were denied proper justice. To address wrongful convictions, several prosecutor's offices across the country, and in California, have established Conviction Integrity Units with the intention of re-examining questionable convictions.

"Despite the creation of post-conviction review units in various jurisdictions, many of these units have failed to fulfill their stated purpose because they may lack resources, flexibility, transparency, and independence in the review process. While some of these internal units have been effective, including the Innocence Commission that was established in the San

Francisco District Attorney's Office, many have been ineffective. Additionally, post-conviction cases where an incarcerated person alleges that they have been wrongfully convicted can take years to investigate and litigate.

"AB 1959 will establish the Innocence Commission Pilot Program that would efficiently and fairly investigate potential wrongful conviction cases."

9) **Argument in Opposition**: None submitted.

10) **Prior Legislation**:

a) AB 2706 (Levine), of the 2021-2022 Legislative Session, was substantially similar to the bill. AB 2706 was held in the Assembly Appropriations Committee.

b) AB 145 (Committee on Budget), Chapter 80, Statutes of 2021, established the County Resentencing Pilot Program.

c) AB 1540 (Ting), Chapter 719, Statutes of 2021, requires the court to provide counsel for the defendant when there is recommendation from the Secretary of CDCR, BPH, Sheriff, or the prosecuting agency to recall an inmate's sentence and resentence that inmate to a lesser sentence.

d) AB 2942 (Ting), Chapter 1001, Statutes of 2018, allows the district attorney in the county of conviction to move the court to recall a defendant's sentence and commitment for the purpose of resentencing.

REGISTERED SUPPORT / OPPOSITION:

Support

Initiate Justice
Initiate Justice Action

Opposition

None submitted.

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Date of Hearing: March 19, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2040 (Waldron) – As Introduced February 1, 2024

SUMMARY: Establishes the California Reentry Officer to provide statewide leadership, coordination, and technical assistance to ensure successful reentry services are provided to incarcerated individuals. Specifically, **this bill**:

1) Establishes, commencing January 1, 2025, the California Reentry Officer.

2) Provides that the Reentry Officer shall be independent of the Department of Corrections and Rehabilitation (CDCR).

3) States that the Governor shall appoint the Reentry Officer for a term of four years, subject to Senate confirmation, and that the Reentry Officer shall serve at the pleasure of the Governor.

4) Authorizes the Reentry Officer to exercise all duties and functions necessary to ensure that the responsibilities of the office are successfully discharged.

5) Provides that the Reentry Officer shall be compensated for their service and may be reimbursed for actual, preapproved expenses incurred in connection with their duties and requires the officer to seek federal or private grant funding to defray the cost of their compensation.

6) States that the Reentry Officer shall have the powers and authority necessary to carry out their duties, including all of the following:

   a) To employ administrative, technical, and other personnel. Any personnel employed shall be exempt from civil service;

   b) To hold hearings, make and sign agreements, and perform necessary acts;

   c) To engage with advisers or advisory committees; and,

   d) To accept any federal funds and any gifts, donations, grants, or bequests.

7) Provides that the mission of the Reentry Officer is to provide statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships with California's criminal justice system to ensure successful reentry services are provided to incarcerated individuals preparing for release and within community supervision and parole.

8) Requires the Reentry Officer to carry out this mission in a way that reflects the principle of aligning fiscal policy and correctional practices, including, but not limited to, programs, interventions, individualized educational pathways, reentry planning and execution, and transition to housing and workforce training to promote a strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations.

9) Requires the Reentry Officer to regularly engage and work with a balanced range of stakeholders and subject matter experts on adult corrections and reentry, to seek to be systematically informed by experts and stakeholders with the most specific knowledge concerning the subject matter, to include the participation of those required to implement programs, and to promote collaboration and innovative problem solving consistent with the mission of the officer.

10) Requires the Reentry Officer to do all of the following:

    a) Focus on developing and implementing reentry programs from state prisons in coordination with CDCR to ensure successful restorative results upon entry back into society;

    b) Facilitate the smooth transition of individuals from prison to release and postrelease while under supervision by addressing a range of subjects, including, but not limited to, education, career workforce training, mental health and substance use treatment and counseling, assistance with transition to housing, attaining necessary documentation, and maintaining work and housing;

    c) Seek various grants to service the needs of reentry, including, but not limited to, housing rent subsidies, food vouchers, workforce training assistance, career technical education, and scholarships;

    d) Raise awareness of continuity of care for incarcerated people with mental health, physical health, and substance use disorders during community supervision and parole by making information available through various sources, including, without limitation, informational websites, nonprofit entities, social media platforms, and public awareness campaigns;

    e) Focus specifically on recommending programming through the period of incarceration that supports successful reentry to society based on individual needs; and,

    f) Work closely with various state departments, including, but not limited to, CDCR, the Department of Housing and Community Development, the Department of Public Health, the California Workforce Development Board, and the Department of Health Care Services.

11) Requires the Reentry Officer to prepare an annual report that summarizes feedback from public engagement, provides data on reentry disparities and on roadblocks and successes in the state, and recommends best practices on tools, methodologies, and opportunities for

successful reentry programs. The report shall be submitted, on or before December 1, 2027, and annually thereafter, to the Governor and the Legislature and shall be posted publicly.

EXISTING LAW:

1) States that the primary objective of adult incarceration in CDCR is to facilitate the successful reintegration of the individuals back to their communities equipped with the tools to be drug-free, healthy, and employable members of society by providing education, treatment, and rehabilitative and restorative justice programs, all in a safe and humane environment. (Pen. Code, § 5000, subd. (b).)

2) Reaffirms a commitment to reducing recidivism among criminal offenders by reinvesting criminal justice resources to support community-based corrections programs and evidence-based practices. (Pen. Code, § 17.5.)

3) Declares that strategies such as standardized risk and needs assessments, transitional housing, treatment, medical and mental health services, and employment, have been demonstrated to significantly reduce recidivism among offenders in other states. (Pen. Code, § 17.7.)

4) Finds and declares that the purpose of sentencing is public safety, which is achieved through punishment, rehabilitation, and restorative justice. (Pen. Code, § 1170, subd. (a)(1).)

5) Finds and declares that incarcerated persons should have educational, rehabilitative, and restorative justice programs available so that their behavior may be modified and they are prepared to reenter the community. (Pen. Code, § 1170, subd. (a)(2).)

6) Requires CDCR to develop and implement a plan to obtain rehabilitation and treatment services for incarcerated persons and parolees. (Pen. Code, § 2062.)

7) Requires CDCR to implement evidence-based gender specific rehabilitative programs, including wraparound educational, health care, mental health, vocational, substance abuse and trauma treatment programs that are designed to reduce female offender recidivism. These programs shall include, but not be limited to educational programs that include academic preparation in the areas of verbal communication skills, reading, writing, arithmetic, and the acquisition of high school diplomas and GEDs, and vocational preparation, including counseling and training in marketable skills, and job placement information. (Pen. Code, § 3430, subd. (g).)

8) Establishes the California Rehabilitation Oversight Board (C-ROB) within the Office of the Inspector General. (Pen. Code, § 6140.)

9) Requires C-ROB to regularly examine the various mental health, substance abuse, educational, and employment programs operated by CDCR for incarcerated individuals and individuals on parole. (Pen. Code, § 6141.)

10) Requires C-ROB to report to the Governor and the Legislature annually on its findings on the effectiveness of treatment efforts, rehabilitation needs of offenders, gaps in rehabilitation services, and levels of participation and success in CDCR's rehabilitative programs. (Pen. Code, § 6141.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Consistently high recidivism rates have fluctuated between 44.6% and 46.1% since 2012. With nearly half of the released individuals returning to the system within three years, a cycle of re-offending and re-incarceration is perpetuated. While CDCR's current system encourages participation in job training and educational programs via incentives, a lack of individualization and leadership in these support systems limits their effectiveness. There is a gap in reentry strategies that support individuals transitioning from incarceration to society. The unique challenges faced by these individuals emphasize the importance of specialized programs to reduce recidivism and foster safer communities for all Californians. Current efforts for reentry support are disjointed, and this inefficiency is the result of California's lacking a coordinated approach that is tailored to the individuals themselves. Someone dedicated to these outcomes is why a reentry officer position is crucial."

2) **Recidivism and Reentry**: On July 1, 2005, CDCR changed its name from the California Department of Corrections to the California Department of Corrections and Rehabilitation pursuant to SB 737 (Romero), Chapter 10, Statutes of 2005. In recent years, CDCR has consistently expanded rehabilitation and reentry programs to ensure that academic education, career and technical education, cognitive behavioral interventions, and rehabilitative programs are operational in all prisons. The goal of these increased investments is to create a safer and more rehabilitative-focused system, to improve post-release outcomes for incarcerated individuals, and to reduce recidivism. (*Governor's Budget Summary 2023-2024* at pp. 84-85 <https://ebudget.ca.gov/2023-24/pdf/BudgetSummary/CriminalJustice.pdf> [March 10, 2024].)

   Despite these efforts, recidivism rates have remained high, hovering at around 50% over the past decade. (State Auditor, *California Department of Corrections and Rehabilitation: Several Poor Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs* (Jan. 2019) <https://www.auditor.ca.gov/reports/agency/22> at p. 1 [Mar. 10, 2024].) These recidivism rates may in part be due to several shortcomings of CDCR's rehabilitation programs as outlined in detail by the California State Auditor's Office (State Auditor). (*Id.* at 1-3.) A report by the State Auditor provides that CDCR's staffing shortfalls, failures to use evidence-based practices, and failures to properly identify and address rehabilitative needs are all factors leading to little change in recidivism rates. (*Id.* at 1, 19, 23.)

   In 2007, the C-ROB was created to provide guidance and recommendations to the CDCR concerning its rehabilitation of incarcerated persons within the state's prison system and those who are released as parolees. C-ROB's goal is to reduce recidivism when incarcerated persons are released into communities. (C-ROB, *About C-ROB* <https://crob.ca.gov/about/> [as of March 10, 2024].) In its most recent report, C-ROB found that, in 2022, 9,360 parolees

with a moderate to high California Static Risk Assessment (CSRA)[1] score were released, of whom 8,088 (86.4%) had received a reentry assessment. Of the released population, 89.4% had a moderate to high CSRA risk and at least one moderate to high reentry need. Those released with moderate to high scores have a greater risk to reoffend, have rehabilitative needs that require additional programming or resources, or a combination of both. (C-ROB, *September 15, 2023 C-ROB Report* <https://crob.ca.gov/wp-content/uploads/2023/09/2023-C-ROB-Report.pdf> [as of March 10, 2024].)

As of March 6, 2024, there are approximately 93,425 people incarcerated at CDCR. (CDCR, *Division of Correctional Policy Research and Internal Oversight, Office of Research, Weekly Report of Population* (March 6, 2024) <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2024/03/Tpop1d240306.pdf>.) Most of these individuals will eventually be released back into the communities of this state. Given that, most parolees have a moderate to high CSRA risk and high reentry needs, it is incumbent upon the state to cultivate successful reentry with the goal of reducing recidivism.

This bill would establish the California Reentry Officer, independent of CDCR, to provide statewide leadership, coordination, and technical assistance to ensure successful reentry services are provided to incarcerated individuals preparing for release and within community supervision and parole. It would require the Reentry Officer to coordinate with not only CDCR, but also various other state departments to carry out this mission. In doing so, this bill aims to reduce recidivism and ensure incarcerated persons succeed upon reentry.

3) **Argument in Support**: According to *Californians for Safety and Justice*, "As outlined in AB 2040, the creation of a California Reentry Officer position is a step towards an individualized method for assisting individuals transitioning back into society. Furthermore, it is the realization of California's bipartisan desire to improve outcomes for released individuals. We applaud this effort and recognizes its potential to significantly impact lives by providing better support structure for those in need.

"We urge your support for AB 2040 to ensure that individuals reentering society receive the structured support necessary to make their transition successful."

4) **Related Legislation**: AB 2142 (Haney) would require CDCR to establish a three-year pilot program at two or more institutions that would provide access to specified mental health therapy for those not classified to receive mental health treatment. AB 2142 is pending in this Committee.

5) **Prior Legislation**:

   a) AB 428 (Waldron), of the 2023-2024 Legislative Session, would have established the California Department of Reentry to provide leadership, coordination, and technical assistance to ensure successful reentry services are provided to incarcerated individuals. AB 428 was held under submission in Assembly Appropriations Committee.

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[1] To determine an incarcerated person's risk of reoffending, CDCR developed a validated risk assessment instrument referred to as the CSRA. (CDCR, *Frequently Asked Questions* <https://www.cdcr.ca.gov/rehabilitation/faq/> [as of March 10, 2024].)

b) AB 1104 (Bonta), Chapter 560, Statutes of 2023, provides that effective rehabilitation increases public safety and builds stronger communities, and that the purpose of incarceration is rehabilitation and successful community reintegration through education, treatment, and restorative justice programs.

c) SB 903, Chapter 821, Statues of 2022, requires C-ROB to examine CDCR's efforts to address the housing needs of incarcerated persons, including those who are identified as having serious mental health needs, who are released to the community as parolees and to include specified data on homelessness in its reports.

d) AB 2250 (Bonta), of the 2021-2022 Legislative Session, would have required CDCR to establish a reentry services pilot program to provide comprehensive, structured reentry services for women released from state prison. AB 2250 was held in the Assembly Appropriations Committee.

e) AB 2730 (Villapudua), of the 2021-2022 Legislative Session, would have created the California Anti-recidivism and Public Safety Act pilot program which would have required CDCR to sponsor a program to help incarcerated persons reintegrate into their communities, reduce recidivism, and increase public safety. AB 2730 was vetoed.

f) AB 620 (Holden), of the 2017-2018 Legislative Session, would have required CDCR to provide meaningful opportunity for successful release of incarcerated persons by offering information about and access to effective trauma focused programming, as specified. AB 620 failed passage in the Assembly Appropriations Committee.

g) AB 2129 (Jones-Sawyer), of the 2013-2014 Legislative Session, would have required CDCR to develop a voluntary reentry program that included access to cognitive behavior therapy. AB 2129 was held in the Assembly Appropriations Committee.

h) AB 900 (Solorio), Chapter 7, Statutes of 2007, created C-ROB to regularly examine and report to the Legislature and Governor on the various mental health, substance abuse, and educational and employment programs for incarcerated persons and parolees operated CDCR.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Californians for Safety and Justice

Opposition

None submitted.

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: March 19, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2120 (Chen) – As Introduced February 6, 2024

SUMMARY: Allows a licensed repossession agency and its employees to enter upon real property, not open to the public and without the consent of the owner, when they are searching for collateral or repossessing collateral, and upon completing the search, leave the private property within one minute.

EXISTING LAW:

1) Defines "repossession agency" to mean and includes any person who, for any consideration whatsoever, engages in business, or accepts employment to locate or recover collateral, whether voluntarily or involuntarily, including, but not limited to collateral registered under the provisions of the Vehicle Code, which is subject to a security agreement, except as specified. (Bus. & Prof. Code, § 7500.2.)

2) Provides that it is a misdemeanor to willfully commit a trespass by driving a vehicle on to another person's property, not open to the general public, without that person's consent. (Pen. Code, § 602, subd. (n).)

3) Provides that, except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding $1,000, or by both. (Pen. Code, § 19.)

4) Exempts registered process servers from vehicular trespass laws when driving any vehicle upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, or the person in lawful possession, as long as the process server leaves immediately upon completion of the service of process. (Pen. Code § 602, subd. (n).)

5) Exempts registered process servers from trespass laws when entering any land under cultivation, or enclosed by fence, belonging to, or occupied by another, or unenclosed land where signs forbid trespassing. (Pen. Code, § 602.8, subd. (c)(3).)

6) Allows registered process servers access to a gated community for a reasonable period of time for the purpose of performing lawful service of process. (Code Civ. Proc., § 415.21.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2120 addresses the problem that occurs when a debtor who calls the police claiming that a repossessor is trespassing when they have completed a repossession. This is an ongoing occurrence when a vehicle has been repossessed or other collateral such as solar panels has been repossessed. The debtor calls the police and claims that the repossessor is trespassing. This often takes an hour-long discussion with the police to clarify that the repossessor is not trespassing, and at times it has resulted in the repossessor being arrested for trespassing. Even though the charges will be dismissed by a judge, the trouble with the unnecessary arrest wastes time and money for both the police and for the repossessor. This bill makes the common sense clarification that a repossessor is not trespassing when they come on to private property to search for collateral under a lawful repossession order and leaves immediately upon completing the search or repossessing the collateral."

2) **Effect of the Bill:** Existing law makes it unlawful to willfully commit a trespass by driving a vehicle on to another person's property, not open to the general public, without that person's consent. (Pen. Code, § 602, subd. (n).) A violation of this statute is a misdemeanor punishable by up to six months in county jail, a fine of up to $1,000, or both. (Pen. Code, § 19.) Under existing law, process servers are exempt from the vehicular trespass statute provided that, upon existing the vehicle when making a lawful service of process, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing service or upon the request of the owner of the lawful possessor of the property. (Pen. Code, § 602, subd. (n).) No similar exemption currently exists for repossessing agencies lawfully recovering collateral from private property. This bill would apply the same exemption to repossessing agencies that currently exist for process servers.

3) **AB 515 Governor's Veto Message:** This bill is substantially similar to AB 515 (Chen), of the 2021-2022 Legislative Session. AB 515 passed through both the Assembly and the Senate without opposition. Despite near unanimous support, the Governor vetoed the bill and issued the following veto message.

> This bill would provide that the crime of trespass does not apply to a repossession agency and its employees when they are on private property searching for or repossessing collateral.
>
> An earlier version of this bill included a cross-reference to repossessor licensing requirements that makes it clear that repossessors are not allowed to go into secured or locked areas. Unfortunately, that language was removed from the bill. I am concerned that allowing a repossessor virtually unfettered access to a person's private property could result in confusion and possibly violent confrontations between property owners and repossessors. For these reasons, I am returning this bill without my signature.

The cross-reference to which the governor's veto message refers is Business and Profession Code section 7508.2, which identifies repossessing agency conduct for which the Director of Consumer Affairs may assess administrative fines. For example, that statute provides that a repossessing agency may be fined $500 for unlawfully entering a private building or secured area, without the consent of the owner or lawful possessor of the property.

This bill does not address the concerns raised by the governor in his veto message.

4) **Considerations:** The exception to the vehicular trespass law under this bill would apply to repossessing agencies so long as they exit property within one minute after completing the search of the property for collateral. That language is the same as that of AB 515 (Chen) as introduced. However, the version of AB 515 that reached the governor's desk in 2021 required repossessing agencies to exit the property immediately, as opposed to "within one minute." That language reflects the requirement that a process server "leaves immediately" upon completing service or being asked to leave by the owner or lawful possessor of the property.

   There are perhaps practical reasons for a less definite requirement. A repossessing agency may be unable to exit property within one minute of completing a search if, for example, one or more vehicles enter a single-lane drive on private property after the repossessing agency. In this situation, more than a minute may pass before those vehicles clear and the repossessing agency leaves, placing the repossessing agency in technical violation of the statute.

   Similarly, the version of AB 515 that made it to the governor's desk required a repossessing agency to leave immediately after completing the search *or completing repossession*. As introduced, this bill would require a repossessing agency to leave within one minute of completing just the search. However, depending on the circumstances, the time between completing the search and actually acquiring possession of the collateral may take more than a minute. Thus, language clarifying that the clock starts running once repossession is complete may be warranted.

5) **Argument in Support**: None submitted.

6) **Argument in Opposition**: None submitted.

7) **Prior Legislation**:

   a) AB 515 (Chen), of the 2021-2022 Legislative Session, was substantially similar to this bill. The Governor vetoed AB 515.

   b) AB 1787 (Maddox), Chapter 149, Statutes of 2000, provided an exemption for a registered process server, while on the real property of another person, to exit their vehicle in order to attempt the service of process.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744

Date of Hearing: March 19, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2307 (Davies) – As Introduced February 12, 2024

SUMMARY: Authorizes the California Victim Compensation Board to compensate a crime victim for the costs of taking a self-defense course. Specifically, **this bill**:

1) Limits reimbursement for self-defense classes to $1,000.

2) Specifies that the self-defense course must be provided, or operated by a nonprofit organization, university, or law enforcement agency, either directly or through a contractual relationship.

EXISTING LAW:

1) Establishes the California Victims Compensation Claims Board (board) to operate the California Victim Compensation Program (CalVCP). (Gov. Code, §§ 13950 et. seq.)

2) Provides than an application for compensation shall be filed with the board in the manner determined by the board. (Gov. Code, § 13952, subd. (a).)

3) Authorizes the board to reimburse for pecuniary loss for the following types of losses:

   a) Medical or medical-related expenses incurred by the victim for services provided by a licensed medical provider;

   b) Out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center;

   c) Compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's injury or the victim's death;

   d) Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services;

   e) The expense of installing or increasing residential security not to exceed $1,000;

   f) The expense of renovating or retrofitting a victim's residence or a vehicle to make them accessible or operational, if it is medically necessary;

   g) Relocation expenses, not to exceed $3,418, if the expenses are determined by law enforcement to be necessary for the victim's personal safety, or by a mental health

treatment provider to be necessary for the emotional well-being of the victim;

h) Funeral or burial expenses not to exceed $$12,818;

i) Costs to clean the scene of the crime not to exceed $1,709; and,

j) Costs of veterinary services not to exceed $10,000. (Gov. Code, § 13957, subd. (a).)

4) Limits the total award to or on behalf of each victim to $35,000, except that this amount may be increased up to $70,000 if federal funds for that increase are available. (Gov. Code, § 13957, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Any victim of a crime, no matter the severity, should have all available resources to them on their recovery process. Of these crimes, Domestic Violence is one of the worst crimes that can be committed against a person. Victims often suffer physical, financial and emotional abuse. AB 2307 is a common-sense measure to ensure those victims who wish to enroll in self-defense courses to protect themselves from potential future harm may have those classes covered under the Crime Victim Compensation Board."

2) **CalVCP**: The CalVCP provides compensation for victims of violent crime, or more specifically those who have been physically injured or threatened with injury. It reimburses eligible victims for many crime-related expenses, such as medical treatment, mental health services, funeral expenses, and home security. (Gov. Code, § 13957, subd. (a).) Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as from federal matching funds.

3) **Gap Analysis Report of 2015**: Nearly a decade ago now, the board issued the third in a series of reports which sought to determine the unmet needs of crime victims and barriers to services for crime victims. This final report outlined gaps in current services and compensation provided under CalVCP. (See *Gap Analysis Report: California's Underserved Crime Victims and their Access to Victim Services and Compensation*, July 2015.) The report noted that the following unmet financial needs were among the more commonly identified by victims:

   - Victims who received funeral and burial compensation stated that the actual cost of the services exceeded the CalVCP reimbursement limit.

   - Victims stated that the amounts for relocation expenses were inadequate to cover the actual costs of relocation.

   - Mental health providers stated that victims' lack of access to transportation creates difficulty accessing mental health treatment.

- Victims and advocates noted that lack of access to transportation was a barrier to obtaining other needed services.

- Childcare expenses are not currently reimbursed by CalVCP, further limiting some victims' access to medical or mental health services.

- Victims need to be reimbursed for lost wages for time taken from work to access services or attend crime-related appointments. (*Id.* at p. 7.)

This bill would provide that a victim may seek reimbursement for the costs of taking a self-defense court. The gap analysis report did not raise this as a service that victims raised as an unmet need. Nevertheless, this seems like a useful service bearing a logical nexus for victims of violent crime.

4) **Financial Condition of the Restitution Fund**: The Legislative Analyst's Office (LAO) has provided this committee with the following figures regarding the financial status of the Restitution Fund, which is a major source of funding support for CalVCP.

Restitution Fund (in thousands)[1]	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24 (estimated)	FY 2024-25 (projected)
Adjusted Beginning Balance	19,042	18,913	43,678	62,844	59,241
Revenues[2]	90,992	110,312	107,403	108,079	83,079
Expenditures	93,122	88,655	88,237	111,682	114,519
Net Revenue	($2,200)	$21,657	$19,166	($3,603)	($31,440)
Fund Balance	$16,842	$40,570	$62,844	$59,241	$27,801

While this bill does not increase the total amount a victim can be reimbursed by CalVCP ($35,000, or $70,000 if federal funding is available), it does provide for payment by the board for a new type of expense. Does it make sense to increase services while both revenue and the fund balance is projected to deplete?

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[1] The figures are represented are in thousands. So, for example, the projected fund balance for fiscal year (FY) 2024-2025 is $27,801,000.

[2] Revenues include General Fund backfill to maintain expenditure levels from the fund. The LAO has informed this committee that the General Fund backfill of the Restitution Fund in 2024-25 is proposed to be $14.5 million—a decrease from the ongoing $39.5 million which has been included. It is expected, that as of now, this decreased General Fund backfill will be one-time in nature and that the backfill will return to $39.5 million in 2025-26 and future years.

5) **Argument in Support**: None submitted.

6) **Argument in Opposition**: None submitted.

7) **Related Legislation**: AB 1956 (Reyes) requires, if the grant funding from the federal Victims of Crime Act awarded to the Office of Emergency Services is 10% lower than the amount awarded the prior year, California Office of Emergency Services (CalOES) to allocate funds, upon appropriation by the Legislature, to fill the gap. AB 1956 is pending hearing in the Assembly Appropriations Committee.

8) **Prior Legislation**:

   a) AB 415 (Maienschein), Chapter 572, Statutes of 2019, authorizes the board to compensate a crime victim for the costs of temporary housing for a pet.

   b) AB 445 (Choi), of the 2019-2020 Legislative Session, would have authorized the board to reimburse a victim for up to $2,500 in attorney fees for services rendered to preserve a crime victim's rights under Marsy's Law. AB 445 failed passage in this Committee.

   c) AB 629 (Smith), Chapter 575, Statutes of 2019, authorizes the board to provide compensation equal to loss of income or support for a victim of human trafficking.

   d) AB 1939 (Steinorth), of the 2017-2018 Legislative Session, would have included temporary housing for the victim's pets as part of relocation expenses which are reimbursable by the board. AB 1939 was vetoed.

   e) SB 1005 (Atkins), of the 2017-2018 Legislative Session, would have authorized the board to compensate a crime victim for a pet deposit and additional rent required if the victim has a pet. SB 1005 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

None submitted

Opposition

None submitted

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: March 19, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2321 (Ortega) – As Introduced February 12, 2024

SUMMARY: Requires the California Department of Corrections and Rehabilitation ("CDCR") to provide each of its employees with personal protective equipment ("PPE"). Specifically, **this bill**:

1) Mandates CDCR provide each of its employees with reasonable and appropriate PPE based on the employee's individual needs.

2) Requires CDCR to create and implement workplace policies without infringing on the protected rights of its employees, consistent with applicable laws, including existing law related to safety equipment and PPE in the workplace, as well as federal and state civil rights laws.

3) Requires CDCR to do all of the following:

   a) Upon request, provide each employee who has a religious or medical reason for a beard with reasonable accommodations, including, but not limited to, alternative PPE.

   b) Commencing January 1, 2025, no longer enforce its policy requiring all employee to be clean shaven.

   c) Consult with stakeholder civil rights organizations, professional organizations, and community-based organizations with expertise regarding PPE and religious and medical accommodation, including, but not limited to, groups that represent the interests of employees who are most likely to be impacted by no-beard policies, to determine the impact of a policy change for those communities.

4) States CDCR must establish a taskforce (hereinafter "Taskforce") consisting of the stakeholders from stakeholder civil rights organizations, professional organizations, and community-based organizations with expertise regarding PPE and religious and medical accommodation and the California Civil Rights Department ("CRD").

5) States CDCR must consult with the Taskforce on policy drafts and implementation of policy, prior to finalization, and provide a meaningful opportunity for the Taskforce to review policies and provide feedback.

6) Requires the Taskforce to meet monthly, or more frequently, as needed, to ensure CDCR's policies are inclusive and address their impact on minority racial and religious communities.

7) States if an accommodation analysis is required (pursuant to an interactive process) CDCR must provide each employee with medical or religious requirement for having a beard, with interim accommodations or remedies in order to maintain their beard while working during the timeframe their accommodation request is pending.

8) Requires interim accommodations or remedies to include, but limited to:

   a) Not requiring the employee to exhaust personal time off ("PTO") or other accrued leave while a review of their request for reasonable accommodation is pending.

   b) Restoring any lost PTO, sick time, wages, or other pension-related or employment penalty that an employee has experienced to avoid shaving since submission of their accommodation request, or while their religious or medical accommodation request is or was pending or under appeal.

   c) Providing clear guidance that indicates that any employee who continues to work or shave while their religious or medical accommodation request is pending does not forfeit that accommodation request unless they specifically do so in writing to their supervisor.

   d) A review of CDCR's legal obligation under the Division of Occupational Safety and Health ("Cal OSHA") applicable to state and federal civil rights law, and local operational policies.

   e) Requires a review of CDCR's legal obligations to include:

      i. An assessment of CDCR's operations and potential workplace hazards, as compared to other state and federal prison systems, in order to develop and implement inclusive respirator and facial hair policies and programs for the department's employees.

      ii. An assessment must include, but not be limited to, a review of hazards from aerosol, transmissible diseases, and tear gas.

      iii. CDCR's obligation to share its workplace safety assessments and job hazard assessments with stakeholder groups and each employee.

9) Mandates CDCR to develop a step-by-step procedure submitting accommodation requests and the interactive process CDCR will follow when engaging with employees and the step-by-step procedure must be included in the Department Operations Manual ("DOM") and all related forms and regulations.

10) States the step-by-step procedure must include, but not be limited to, all of the following:

   a) How employees may request religious and medical accommodations.

   b) How employees may file an appeal if an accommodation request is denied.

   c) Specific timelines for review and response to medical and religious accommodation requests, not to exceed 30 days from the date of the request. Upon approval of the request, CDCR will have an additional 30 days to procure and provide the alternative

PPE.

11) Defines PPE as follows:

a) Protective equipment for the eyes, face, head, and extremities.

b) Respiratory devices.

c) Protective shield and barriers, including N95 and other filtering facepeice respirators, elastomeric air purifying respirators with appropriate particulate filters or cartridges, or powered air purifying respirators.

d) Disinfecting and sterilizing devices and supplies.

e) Medical gowns and apparel.

f) Face or surgical masks.

g) Face shields.

h) Gloves.

i) Shoe covering.

j) Equipment otherwise covered or necessary to comply with Title 8 of the California Code of Regulations (hereinafter "Title 8").

EXISTING LAW:

1) Provides that, except in extraordinary circumstances, when an incarcerated person is transferred to another state prison institution, any member of the clergy or spiritual adviser who has been previously authorized by CDCR to visit that inmate must be granted visitation privileges at the institution to which the inmate is transferred within 72 hours of the transfer. (Pen. Code, § 5009, subd. (b)(1).)

2) Mandates that visitations by members of the clergy or spiritual advisers be subject to the same rules, regulations, and policies relating to general visitations applicable at the institution to which the inmate is transferred. (Pen. Code, § 5009, subd. (b)(2).)

3) Authorizes a CDCR or volunteer chaplain who has ministered to or advised an inmate incarcerated in state prison to, voluntarily and without compensation, continue to minister to or advise the inmate while they are on parole, provided that the CDCR or volunteer chaplain so notifies the warden and the parolee's parole agent in writing. (Pen. Code, § 5509, subd. (b)(3).)

4) Prohibits any employer in the State of California that employees more than five people, to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment, or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in

terms, conditions, or privileges of employment because of the race, ***religious creed***, color, national origin, ancestry, ***physical disability, mental disability,*** reproductive health decision-making, ***medical condition,*** genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of that person. (Emphasis added.) (Gov. Code, § 12940, subd. (a).)

5) Prohibits any employer to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's ***religious belief or observance*** and any employment requirement, unless the employer demonstrates it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as specified, on the conduct of the business of the employer. (Emphasis added.) (Gov. Code, § 12940, subd. (l)(1).)

6) Defines religious belief or observance to include, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice. (Gov. Code, § 12940, subd. (l)(1).)

7) Defines "religious creed," "religion," "religious observance," "religious belief," and "creed" to include all aspects of religious belief, observance, and practice, including religious dress and grooming practices. "Religious dress practice" shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of an individual observing a religious creed. ***"Religious grooming practice" shall be construed broadly to include all forms of head, facial, and body hair that are part of an individual observing a religious creed.*** (Emphasis added.) (Gov. Code, § 12926, subd. (q).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "AB 2321 is crucial legislation that rectifies a discriminatory policy that disproportionately impacts religious communities and individuals with certain skin conditions. This bill seeks to remedy this discriminatory policy by requiring CDCR to comply with existing Cal/OSHA regulations, California's Fair Employment and Housing Act (FEHA), and Title VII regulations to provide reasonable and appropriate accommodations for its employees based on individual need, to provide reasonable and appropriate alternative PPE to its employees, and to create interim accommodations for employees with pending beard accommodation requests. It would also require them to … [sic].

   "AB 2321 addresses a policy that unfairly affects religious communities and individuals with certain skin conditions. The bill requires the CDCR to provide suitable accommodations for

employees and alternative PPE based on individual needs. It also calls for the creation of specific guidelines for handling accommodation requests, appeals, and responses. AB 2321 upholds California's dedication to workplace equality, and respect for individual needs and beliefs. This bill will be a critical step in ensuring that the largest public employer in the state of California provides their employees with the necessary personal protective equipment that respects their individual needs and beliefs."

2) **CDCR Policy on Transmissible Disease Prevention and Title 8:** In approximately December 2022, CDCR updated its phased-in implementation for compliance with Title 8 of the California Code of Regulations (hereinafter "Title 8"). Title 8 covers provisions pertaining to the Department of Industrial Relations ("DIR") and preventing the spread of hazardous substances in the workplace. (Cal. Code Regs., tit. 8, § 5160 ["This Article establishes minimum standards for the use, handling, and storage of hazardous substances in all places of employment."].)

   Title 8, sections 5144 and 5199 generally relate to mandatory PPE for state employees who may be exposed to toxic fumes or chemicals. Section 5144 specifically relates to respiratory protection. Section 5144 subdivision (a)(2) states,

   > "Respirators shall be provided by the employer when such equipment is necessary to protect the health of the employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protection program which shall include the requirements outlined in subsection (c)."

   Section 5144, subdivision (c) creates a respiratory protection program ("RPP") and requires any employer to develop and implement a written RPP with required worksite-specific procedure and elements for required respirator use. If a respirator is required for employment, subdivision (d) establishes the employer requirements for providing respirators. Some employment settings require use of an "immediately dangerous to life and health ("IDLH)-certified mask" to prevent exposure to toxic, corrosive, or asphyxiant substance. (Cal. Code Regs., tit. 5, § 5144, subd. (d)(2).) An IDLH-type mask must be a "full facepeice pressure demand, self-contained breathing apparatus ("SCBA") certified by the National Institute for Occupational Safety & Health at the Centers for Disease Control and Prevention. Some CDCR positions may require use of an SCBA IDLH mask.

   SCBA masks are more akin to what firefighters wear in the course of their duties. The face shield portion usually covers the entire face and must be fit tested to the face in order to ensure a tight seal to prevent exposure. Section 5144, subdivision (f) outlines the fit testing requirements that an employer must follow in ensuring compliance with state occupational safety laws.

   > "This subsection requires that, before an employee may be required to use any respirator with a negative or positive pressure tight-fitting face piece, the employee must be fit tested with the same make, model, style, and size of respirator that will be used. This subsection specifies the

> kinds of fit tests allowed, the procedures for conducting them, and how the results of the fit tests must be used."
> ...
>
> The employer shall conduct an additional fit test whenever the employee reports, or the employer, physician, or other licensed health care professional (PLHCP), supervisor, or program administrator makes visual observations of, changes in the employee's physical condition that could affect respirator fit. Such conditions include, but are not limited to, facial scarring, dental changes, cosmetic surgery, or an obvious change in body weight."

Section (g) of section 5144 creates multiple employer mandates to ensure the face piece seal is tight enough against the face skin to properly protect against exposure to toxic fumes or aerosols.

> Face piece seal protection.
>
> (A) The employer shall not permit respirators with tight-fitting face pieces to be worn by employees who have:
>
> 1. **Facial hair that comes between the sealing surface of the face piece and the face or that interferes with valve function; or**
>
> 2. Any condition that interferes with the face-to-face piece seal or valve function. (Emphasis added.)

(Cal. Code of Regs, tit. 5, § 5144, subd. (g)(1).)
SCBA masks require a tight face seal to prevent exposure to toxic air particles. Accordingly, numerous positions across state and local government require SCBA masks and require employees to have beards no longer than one inch in order to properly fit test a mask. This includes employees at local correctional institutions, irrigation districts, wastewater districts, and other positions that may involve exposure to aerosol toxins.
However, it may mean that employers will be required pursuant to the FEHA to accommodate an employee with physical or mental disabilities or religious objections. CDCR has a legal obligation to comply with Title 8. To date, it may have been out of compliance. This bill does not really resolve the issues with Title 8 because the proposed Penal Code section 5009.1 generally requires CDCR to provide PPE and to allow employees to retain their facial hair. It also mandates that CDCR comply with state and federal civil rights laws (presumably, FEHA, Title VII of the 1964 Civil Rights Act, Civ. Code, § 56, *et seq.,* [Bane Act], and others) as well as Title 8. Therefore, this bill mandates CDCR comply with Title 8 [which prohibits having facial hair that interferes with the SCBA mask] but also mandates that CDCR cannot prohibit facial hair. This conflict is left unresolved by the current legislation and may be prohibited by existing state and federal OSHA laws.

3) **ACLU Challenge:** On or about February 9, 2023, the ACLU of Northern California and the Sikh Coalition served a demand letter on CDCR stating that its December 2022

memorandum requiring a very short beard or no beard violated the FEHA and Title VII of the 1964 Civil Rights Act. The letter points out the numerous circumstances in which CDCR corrections officers may have facial hair, and, as a matter of law, CDCR cannot just categorically deny any request for an accommodation. That would likely constitute a violation of both state and federal constitutional law, as well as state and federal employment laws including the FEHA and Title VII, as explained below. The ACLU's and Sikh Coalition's demand letter requested CDCR to create a policy with more nuance to ensure a greater degree of accommodation for disability[1] and religious reasons.
CDCR provided this committee with memoranda that outlined the delayed implementation process and procedures for requesting accommodation. Additionally, this proposed policy likely required CDCR to meet and confer with the California Correctional Officers Peace Officers Association (CCPOA) to ensure fair and equitable application. (See § Gov. Code, 3517.) The memoranda makes clear that CDCR will take all requests for accommodation and move quickly to begin the interactive and accommodation processes to ensure employees had sufficient time to seek accommodations before the mask requirements were enforced. (See CDCR Memorandum, *Notice of Chance to Department Operations Manual* dated December 12, 2022, including attached request for accommodation.)

4) **Prohibitions against Religious and Disability Discrimination:** Both the FEHA and Title VII of the 1964 Civil Rights Act prohibit an employer from taking any adverse employment action or engaging in any visual, verbal, or physical conduct that affects the terms and conditions of employment because of a person's sincerely held religious beliefs or mental or physical disabilities.

a. Religious Discrimination

The elements of a religious discrimination claim are: the plaintiff had a bona fide or sincerely held religious belief; the employer was aware of that belief; and the belief conflicted with an employment requirement. (*Bolden-Hardge v. Off. of the Cal. State Controller* (9th Cir. 2023) 63 F.4th 1215, 1218; *Soldinger v. Northwest Airlines, Inc.* (1996) 51 Cal. App.4th 345, 370; *Friedman v. Southern California Permanente Medical Group* (2002) 102 Cal.App.4th 39, 45.)

When the employee has a sincerely-held religious belief that conflicts with an employer requirement, the employer is legally obligated to engage in an accommodation discussion to determine what remedies may be available to allow the employee to observe their religious practices but still consistent with the employer's operational needs. (Cal. Const. Art. 1, § 8.)

> "The duty of reasonable accommodation of religious practice implicit in Cal. Const. art. I, § 8 forbids disqualification of employees for religious practices unless reasonable accommodation by the employer is impossible without undue hardship." (*Silo v. CHW Med. Foundation* (2002) 27 Cal.4th 1097, 1100.)

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[1] The ACLU-Sikh Coalition Letter specifically refers to denying medical accommodations for men of color, and in particular, Black Men (either cis-gender or trans-gender), with Psuedifolliculitis – a bacterial skin condition.

An employer may only deny an accommodation where it constitutes an undue hardship.

> "The employer accommodated Harrison's observance of holy days but found: (1) that no qualified employee was willing to fill Harrison's job on his Saturday Sabbath, and (2) that involuntary assignment of a replacement was forbidden by the seniority provisions of the collective bargaining contract. The court held that the employer's duty of reasonable accommodation did not require it to violate the contract to pay overtime wages to a substitute, or to get along with one less Saturday employee." (*Rankins v. Comm'n on Prof'l Competence of Ducor Union Sch. Dist.* (1979) 24 Cal.3d 167, 175.)

Undue hardship is a difficult defense to prove since triers of fact will want to see all the attempts to accommodate the employee before it reached the point of claiming an undue hardship. This includes allowing the employee the opportunity to work in another position that does not interfere with their religious beliefs.

b. Disability Discrimination

Disability is similar to religion in that it requires an employer to consider all reasonable accommodations for an employee with disabilities. An employer is legally prohibited from taking an adverse action against any employee for any physical (i.e., physiological) or mental disability. (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1006; *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426; *Faust v. California Portland Cement Co.* (2007) 150 Cal.App.4th 864 ["To establish a prima facie case under the FEHA on grounds of physical disability, Scotch had to present evidence showing he suffered a physical disability within the meaning of the FEHA, he was otherwise qualified for his job, and he suffered an adverse employment action because of the physical disability."].)
A FEHA disability is any disability that impairs a major life activity. Working is considered a major life activity. So, in most instances, unless the alleged disability is a cold, flu, bruise, etc., but any one of those injuries or illnesses can easily become an illness that impacts a major life activity. (*Soria v. Univision Radio Los Angeles, Inc.* (2016) 5 Cal.App.5th 570.)
An employer must commence an interactive process when it becomes aware of an employee's disability or the employee puts the employer on notice of a possible disability. During the interactive process, the employer must consider any reasonable accommodation, including the accommodations requested by the employee and the employee's doctor, as well as what the employer thinks is necessary for operational efficiencies. (See *Avila v. Continental Airlines, Inc.* (2008) 165 Cal.App.4th 1237.)
Therefore, CDCR cannot just unilaterally decide it will no longer accommodate a religious or disability request for facial hair if the facial hair were necessary for a disability or a sincerely-held religious belief. CDCR is legally required to try to accommodate, including placing officers in different positions. Failure to do so would no doubt result in multiple formal grievances under the MOU and the Dills Act, as explained below, as well as lawsuits alleging violations of FEHA, Title VII, and constitutional law.

5) **Title VII Bone Fide Occupational Qualification Defense:** A BFOQ is a legally allowed restriction of hiring and employing a person based on their sex, religion, or national origin. To be defined as legal, or "bona fide," the qualifications should relate to the particular

business's necessary operations, as well as the position's essential job functions. To say it differently, the BFOQ law allows for necessary employment discrimination based on sex, religion, or national origin if the particular business's operations or the job position's duties justify it. The Bona Fide Occupational Qualifications rule is the exception to Title VII of the Civil Rights Act, which prohibits employment discrimination "based on race, color, religion, sex and national origin." BFOQs recognize that in some extremely rare instances a person's sex, religion, or national origin may be reasonably necessary to carrying out a particular job function in the normal operation of an employer's business or enterprise. However, it is extremely rare. The only cases to date that allow for a BFOQ are:

- Airline pilots and bus drivers who are assigned a mandatory retirement age.
- Church employees who must be a member of the denomination to fulfill job duties.
- Models or actors who need to show authenticity in a role.

Examples of *invalid* BFOQ claims include:

- Females can't do the work.
- The job is too dangerous or unpleasant for women.
- The employer or its managers, other employees, clients, or customers prefer males/females even though the work isn't reliant on a specific gender to fulfill a job role.
- There are no separate restroom/changing room facilities available.
- It's too hard/time-consuming to qualify male/female job applicants.
- The job requirement states the applicant must speak, read, and write fluent Hebrew, therefore they must be Israeli born.
- The duties require someone younger because the job requires heavy lifting.
- The business owner is Catholic and doesn't want to employ a Scientologist.

Whether being clean shaven or having a very short beard constitutes a BFOQ for CDCR correctional officers is up to the courts decide. However, CDCR does not report seeking any BFOQ for this reasons. CDCR contends it will engage in the legally-required process when an employee requests an accommodation on religious or disability grounds. Therefore, if CDCR is no longer able to ensure that facial hair is short enough to comply with fit test requirements mandated by state and federal occupational safety laws, it may face significant liability for violating Cal OSHA requirements. (*Shirvanyan v. Los Angeles Community College Dist.* (2020) 59 Cal.App.5th 82, 97.)

6) **Undue Hardship Defense:** The FEHA and Title VII both allow for an employer to allege a disability-related requested or available accommodation is so unduly burdensome to an employer, that it simply cannot offer it. (See *Humphrey v. Mem'l Hosps. Ass'n* (9th Cir. 2001) 239 F.3d 1128, 1130 ["Working at home is a reasonable accommodation when the essential functions of the position can be performed at home and a work-at-home arrangement would not cause undue hardship for the employer."].) This may result in the employer terminating an employer for inability to reasonably accommodate. In some cases, the employee may be entitled to a disability retirement. (See Gov. Code, § 21153.) Undue hardship defenses are very fact-intensive and require an extensive interactive processes to successfully allege to a trier of fact. Even if CDCR were alleging it could not allow a correctional officer to have a lengthy beard without significant undue hardship, it would still have to interact and attempt some type of accommodation.

7) **CDCR Memorandum of Understanding ("MOU")**: The MOU between CDCR and CCPOA formalized their most recent agreement in August 2023. First, CDCR operates health and safety committees. It is staffed from people from CDCR and people representing CDCR. It meets regularly to discuss and address health and safety issues affecting correctional officers. (See Agreement between State of California and CCPOA covering Bargaining Group 6 Corrections, July 3, 2023 through July 2, 2025 (hereinafter "CDCR-CCPOA MOU", section 7.01, subd. (A-E) p. 19.)[2] The CDCR-CCPOA MOU also states, "The State is committed to providing Peace Officer protective and safety equipment for the personal protection of its employees, taking into consideration the various work environments and the inherent risk of various job assignments." (CDCR-CCPOA MOU, section 7.05, subd. (A).)

The MOU makes clear that CDCR is responsible for determining the protective equipment and/or clothing based on their position and classification. Protective equipment includes: CDCR-issued "badges, handguns, holsters, handcuffs, handcuff cases, handcuff keys, batons, chemical agents, riot helmets, gas masks, personal alarm devices and CPR masks. For camps, it may include Nomex and helmets. For non-uniformed staff, appropriate cases/carriers will also be issued." (CDCR-CCPOA MOU, section 7.05, subd. (B), p. 21.)

CDCR is generally responsible for covering the cost of personal protective equipment and the terms of reimbursement and cost coverage are usually covered in either statute or the MOU. (See CDCR-CCPOA MOU, section 14.05, subd. (G), p. 108.) CDCR provides PPE to its officers, including gas masks, N and K-95 masks, gloves, etc., at no cost to the officers or CCPOA. There is nothing in the MOU that addresses fit testing with facial hair.

Generally, an MOU includes a limited "re-opener" provision that may allow some interpretation of the MOU in a manner consistent with the language. (See CDCR-CCPOA MOU, Article 27, p. 172-173.) However, usually the parties must meet and confer in advance pursuant to the Ralph M. Dills Act (Gov. Code, § 3512, *et seq.*), which governs state labor relations. CDCR is generally prohibited from changing the terms and conditions of employment without negotiating with CDCR. Government Code section 3517 states: "The Governor, or his representative as may be properly designated by law, ***shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations,*** and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action." (Emphasis added.)

CDCR may only make unilateral changes to the terms and conditions of employment when it is not prohibited by the MOU (i.e., within management rights"), the parties have reached impasse during negotiations, or where it is mandated by existing law. (See *Brown v. Superior Court (CCPPOA)* (2011) 199 Cal.App.4th 971, 972 ["Although [the] Ralph C. Dills Act, (citation omitted), does not permit the California Governor or the California Department of Personnel Administration [now Human Resources Department ("Cal HR") unilaterally to impose a mandatory unpaid furlough for represented employees (in the absence of an

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[2] CDCR-CCPOA MOU (2023-205) may be found at https://www.calhr.ca.gov/state-hr-professionals/Pages/main.aspx (last visited March 10, 2024.)

authorizing provision in an applicable memorandum of understanding, unless the parties have reached an impasse in negotiations), nothing in the Dills Act precludes the legislature from adopting such a furlough plan through a legislative enactment as one method of reducing the compensation of state employees when such cuts are found necessary and appropriate in light of the State's fiscal condition."].)

8) **Arguments in Support.** According to the California Association of Psychiatric Technicians, "This bill mandates that CDCR provide its employees with reasonable and appropriate PPE tailored to their specific needs. Furthermore, it prohibits the enforcement of departmental policies that require staff to be clean-shaven, recognizing the diverse religious and cultural backgrounds of CDCR employees. Additionally, AB 2321 calls for the development of a clear and transparent procedure for submitting accommodation requests and engaging in the interactive process with employees.

"CAPT represents approximately 1,200 psychiatric technicians working across CDCR facilities, many of whom belong to minority racial and religious communities. It is imperative to acknowledge and respect the religious freedoms of our members, especially regarding grooming practices. No one should face barriers to practicing their religion due to employer policies.

"While we applaud the inclusion of PPE provisions in AB 2321, we believe it is essential to expand the definition of personal protective equipment to include "stab vests." Prisons inherently pose significant risks, and all staff, including psychiatric technicians, deserve access to adequate protection. Our members work alongside correctional officers who are provided with stab vests, yet psychiatric technicians are not afforded the same level of protection. Including stab vests in the definition of PPE will ensure that all staff have the necessary tools to ensure their safety while providing care to inmates. Additionally, to ensure that all staff can receive the appropriate PPE, the bill should be amended to include **California Correctional Health Care Services (CCHCS),** as this organization provides care that includes medical, dental, and mental health services to California's incarcerated population at all 33 California Department of Corrections and Rehabilitation (CDCR) institutions statewide."

9) **Argument in Opposition.** None submitted.

10) **Prior Legislation.**

a) AB 1217 (Rodriguez), of the 2021-22 Legislative Session, would have authorized the State Department of Public Health (CDPH) to rotate personal protective equipment (PPE) in the state's stockpile by selling the PPE to a non-profit agency, local government or provider, and by contracting to purchase PPE on behalf of a local government or provider. AB 1217 was held on the Assembly Appropriations suspense file.

b) SB 115 (Committee on Budget), Chapter 2, Statutes of 2021 appropriated $50 million for PPE to variety of state agencies combatting COVID-19.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Psychiatric Technicians

Opposition

None

Analysis Prepared by: Kimberly Horiuchi / PUB. S. / (916) 319-3744

Date of Hearing: March 19, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2336 (Villapudua) – As Amended March 12, 2024

As Proposed to be Amended in Committee

SUMMARY: Adds a substance containing fentanyl to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony punishable in state prison by two, three, or four years. Specifically, **this bill**:

1) Adds a substance containing fentanyl to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony punishable in state prison by two, three, or four years.

2) Provides that, where the substance possessed is one containing fentanyl, the person must have knowledge that the specific controlled substance possessed is fentanyl.

3) States that this prohibition does not apply to any person lawfully possessing fentanyl, including with a valid prescription.

EXISTING LAW:

1) Makes it unlawful to possess several specified controlled substances, including heroin, cocaine, cocaine base, opium, hydrocodone, and fentanyl. Provides that the punishment is imprisonment in the county jail for not more than one year unless the person has one or more prior convictions for a serious or violent felony, as specified, or for an offense requiring sex offender registration, in which case it is punishable as a felony. (Health & Saf. Code, § 11350, subd. (a).)

2) Makes it unlawful to possess several specified controlled substances, including methamphetamine, amphetamine, phencyclidine (PCP), and gamma hydroxybutyric acid (GHB). Provides that the punishment is imprisonment in the county jail for not more than one year unless the person has one or more prior convictions for a serious or violent felony, as specified, or for an offense requiring sex offender registration, in which case it is punishable as a felony. (Health & Saf. Code, § 11377, subd. (a).)

3) Makes it unlawful for a person to possess for sale, or purchase for purpose of sale, several specified controlled substances, including heroin, cocaine, cocaine base, opium, and fentanyl. Provides that the punishment is imprisonment in the county jail for two, three, or four years. (Health & Saf. Code, §§ 11351, 11351.5.)

4) Makes it unlawful for a person to transport, import, sell, furnish, administer, or give away, or offer or attempt to transport, import, sell, furnish, administer, or give away several specified controlled substances, including cocaine, cocaine base, heroin, and fentanyl. Provides that the

punishment is imprisonment in the county jail for three, four, or five years. Provides that the punishment for transporting those specified controlled substances within the state between noncontiguous counties is imprisonment in the county jail for three, six, or nine years. (Health & Saf. Code, § 11352.)

5) Makes it unlawful to possess for sale several specified controlled substances, including methamphetamine, amphetamine, and GHB. Provides that the punishment is imprisonment in the county jail for 16 months, two years, or three years. (Health & Saf. Code, § 11378.)

6) Makes it unlawful to possess PCP for sale. Provides that the punishment is imprisonment in the county jail for three, four, or five years. (Health & Saf. Code, § 11378.5.)

7) Makes it unlawful for a person to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport specified controlled substances, including methamphetamine, amphetamine, and GHB. Provides that the punishment is imprisonment in the county jail for two, three, or four years. Provides that the punishment for transporting those specified controlled substances within the state between noncontiguous counties is imprisonment in the county jail for three, six, or nine years. (Health & Saf. Code, § 11379.)

8) Makes it unlawful for a person to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport PCP or its analogs. Provides that the punishment is imprisonment in the county jail for three, four, or five years. Provides that the punishment for transporting those specified controlled substances within the state between noncontiguous counties is imprisonment in the county jail for three, six, or nine years. (Health & Saf. Code, § 11379.5.)

9) Provides, notwithstanding any other provision of law, that every person who unlawfully possesses any amount of a substance containing cocaine base, a substance containing cocaine, a substance containing heroin, a substance containing methamphetamine, a crystalline, or liquid substance containing PCP, plant material containing PCP, or a hand-rolled cigarette treated with PCP while armed with a loaded, operable firearm is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years. (Health & Saf. Code, § 11370.1, subd. (a).)

10) Defines "armed with" to mean having available for immediate offensive or defensive use. (Health & Saf. Code, § 11370.1, subd. (a).)

11) Provides that any person who is convicted of the above offense is ineligible for diversion or deferred entry of judgment, as described. (Health & Saf. Code, § 11370.1, subd. (b).)

12) Specifies that the term "controlled substance analog" does not mean "any substance for which there is an approved new drug application as specified under the federal Food, Drug, and Cosmetic Act or which is generally recognized as safe and effective as specified by the federal Food, Drug, and Cosmetic Act." (Health & Saf. Code, § 11401, subd. (c)(1).)

13) Regulates firearms, the possession of firearms, and the carrying of firearms. (Pen. Code, § 23500 et seq.)

14) Provides for an additional year of punishment for a person who is armed with a firearm in the commission or attempted commission of a felony, unless being armed is an element of the offense. (Pen. Code, § 12022, subd. (a)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Current law allows for the felony prosecution of a person who possesses a substance containing cocaine, cocaine base (crack), amphetamine, methamphetamine, phencyclidine (PCP), or heroin while being armed with a loaded, operable firearm. A grave threat to public health and safety exists today in the form of the drug fentanyl, which is causing numerous overdose deaths in California and nationwide. Fentanyl is not listed by name as being among the controlled substances eligible for prosecution under existing law, even though it is up to 50 times stronger than heroin, which is on the list.

   "Californians have seen an increased supply of fentanyl in recent years, causing significant risk to first responders as well as to those who ultimately succumb to fatal overdoses and anyone coming into contact with the illicit drug. It is as dangerous as, or more dangerous than, the drugs listed by name in existing law.

   "Those who possess loaded, operable firearms while also possessing this extremely dangerous drug risk harm to first responders, fellow users, passersby, and the like. Dealers of this dangerous drug often arm themselves in order to stave off robberies of this valuable illicit commodity and to avoid apprehension by law enforcement. Fentanyl should be added to the list as it is every bit as dangerous as, and even potentially more dangerous than, the drugs currently listed by name. Such will potentially reduce gun violence, risk to first responders, and the community."

2) **Possession of a Controlled Substance While Armed**: Under current law, possession of specified controlled substances, including heroin and fentanyl, is generally a misdemeanor. (See Health & Saf. Code, §§ 11377 & 11350.) However, possession of any amount of a substance containing cocaine base, cocaine, heroin, methamphetamine, or PCP while armed with a loaded, operable firearm is a felony punishable by imprisonment in the state prison for two, three, or four years. (Health & Saf. Code, § 11370.1, subd. (a).)

   Notably, this law does not require that the firearm be unlawfully possessed or that the person otherwise be engaged in unlawful activity related to the firearm. In other words, a person in lawful possession of a loaded, operable firearm who is also in possession of one of the specified controlled substances can be charged with a felony. Moreover, the person is considered armed with the firearm even if it is not on their person. They do not even need to know that it is loaded and operable, just that it is in a readily accessible place. (See CALCRIM No. 2303; *People v. White* (2016) 243 Cal.App.4th 1354, 1362.)

   The controlled substance need only be a "usable amount." A "usable amount" is defined as

"a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user." (See CALCRIM No. 2303.)

Though these specific controlled substances are singled out in statute for enhanced punishment if the person has an accessible firearm that may be lawfully possessed, there is no requirement that the person know which specific controlled substance they actually possess. They need only know the substance's nature or character as a controlled substance. (*People v. Palaschak* (1995) 9 Cal.4th 1236, 1242; *People v. Horn* (1960) 187 Cal.App.2d 68, 74-75; CALCRIM No. 2303.)

This bill would add a substance containing fentanyl to the list of controlled substances in this statute. What this bill does is punish the personal possession of fentanyl if there is a firearm accessible. Possession for sales, sales, and distribution of fentanyl is already a felony under current law. A person who possesses these substances for purposes of sales is guilty of a felony punishable in the county jail by two, three, or four years. (Health & Saf. Code, § 11351.) If the person is armed with a firearm, an additional year may be added. (Pen. Code, § 12022, subd. (a)(1).) If a person transports, sells, furnishes, administers, or gives away, fentanyl, the punishment is three, six, or nine years in state prison. (Health & Saf. Code, § 11352.) Again, if the person is armed, an additional year may be added. (Pen. Code, § 12022, subd. (a)(1).)

Moreover, because fentanyl is frequently mixed with other drugs without the knowledge of the user, the person may not even know they possess fentanyl. (https://www.npr.org/sections/health-shots/2018/03/29/597717402/fentanyl-laced-cocaine-becoming-a-deadly-problem-among-drug-users.) And unless fentanyl is the only drug possessed, possession of a controlled substance is covered by other laws – e.g., possession of cocaine, heroin, methamphetamine, etc. (Health & Saf. Code, §§ 11370.1 [possession while armed with a firearm] 11350 [possession of cocaine or heroin] & 11377 [possession of methamphetamine].)

Indeed, because other provisions of law already punish trafficking fentanyl and other drugs while armed, the persons most likely to be punished under this law are people who use drugs, particularly those with substance use disorders. This includes people who lawfully possess the firearm, and who may have very good reasons for arming themselves. Intimate partner violence (IPV), for example, increases the odds that a victim will suffer a substance use disorder, and studies demonstrate an increased rate of IPV among women with substance use disorders. (See e.g., Afifi, *Victimization and Perpetration of Intimate Partner Violence and Substance Use Disorders in a Nationally Representative Sample*, The Journal of Nervous and Mental Disease, (Aug. 2012) <https://journals.lww.com/jonmd/abstract/2012/08000/victimization_and_perpetration_of_intimate_partner.6.aspx> [last visited Mar. 13, 2024]; Ogden, *Intimate partner violence as a predictor of substance use outcomes among women: a systemic review*, Addictive Behaviors (Dec. 18, 2021) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10007694/> [last visited Mar. 13, 2024].) They are also disproportionately the victims of gun violence or threats of gun violence. "In the U.S., an estimated 4.5 million women report having been threatened with a gun by an intimate partner, and nearly 1 million have had a partner who used a gun against them. In 2017, 926 of the 1,527 women (61%) murdered by a partner were killed with a gun (61%), and, overall, gun-related partner homicides increase by 26% from 2010 to

2017." (Seeburger, *Firearms and Intimate Partner Violence (IPV): Scope & Policy Implications*, Ortner Center on Violence & Abuse, University of Pennsylvania (Nov. 2020), <https://sp2.upenn.edu/wp-content/uploads/2020/11/OC-IPV-and-Guns-fact-sheet_11182020.pdf> [last visited Mar. 13, 2024].) Given these staggering statistics, it would perhaps make sense for an IPV victim with a substance use disorder to carry a firearm. But doing so would turn this victim into a felon if they carried that firearm, for their protection, while in possession of a controlled substance, even when the amount of the substance is not enough to affect them.

3) **Harsher Sentences Unlikely to Reduce Drug Use or Deter Criminal Conduct:** Ample research on the impact of increasing penalties for drug offenses on criminal behavior has called into question the effectiveness of such measures. In a report examining the relationship between prison terms and drug misuse, PEW Charitable Trusts found "[n]o relationship between drug imprisonment rates and states' drug problems," finding that "higher rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths." (https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems; see https://www.ccjrc.org/wp-content/uploads/2016/02/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf)

   This may be because of the limited deterrent effect of harsher sentences generally. According the U.S. Department of Justice, "Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not 'chasten' individuals convicted of crimes, and prisons may exacerbate recidivism." (https://nij.ojp.gov/topics/articles/five-things-about-deterrence)

   According to PEW, "[A] large body of prior research…cast[s] doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations." (PEW, *supra.*) PEW concludes:

   > Putting more drug-law violators behind bars for longer periods of time has generated enormous costs for taxpayers, but it has not yielded a convincing public safety return on those investments. Instead, more imprisonment for drug offenders has meant limited funds are siphoned away from programs, practices, and policies that have been proved to reduce drug use and crime. (*Ibid.*)

   Will applying enhanced punishment to a person who possess one of these controlled substances for personal use, while having access to what may be a lawfully possessed firearm, reduce the amount drugs on California streets or reduce the threat of injury from a firearm? The evidence to date suggests that it will not. How will this enhanced punishment for having a firearm and fentanyl prevent the accidental overdoses referenced in the author's statement?

4) **Argument in Support**: According to the *California District Attorneys Association*, "Those who carry fentanyl simultaneously with a loaded, operable firearm present a unique risk to public safety. Guns that are 'ready to go,' so to speak, present enormous challenges when in the hands of those dealing or using dangerous drugs.

   "Further, those who traffic in drugs, particularly fentanyl, use their dangerous weapons to

stave off robberies by competitors, to combat law enforcement, and to "protect their stash." Whether someone is a 'low-level drug dealer' or even a simple 'drug user' does not take away the dangerous nature of the loaded, operable weapon within the proximity of the drug. This is a lethal combination, and it is time we recognize it as such.

"The law already recognizes its lethality when it comes to heroin, crack, cocaine, PCP, methamphetamine, and amphetamine. Last year, a prior version of this bill, which CDAA sponsored—SB 226 (D-Alvarado-Gil)—passed unanimously at the Senate Public Safety Committee and on the floor of the Senate. It is time we place fentanyl on this list."

5) **Argument in Opposition**: According to the *Ella Baker Center for Human Rights*, "Under current law, people who have even a small amount of a controlled substance and a lawfully purchased firearm in their residence are convicted of this felony, with an upper penalty of 4 years in jail or prison. HSC 11370.1 does not require that a firearm be used, brandished, or even be on the person. The mere presence of a firearm, even one legally owned and safely stored in the home, is grounds for conviction and a very long term of incarceration if the person has a small amount of a drug in their residence, vehicle, or personal possession.

"HSC 11370.1 went into effect in January of 1997. In the last 24 years, evidence has emerged that punishing people for possessing a small amount of heroin or another controlled substance for their own use, while also having a firearm within their residence or their vehicle has reduced gun violence, crime, drug use, or the negative health effects of drug misuse?

"What health benefits do punished people derive from years of incarceration? Research has established that persons leaving prisons are far, are more likely to die of a drug overdose than the general population. But there is no research that we are aware of that shows that long sentences reduce the availability of drugs, or reduce drug harms or violent crimes. On the contrary, available research finds that long sentences have negligible public safety benefits, and definite negative effects on individuals, families, and communities.

"Further, our state and local budgets are not unlimited – we should not lock them up in failed policies. The cost for each year of prison is now estimated to be $132,860 per prisoner. That is twice the cost of tuition at USC, California's most expensive private university. The approximate cost of a year of methadone treatment for an opioid-dependent person is $6,552. The approximate cost of buprenorphine treatment is less than $6,000. It would be healthier, safer, and better for public safety to send an additional 17 people to methadone treatment, or 19 people to buprenorphine treatment than to incarcerate one person for an additional year. Funding a robust, voluntary drug treatment system is a far more intelligent investment.

"Furthermore, increased punishment may have the unintended consequence of worsening our public health crisis, rather than ameliorating it. The number one reason that witnesses to an overdose hesitate to, or do not call 911 or take a person to an emergency room is fear of incarceration for the person seeking to save a life, or even the person suffering the medical crisis. California "Good Samaritan" law, Health & Safety Code 11376.5, intended to encourage people to call 911 provides no protection against prosecution and incarceration pursuant to HSC 11370.1. The drive by some lawmakers and prosecutors to "make an example" of persons using fentanyl only worsens our current crisis. It is getting harder to convince people in danger that they should call 911 or take a person to an emergency room.

"The war on drugs failed us, failed families, and failed communities. After incarcerating millions of Americans, drugs became more widely available, stronger, and cheaper. It seems completely irrational to replicate that failed policy."

6) **Related Legislation**:

a) AB 1848 (Davies), would expand an existing one year sentencing enhancement for any person over the age of 18 who induces a minor to transport, carry, sell, give away, prepare for sale, or sell heroin, cocaine, or cocaine base on any church, synagogue, youth center, day care, or public swimming pool grounds to include the transport, carry, sell, give away, prepare for sale, or sell heroin, cocaine, cocaine base, and fentanyl either on the grounds of, or within 1000 feet from a church, synagogue, youth center, day care, or public swimming pool. AB 1848 will be heard in this committee today.

b) AB 2045 (Hoover), would increase the penalty for the crime of inducing a minor to sell or possess any controlled substance within 1,000 feet of a school crime as it relates to fentanyl to 5, 8, or 11 years and makes the 1,000 enhancement applicable to offenses involving fentanyl. AB 2045 is pending hearing in this committee.

c) AB 2209 (Sanchez), would allow law enforcement to assist the Immigration & Customs Enforcement in investigations of any person who is suspected or previously convicted of possession for sale or sale of fentanyl. AB 2209 is pending in this committee.

d) AB 2341 (Fong), would prohibit the granting of credits to any inmate serving a sentence for a fentanyl-related offense, as specified. AB 2341 is pending hearing in this committee.

7) **Prior Legislation**:

a) AB 675 (Soria), of the 2023-2024 Legislative Session, would have added a substance containing a heroin analog, a substance containing fentanyl, and a substance containing a fentanyl analog to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony punishable in state prison by two, three, or four years. AB 675 was held in suspense in the Assembly Appropriations Committee.

b) SB 226 (Alvarado-Gil), of the 2023-2024 Legislative Session, would add fentanyl to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony. SB 226 is failed passage in this committee.

c) AB 1673 (Seyarto), of the 2021-2022 Legislative Session, would have created the Anti-Fentanyl Abuse Task Force to evaluate the nature and extent fentanyl abuse in California and to develop policy recommendations for addressing it. AB 1673 was held in suspense in the Assembly Appropriations Committee.

d) SB 1070 (Melendez), of the 2021-2022 Legislative Session, would have added oxycodone and fentanyl to the list of controlled substances for which possession of those substances while armed with a loaded and operable firearm is a felony. Hearing on SB

1070 in the Senate Public Safety Committee was canceled at the request of the author.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Drug Induced Homicide
Fullerton Police Officers' Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Joaquin District Attorney Office
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

ACLU California Action
California Public Defenders Association
Drug Policy Alliance
Ella Baker Center for Human Right
Initiate Justice
Initiate Justice Action

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744

Amended Mock-up for 2023-2024 AB-2336 (Villapudua (A))

Mock-up based on Version Number 98 - Amended Assembly 3/12/24
Submitted by: Staff Name, Office Name

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11370.1 of the Health and Safety Code is amended to read:

11370.1. (a) Notwithstanding Section 11350 or 11377 or any other provision of law, **and except as provided in subdivision (2),** every person who unlawfully possesses any amount of a substance containing cocaine base, a substance containing cocaine, a substance containing heroin, a substance containing methamphetamine, a substance containing fentanyl, a crystalline substance containing phencyclidine, a liquid substance containing phencyclidine, plant material containing phencyclidine, or a hand-rolled cigarette treated with phencyclidine while armed with a loaded, operable firearm is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

(b) Where the substance possessed is one containing fentanyl, the person must have knowledge that the specific controlled substance possessed is fentanyl.

~~(b)~~ **(c)** Subdivision (a) does not apply to a person lawfully possessing fentanyl, including with a valid prescription.

~~(c)~~ **(d)** As used in subdivision (a), "armed with" means having available for immediate offensive or defensive use.

~~(d)~~ **(e)** A person who is convicted under this section shall be ineligible for diversion or deferred entry of judgment under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Staff name
Office name
03/15/2024

Date of Hearing: March 19, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2420 (Lowenthal) – As Introduced February 13, 2024

SUMMARY: Authorizes any person who had their arrest or conviction set aside and dismissed pursuant to existing law related to expungement to petition the court to have their arrest and related records sealed. Specifically, **this bill**:

EXISTING LAW:

1) Authorizes any person who is convicted of a crime, as specified, and has fulfilled the conditions of probation or has been discharged prior to termination of probation to petition the court to withdraw their plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if they have been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant. (Pen. Code, § 1203.4, subd. (a)(1).)

2) Requires the DOJ, as of July 1, 2022, and subject to an appropriation in the annual Budget Act, on a monthly basis, to review the records in the statewide criminal justice databases, and based on information in the state summary criminal history repository and the Supervised Release File, identify persons with convictions that meet specified criteria and are eligible for automatic conviction record relief. (Pen. Code § 1203.425, subd. (a)(1)(A).)

3) States that a person is eligible for automatic conviction relief if they meet all of the following conditions:

   a) The person is not required to register pursuant to the Sex Offender Registration Act;

   b) The person does not have an active record for local, state, or federal supervision in the Supervised Release File;

   c) Based upon the information available in the department's record, including disposition dates and sentencing terms, it does not appear that the person is currently serving a sentence for any offense and there is no indication of any pending criminal charges;

   d) Except as otherwise provided, there is no indication that the conviction resulted in a sentence of incarceration in the state prison; and,

   e) The conviction occurred on or after January 1, 2021, and meets either of the following criteria:

      i) The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have

completed their term of probation without revocation; or,

ii) The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and at least one calendar year has elapsed since the date of judgment. (Pen. Code § 1203.425, subd. (a)(1)(A)(B).)

3) Requires the DOJ to grant relief, including dismissal of a conviction, to a person who is eligible, without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records. (Pen. Code § 1203.425, subd. (a)(2)(A).)

4) States that a person who has suffered an arrest that did not result in a conviction, as specified, may petition the court to have his or her arrest and related records sealed. (Pen. Code, § 851.91, subd. (a).)

5) Specifies that an arrest that did not result in a conviction has occurred if any of the following are true:

   a) The statute of limitations has run on every offense upon which the arrest was based and the prosecuting attorney of the city or county that would have had jurisdiction over the offense or offenses upon which the arrest was based has not filed an accusatory pleading based on the arrest; or

   b) The prosecuting attorney filed an accusatory pleading based on the arrest, but, with respect to all charges, one or more of the following has occurred:

      i) No conviction occurred, the charge has been dismissed, and the charge may not be refiled;

      ii) No conviction occurred and the arrestee has been acquitted of the charges; or,

      iii) A conviction occurred, but has been vacated or reversed on appeal, all appellate remedies have been exhausted, and the charge may not be refiled. (Pen. Code, § 851.91, subd. (a).)

6) Specifies that a person is not eligible for relief in the form of sealing an arrest for which no conviction has occurred in a variety of circumstances, including when the arrest was for a crime that has no statute of limitations, such as murder, or when the person evaded law enforcement efforts to prosecute the arrest, including by absconding from the jurisdiction in which the arrest occurred. (Pen. Code, § 851.91, subd. (a)(2).)

7) Specifies procedures for filing a petition to seal an arrest record for an arrest that did not result in a conviction and allows a court to deny a petition to seal for failing to meet any of those procedural requirements. (Pen. Code, § 851.91, subds. (b) and (d).)

8) Specifies that a petition to seal an arrest record for an arrest that did not result in a conviction may be granted as a matter of right or in the interests of justice, as specified. (Pen. Code, § 851.91, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author: "AB 2420 will allow individuals who have been convicted of low-level, misdemeanor crimes to be eligible to have their records sealed, enabling them to once again engage in society without the loss of civil rights, public benefits, employment opportunities, housing eligibility, and freedom to live and work without restriction that these convictions too often cause. … Through allowing persons convicted of low-level, misdemeanor crimes to have their records sealed, they will be able to more successfully re-assimilate into society. Criminal records can act as a scarlet letter, negatively effecting the individual's chances of securing a job, housing, and educational opportunities. This bill would ensure that a low level, misdemeanor crime that is eligible for dismissal and expungement does not carry with it, a potentially very long lasting set of consequences and restrictions to how that individual is able to engage with society."

2) **Automatic Conviction Relief:** In 2019, the Legislature passed AB 1076 (Ting), Chapter 578, Statutes of 2019 which established a procedure in which persons could have certain convictions dismissed and have such information withheld from disclosure without having to file a petition with the court. (Pen. Code, § 1203.425.) The purpose of AB 1076 was to remove barriers to housing and employment for convicted and arrested individuals in order to foster their successful reintegration into the community.

   AB 200 (Committee on Budget), Chapter 58, Statutes of 2022, delayed the implementation date of AB 1076 related to prohibiting dissemination of criminal records for which relief was granted to January 1, 2023. SB 731 (Durazo), Chapter 814, Statutes of 2022, as relevant to this bill, expanded automatic conviction relief to a person who was convicted of a felony on or after January 1, 2005, and who has successfully completed their sentence (including any term of probation) after having had their probation revoked. SB 763 (Durazo) proposes to allow for automatic conviction relief for any conviction occurring on or after January 1, 1973. SB 763 was held on suspense in the Senate Appropriations Committee.

3) **Expungement:** As a general matter, expungement is a court-ordered dismissal of pending charges or, in some cases, may involve dismissal after a conviction. (See Pen. Code, § 1203.4, subd. (a).) Additionally, Penal Code section 1203.425 extends automatic conviction record relief to misdemeanor convictions where the sentence has been successfully completed following a revocation of probation. (Pen Code, § 1203.425, subd. (a)(1).)

   However, in actual practice, the effects of a dismissal are often severely restricted. (52 Ops. Cal. Atty. Gen. 118, 118–119 (1969) [dismissal of criminal conviction does not release person from responsibility of registering as sex offender when civilly committed].) The effects are limited to reinstitution of voting rights relief from criminal registration statutes or relief from impeachment, except when testifying as a criminal defendant. Many expungement statutes offer broader relief for a narrow class of people. They provide for the sealing of a person's criminal records from the public and, in two cases, provide for both the

sealing and the later destruction of the records.[1] In addition, under the California Criminal Record Purge Program, the California Department of Justice ("DOJ") voluntarily destroys criminal records in its files after they have been retained for requisite periods of time.

Pursuant to Penal Code Section 1203.4, a person must be released from penalties and disabilities resulting from conviction in any case in which the person has been granted and successfully completed probation, by either fulfilling the conditions of probation for the entire period. (*People v. Chandler* (1988) 203 Cal. App. 3d 782, 788–90.) The court has discretion to do so in the interests of justice in other probation cases, although the court should not allow expungement until any outstanding payments of restitution have actually been paid. (*People v. Covington* (2000) 82 Cal. App. 4th 1263.) Penal Code Section 1203.4, subdivision (a) expungement is not available from a conviction for certain sex offenses, certain misdemeanor offenses under the Vehicle Code, and certain infractions. (See Pen. Code, § 261.5, subd. (d); and Veh. Code, §§ 12810, subd. (a) and 42002.1.)

This bill proposes to allow any person who received an expungement following successful completion of probation to petition the court to have their arrest and case related documentation sealed.

4) **Collateral Consequences:** Collateral consequences are legal disabilities imposed by law as a result of a criminal conviction regardless of whether a convicted individual serves any time incarcerated. (See Description, National Inventory of Collateral Consequences.)[2] These consequences create social and economic barriers for people reentering into society following incarceration. Collateral consequences are known to adversely affect adoptions, housing, welfare, immigration, employment, professional licensure, property rights, mobility, and other opportunities—the collective effect of which increases recidivism and undermines meaningful reentry of the convicted for a lifetime. (See Michael Pinard, Reflections and Perspectives on Reentry and Collateral Consequences (2010) 100 J.L & Criminology 1213, 1220.)

Moreover, collateral consequences disproportionately affect Black, Indigenous, and People of Color as well as people from historically marginalized communities. (American Bar Association (2015) Collateral Consequences of Criminal Convictions Judicial Bench Book, National Inventory of Collateral Consequences of Criminal Convictions, p. 4.)[3] Despite the sweeping adverse consequences flowing from any criminal conviction, defendants are generally not entitled, as a matter of due process, to be warned of these consequences, either before accepting a plea or upon conviction. Although the U.S. Supreme Court has required consideration of certain immigration consequences of a criminal conviction, the Court left

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[1] (See Penal Code §§ 851.8 (sealing and destroying arrest records of factually innocent person never tried for offense), 851.85 (sealing record of person found factually innocent after acquittal), 851.86 (sealing record of person whose conviction was set aside based on determination of factual innocence), 851.87 (sealing arrest records after completion of pre-filing diversion program), 1000.4 (confidentiality of records after dismissal of charges under pretrial diversion program), 1001.9, 1001.33 (sealing arrest records of various pretrial diversion programs); Health & Safety Code § 11361.5 (sealing and destroying record of certain minor narcotics offenses).)

[2] http://www.abacollateralconsequences.org/description (last accessed March 14, 2024).

[3] https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf (last accessed March 14, 2024.)

open what other disenfranchisements might rise to the level requiring constitutional protection. (See *Padilla v. Kentucky* (2010) 559 U.S.356.)
The negative impact of collateral consequences on a returning citizen's chances of successful re-entry into their community are clear and well-documented --consider barriers to employment: 87% of employers conduct background checks, and recent surveys indicate that most employers are unwilling to hire applicants who have served time in prison. According to the ABA Judicial Bench Book on Collateral Consequences in 2015:

> For those who do find work, the resultant pay cuts are staggering: formerly incarcerated men take home 40% less pay annually, resulting in an average earnings loss of nearly $179,000 by age 48. The nation as a whole suffers from this unfortunate reality. In 2008, the Center for Economic Policy Research estimated that the loss in GDP due to employment barriers for people with criminal records was as much as $65 billion annually—higher than the GDPs of more than half the world's nations—and employers are losing qualified and motivated workers as a result of the stigma associated with prior incarceration.
>
> For many returning citizens, collateral-consequence laws put public housing out of reach. Federal law includes a mandatory ban on access to public housing for people with certain types of convictions and grants discretion to local housing authorities to deny housing based on any criminal activity. Entire households may be evicted based on the arrest or pending criminal charge of one household member. This one-strike provision has a profound impact on family structure. Many families residing in public housing have to sign agreements that returning citizens' family members cannot live with or even visit them at their public housing unit. Private housing is not easy to come by either. Most landlords use background and credit checks to screen out prospective tenants with criminal records. It is no wonder, then, that nearly one-third of individuals released from incarceration expect to go to homeless shelters, which are more often than not unsafe. Obviously, lack of stable housing undoubtedly contributes to increased recidivism. (American Bar Association (2015) Collateral Consequences of Criminal Convictions Judicial Bench Book, National Inventory of Collateral Consequences of Criminal Convictions, p. 4).

Since this bill allows any person who had a conviction dismissed pursuant to expungement to petition the court to seal their arrest and related records, it reduces barriers to reentry following incarceration. By expanding the eligibility for records sealing to people who received an expungement it will likely expand opportunities for the formerly incarcerated or convicted by eliminating collateral consequences. Finally, existing law already allows people who had a matter dismissed following expungement to seal their conviction and DOJ, subject

to a budget appropriation, is required to update its databases to reflect a reduction from a felony to a misdemeanor or if the matter was dismissed. (Pen. Code, § 1203.425, subd. (a)(3)(A).)

5) **Argument in Support:** According to the *California Public Defenders Association (CPDA)*: "AB 2420 removes yet another legal barrier and obstacle for individuals who have made mistakes, paid their debt to society, and now want to make a better life for themselves and those who depend on them. In the future, we hope that the Legislature considers expanding the record sealing provisions to individuals who successfully completed misdemeanor diversion but were never arrested in the first place but came to court after getting a prosecutor letter's telling them to come to court. Unfortunately, the Los Angeles Appellate Division in *People v. Hadim* (2022) 82 Cal.App.5thSupp. 39, barred individuals who had never been arrested from relief. This is another gap in Penal Code Section 851.91 which also needs to be addressed. AB 2420 is a commonsense, cost-effective solution that allows rehabilitated individuals to become productive tax paying members of their communities."

6) **Argument in Opposition:** According to the *California District Attorneys Association*: "While section 1203.4 broadly provides relief for most felony convictions, section 851.91 limits the interest of justice exclusion to a narrow set of three types of offenses. If passed, AB 2420 would expand sealing to offenses that are equally and more serious than the crimes that are listed as exceptions. This expansion of the sealing statute also directly conflicts with a prosecutor's constitutional and statutory discovery obligations and hampers the ability to introduce relevant, admissible evidence at trial. Under *Brady v. Maryland* (1963) 363 U.S. 83 and its progeny, a prosecutor must disclose favorable, material evidence to the accused. This obligation is self-executing and does not depend upon a request by the defense. Evidence is favorable if it exculpates the accused or can impeach a prosecution witness.

"Prior convictions, irrespective of whether those convictions have been expunged or sealed, may constitute Brady evidence, which the prosecution is required to disclose. And importantly, AB 2420 hampers a prosecutor's ability to affirmatively use the conviction or underlying conduct to attack the credibility of a witness. The provision would also prevent a prosecutor from seeking to admit evidence that a person committed a crime to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake under section 1101, subdivision (b) of the Evidence Code. This bill would also obstruct a prosecutor's ability to seek to admit evidence of another sexual offense or acts of domestic violence, elder abuse, or child abuse. (Evid. Code, §§ 1108, 1109.)

"Other statutes, like Penal Code section 851.7, create an exception so that a prosecuting attorney may comply with their discovery obligations. For example, subdivision (g)(1) of section 851.7 provides that a prosecuting attorney may access, inspect, or use a record that has been sealed under that provision "in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation."

"Critically, other provisions, like Penal Code sections 851.92, explicitly state that sealing in no way hampers the ability of criminal justice agencies to "access, furnish to other criminal agencies, and use" any sealed records—to the same extent that they would have if the arrest had not been sealed. (Pen. Code, § 851.92, subd. (b)(6); see also Pen. Code, § 851.92. subd. (d)(2).) Unfortunately, AB 2420 includes no such exceptions."

7) **Related Legislation:** SB 763 (Durazo) would apply automatic conviction record relief to specified felony convictions occurring on or after January 1, 1973, instead of on or after January 1, 2005. SB 763 was held on the Senate Appropriations suspense file.

8) **Prior Legislation:**

   a) SB 731 (Durazo), Chapter 814, Statutes 2022, as relevant here, expanded automatic arrest record and conviction relief to additional felony offenses, as specified.

   b) AB 1038 (Ting), of the 2021-2022 Legislative Session, would have required DOJ, on a monthly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for arrest record relief or automatic conviction record relief by having their arrest records, or their criminal conviction records, withheld from disclosure or modified, as specified, for all convictions that occurred on or after January 1, 1973, rather than just those that occurred on or after January 1, 2021. AB 1038 was not heard in the Senate Public Safety Committee.

   c) SB 118 (Committee on Budget and Fiscal Review), Chapter 29, Statutes of 2020, adjusted the timeline for implementation of AB 1076 (Ting), Chapter 578, Statutes of 2019.

   d) AB 88 (Committee on Budget), of the 2019-2020 Legislative Session, would have adjusted the timeline for implementation of AB 1076 (Ting), Chapter 578, Statutes of 2019. AB 88 died on the Senate inactive file.

   e) AB 1076 (Ting), Chapter 578, Statutes of 2019, requires the DOJ, as of January 1, 2021, and subject to an appropriation, to review its criminal justice databases on a weekly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, with specified exceptions, and required the DOJ to grant that relief to the eligible person without a petition or motion to being filed on the person's behalf.

REGISTERED SUPPORT / OPPOSITION:

SUPPORT

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Californians for Safety and Justice
Ella Baker Center for Human Rights
Initiate Justice

OPPOSITION

California District Attorneys Association

Analysis Prepared by: Kimberly Horiuchi / PUB. S. / (916) 319-3744

Date of Hearing: March 19, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2475 (Haney) – As Amended March 13, 2024

As Proposed to be Amended in Committee

SUMMARY: Requires the court to stay the execution of the decision determining an incarcerated person is not an offender with a mental health disorder (OMHD) for up to 30 days, instead of five working days, in order to allow for their orderly release. Specifically, **this bill**:

1) Requires the court to stay the execution of the decision determining an incarcerated person is not an OMHD for up to 30 days, instead of five work days, in order to allow for their orderly release.

2) Allows the parties to return to court during that time period to ensure that the parties have coordinated an exit plan for the incarcerated person.

3) Requires the California Department of Corrections and Rehabilitation (CDCR) to notify the probation department of the county of supervision of the pending release within five working days of the court order.

4) Requires CDCR to work with the county of supervision to coordinate the orderly and safe return of the prisoner.

5) Makes technical, non-substantive changes.

EXISTING LAW:

1) Allows the Board of Parole Hearings (BPH), upon a showing of good cause, to order an incarcerated person to remain in custody for up to 45 days past the scheduled release date for a full OMHD evaluation. (Pen. Code, § 2963, subd. (a).)

2) Requires incarcerated persons who meet the following criteria to be deemed an OMHD and be treated by the Department of State Hospitals (DSH) as a condition of parole:

   a) The incarcerated person has a severe mental disorder, as defined, that is not in remission or cannot be kept in remission without treatment;

   b) The severe mental disorder was one of the causes or an aggravating factor in the commission of the offense;

   c) The person was treated for the disorder for at least 90 days in the year before their release; and,

d) By reason of the severe mental disorder, the person poses a substantial danger of physical harm to others. (Pen. Code, § 2962.)

3) Requires an OMHD to receive inpatient treatment unless there is reasonable cause to believe that the person can be safely and effectively treated on an outpatient basis. If the hospital does not place the person on outpatient treatment within 60 days of receiving custody of the parolee, they may request to hearing to determine whether outpatient treatment is appropriate. (Pen. Code, § 2964.)

4) Allows the incarcerated person to challenge the OMHD determination both administratively (at a hearing before the BPH) and judicially (via a superior court jury trial). (Pen. Code, § 2966.)

5) Provides that if the OMHD determination made by BPH is reversed by a judge or jury, the court shall stay the execution of the decision for five working days to allow for an orderly release of the person. (Pen. Code, § 2966, subd. (b).)

6) Specifies that if the person's severe mental disorder is put into remission during the parole period and can be kept that way, the director of DSH shall notify the BPH and shall discontinue treatment. (Pen. Code, § 2968.)

7) Provides that not later than 180 days before the termination of parole, if the person's severe mental disorder is not in remission or cannot be kept that way without treatment, the director of DSH, or the program director in charge of the person's outpatient treatment, or the CDCR Secretary shall notify the district attorney. (Pen. Code, § 2970, subd. (a).)

8) Allows the district attorney to file a petition in the superior court seeking a one-year extension of the OMHD commitment. (Pen. Code, § 2970, subd. (b).)

9) Requires the following persons released from prison be subject to parole under the supervision of CDCR:

   a) A person who committed a serious felony listed in Penal Code section 1192.7, subdivision (c);

   b) A person who committed a violent felony listed in Penal Code section 667.5, subdivision (c);

   c) A person serving a Three-Strikes sentence;

   d) A high-risk sex offender;

   e) A mentally disordered offender;

   f) A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which he or she is being released; and,

g) A person subject to lifetime parole at the time of the commission of the offense for which he or she is being released. (Pen. Code, §§ 3000.08, subd. (a) & 3451, subd. (b).)

10) Requires all other offenders released from prison to be placed on post-release community supervision by the probation department. (Pen. Code, §§ 3000.08, subd. (b) & 3451, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "People who have a history of violent behavior and suffer from severe mental disorders need an effective support and transition plan to help them safely come back to the community. AB 2475 will increase the mental health treatment planning window from five days to up to thirty days, by stay of the court for these parolees. This additional time will allow the Department of State Hospitals, State Parole, and local agencies to coordinate housing, supervision, medication, and mental health services they need for their safety and the safety of the community.

   "These individuals often need intensive care and supervision and have complex treatment plans. They deserve adequate time and attention from state and local agencies to help plan for their success and reintegration back into the community. We know that rushed decisions can lead to tragic outcomes. The current system is setting up parolees for failure and also threatens public safety."

2) **The OMHD Act (Penal Code Section 2960 et seq.)**: An OMHD commitment, formerly known as a mentally disordered offender commitment, is a post-prison civil commitment to further detain a person with a severe mental health disorder. The OMHD Act is designed to confine as mentally ill an inmate who is about to be released on parole when it is deemed that that their mental illness not only contributed to the commission of a violent crime, but also continues to make them dangerous to others. Rather than release the person to the community, CDCR paroles the incarcerated person to the supervision of the state hospital, and the individual remains under hospital supervision throughout the parole period.

   Penal Code section 2962 lists several criteria that must be proven for an initial OMHD certification, namely, whether: the incarcerated person has a severe mental disorder; the severe mental disorder was one of the causes or an aggravating factor in the commission of the offense; the disorder is not in remission or capable of being kept in remission without treatment; the incarcerated person was treated for the disorder for at least 90 days in the year before their release; and (6) by reason of the severe mental disorder, the person poses a substantial danger of physical harm to others. (Pen. Code, § 2962, subds. (a)-(d); *People v. Cobb*, *supra*, 48 Cal.4th at pp. 251-252.)

   The initial determination that the incarcerated person meets the OMHD criteria is made administratively. The person in charge of treating the incarcerated person and a practicing psychiatrist or psychologist from the DSH will evaluate the inmate. If it appears that the incarcerated person qualifies, the chief psychiatrist then will certify to the BPH that they meet the criteria of an OMHD. (https://www.cdcr.ca.gov/bph/divisions/severe-mental-health-disorder/)

The incarcerated person may request a hearing before the BPH to require proof that they qualify as an OMHD. If the BPH determines that the person meets the criteria of an OMHD, the person may file a petition in the superior court of the county in which they are incarcerated or are being treated for a hearing on whether they, as of the date of the board hearing, meet the criteria. The person is entitled to a jury trial, which can be waived. The jury must unanimously agree that the allegations of the petition were proven beyond a reasonable doubt. If the superior court or jury reverses the determination of the BPH, the court is required to stay the execution of the decision for five working days to allow for an orderly release of the prisoner. (Pen. Code, § 2966, subd. (b).)

3) **Timeframe for Notice of Release**: As noted above, if the court determines that an individual no longer meets the criteria of an OMHD and must be released, the order is stayed for five working days to give time for the person's orderly release.

   According to background information provided by the author, "Right now, there is an unrealistic expectation that all agencies involved have the resources and bandwidth to safely place a parolee back to the community within 5 days. However, it is nearly impossible for this to happen given the level of coordination involved in getting the person situated with their medication, housing, and mental health treatment plan. This short timeframe creates safety concerns for the patient as well as for the community in which they are placed."

   This bill would extend the timeframe for release from 5 working days to up to 30 days maximum.

4) **Argument in Support**: According to the *California Association of Psychiatric Technicians*, "As the representative body for approximately 5,000 licensed psychiatric technicians (PT) employed across various state agencies such as the California Department of Corrections and Rehabilitation (CDCR) and the Department of State Hospitals (DSH) that treats offenders with mental disorders, we are keenly aware of the challenges faced when an inmate/patient is set to be released into the community. AB 2475 increases the number of planning days that a state hospital must hold a parolee who has committed a violent crime because of a severe mental disorder. Increasing preparation days from five to up to thirty days ensures that our staff have the time to develop treatment plans that can be followed upon an individual's release.

   "Under current law, the five-day planning time is simply not enough to coordinate all the necessary services to ensure someone with a mental disorder and a propensity for violence can be safely released into an unsuspecting community. The thirty-day time frame, as proposed in this bill, is much more realistic and gives the inmate/patient a greater chance of success as resources and supervision will be addressed in their conditional release plan."

5) **Argument in Opposition**: None submitted.

6) **Prior Legislation**: AB 1065 (Holden), of the 2013-2014 Legislative Session, was substantially similar to this bill. AB 1065 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Psychiatric Technicians
Union of American Physicians and Dentists

Opposition

None submitted

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Amended Mock-up for 2023-2024 AB-2475 (Haney (A))

Mock-up based on Version Number 98 - Amended Assembly 3/13/24
Submitted by: Sandy Uribe, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2966 of the Penal Code is amended to read:

2966. (a) A prisoner may request a hearing before the Board of Parole Hearings, and the board shall conduct a hearing if so requested, for the purpose of proving that the prisoner meets the criteria in Section 2962. At the hearing, the burden of proof shall be on the person or agency who certified the prisoner under subdivision (d) of Section 2962. If the prisoner or any person appearing on the prisoner's behalf at the hearing requests it, the board shall appoint two independent professionals as provided for in Section 2978. The prisoner shall be informed at the hearing of the right to request a trial pursuant to subdivision (b). The Board of Parole Hearings shall provide a prisoner who requests trial a petition form and instructions for filing the petition.

(b) A prisoner who disagrees with the determination of the Board of Parole Hearings that the prisoner meets the criteria of Section 2962 may file in the superior court of the county in which the prisoner is incarcerated or is being treated a petition for a hearing on whether the prisoner, as of the date of the Board of Parole Hearings hearing, met the criteria of Section 2962. The court shall conduct a hearing on the petition within 60 calendar days after the petition is filed, unless either time is waived by the petitioner or the petitioner's counsel or good cause is shown. Evidence offered for the purpose of proving the prisoner's behavior or mental status subsequent to the Board of Parole Hearings hearing shall not be considered. The order of the Board of Parole Hearings shall be in effect until the completion of the court proceedings. The court shall advise the petitioner of the right to be represented by an attorney and of the right to a jury trial. The attorney for the petitioner shall be given a copy of the petition and any supporting documents. The hearing shall be a civil hearing. In order to reduce costs, the rules of criminal discovery, as well as civil discovery, shall be applicable. The standard of proof shall be beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The court may, upon stipulation of both parties, receive in evidence the affidavit or declaration of any psychiatrist, psychologist, or other professional person who was involved in the certification and hearing process, or any professional person involved in the evaluation or treatment of the petitioner during the certification process. The court may allow the affidavit or declaration to be read and the contents thereof considered in the rendering of a decision or verdict in any proceeding held pursuant to this subdivision, or subdivision (c), or subdivision (a) of Section 2972. If the court or jury reverses the determination

of the Board of Parole Hearings, the court shall stay the execution of the decision for up to 30 ~~working~~ days to allow for an orderly release of the prisoner. The court may require the parties to return to the court during those 30 days to ensure that the entities involved in the release of the prisoner have coordinated an exit plan for the prisoner. If the court or jury reverses the determination of the Board of Parole Hearings, the Department of Corrections and Rehabilitation, upon a determination that the individual is eligible for release pursuant to Section 3451, shall notify the probation department of the county of supervision of the pending release within five working days of the court order and work with the county of supervision to coordinate the orderly and safe release of the prisoner.

(c) If the Board of Parole Hearings continues a parolee's mental health treatment under Section 2962 when it continues the parolee's parole under Section 3001, the procedures of this section shall only be applicable for the purpose of determining if the parolee has a severe mental health disorder, whether the parolee's severe mental health disorder is not in remission or cannot be kept in remission without treatment, and whether by reason of the parolee's severe mental health disorder, the parolee represents a substantial danger of physical harm to others.

Date of Hearing: March 19, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2527 (Bauer-Kahan) – As Amended March 12, 2024

SUMMARY: Prohibits incarcerated pregnant persons in detention facilities and state prisons from being placed in solitary confinement or restrictive housing units during their pregnancy or for 12 weeks postpartum. Specifically, **this bill**:

1) Prohibits incarcerated pregnant persons form being placed in solitary confinement or restrictive housing units during their pregnancy or for 12 weeks postpartum.

2) Requires incarcerated pregnant persons to be provided a minimum of 120 ounces of free, clean bottled water each day.

3) Requires incarcerated pregnant persons to be provided daily high-quality and high-caloric nutritional meals that meet guidelines established by the Department of Public Health (DPH) for the California Special Supplemental Nutrition Program for Women, Infants and Children, as specified.

4) Provides that the social worker referred to pregnant incarcerated persons under existing law discuss with each pregnant incarcerated person health education, advocacy, physical, emotional, spiritual, and nonmedical support before, during, after childbirth or end of a pregnancy, including throughout the postpartum period.

5) Requires the notice given to incarcerated pregnant persons in local detention facilities about community-based programs serving pregnant, birthing, or lactating incarcerated persons to, at a minimum, contain guidelines for qualification, the timeframe for application, and the process for appealing a denial of admittance to those programs.

6) States that, if a community-based program is denied access to a local detention facility, the reason for the denial shall be provided in writing to the incarcerated person within two working days of receipt of the request. The written denial shall address the safety or security concerns for the incarcerated person, infant, public, or staff.

7) Requires, for local detention facilities, if an incarcerated pregnant person's request for an elected support person is denied, the reason for the denial must be provided in writing to the incarcerated person within two working days of receipt of the request. The written denial shall address the safety or security concerns for the incarcerated person, infant, public, or staff. Upon receipt of a written denial, the incarcerated pregnant person may choose the approved institution staff to act as the support person.

8) Requires, at local detention facilities, incarcerated persons who have had a miscarriage, stillbirth, or abortion, including a termination of the pregnancy for medical reasons, to

receive appropriate, timely, culturally responsive, and medically accurate and comprehensive care, evaluation, and treatment of existing or newly diagnosed chronic conditions, including mental health disorders and infectious diseases.

9) Defines "detention facility" as any city, county, or regional facility used for the confinement of any person, including those under 18 years of age, for more than 24 hours.

EXISTING LAW:

1) Requires the Board of State Community Corrections (BSCC) to establish minimum standards for state and local correctional facilities, including standards for pregnant individuals incarcerated at the CDCR and local detention facilities. (Penal Code § 6030.)

2) Provides that every woman upon being committed to CDCR shall be examined mentally and physically, and shall be given the care, treatment and training adapted to her particular condition. (Pen. Code, § 3403.)

3) Provides that any incarcerated person at CDCR shall have the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice in order to determine whether they are pregnant. (Pen. Code, § 3406.)

4) States that, if the incarcerated person is found to be pregnant, they are entitled to a determination of the extent of the medical and surgical services needed and to the receipt of these services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice. (Pen. Code, §§ 3406, subd. (b) & 4023.6.)

5) States that a person who is incarcerated in state prison who is identified as possibly pregnant or capable of becoming pregnant during an intake health examination or at any time during incarceration shall be offered a test upon intake or by request. (Pen. Code, §§ 3408, subd. (a) & 4203, subd. (a).)

6) States that an incarcerated person in state prison or a local detention facility with a positive pregnancy test result shall be offered comprehensive and unbiased options counseling that includes information about prenatal health care, adoption, and abortion. (Pen. Code, §§ 3408, subd. (b) & 4023, subd. (b).)

7) Provides that a pregnant incarcerated person, within seven days of arriving at the prison or local detention facility, be scheduled for a pregnancy examination with a physician, nurse practitioner, certified nurse-midwife, or physician assistant. The examination shall include all of the following:

    a) A determination of the gestational age of the pregnancy and the estimated due date;

    b) A plan of care, including referrals for specialty and other services, isolation practices, level of activities, and bed assignments, social and clinical needs, among other services; and,

c) Prenatal labs and diagnostic studies, as needed based on gestational age or existing or newly diagnosed health conditions. (Pen. Code, §§ 3408, subd. (d) & 4023, subd. (d).)

8) States that an eligible incarcerated pregnant person in state prison or a local detention facility shall be provided notice of, access to, and written application for, community-based programs serving pregnant, birthing, or lactating incarcerated persons. (Pen. Code, §§ 3408, subd. (j), & 4023, subd. (j).)

9) Requires, at state prisons, the notice to include, at minimum, the guidelines for qualification, the timeframe for application, and the process for appealing a denial of admittance to those programs. (Pen. Code, § 3408, subd. (j).)

10) Requires, at state prisons, if a community-based program is denied access to a local detention facility, the reason for the denial shall be provided in writing to the incarcerated person within two working days of receipt of the request. The written denial shall address the safety or security concerns for the incarcerated person, infant, public, or staff. (Pen. Code, § 3408, subd. (j).)

11) Provides that each incarcerated pregnant person shall be referred to a social worker who shall do all of the following:

a) Discuss with the incarcerated person the options available for feeding, placement, and care of the child after birth, including the benefits of lactation;

b) Assist the incarcerated pregnant person with access to a phone in order to contact relatives regarding newborn placement; and,

c) Oversee the placement of the newborn child. (Pen. Code, §§ 3408, subd. (k) & 4203, subd. (k).)

12) States that an incarcerated pregnant person shall be temporarily taken to a hospital outside the prison or detention facility for the purpose of giving childbirth. (Pen. Code, §§ 3408, subd. (l) & 4203, subd. (l).)

13) Allows an incarcerated pregnant person to elect to have a support person present during labor, childbirth, and during postpartum recovery while hospitalized. (Pen. Code, §§ 3408, subd. (m) & 4203, subd. (m).)

14) Provides that the support person may be an approved visitor or the prison's or detention facility's staff designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care. (Pen. Code, §§ 3408, subd. (m) & 4203, subd. (m).)

15) Requires, at state prisons, if incarcerated pregnant person's request for an elected support person is denied, the reason for the denial must be provided in writing to the incarcerated person within two working days of receipt of the request. The written denial shall address the safety or security concerns for the incarcerated person, infant, public, or staff. Upon receipt of a written denial, the incarcerated pregnant person may choose the approved institution staff to act as the support person. (Pen. Code, § 3408, subd. (m).)

16) States that, at state prisons, all pregnant and postpartum incarcerated persons, including incarcerated persons who have had miscarriage, stillbirth, or abortion, including a termination of the pregnancy for medical reasons, shall receive appropriate, timely, culturally responsive, and medically accurate and comprehensive care, evaluation, and treatment of existing or newly diagnosed chronic conditions, including mental health disorders and infectious diseases. (Pen. Code, § 3408, subd. (n).)

17) States that, at local detention facilities, all pregnant and postpartum incarcerated persons shall receive appropriate, timely, culturally responsive, and medically accurate and comprehensive care, evaluation, and treatment of existing or newly diagnosed chronic conditions, including mental health disorders and infectious diseases. (Pen. Code, § 4203, subd. (n).)

18) Provides that upon return to prison or local detention facility, the physician, nurse practitioner, certified nurse-midwife, or physician assistant shall provide a postpartum examination within one week from childbirth and as needed for up to 12 weeks postpartum, and shall determine whether the incarcerated person may be cleared for full duty or if medical restrictions are warranted. (Pen. Code, §§ 3408, subd. (p) & 4203, subd. (p).)

19) Requires postpartum individuals to be given at least 12 weeks of recovery after any childbirth before they are required to resume normal activity. (Pen. Code, §§ 3408, subd. (p) & 4203, subd. (p).)

20) Requires CDCR to establish a community treatment program under incarcerated women who have one or more children under age six may participate. The program shall provide for the release of the mother and child or children to a public or private facility in the community and which will provide the best possible care for the mother and child. (Pen. Code, § 3411.)

21) Provides that every female inmate at CDCR who is pregnant and who is not eligible for participation in the community treatment program shall have access to complete prenatal care, which shall include a balanced, nutritious diet approved by a doctor. (Pen. Code, § 3424.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "All pregnant people deserve to be safe in their environment, have access to clean drinking water and healthy meals. As a mother, I know how important these things are. Unfortunately, the reality in our state is that people who are pregnant while incarcerated do not have these basic needs met. AB 2527 creates minimum requirements that pregnant incarcerated people be given clean, bottled water and healthy meals. This bill also prohibits putting pregnant people in solitary confinement and other restrictive housing. AB 2527 makes progress towards ensuring that all pregnant people are treated with dignity and respect."

2) **Incarcerated Pregnant Individuals**: Recent estimates indicate that eight to ten percent of women who enter prison are pregnant. (Legal Services for Prisoners with Children, *Pregnant Women in California Prisons and Jails: A Guide for Prisoners and Legal Advocates,* <https://www.courts.ca.gov/documents/BTB_23_4K_5.pdf>.) State law provides

incarcerated pregnant individuals a minimal level of pre-and-post partum services, such as access to a social worker, regular prenatal care visits with a health care provider, and the right to have delivery take place in a hospital outside of the institution. (Pen. Code, §§ 3408, 4203.8.)

In addition, some incarcerated women at state prisons can apply to the Community Prison Mother Program (CPMP) within CDCR's Female Offender Programs and Services. Pursuant to California Penal Code Sections 3410 through 3424, the CPMP provides an opportunity for pregnant individuals and mothers with one or more children, six years of age or younger, the opportunity to be housed with their children in a supervised facility away from the prison setting. The primary focus of the CPMP is to reunite mothers with their children and re-integrate them back into society as productive citizens by providing a safe, stable, wholesome and stimulating environment. CPMP also looks to establish stability in the parent-child relationship, provide the opportunity for mothers who are incarcerated individuals to bond with their children, and strengthen the family unit. (CDCR, Community Participant Mother Program, <https://www.cdcr.ca.gov/rehabilitation/pre-release-community-programs/community-prisoner-mother-program/>.)

3) **Effect of this Bill**: This bill would make several changes to existing law regarding the provision of care to pregnant incarcerated individuals confined in state prisons and local detention faculties.

   a) **Solitary Confinement**: This bill would prohibit incarcerated pregnant persons in state prisons and local detention facilities from being housed in solitary confinement or restrictive housing units during their pregnancy and for 12 weeks postpartum.

      Under existing law, incarcerated pregnant individuals and local detention facilities and CDCR are given a plan of care, which include, vaguely "isolation practices, level of activities, and bed assignments" (Pen. Code, §§ 3408, subd. (c) & 4203.8, subd. (c).) Incarcerated pregnant persons housed in a multitier housing unit must be assigned lower bunk and lower tier housing. (Pen. Code, §§ 3408, subd. (g) & 4203.8, subd. (g).) Other than these provisions, existing law is silent as to whether incarcerated pregnant individuals can be placed in solitary confinement.

      Pregnant women and women with infants and breastfeeding should never be subjected to solitary confinement according to the United Nations' Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, as they are at especially high risk of psychological damage due to isolation and solitary can curtail their access to prenatal care. (*United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-treatment-women-prisoners-and-non-custodial>.) Research shows that vulnerable populations like pregnant women are far more susceptible to the potential dangers of solitary confinement. (*Unjust Isolation: The Diminishing Returns of Solitary Confinement of Pregnant Women and California's Need to Regulate It* (2021) 2 Hastings J. Crime & Punish. 122.)

      According to the American College of Obstetricians and Gynecologists (ACOG), "pregnant people should not be placed in solitary confinement. The mental health effects on people placed in restrictive housing can be compounded in pregnancy. Being in

solitary confinement can limit access to timely health care, especially when urgent pregnancy concerns arise. Such housing also limits mobility and often by default results in bedrest, which has documented harms in pregnancy. Furthermore, the practice of routinely placing pregnant people in medical isolation for the sole purpose of proximity to health care staff is not recommended when such arrangements limit access to programming, exercise, and social interaction." (ACOG, *Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals*<https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals>.)

b) **Water and Nutrition**: This bill would require pregnant individuals incarcerated at state prison and local detention facilities to be provided a minimum of 120 ounces of free, clean bottled water each day.

According to the National Institute of Health (NIH), "[g]eneral fluid needs increase during pregnancy in order to support fetal circulation, amniotic fluid, and a higher blood volume." (NIH, *Nutrition Column An Update on Water Needs during Pregnancy and Beyond* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1595116/>.) Additionally, an "adequate fluid supply also ensures that the mother has enough reserves to tolerate blood loss during delivery." (*Ibid.*) The ACOG, recommends drinking 8 to 12 cups (64 to 96 ounces) of water every day during pregnancy. (ACOG, *How Much Water Should I Drink During Pregnancy?* <https://www.acog.org/womens-health/experts-and-stories/ask-acog/how-much-water-should-i-drink-during-pregnancyv#:~:text=During%20pregnancy%20you%20should%20drink,helps%20waste%20leave%20the%20body>.) The NIH also advises that, "pregnant women must be cautioned that some water is tainted with lead, which can result in spontaneous abortion, decreased stature, and deficiency in the neurodevelopment of the growing fetus. Water contamination can be of particular concern in the pregnant woman who already has a reduced immunity related to the pregnancy." (NIH, *supra.*) "Contamination can be avoided with the use of bottled water. [...] Bottled water is regulated by the Food and Drug Administration for water quality and accurate labeling." (*Ibid.*)

This bill would also require incarcerated pregnant persons at CDCR and local detention facilities to be provided daily high quality and high-caloric nutritional meals the guidelines for California Special Supplemental Nutrition Program for Women, Infants and Children. This program provides "nutrition education, breastfeeding support, healthy foods and referrals to health care and other community services" to "people who are pregnant or have given birth or experienced pregnancy." (CDPH, *Women, Infants & Children Program* <https://www.cdph.ca.gov/programs/cfh/DWICSN/pages/program-landing1.aspx>.)

According to the U.S. Department of Health and Human Services, nutrition plays a vital role before, during, and after pregnancy to support the health of the mother and her child. "Following a healthy dietary pattern is especially important for those who are pregnant or lactating for several reasons. Increased calorie and nutrient intakes are necessary to support the growth and development of the baby and to maintain the mother's health. Consuming a healthy dietary pattern before and during pregnancy also may improve pregnancy outcomes. In addition, following a healthy dietary pattern before and during pregnancy and lactation has the potential to affect health outcomes for both the mother

and child in subsequent life stages." (USDA, *Dietary Guidelines for Americans, 2020-2025* <https://www.dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf.>) Among other vitamins and minerals, individuals with a healthy pre-pregnancy weight need about 340 - 450 extra calories per day from nutrient-dense choices during the second and third trimester. (HHS, *Nutrition During Pregnancy to Support a Healthy Mom and Baby* <https://health.gov/news/202202/nutrition-during-pregnancy-support-healthy-mom-and-baby>.) Maternal nutrition can contribute positively to the delivery of a healthy, full-term newborn of an appropriate weight. Pregnant individuals often experience nausea, cravings, and have smaller gastric capacity, thus pregnant people in custody should receive healthy snacks outside of scheduled mealtimes. (ACOG, *Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals*<https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals>.)

c) **Social Worker Referral**: Under existing law, pregnant individuals who are incarcerated in prisons and jails are referred to a social worker. (Pen. Code, §§ 3408, subd. (k) & 4203, subd. (k).) The social worker is required to discuss with the incarcerated person the options available for feeding, placement, and care of the child after birth, including the benefits of lactation; assist the incarcerated pregnant person with access to a phone in order to contact relatives regarding newborn placement; and, oversee the placement of the newborn child. (*Ibid.*)

This bill would further require the social worker provide health education, advocacy, physical, emotional, spiritual, and nonmedical support before, during, and after childbirth or end of a pregnancy, including throughout the postpartum period. Though pregnant individuals should, without question, have access to these services, the legislature should consider whether a social worker is the most appropriate professional to provide health education, physical, and spiritual support to incarcerated pregnant persons.

d) **Creates Uniformity between Local Detention Facilities and State Prisons**: This bill also includes several provisions that create uniformity for the procedures for pregnant individuals at local detention facilities with those at state prisons.

First, this bill would require the notice given to incarcerated pregnant persons about community-based programs serving pregnant, birthing, or lactating incarcerated persons to, at a minimum, contain guidelines for qualification, the timeframe for application, and the process for appealing a denial of admittance to those programs. Under existing law, state prisons are required to include in the notice, guidelines for the qualification, timeline and process for appealing a denial of admittance to the programs. (Pen. Code, § 3408, subd. (j).) Existing law does not have the same requirement that this information be included in the notice at local detention facilities.

Second, this bill would require, if a community-based program is denied access to a local detention facility, the reason for the denial to be provided in writing to the incarcerated person within two working days of receipt of the request. The written denial shall address the safety or security concerns for the incarcerated person, infant, public, or staff. This is the existing law at state prisons. (Pen. Code, § 3408, subd. (j).) Existing law does not

have the same requirements for programs that are denied access to local detention facilities.

Third, this bill would require, at local detention facilities, if an incarcerated pregnant person's request for an elected support person is denied, the reason for the denial to be provided in writing to the incarcerated person within two working days of receipt of the request. The written denial shall address the safety or security concerns for the incarcerated person, infant, public, or staff. Upon receipt of a written denial, the incarcerated pregnant person may choose the approved institution staff to act as the support person. Under existing law, both state prisons and local detention facilities are required to allow an incarcerated person to elect to have a support person present during birth. (Pen. Code, §§ 3408 subd. (m), & 4203.8, subd. (m).) However, existing law only requires the reason for denial to be provided to incarcerated persons at state prisons and does not afford the same protections to individuals incarcerated at local detention facilities. (Pen. Code, § 3408, subd. (m).)

Fourth, this bill would require, at local detention facilities, incarcerated persons who have had a miscarriage, stillbirth, or abortion, including a termination of the pregnancy for medical reasons, to receive appropriate, timely, culturally responsive, and medically accurate and comprehensive care, evaluation, and treatment of existing or newly diagnosed chronic conditions, including mental health disorders and infectious diseases. Under existing law at state prisons requires all pregnant and postpartum incarcerated persons, including incarcerated persons who have had miscarriage, stillbirth, or abortion, including a termination of the pregnancy for medical reasons, to receive this care. (Pen. Code, § 3408, subd. (n).) However, existing law only requires this care to be given to pregnant and postpartum incarcerated persons, at local detention facilities, but does not require the same for those who have had had a miscarriage, stillbirth, or abortion, including a termination of the pregnancy for medical reasons. (Pen. Code, § 4203.8, subd. (n).)

4) **Comparison to AB 2740 (Waldron)**: AB 2740 (Waldron), which is being heard by this committee today, also concerns pregnant incarcerated individuals. AB 2740 applies to state prisoners only.

Both this bill and AB 2740 would expand the requirements of the social worker referred to each pregnant incarcerated person. As discussed above, this bill would require the social worker to provide health education, advocacy, physical, emotional, spiritual, and nonmedical support before, during, and after childbirth or end of a pregnancy, including throughout the postpartum period. AB 2740 would specify that the incarcerated person must be referred to a social worker within seven days of arriving at the prison and would require the social worker to discuss options for parenting classes and other classes relevant to caring for newborns and options for placement and visiting the newborn.

Both this bill and AB 2740 also contain provisions regarding nutrition for incarcerated pregnant individuals. This bill would require incarcerated pregnant persons to be provided a minimum of 120 ounces of free, clean bottled water each day and daily high-quality and high caloric nutritional meals. AB 2740 would require the plans of care for incarcerated pregnant persons at state prisons to include a meal plan with additional meals and beverages in accordance with medical standards of care.

To the extent that there is overlap between this bill and AB 2740, the bills appear to be harmonious.

5) **Argument in Support**: According to the *Ella Baker Center for Human Rights*, "Incarcerated pregnant individuals face harsh conditions that have devastating impacts on both their own health and the health of their fetuses. Across the nation, incarcerated women have a higher mortality rate than their male counterparts and are more likely to experience mental health illnesses. These mental health illnesses are exacerbated during pregnancy. Pregnant individuals in California prisons and county detention facilities remain subjected to the extreme stress of solitary confinement, which can lead to prolonged psychological distress that can cause severe harm. The isolation that happens from solitary confinement can also result in pregnancy complications and can affect the development of the fetus. Furthermore, the use of restrictive housing can cause delays in addressing pregnancy complications, highlighting a systemic challenge within the California carceral system.

"Though access to basic nutrition is crucial during pregnancy, incarcerated individuals often experience challenges in accessing clean water and nourishing meals. According to an ACLU report on reproductive health within California's carceral system, the water quality in prisons and county detention facilities is often so substandard that pregnant individuals cannot safely consume it. Incarcerated pregnant people receive inadequate meals and often resort to surviving on peanut butter and jelly sandwiches to reach daily caloric intake recommendations, however these meals do not meet the nutritional needs of a pregnant individual. This insufficient nutrition and lack of clean drinking water is not only endangering the health of the fetus but also violates the human rights of pregnant individuals who are incarcerated.

"AB 2527 will improve conditions of confinement for incarcerated pregnant individuals by preventing the use of solitary confinement during pregnancy and up to 12 weeks postpartum. AB 2527 will require daily access to 120 ounces of free bottled water during pregnancy. It will also require access to high-quality nutritional meals in alignment with relevant Department of Health guidelines. AB 2527 makes strides towards ensuring that all incarcerated pregnant individuals are treated with dignity and provided the essential prenatal care to support a healthy pregnancy.

"Incarcerated pregnant individuals in California deserve to have a pregnancy that is rooted in dignity and respect for both the birthing individuals and the fetuses."

6) **Argument in Opposition**: According to

7) **Related Legislation**:

   a) AB 2740 (Waldron) would require each incarcerated pregnant person to be referred to a social worker to discuss options for parenting classes and other classes relevant to caring for newborns and options for placement and visiting the newborn. AB 2740 is being heard by this committee today.

   b) AB 2160 (McKinnor) would authorize any pregnant or postpartum defendant to request a stay of execution of their sentence for any period of time through the end of the

pregnancy or the postpartum period and would authorize a person who may be pregnant or postpartum and who is arrested or in custody in a county jail or state prison to request and to take a pregnancy test upon or following admission to the county jail or state prison. AB 2160 is pending hearing in this committee.

c) AB 1810 (Bryan) would require an incarcerated person to have ready access to materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, without having to request them. AB 1810 is pending in the Assembly Appropriations Committee.

d) AB 280 (Holden) would limit the use of segregated confinement and would prohibit placing individuals who are pregnant in segregated confinement. AB 280 is pending on the Assembly inactive file.

8) **Prior Legislation**:

a) AB 583 (Wicks), of the 2023-2024 Legislative Session, would have established a pilot program to fund community-based doula groups, local public health departments, and other organizations to provide full-spectrum doula care to members of communities with high rates of negative birth outcomes who are not eligible for Medi-Cal and incarcerated people. AB 583 failed passage in Assembly Appropriations Committee.

b) AB 2632 (Holden), of the 2021-2022 Legislative Session, was substantially similar to AB 280. AB 2632 was vetoed.

c) AB 2321 (Jones-Sawyer), Chapter 781, Statutes of 2022, prohibits confinement of a minor in a locked single-person room or cell in a juvenile facility for a period lasting longer than one hour when room confinement is necessary for institutional operations.

d) AB 1225 (Waldron), of the 2021-2022 Legislative Session, would have prohibited an incarcerated woman from being placed in solitary confinement for medical observation. AB 1225 was held in the Assembly Appropriations Committee.

e) AB 2717 (Waldron), of the 2021-2022 Legislative Session, would have expanded the community prison mother treatment program within CDCR. AB 2717 was vetoed.

f) AB 732 (Bonta), Chapter 321, Statutes of 2020, requires specified medical treatment and services for county jail and state prison inmates who are pregnant, and requires that incarcerated persons be provided with materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, upon request.

g) SB 1433 (Mitchell), Chapter 311, Statutes of 2016, requires that any person incarcerated in state prison who menstruates shall, upon request, have access to and be allowed to use materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system.

h) AB 478 (Lieber), Chapter 608, Statutes of 2005, set minimum standards for the medical care of incarcerated individuals who are pregnant during their incarceration.

i) SB 617 (Speier), of the 2005-2006 Legislative Session, would have required CDCR to house pregnant female prison inmates separately from other female inmates and be given appropriate health care and nutrition.

j) AB 1530 (McLeod), Chapter 297, Statutes of 2004, required CDCR to ensure that female prisoners have notice of and access to parenting programs and required CDCR to accept pregnant mothers into the program.

REGISTERED SUPPORT / OPPOSITION:

Support

California Catholic Conference
California Nurse-midwives Association (UNREG)
California Public Defenders Association
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Essie Justice Group
Feed Black Futures
Initiate Justice
Initiate Justice Action
Legal Services for Prisoner With Children
Legal Services for Prisoners With Children
Rubicon Programs
The Empowerthem Collective
Women's Foundation of California, Dr. Beatriz Maria Solis Policy Institute (SPI)

1 Private Individual

Opposition

California State Sheriffs' Association

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: March 19, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2541 (Bains) – As Introduced February 13, 2024

SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST) to develop guidelines to address wandering individuals who have Alzeheimer's disease, autism, and dementia. Specifically, **this bill**:

1) Requires POST, in consultation with subject matter experts, including, but not limited to, law enforcement agencies, the Department of Justice Missing and Unidentified Persons Section, organizations with expertise in autism and wandering, organizations with expertise in Alzheimer's disease and dementia and wandering, emergency management services agencies, regional centers, and public transit agencies, on or before January 1, 2026, to develop guidelines for addressing wandering associated with the aforementioned conditions.

2) States that the guidelines must include, at minimum, all of the following:

    a) Development of law enforcement investigational checklists;

    b) Protocols for deploying law enforcement agency resources, including, but not limited to, search and rescue dogs;

    c) Protocols for developing community awareness campaigns for wandering prevention and water safety;

    d) Technological solutions regarding all of the following;

        i) Wandering prevention devices;

        ii) Proactive registries; and,

        iii) Community alert systems.

    e) Coordination and communication protocols between law enforcement agencies and all of the following:

        i) Other local law enforcement agencies;

        ii) First responders, including, but not limited to, emergency management services;

        iii) 911 dispatch;

        iv) Hospitals; and,

v) Transportation systems.

EXISTING LAW:

1) Requires POST to adopt rules establishing minimum standards relating to the recruitment, training and fitness of state and local law enforcement officers. (Pen. Code, §§ 13510 & 13510.5.)

2) Mandates that the course of basic training for law enforcement officers include adequate instruction in specified procedures and techniques relating to the handling of persons with developmental disabilities or mental illness. (Pen. Code, § 13519.2, subd. (a).)

3) Requires POST to review its training module in the regular basic training course relating to persons with a mental illness, intellectual disability, or substance use disorder, and analyze existing curricula in order to identify where additional training is needed to better prepare law enforcement to effectively address incidents involving these populations. (Pen. Code, § 13515.26, subd. (a).)

4) Requires POST to establish and keep updated a continuing education classroom training course related to law enforcement interactions with persons with mental disabilities, as specified. (Pen. Code, §§ 13515.25 & 13515.27.)

5) Requires field training officers (FTOs) to complete at least eight hours of crisis intervention behavioral health training in order to better train new peace officers on how to effectively interact with persons with mental illness or intellectual disability. (Pen. Code, § 13515.28, subd. (a)(1).)

6) Mandates this FTO training to include:

   a) The cause and nature of mental illness and intellectual disabilities;

   b) How to identify indicators of mental illness, intellectual disability, and substance use disorders;

   c) How to distinguish between mental illness, intellectual disability, and substance use disorders;

   d) How to respond appropriately in a variety of situations involving these populations;

   e) Conflict resolution and de-escalation techniques;

   f) Appropriate language usage when interacting with potentially emotionally distressed persons;

   g) Community and state resources to serve these populations and how these resources can be best utilized by law enforcement;

   h) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disabilities, and substance use disorders. (Pen. Code, § 13515.28, subd. (b).)

FISCAL EFFECT: Unknown
COMMENTS:

1) **Author's Statement**: According to the author, "As the nation's population continues to age, the incidence of Alzheimer's and other forms of dementia has increased as well. I have seen this first hand as a practicing physician. The number of children diagnosed with autism spectrum disorder (ASD) has also risen consistently and dramatically since the 1990s. Given that over 60% of those living with Alzheimer's disease will wander at some point and an estimated 49% of children with autism will engage in wandering behavior there will be more and more opportunities for these individuals to wander from home and come into contact with local law enforcement and public safety officials.

   "Finding people quickly is key because the survival rate drops dramatically the longer it takes to find the missing person. It is imperative that our law enforcement agencies are effectively trained to help families prevent wandering and to respond effectively and quickly when these individuals do wander. With the passage of this legislation, law enforcement will have the guidance needed to do both. "

2) **Alzheimer's Disease and Dementia Wandering:** According to the National Institute on Aging:

   > Alzheimer's disease is a brain disorder that slowly destroys memory and thinking skills, and eventually, the ability to carry out the simplest tasks. In most people with Alzheimer's, symptoms first appear later in life. Estimates vary, but experts suggest that more than 6 million Americans, most of them age 65 or older, may have Alzheimer's.
   >
   > Alzheimer's is currently ranked as the seventh leading cause of death in the United States and is the most common cause of dementia among older adults.
   >
   > Dementia is the loss of cognitive functioning — thinking, remembering, and reasoning — and behavioral abilities to such an extent that it interferes with a person's daily life and activities. Dementia ranges in severity from the mildest stage, when it is just beginning to affect a person's functioning, to the most severe stage, when the person must depend completely on others for help with basic activities of daily living.
   >
   > The causes of dementia can vary depending on the types of brain changes that may be taking place. Other forms of dementia include Lewy body dementia, frontotemporal disorders, and vascular dementia. It is common for people to have mixed dementia — a combination of two or more types of dementia. For example, some people have both Alzheimer's and vascular dementia. (https://www.nia.nih.gov/health/alzheimers-and-dementia/understanding-different-types-dementia) [as of Mar. 14, 2024]

   Wandering and getting lost is considered one of the first mild symptoms of Alzheimer's disease. Alzheimer's can happen as early as a person's 30's onward.

3) **Autism Wandering:** Those who live with an autism spectrum condition are also prone to wandering. A study by the Kennedy Krieger Institute compiled data from various resources in regards to children who wander away or "bolt". The Kennedy Krieger Institute also identifies this behavior as eloping/elopement. They note four key components: elopement

prevalence, elopement behavior, characteristics of eloping, and the impact of eloping.

Some of the statistical date they provide is that 49 percent of children with ASD attempted to elope at least once after age 4. (https://www.kennedykrieger.org/stories/nearly-half-children-autism-wander-or-bolt-safe-places [as of Mar. 12, 2024].) In addition they also state that "From age 4 to 7, 46 percent of children with ASD eloped, which is four times the rate of unaffected siblings." (*Id.)*

4) **Existing Training for Officers Related to Intellectual Disabilities and Mental Illness**: California law requires POST to provide, and peace officers to complete, extensive training related to interactions with individuals with intellectual disabilities and mental illness. Most of these requirements were added by SB 11 (Beall), Chapter 468, Statutes of 2015 and SB 29 (Beall), Chapter 469, Statutes of 2015. Officers are required to complete, at a minimum, POST's Regular Basic Course curriculum, which includes 15 hours of instruction on disability laws, developmental disabilities, physical disabilities and mental illness. Additionally, FTOs who are instructors in the field training program must have at least 8 hours of crisis intervention behavioral health training. Further, officers must complete at least 24 hours of Continuing Professional Training every two years, a part of which may be satisfied by the mental health training course developed by POST; however, the course is not mandated as part of the biennial requirement. POST is also required to conduct a review and evaluation of its existing training, identify critical gaps, and work with the appropriate stakeholders to update the training to help officers effectively address incidents involving persons with mental illness or intellectual disability.

   The basic training learning domain covering people with disabilities, includes recognizing appropriate peace officer response(s) and methods of communication during field contacts with people who are affected by dementia. (See LD-37, p. 3, available at https://post.ca.gov/regular-basic-course-training-specifications [as of Mar. 12, 2024].)

   This bill would require POST to add guidelines for law enforcement officers interacting with persons with Alzheimer's disease, dementia, and autism who wander.

5) **Little Hoover Commission (LHC) Study:** In November 2021, LHC issued a report examining the various peace officer training requirements and made several recommendations for improving outcomes. Recommendations included asking the Legislature to refrain from amending or adding any new law enforcement training requirements and instead have POST assess how well existing officer training is working in the field and adjust training mandates as needed. LHC also recommended POST collaborate with academic researchers and establish a permanent academic review board to ensure training standards are aligned with the latest scientific research and advise POST on how to incorporate research findings into new and existing standards and training. (*Law Enforcement Training: Identifying What Works for Officers and Communities*, Little Hoover Commission, Nov. 2021 Law Enforcement Training: Identifying What Works for Officers and Communities – Little Hoover Commission (ca.gov).)

6) **Argument in Support**: According to *the Alzheimer's Association,* "Currently, there is very little dedicated training on identifying and interacting with individuals with Alzheimer's. This is despite the fact that nearly 70 percent of those diagnosed will experience 'wandering,' which can result in peace officers being called to respond.

"Ensuring that our state's workforce has dementia training and competency is critical, especially for law enforcement. Recognizing this need, Los Angeles, San Mateo and a few other local jurisdictions have begun to add dementia-related training for their sworn officers. Ensuring that our entire state has this same training is a reasonable next step to ensuring the state's law enforcement workforce is dementia capable.

"AB 2541 will require POST to create guidelines in consultation with law enforcement agencies, the Department of Justice Missing and Unidentified Persons Section, organizations with expertise in autism and wandering, organizations with expertise in Alzheimer's disease and dementia and wandering, emergency management services agencies, regional centers, and public transit agencies. The guidelines will address, among other issues, protocols for deploying law enforcement agency resources, and protocols for developing community awareness campaigns for wandering prevention and water safety. Additionally, the guidelines will focus on technological solutions regarding wandering prevention devices, proactive registries, and community alert systems."

7) **Related Legislation**: SCR 116 (Jones), makes finding and declarations regarding Frontotemporal Degeneration Awareness Week, which includes recommendations on addressing Alzheimer's disease. SCR 116 is pending on the Senate Floor and awaiting a vote from the body.

8) **Prior Legislation**:

   a) AB 21 (Gipson), of the 2023-2024 Legislative Session, would have required the Commission on Peace Officer Standards and Training (POST) to revise their training for field-training officers (FTOs) on interacting with persons with mental illness or intellectual disabilities to also include instruction on interacting with persons with Alzheimer's or dementia. AB 21 was held on the Appropriations Suspense calendar and subsequently returned to the desk without further action.

   b) AB 2583 (Mullin), of the 2021-2022 Legislative Session, would have required the Commission on Peace Officer Standards and Training (POST) to revise their training for field-training officers (FTOs) on interacting with persons with mental illness or intellectual disabilities to also include instruction on interacting with persons with Alzheimer's. AB 2583 was held on the Appropriations Suspense calendar and subsequently returned to the desk without further action.

REGISTERED SUPPORT / OPPOSITION:

Support

Alzheimer's Association
Alzheimer's Greater Los Angeles
Alzheimer's Orange County
Alzheimer's San Diego
California Public Defenders Association
Easterseals Northern California

Educate. Advocate.
Leadingage California

Opposition

None

Analysis Prepared by: Elizabeth Potter / PUB. S. / (916) 319-3744

Date of Hearing: March 19, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2546 (Rendon) – As Introduced February 13, 2024

SUMMARY: Clarifies that the definition of "military equipment" includes area denial electroshock devices generally and not just the Taser Shockwave system; and that the definition also includes long-range acoustic devices, acoustic hailing devices, and sound cannons rather than just the Long-Range Acoustic Device (LRAD) manufactured by the Genasys Corporation.

EXISTING LAW:

1) Requires a law enforcement agency to obtain approval of the governing body, by an ordinance adopting a military-equipment-use policy at a regular meeting of the governing body before, among other things, requesting, acquiring, or seeking funds for military equipment. (Gov. Code, § 7071, subd. (a).)

2) Defines "military equipment" to include equipment such as drones, specialized firearms, command and control vehicles, the Taser Shockwave, and the LRAD. (Gov. Code, § 7070, subd. (c).)

3) Defines "governing body" as the elected body that oversees a law enforcement agency or, if there is no elected body that directly oversees the law enforcement agency, the appointed body that oversees a law enforcement agency. (Gov. Code, § 7070, subd. (a).)

4) Defines "law enforcement agency" as a police department, sheriff's department, district attorney's office, or county probation department. (Gov. Code, § 7070, subd. (b)(1)-(4).)

5) Requires a law enforcement agency to submit a proposed military-equipment-use policy to the governing body and make those documents available on the law enforcement agency's internet website at least 30 days prior to any public hearing concerning the military equipment at issue. (Gov. Code, § 7070, subd. (b).)

6) Provides that the governing body shall only approve a military-equipment-use policy if it determines all of the following:

   a) The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.

   b) The proposed use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

c) If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.

d) Prior military equipment use complied with the use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance. (Gov. Code, § 7071, subd. (d)(1).)

7) Requires, in order to facilitate public participation, any proposed or final military equipment use policy to be made publicly available on the internet website of the relevant law enforcement agency for as long as the military equipment is available for use. (Gov. Code, § 7071, subd. (d)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "A loophole in state law means that some long-range acoustic devices, which are military-grade weapons, may be acquired by law enforcement agencies without the approval of the local governing body. By making a simple clarifying change to how these weapons are defined in state law, we can close this loophole, and ensure that all long-range acoustic devices are subject to California's important public review and transparency protocols for acquiring military-grade weapons."

2) **Need for the Bill:** Current law requires a law enforcement agency to obtain approval from the governing body that oversees it before acquiring or using military equipment. (Gov. Code, § 7071, subd. (a), et seq.) Military equipment includes, among other things, robots and drones, battering rams, command and control vehicles, tracked armored vehicles that provide ballistic protection to their occupants, and firearms and firearm accessories that can launch explosive projectiles. (Gov. Code, § 7070, subd. (c).) It also includes Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD). (Gov. Code, § 7070, subd. (c)(13).). However, there may be other companies that make virtually the same or very similar systems. Yet, because existing law requires law enforcement to seek approval for devices made by just two companies, these systems would not fall under existing law and law enforcement would be free to fund, acquire, and use them without local government approval. This bill would clarify that technologies similar to Taser Shockwave and Genasys's LRAD system but manufactured by other companies fall under the definition of military equipment.

   AB 1486 (Jones-Sawyer), of the 2023-2024 Legislatives Session, would have clarified that an assault weapon is not a "standard issue service weapon" and therefore falls under the definition of "military equipment," which requires approval from the local governing body before a law enforcement agency may acquire it. It was amended in the Senate to include the proposed changes to existing law made by this bill. But AB 1486 was ordered to the inactive file in the Senate.

3) **Argument in Support**: According to *Genasys Corporation*, the manufacturer of LRAD, "Currently, Section 7070 of the California Government Code includes LRAD in the list of

military equipment that requires a law enforcement agency to get approval from its governing body prior to purchasing one of the items on the list. LRAD is a trademarked term for a long range acoustic device that is manufactured by one company, Genasys Inc. located in San Diego, California.

"LRAD was trademarked in 2003 under USPTO serial number 78304629. The acronym LRAD and 'Long Range Acoustic Device' are synonymous and associated with a single company, Genasys. There are other manufacturers of this technology outside California, in the U.S. and overseas, but they refer to their products as 'acoustic hailing devices,' 'long range acoustic hailer,' or 'acoustic stabilized systems' to avoid infringement on the Genasys trademark.

"We appreciate your effort to correct the reference in state statute. The statute should list the generic terms for the product instead of using a trademarked term. If the statute is not corrected, other manufacturers of acoustic devices will be able to avoid the pre-approval requirements placed on law enforcement.

"The bill's approach to broadening the scope of the Government Code currently in statute is a practical step towards ensuring the regulations apply uniformly to all relevant technologies."

4) **Argument in Opposition**: None submitted.

5) **Related Legislation**: AB 2014 (Nguyen), would change law enforcement's duty to seek approval from the local governing body before funding, acquiring or using drones or robots to only require approval if the drone or robot were weaponized. The hearing on AB 2014 was canceled at the request of the author.

6) **Prior Legislation**:

   a) AB 1486 (Jones-Sawyer), of the 2023-2024 Legislative Session, would have clarified that an assault weapon is not a "standard issue service weapon" and therefore falls under the definition of "military equipment," which requires approval from the local governing body before a law enforcement agency may acquire it. AB 1486 was placed on the inactive file in the Senate.

   b) AB 421 (Chiu), Chapter 406, Statutes of 2021, requires local law enforcement agencies to follow specific procedures to obtain approval from local government prior to the acquisition or use of federal surplus military equipment.

   c) AB 3131 (Gloria), of the 2017 – 2018 Legislative Session, was substantially similar to AB 421. AB 3131 was vetoed.

   d) AB 36 (Campos), of the 2015 – 2016 Legislative Session, would have prohibited local agencies, except local law enforcement agencies that are directly under the control of an elected officer, from applying to receive specified surplus military equipment from the federal government, unless the legislative body of the local agency approves the acquisition at a regular meeting. The governor vetoed AB 36.

e) SB 242 (Monning), Chapter 79, Statutes of 2015, requires a school district's police department to obtain approval from its governing board prior to receiving federal surplus military equipment.

REGISTERED SUPPORT / OPPOSITION:

Support

Genasys Corporation

Opposition

None

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744

Date of Hearing: March 19, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2740 (Waldron) – As Introduced February 15, 2024

SUMMARY: Requires incarcerated pregnant persons in state prison to be referred to a social worker to discuss options for parenting classes and other classes relevant to caring for newborns and options for placement and visiting the newborn. Specifically, **this bill**:

1) Requires, within seven days of arriving at the prison, an incarcerated pregnant person to be referred to a social worker.

2) Provides that the social worker shall discuss with the incarcerated person options for parenting classes and other classes relevant to caring for newborns and options for visiting with the newborn.

3) Requires the social worker to discuss with the incarcerated person the options to establish future placement for the child and to secure that placement for the child.

4) Requires plans of care for incarcerated pregnant persons to include a meal plan with additional meals and beverages in accordance with medical standards of care.

5) Provides that, following delivery at a medical facility, the incarcerated mother and the newborn child shall remain at the facility no fewer than three days after delivery for postpartum medical care.

6) States that the incarcerated mother and child shall be provided with no less than three days of bonding time after delivery and before the newborn child is removed.

7) Requires incarcerated mothers to be permitted to breastfeed the newborn and pump breast milk to be stored and provided to the child upon removal from the medical facility.

8) Requires the Department of Corrections and Rehabilitation (CDCR) to expedite the family visitation application process for incarcerated pregnant persons to prevent delays for vitiation for the mother and newborn following delivery.

9) Prohibits eligibility for family visitation for the incarcerated mother to see their newborn child from being limited unless the incarcerated mother was convicted of a sex offense and the victim was a minor or family member.

EXISTING LAW:

1) Requires the Board of State Community Corrections (BSCC) to establish minimum standards for state and local correctional facilities, including standards for pregnant individuals

incarcerated at the CDCR. (Pen. Code, § 6030.)

2) Provides that every woman upon being committed to CDCR shall be examined mentally and physically, and shall be given the care, treatment and training adapted to her particular condition. (Pen. Code, § 3403.)

3) Provides that any incarcerated person shall have the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice in order to determine whether they are pregnant. (Pen. Code, § 3406.)

4) States that, if the incarcerated person is found to be pregnant, they are entitled to a determination of the extent of the medical and surgical services needed and to the receipt of these services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice. (Pen. Code, § 3406, subd. (b).)

5) States that a person who is incarcerated in state prison who is identified as possibly pregnant or capable of becoming pregnant during an intake health examination or at any time during incarceration shall be offered a test upon intake or by request. (Pen. Code, § 3408, subd. (a).)

6) States that an incarcerated person with a positive pregnancy test result shall be offered comprehensive and unbiased options counseling that includes information about prenatal health care, adoption, and abortion. (Pen. Code, § 3408, subd. (b).)

7) Requires a person incarcerated in prison who is confirmed to be pregnant to, within seven days of arriving at the prison, be scheduled for a pregnancy examination with a physician, nurse practitioner, certified nurse-midwife, or physician assistant. The examination shall include all of the following:

   a) A determination of the gestational age of the pregnancy and the estimated due date;

   b) A plan of care, including referrals for specialty and other services, isolation practices, level of activities, and bed assignments, social and clinical needs, among other services; and,

   c) Prenatal labs and diagnostic studies, as needed based on gestational age or existing or newly diagnosed health conditions. (Pen. Code, § 3408, subd. (d).)

8) States that an eligible incarcerated pregnant person or person who gives birth after incarceration shall be provided notice of, access to, and written application for, community-based programs serving pregnant, birthing, or lactating incarcerated persons. (Pen. Code, § 3408, subd. (j).)

9) Provides that each incarcerated pregnant person shall be referred to a social worker who shall do all of the following:

   a) Discuss with the incarcerated person the options available for feeding, placement, and care of the child after birth, including the benefits of lactation;

   b) Assist the incarcerated pregnant person with access to a phone in order to contact relatives regarding newborn placement; and,

c) Oversee the placement of the newborn child. (Pen. Code, § 3408, subd. (k).)

10) States that an incarcerated pregnant person shall be temporarily taken to a hospital outside the prison for the purpose of childbirth. (Pen. Code, § 3408, subd. (l).)

11) Allows an incarcerated pregnant person to elect to have a support person present during labor, childbirth, and during postpartum recovery while hospitalized. (Pen. Code, § 3408, subd. (m).)

12) Provides that the support person may be an approved visitor or the prison's staff designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care. The approval for the support person must be made by the administrator of the prison. Upon receipt of a written denial, the incarcerated pregnant person may choose the approved institution staff to act as the support person. (Pen. Code, § 3408, subd. (m).)

13) Requires CDCR to establish a community treatment program for incarcerated women who have one or more children under age six to participate. The program shall provide for the release of the mother and child or children to a public or private facility in the community and which will provide the best possible care for the mother and child. (Pen. Code, § 3411.)

14) Provides that every female inmate who is pregnant and who is not eligible for participation in the community treatment program shall have access to complete prenatal care, which shall include a balanced, nutritious diet approved by a doctor. (Pen. Code, § 3424.)

15) State that any amendments to existing CDCR regulation which may impact the visitation of incarcerated persons shall recognize the role of visitation in establishing and maintaining a meaningful connection with family and community. (Pen. Code, § 6400.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "By reimagining the outcomes of infants born within a CA state prison, AB 2740 will prioritize prenatal and postpartum medical care for incarcerated mothers. It will connect incarcerated pregnant mothers to a social worker, and strengthen medical care for incarcerated mothers by giving them no less than three full days in the medical facility after delivery for care and newborn bonding. AB 2740 will promote breastfeeding, pumping, and storing colostrum/breast milk during the three full days in the medical facility after delivery. This bill will also expedite the family visitation process for mom and infant to prevent delays after delivery. Additionally, it will expand family visitation eligibility by removing violent crimes as a disqualifying factor and only prohibiting family visitation if the incarcerated mother was convicted of a sex offense and the victim was a minor or family member."

2) **Incarcerated Pregnant Individuals at CDCR**: Recent estimates indicate that eight to ten percent of women who enter prison are pregnant. (Legal Services for Prisoners with Children, *Pregnant Women in California Prisons and Jails: A Guide for Prisoners and Legal Advocates,* <https://www.courts.ca.gov/documents/BTB_23_4K_5.pdf>.) State law provides incarcerated pregnant individuals a minimal level of pre-and-post partum services, such as

access to a social worker, regular prenatal care visits with a health care provider, and the right to have delivery take place in a hospital outside of the institution. (Pen. Code, §§ 3408, 4203.8.)

In addition, some incarcerated women can apply to the Community Prison Mother Program (CPMP) within CDCR's Female Offender Programs and Services. Pursuant to California Penal Code Sections 3410 through 3424, the CPMP provides an opportunity for pregnant individuals and mothers with one or more children, six years of age or younger, the opportunity to be housed with their children in a supervised facility away from the prison setting. The primary focus of the CPMP is to reunite mothers with their children and re-integrate them back into society as productive citizens by providing a safe, stable, wholesome and stimulating environment. CPMP also looks to establish stability in the parent-child relationship, provide the opportunity for mothers who are incarcerated individuals to bond with their children, and strengthen the family unit. (CDCR, *Community Participant Mother Program,* <https://www.cdcr.ca.gov/rehabilitation/pre-release-community-programs/community-prisoner-mother-program/>.)

3) **Effect of this Bill**: This bill would make several changes to existing law regarding the provision of care to pregnant incarcerated individuals confined in state prisons.

   a) **Social Worker Referral**: Under existing law, pregnant individuals who are incarcerated in prisons are referred to a social worker. (Pen. Code, §§ 3408, subd. (k).) The social worker is required to discuss with the incarcerated person the options available for feeding, placement, and care of the child after birth, including the benefits of lactation; assist the incarcerated pregnant person with access to a phone in order to contact relatives regarding newborn placement; and, oversee the placement of the newborn child. (*Ibid.*)

   This bill would further require that the incarcerated pregnant person to be referred to a social worker within seven days of arriving at the prison and would require the social worker to discuss with the incarcerated person options for parenting classes and other classes relevant to caring for newborns, options for visiting with the newborn, and options to establish future placement for the child and to secure that placement for the child.

   b) **Nutrition**: This bill would require the plans of care given incarcerated pregnant persons in state prisons to include a meal plan with additional meals and beverages in accordance with medical standards of care.

   According to the National Institute of Health (NIH), "[g]eneral fluid needs increase during pregnancy in order to support fetal circulation, amniotic fluid, and a higher blood volume." (NIH, *Nutrition Column an Update on Water Needs during Pregnancy and Beyond* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1595116/>.) Additionally, an "adequate fluid supply also ensures that the mother has enough reserves to tolerate blood loss during delivery." (*Ibid.*) The ACOG, recommends drinking 8 to 12 cups (64 to 96 ounces) of water every day during pregnancy. (ACOG, *How Much Water Should I Drink During Pregnancy?* <https://www.acog.org/womens-health/experts-and-stories/ask-acog/how-much-water-should-i-drink-during-pregnancyv#:~:text=During%20pregnancy%20you%20should%20drink,helps%20waste%20leave%20the%20body>.) According to the U.S. Department of Health and Human Services (HHS), nutrition plays a vital role

before, during, and pregnancy to support the health of the mother and her child. "Following a healthy dietary pattern is especially important for those who are pregnant or lactating for several reasons. Increased calorie and nutrient intakes are necessary to support the growth and development of the baby and to maintain the mother's health. Consuming a healthy dietary pattern before and during pregnancy also may improve pregnancy outcomes. In addition, following a healthy dietary pattern before and during pregnancy and lactation has the potential to affect health outcomes for both the mother and child in subsequent life stages." (USDA, *Dietary Guidelines for Americans, 2020-2025* <https://www.dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf.>) Among other vitamins and minerals, individuals with a healthy pre-pregnancy weight need about 340 - 450 extra calories per day from nutrient-dense choices during the second and third trimester. (HHS, *Nutrition During Pregnancy to Support a Healthy Mom and Baby* <https://health.gov/news/202202/nutrition-during-pregnancy-support-healthy-mom-and-baby>.) Maternal nutrition can contribute positively to the delivery of a healthy, full-term newborn of an appropriate weight. Pregnant individuals often experience nausea, cravings, and have smaller gastric capacity, thus pregnant people in custody should receive healthy snacks outside of scheduled mealtimes. (ACOG, *Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals*<https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals>.)

c) **Postpartum Care**: This bill would require, following delivery at a medical facility, the incarcerated mother and the newborn child to remain at the facility no fewer than three days after delivery for postpartum medical care. It would further allow the incarcerated mother and child to be provided with no less than three days of bonding time after delivery and before the newborn child is removed. This bill would also prohibit eligibility for family visitation for the incarcerated mother to see their newborn child from being limited unless the incarcerated mother was convicted of a sex offense and the victim was a minor or family member.

Concerning postpartum care, the ACOG recommends:

> "People who give birth while in custody should be allowed maximum time for parent–infant bonding while in the hospital after delivery. Policies or practices that separate the newborn from the birthing person for nonmedical indications while in the hospital or that expedite postpartum hospital discharge for carceral facility convenience are punitive, medically unnecessary, and can have detrimental effects on parent–infant bonding, breastfeeding, and psychological well-being. Upon return to the prison, jail, or detention facility, institutions can promote continued bonding by allowing contact visits and working with infant caregivers to help facilitate transport. Several prison nursery programs exist, allowing those who give birth in custody to have their infants with them at the prison for varying periods of time. Although such programs facilitate bonding and breastfeeding, and some research suggests that participants have lower rates of recidivism. […]

> Forced separation from one's newborn, as happens by default for most people who give birth in custody, can potentially have devastating maternal effects."

(ACOG, *Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals* <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals>.)

d) **Lactation**: This bill would require incarcerated mothers to be permitted to breastfeed their newborn and pump breast milk to be stored and provided to the child upon removal from the medical facility. Under existing law, the social worker is required to discuss with the incarcerated person the "benefits of lactation." (Pen. Code, § 3408, subd. (k).)

There is a dearth of court decisions regarding prisoners' rights to breast-feed their infants. (See, e.g., *Ploski v. Feder* (N.D.Cal. Mar. 1, 1999) No. C 98-2392, at *13) [finding that there is "no case which even remotely suggests that [an incarcerated plaintiff] had a clearly established constitutional right to ensure that her child was receiving her breast."].) In *Berrios Berrios v. Thornburg* (E.D. Ky. 1989) 716 F.Supp.987, the court decided that storing breast milk in the prison refrigerator and making arrangements for delivery of the milk to the baby's caretaker was outweighed by the government's interest in preserving the security of the prison. (*Ibid.*) In *Southerland v. Thigpen* (D. Miss. 1986) 784 F. 2d 713, the court ruled that the state's penal interest outweighed the interest of the prisoner's infant receiving his mother's breast milk, even though the baby had special medical considerations that made breast-feeding even more important than usual. More recently, one court went as far as to compare breastfeeding to prison regulations on obscene photos, to justify denying mothers the right to breastfeed in prison, stating:

> "Breastfeeding, however natural, non-sexual, and appropriate in a wide variety of contexts, may threaten the security and safety of the staff, inmates and other visitors when done in a visiting room at a correctional facility. It is easy to imagine the real possibility that puerile remarks by one or more inmates about the exposed breasts of another inmate's family member may lead to violent confrontations. In *Giano v. Senkowski*, the Second Circuit upheld a regulation banning inmates' possession of nude photographs of wives and girlfriends on the grounds that (1) an inmate who knows a fellow inmate or guard has seen the photographs without permission may become violent; and (2) insults—intended or perceived—from inmates who see the photographs (even with permission) may lead to violence. The threat of violence establishes a logical connection between the policy and the legitimate government interest of maintaining prison security. The Seventh Circuit also has upheld the reasonableness of regulations banning such material, and which recognized that if such photographs were viewed by other inmates, conflicts or assaults are likely to result. [...]
>
> Against this backdrop of significant security concerns about permitting breastfeeding in a prison visiting room, and in light of judicial reluctance to interfere with prison officials' expertise in managing these institutions,

> this court must conclude that [the statutes] do not provide clear legislative direction that prison facilities fall within the meaning of a place of public accommodation...."

(*CHRO ex rel. Vargas v. Dep't of Corr.* (Jan. 10, 2014, No. HHBCV136019521S) at *17.) Unfortunately, the few courts that have had an opportunity to examine this issue have given short shrift to the benefits of breast-feeding for *both* the incarcerated mother and child when called upon to balance the right against the penological interest of maintaining institutional security.

According to the Centers for Disease Control (CDC), breast milk is the best support of nutrients for most babies, can help protect babies against illness and disease, and contains antibodies that help babies develop a strong immune system. (CDC, *Breastfeeding Benefits Both Baby and Mom*<https://www.cdc.gov/nccdphp/dnpao/features/breastfeeding-benefits/index.html#:~:text=Breastfed%20babies%20have%20a%20lower,the%20mother%20with%20her%20baby.>.) The American Academy of Pediatrics (AAP) recommends exclusive breastfeeding for about 6 months, and then continuing breastfeeding while introducing complementary foods until a child is 2 years old or older. (AAP, *Breastfeeding: AAP Policy Explained* <https://www.healthychildren.org/English/ages-stages/baby/breastfeeding/Pages/Where-We-Stand-Breastfeeding.aspx>.) A newborn child should not have to forgo this benefit due to the incarceration of its mother.

In addition, ACOG encourages correctional faculties to provide lactation support and accommodations for postpartum individuals to provide breastmilk for their infants. The ACOG "strongly supports breastfeeding as the preferred method of feeding for newborns and infants. Given the benefits of breastfeeding to the woman and the infant, incarcerated individuals wishing to breastfeed should be allowed to breastfeed their infants directly, when possible, and express milk for delivery to the infant. If the individual is to express her milk, accommodations should be made for equipment and a private space to pump, safe storage, and transport of the milk to the infant's caregiver. Information on postpartum contraception and safe birth spacing should be discussed and reversible methods of contraception provided during incarceration, especially in preparation for release." (ACOG, *Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals*<https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals>.)

4) **Comparison to AB 2527 (Bauer-Kahan)**: AB 2527 (Bauer-Kahan), which being heard by this committee today, also concerns pregnant incarcerated individuals. AB 2527 applies to both state prisoners and individuals incarcerated at local detention facilities. This bill would only apply to state prisoners.

   Both this bill and AB 2527 would expand the requirements of the social worker referred to each pregnant incarcerated person. As discussed above, this bill would specify that the incarcerated person must be referred to a social worker within seven days of arriving at the prison and would require the social worker to discuss options for parenting classes and other classes relevant to caring for newborns and options for placement and visiting the newborn. AB 2527 would require the social worker to provide health education, advocacy, physical,

emotional, spiritual, and nonmedical support before, during, and after childbirth or end of a pregnancy, including throughout the postpartum period.

Both this bill and AB 2527 also contain provisions regarding nutrition for incarcerated pregnant individuals. This bill would require the plans of care for incarcerated pregnant persons at state prisons to include a meal plan with additional meals and beverages in accordance with medical standards of care. AB 2527 requires incarcerated pregnant persons to be provided a minimum of 120 ounces of free, clean bottled water each day and daily high-quality and high caloric nutritional meals.

To the extent that there is overlap between this bill and AB 2527, the bills appear to be harmonious.

5) **Argument in Support**: According to *the California Public Defenders Association (CPDA),* "AB 2740 seeks to improve the health outcomes for people who must face pregnancy and childbirth in prison, and for the children born to those pregnant people. Recent research confirms that nationally, approximately 4% of people who enter prison are pregnant, and pregnancy outcomes in prisons and jails in some places were worse than national trends across the general population. Healthier pregnancies, education on parenting/newborn care and eliminating most restrictions on family visiting options will lead to healthier parents, babies and families.

"Among incarcerated people, pregnancies are often complicated by lack of prenatal care, histories of trauma and abuse, poor nutrition, substance use, chronic medical conditions, poverty, and limited health care. These risk factors elevate the likelihood for poor perinatal outcomes. Additionally, high levels of stress in the perinatal period have been associated with maternal depression, preterm delivery, and low birth weights. Moreover, childbirth can be a daunting experience, even under the best of circumstances. For pregnant inmates, labor and delivery may be additionally anxiety-provoking, because of lack of control over the birthing experience, limited health education, absence of support from family or friends, separation following delivery, and concern about infant placement. Thus, childbirth support and education are particularly important for incarcerated persons who are already at higher risk for complicated pregnancies. The benefit of having an assigned social worker to address prenatal and newborn care, as well as parenting and visiting options, is improved health—physical, mental and emotional—for both the parent and the baby.

"To have a mother in prison is like a primal wound…"-- Brittany Barnett, founder of Girls Embracing Mothers

"AB 2740 also recognizes the impact of having an incarcerated parent and the reverberating mental health consequences for children. More than 60 percent of women in state prisons, and nearly 80 percent of those in jail, have minor children, and most are the primary caretaker. Research conducted by the University of California-Irvine's Kristin Turney in 2014 found that children with an incarcerated parent experienced depression at rates more than three times higher than children without an incarcerated parent, as well as significantly higher rates of anxiety, attention deficit disorder, behavior problems, speech problems, asthma, obesity, epilepsy, and other conditions. The toll is often even more severe when the incarcerated parent is a mother. Family visits can positively affect a child's well-being, help reduce prison misconduct and recidivism, and improve the chances that families will remain

intact when a former inmate reenters the community.

"Parental incarceration has devastating consequences on children. For children who end up in foster care, those consequences are likely even more dire. As Dr. Carolyn Sufrin, primary author of the comprehensive study on Pregnancy outcomes in Prison notes, "The consequences of being born to a mother who's incarcerated or even having a parent who's incarcerated for the next generation are profound especially when we consider the deep racial disparities in incarceration rates." (Available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6459671/).

"We cannot afford to wait to address these issues. AB 2740 is an important step towards promoting family unification and healthier families."

6) **Argument in Opposition**: According to

7) **Related Legislation**:

a) AB 2527 (Bauer-Kahan), would require incarcerated pregnant persons to be provided with free and clean bottled water and daily high-quality and high caloric nutritional meals and would prohibit incarcerated pregnant persons from being placed in solitary confinement or restrictive housing units during their pregnancy or for 12 weeks postpartum. AB 2572 is being heard by this committee today.

b) AB 2160 (McKinnor), would authorize any pregnant or postpartum defendant to request a stay of execution of their sentence. AB 2160 is pending hearing in this committee.

c) AB 1810 (Bryan), would require an incarcerated person to have ready access to materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, without having to request them. AB 1810 is pending in the Assembly Appropriations Committee.

d) AB 280 (Holden), would limit the use of segregated confinement and would prohibit placing individuals who are pregnant in segregated confinement. AB 280 is pending on the Assembly inactive file.

8) **Prior Legislation**:

a) AB 583 (Wicks), of the 2023-2024 Legislative Session, would have established a pilot program to fund community-based doula groups, local public health departments, and other organizations to provide full-spectrum doula care to members of communities with high rates of negative birth outcomes who are not eligible for Medi-Cal and incarcerated people. AB 583 failed passage in Assembly Appropriations Committee.

b) AB 2632 (Holden), of the 2021-2022 Legislative Session, was substantially similar to AB 280. AB 2632 was vetoed.

c) AB 2321 (Jones-Sawyer), Chapter 781, Statutes of 2022, prohibits confinement of a minor in a locked single-person room or cell in a juvenile facility for a period lasting longer than one hour when room confinement is necessary for institutional operations.

d) AB 1225 (Waldron), of the 2021-2022 Legislative Session, would have prohibited an incarcerated woman from being placed in solitary confinement for medical observation. AB 1225 was held in the Assembly Appropriations Committee.

e) AB 2717 (Waldron), of the 2021-2022 Legislative Session, would have expanded the community prison mother treatment program within CDCR. AB 2717 was vetoed.

f) AB 732 (Bonta), Chapter 321, Statutes of 2020, requires specified medical treatment and services for county jail and state prison inmates who are pregnant, and requires that incarcerated persons be provided with materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, upon request.

g) SB 1433 (Mitchell), Chapter 311, Statutes of 2016, requires that any person incarcerated in state prison who menstruates shall, upon request, have access to and be allowed to use materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system.

h) AB 2530 (Atkins), Chapter 726, Statutes of 2012, prohibits the shackling of inmates and wards incarcerated by the CDCR who are known to be pregnant or in recovery after delivery, with leg irons, waist chains, or handcuffs behind the body.

a) AB 568 (Skinner), of the 2011-2012 Legislative Session, would have prohibited inmates and wards in the custody of the CDCR, CDCR's Division of Juvenile Facilities, and local correctional and juvenile facilities, who are known to be pregnant, from being shackled by the wrists, ankles, around the abdomen, or to another person, unless deemed necessary for safety, and if necessary for safety, be restrained in the least restrictive way possible. AB 568 was vetoed.

b) AB 478 (Lieber), Chapter 608, Statutes of 2005, set minimum standards for the medical care of incarcerated individuals who are pregnant during their incarceration.

c) SB 617 (Speier), of the 2005-2006 Legislative Session, would have required CDCR to house pregnant female prison inmates separately from other female inmates and be given appropriate health care and nutrition.

d) AB 1530 (McLeod), Chapter 297, Statutes of 2004, required CDCR to ensure that female prisoners have notice of and access to parenting programs and required CDCR to accept pregnant mothers into the program.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Reentry Project
American College of Obstetricians and Gynecologists District Ix
Anti-recidivism Coalition
California Catholic Conference

California Public Defenders Association
Californians United for A Responsible Budget
Children's Defense Fund - CA
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Everychild Foundation
Grace Institute - End Child Poverty in Ca
Initiate Justice
Initiate Justice Action
Justice First
LA Defensa
Los Angeles Youth Uprising Coalition
Parenting for Liberation
Rubicon Programs
Ryse Center
Santa Cruz County Democratic Central Committee
Sister Warriors Freedom Coalition
The Gathering for Justice
The Translatin@ Coalition
Transitions Clinic Network

2 Private Individuals

Opposition

None submitted.

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: March 19, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2766 (Low) – As Introduced February 15, 2024

SUMMARY: States that California Department of Corrections and Rehabilitation (CDCR) records pertaining to an inmates release date and what an inmate did to earn release credits are public records subject to disclosure under the California Public Records Act (CPRA). Specifically, **this bill**:

1) States that CDCR records pertaining to an inmate's release date and what the inmate did to earn any release credits are public records subject to disclosure under CPRA.

2) Requires disclosure to be sufficiently detailed and include the number of days of credit that were based on each of the following categories:

   a) Good behavior;

   b) Rehabilitation and education program participation; and,

   c) Pretrial release credits.

3) Requires disclosure to include the types of rehabilitative and education programs that the inmate participated in and completed.

4) Provides that CDCR is not required to disclose records that are subject to the privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPPA).

5) Provides that CDCR is not required to disclose information early release credits earned by an in-custody informant, as defined, for providing exception assistance in maintaining the safety and security of a prison.

6) States that this act does not constitute a change in, but is declaratory of, existing law.

EXISTING LAW:

1) Provides that all people are by nature free and independent and have inalienable rights, including privacy. (Cal. Const., Art. I, § 1.)

2) Provides that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., Art. I, § 3, subd. (b)(1).)

3) Defines "public records" to include any writing containing information relating to the conduct of the public's business, prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code, § 7920.530.)

4) Declares that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 7921.000.)

5) Provides that the inalienable right to privacy under the California Constitution may exempt certain records, or portions thereof, from disclosure under the California Public Records Act. (Gov. Code, § 7930.000.)

6) Provides that Penal Code sections 11076 and 13202 may operate to exempt criminal offender record information, or portions thereof, from disclosure. (Gov. Code, § 7930.130.)

7) Defines "criminal offender record information" as records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release. (Pen. Code, § 13102.)

8) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of CPRA, or that on the facts of a particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 7922.000.)

9) Provides for a right of access to criminal offender record information by any person or public agency authorized by law. (Pen. Code, § 13200.)

10) Provides that the right of access to criminal offender record information does not authorize access of any person or public agency to such information unless such access is otherwise authorized by law. (Pen. Code, § 13201.)

11) Provides that every public agency or bona fide research institution concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders may be provided with criminal offender record information, including criminal court records, as required for the performance of its duties, including the conduct of research. (Pen. Code, § 13202.)

12) Provides that criminal offender record information shall be disseminated, whether directly or through any intermediary, only to such agencies as are, or may subsequently be, authorized access to such records by statutes. (Pen. Code, § 11076.)

13) Requires CDCR to establish written guidelines for accessibility of records, to post those guidelines in a conspicuous public place at CDCR offices, and to make a copy of the guidelines available upon request free of charge to any person requesting them. (Gov. Code, § 6253.4(b)(5).)

14) Provides that any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right to

inspect or receive a copy of any public record or class of public records. (Gov. Code, § 7923.)

15) Requires CDCR to establish written guidelines for accessibility of records. (Gov. Code, § 7922.635, subd. (a)(6).)

16) States that any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense. (Cal. Const., art. I, § 32.)

17) Provides that CDCR shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements. (Cal. Const., art. 1, § 32, subd. (a)(2).)

18) Provides that an incarcerated person, unless otherwise precluded, is eligible to receive good conduct, rehabilitation, and/or education credits to advance their release date if sentenced to a determinate term or to advance an initial parole hearing date if sentenced to an indeterminate term with the possibility of parole. (Pen. Code, §§ 2931, 2933 & 2933.05; see also 15 CCR § 3043.4, *et. seq.*)

19) Provides that, in addition to other specified limitations, the only incarcerated person or parolee data which may be released without a valid written authorization from the incarcerated person or parolee to the media or to the public includes that person's:

a) Name;

b) Age;

c) Race and/or ethnicity;

d) Birthplace;

e) County of last legal residence;

f) Commitment offense;

g) Date of admission to CDCR and CDCR number;

h) Facility assignments and a general description of behavior;

i) Patient health condition given in short and general terms that do not communicate specific medical information about the individual, such as good, fair, serious, critical, treated and released, or undetermined;

j) Manner of death as natural, homicide, suicide, accidental, or executed; and,

k) Sentencing and release actions, including month and year of current parole eligibility date. (15 CCR § 3261.2(e)(1)-(11).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In recent news, we have seen cases of violent, convicted felons who were released early from their prison sentences, and who then went on to commit more violent felony offenses against the public. In many of these cases, the Department of Corrections and Rehabilitation (CDCR) has refused to disclose information as to how those inmates obtained their early release credits. It is vital to the creation of a fair and just system for all Californians, that we have a transparent criminal justice system. AB 2766 will provide that CDCR records pertaining to an inmate's early release date and how they earned their early release credits are available to the public, and are subject to disclosure under the California Public Records Act. AB 2766 will create more transparencies to ensure that CDCR is properly applying the law, to help Californian's feel safe in their communities and to create just outcomes for all."

2) **Proposition 57:** On November 8, 2016, Californians voted on whether to increase rehabilitation services and decrease the state's prison population by approving Proposition 57. Known as The Public Safety and Rehabilitation Act of 2016, Proposition 57 proposed, among other things, to authorize CDCR to award sentence credits for rehabilitation, good behavior, and education. It required CDCR to pass regulations to that effect. (https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf.) Voters approved Proposition 57 by a margin of nearly 30 points. (https://ballotpedia.org/California_Proposition_57,_Parole_for_Non-Violent_Criminals_and_Juvenile_Court_Trial_Requirements_(2016).)

   As required, CDCR has since issued regulations to effectuate the proposition's purpose. (Cal. Const., Art. I, § 32, subd. (b); 15 CCR § 3043, *et seq.*) Awarding credits is based on several different eligibilities including Good Conduct, Milestone Completion, Rehabilitative Achievement, Educational Merit, and Extraordinary Conduct. (https://www.cdcr.ca.gov/proposition57/.)

3) **California Public Records Act (CPRA):** The CPRA provides that every person or entity in California has a right to access information concerning the conduct of the people's business. (Gov. Code, §7921.000; Cal. Const., Art. I, § 3, subd. (b)(1).) Despite the public's fundamental right to access public records, the California Constitution also provides people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., Art. I, § 1.) The CPRA provides that the inalienable right to privacy under California Constitution may exempt certain records, or portions thereof, from disclosure under the Act. (Gov. Code, §7930.000.) It specifically states that Penal Code sections 11076 and 13202 may operate to exempt criminal offender record information, or portions thereof, from disclosure. (Gov. Code, § 7930.130.)

   If an agency rejects a public records request, the CPRA requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of CPRA, or that on the facts of a particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Civ. Code, § 7922.000.) Any person may challenge an agency's rejection of a CPRA request by instituting proceedings for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right to inspect or receive a copy of

any public record or class of public records. (Gov. Code, § 7923.)

CDCR has issued regulations governing the disclosure of information relating to an incarcerated person. Specifically, CDCR regulations state, "[T]he only inmate or parolee data which may be released without a valid written authorization from the inmate or parolee to the media or to the public" includes their name, age, race and/or ethnicity, birthplace, count of last legal residence, commitment offense, date of admission, facility assignment, a general description of behavior, a short and general description of an inmate's health or manner of death, and the month and year of their release. (15 CCR § 3261.2(e)(1)-(11).)

This bill would require CDCR to disclose significantly more information than is likely required under the CPRA, and which, contrary to Section 2 of this bill, appears to be protected.

4) **Institutional Safety at CDCR Facilities:** This bill would make "[CDCR] records pertaining to an inmate's release date and what the inmate did to earn any release credits…subject to disclosure" under CPRA. This bill provides limited exceptions to or restrictions on disclosure. It does not limit who can request an incarcerate person's records. Nor does it exempt from disclosure an incarcerated person's release credit information before that person's release date has been set. Even if the date has been set, an incarcerated person is not immediately released upon receiving that date. In either case, a person could request information on an incarcerated person's rehabilitative efforts and then communicate that information to another incarcerated person within the same institution.

   For example, an incarcerated person may receive "up to twelve months of Extraordinary Conduct Credit" for "provid[ing] exceptional assistance in maintaining the safety and security of a prison." (Pen. Code, § 2935; 15 CCR § 3043.6, subd. (a).) Disclosure that an incarcerated person assisted corrections staff may put that person at risk from other incarcerated persons, particularly if the provided information resulted in consequences for other incarcerated persons. Given the ongoing efforts by CDCR to manage security threat groups ("gangs") and other security threats within its institutions, there may be reason for concern that such broad disclosures would threaten institutional safety and the safety of the people in CDCR's care. Similarly, it could also put the individual in immediate risk from persons who are not incarcerated, such as members of rival gangs, once they are released from prison.

   This bill would require disclosure of all credits earned except HIPAA-protected records and "early release credits earned by an in-custody informant for providing exceptional assistance in maintaining the safety and security of a prison." However, exempting disclosure of only the information pertaining to extraordinary conduct credits would result in a discrepancy between the credits earned and the release date, highlighting that the incarcerated person had received credits for conduct exempted from disclosure. The omission of the credits would serve only to highlight that the credits had been earned in service to CDCR.

5) **A Disincentive to Participate in Rehabilitative Programming:** As mentioned above, this bill provides broad disclosure on what an incarcerated person did to earn release credits before that person has been released from CDCR, which may place that person at risk. Moreover, this bill requires disclosure of "the types of rehabilitative and education programs that the inmate participated in and completed." This could require the disclosure of

information about rehabilitation credits an incarcerated person earns for participation in self-help and peer support groups, such as Narcotics Anonymous and/or Alcoholics Anonymous among others, or participation programs like CBI-Life Skills. (https://www.cdcr.ca.gov/rehabilitation/cbi/) Whether such information falls under the bill's HIPAA-exception is unclear, and resolving the issue could require litigation. If earning credits could result in disclosure of an incarcerated person's personal information or might threaten their personal safety, will they be disincentivized to participate in rehabilitative programming?

6) **Vague Language:** This bill provides that "[a] disclosure…shall be sufficiently detailed and include the number of days of credit…," but it does not provide guidance to CDCR on the records, or the portions of records, that would be required to meet that standard. Given that the bill requires that disclosures be both "sufficiently detailed *and* include the number of days of credit…," disclosure would have to go beyond a cursory calculation of the total credit days an incarcerated person has earned in each category. But what level of detail is "sufficient[]" to comply with this bill's mandate?

7) **Practical Consideration:** According to the author, this bill "will create more transparencies to ensure that CDCR is properly applying the law." Yet, as previously noted, this bill would not require disclosure of HIPAA-protected records or "early release credits earned by an in-custody informant for providing exceptional assistance in maintaining the safety and security of a prison." As a result, a report issued by CDCR in response to a CPRA request on how an individual earned release credits while incarcerated would not completely account for credits withheld under one of the exceptions in this bill. Put simply, under this bill the public may not have significantly more clarity about how CDCR awarded an individual credits, even if it knows more personal, potentially embarrassing or stigmatizing, information about the subject of the request.

8) **Argument in Support**: According to the *California District Attorneys Association*, "As many victims and justice system stakeholders have been surprised by the release of certain offenders and have expressed concerns about the lack of information when incarcerated individuals are released back into their communities, this bill is one way of addressing those concerns. The public should have a better idea of how the laws they have enacted are working when it comes to the release of offenders so they can decide whether to challenge, support, or seek modification in the laws.

   "This bill is a codification of how release of the records should be handled under the current law, with exceptions to disclosure in the current language that protect the most sensitive information, and modifications to further mitigate any harm from the competing concerns can be made if warranted."

9) **Argument in Opposition**: According to *Oakland Privacy*, "It is a relatively rare occasion for us to find ourselves arguing **against** more governmental transparency and against a broadening of the California Public Records Act. However the potential safety issues disregarded by AB 2766 are sobering and of great concern. Moreover, it is not clear to us what the public interest in the information actually consists of. The CPRA is not intended to satisfy prurient, sensationalistic interests and in this case, we are unable to identify any other interest. Accordingly, we request that the committee not advance the bill.

"The privacy interests at stake in AB 2766 are similar to those that protect employee data and medical records. In general, rehabilitative efforts can and do encompass personal information including substance issues, mental health and therapy, and educational difficulties. Both employers and health/medical facilities keep such information private for very good reasons. Release of such information has discriminatory aspects and moreover, having such information broadly released serves as a strong disincentive to requesting and receiving needed treatments. The Legislature, for example, has taken legislative action to prevent the sale and sharing of information from mental health applications for exactly this reason.

"In a prison and in the real world that inmates must sometimes grapple with post-release (which includes gangs and former criminal associates) these dangers are multiplied and amplified with physical threats to life and limb if gangs and associates dislike rehabilitative efforts or associate them with snitching to criminal justice authorities. Since one form of credit (the extraordinary conduct credit) in fact involves assisting with safety and security issues in the prison, the perception of snitching may in fact be the reality - with possible consequences awaiting the inmate post-release, which neither CDCR nor the unwitting public records requester is likely to be available to mitigate.

"One of the fundamental precepts of privacy law is consent, which is nowhere mentioned in AB 2766. For good reasons, the Public Records Act does not rely on the consent of government bodies in order to release public information, but inmates are not government bodies and information about their activities in prison can, in some circumstances, not only constitute particularized individual information about one specific person, but also pose unique dangers to them upon release. While we do strip inmates of a number of personal freedoms and rights, the privacy of their medical and psychiatric information has generally not been up for grabs. At a minimum, allowing an inmate to withhold consent for the release of their records would seem to be required for their safety.

"Moreover, the public interest in such information is unclear to us. The bill's author in the 2023 Assembly Public Safety committee analysis states that "more transparencies will help the community feel safe and be assured that CDCR is properly applying the law". While we share an interest in CDCR properly applying the law, the oversight responsibilities for CDCR lie with the state and the Legislature, not with individual members of the public. We don't really see how a list of the particular set of release credits for one or a small group of individuals provides oversight of CDCR's performance, which requires aggregate data. So the likely use of such reports seems limited to one of two purposes:

1) Harassing a particular individual after their release, which can only have negative effects regarding recidivism and the ability to re-integrate into non-criminal society

2) Gotcha reporting for ex post-facto examinations in the unfortunate incidence of another crime after release. While we would never say there is no public interest in sensationalistic crime reporting, one individual's story, however dramatic it may prove to be, is not in itself a meaningful analysis of rehabilitation programs and shouldn't be substituted for one. There is plenty of aggregated data available for reporters interested in examining how well California's rehabilitative efforts are going.

"Given the potential dangers to newly-released inmates and the lack of news value in individual health and psychiatric information garnered without consent, the balance of

equities present are convincingly on the side of treating personal information like it is personal information."

10) **Related Legislation**:

a) AB 1260 (Joe Patterson), would require CDCR to make an initial determination of the minimum eligible parole date for an inmate based on the sentence of the court, any credits awarded, and the good conduct credit rate, as specified. AB 1260 failed passage in this committee and was granted reconsideration. AB 1260 is pending referral in the Senate Rules Committee.

b) AB 1898 (Flora), would prohibit a person convicted of specified child pornography offenses, who previously has been convicted of and has served two or more separate prior prison terms for specified offenses, from receiving release credits. AB 1898 will be heard today in this committee.

c) AB 2341 (V. Fong), would prohibit the granting of release credits to an inmate serving a sentence for a fentanyl-related offense, as specified. AB 2341 has been pulled by the author.

11) **Prior Legislation**:

a) AB 15 (Dixon), of the 2023-2024 Legislative Session, was identical to this bill. AB 15 failed passage in this committee.

b) SB 288 (J. Nguyen), of the 2023-2024 Legislative Session, was substantially similar to this bill and AB 15 (Dixon). SB 288 failed passage in the Senate Public Safety Committee.

c) SB 359 (Umberg), of the 2023-2024 Legislative Session, would have required CDCR to compile data related to credits awarded to incarcerated persons, as specified, and to submit an annual report to the Legislature on or before January 1, 2025. SB 359 failed passage in this committee.

d) SB 345 (Bradford), of the 2017-2018 Legislative Session, would have required CDCR, among others, to the extent not prohibited by the CPRA, to conspicuously post on their Internet website, in a searchable manner, all current standards, policies, practices, operating procedures, and education and training materials. Governor Brown vetoed SB 345.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Police Chiefs Association
California State Sheriffs' Association
League of California Cities

Opposition

Initiate Justice
Initiate Justice Action
Oakland Privacy
Uncommon Law

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