

Date of Hearing: April 28, 2015

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1104 (Rodriguez) – As Amended April 23, 2015

SUMMARY: Clarifies in the Penal Code that a search warrant may be issued when the property or things to be seized are controlled substances or any device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance, as provided in existing provisions of law in the Health and Safety Code.

EXISTING LAW:

- 1) States that a search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)
- 2) Permits a search warrant to be issued for any of the following grounds:
 - a) When the property subject to search was stolen or embezzled;
 - b) When property or things were used as the means to commit a felony;
 - c) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered;
 - d) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony;
 - e) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child or possession of matter depicting sexual conduct of a person under the age of 18 years has occurred or is occurring;
 - f) When there is a warrant to arrest a person;
 - g) When a provider of electronic communication service or remote computing service has records or evidence, as specified, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of

- concealing them or preventing their discovery;
- h) When the property or things to be seized include an item or any evidence that tends to show a violation of a specified section of the Labor Code, or tends to show that a particular person has violated that section;
 - i) When the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as specified;
 - j) When the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of, specified persons;
 - k) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms, as specified, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a specified protective order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law;
 - l) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code;
 - m) When a sample of the blood of a person constitutes evidence that tends to show a violation of specified provisions in the Vehicle Code relating to driving under the influence offenses and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as specified; and,
 - n) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order, as specified. (Pen. Code, § 1524, subd. (a).)
- 3) Requires a search warrant be to issued upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1104 simply seeks clarification that a search warrant for controlled substances is already authorized in the Health and Safety Code by referencing such provision in Penal Code. This bill does not attempt to increase penalties or otherwise contravene the notions underlying Proposition 47. All existing state and federal requirements regarding the issuance of search warrants would still apply."
- 2) **Search Warrants:** Both the United States and the California constitutions guarantee the right of all persons to be secure from unreasonable searches and seizures. (U.S. Const., amend. IV; Cal. Const., art. 1, sec. 13.) This protection applies to all unreasonable government intrusions into legitimate expectations of privacy. (*United States v. Chadwick* (1977) 433 U.S. 1, 7, overruled on other grounds by *California v. Acevedo* (1991) 500 U.S. 565.) In general, a search is not valid unless it is conducted pursuant to a warrant. A search warrant may not be issued without probable cause. "Reasonable and probable cause exists if a man of ordinary care and prudence would be led to conscientiously entertain an honest and strong suspicion that the accused is guilty." (*People v. Alvarado* (1967) 250 Cal.App.2d 584, 591.) The mere reasonableness of a search, assessed in light of the surrounding circumstances, is not a substitute for the warrant required by the Constitution. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 758, overruled on other grounds by *California v. Acevedo*, supra.) There are exceptions to the warrant requirement, but the burden of establishing an exception is on the party seeking one. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 760, overruled on other grounds by *California v. Acevedo*, supra.)

In California, Penal Code section 1524 provides the statutory grounds for the issuance of warrants. Under these provisions, a search warrant may be issued "[w]hen property or things were used as the means to commit a felony." (Pen. Code, § 1524, subd. (a)(2).) There are other enumerated circumstances that authorize a search warrant regardless of whether the crime was a felony or misdemeanor, such as "[w]hen the property subject to search was stolen or embezzled." (Pen. Code, § 1524, subd. (a)(1).) Additionally, Penal Code section 1524 provides that a search warrant may be issued "[w]hen the property or things are in the possession of any person with the intent to use them as a means of committing a public offense. . . ." (Pen. Code, § 1524, subd. (a)(3).) A "public offense" is defined as crimes which include felonies, misdemeanors, and infractions. (Pen. Code, § 16.) When the mere possession of such property is not violation of law, this provision requires a showing of specific intent to use such property to commit public offense before a warrant may be issued. However, when possession itself is declared unlawful by statute, such is the case for controlled substances, it is not necessary to show specific intent, possession itself being public offense. (*Dunn v. Municipal Court for Eureka Judicial Dist.* (1963) 220 Cal App 2d 858.)

The Health and Safety code also states that controlled substances or paraphernalia "may be seized by any peace officer and in the aid of such seizure a search warrant may be issued as prescribed by law." (Health & Saf. Code, § 11472.) However, because Penal Code section 1524 is relied upon as the statute that provides direction on when warrants may be issued, adding a cross reference to Health and Safety Code section 11472 will provide clarity to agencies on when they may seek a warrant.

- 3) **Argument in Support:** According to the *California State Sheriffs' Association*, "Because California law is constantly changing, both due to legislative and judicial action, it often becomes necessary to update and clarify statutes so it is clear to law enforcement and court officers, as well as the Californians who are governed by them, what the state of the law is.

"It has come to our attention that the authority to seek and obtain search warrants for controlled substance possession offenses as described in Health and Safety Code may be unclear and in the spirit of the above precepts, AB 1104 will merely clarify this existing authority by inserting an unambiguous cross-reference in Penal Code Section 1524, the existing California law that generally describes the situations in which search warrants may issue."

- 4) **Argument in Opposition:** According to the *California Public Defenders Association*, "Health and Safety Code authorizes a peace officer to seize the listed items, and provides that 'in the aid of such seizure a search warrant may be issued as prescribed by law.'

"In other words, if a search warrant issues as prescribed by Penal Code section 1524, and in executing it an officer finds any of the listed items, the officer can seize them. But existing law, that is, existing Penal Code section 1524, does not currently authorize a search warrant to issue solely for those listed items, and nor does Health and Safety Code section 11472.

"This is a subtle but important point. It is illustrated by *People v. Superior Court (Morton)* (1984) 151 Cal.App.3d 899. In that case, drug paraphernalia, which is an item listed in Health and Safety Code section 11472, was seized, and there was a search warrant. But the warrant in that case was not issued just because those items were possessed, and it was not issued under authority of Health and Safety Code section 11472. On the contrary, the *Morton* court stated, at 151 Cal.App.3d at 901, that the 'warrants recited that there was probable cause to believe that described property "is possessed ... with the intent to use it as a means of committing ... a violation of ... Section 11364.7.'" (Section 11364.7 outlaws possession of drug paraphernalia with intent to deliver them to another person to use drugs.)

"Thus, the warrant in issued by authority of Penal Code section 1524, subdivision (a)(3), authorizing a search warrant when the property is possessed 'with the intent to use them as a means of committing a public offense.' It was not authorized by Health and Safety Code section 11472."

5) **Related Legislation:**

- a) AB 46 (Lackey) reverses provisions recently enacted by Proposition 47 related to possession for personal use of specified controlled substances. AB 46 has been amended and no longer affects Proposition 47. AB 46 is pending hearing by the Committee on Appropriations.
- b) AB 150 (Melendez) specifies that theft of a firearm valued at \$950 dollars or less is a felony. AB 150 is pending hearing in the Assembly Appropriations Committee.

- c) SB 333 (Galgiani) would reverse provisions recently enacted by Proposition 47 related to possession for personal use of specified controlled substances. SB 333 is pending hearing in the Senate Public Safety Committee.
- d) SB 452 (Galgiani) is substantially similar to AB 150 (Melendez), but also addresses the crime of grand theft from the person. SB 452 is pending hearing in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association (Sponsor)
California District Attorneys Association (Co-Sponsor)
Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Narcotic Officers Association
California Peace Officers' Association
California Police Chiefs Association
California State Association of Counties
California State Lodge, Fraternal Order of Police
Crime Victims United
Long Beach Police Officers Association
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Peace Officers Research Association of California
Riverside Sheriffs Association
Sacramento County Deputy Sheriffs' Association
San Bernardino County Sheriff's Department
San Diego County Sheriff's Department
Santa Ana Police Officers Association

Opposition

California Public Defenders Association

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744

Date of Hearing: April 28, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1118 (Bonta) – As Amended April 16, 2015

SUMMARY: Establishes a Procedural Justice Task Force (task force) to be administered by the Board of State and Community Corrections (BSCC) Specifically, **this bill:**

- 1) Establishes a Procedural Justice Task Force to be administered by the BSCC and provides that the task of the task force is the following:
 - a) To provide for grant funding, to be awarded to local law enforcement departments for the purpose of implementing and enhancing procedural justice training;
 - b) To provide for a matching grant program, whereby philanthropic organizations may invest directly in procedural justice training;
 - c) The task force shall manage the grant programs, monitor implementation, and serve in an advisory capacity to sites leading implementation; and
 - d) The task force shall bring together police departments that are implementing procedural justice training, as well as support the implementation and monitor the effectiveness of a community of practice plan to assist police departments that have adopted procedural justice training.
- 2) Provides that the task force shall have the powers and authority necessary to carry out the duties imposed upon it by this section, including, but not limited to, all of the following:
 - a) To employ any administrative, technical, or other personnel necessary for the performance of its powers and duties;
 - b) To hold hearings, make and sign any agreements, and to do or perform any acts that may be necessary, desirable, or proper to carry out the purposes of this section;
 - c) To cooperate with, and secure the cooperation of, any department, division, board, bureau, commission, or other agency of the state to facilitate the task force properly to carry out its powers and duties;
 - d) To appoint advisers or advisory committees from time to time when the task force determines that the experience or expertise of the advisers or advisory committees is needed for projects of the task force. Section 11009 of the Government Code shall apply to these advisers or advisory committees;

- e) To accept any federal funds granted, by act of Congress or by executive order, for all or any of the purposes of this section; and
 - f) To accept any gift, donation, grant, or bequest for all or any of the purposes of this section.
- 3) Provides that the task force shall be composed of 12 members. The members shall elect one member to chair the task force. The members of the task force shall include individuals representing a cross-section of disciplines and entities, as follows:
- a) The Attorney General, or his or her designee;
 - b) The President of the Peace Officers Research Association of California, or his or her designee;
 - c) The President of the California Police Chiefs Association, or his or her designee;
 - d) The President of the California State Sheriffs' Association, or his or her designee;
 - e) The Executive Director of the Commission on Peace Officers Standards and Training, or his or her designee;
 - f) The Chair of the Board of State and Community Corrections, or his or her designee;
 - g) Two representatives from each of the following categories, one of whom shall be appointed by the President Pro Tempore of the Senate and one of whom shall be appointed by the Speaker of the Assembly:
 - i) A university researcher or professor who specializes in procedural justice, community-police relations, implicit bias, or a similar law enforcement subject;
 - ii) A representative of a nonprofit civil rights organization that specializes in civil or human rights and criminal justice; and
 - iii) A community organizer who specializes in civil or human rights and criminal justice.
- 4) Provides that the task force shall award grants to local law enforcement agency applicants with a procedural justice training program that meets, at a minimum, the following requirements:
- a) Establishes authentic partnerships with community-based organizations, incorporates community partners in leading a portion of the training and development of local law enforcement policies and practices;
 - b) Apportions funding for community partners to facilitate training modules;
 - c) Addresses implicit bias;

- d) Includes a contextualized module that addresses the historical and generational effects of policing with particular emphasis on communities of color;
 - e) Is implemented in multiple phases, including in the academy, field training, and as ongoing standalone training, particularly for mid-level officers and captains;
 - f) Includes performance reviews to test police officers' competency in procedural justice, including evaluations from supervising officers, peer evaluations, and community surveys;
 - g) Includes the development of tools to continuously assess course quality and determine whether the training is changing officers' attitudes and practices;
 - h) Is tailored or customized to reflect community priorities and departmental needs; and
 - i) In consultation with the task force, the commission shall develop a model procedural justice training curriculum, by an unspecified date. The task force and commission shall work together to determine the appropriate length and content of the course.
- 5) Makes the following findings and declarations:
- a) Police training that addresses culture, diversity, mental illness, youth development, and emphasizes mediation skills, improves how police relate to the communities that they serve and help minimize the use of force. The Legislature acknowledges that procedural justice training has emerged as a best practice for police departments to build trust with community members and reduce confrontation. Research suggests that when citizens see the police as more objective, they are more likely to comply with police directives;
 - b) Procedural justice emphasizes treating community residents with respect, and has gained traction as an evidence-based and cost-effective way to reduce crime. As a result, several law enforcement agencies throughout the country have implemented procedural justice training into their academies along with field training. Procedural justice is based on the following core principles:
 - i) Fairness and consistency of rule application;
 - ii) Impartiality and unbiased decisionmaker neutrality;
 - iii) Citizen voice in decisionmaking; and
 - iv) Transparency and openness in process.
 - c) Police training programs should include content for mitigating the impact of bias, identifying and properly responding to people with mental illness, and instill the principles and practices of procedural justice;
 - d) Procedural justice and police legitimacy training builds the public's confidence in police departments, acceptance of police authority, and the belief that officers are fair, based on

the application of the following four key principles:

- i) Treating people with dignity and respect;
 - ii) Making decisions fairly, based on facts, not illegitimate factors such as race;
 - iii) Giving people a voice – a chance to tell their side of the story; and
 - iv) Acting in a way that encourages community members to believe that they will be treated with goodwill in the future.
- e) Law enforcement departments that employ such principles – supported by a wealth of research – experience higher levels of public cooperation with police efforts to address crime, increased compliance with the law, stronger public support for police, and greater deference to police in interactions with community members;
 - f) Procedural justice and police legitimacy university experts have developed a proven curriculum that draws on research in legitimacy, procedural justice, leadership and adult learning theory, and has been successfully implemented in cities throughout the nation, including in Chicago, Oakland, Stockton, and Salinas;
 - g) The City of Oakland has advanced the field of procedural justice and police legitimacy by having community partners lead modules on the intersection of race and policing, including the historical and generational effects of policing, and community perspectives on policing;
 - h) The community training partnership was well received by police officers in Oakland, who actively engage with the community trainers, and fostered a set of community leaders that act as critical champions who, for example, serve as bridges to the community while continuing to press for institutional change;
 - i) The cities of Oakland, Salinas, and Stockton are all considering ongoing procedural justice and police legitimacy training, including a combination of scenario-based training and advanced procedural justice training tailored to particular situations or roles in a department;
 - j) Several police departments that have implemented procedural justice and police legitimacy training are planning on incorporating content on implicit racial bias into future training; and
 - k) In Oakland and Stockton, the departments' embrace of procedural justice principles has provided a set of unifying values and guiding principles that a group of diverse partners regularly invoke as they implement evidence-based violence reduction strategies.

EXISTING LAW:

- 1) Establishes, commencing July 1, 2012, BSCC and states that all references to the Board of Corrections or the Corrections Standards Authority shall refer to BSCC. (Pen. Code, § 6024, subd. (a).)

- 2) States that the mission of BSCC shall include providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. This mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment 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. (Pen. Code, § 6024, subd. (b).)
- 3) Provides that it shall be the duty of BSCC to collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, including, but not limited to, prevention, intervention, suppression, supervision, and incapacitation, as they relate to both adult corrections, juvenile justice, and gang problems. The board shall seek to collect and make publicly available up-to-date data and information reflecting the impact of state and community correctional, juvenile justice, and gang-related policies and practices enacted in the state, as well as information and data concerning promising and evidence-based practices from other jurisdictions. (Pen. Code, § 6027, subd. (a).)
- 4) Requires, commencing on and after July 1, 2012, BSCC, in consultation with the Administrative Office of the Courts, the California State Association of Counties, the California State Sheriffs' Association, and the Chief Probation Officers of California, shall support the development and implementation of first phase baseline and ongoing data collection instruments to reflect the local impact of Public Safety Realignment, specifically related to dispositions for felony offenders and postrelease community supervision. The board shall make any data collected pursuant to this paragraph available on the board's Internet Web site. It is the intent of the Legislature that the board promote collaboration and the reduction of duplication of data collection and reporting efforts where possible. (Pen. Code, § 6027, subd. (b)(12).)
- 5) Authorizes BSCC to do either of the following:
 - a) Collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of criminal justice in the state; or,
 - b) Perform other functions and duties as required by federal acts, rules, regulations, or guidelines in acting as the administrative office of the state planning agency for distribution of federal grants. (Pen. Code, § 6027, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Underlying social, racial, and economic disparities have long created rifts between law enforcement and the communities they are sworn to protect. However, Fruitvale Station and Oscar Grant, Ferguson and Michael Brown, and now North Charleston and Walter Scott, all have exposed and brought to light these deep

riffs and reinforced the need to repair community-police relations by moving beyond the status quo. With AB 1118, I propose to improve community-police relations by implementing and expanding the use of procedural justice in police departments across California.

"Procedural justice has four core tenets:

- Respect: Treating people with dignity and respect;
- Neutrality: Making decisions fairly, based on facts, not illegitimate factors such as race;
- Voice: Giving people a chance to tell their side of the story; and
- Trust: Acting in a way that encourages community members to believe that they will be treated with goodwill in the future.

"Procedural justice is already being used in Oakland, Stockton, and Salinas, to reflect the unique needs of those communities and change the culture within the police departments. The training has been vetted in academic studies, and within departments procedural justice has received largely positive feedback from police chiefs to the rank-and-file.

"Oakland has a long history of distrust and violence, but procedural justice is allowing law enforcement and the community to come together and bridge those gaps, in order to slow the cycle of violence and make the community whole."

- 2) **Background of the BSCC:** BSCC was established, commencing July 1, 2012, by SB 92 (Committee on Budget and Fiscal Review), Chapter 36, Statutes of 2011. "From 2005 through 2012, BSCC was the Correction Standards Authority, a division of CDCR. Prior to that it was the Board of Corrections, an independent state department. The BSCC is responsible for administering various criminal justice grant programs and ensuring compliance with state and federal standards in the operation of local correctional facilities. It is also responsible for providing technical assistance to local authorities and collecting data related to the outcomes of criminal justice policies and practices." (LAO, *The 2013-14 Budget: The Governor's Criminal Justice Proposals*, p. 44 (Feb. 15, 2013).)

"In creating BSCC, the Legislature added two responsibilities to the board's core mission: (1) assisting local entities to adopt best practices to improve criminal justice outcomes and (2) collecting and analyzing data related to criminal justice outcomes in the state." (*Id.* at pp. 44-45.)

- 3) **Argument in Support:** According to *The California Police Chiefs Association*, "The California Police Chiefs Association is proud to co-sponsor AB 1118 in concert with PolicyLink and PICO CA. AB 1118 establishes a Procedural Justice Task Force, administered by the Board of State and Community Corrections, to implement and enhance procedural justice training for local law enforcement agencies.

"The President's Task Force on 21st Century Policing (March, 2015) recently issued a number of recommendations for local law enforcement adaptation. Recommendation 1.1 states that, 'Law enforcement culture should embrace a guardian mindset to build public trust and legitimacy. Toward that end, police and sheriffs' departments should adopt procedural justice as the guiding principle for internal and external policies and practices to guide their interactions with the citizens they serve.' We adamantly support this recommendation.

"Procedural justice and police legitimacy training is a critical step as part of a broader effort toward organizational development, intended to improve the relationship between police and communities they serve. The training is based on four key principles: Treating people with dignity and respect; Making decisions fairly, based on facts, and not illegitimate factors such as race; Giving people a voice, a chance to tell their side of the story; and, Acting in a way that encourages community members to believe that they will be treated with goodwill in the future.

"We strongly believe that AB 1118 will assist California law enforcement agencies in both implementing this top-priority recommendation from the President's Task Force on 21st Century Policy March report and creating stronger ties with their communities. Thank you for your leadership and partnership on this incredibly important issue."

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association (Co-Sponsor)
PICO California (Co-Sponsor)
PolicyLink (Co-Sponsor)
Advancement Project
American Civil Liberties Union of California
Coalition for Police Accountability
Impact Justice
Oakland Community Organizations
United Food & Commercial Workers Union

Opposition

None

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: April 28, 2015
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1140 (Bonta) – As Amended April 22, 2015
As Proposed to be Amended in Committee

SUMMARY: Revises various rules governing the California Victim Compensation Program (CalVCP). Specifically, **this bill:**

- 1) Expands the definition of a victim's "authorized representative" to include any person having written authorization by the victim or derivative victim, or any person designated by law such as a legal guardian, conservator, or social worker; but excluding any medical or mental health provider, or its agent, who has provided services to the victim or derivative victim.
- 2) Provides that an applicant may be found to have been "uncooperative" for purposes of verifying information necessary to process a claim under the following circumstances:
 - a) He or she has information, or reasonably-obtainable information, that is needed to process the claim but fails to do so after the board requests it. However, The board must take the applicant's economic, psycho-social, and post-crime traumatic circumstances under consideration, and cannot unreasonably reject an application solely for failure to provide information;
 - b) He or she provides false information regarding the claim, or causes another person to do so;
 - c) He or she refuses to apply for benefits from other sources to which he or she may be entitled, such as worker's compensation, social security, state disability insurance or unemployment insurance; or,
 - d) He or she threatens a board member or staff with violence or bodily harm.
- 3) Authorizes compensation for a victim's emotional injury incurred as a direct result of the nonconsensual distribution of pictures or video of sexual conduct in which the victim appeared, if the victim is a minor. But disallows compensation for derivative victims.
- 4) Revises provisions allowing compensation for emotional injury suffered in child abduction cases to delete the requirement that the deprivation of custody lasted for 30 calendar days, and instead requires only that criminal charges be filed in the case.
- 5) Authorizes denial of a claim, in whole or in part, if the board finds that denial is appropriate because of the nature of the applicant's involvement in the events leading to the crime, or the involvement of the person whose injury or death gave rise to the claim. This limitation does not apply if the victim's injury or death occurred as a direct result of the crimes of rape,

- spousal rape, domestic violence, or unlawful sexual intercourse with a minor.
- 6) States that factors to be considered for determining involvement in the crime include, but are not limited to:
 - a) The victim or derivative victim initiated the qualifying crime, or provoked or aggravated the suspect into initiating the qualifying crime;
 - b) The qualifying crime was a reasonably foreseeable consequence of the conduct of the victim or derivative victim; and,
 - c) The victim or derivative victim was committing a crime that could be charged as a felony and that reasonably lead to him or her being victimized.
 - 7) States that if the board finds that the victim or derivative victim was involved in events leading to the crime, factors that may be used to mitigate or overcome involvement, include, but are not limited to:
 - a) The victim's injuries were significantly more serious than reasonably could have been expected based on the victim's level of involvement;
 - b) A third party interfered in a manner not reasonably foreseeable by the victim or derivative victim; and,
 - c) The victim's age, physical condition, and psychological state, as well as any compelling health and safety concerns.
 - 8) Prohibits a domestic violence victim from being found to be uncooperative based on his or her conduct with law enforcement at the scene of a crime.
 - 9) Prohibits a victim of domestic violence, sexual assault, or human trafficking from being found to be uncooperative because of a delay in reporting the crime.
 - 10) Prohibits the denial of an application for a claim arising from a sexual assault based solely on the failure to file a police report.
 - 11) Requires the board to adopt guidelines allowing it to consider and approve applications for assistance in sexual assault cases by relying upon evidence other than a police report. Factors evidencing a sexual assault has occurred, may include medical records, mental health records, and a sexual assault examination.
 - 12) Denies compensation to any person convicted of a violent felony, as specified, until that person is no longer incarcerated and discharged from parole, probation, post-release community supervision, or mandatory supervision.
 - 13) Denies compensation to any person who is required to register as a sex offender.
 - 14) Removes current provisions which prioritize the applications of victims who are not felons.

- 15) Removes limits for statutory rape counseling.
- 16) Expands eligibility to recoup the costs of mental health counseling to grandparents and grandchildren.
- 17) Limits reimbursement for medically-related expenses to those that were provided by a licensed medical provider.
- 18) Eliminates the board's authority to reimburse for expenses of nonmedical remedial care and treatment given in accordance with a religious method of healing recognized under state law.
- 19) Eliminates verification requirements for reimbursement of increased residential-security measures.
- 20) Allows reimbursement for the purchase of a vehicle for a victim who becomes permanently disabled.
- 21) Specifies that, as to reimbursement of costs for a victim's relocation, the victim may be required to repay the reimbursement if the victim notifies the perpetrator of his or her new address or allows the offender on the premises. Additionally, if a security deposit is required for relocation services, the board shall be named as the recipient of the security deposit.
- 22) Expands reimbursement to cover clean up expenses when the crime scene is a vehicle.
- 23) Allows the board to request verification before it reimburses for attorney's fees.
- 24) Permits an applicant who seeks a hearing on the denial of compensation to request a telephonic hearing.
- 25) Provides that evidence submitted after the board has denied a request for reconsideration shall not be considered unless the board chooses to reconsider the decision on its own motion.
- 26) Requires any board actions to collect overpayments be commenced within seven years of the date of the overpayment, except there is no statute of limitation for the action if overpayment was a result of fraud, misrepresentation or willful non-disclosure of the applicant.
- 27) Authorizes the recipient of an alleged overpayment to contest that finding.
- 28) Provides that the board need only forward restitution proceeds collected from a prisoner or parolee to a victim when the payment is \$25 or more, unless the victim requests payments of a lesser amount.
- 29) Makes technical, non-substantive changes.

EXISTING LAW:

- 30) Establishes the Victim Compensation and Government Claims Board (VCGCB) to operate the CalVCP. (Gov. Code, § 13950 et. seq.)
- 31) Provides that an application for compensation shall be filed with the board in the manner determined by the board. (Gov. Code, § 13952, subd.(a).)
- 32) States that, except as provided by specified sections of the Government Code, a person shall be eligible for compensation when all of the following requirements are met:
- a) The person from whom compensation is being sought any of the following:
 - i) A victim.
 - ii) A derivative victim.
 - iii) A person who is entitled to reimbursement for funeral, burial or crime scene clean-up expenses pursuant to specified sections of the Government Code.
 - b) Either of the following conditions is met:
 - i) The crime occurred within California, whether or not the victim is a resident of California. This only applies when the VCGCB determines that there are federal funds available to the state for the compensation of crime victims.
 - ii) Whether or not the crime occurred within the State of California, the victim was any of the following:
 - (1) A California resident.
 - (2) A member of the military stationed in California.
 - (3) A family member living with a member of the military stationed in California.
 - c) If compensation is being sought for derivative victim, the derivative victim is a resident of California, or the resident of another state who is any of the following:
 - i) At the time of the crimes was the parent, grandparent, sibling, spouse, child or grandchild of the victim.
 - ii) At the time of the crime was living in the household of the victim.
 - iii) At the time of the crime was a person who had previously lived in the house of the victim for a person of not less than two years in a relationship substantially similar to a previously listed relationship.

- iv) Another family member of the victim including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.
 - v) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.
- d) And other specified requirements. (Gov. Code, § 13955.)
- 33) States that an application shall be denied if the board finds that the victim failed to reasonably cooperate with law enforcement in prosecution of the crime. (Gov. Code, § 13956, subd. (b)(1).)
- 34) Disqualifies certain individuals from eligibility, including a participant in the crime for which compensation is being sought, and persons convicted of a felony who are currently on probation or parole. (Gov. Code, § 13956.)
- 35) Authorizes the board to reimburse for pecuniary loss for the following types of losses (Gov. Code, § 13957, subd. (a)):
- a) The amount of medical or medical-related expenses incurred by the victim, subject to specified limitations.
 - b) The amount of out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim, as specified, including peer counseling services provided by a rape crisis center.
 - c) The expenses of non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.
 - d) 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, subject to specified limitations.
 - e) Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services.
 - f) The expense of installing or increasing residential security, not to exceed \$1,000, with respect to a crime that occurred in the victim's residence, upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.
 - g) The expense of renovating or retrofitting a victim's residence or a vehicle to make them accessible or operational, if it is medically necessary.
 - h) Expenses incurred in relocating, as specified, if the expenses are determined by law enforcement to be necessary for the personal safety or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

- 36) Limits the total award to or on behalf of each victim to \$35,000, except that this amount may be increased 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, "The California Victim Compensation and Government Claims Board administers the California Victim Compensation Program (CalVCP) and is authorized to compensate victims and derivative victims of specified types of crimes through a continuously appropriated fund, the Restitution Fund. Existing law sets forth the eligibility requirements and limits on the amount of compensation the CalVCP may award. The CalVCP framework was developed several decades ago and has not been thoroughly revised since that time.

"To address ongoing issues with outdated restrictions and the need to modernize the program to reflect changing technologies and crimes, the CalVCP conducted a Statute Modernization Project, bringing various stakeholder groups together to make recommendations on revising and updating the state compensation program to better serve victims.

"AB 1140 would implement many of the recommendations made by the CalVCP Statute Modernization Project to modernize the existing statutes. For example, current law restricts compensation of victims of domestic violence if the victim fails to cooperate with law enforcement or report the assault in a timely fashion. AB 1140 would update that law to comport with current understandings of domestic violence and the many reasons a victim may fail to immediately report or cooperate. Current law also restricts compensation to persons on probation or parole and those who have participated in a crime that resulted in their injuries. AB 1140 would delete those restrictions and allow compensation unless the person is on probation or parole for a violent crime or is a sex offender and allow compensation to those who participated in a crime unless the crime was a felony.

"The bill would also make a number of other improvements to address emerging issues in law. For example, the bill would include online harassment as a compensable crime and also allow compensation to a minor who sustains emotional injury as a direct result of the distribution of pictures or video of sexual conduct."

- 2) **Background:** CalVCP provides compensation for victims of violent crime. It reimburses eligible victims for many crime-related expenses, such as medical treatment, mental health services, funeral expenses, home security, and relocation services. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds. (See CVGCB Website <<http://www.vcgcb.ca.gov/board>>.)
- 3) **Governor's Budget Proposal:** "The Governor's budget for 2015-16 proposes to reorganize VCGCB beginning in 2016-17. The proposed change would result in the board having primarily victim programs to administer, as opposed to its current role which includes responsibility for certain non-victim programs." (See *The 2015-16 Budget: Improving State Programs for Crime Victims*, by J. Peters, Legislative Analyst's Office, March 18, 2015, p. 3, <<http://www.lao.ca.gov/reports/2015/budget/crime-victims/crime-victims-031815.pdf>>.)

The budget proposes \$105 million, primarily from the Restitution Fund, and federal funds, which is a decrease of \$14 million from the levels provided in 2014-15. (*Id.* at p. 6.)

- 4) **Legislative Analyst's Office (LAO) Report:** The LAO's March 2015 report, *Improving State Programs for Crime Victims*, made several recommendations. The LAO agreed with the Governor's proposal to restructure the VCGCB to focus solely on administering victim programs, and shifting victim programs administered by other departments to the VCGCB. The LOA also found that the board needs to develop a comprehensive strategy, which among other things should assess the appropriate number, scope, and priority of the state's existing programs, as well as conducting periodic program evaluations to see which victim programs are most effective and should be expanded in the future. (*Improving State Programs for Crime Victims*, supra, pp. 18-20, < <http://www.lao.ca.gov/reports/2015/budget/crime-victims/crime-victims-031815.pdf>>.)

- 5) **Argument in Support:** According to the *Alameda County District Attorney*, "As you may know, the California Victim Compensation and Government Claims Board administers the California Victim Compensation Program (CalVCP), which compensates victims and derivate victims of specified types of crimes through a continuously appropriated fund, the Restitution fund. To address ongoing issues with outdated restrictions and the need to modernize the program to reflect changing technologies and crimes, the CalVCP conducted a Statute Modernization Project, bringing various stakeholder groups together to make recommendations on revising and updating the state compensation program to better serve victims.

"AB 1140 implements the recommendations made by the CalVCP Modernization Project."

- 6) **Argument in Opposition:** According to the *California District Attorneys Association*, "Section 5 of the bill (on p. 19) amends Government Code section 13957(a)(1) to provide for reimbursement only for medical or medical-related expenses incurred by the victim *for services that were provided by a licensed medical provider*.

"This is directly contrary to established law. In *People v. Keichler* (2005) 129 Cal.App.4th 1039, the 3rd District Court of Appeal upheld compensation for Laotian Hill Tribe assault victims who paid for a shaman's spirit healing ceremony, rather than incur Western medical expenses, after a full trial hearing including expert testimony on the value of such a ceremony. ...

"Finally, we ask that language be added to the bill to require that any compensation received by a supervised felon first be applied to any victim restitution, fines, and fees that they owe in the case for which they are being supervised."

- 7) **Related Legislation:** SB 519 (Hancock) expands eligibility for compensation for crime victims to include counseling to a person who is an adult witness of a crime. The bill would also expand eligibility for compensation for mental health services and relocation benefits to a person who is 65 years of age or older and sustained financial exploitation by a relative or caretaker, if there is a reasonable fear of continued exploitation. SB 519 is pending hearing in the Senate Public Safety Committee.

8) Prior Legislation:

- a) AB 2809 (Leno), Chapter 587, Statutes of 2008, allowed a minor who suffers emotional injury as a direct result of witnessing a violent crime to be eligible for reimbursement for the costs of outpatient mental health counseling if the minor was in close proximity to the victim when he or she witnessed the crime
- b) AB 2869 (Leno), Chapter 582, Statutes of 2006, specified that the provisions authorizing reimbursement for funeral and burial expenses under existing law apply without respect to any felon status of the victim.
- c) AB 2729 (Wesson), of the 2001-2002 Legislative Session, would have expanded mental health services to include reimbursement for domestic violence peer counselors. AB 2729 was vetoed.
- d) AB 606 (Jackson) Chapter 584, Statutes of 1999, authorized reimbursement of services provided by child life specialists under specified circumstances, and added benefits for relocation, residential security, home and vehicle modification.

REGISTERED SUPPORT / OPPOSITION:**Support**

Alameda County District Attorney
Alliance for Boys and Men of Color
Legal Services for Prisoners with Children
Policy Link

Opposition

California District Attorneys Association
California Public Defenders Association

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

Amendments Mock-up for 2015-2016 AB-1140 (Bonta (A))

*******Amendments are in BOLD*******

**Mock-up based on Version Number 98 - Amended Assembly 4/22/15
Submitted by: Sandy Uribe, Assembly Public Safety Committee**

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

SECTION 1. Section 13952 of the Government Code is amended to read:

13952. (a) An application for compensation shall be filed with the board in the manner determined by the board.

(b) (1) The application for compensation shall be verified under penalty of perjury by the individual who is seeking compensation, who may be the victim or derivative victim, or an individual seeking reimbursement for burial, funeral, or crime scene cleanup expenses pursuant to subdivision (a) of Section 13957. If the individual seeking compensation is a minor or is incompetent, the application shall be verified under penalty of perjury or on information and belief by the parent with legal custody, guardian, conservator, or relative caregiver of the victim or derivative victim for whom the application is made. However, if a minor seeks compensation only for expenses for medical, medical-related, psychiatric, psychological, or other mental health counseling-related services and the minor is authorized by statute to consent to those services, the minor may verify the application for compensation under penalty of perjury.

(2) For purposes of this subdivision, "relative caregiver" means a relative as defined in paragraph (2) of subdivision (h) of Section 6550 of the Family Code, who assumed primary responsibility for the child while the child was in the relative's care and control, and who is not a biological or adoptive parent.

(c) (1) The board may require submission of additional information supporting the application that is reasonably necessary to verify the application and determine eligibility for compensation.

(2) The staff of the board shall determine whether an application for compensation contains all of the information required by the board. If the staff determines that an application does not contain all of the required information, the staff shall communicate that determination to the applicant with a brief statement of the additional information required. The applicant, within 30 calendar days of being notified that the application is incomplete, may either supply the additional

information or appeal the staff's determination to the board, which shall review the application to determine whether it is complete.

(d) (1) The board may recognize an authorized representative of the victim or derivative victim, who shall represent the victim or derivative victim pursuant to rules adopted by the board.

(2) For purposes of this subdivision, "authorized representative" means any of the following:

(A) Any person who has written authorization by the victim or derivative victim. However, a medical or mental health provider, or agent of the medical or mental health provider, who has provided services to the victim or derivative victim shall not be allowed to be an authorized representative.

(B) Any person designated by law including, but not limited to, a legal guardian, conservator, or social worker.

(3) Except for attorney's fees awarded under this chapter, no authorized representative described in paragraph (2) shall charge, demand, receive, or collect any amount for services rendered under this subdivision.

SEC. 2. Section 13954 of the Government Code is amended to read:

13954. (a) The board shall verify with hospitals, physicians, law enforcement officials, or other interested parties involved, the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and any other pertinent information deemed necessary by the board. Verification information shall be returned to the board within 10 business days after a request for verification has been made by the board. Verification information shall be provided at no cost to the applicant, the board, or victim centers. When requesting verification information, the board shall certify that a signed authorization by the applicant is retained in the applicant's file and that this certification constitutes actual authorization for the release of information, notwithstanding any other provision of law. If requested by a physician or mental health provider, the board shall provide a copy of the signed authorization for the release of information.

(b) (1) The applicant shall cooperate with the staff of the board or the victim center in the verification of the information contained in the application. Failure to cooperate shall be reported to the board, which, in its discretion, may reject the application solely on this ground.

(2) An applicant may be found to have failed to cooperate with the board if any of the following occur:

(A) The applicant has information, or there is information that he or she may reasonably obtain, that is needed to process the application or supplemental claim, and the applicant failed to provide the information after being requested to do so by the board. **The Board shall take the**

applicant's economic, psycho-social, and post-crime traumatic circumstances under consideration, and shall not unreasonably reject an application solely for failure to provide information.

(B) The applicant provided, or caused another to provide, false information regarding the application or supplemental claim.

(C) The applicant refused to apply for other benefits potentially available to him or her from other sources besides the board including, but not limited to, worker's compensation, state disability insurance, social security benefits, and unemployment insurance.

(D) The applicant threatened violence or bodily harm to a member of the board or staff.

(c) The board may contract with victim centers to provide verification of applications processed by the centers pursuant to conditions stated in subdivision (a). The board and its staff shall cooperate with the Office of Criminal Justice Planning and victim centers in conducting training sessions for center personnel and shall cooperate in the development of standardized verification procedures to be used by the victim centers in the state. The board and its staff shall cooperate with victim centers in disseminating standardized board policies and findings as they relate to the centers.

(d) (1) Notwithstanding Section 827 of the Welfare and Institutions Code or any other provision of law, every law enforcement and social service agency in the state shall provide to the board or to victim centers that have contracts with the board pursuant to subdivision (c), upon request, a complete copy of the law enforcement report and any supplemental reports involving the crime or incident giving rise to a claim, a copy of a petition filed in a juvenile court proceeding, reports of the probation officer, and any other document made available to the probation officer or to the judge, referee, or other hearing officer, for the specific purpose of determining the eligibility of a claim filed pursuant to this chapter.

(2) The board and victim centers receiving records pursuant to this subdivision may not disclose a document that personally identifies a minor to anyone other than the minor who is so identified, his or her custodial parent or guardian, the attorneys for those parties, and any other persons that may be designated by court order. Any information received pursuant to this section shall be received in confidence for the limited purpose for which it was provided and may not be further disseminated. A violation of this subdivision is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(3) The law enforcement agency supplying information pursuant to this section may withhold the names of witnesses or informants from the board, if the release of those names would be detrimental to the parties or to an investigation in progress.

(e) Notwithstanding any other provision of law, every state agency, upon receipt of a copy of a release signed in accordance with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) by the

applicant or other authorized representative, shall provide to the board or victim center the information necessary to complete the verification of an application filed pursuant to this chapter.

(f) The Department of Justice shall furnish, upon application of the board, all information necessary to verify the eligibility of any applicant for benefits pursuant to subdivision (c) of Section 13956, to recover any restitution fine or order obligations that are owed to the Restitution Fund or to any victim of crime, or to evaluate the status of any criminal disposition.

(g) A privilege is not waived under Section 912 of the Evidence Code by an applicant consenting to disclosure of an otherwise privileged communication if that disclosure is deemed necessary by the board for verification of the application.

(h) Any verification conducted pursuant to this section shall be subject to the time limits specified in Section 13958.

(i) Any county social worker acting as the applicant for a child victim or elder abuse victim shall not be required to provide personal identification, including, but not limited to, the applicant's date of birth or social security number. County social workers acting in this capacity shall not be required to sign a promise of repayment to the board.

SEC. 3. Section 13955 of the Government Code is amended to read:

13955. Except as provided in Section 13956, a person shall be eligible for compensation when all of the following requirements are met:

(a) The person for whom compensation is being sought is any of the following:

(1) A victim.

(2) A derivative victim.

(3) (A) A person who is entitled to reimbursement for funeral, burial, or crime scene cleanup expenses pursuant to paragraph (9) or (10) of subdivision (a) of Section 13957.

(B) This paragraph applies without respect to any felon status of the victim.

(b) Either of the following conditions is met:

(1) The crime occurred in California. This paragraph shall apply only during those time periods during which the board determines that federal funds are available to the state for the compensation of victims of crime.

(2) Whether or not the crime occurred in California, the victim was any of the following:

(A) A resident of California.

(B) A member of the military stationed in California.

(C) A family member living with a member of the military stationed in California.

(c) If compensation is being sought for a derivative victim, the derivative victim is a resident of California, or any other state, who is any of the following:

(1) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(2) At the time of the crime was living in the household of the victim.

(3) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in paragraph (1).

(4) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

(5) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

(d) The application is timely pursuant to Section 13953.

(e) (1) Except as provided in paragraph (2), the injury or death was a direct result of a crime.

(2) Notwithstanding paragraph (1), no act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this chapter, except when the injury or death from such an act was any of the following:

(A) Intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(B) Caused by a driver who fails to stop at the scene of an accident in violation of Section 20001 of the Vehicle Code.

(C) Caused by a person who is under the influence of any alcoholic beverage or drug.

(D) Caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

(E) Caused by a person who commits vehicular manslaughter in violation of subdivision (b) of Section 191.5, subdivision (c) of Section 192, or Section 192.5 of the Penal Code.

(F) Caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect, and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

(f) As a direct result of the crime, the victim or derivative victim sustained one or more of the following:

(1) Physical injury. The board may presume a child who has been the witness of a crime of domestic violence has sustained physical injury. A child who resides in a home where a crime or crimes of domestic violence have occurred may be presumed by the board to have sustained physical injury, regardless of whether the child has witnessed the crime.

(2) Emotional injury and a threat of physical injury.

(3) Emotional injury, where the crime was a violation of any of the following provisions:

(A) Section 236.1, 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, 289, or 653.2, or subdivision (b) or (c) of Section 311.4, of the Penal Code.

(B) Section 270 of the Penal Code, where the emotional injury was a result of conduct other than a failure to pay child support, and criminal charges were filed.

(C) Section 261.5 of the Penal Code, and criminal charges were filed.

(D) Section 278 or 278.5 of the Penal Code, and criminal charges were filed. For purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(4) Injury to, or the death of, a guide, signal, or service dog, as defined in Section 54.1 of the Civil Code, as a result of a violation of Section 600.2 or 600.5 of the Penal Code.

(5) Emotional injury to a victim who is a minor incurred as a direct result of the nonconsensual distribution of pictures or video of sexual conduct in which the minor appears.

(g) The injury or death has resulted or may result in pecuniary loss within the scope of compensation pursuant to Sections 13957 to 13957.7, inclusive.

SEC. 4. Section 13956 of the Government Code is amended to read:

13956. Notwithstanding Section 13955, a person shall not be eligible for compensation under the following conditions:

(a) An application may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime, or the involvement of the person whose injury or death gives rise to the application.

(1) Factors that may be considered in determining whether the victim or derivative victim was involved in the events leading to the qualifying crime include, but are not limited to:

(A) The victim or derivative victim initiated the qualifying crime, or provoked or aggravated the suspect into initiating the qualifying crime.

~~(B) The victim or derivative victim intentionally created, entered, or stayed in a situation in which it was reasonably foreseeable that he or she would be victimized.~~

~~(B)~~ (C) The qualifying crime was a reasonably foreseeable consequence of the conduct of the victim or derivative victim.

(C) ~~(D)~~ The victim or derivative victim was committing a crime that could be charged as a felony and reasonably lead to him or her being victimized. However, committing a crime shall not be considered involvement if the victim's injury or death occurred as a direct result of a crime committed in violation of Section 261, 262, or 273.5 of, or for a crime of unlawful sexual intercourse with a minor violation of subdivision (d) of Section 261.5 of, the Penal Code.

(2) If the victim is determined to have been involved in the events leading to the qualifying crime, factors that may be considered to mitigate or overcome involvement include, but are not limited to:

(A) The victim's injuries were significantly more serious than reasonably could have been expected based on the victim's level of involvement.

(B) A third party interfered in a manner not reasonably foreseeable by the victim or derivative victim.

~~(C) In the case of a minor, the~~ The board shall consider the ~~minor's~~ victim's age, physical condition, and psychological state, as well as any compelling health and safety concerns, in determining whether the ~~minor's~~ application should be denied pursuant to this section. The application of a derivative victim of domestic violence under 18 years of age or derivative victim of trafficking under 18 years of age shall not be denied on the basis of the denial of the victim's application under this subdivision.

(b) (1) An application shall be denied if the board finds that the victim or, if compensation is sought by, or on behalf of, a derivative victim, either the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. In determining whether cooperation has been reasonable, the board shall consider the victim's or derivative victim's age, physical condition, and psychological state, cultural or linguistic barriers, any compelling health and safety concerns,

Sandy Uribe

Assembly Public Safety Committee

04/23/2015

Page 7 of 26

including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family or the derivative victim or the derivative victim's family, and giving due consideration to the degree of cooperation of which the victim or derivative victim is capable in light of the presence of any of these factors. A victim of domestic violence shall not be determined to have failed to cooperate based on his or her conduct with law enforcement at the scene of the crime. Lack of cooperation shall also not be found solely because a victim of sexual assault, domestic violence, or human trafficking delayed reporting the qualifying crime.

(2) An application for a claim based on domestic violence shall not be denied solely because a police report was not made by the victim. The board shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence relying upon evidence other than a police report to establish that a domestic violence crime has occurred. Factors evidencing that a domestic violence crime has occurred may include, but are not limited to, medical records documenting injuries consistent with allegations of domestic violence, mental health records, or that the victim has obtained a permanent restraining order.

(3) An application for a claim based on a sexual assault shall not be denied solely because a police report was not made by the victim. The board shall adopt guidelines that allow it to consider and approve applications for assistance based on a sexual assault relying upon evidence other than a police report to establish that a sexual assault crime has occurred. Factors evidencing that a sexual assault crime has occurred may include, but are not limited to, medical records documenting injuries consistent with allegations of sexual assault, mental health records, or that the victim received a sexual assault examination.

(4) An application for a claim based on human trafficking as defined in Section 236.1 of the Penal Code shall not be denied solely because no police report was made by the victim. The board shall adopt guidelines that allow the board to consider and approve applications for assistance based on human trafficking relying upon evidence other than a police report to establish that a human trafficking crime as defined in Section 236.1 of the Penal Code has occurred. That evidence may include any reliable corroborating information approved by the board, including, but not limited to, the following:

(A) A Law Enforcement Agency Endorsement issued pursuant to Section 236.2 of the Penal Code.

(B) A human trafficking caseworker as identified in Section 1038.2 of the Evidence Code, has attested by affidavit that the individual was a victim of human trafficking.

(5) (A) An application for a claim by a military personnel victim based on a sexual assault by another military personnel shall not be denied solely because it was not reported to a superior officer or law enforcement at the time of the crime.

(B) Factors that the board shall consider for purposes of determining if a claim qualifies for compensation include, but are not limited to, the evidence of the following:

(i) Restricted or unrestricted reports to a military victim advocate, sexual assault response coordinator, chaplain, attorney, or other military personnel.

(ii) Medical or physical evidence consistent with sexual assault.

(iii) A written or oral report from military law enforcement or a civilian law enforcement agency concluding that a sexual assault crime was committed against the victim.

(iv) A letter or other written statement from a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, licensed therapist, or mental health counselor, stating that the victim is seeking services related to the allegation of sexual assault.

(v) A credible witness to whom the victim disclosed the details that a sexual assault crime occurred.

(vi) A restraining order from a military or civilian court against the perpetrator of the sexual assault.

(vii) Other behavior by the victim consistent with sexual assault.

(C) For purposes of this subdivision, the sexual assault at issue shall have occurred during military service, including deployment.

(D) For purposes of this subdivision, the sexual assault may have been committed off base.

(E) For purposes of this subdivision, a “perpetrator” means an individual who is any of the following at the time of the sexual assault:

(i) An active duty military personnel from the United States Army, Navy, Marine Corps, Air Force, or Coast Guard.

(ii) A civilian employee of any military branch specified in clause (i), military base, or military deployment.

(iii) A contractor or agent of a private military or private security company.

(iv) A member of the California National Guard.

(F) For purposes of this subdivision, “sexual assault” means an offense included in Section 261, 262, 264.1, 286, 288a, or 289 of the Penal Code, as of the date the act that added this paragraph was enacted.

(c) (1) Notwithstanding Section 13955, no person who is convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code may be granted compensation until that

person has been discharged from probation or has been released from a correctional institution and has been discharged from parole, or has been discharged from postrelease community supervision or mandatory supervision, if any, for that violent crime. In no case shall compensation be granted to an applicant pursuant to this chapter during any period of time the applicant is held in a correctional institution, or while an applicant is required to register as a sex offender pursuant to Section 290 of the Penal Code.

(2) A person who has been convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code may apply for compensation pursuant to this chapter at any time, but the award of that compensation may not be considered until the applicant meets the requirements for compensation set forth in paragraph (1).

SEC. 5. Section 13957 of the Government Code is amended to read:

13957. (a) The board may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows:

(1) Subject to the limitations set forth in Section 13957.2, reimburse the amount of medical or medical-related expenses incurred by the victim for services that were provided by a licensed medical provider, including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) Subject to the limitations set forth in Section 13957.2, reimburse the amount of outpatient 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 as defined by Section 13837 of the Penal Code, and including family psychiatric, psychological, or mental health counseling for the successful treatment of the victim provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime, that became necessary as a direct result of the crime, subject to the following conditions:

(A) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed ten thousand dollars (\$10,000):

(i) A victim.

(ii) A derivative victim who is the surviving parent, grandparent, sibling, child, grandchild, spouse, fiancé, or fiancée of a victim of a crime that directly resulted in the death of the victim.

(iii) A derivative victim, as described in paragraphs (1) to (4), inclusive, of subdivision (c) of Section 13955, who is the primary caretaker of a minor victim whose claim is not denied or reduced pursuant to Section 13956 in a total amount not to exceed ten thousand dollars (\$10,000) for not more than two derivative victims.

(B) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed five thousand dollars (\$5,000):

(i) A derivative victim not eligible for reimbursement pursuant to subparagraph (A), provided that mental health counseling of a derivative victim described in paragraph (5) of subdivision (c) of Section 13955, shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(ii) A minor who suffers emotional injury as a direct result of witnessing a violent crime and who is not eligible for reimbursement of the costs of outpatient mental health counseling under any other provision of this chapter. To be eligible for reimbursement under this clause, the minor must have been in close proximity to the victim when he or she witnessed the crime.

(C) The board may reimburse a victim or derivative victim for outpatient mental health counseling in excess of that authorized by subparagraph (A) or (B) or for inpatient psychiatric, psychological, or other mental health counseling if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(D) Expenses for psychiatric, psychological, or other mental health counseling-related services may be reimbursed only if the services were provided by either of the following individuals:

(i) A person who would have been authorized to provide those services pursuant to former Article 1 (commencing with Section 13959) as it read on January 1, 2002.

(ii) A person who is licensed in California to provide those services, or who is properly supervised by a person who is licensed in California to provide those services, subject to the board's approval and subject to the limitations and restrictions the board may impose.

(3) Subject to the limitations set forth in Section 13957.5, authorize 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 or derivative victim's injury or the victim's death. If the victim or derivative victim requests that the board give priority to reimbursement of loss of income or support, the board may not pay medical expenses, or mental health counseling expenses, except upon the request of the victim or derivative victim or after determining that payment of these expenses will not decrease the funds available for payment of loss of income or support.

(4) Authorize a cash payment to or on behalf of the victim for job retraining or similar employment-oriented services.

(5) Reimburse the expense of installing or increasing residential security, not to exceed one thousand dollars (\$1,000). Installing or increasing residential security may include, but need not be limited to, both of the following:

(A) Home security device or system.

(B) Replacing or increasing the number of locks.

(6) Reimburse the expense of renovating or retrofitting a victim's residence, or the expense of modifying or purchasing a vehicle, to make the residence or the vehicle accessible or operational by a victim upon verification that the expense is medically necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total.

(7) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars (\$2,000) to a victim for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(B) The cash payment or reimbursement made under this paragraph shall only be awarded to one claimant per crime giving rise to the relocation. The board may authorize more than one relocation per crime if necessary for the personal safety or emotional well-being of the claimant. However, the total cash payment or reimbursement for all relocations due to the same crime shall not exceed two thousand dollars (\$2,000). For purposes of this paragraph a claimant is the crime victim, or, if the victim is deceased, a person who resided with the deceased at the time of the crime.

(C) The board may, under compelling circumstances, award a second cash payment or reimbursement to a victim for another crime if both of the following conditions are met:

(i) The crime occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same offender.

(D) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence and the identity of the offender is known to the victim, the victim shall agree not to inform the offender of the location of the victim's new residence and not to allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender. A victim may be required to repay the relocation payment or reimbursement to the board if he or she violates the terms set forth in this paragraph.

(E) Notwithstanding subparagraphs (A) and (B), the board may increase the cash payment or reimbursement for expenses incurred in relocating to an amount greater than two thousand dollars (\$2,000), if the board finds this amount is appropriate due to the unusual, dire, or exceptional circumstances of a particular claim.

(F) If a security deposit is required for relocation, the board shall be named as the recipient and receive the funds upon expiration of the victim's rental agreement.

(8) When a victim dies as a result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay any of the following expenses:

(A) The medical expenses incurred as a direct result of the crime in an amount not to exceed the rates or limitations established by the board.

(B) The funeral and burial expenses incurred as a direct result of the crime, not to exceed seven thousand five hundred dollars (\$7,500).

(9) When the crime occurs in a residence or inside a vehicle, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars (\$1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Public Health as trauma scene waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.

(10) When the crime is a violation of Section 600.2 or 600.5 of the Penal Code, the board may reimburse the expense of veterinary services, replacement costs, or other reasonable expenses, as ordered by the court pursuant to Section 600.2 or 600.5 of the Penal Code, in an amount not to exceed ten thousand dollars (\$10,000).

(11) An award of compensation pursuant to paragraph (5) of subdivision (f) of Section 13955 shall be limited to compensation to provide mental health counseling and shall not limit the eligibility of a victim for an award that he or she may be otherwise entitled to receive under this part. A derivative victim shall not be eligible for compensation under this provision.

(b) The total award to or on behalf of each victim or derivative victim may not exceed thirty-five thousand dollars (\$35,000), except that this award may be increased to an amount not exceeding seventy thousand dollars (\$70,000) if federal funds for that increase are available.

SEC. 6. Section 13957.5 of the Government Code is amended to read:

13957.5. (a) In authorizing compensation for loss of income and support pursuant to paragraph (3) of subdivision (a) of Section 13957, the board may take any of the following actions:

(1) Compensate the victim for loss of income directly resulting from the injury, except that loss of income may not be paid by the board for more than five years following the crime, unless the victim is disabled as defined in Section 416(i) of Title 42 of the United States Code, as a direct result of the injury.

(2) Compensate an adult derivative victim for loss of income, subject to all of the following:

(A) The derivative victim is the parent or legal guardian of a victim, who at the time of the crime was under the age of 18 years and is hospitalized as a direct result of the crime.

(B) The minor victim's treating physician certifies in writing that the presence of the victim's parent or legal guardian at the hospital is necessary for the treatment of the victim.

(C) Reimbursement for loss of income under this paragraph may not exceed the total value of the income that would have been earned by the adult derivative victim during a 30-day period.

(3) Compensate an adult derivative victim for loss of income, subject to all of the following:

(A) The derivative victim is the parent or legal guardian of a victim who at the time of the crime was under the age of 18 years.

(B) The victim died as a direct result of the crime.

(C) The board shall pay for loss of income under this paragraph for not more than 30 calendar days from the date of the victim's death.

(4) Compensate a derivative victim who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime, subject to both of the following:

(A) Loss of support shall be paid by the board for income lost by an adult for a period up to, but not more than, five years following the date of the crime.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(b) The total amount payable to all derivative victims pursuant to this section as the result of one crime may not exceed seventy thousand dollars (\$70,000).

SEC. 7. Section 13957.7 of the Government Code is amended to read:

13957.7. (a) No reimbursement may be made for any expense that is submitted more than three years after it is incurred by the victim or derivative victim. However, reimbursement may be made for an expense submitted more than three years after the date it is incurred if the victim or derivative victim has affirmed the debt and is liable for the debt at the time the expense is submitted for reimbursement, or has paid the expense as a direct result of a crime for which a timely application has been filed or has paid the expense as a direct result of a crime for which an application has been filed and approved.

(b) Compensation made pursuant to this chapter may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of compensation according to the applicant's need, subject to the maximum limits provided in this chapter.

(c) (1) The board may authorize direct payment to a provider of services that are reimbursable pursuant to this chapter and may make those payments prior to verification. However, the board may not, without good cause, authorize a direct payment to a provider over the objection of the victim or derivative victim.

(2) Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment.

(d) Payments for peer counseling services provided by a rape crisis center may not exceed fifteen dollars (\$15) for each hour of services provided. Those services shall be limited to in-person counseling for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(e) The board shall develop procedures to ensure that a victim is using compensation for job retraining or relocation only for its intended purposes. The procedures may include, but need not be limited to, requiring copies of receipts, agreements, or other documents as requested, or developing a method for direct payment.

(f) Compensation granted pursuant to this chapter shall not disqualify an otherwise eligible applicant from participation in any other public assistance program.

(g) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars (\$500), whichever is less, for each victim and each derivative victim. The board may request that an attorney provide verification of legal services provided to an applicant and the board may contact an applicant to verify that legal services were provided. An attorney receiving fees from another source may waive the right to receive fees under this subdivision. Payments under this subdivision shall be in addition to any amount authorized or ordered under subdivision (b) of Section 13960. An attorney may not charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this chapter except as awarded under this chapter.

(h) A private nonprofit agency shall be reimbursed for its services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement may not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for compensation under this chapter and that other reimbursement or direct subsidies are not available to serve the victim.

SEC. 8. Section 13959 of the Government Code is amended to read:

13959. (a) The board shall grant a hearing to an applicant who contests a staff recommendation to deny compensation in whole or in part.

(b) The board shall notify the applicant not less than 10 days prior to the date of the hearing. Notwithstanding Section 11123, if the application that the board is considering involves either a crime against a minor, a crime of sexual assault, or a crime of domestic violence, the board may exclude from the hearing all persons other than board members and members of its staff, the applicant for benefits, a minor applicant's parents or guardians, the applicant's representative, witnesses, and other persons of the applicant's choice to provide assistance to the applicant during the hearing. However, the board shall not exclude persons from the hearing if the applicant or applicant's representative requests that the hearing be open to the public.

(c) At the hearing, the person seeking compensation shall have the burden of establishing, by a preponderance of the evidence, the elements for eligibility under Section 13955.

(d) Except as otherwise provided by law, in making determinations of eligibility for compensation and in deciding upon the amount of compensation, the board shall apply the law in effect as of the date an application was submitted.

(e) The hearing shall be informal and need not be conducted according to the technical rules relating to evidence and witnesses. The board may rely on any relevant evidence if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that might make improper the admission of the evidence over objection in a civil action. The board may rely on written reports prepared for the board, or other information received, from public agencies responsible for investigating the crime. If the applicant or the applicant's representative chooses not to appear at the hearing, the board may act solely upon the application for compensation, the staff's report, and other evidence that appears in the record.

(f) Hearings shall be held in various locations with the frequency necessary to provide for the speedy adjudication of the applications. If the applicant's presence is required at the hearing, the board shall schedule the applicant's hearing in as convenient a location as possible or conduct the hearing by telephone.

(g) The board may delegate the hearing of applications to hearing officers.

(h) The decisions of the board shall be in writing. Copies of the decisions shall be delivered to the applicant or to his or her representative personally or sent to him or her by mail.

(i) The board may order a reconsideration of all or part of a decision on written request of the applicant. The board shall not grant more than one request for reconsideration with respect to any one decision on an application for compensation. The board shall not consider any request for

reconsideration filed with the board more than 30 calendar days after the personal delivery or 60 calendar days after the mailing of the original decision.

(j) The board may order a reconsideration of all or part of a decision on its own motion, at its discretion, at any time.

(k) Evidence submitted after the board has denied a request for reconsideration shall not be considered unless the board chooses to reconsider its decision on its own motion.

SEC. 9. Section 13963 of the Government Code is amended to read:

13963. (a) The board shall be subrogated to the rights of the recipient to the extent of any compensation granted by the board. The subrogation rights shall be against the perpetrator of the crime or any person liable for the losses suffered as a direct result of the crime which was the basis for receipt of compensation, including an insurer held liable in accordance with the provision of a policy of insurance issued pursuant to Section 11580.2 of the Insurance Code.

(b) The board shall also be entitled to a lien on any judgment, award, or settlement in favor of or on behalf of the recipient for losses suffered as a direct result of the crime that was the basis for receipt of compensation in the amount of the compensation granted by the board. The board may recover this amount in a separate action, or may intervene in an action brought by or on behalf of the recipient. If a claim is filed within one year of the date of recovery, the board shall pay 25 percent of the amount of the recovery that is subject to a lien on the judgment, award, or settlement, to the recipient responsible for recovery if the recipient notified the board of the action prior to receiving any recovery. The remaining amount, and any amount not claimed within one year pursuant to this section, shall be deposited in the Restitution Fund.

(c) The board may compromise or settle and release any lien pursuant to this chapter if it is found that the action is in the best interest of the state or the collection would cause undue hardship upon the recipient. Repayment obligations to the Restitution Fund shall be enforceable as a summary judgment.

(d) No judgment, award, or settlement in any action or claim by a recipient, where the board has an interest, shall be satisfied without first giving the board notice and a reasonable opportunity to perfect and satisfy the lien. The notice shall be given to the board in Sacramento except in cases where the board specifies that the notice shall be given otherwise. The notice shall include the complete terms of the award, settlement, or judgment, and the name and address of any insurer directly or indirectly providing for the satisfaction.

(e) (1) If the recipient brings an action or asserts a claim for damages against the person or persons liable for the injury or death giving rise to an award by the board under this chapter, notice of the institution of legal proceedings, notice of all hearings, conferences, and proceedings, and notice of settlement shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. Notice of the

institution of legal proceedings shall be given to the board within 30 days of filing the action. All notices shall be given by the attorney employed to bring the action for damages or by the recipient if no attorney is employed.

(2) Notice shall include all of the following:

(A) Names of all parties to the claim or action.

(B) The address of all parties to the claim or action except for those persons represented by attorneys and in that case the name of the party and the name and address of the attorney.

(C) The nature of the claim asserted or action brought.

(D) In the case of actions before courts or administrative agencies, the full title of the case including the identity of the court or agency, the names of the parties, and the case or docket number.

(3) When the recipient or his or her attorney has reason to believe that a person from whom damages are sought is receiving a defense provided in whole or in part by an insurer, or is insured for the injury caused to the recipient, notice shall include a statement of that fact and the name and address of the insurer. Upon request of the board, a person obligated to provide notice shall provide the board with a copy of the current written claim or complaint.

(f) The board shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04 of the Penal Code, as operative on or before August 2, 1995, or Section 730.6 of the Welfare and Institutions Code, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10-percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund, as provided in Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04 of the Penal Code, operative on or before August 2, 1995, or Section 730.6 of the Welfare and Institutions Code. The 10-percent rebates shall not be used to supplant county funding.

(g) In the event of judgment or award in a suit or claim against a third party or insurer, if the action or claim is prosecuted by the recipient alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees when an attorney has been retained. After payment of the expenses and attorney's fees, the court or agency shall, on the application of the board, allow as a lien against the amount of the judgment or award, the

amount of the compensation granted by the board to the recipient for losses sustained as a result of the same incident upon which the settlement, award, or judgment is based.

(h) For purposes of this section, "recipient" means any person who has received compensation or will be provided compensation pursuant to this chapter, including the victim's guardian, conservator or other personal representative, estate, and survivors.

(i) In accordance with subparagraph (B) of paragraph (4) of subdivision (f) of Section 1202.4 of the Penal Code, a representative of the board may provide the probation department, district attorney, and court with information relevant to the board's losses prior to the imposition of a sentence.

SEC. 10. Section 13965 of the Government Code is amended to read:

13965. (a) Any recipient of an overpayment pursuant to this chapter is liable to repay the board that amount unless both of the following facts exist:

(1) The overpayment was not due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient.

(2) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience.

(b) All actions to collect overpayments shall commence within seven years from the date of the overpayment. However, an action to collect an overpayment due to fraud, misrepresentation, or willful nondisclosure by the recipient may be commenced at any time.

(c) Any recipient of an overpayment is authorized to contest the staff recommendation of an overpayment pursuant to the hearing procedures in Section 13959. If a final determination is made by the board that an overpayment exists, the board may collect the overpayment in any manner prescribed by law.

(d) All overpayments exceeding two thousand dollars (\$2,000) shall be reported to the Legislature pursuant to Section 13928 and the relief from liability described in subdivision (a) shall be subject to legislative approval.

SEC. 11. Section 13971 of the Government Code is amended to read:

13971. As used in this article, "private citizen" means any person other than a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the public safety acting within the course and scope of such employment.

SEC. 12. Section 13972 of the Government Code is amended to read:

Sandy Uribe
Assembly Public Safety Committee
04/23/2015
Page 19 of 26

13972. (a) If a private citizen incurs personal injury or death or damage to his or her property in preventing the commission of a crime against the person or property of another, in apprehending a criminal, or in materially assisting a peace officer in prevention of a crime or apprehension of a criminal, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, the private citizen, his or her surviving spouse, his or her surviving children, a person dependent upon the citizen for his or her principal support, any person legally liable for the citizen's pecuniary losses, or a public safety or law enforcement agency acting on behalf of any of the above may file a claim with the California Victim Compensation and Government Claims Board for indemnification to the extent that the claimant is not compensated from any other source for the injury, death, or damage. The claim shall generally show all of the following:

(1) The date, place, and other circumstances of the occurrence or events that gave rise to the claim.

(2) A general description of the activities of the private citizen in prevention of a crime, apprehension of a criminal, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe.

(3) The amount or estimated amount of the injury, death, or damage sustained for which the claimant is not compensated from any other source, insofar as it may be known at the time of the presentation of the claim.

(4) Any other information that the California Victim Compensation and Government Claims Board may require.

(b) A claim filed under subdivision (a) shall be accompanied by a corroborating statement and recommendation from the appropriate state or local public safety or law enforcement agency.

SEC. 13. Section 13973 of the Government Code is amended to read:

13973. (a) Upon presentation of a claim pursuant to this chapter, the California Victim Compensation and Government Claims Board shall fix a time and place for the hearing of the claim, and shall mail notices of the hearing to interested persons or agencies. The board shall receive recommendations from public safety or law enforcement agencies, and evidence showing all of the following:

(1) The nature of the crime committed by the apprehended criminal or prevented by the action of the private citizen, or the nature of the action of the private citizen in rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, and the circumstances involved.

(2) That the actions of the private citizen substantially and materially contributed to the apprehension of a criminal, the prevention of a crime, or the rescuing of a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe.

(3) That, as a direct consequence, the private citizen incurred personal injury or damage to property or died.

(4) The extent of the injury or damage for which the claimant is not compensated from any other source.

(5) Any other evidence that the board may require.

(b) If the board determines, on the basis of a preponderance of the evidence, that the state should indemnify the claimant for the injury, death, or damage sustained, it shall approve the claim for payment. In no event shall a claim be approved by the board under this article in excess of ten thousand dollars (\$10,000).

(c) In addition to any award made under this chapter, the board may award, as attorney's fees, an amount representing the reasonable value of legal services rendered a claimant, but in no event to exceed 10 percent of the amount of the award. No attorney shall charge, demand, receive, or collect for services rendered in connection with any proceedings under this chapter any amount other than that awarded as attorney's fees under this section. Claims approved under this chapter shall be paid from a separate appropriation made to the California Victim Compensation and Government Claims Board in the Budget Act and as the claims are approved by the board.

SEC. 14. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) (1) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, in any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on

the fine amount, whichever is less, up to a maximum of 50 percent from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(2) If the board of supervisors designates the county sheriff as the collecting agency, the board of supervisors shall first obtain the concurrence of the county sheriff.

(c) In any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. The secretary shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(d) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, in any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law. The agency shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or may pay the victim directly. The sentencing court shall be provided a record of the payments made to the victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(e) The secretary shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (a) or (c). The secretary shall deduct and retain from any prisoner settlement or trial award, an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n), unless prohibited by federal law. The secretary shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections and Rehabilitation. The secretary, at his or her discretion, may retain

any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(f) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct and retain from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (b) or (d). The agency is authorized to deduct and retain from a prisoner settlement or trial award an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n), unless prohibited by federal law. Upon release from custody pursuant to subdivision (h) of Section 1170, the agency is authorized to charge a fee to cover the actual administrative cost of collection, not to exceed 10 percent of the total amount collected. The agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the agency. The agency is authorized to retain any excess funds in the special deposit account for future reimbursement of the agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(g) In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the secretary, or, when a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may collect from the parolee or, pursuant to Section 2085.6, from a person previously imprisoned in county jail any moneys owing on the restitution fine amount, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(h) In any case in which a parolee owes a direct order of restitution, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or paragraph (3) of subdivision (a) of Section 1202.4, the secretary, or, when a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated or a local collection program, may collect from the parolee or, pursuant to Section 2085.6, from a person previously imprisoned in county jail any moneys owing, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or the agency may pay the

victim directly. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

(i) The secretary, or, when a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may deduct and retain from moneys collected from parolees or persons previously imprisoned in county jail an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (g) or (h), unless prohibited by federal law. The secretary shall deduct and retain from any settlement or trial award of a parolee an administrative fee that totals 5 percent of an amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n), unless prohibited by federal law. The agency is authorized to deduct and retain from any settlement or trial award of a person previously imprisoned in county jail an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n). The secretary or the agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections and Rehabilitation or the agency, as applicable. The secretary, at his or her discretion, or the agency may retain any excess funds in the special deposit account for future reimbursement of the department's or agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(j) When a prisoner has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections and Rehabilitation shall collect the restitution order first pursuant to subdivision (c).

(k) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and that prisoner has both a restitution fine and a restitution order from the sentencing court, if the agency designated by the board of supervisors in the county where the prisoner is incarcerated collects the fine and order, the agency shall collect the restitution order first pursuant to subdivision (d).

(l) When a parolee has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections and Rehabilitation, or, when the prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may collect the restitution order first, pursuant to subdivision (h).

(m) If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars (\$50) for visits that include the inmate and one visitor, seventy dollars (\$70) for visits that include the inmate and two or three visitors, and eighty dollars (\$80) for visits that include the inmate and four or more visitors.

(n) Compensatory or punitive damages awarded by trial or settlement to any inmate, parolee, person placed on postrelease community supervision pursuant to Section 3451, or defendant on mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, in connection with a civil action brought against a federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against that person. The balance of the award shall be forwarded to the payee after full payment of all outstanding restitution orders and restitution fines, subject to subdivisions (e) and (i). The Department of Corrections and Rehabilitation shall make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages. For any prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency is authorized to make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages.

(o) (1) Amounts transferred to the California Victim Compensation and Government Claims Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation and Government Claims Board. If the restitution payment to a victim is less than twenty-five dollars (\$25), then payment need not be forwarded to that victim until the payment reaches twenty-five dollars (\$25) or when the victim requests payment of the lesser amount.

(2) If a victim cannot be located, the restitution revenues received by the California Victim Compensation and Government Claims Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.

(3) (A) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the Department of Corrections and Rehabilitation, which shall verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the Department of Corrections and Rehabilitation, the California Victim Compensation and Government Claims Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (c) or (h).

(B) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the agency designated by the board of supervisors in the county where the prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 is incarcerated, which may verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the agency, the California Victim Compensation and Government Claims Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (d) or (h).

SEC. 15. 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.

Date of Hearing: April 28, 2015
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1154 (Gray) – As Amended April 23, 2015

SUMMARY: Exempts from public-record laws the phone numbers and street addresses contained in applications and licenses to carry concealed weapons. Specifically, **this bill:**

- 1) Exempts from the California Public Records Act the telephone numbers and home addresses, except city and zip code, of licensees and applicants of permits to carry concealed weapons (CCW).
- 2) Specifies that this exemption shall not be construed as prohibiting the disclosure of public records relating to the reason that an application for a CCW was granted or denied.
- 3) Makes technical, non-substantive changes.

EXISTING LAW:

- 1) Authorizes a county sheriff or a city police chief to issue a permit for a CCW to a county or city resident if the person is of good moral character, there is good cause for the issuance, the person meets the residency requirements, and the applicant has completed a firearm safety course. (Pen. Code, §§ 26150, subd. (a), & 26155, subd. (a).)
- 2) States that a county sheriff or a chief of a municipal police department may issue a license to carry a concealed handgun in either of the following formats:
 - a) A license to carry a concealed handgun upon his or her person; or,
 - b) A license to carry a loaded and exposed handgun if the population of the county, or the county in which the city is located, is less than 200,000 persons according to the most recent federal decennial census. (Pen. Code, §§ 26150, subd. (b), & 26155, subd. (b).)
- 3) Requires applications for CCWs to include name, occupation, residence and business address, the licensee's age, height, weight, color of eyes and hair, and the reason for desiring a CCW, as well as a description of the weapon for which the permit is sought. (Pen. Code, § 26175, subd. (c).)
- 4) Requires that the fingerprints of each CCW applicant be taken and submitted to the Department of Justice (DOJ). (Pen. Code, § 26185.)
- 5) Provides criminal penalties for knowingly filing a false application for a concealed weapon license. (Pen. Code, § 26180.)

- 6) Provides that a license to carry a concealed handgun is valid for up to two years, three years for judicial officers, or four years in the case of a reserve or auxiliary peace officer. (Pen. Code, § 26220.)
- 7) Requires a record of the CCW to be maintained in the office of the issuing authority and with the DOJ. (Pen. Code, § 26225.)
- 8) Requires the licensee notify the licensing authority in writing of any change of address within 10 days. (Pen. Code, § 26210.)
- 9) Provides pursuant to the California Public Records Act (PRA) that all records maintained by local and state governmental agencies are open to public inspection unless specifically exempt. (Gov. Code, §§ 6250 *et seq.*)
- 10) 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, § 6252, subd. (e).) The records of weapons permit holders maintained by the sheriff are public records. (62 Ops. Cal. Atty. Gen. 402.)
- 11) Exempts from disclosure under the PRA information in CCW applications which indicates when or where applicants are vulnerable to attack or concerns applicants' medical or psychological histories or that of family members. (Gov. Code, § 6254, subd. (u)(1).)
- 12) Exempts from disclosure under the PRA the home address and telephone number of prosecutors, public defenders, peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses or in CCWs. (Gov. Code, § 6254, subds. (u)(2) & (3).)
- 13) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the PRA or that on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 6255, subd. (a).)
- 14) Authorizes any person to institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. (Gov. Code, § 6258.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "In California, individuals must register their firearms with the California Department of Justice (DOJ). State law prohibits the DOJ from releasing that information to anyone other than law enforcement and court officials.

"When it comes to concealed carry permits, an individual must apply for the permit with his/her County Sheriff or local police department. While individuals must comply with all

firearm laws when apply for the permit, including a background check and the 10 day waiting period, their application information, including home address and phone number, is public record unless they are a judge, peace officer, district attorney, public defender, or other protected public official.

"This discrepancy creates significant privacy concerns for law abiding concealed carry permit holders who are put at risk of being targeted by criminals for home invasion and gun theft. Crime victims who may choose to own a firearm for the purpose of safety and protection also risk having their private information obtained or disseminated making it easier for an offender to locate them to inflict further harm.

"AB 1154 would protect the homes addresses and phone numbers of permit holders without restricting access to law enforcement, courts, district attorneys, and public defenders. The bill would extend the same protections that public officials receive to all concealed carry permit holders.

"This issue is especially pertinent given a recent case in New York where a newspaper published the names and addresses of 44,000 gun permit holders in the form of an interactive online map. The public availability of this information caused significant safety and privacy concerns. California's concealed carry permit holders are currently exposed to the same risk.

"AB 1154 strikes a balance between government transparency and personal privacy. It ensures the issuance of concealed carry permits can be monitored by citizens and stakeholders without providing a one-stop-shop for offenders to collect sensitive location and contact data."

- 2) **Background:** It is a crime for a person to carry a firearm concealed on his person or in his vehicle without a permit. (Pen. Code, § 25400.) County sheriffs and city police chiefs are the only officials authorized to issue a permit to carry a concealed weapon. (Pen. Code, §§ 26150, 26155, 26170 & 26215.) This decision involves the exercise of official discretion involving a determination of whether the person is of good moral character and there is good cause for the issuance of the license. (Pen. Code, §§ 26150, 26155 & 26170.) The county sheriff and police chiefs have "extremely broad discretion concerning the issuance of concealed weapons licenses." (*Gifford v. City of Los Angeles* (2001) 88 Cal.App.4th 801, 805.) The issuing official is required to maintain a record of these applications and licenses (Pen. Code, § 26225), and records regarding these official actions are considered public records like other decisions to grant or deny a governmental permit.
- 3) ***CBS, Inc. v. Block* (1986) 42 Cal.3d 646:** In 1983, CBS made a PRA request seeking information regarding CCW permits issued in Los Angeles County for purposes of investigating potential abuses by the Sheriff's Department. The sheriff refuse to release any information and litigation ensued. (*Id.* at p. 649.) The California Supreme reviewed the case to decide whether the press and the public should be prohibited from obtaining the information contained in CCA applications. (*Ibid.*)

The Court recognized there were competing societal concerns, namely transparency and the right to privacy of the individuals whose information was on file. (*Id.* at p. 651.) The Court rejected the arguments that release of this information would allow criminals to plan crimes against licensees, finding it "conjectural at best." (*Id.* at p. 652.) "A mere assertion of

possible endangerment does not 'clearly outweigh' the public interest in access to these records. (*Ibid.*) The Court noted that the law permits deletion of any information indicating times and places where an individual would be vulnerable to attack. (*Ibid.*)

The Court also rejected the argument that release of the information would violate an individual's right to privacy protected by the California Constitution. "While some holders of concealed weapon licenses may prefer anonymity, it is doubtful that such preferences outweigh the 'fundamental and necessary' right of the public to examine the bases upon which such licenses are issued. It is a privilege to carry a concealed weapon." (*Id.* at p. 654.) Making this information public serves the purpose of allowing "the public to ensure that public officials are acting properly in issuing licenses for legitimate reasons." (*Ibid.*)

- 4) **Need for Transparency:** Over the years, some elected sheriffs have been accused of unequally applying CCW regulations by dispensing permits to campaign contributors without regard to the statutory requirements. For example, former Los Angeles Sheriff Lee Baca was accused favoring those who have given gifts or campaign contributions when dispensing CCW permits because "[m]ore than one out of every 10 permits issued to civilians went to people on Baca's gift list. (<<http://www.laweekly.com/news/sheriff-lee-baca-and-the-gun-gift-connection-2612907>>.) Similarly in 2008, former Orange County Sheriff Michael Carona was accused of the same type of favoritism to his campaign contributors. (<<http://articles.latimes.com/2008/nov/08/local/me-carona8>>.)

As recently amended, this bill conforms the release of information regarding who obtains CCW permits to the same detail as campaign contribution reports, which releases the name of the contributor, and the contributor's city and zip code. (See <<http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1333789&session=2013&view=received>>.) While this amendment does appear to afford some transparency as to campaign contributors, will it be sufficient to investigate favoritism towards family members, friends, or business associates? Moreover, is name, city, and zip code sufficient information to provide public oversight of officials who wrongly deny CCW permits? Would the disclosure of an individual's street name, but not street number, allow for more investigation while still protecting an individual's privacy?

- 5) **Argument in Support:** According to the *National Rifle Association*, a co-sponsor of this bill, "The provisions of Assembly Bill 1154 would provide that the CPRA not be construed to require the disclosure of private information of civilian licensed CCW holders. In recent years, a New York paper published the names of licensed CCW holders. Such actions place lawful concealed carry holders at risk to criminals who may target their home to steal firearms. An individual exercising his or her Second Amendment rights should not be put at risk of being a victim of gun theft by the public exposure of their private information, and enactment of this concealed handgun license holders protection legislation would prevent such abuse. The privacy of carry permit holders in 43 states is now protected by laws similar to AB 1154."

6) **Arguments in Opposition:**

- a) The *California Newspaper Publishers Association* writes, "The legislature has long recognized the strong public interest in the accessibility of information about CCW applicants and licensees because of the public's role in overseeing officials who have the

authority to issue these permits. AB 1154 would prevent the public from knowing whether officials are issuing permits justly and impartially or abusing the exercise of their statutorily delegated discretion.

"In *CBS v. Block*, 42 Cal.3d 646 (1986), the state Supreme Court was tasked with determining whether a sheriff's refusal of a broadcaster's request to inspect and copy concealed weapons applications submitted to and licenses issued by a county sheriff violated the public's right to access information pursuant to the California Public Records Act. The Court ruled that the information was disclosable. The Court reasoned, 'Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.' *Id.* at p. 651.

"In reaching its decision in *Block* the Court summarily dismissed as 'conjectural at best,' the assertion by the sheriff that releasing this information would allow would-be attackers to more carefully plan their crime against licensees and would deter those who need a license from making an application. *Id.* at p. 652.

"An example of the importance of this information as a check on potential abuse by officials can be found in the case of former Orange County Sheriff, Brad Gates. In the late 1980's Gates was accused of improperly issuing concealed weapons permits to his cronies and political supporters. The sheriff's own records showed he issued 101 permits to members of the Balboa Bay Club, the Lincoln Club, and various other supporters all of whom were contributors to his political campaigns. Gates, however, also denied permits to those he considered unfriendly even though the stated reasons for the permits by the unfriendly applicants were the same as those given by his campaign contributors.

Gates ultimately lost a civil rights suit filed against him by two private investigators who challenged Gates denial of their concealed weapon application seven times. ...

"By exempting from public access the very same information that revealed the widespread abuse of authority that occurred in Orange County, AB 1154 would not only embolden corruption but it would also serve to protect dishonest officials from public scrutiny by eliminating one of the only tools to ferret out misconduct."

- b) According to the *Calguns Foundation*, "In *CBS, Inc. v. Block*, 42 Cal.3d 646 (1986), the California Supreme Court held that '[t]he interest of society in ensuring accountability is particularly strong where the discretion invested in a government official is unfettered, and only a select few are granted the special privilege. Moreover the degree of subjectivity involved in exercising the discretion cries out for public scrutiny.' *Id.* at 655. We couldn't agree more.

"As you are no doubt aware, two important federal civil rights lawsuits challenging the application of discretion by the sheriffs of San Diego County and Yolo County, respectively, have been consolidated and scheduled for a June 15 *en banc* re-hearing by the Ninth Circuit Court of Appeals. (See *Peruta v. Cnty. of San Diego*, 9th Cir. No. 10-56971; *Richards v. Prieto*, 9th. Cir. No. 11-16255.) It should be noted that CGF is a party to the Richards matter....

"Until such time that law-abiding people can exercise their fundamental, individual right to carry ('bear') loaded, operable firearms in public for self-defense, the subjective and unconstitutional application or discretion under Cal. Penal Code section 26150, *et. seq.*, by nearly every county sheriff and chief of a municipal police department in California cries out for exactly the kind of scrutiny that AB 1154 would shield against.

"While the privacy of gun owners is of paramount importance to CGF and our supporters, AB 1154 does not accomplish that laudable goal in any meaningful way and would simply harm our ability to investigate violations of the Fourteenth Amendment's Equal Protection Clause and frustrate our ability to conduct important research into sheriffs' and police chiefs' applications of discretion through comparisons of application and license data to state and federal data on race, income, and other factors based on the applicants' and licensees' place of residence."

7) **Related Legislation:**

- a) AB 1134 (Stone) authorizes the sheriff of a county in which a city is located to enter into an agreement with the chief or other head of the municipal police agency in that city for the chief or head of that municipal police agency to process all applications for licenses to carry a concealed handgun upon the person, renewal of those licenses, and amendments to those licenses. AB 1134 is pending referral in the Senate Rules Committee.
- b) SB 707 (Wolk) allows a person holding a valid CCW, and a retired peace officer authorized to carry a concealed or loaded firearm, to carry the firearm in an area that is within 1,000 feet of, but not on the grounds of, a public or private school providing instruction in kindergarten to grade 12, and deletes the exemption that allows these people to possess a firearm on the campus of a university or college. SB 707 is pending hearing in the Senate Appropriations Committee.

8) **Prior Legislation:** AB 134 (Logue), of the 2013-2014 Legislative Session, was substantially similar to this bill. AB 134 was held in the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rifle and Piston Association (Co-Sponsor)
 National Rifle Association (Co-Sponsor)
 California Police Chiefs
 California State Sheriffs' Association
 Crime Victims United of California

One Private Individual

Opposition

Calguns Foundation

California Broadcasters Association
California Newspaper Publishers Association
Firearms Policy Coalition

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

Date of Hearing: April 28, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1213 (Wagner) – As Introduced February 27, 2015

SUMMARY: This bill would require the Department of Justice to establish an Offender Global Positioning System Database that would receive and store GPS device data for offenders monitored by criminal justice agencies throughout the state. The database would be required, among other capabilities, to receive specified data and to be able to send commands to a GPS device requiring the device to report data and to comply with other functional requirements. The department would be required to provide, at state expense, connections to the database to one sheriff's system and one probation department system in each county for purposes of submitting data to the database. Specifically, **this bill:**

- 1) States that is the intent of the Legislature to provide for a statewide database to receive and house all Global Positioning System (GPS) device data for offenders monitored by criminal justice agencies throughout the state. Developing and implementing this database is a matter of public safety and statewide importance. Presently there is no ability for criminal justice agencies to access each other's GPS device data to determine if an offender placed on GPS by one entity is in the proximity of another offender monitored by a different entity. A GPS database that can be accessed by criminal justice agencies will enhance supervision practices, promote rehabilitative services, assist investigations and ensure offender accountability and community safety.
- 2) Requires that the Department of Justice implement, operate, and maintain the Offender Global Positioning System Database for the use of criminal justice agencies.
- 3) Defines the following terms:
 - a) "Alert" means "a notification from the database to the monitoring agency or user."
 - b) "Database" means "the Offender Global Positioning System Database as described in this chapter."
 - c) "Global Positioning System device" or "GPS device" means "a device that uses signals from satellites to determine an offender's physical location with a high degree of accuracy."
 - d) "Monitoring agency" means the criminal justice agency responsible, pursuant to statute or court order, for monitoring an offender.
 - e) "Offender" means "any person convicted of a crime and who is subject to GPS device monitoring by a criminal justice agency."

- f) "Reporting cycle" means "the specified minimum interval at which a GPS device is to transmit data to the database."
 - g) "User" means "a criminal justice agency with a data connection to the database."
- 4) Requires that by an unspecified date, the Department of Justice develop functional specifications and standards for offender GPS devices such that GPS device will transmit GPS data information to the database at a specified reporting cycle. The GPS data information transmitted to the database shall include the following data elements:
- a) Latitude.
 - b) Longitude.
 - c) The offender's full name.
 - d) The monitoring entity's contact information.
 - e) The GPS device identification number.
 - f) The GPS device shall be capable of receiving commands from the database to transmit the data information identified in paragraph (1) regardless of the device's reporting cycle.
- 5) Requires that by an unspecified date, the Department of Justice develop functional specifications and standards for the database in compliance with the following objectives:
- a) The database shall receive information from GPS devices to include the data elements in paragraph (1) of subdivision (a).
 - b) The database shall permit users to track and view offender's proximity to other offenders.
 - c) The database shall permit users to create and use offender monitoring alert zones. These zones which are electronically demarcated during GPS monitoring, are as follows:
 - i) An "inclusion zone" is a geographic area within which it is appropriate for an offender to be present. If the offender leaves this zone, an alert shall occur.
 - ii) An "exclusion zone" is a geographic area within which an offender is not permitted. If the offender enters this zone, an alert shall occur.
 - iii) An "investigation zone" is a specialized geographic area created by the monitoring agency or user where, if specified criteria are met, an alert shall occur.
 - d) The database shall permit users to send a command to a GPS device or multiple GPS devices to transmit the data information identified in paragraph (1) of subdivision (a), regardless of the device's reporting cycle.
 - e) The database shall permit users to determine if one or more offenders are, or were, at or near a particular location during a specified time frame.

- 6) Requires the Department of Justice consult with the following entities and groups when developing the functional specifications and standards as specified:
 - a) The Department of Corrections and Rehabilitation.
 - b) Chief Probation Officers of California.
 - c) The California Probation, Parole, and Correctional Association.
 - d) The California Police Chiefs Association.
 - e) The California Peace Officers' Association.
 - f) GPS device industry representatives.
- 7) Specifies that each entity and group listed in subdivision (c) may designate a representative to work with the Department of Justice to develop the functional specifications and standards set forth in subdivisions (a) and (b).
- 8) States that criminal justice agencies that use GPS devices for monitoring offenders have the ability to select from different manufacturers and vendors, in accordance with any contracting policies, rules, and regulations governing their authority to contract for those services. The functional specifications and standards shall encourage multiple bidders and shall not have the effect of limiting the criminal justice agencies to choosing a GPS device that is able to be supplied by only one manufacturer or vendor.
- 9) Specifies that, except as provided, a GPS device purchased or used for GPS monitoring of offenders in this state shall comply with the functional specifications and standards developed by the Department of Justice.
- 10) States that any GPS devices purchased and used to monitor offenders pursuant to a contract entered into before an unspecified date, are exempted from data requirements.
- 11) Requires that on a triennial basis, following implementation of the functional specifications and standards for GPS devices and the database, the Department of Justice consult with the specified entities and groups, to determine if there are any improvements to the functional specifications and standards for GPS devices and the database needed to meet the needs of law enforcement and to take advantage of advancements in GPS monitoring. The database shall be designed to accommodate present and future data-processing equipment.
- 12) States that the Department of Justice shall provide, at state expense, connections to the database to one sheriff's system and one probation department system in each county, hereinafter the "county systems." Before providing the county systems with connections to the database, the Department of Justice shall adopt and publish for distribution, the operating policies, practices, and procedures for the database, and the security requirements for county systems connecting to the database.

EXISTING LAW:

- 1) Requires The Department of Justice to maintain a statewide telecommunications system of communication for the use of law enforcement agencies. (Gov. Code, § 15152.)
- 2) States that the statewide telecommunications system shall be under the direction of the Attorney General, and shall be used exclusively for the official business of the state, and the official business of any city, county, city and county, or other public agency. (Gov. Code, § 15153.)
- 3) Allows the Board of Parole Hearings, the court, or the supervising parole authority to require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to custody, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. (Pen. Code, § 3004, subd. (a).)
- 4) Requires every inmate who has been convicted for any felony violation of a "registerable sex offense" and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for life. (Pen. Code, § 3004, subd. (b).)
- 5) Requires any inmate released on parole pursuant to this section shall be to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring. (Pen. Code, § 3004, subd. (c).)
- 6) Allows the Department of Corrections and Rehabilitation (CDCR) to utilize continuous electronic monitoring to electronically monitor the whereabouts of persons on parole, as provided by this article. (Pen. Code, § 3010, subd. (a).)
- 7) Requires any use of continuous electronic monitoring, as specified, to have as its primary objective the enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on parole. (Pen. Code, § 3010, subd. (b).)
- 8) Specifies that continuous electronic monitoring may include the use of worldwide radio navigation system technology, known as the Global Positioning System, or GPS. (Pen. Code, § 3010, subd. (d)(1).)
- 9) Requires a person who is required to register as a sex offender as a condition of parole to report to his or her parole officer within one working day following release from custody, or as instructed by a parole officer to have an electronic, global positioning system (GPS), or other monitoring device affixed to his or her person. (Pen. Code, § 3010.10, subd. (a).)
- 10) Prohibits a person who is required to register as a sex offender from removing, disabling, render inoperable, or knowingly circumvent the operation of, or permit another to remove,

disable, render inoperable, or knowingly circumvent the operation of, an electronic, GPS, or other monitoring device affixed to his or her person as a condition of parole, when he or she knows that the device was affixed as a condition of parole. (Pen. Code, § 3010.10, subd. (b).)

- 11) Allows each county agency responsible for postrelease supervision, under Realignment, to determine additional appropriate conditions of supervision consistent with public safety, including the use of continuous electronic monitoring, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate, structured, and intermediate sanctions up to and including referral to a reentry court, or flash incarceration in a city or county jail. (Pen. Code, § 3454(b))

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1213 establishes the California Offender Global Positioning System Database so that criminal justice agencies can better scrutinize the location and possible interactions of offenders wearing court-ordered GPS monitoring devices.

"A GPS database that can be accessed by criminal justice agencies will enhance supervision practices, promote rehabilitative services, assist investigations and ensure offender accountability and community safety."

- 2) **GPS Monitoring by California Department of Corrections and Rehabilitation(CDCR):** The GPS monitoring component employs the tracking system of two different vendors. Satellite Tracking of People (STOP) LLC is the vendor used in San Bernardino, Riverside, the city of Los Angeles, and Los Angeles County. Pro Tech is the vendor used in Sacramento and Fresno. The hardware and software of each system are virtually identical. Each vendor uses an active monitoring system whereby the GPS unit takes a data point every minute and transmits the location data every 10 minutes. A notice is instantly transmitted during a strap tamper or zone violation (i.e., an immediate event). Weighing six ounces, the GPS unit is a single-piece device about the size of a computer mouse that is worn flush around the left ankle, secured by a black plastic band. It combines cellular and GPS technology to automatically report the wearer's exact location. Its internal memory can be remotely programmed with multiple inclusion and exclusion zones.

Each vendor's software employs a combination of data integration, geomapping, and GPS technology to monitor parolees. The GPS unit can track the precise location of parolees and link the data to the location and time of reported crime incidents, as well as electronically monitor individualized exclusion and inclusion zones for violations. Any intersection of a tracked parolee with a crime incident or a zone violation is known as a "hit" and is electronically sent to the appropriate police or corrections agency. Each vendor also tracks the information about parolee activities supplied by the GPS technology and transmits it to the supervising parole agent through the monitoring center.

The parole agent typically receives the GPS information in two forms: daily notification (DN) and immediate notification (IN) alerts. For each parolee, a DN is emailed to the parole agent. The notification details all the activity recorded by the GPS unit, including charging activity,

zone violations, strap tampers, and other violations. The parole agent must review all recorded activity and note any actions that stem from the notification. The notification also includes a direct link to the Web-based STOP data system for review of “tracks” or movement patterns of any offender on any GPS caseload. The software plots the location and movement on an interactive Google map, allowing the parole agent to see the movements of a parolee and investigate any unusual or suspicious movement patterns. The parole agents are provided with laptops enabled with wireless Internet cards to allow access to VeriTracks from the field.
<http://www.cdcr.ca.gov/Reports/docs/External-Reports/Gang-GPS-Program-Narrative.pdf>

- 3) **Between October 2013 and March 2014, two men raped and killed four women while wearing state and federally issued GPS devices within the county boundaries of Orange County:** At the time of the crimes, the men were wearing GPS devices. One of the devices was issued by the State of California and the other was issued by federal authorities. One of the suspects was being tracked with GPS by federal probation officers. The other was being tracked with GPS by state parole officers. Police indicated that information from the bracelets, as well as cellphone records from the women, aided in the investigation. In connection with the case, concerns were raised about why the monitoring failed to identify the suspects more quickly.
<http://www.ocregister.com/articles/gordon-609736-cano-anaheim.html><http://www.ocregister.com/articles/gordon-613695-federal-probation.html>
- 4) **Jessica’s Law:** California Proposition 83, better known as Jessica’s Law, was passed by voters in 2006. The provisions of this law mandate that all sex offenders released on parole be placed on GPS supervision for life and made California Department of Correction and Rehabilitation (CDCR) parole agents responsible for enforcing the terms and conditions of Jessica’s Law while a parolee is under the state’s jurisdiction CDCR was also charged with the responsibility of implementing this program.

With a limited amount of GPS units, CDCR prioritized its High Risk Sex Offender population of approximately 2,500 on parole to be equipped with ankle monitors first. This first phase was completed in April 2008. CDCR completed the implementation of the program in December 2008 (6 months ahead of schedule) by equipping another 2,300 non- HRSOs with GPS monitoring units, bringing the total to 4,800. This figure nearly triples the 1,800 GPS units used by Florida, the second-leading state to use the devices. As of August 2011, there were 9,912 sex offenders on parole in California (9 percent of all parolees under the jurisdiction of the CDCR). Roughly 7,022 of these sex offenders were living in the community, and 6,968 (99.2 percent) were monitored by GPS technology. (*Monitoring High-Risk Sex Offenders With GPS Technology: An Evaluation of the California Supervision Program, Final Report* (2012), pp. 1-2, 1-3.)

- 5) **GPS Tracking in California other than Sex Offenders:** Last year, then-L.A. County Sheriff Lee Baca solicited bids from GPS tracking companies to monitor as many as 3,000 offenders released from jail, while the county Probation Department is using GPS to track hundreds of felons released from prison. Riverside County has approved \$1 million to monitor up to 600 criminals. (*GPS Monitoring Alerts Overwhelm Probation Officers in California*, Paige St. John, McClatchy News Service, February 18, 2014.) Counties throughout the state are using GPS monitoring at the local level for individuals on probation, pretrial release, or mandatory supervision.

- 6) **Argument in Support:** According to *The Orange County Board of Supervisors*, “The County fully endorses the goal of this bill to require data-sharing among local and state GPS monitoring systems to better scrutinize the interactions of offenders required to wear the devices. Assuring that specific data is provided to a state clearinghouse will ensure enhanced public safety and quicker access to crucial investigative information.

“Additionally, we are also sponsoring a Joint Resolution to be advanced by your office will ask the federal government to endorse and participate in the state’s data-sharing efforts, Having a coordinated database tracking where offenders are located may have led to early detection of the fraternization of two men—one being monitored while on federal probation and the other on state parole—accused of the deaths of four young women in Orange County.

- 7) **Argument in Opposition:** According to *The American Civil Liberties Union of California*, “Law enforcement agencies are already struggling to keep up with the GPS data they currently receive, and it seems ill-advised to add to their burden. As a recent Los Angeles Time article explained, “agents are drowning in a flood of meaningless data, masking alarms that would signal real danger.” Increasing the amount of data local law enforcement agents are expected to track would only further drown them, and without clear returns. California law enforcement officers have also been grappling with the flaws and limitations of GPS technology itself – which have included dead batteries, cracked cases, and reported locations being off by as much as three miles. Until these problems are resolved, it makes little sense to divert resources into creating a statewide database.

Thousands of Californians are currently being monitored through GPS devices. GPS data collection is itself an invasive process, and raises constitutional concerns. Consolidated databases such as the one proposed by AB 1213 are often more invasive than local databases in that they allow a broader range of people to access individuals’ data – which, among other things, would include a person’s full name, date of birth, and his or her exact location at any given time. Without any standards for who can access this information, for what reasons, and for how long, it is unclear whether a statewide database would pass constitutional muster.

One of the primary purposes of AB 1213 is to allow criminal justice agencies to access each other’s GPS device data to determine if an individual placed on GPS by one entity is in the proximity of another individual monitored by a different entity. However, specifically tracking this type of data may raise freedom of association concerns, and result in further law enforcement overreach. Because people monitored through GPS devices may associate for legal purposes – for example, at church, in treatment groups, at their places of employment – allowing multi-jurisdictional tracking of such associations could result in further unnecessary law enforcement intrusion into people’s private lives and protected activities. Such tracking could also result in additional false accusations of unlawful activity, further exposing people previously convicted of crimes to unnecessary criminal justice system involvement. GPS tracking devices are worn on a person’s ankle and are not typically visible to the public. Circumstances can easily arise whereby a monitored person inadvertently finds him or herself in close proximity to another monitored person – say, at the grocery store, or waiting for an oil change – which, while perfectly innocent, can already draw unnecessary law enforcement attention and involvement. By encouraging law enforcement agencies to track not only their own supervisees, but also the supervisees of other agencies, it will be nearly impossible for them to differentiate between lawful and unlawful activity simply by looking at GPS data. Responding to additional false alarms will likewise divert critical law enforcement time and other resources away from proven investigation and prevention techniques.”

8) Prior Legislation:

- a) SB 57 (Lieu), Chapter 776, Statutes of 2013, prohibits a person who is required to register as a sex offender and who is subject to parole supervision from removing, as specified, an electronic, GPS, or other monitoring device affixed as a condition of parole. Upon a violation of the provision, the bill would require the parole authority to revoke the person's parole and impose a mandatory, 180-day period of incarceration
- b) SB 566 (Hollingsworth), of the 2008-2009 legislative session, would have made the unauthorized removal, disabling, or tampering with a GPS device affixed as a condition of a criminal court order, juvenile court disposition, parole, or probation a crime, punishable as specified. The bill would require the court, if applicable, to order restitution in an amount equivalent to the replacement cost of the electronic, GPS, or other monitoring device. The bill was held I the Senate Public Safety Committee.
- c) SB 1203 (G. Runner), of the 2008-2009 legislative session, would have provided that any person who willfully removes or disables an electronic, global positioning system, or other monitoring device affixed to his or her person or the person of another, knowing that the device was affixed as part of a criminal sentence or juvenile court disposition, as a condition of parole or probation, or otherwise pursuant to law, is guilty of a misdemeanor, punishable as specified. Because the bill would create a new crime, the bill would create a state-mandated local program. The bill failed passage in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

Orange County Board of Supervisors
California District Attorneys Association
Peace Officers Research Association of California

Opposition

American Civil Liberties Union of California
California Public Defenders Association

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: April 28, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1237 (Brown) – As Introduced February 27, 2015

SUMMARY: Requires the State Department of State Hospitals to establish, within the department, a pool of psychiatrists and psychologists with forensic skills, and would require the department to create evaluation panels from the pool of psychiatrists and psychologists, as specified. This bill would require the court to order an examination by an evaluation panel for a defendant who pleads not guilty by reason of insanity or who may be mentally incompetent. The bill would also make conforming changes. Specifically, **this bill:**

- 1) Requires the State Department of State Hospitals to establish a pool of psychiatrists and psychologists with forensic skills who are employees of the department from which evaluation panels shall be created.
- 2) Requires the State Department of State Hospitals to create evaluation panels with each panel consisting of three to five forensic psychiatrists or psychologists from the pool of psychiatrists and psychologists.
- 3) Requires the court to appoint an evaluation panel to examine the defendant and investigate his or her mental status, when a defendant pleads not guilty by reason of insanity.
- 4) States that is the duty of the evaluation panel to make the examination and investigation, and to testify, whenever summoned, in any proceeding in which the sanity of the defendant is in question.
- 5) Allows the members of the evaluation panel, in addition to their actual traveling expenses, those fees that in the discretion of the court seem just and reasonable, having regard to the services rendered by the witnesses. The fees allowed shall be paid by the county where the indictment was found or in which the defendant was held for trial to the State Department of State Hospitals.
- 6) Requires any report on the examination and investigation of mental sanity, include, but not be limited to, the psychological history of the defendant, the facts surrounding the commission of the acts forming the basis for the present charge used by the evaluation panel in making the panel's examination of the defendant, the present psychological or psychiatric symptoms of the defendant, if any, the substance abuse history of the defendant, the substance abuse history of the defendant on the day of the offense, a review of the police report for the offense, and any other credible and relevant material reasonably necessary to describe the facts of the offense.
- 7) Requires that a trial by court or jury of the question of mental competence shall proceed in the following order:

- a) The court shall appoint an evaluation panel, and any other expert with forensic experience the court may deem appropriate, to examine the defendant;
- b) The defense and the prosecution shall each confer with the State Department of State Hospitals regarding the selection of the panelists, in any case in which the defendant or the defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence;
- c) The defense and the prosecution shall each confer with the State Department of State Hospitals regarding the selection of the panelists;
- d) Requires the examining panelists to evaluate the nature of the defendant's mental disorder, if any, the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder and, if within the scope of their licenses and appropriate to their opinions, whether or not treatment with antipsychotic medication is medically appropriate for the defendant and whether antipsychotic medication is likely to restore the defendant to mental competence;
- e) Requires that the panelist inform the court of his or her opinion and his or her recommendation, if an examining panelist is of the opinion that antipsychotic medication may be medically appropriate for the defendant and that the defendant should be evaluated by a psychiatrist to determine if antipsychotic medication is medically appropriate;
- f) The examining panelists shall also address the issues of whether the defendant has capacity to make decisions regarding antipsychotic medication and whether the defendant is a danger to self or others;
- g) If the defendant is examined by a psychiatrist and the psychiatrist forms an opinion as to whether or not treatment with antipsychotic medication is medically appropriate, the psychiatrist shall inform the court of his or her opinions as to the likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, and whether it is medically appropriate to administer antipsychotic medication in the county jail;
- h) If it is suspected the defendant is developmentally disabled, the court shall appoint the director of the regional center for the developmentally disabled, or the designee of the director, to examine the defendant. The court may order the developmentally disabled defendant to be confined for examination in a residential facility or state hospital;
- i) The regional center director shall recommend to the court a suitable residential facility or state hospital. Prior to issuing an order pursuant to this section, the court shall consider the recommendation of the regional center director. While the person is confined pursuant to order of the court under this section, he or she shall be provided with necessary care and treatment;

- j) The counsel for the defendant shall offer evidence in support of the allegation of mental incompetence;
 - k) The prosecution shall offer any evidence in support of the allegation of mental incompetence;
 - l) Allows each party may offer rebutting testimony, unless the court, for good reason in furtherance of justice, also permits other evidence in support of the original contention;
 - m) When the evidence is concluded, unless the case is submitted without final argument, the prosecution shall make its final argument and the defense shall conclude with its final argument to the court or jury;
 - n) In a jury trial, the court shall charge the jury, instructing them on all matters of law necessary for the rendering of a verdict. It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. The verdict of the jury shall be unanimous; and
 - o) Only a court trial is required to determine competency in any proceeding for a violation of probation, mandatory supervision, postrelease community supervision, or parole.
- 8) Requires the State Department of State Hospitals to establish a pool of psychiatrists and psychologists with forensic skills who are employees of the department from which evaluation panels shall be created.
- 9) Requires the State Department of State Hospitals to create evaluation panels with each panel consisting of three to five forensic psychiatrists or psychologists from the pool created in subdivision (a).

EXISTING LAW:

- 1) Requires the court select and appoint two, and may select and appoint three, psychiatrists, or licensed psychologists who have a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, to examine the defendant and investigate his or her mental status, when a defendant pleads not guilty by reason of insanity. (Pen. Code, § 1027, subd. (a).)
- 2) Requires the psychiatrists or psychologists selected and appointed to make the examination and investigation, and to testify, whenever summoned, in any proceeding in which the sanity of the defendant is in question. (Pen. Code, § 1027, subd. (a).)
- 3) Allows the psychiatrists or psychologists appointed by the court, in addition to their actual traveling expenses, fees that in the discretion of the court seem just and reasonable, having regard to the services rendered by the witnesses. The fees allowed shall be paid by the county where the indictment was found or in which the defendant was held for trial. (Pen. Code, § 1027, subd. (a).)
- 4) States that any report on the examination and investigation of defendant's mental status, shall include, but not be limited to, the psychological history of the defendant, the facts

surrounding the commission of the acts forming the basis for the present charge used by the psychiatrist or psychologist in making his or her examination of the defendant, the present psychological or psychiatric symptoms of the defendant, if any, the substance abuse history of the defendant, the substance use history of the defendant on the day of the offense, a review of the police report for the offense, and any other credible and relevant material reasonably necessary to describe the facts of the offense. (Pen. Code, § 1027, subd. (b).)

- 5) States that this section does not presume that a psychiatrist or psychologist can determine whether a defendant was sane or insane at the time of the alleged offense. This section does not limit a court's discretion to admit or exclude, pursuant to the Evidence Code, psychiatric or psychological evidence about the defendant's state of mind or mental or emotional condition at the time of the alleged offense. (Pen. Code, § 1027, subd. (c).)
- 6) Provides that nothing contained in this section shall be deemed or construed to prevent any party to any criminal action from producing any other expert evidence with respect to the mental status of the defendant. If expert witnesses are called by the district attorney in the action, they shall only be entitled to those witness fees as may be allowed by the court. (Pen. Code, § 1027, subd. (d).)
- 7) Specifies that any psychiatrist or psychologist appointed by the court may be called by either party to the action or by the court, and shall be subject to all legal objections as to competency and bias and as to qualifications as an expert. When called by the court or by either party to the action, the court may examine the psychiatrist or psychologist, as deemed necessary, but either party shall have the same right to object to the questions asked by the court and the evidence adduced as though the psychiatrist or psychologist were a witness for the adverse party. When the psychiatrist or psychologist is called and examined by the court, the parties may cross-examine him or her in the order directed by the court. When called by either party to the action, the adverse party may examine him or her the same as in the case of any other witness called by the party. (Pen. Code, § 1027, subd. (e).)
- 8) Requires a trial by court or jury of the question of mental competence to proceed in the following order:
 - a) The court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant; (Pen. Code § 1369, subd. (a).)
 - b) In any case where the defendant or the defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof; (Pen. Code § 1369, subd. (a).)
 - c) One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution; (Pen. Code § 1369, subd. (a).)
 - d) The examining psychiatrists or licensed psychologists shall evaluate the nature of the defendant's mental disorder, if any, the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder and, if within the scope of their licenses and appropriate to their opinions, whether or not treatment with antipsychotic medication

is medically appropriate for the defendant and whether antipsychotic medication is likely to restore the defendant to mental competence; (Pen. Code § 1369, subd. (a).)

- e) If an examining psychologist is of the opinion that antipsychotic medication may be medically appropriate for the defendant and that the defendant should be evaluated by a psychiatrist to determine if antipsychotic medication is medically appropriate, the psychologist shall inform the court of this opinion and his or her recommendation as to whether a psychiatrist should examine the defendant; (Pen. Code § 1369, subd. (a).)
- f) The examining psychiatrists or licensed psychologists shall also address the issues of whether the defendant has capacity to make decisions regarding antipsychotic medication and whether the defendant is a danger to self or others; (Pen. Code § 1369, subd. (a).)
- g) If the defendant is examined by a psychiatrist and the psychiatrist forms an opinion as to whether or not treatment with antipsychotic medication is medically appropriate, the psychiatrist shall inform the court of his or her opinions as to the likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, and whether it is medically appropriate to administer antipsychotic medication in the county jail; (Pen. Code § 1369, subd. (a).)
- h) If it is suspected the defendant is developmentally disabled, the court shall appoint the director of the regional center for the developmentally, or the designee of the director, to examine the defendant. The court may order the developmentally disabled defendant to be confined for examination in a residential facility or state hospital; (Pen. Code § 1369, subd. (a).)
- i) The regional center director shall recommend to the court a suitable residential facility or state hospital. Prior to issuing an order pursuant to this section, the court shall consider the recommendation of the regional center director. While the person is confined pursuant to order of the court under this section, he or she shall be provided with necessary care and treatment; (Pen. Code § 1369, subd. (a).)
- j) The counsel for the defendant shall offer evidence in support of the allegation of mental incompetence; (Pen. Code § 1369, subd. (b)(1).)
- k) If the defense declines to offer any evidence in support of the allegation of mental incompetence, the prosecution may do so; (Pen. Code § 1369, subd. (b)(2).)
- l) The prosecution shall present its case regarding the issue of the defendant's present mental competence; (Pen. Code § 1369, subd. (c).)
- m) Each party may offer rebutting testimony, unless the court, for good reason in furtherance of justice, also permits other evidence in support of the original contention; (Pen. Code § 1369, subd. (d).)
- n) When the evidence is concluded, unless the case is submitted without final argument, the prosecution shall make its final argument and the defense shall conclude with its final argument to the court or jury; (Pen. Code § 1369, subd. (e).)

- o) In a jury trial, the court shall charge the jury, instructing them on all matters of law necessary for the rendering of a verdict. It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. The verdict of the jury shall be unanimous; and (Pen. Code § 1369, subd. (f).)
- p) Only a court trial is required to determine competency in any proceeding for a violation of probation, mandatory supervision, postrelease community supervision, or parole. (Pen. Code § 1369, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1. **Author's Statement:** According to the author, "The Department of State Hospitals estimates that between 15-20 percent of their patients are malingerers. Malingers are patients who are faking mental illness to avoid being sentenced to prison. Once they are sent to a state hospital, they then become threats to hospital staff and patients. Violence against hospital staff could be reduced if patients were examined by the psychologists and psychiatrist who are familiar with the state hospital system."
2. **Background:** According to the Legislative Analyst's Office (LAO), the state's five state hospitals—Atascadero, Coalinga, Metropolitan, Napa, and Patton—provide treatment to a combined patient population of approximately 6,600. State hospitals treat patients under several forensic commitment classifications, including Not Guilty by Reason of Insanity, Incompetent to Stand Trial, Sexually Violent Predators, and Mentally Disordered Offenders. Currently the state hospitals are treating approximately 1,400 patients who are not guilty by reason of insanity (NGI) and approximately 1,300 patients who are incompetent to stand trial (IST). Since the death of a psychiatric technician at the Napa State Hospital in October 2010, much attention has been focused on the level of assaults on state hospital staff and patients. (See Lee Romney, *California mental hospitals are dangerous, legislators told*, L.A. Times (Aug. 24, 2011).)
3. **Incompetent to Stand Trial:** Under state and federal law, all individuals who face criminal charges must be mentally competent to help in their defense. By definition, an individual who is IST lacks the mental competency to participate in legal proceedings. In a January 2012 report by the Office of the Legislative Analyst (LAO) entitled, "An Alternative Approach: Treating the Incompetent to Stand Trial," the LAO outlined the specific process California courts must follow when a defendant's competency is in doubt. The process is often initiated by defense attorneys concerned about the client's mental capacity which then requires the judge to order an evaluation of the person by court-appointed mental health experts, during which time the court proceedings are suspended. The evaluation and report guides the court to assess competency. In cases when a person is found IST, judges then typically order an evaluation to determine the most appropriate treatment facility, the goal of treatment being restoring the person to competency. Individuals charged with a violent felony are typically ordered to undergo treatment at a state hospital.
4. **Not Guilty by Reason of Insanity:** According to a Disability Rights California May 2009 report entitled, "Forensic Mental Health Legal Issues," the plea of NGI is an affirmative

defense to a criminal charge, but refers to a legal definition not a clinical diagnosis. Under current California law, a defendant will be found NGI if it is proven by a preponderance of the evidence that the individual was either: i) incapable of knowing or understanding the nature and quality of the act; or, ii) incapable of distinguishing right from wrong at the time the offence was committed. The insanity defense is used primarily when a criminal charge is a serious felony. If a court or jury finds a person NGI, the court must determine whether to confine the person in a state hospital or outpatient treatment program. Penal Code Section 1026 requires, prior to making the placement, the court to order an evaluation by the CPD to advise the court on the most appropriate placement.

5. **State Hospitals Have Been Criticized for Their Evaluations of Sexually Violent Predators(SVP):** Although NGIs and ISTs are currently evaluated by experts at a local level, State Hospitals have the responsibility to evaluate SVPs. The California State Auditor recently published results of its audit concerning the California Department of State Hospitals' Sex Offender Commitment Program and evaluation of SVPs. The report concluded that the State Hospitals' evaluation of potential SVPs were inconsistent. The report noted gaps in policies, supervision, and training. The report noted that State Hospitals have not consistently offered training to its evaluators and did not provide SVP evaluators with any training between August 2012 and May 2014. (California Department of State Hospitals, California State Auditor, March 2015.)
6. **ISTs and NGI are Determined in the Course of an Adversarial Process with Checks and Balances beyond the Evaluators:** The existing process to determine NGIs and ISTs involves mental health evaluations by experts who are psychiatrists or psychologists. But in addition to the evaluations by the experts, the process includes a judge, a district attorney, and a defense attorney. To the extent the parties have concerns or disagreements about the validity of the determinations reached by the evaluators, the parties can demand a trial to determine if the defendant meets the legal standard for NGI or IST. The trial allows additional evidence to be presented, and existing evidence to be challenged, by the parties in order reach an accurate determination of NGI or IST, if there is not a consensus among the parties.
7. **Argument in Support:** According to *The American Federation of State, County and Municipal Employees*, "AFSCME strongly supports AB 1237 in requiring the Department of State Hospitals (DSH) to establish, within the department, a pool of psychiatrists and psychologists with forensic skills. AB 1237 would also create evaluation panels from the aforementioned pool to evaluate a defendant who pleads not guilty by reason of insanity or who may be mentally incompetent. Our affiliate, the Union of American Physicians and Dentists UAPD) is sponsoring AB 1237, and we proudly stand with them in support of a measure that would aid the DSH in being able to more appropriately diagnose and place forensic patients in an appropriate state hospital setting. AB 1237 would go a long way in stemming the tide of violence against hospital staff in the state hospitals."
8. **Argument in Opposition:** According to *The Judicial Council*, "In support of AB 1237, the author's fact sheet asserts that "court appointed psychiatrists are not always familiar with the populations being served at the different state hospitals" and that "[a]s a result, malingerers are often placed in the state hospital system and the safety of patients and staff is put in

jeopardy.” The Judicial Council believes that these statements conflate separate issues and that no evidence of the assertions is provided in either the bill or the background materials provided by the author. The council also believes that the consequence of the bill’s radical shift in procedure from court-appointed psychiatrists and psychologists to state hospital evaluation panels would virtually replace the need for local forensic experts and related quality assurance mechanisms. In addition, the Judicial Council is concerned that the bill shifts clinical responsibility for determining mental illness-related issues to individuals who, obviously, have interests and incentives external to the judicial process. Restricting the criminal courts’ ability to secure timely and unbiased forensic evaluations in NGI and IST cases inappropriately impedes the independence of judicial decision making. Moreover, the council is concerned about potential delays in the court process that could result from having only a limited pool of evaluators to draw from, especially since those evaluators may be located a significant distance from the counties where the proceedings are being conducted.

“It is also important to note that AB 1237 wholly fails to address the issue of the qualifications and training standards for forensic evaluators, which appears to be the principal policy concern underlying this measure. The issue of qualifications and training for forensic evaluators was one of the topics of discussion during stakeholder meetings regarding state hospitals and developmental centers that were convened by the Governor’s office last year. While a number of the participants expressed interest in further pursuing this avenue, there was no mention of the type of fundamental shift in how California’s long-standing forensic evaluation system operates that AB 1237 presents. The Judicial Council respectfully suggests that a similar stakeholder process, involving all of the key interest groups, is a more appropriate forum for addressing the underlying concerns behind this bill.”

9. **Prior Legislation:** AB 2543 (Levine), of the 2013-2014, Legislative Session, would have required the State Department of State Hospitals to establish a pool of psychiatrists and psychologists with forensic skills who would evaluate a defendant who pleads not guilty by reason of insanity or who may be mentally incompetent.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees (Co-Sponsor)
Union of American Physicians and Dentists (Co-Sponsor)
California Association of Psychiatric Technicians

Opposition

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California District Attorneys Association
California Judges Association
California Public Defenders Association
California State Association of Counties

Disability Rights California
Judicial Council of California
Los Angeles County District Attorney's Office
San Francisco Public Defender

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: April 28, 2015

Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1241 (Calderon) – As Amended March 26, 2015

SUMMARY: Imposes a mandatory minimum fine of not less than \$1,000 for a second or subsequent conviction for the crime of music or video piracy.

EXISTING LAW:

- 1) Provides that a person is guilty of the failure to disclose the origin of a recording or audiovisual work (piracy) if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale or resale, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group thereon. (Pen. Code, § 653w, subd. (a)(1).)
- 2) Provides that if the offense involves at least 100 articles of audio recordings or audiovisual works, or the commercial equivalent thereof, then the punishment is imprisonment in a county jail not to exceed one year, by imprisonment pursuant to criminal justice realignment for two, three, or five years, by a fine not to exceed \$500,000, or by both that fine and imprisonment. (Pen. Code, § 653w, subd. (b)(1).)
- 3) Punishes any other first-time violation of the crime by imprisonment in a county jail not to exceed one year, by a fine of not more than \$50,000, or by both that fine and imprisonment. (Pen. Code, § 653w, subd. (b)(2).)
- 4) Punishes a second or subsequent conviction by imprisonment in a county jail not to exceed one year, or by imprisonment pursuant to criminal justice realignment, by a fine not more than \$200,000, or by both that fine and imprisonment. (Pen. Code, § 653w, subd. (b)(3).)
- 5) Defines "recording" as any "tangible medium upon which information or sounds are recorded or otherwise stored, including, but not limited to, any phonograph record, disc, tape, audio cassette, wire, film, memory card, flash drive, hard drive, data storage device, or other medium on which information or sounds are recorded or otherwise stored, but does not include sounds accompanying a motion picture or other audiovisual work." (Pen. Code, § 653w, subd. (a)(2).)
- 6) Defines "audiovisual works" as the "physical embodiment of works that consist of related images that are intrinsically intended to be shown using machines or devices, such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films, tapes, discs, memory cards,

flash drives, data storage devices, or other devices, on which the works are embodied." (Pen. Code, § 653w, subd. (a)(3).)

- 7) Requires, in addition to any other penalty or fine, the court to order a person who has been convicted of a music or video piracy to make restitution to an owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are derived that suffered economic loss resulting from the violation. (Pen. Code, § 1202.4, subd. (r)(1).)
- 8) Requires the restitution order be based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles, and to also include reasonable costs incurred as a result of the investigation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner. (Pen. Code, § 1202.4, subd. (r)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1241 continues the practice of fine-tuning state laws to address the impact of piracy upon very important industry sections to California. This just clarifies that a minimum fine will be established for those committing a second offense in this criminal area."
- 2) **Underground Economy:** The "underground economy" refers to those individuals and businesses that deal in cash and/or use other schemes to conceal their activities, identities, and true tax liabilities from government licensing, regulatory, and taxing agencies. The activities that occur in the underground economy include the sale or transfer of illegal goods, such as pirated music or movies, counterfeit pharmaceutical drugs, vitamins, wine, clothing, accessories, weapons, tax evasion or fraud, and untaxed tobacco products or alcohol. The underground economy hurts legitimate businesses, creates an enormous tax gap and hurts all California due to the loss of revenue. The Board of Equalization estimates that the State of California losses about \$8.5 billion dollars annually in tax revenue due to the underground economy. (<http://www.boe.ca.gov/info/underground_economy.htm>.) This revenue is needed to fund critical programs such as education, public safety, infrastructure and social services.
- 3) **Practical Considerations:** Setting the penalty, or range of penalties, for a crime is an inherently legislative function. The Legislature does have the power to require a minimum term or other specific sentence. (*Keeler v. Superior Court* (1970) 2 Cal.3d 619, 631.) Sentencing, however, is solely a judicial power. (*People v. Tenorio* (1970) 3 Cal.3d 89, 90-93; *People v. Superior Court (Fellman)* (1976) 59 Cal.App.3d 270, 275.) California law effectively directs judges to impose an individualized sentence that fits the crime and the defendant's background, attitude, and record. (Cal. Rules of Court, rules 4.401-4.425.) This bill limits judicial discretion and requires a minimum fine of \$1,000 to be imposed in each case in which a defendant has already suffered a prior conviction for piracy, regardless of the facts.

Although a minimum fine of \$1,000 for a second or subsequent conviction may not be

unreasonable, the sentencing judge already has the discretion to impose this amount, and much more. There is no evidence that this amount is not already being imposed in these types of cases.

- 4) **Existing Penalty Assessments:** There are penalty assessments and fees assessed on the base fine for a crime. Assuming a defendant was fined \$1,000 as the fine for a criminal offense, the following penalty assessments would be imposed pursuant to the Penal Code and the California Government Code:

Base Fine:	\$ 1,000
Penal Code 1464 state penalty on fines:	1,000 (\$10 for every \$10)
Penal Code 1465.7 state surcharge:	200 (20% surcharge)
Penal Code 1465.8 court operation assessment:	40 (\$40 fee per offense)
Government Code 70372 court construction penalty:	500 (\$5 for every \$10)
Government Code 70373 assessment: misdemeanor)	30 (\$30 for felony or misdemeanor)
Government Code 76000 penalty:	700 (\$7 for every \$10)
Government Code 76000.5 EMS penalty:	200 (\$2 for every \$10)
Government Code 76104.6 DNA fund penalty:	100 (\$1 for every \$10)
Government Code 76104.7 add'l DNA fund penalty:	400 (\$4 for every \$10)
Total Fine with Assessments:	\$4,170

It should be noted that this figure does not include victim restitution, or the restitution fine, and that other fines and fees, such as the jail booking fee, attorney fees, OR release fees, probation department fees, may also be applicable.

- 5) **Prioritization of Court-Ordered Debt:** Current law under Penal Code section 1203.1d prioritizes the order in which delinquent court-ordered debt received is to be satisfied. The priorities are 1) victim restitution, 2) state surcharge, 3) restitution fines, penalty assessments, and other fines, with payments made on a proportional basis to the total amount levied for all of these items, and 4) state/county/city reimbursements, and special revenue items.

The fine at issue in this bill has a fairly low priority in the collection order, falling in the third category. Given that victim restitution in these types of cases is to be on the aggregate wholesale value of lawfully manufactured and authorized devices or articles, and to also include reasonable costs incurred as a result of the investigation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner (Pen. Code, § 1202.4, subd. (r)(1)), it could very well be the case that this fine is unlikely to be collected.

A recent San Francisco Daily Journal article noted, "California courts and counties collect nearly \$2 billion in fines and fees every year. Nevertheless, the state still has a more than \$10.2 billion balance of uncollected debt from prior years, according to the most recent date from 2012." (See Jones & Sugarman, *State Judges Bemoan Fee Collection Process*, San Francisco Daily Journal, (January 5, 2015).) "The annual growth in delinquent debt partly reflects a supply of money that doesn't exist to be collected." (*Ibid.*) In the same article, the Presiding Judge of San Bernardino County was quoted as saying "the whole concept is

getting blood out of a turnip." (*Ibid.*)

- 6) **Related Legislation:** AB 160 (Dababneh) would expand the list of crimes that allow for forfeiture of assets and prosecution of criminal profiteering to include, among other crimes, illegal piracy of recordings or audiovisual works. AB 160 is pending in the Assembly Committee on Revenue and Taxation.
- 7) **Prior Legislation:**
 - a) AB 2122 (Bocanegra), Chapter 857, Statutes of 2014, provides that the "true name and address" audio recording and audiovisual works piracy alternate felony-misdemeanor shall apply where the defendant's conduct involved the "commercial equivalent" of at least 100 articles of sound recordings or audiovisual recordings.
 - b) SB 1479 (Pavley), Chapter 873, Statutes of 2012, provides that in music or video piracy cases, restitution shall include the value of pirated works that were seized from the defendant, but not actually sold.
 - c) SB 830 (Wright), Chapter 480, Statutes of 2010, expanded the definition of a "recording" for the purposes of prosecution for failing to disclose the origin of a recording when utilizing the recording for financial gain to include memory cards, flash drives, hard-drives, or data storage devices.
 - d) AB 819 (Calderon), Chapter 351, Statutes of 2010, increased the fines for intellectual property piracy.
 - e) AB 2750 (Krekorian), Chapter 468, Statutes of 2008, required a court to order persons convicted of specified crimes relating to music piracy to pay restitution to not only the owner or lawful producer, but also to a trade association acting on behalf of the owner or lawful producer.
 - f) AB 64 (Cohn), Chapter 9, Statutes of 2006, made the possession or sale of at least 100, rather than 1,000, audio recordings punishable as an alternate felony/misdemeanor.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

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

Date of Hearing: April 28, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1276 (Santiago) – As Amended March 26, 2015

PULLED BY THE AUTHOR

Date of Hearing: April 28, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1310 (Gatto) – As Introduced February 27, 2015

SUMMARY: Expands jurisdiction for crimes involving peeping by use of camera, phone, or other instrumentality where intimate images are captured and distributed. Expands the grounds for issuance of a search warrant to cover property that consists of evidence that tends to show conduct in violation of peeping with use of instrumentality and distribution of intimate images obtained from the peeping. Specifically, **this bill:**

- 1) Expands the jurisdiction of a criminal action for the conduct specified in subdivision (j) of Section 647 to include the county in which the offense occurred, the county in which the victim resided at the time the offense was committed, or the county in which the intimate image was used for an illegal purpose.
- 2) Allows prosecution in any of the jurisdictions when multiple offenses of unauthorized distribution of an intimate image, either all involving the same defendants or defendants and the same intimate image belonging to the one person, or all involving the same defendant or defendants and the same scheme of substantially similar activity, occur in multiple jurisdictions.
- 3) Authorizes jurisdiction to extend to all associated offenses connected together in their commission to the underlying unauthorized distribution of an intimate image.
- 4) Requires the court to hold a hearing to consider whether the matter should proceed in the county of filing, or whether one or more counts should be severed, when charges alleging multiple offenses of unauthorized distribution of an intimate image occurring in multiple territorial jurisdictions are filed in one county.
- 5) Requires the district attorney filing the complaint to present evidence to the court that the district attorney in each county where any of the charges could have been filed has agreed that the matter should proceed in the county of filing.
- 6) Requires the court to consider the location and complexity of the likely evidence, where the majority of the offenses occurred, whether the offenses involved substantially similar activity or the same scheme, the rights of the defendant and the people, and the convenience of, or hard ship to, the victim and witnesses.
- 7) Requires the court to hold a hearing on its own motion, or the motion of the defendant, to determine whether the county of the victim's residence is the proper venue for trial, when an action for unauthorized distribution of an intimate image is filed in the county in which the victim resided at the time the offense was committed and no other basis for the jurisdiction

applies. In ruling on the matter the court shall consider the rights of the parties, the access of the parties to evidence, the convenience to witnesses, and the interests of justice.

- 8) Expands the grounds for issuance of a search warrant to include property or things to be seized which consist of evidence that tends to show conduct in violation of subdivision (j) of Section 647.

EXISTING LAW:

- 1) States that any person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, camcorder, or mobile phone, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside is guilty of disorderly conduct, a misdemeanor. (Pen. Code, § 647, subd. (j)(1).)
- 2) States that any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy inside is guilty of disorderly conduct, a misdemeanor. (Pen. Code, § 647, subd. (j)(2).)
- 3) States that any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person inside is guilty of disorderly conduct, a misdemeanor. (Pen. Code, § 647, subd. (j)(3)(A).)
- 4) States that any person who intentionally distributes the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress is guilty of disorderly conduct, a misdemeanor. (Pen. Code, § 647, subd. (j)(4)(A).)
 - a) Defines “distribution of an image” as when he or she personally distributes the image, or arranges, specifically requests, or intentionally causes another person to distribute that image; (Pen. Code, § 647, subd. (j)(4)(B).)

- b) Defines "intimate body part" as any portion of the genitals, the anus and in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or clearly visible through clothing; and (Pen. Code, § 647, subd. (j)(4)(C).)
- c) States that it shall not be a violation of this paragraph to distribute an image described in subparagraph (A) if any of the following applies:
 - i) The distribution is made in the course of reporting an unlawful activity. (Pen. Code, § 647, subd. (j)(4)(D)(i).)
 - ii) The distribution is made in compliance with a subpoena or other court order for use in a legal proceeding. (Pen. Code, § 647, subd. (j)(4)(D)(ii).)
 - iii) The distribution is made in the course of a lawful public proceeding. (Pen. Code, § 647, subd. (j)(4)(D)(iii).)
- 5) Specifies that except as provided, when a public offense is committed in part in one jurisdictional territory and in part in another jurisdictional territory, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more jurisdictional territories, the jurisdiction for the offense is in any competent court within either jurisdictional territory. (Pen. Code, § 781.)
- 6) Allows jurisdiction of a criminal action for identity theft, to include the county where the theft of the personal identifying information occurred, the county in which the victim resided at the time the offense was committed, or the county where the information was used for an illegal purpose. . (Pen. Code, § 786, subd. (b)(1).)
- 7) Specifies that if multiple offenses of unauthorized use of personal identifying information, either all involving the same defendant or defendants and the same personal identifying information belonging to the one person, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions is a proper jurisdiction for all of the offenses. . (Pen. Code, § 786, subd. (b)(1).)
- 8) Allows jurisdiction to extend to all associated offenses connected together in their commission to the underlying identity theft offense or identity theft offenses. (Pen. Code, § 786, subd. (b)(1).)
- 9) Specifies that when charges alleging multiple offenses of unauthorized use of personal identifying information occurring in multiple territorial jurisdictions are filed in one county pursuant to this section, the court shall hold a hearing to consider whether the matter should proceed in the county of filing, or whether one or more counts should be severed. The district attorney filing the complaint shall present evidence to the court that the district attorney in each county where any of the charges could have been filed has agreed that the matter should proceed in the county of filing. (Pen. Code, § 786, subd. (b)(1).)

- 10) Requires that in determining whether all counts in the complaint should be joined in one county for prosecution, the court shall consider the location and complexity of the likely evidence, where the majority of the offenses occurred, whether or not the offenses involved substantially similar activity or the same scheme, the rights of the defendant and the people, and the convenience of, or hardship to, the victim and witnesses. (Pen. Code, § 786, subd. (b)(1).)
- 11) Multiple charges of rape, child abuse, spousal abuse, sexual acts with children, or stalking involving the same defendant and victim, that occurred in multiple jurisdictions, can be tried in any jurisdiction in which one of the acts occurred. (Pen. Code, § 784.7.)
- 12) The trial for child abduction may be held in the jurisdiction from which the child was taken, in the jurisdiction where the child was held, or in the jurisdiction where the child was found. (Pen. Code, § 784.5.)
- 13) When property taken in one jurisdiction by burglary, carjacking, robbery, theft, or embezzlement is brought or received in another jurisdiction, the trial can be held in either jurisdiction. The trial can also be tried in a contiguous jurisdiction if the defendant is arrested in that jurisdiction, the prosecution secures on the record the defendant's knowing, voluntary, and intelligent waiver of the right of vicinage, and the defendant is charged with one or more property crimes in the arresting territory. (Pen. Code, § 786.)
- 14) Two or more offenses connected together in their commission or in the same class of crimes or offenses may be joined in one accusatory pleading. (Pen. Code, § 954.)
- 15) Provides that a search warrant may be issued upon any of the following grounds:
 - a) When the property was stolen or embezzled; (Pen. Code, § 1524, subd. (a)(1).)
 - b) When the property or things were used as the means of committing a felony; (Pen. Code, § 1524, subd. (a)(2).)
 - c) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered; (Pen. Code, § 1524, subd. (a)(3).)
 - d) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony; (Pen. Code, § 1524, subd. (a)(4).)
 - e) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, or possession of matter depicting sexual conduct of a person under 18 years of age, has occurred or is occurring; (Pen. Code, § 1524, subd. (a)(5).)
 - f) When there is a warrant to arrest a person; (Pen. Code, § 1524, subd. (a)(6).)

- g) When a provider of electronic communication service or remote computing service has records or evidence, as specified, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery; (Pen. Code, § 1524, subd. (a)(7).)
- h) When the property or things to be seized include an item or any evidence that tends to show a violation of duty to secure workers compensation; (Pen. Code, § 1524, subd. (a)(8).)
- i) When the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault, as specified; (Pen. Code, § 1524, subd. (a)(9).)
- j) When the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of a person who has been detained for an examination of their mental condition; (Pen. Code, § 1524, subd. (a)(10).)
- k) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms as specified in the family code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued as specified in the family code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law; (Pen. Code, § 1524, subd. (a)(11).)
- l) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed; (Pen. Code, § 1524, subd. (a)(12).)
- m) When a sample of the blood of a person constitutes evidence that tends to show a violation of driving under the influence and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis; and (Pen. Code, § 1524, subd. (a)(13).)
- n) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law. (Pen. Code, § 1524, subd. (a)(14).)

- 16) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be. (Pen. Code, § 1524, subd. (b).)
- 17) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person who is a lawyer, a psychotherapist, or a member of the clergy and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless specified procedures have been complied with:
- 18) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute any evidence that tends to show a violation of identity theft, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court. (Pen. Code, § 1524, subd. (j).)
- 19) States that a provider of electronic communication service or remote computing service, as specified, shall disclose to a governmental prosecuting or investigating agency the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of that service, and the types of services the subscriber or customer utilized, when the governmental entity is granted a search warrant. (Pen. Code 1524.3, subd. (a).)
- 20) Specifies that a governmental entity receiving subscriber records or information under this section is not required to provide notice to a subscriber or customer. (Pen. Code 1524.3, subd. (b).)
- 21) Allows a court issuing a search warrant, as specified, on a motion made promptly by the service provider, to quash or modify the warrant if the information or records requested are unusually voluminous in nature or compliance with the warrant otherwise would cause an undue burden on the provider. (Pen. Code 1524.3, subd. (c).)
- 22) States that a provider of wire or electronic communication services or a remote computing service, upon the request of a peace officer, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a search warrant or a request in writing and an affidavit declaring an intent to file a warrant to the provider. Records shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the peace officer. (Pen. Code 1524.3, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "It is essential that we protect our communities from criminals who exploit and violate their victims' privacy and then "hide in plain sight" behind computer screens and jurisdictional technicalities. The justice system is intended to protect the public and bring justice to victims. Criminals shouldn't be allowed to

use legal technicalities as a shield against prosecution. AB 1310 will give law enforcement the necessary tools to investigate and prosecute cyber exploitation cases by allowing a case to be prosecuted in the jurisdiction where the victim resides and allowing search warrants to be issued for the timely investigation of cyber exploitation crimes.”

- 2) **Jurisdiction:** Jurisdiction is generally established by the location where the crime occurred. Jurisdiction exists in the county in which the crime occurred. When a crime is committed in part in one jurisdictional territory and in part in another jurisdictional territory, the jurisdiction for the offense is in any competent court within either jurisdictional territory. (Pen. Code, § 781.)

The Legislature has made provisions that in certain situations where the criminal activity occurred in different geographic jurisdictions in the state, sometimes with multiple victims, it is appropriate to consolidate the prosecution in one jurisdiction (county). Existing law provides for such consolidation where the crime of identity theft is involved. (Pen. Code, § 786.) The proposed legislation seeks to incorporate the same jurisdictional language used in cases of identity theft and extend it to cases that involve “revenge porn” and other specified crimes of a similar nature.

In 2002, the Legislature enacted law which allowed trial in one county of identity theft crimes that occurred in multiple counties and involved a single victim. (SB 1773 (Wayne), Ch. 908, Stats. 2002.) At issue, was the fact that an identity thief can relatively easily and quickly use a victim's identifying information in many counties across the state. The Legislature recognized that such cases can give rise to overlapping prosecutions, leading to numerous problems, including investigation and evidence collection problems, claims that the first prosecutor to file charges should have resolved all charges arising out of an incident and others. To address such concerns, the applicable venue section was amended to direct a court to consider whether all charges should be tried in one county, or whether some charges should be severed and tried in a different county. The prosecutor in such a case was directed to obtain the agreement of the district attorneys in the other counties where venue would also lie.

Consolidation of these types of cases can improve judicial economy in other respects as well. Where a common scheme is involved, evidence from each incident or crime is typically admissible as to each offense. Requiring separate prosecution in each county where related identity theft cases occurred could result in presentation of the same evidence in each county resulting in a waste of judicial, prosecution and defense resources.

In 2009, the Legislature expanded the jurisdictional provisions for identity theft to include situations multiple victims involving the same defendant or defendants as part of the same scheme or substantially similar activity. (SB 226 (Alquist), Ch. 40, Stats. 2009.)

This legislation seeks to address similar jurisdictional issues which can arise when prosecuting “revenge porn” cases. In those cases, the distribution of images can potentially involve multiple counties and victims.

- 3) **Electronic Communications Privacy Act (ECPA):** The ECPA is federal law which protects communication based upon its form. It protects wire and electronic communication content in storage by the provider. The ECPA applies to all parties, private and law

enforcement alike. However, for law enforcement, there are mechanisms for requiring disclosure to the government by public Electronic Communication Service (ECS) Providers of information regarding an electronic communication. The most well-known example of an ECS would be an Internet Service Provider (ISP), such as America On Line, Hotmail, or Yahoo.

A public or private ECS is generally prohibited from voluntarily disclosing the content of wire and electronic communication intercepted during transmission. The four exceptions to this rule are: (1) where the addressee / sender consents to the disclosure; (2) where the communication provider is permitted to disclose customer communications in emergencies involving an immediate risk of death or serious physical injury to a person; (3) when the disclosure is necessary to protect the rights or property of the communication service provider; and (4) where the communication provider inadvertently obtains information that pertains to the commission of a crime.

- 4) **Search Warrants Seeking Electronic Information in Investigations of Misdemeanor Conduct:** Search warrants are generally limited to cases where law enforcement is investigating felony conduct. However, the law provides law enforcement to seek and obtain search warrants under specific circumstances involving misdemeanor conduct.

Law enforcement can seek a search warrant to investigate misdemeanor criminal conduct when a provider of electronic communication service or remote computing service has records or evidence showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery. (Pen. Code, § 1524, subd. (a)(7).) Under those circumstances, the investigating agency can obtain a search warrant for the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of that service, and the types of services the subscriber or customer used. (Pen. Code 1524.3, subd. (a).)

- 5) **Amendments Proposed by Committee:** The Committee has suggested amendments at the request of the chair which would to limit any use of a search warrant for “revenge porn” and other specified misdemeanors, to exclude the content of any electronic communications.
- 6) **Argument in Support:** According to *The California Police Chiefs Association*, “AB 1310 would permit the seizure of cyber exploitation, commonly referred to as ‘revenge porn’ images as grounds for issuance of a search warrant, giving law enforcement the ability to search electronic databases and retrieve the victims’ images. It would additionally allow the prosecuting district attorney’s office to bring an action against an individual in the jurisdiction in which the individual whose image was published resides. Since poster and website operators commonly reside outside of the victims’ jurisdiction, this would relieve some of the burden placed on the victim during prosecution. The justice system is intended to protect the public and bring justice to victims. Criminals shouldn’t be allowed to use legal technicalities as a shield against prosecution.”
- 7) **Argument in Opposition:** According to *California Attorneys for Criminal Justice*, “AB 1310 would expand the power of our courts to issue search warrants in misdemeanor matters

other than those narrow exceptions that were recently engrafted into the Penal Code (under the aegis of public safety in drunk driving refusal matters). Those provisions allow merely a blood draw (not a residential search), to occur for purposes of proving an extremely harmful misdemeanor. AB 1310 would unnecessarily allow the issuance of warrants to search private residences day or night for evidence of what amounts to, at worst, a ubiquitous and easily detected public nuisance.

“While the advent of requiring a warrant in circumstances not familiar to law enforcement may have justified recent amendments to 1524 that apply in certain DUI cases, CACJ is concerned that AB 1310 shares none of the public safety imperatives that occur when a suspected drunk driver refuses to provide a blood or breath sample. There appears to be no urgency, or exigence, that would justify the issuance of a warrant to search private homes for evidence that conduct in violation of subdivision (j) of Section 647 has occurred or is occurring. AB 1310 is simply unnecessary. PPP Any valid search warrant requires the police to swear out an affidavit that contains some evidence that what they are looking for will be found at the place to be searched. However, if the police already have that much evidence that a violation of 647(j) has or will occur, then it is the better practice to prove this via subpoena or summons to ISP providers for ISP address information and other means that are readily available to law enforcement.”

- 8) **Related Legislation:** SB 178 (Leno) prohibits a government entity from compelling the production of or access to electronic communication information or electronic device information, as defined, without a search warrant or wiretap order, except for emergency situations, as defined. SB 178 is awaiting hearing in the Senate Appropriations Committee.
- 9) **Prior Legislation:**
- a) SB 255 (Cannella), Chapter 466, Statutes of 2013, provides that any person who photographs or records by any means the image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person subsequently distributes the image taken, with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress, is guilty of disorderly conduct and subject to that same punishment.
 - b) SB 612 (Simitian), Chapter 47, Statutes of 2008, expands the jurisdictional provisions to include the crimes of unauthorized retention and transfer of personal identifying information when crimes involved identity theft. Added the county in which the victim resided at the time the offense was committed to the jurisdictions in which a criminal action may be brought for commission of these crimes.
 - c) SB 226 (Alquist), Chapter 40, Statutes of 2009, provides that when multiple offenses occur in multiple jurisdictions and all of the offenses involve the same defendant or defendants and either the same personal identifying information of one person or the same scheme or substantially similar activity, then jurisdiction for all offenses, including associated offenses connected together in their commission to an underlying identity theft offense, is proper in any one of the counties where one of the offenses occurred.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Kamala Harris
Association of Deputy District Attorneys
Association for Los Angeles Deputy Sheriffs
California District Attorneys Association
California Police Chiefs Association
California State Sheriffs' Association
Crime Victims United of California
Los Angeles Police Protective League
Peace Officers Research Association of California
Riverside Sheriffs Association

Opposition

California Public Defenders Association
California Attorneys for Criminal Justice

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: April 28, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1491 (O'Donnell) – As Amended April 20, 2015

SUMMARY: Increases the punishment for supervision of a prostitute from a misdemeanor to an alternate felony/misdemeanor if the defendant is an active member of a gang, regardless of whether or not the supervision was done for the benefit of the gang. Specifically, **this bill:**

- 1) Provides that if a person is guilty of supervising a prostitute while being an active participant in a criminal street gang they shall be punished by imprisonment for 16 months, two, or three years or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.
- 2) Requires that the defendant shall register as a gang member.

EXISTING LAW:

- 1) Provides that any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in a state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail. (Pen. Code, § 186.22, subd. (d).)
- 2) Enacts the California Street Terrorism Enforcement and Prevention (STEP) Act which seeks the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. (Pen. Code, §§ 186.20 & 186.21.)
- 3) States that any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years. (Pen. Code, § 186.22, subd. (a).)
- 4) Adds an additional and consecutive term of confinement to the base term when a person is convicted of a felony committed for the benefit of, at the direction of, or an association with

any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members. (Pen. Code § 186.22(b).)

- 5) Defines a "criminal street gang" as any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in existing law having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity. (Pen. Code § 186.22, subd. (f).)
- 6) Contains provisions for punishing gang-related activity as a conspiracy. (Pen. Code., § 182.5.)
- 7) Criminalizes gang recruitment or solicitation to actively participate in a gang. (Pen. Code, § 186.26.)
- 8) Requires convicted criminal gang offenders to register with the local chief of police or sheriff within 10 days of release from custody, as specified. (Pen. Code, §§ 186.30 & 186.32.)
- 9) Provides that a violation of the registration requirements is a crime. (Pen. Code, § 186.33.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Criminal street gangs have been continually evolving new methods to fund gang activities for decades. In recent years, they have increasingly migrated to commercial sexual exploitation as a new source of illicit income. These criminals view human trafficking as a more profitable and lower risk enterprise than drug or weapons trafficking. While a trafficker can sell a gun or drugs once before investing additional resources to replenish his supply, he can sell the same person over and over.

"AB 1491 gives discretion to prosecutors to pursue a charge of "supervising a prostitute" as a felony when the crime is found to be conducted by a member of a criminal street gang. The bill provides the tools necessary to convict perpetrators and keep them behind bars. This will allow us to deal significant damage to the human trafficking operations of these gangs and help protect the victims of this horrible underground sexual abuse."

- 2) **The Gang Statute:** Penal Code Section 186.22 has three separate charging provisions. First, subdivision (a) of the statute contains the criminal offense of gang participation. It prohibits actively participating in a criminal street gang combined with willfully promoting, furthering, or assisting in any felonious conduct by members of that gang. The gravamen of the offense is the "participation in the gang itself." [*People v. Herrera* (1999) 70 Cal.App.4th 1456, 1467, fns. omitted.]

The second provision is an enhancement allegation contained in subdivision (b)(1). If pleaded and proved, it increases the sentence for an underlying felony. The allegation is applicable to any felony "committed for the benefit of, at the direction of, or in association

with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members."

The third, subdivision (d) of the statute, is an alternate penalty allegation which technically applies to all felonies and misdemeanors "committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members," but whose practical application is to raise the sentences only for gang-related misdemeanors.

- 3) ***People v. Rodriguez* (2012) 55 Cal.4th 1125**: In *Rodriguez*, the California Supreme Court resolved conflicting Court of Appeal interpretations of Penal Code Section 186.22(a), the substantive crime of active participation in a criminal street gang. That subdivision provides in full: "Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years." [Penal Code Section 186.22(a).] The lower courts had split on whether the phrase "criminal conduct by members of that gang" required participation by more than a single gang member.

In *Rodriguez*, the defendant, a Norteno gang member, acted alone in committing an attempted robbery. Among other offenses, he was convicted of the criminal street gang offense. (*People v. Rodriguez, supra*, 55 Cal.4th at pp. 1128-1129.) He appealed that conviction.

Interpreting the phrase "criminal conduct by members of that gang," the Court held that the plain meaning of the statute requires that the conduct in question be committed by at least two gang members, one of whom may be the defendant if he is a gang member. (*Id.* at p. 1132.) The Court noted that "members" is a plural noun. (*Ibid.*) Thus, if the defendant acts alone, he cannot be guilty of violating subdivision (a). The statute requires at least two perpetrators whose felonious conduct benefits the gang.

This Court noted that requiring that a defendant commit the underlying felony with at least one other gang member reflects the Legislature's attempt to avoid "any potential due process concerns that might be raised by punishing mere gang membership." [*Id.* at p. 1133, citing *Scales v. United States* (1961) 367 U.S. 203.] Penal Code Section 186.22(a) imposes criminal liability not for lawful association, but only when a defendant actively participates in a criminal street gang while also acting with guilty knowledge and intent. By requiring that a defendant commit an underlying felony with at least one other gang member, the Legislature avoided punishing mere gang membership. (*Id.* at p. 1134.) Use of the plural word "members" reflects the Legislature's attempt to provide a nexus between the felonious conduct and the gang activity to satisfy due process. (*Id.* at p. 1135.)

The Court also relied heavily on its earlier opinion in *People v. Albillar* (2010) 51 Cal.4th 47, which interpreted the gang enhancement in subdivision (b) to distinguish the two provisions. The substantive offense, unlike the enhancement, does not require a specific intent to promote the gang, but rather only knowledge of the gang's pattern of criminal activity. And the enhancement, unlike the substantive offense, requires that the underlying felony be gang related. (*Id.* at pp. 1134-1135.) The court emphasized the two provisions "strike at different

things." (*Id.* at p. 1138.) The enhancement punishes gang-related conduct, i.e. felonies committed with the specific intent to benefit, further, or promote the gang; whereas the substantive offense punishes gang members who act in concert with other gang members in committing a felony, regardless of whether the felony is gang related. (*Ibid.*)

The Supreme Court noted that a gang member who commits a felony by himself or herself will not go unpunished. Not only will that person be convicted of the underlying felony, but he or she may also be eligible for punishment under the gang enhancement, which carries a longer term of incarceration than the substantive gang crime. (*Id.* at pp. 1138-1139.)

- 4) **Gang Members vs. Active Participants:** Under the current language of the statute, in order to prove the elements of the substantive offense, the prosecution must prove that defendant: (a) is an *active participant* of a criminal street gang, (b) that he or she had knowledge that its *members* engage in or have engaged in a pattern of criminal gang activity, and (c) he or she willfully promoted, furthered, or assisted in ... felonious criminal conduct *by members* of that gang. [*People v. Lamas* (2007) 42 Cal.4th 516, 524, italics added.] Thus, the statute distinguishes between gang members and active participants.

As to the active participation requirement, that statute says it is not necessary to prove that the defendant is a member of the criminal street gang. [Penal Code Section 186.22(i); see also *In re Jose P.* (2003) 106 Cal.App.4th 458, 466.]

The California Supreme Court has previously construed the phrase "active participation" in Penal Code Section 186.22(a) as being "some enterprise or activity" in which the defendant's participation is more than "nominal or passive." [*People v. Castaneda* (2000) 23 Cal.4th 743, 747, 749-750; see also *In re Jose P.* (2003) 106 Cal.App.4th 458, 466.] California jury instructions also echo this definition of "active participant." Relevant portions instruct the jury that "[a]ctive participation means involvement with a criminal street gang in a way that is more than passive or in name only. (See CALCRIM No. 1400.)

- 5) **Constitutional Considerations:** Gang membership is constitutionally protected activity under the First Amendment. [*Dawson v. Delaware* (1992) 503 U.S. 159, 163-164.] The United States Supreme Court has held that mere association with a group cannot be punished unless there is proof that the defendant knows of and intends to further its illegal aims. [*Scales v. United States, supra*, 367 U.S. 203, 229.]

As the Supreme Court noted in *Rodriguez, supra*, 55 Cal. 4th 1125, requiring that the defendant commit the underlying offense together with another gang member provides a nexus to the gang which avoids punishing mere gang membership. (*Id.* at pp. 1133-1134.)

This bill seeks to punish otherwise misdemeanor conduct as a felony, simply because the defendant is a member of a street gang. The crime in question does not have to meet the statutorily required elements that the conduct be committed at the direction or for the benefit of a criminal street gang. The mere fact that the defendant is alleged to be a member of a criminal gang will be enough to not only elevate the penalty of the offense, but will also require that the defendant register as a gang member.

- 6) **Argument in Support:** None submitted.

- 7) **Argument in Opposition:** According to the *American Civil Liberties Union*, "AB 1491 would create a new crime for 'supervising a prostitute while being an active participant in a criminal street gang.' Under Penal Code section 186.22(d), it is already a crime for a person to commit any offense, including 'supervising a prostitute,' if that offense

"is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members

"AB 1491 would remove the requirement that the offense was committed for the benefit of and with the specific intent to promote the street gang. This would effectively making it a crime *to simply be* a member of a street gang while supervising a prostitute, even if the prostitution-related crime *was not committed for* the benefit of the gang.

"AB 1491 goes too far in criminalizing status rather than conduct. The most relevant case on the constitutional limits of criminalizing membership in an organization is *Scales v. US* (1961) 367 U.S. 203. The court in *Scales* said:

"In our jurisprudence guilt is personal, and when the imposition of punishment on a status or on conduct can only be justified by reference to the relationship of that status or conduct to other concededly criminal activity [. . .], that relationship must be sufficiently substantial to satisfy the concept of personal guilt in order to withstand attack under the Due Process Clause of the Fifth Amendment.

"(*Id.* at 224-225.) The court stated further:

"[W]e can perceive no reason why one who **actively and knowingly** works in the ranks of that organization, **intending to contribute to the success of those specifically illegal activities**, should be any more immune from prosecution than he to whom the organization has assigned the task of carrying out the substantive criminal act.

"(*Id.* at 226-227 [emphasis added].)

"This is why Penal Code section 186.22(d) requires not just "active participation" in a street gang but also that the crime 'is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members.' By removing this element, AB 1491 reduces the culpability requirements for this crime too far. For these reasons, we oppose AB 1491."

8) **Prior Legislation:**

- a) AB 2590 (Feuer), of the 2007-08 Legislative Session, would have revised the definition of "criminal street gang" and "active participant" for the purposes of the STEP Act. AB 2590 was held on the Assembly Appropriations Committee's Suspense File.
- b) Proposition 21, of the March 7, 2000 election, enacted a number of public safety provisions, including several gang provisions. Proposition 21 increased penalties for gang-related crimes, created a new crime of conspiracy related to gang activity, and

required registration for adults and minors who have been convicted of participation in a street gang, or where the gang enhancement was found to be true.

- c) SB 1555 (Robbins), Chapter 1256, Statutes of 1987, and AB 2013 (Moore), Chapter 1242, Statutes of 1877, both enacted the STEP Act. Both bills were signed by the Governor on the same day, but SB 1555 was chaptered last.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
Long Beach Police Officers Association

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
California Public Defenders Association
Legal Services for Prisoners with Children

Analysis Prepared by: Gabriel Caswell / PUB. S. / (916) 319-3744

Date of Hearing: April 28, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 534 (Linder) – As Introduced February 23, 2015

VOTE TO GRANT RECONSIDERATION

SUMMARY: Requires the court to suspend the driving privilege for six months of any person who pleads guilty or nolo contendere to hit and run with property damage if the charge is a substitute or in satisfaction of the charge of hit and run resulting in injury or death. Specifically, **this bill:**

- 1) Provides that if the prosecution agrees to a plea of guilty or nolo contendere to a charge of leaving the scene of an accident resulting in property damage without stopping and properly identifying himself or herself, in satisfaction of, or a substitute for the charge of leaving the scene of an accident resulting in injury or death without stopping and properly identifying himself or herself, the prosecutor shall state for the record the factual basis for the satisfaction or substitution, including whether the defendant was involved in accident in which a person was struck.
- 2) States that if the court accepts the defendant's plea of guilty or nolo contendere to a charge of leaving the scene of an accident resulting in property damage without stopping and properly identifying himself or herself, and the prosecutor's states that the driver of the vehicle was involved in an accident where a person was struck, the court shall immediately suspend the convicted driver's privilege to operate a motor vehicle for a period of six months.

EXISTING LAW:

- 1) Provides that a court may suspend, for not more than six months, the privilege of a person to operate a motor vehicle upon conviction of any of the following offenses:
 - a) Failure of a driver involved in an accident where property is damaged to stop and exchange specified information;
 - b) Reckless driving proximately causing bodily injury;
 - c) Failure of a driver to stop at a railroad crossing as required;
 - d) Evading or fleeing from a peace officer in a motor vehicle or upon a bicycle; and,
 - e) Knowingly causing or participating in a vehicular collision, or any other vehicular accident, for the purpose of presenting or causing to be presented any false or fraudulent insurance claim. (Veh. Code, §13201.)

Date of Hearing: April 28, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 534 (Linder) – As Introduced February 23, 2015

VOTE TO GRANT RECONSIDERATION

SUMMARY: Requires the court to suspend the driving privilege for six months of any person who pleads guilty or nolo contendere to hit and run with property damage if the charge is a substitute or in satisfaction of the charge of hit and run resulting in injury or death. Specifically, **this bill:**

- 1) Provides that if the prosecution agrees to a plea of guilty or nolo contendere to a charge of leaving the scene of an accident resulting in property damage without stopping and properly identifying himself or herself, in satisfaction of, or a substitute for the charge of leaving the scene of an accident resulting in injury or death without stopping and properly identifying himself or herself, the prosecutor shall state for the record the factual basis for the satisfaction or substitution, including whether the defendant was involved in accident in which a person was struck.
- 2) States that if the court accepts the defendant's plea of guilty or nolo contendere to a charge of leaving the scene of an accident resulting in property damage without stopping and properly identifying himself or herself, and the prosecutor's states that the driver of the vehicle was involved in an accident where a person was struck, the court shall immediately suspend the convicted driver's privilege to operate a motor vehicle for a period of six months.

EXISTING LAW:

- 1) Provides that a court may suspend, for not more than six months, the privilege of a person to operate a motor vehicle upon conviction of any of the following offenses:
 - a) Failure of a driver involved in an accident where property is damaged to stop and exchange specified information;
 - b) Reckless driving proximately causing bodily injury;
 - c) Failure of a driver to stop at a railroad crossing as required;
 - d) Evading or fleeing from a peace officer in a motor vehicle or upon a bicycle; and,
 - e) Knowingly causing or participating in a vehicular collision, or any other vehicular accident, for the purpose of presenting or causing to be presented any false or fraudulent insurance claim. (Veh. Code, §13201.)

- 2) States that the Department of Motor Vehicles (DMV) immediately shall revoke the privilege of a person to operate a motor vehicle upon receipt of a duly certified abstract of the record of a court showing that the person has been convicted of any of the following crimes or offenses:
 - a) Failure of the driver of a vehicle involved in an accident resulting in injury or death to stop or otherwise comply, as specified;
 - b) A felony in which a motor vehicle is used, except as specified; and,
 - c) Reckless driving causing bodily injury. (Veh. Code, § 13350, subd. (a).)
- 3) Provides that the driver of any vehicle involved in an accident resulting in damage to any property, including a vehicle, shall immediately stop the vehicle and exchange information, as specified, or leave in a conspicuous place on the vehicle or other property damaged written notice giving the name and address of the driver of the vehicle involved. The failure to comply with these requirements is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or by both a fine and imprisonment. (Veh. Code, § 20002.)
- 4) Requires the driver of any vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in the death of any person to immediately stop the vehicle at the scene of the accident and to fulfill specified requirements. The failure to comply is punishable by imprisonment in the state prison for 16 months, two, or three years or, by imprisonment in a county jail not to exceed one year, or by a fine of not less than \$1,000 nor more than \$10,000, or by both a fine and imprisonment. If the accident results in death or permanent, serious injury, the offense is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by a fine of not less than \$1,000 nor more than \$10,000, or by both a fine and imprisonment. (Veh. Code, § 20001, subs. (a) & (b).)
- 5) Provides that a person who flees the scene of the crime after committing vehicular manslaughter with gross negligence or vehicular manslaughter while intoxicated, upon conviction for that offense, in addition and consecutive to the punishment prescribed, shall be punished by an additional term of imprisonment of five years in the state prison. Existing law provides that this additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. (Veh. Code, § 20001, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 534 adds Section 13200.3 of the Vehicle Code to help reduce the number of hit-and-run accidents, while prioritizing highway safety and protecting victims. This bill addresses hit-and-run drivers who commit an offense punishable by a mandatory one year license revocation, but get to keep their licenses after entering into a plea bargain. AB 534 ensures that this will no longer happen by granting prosecuting agencies the flexibility to plea bargain a hit-and-run with injury down to a hit-

and-run with property damage while ensuring a mandatory six month license suspension."

- 2) **Argument in Support:** The *Association of California Highway Patrolmen* argues, "Under current law hit and run accidents are classified into three categories: (1) a misdemeanor hit-and-run with property damage, (2) a wobblers hit-and-run involving other injury, and (3) a wobblers hit and run involving serious injury or death. A level one conviction is subject to a six month license suspension; however, it is at the discretion of the court.

"This bill would revise these provisions and make the six month suspension mandatory.

"Hit and run accidents are becoming more prevalent. Current penalties do not reflect the seriousness of the crime and therefore do not act as an effective deterrent. AB 534 would change the law to make hit and run drivers more accountable for their actions, in the hopes of reducing the number of accidents."

- 3) **Argument in Opposition:** The *American Civil Liberties Union* argues, "AB 534 would require courts to immediately suspend, for six months, the driving privilege of any defendant who pleads guilty or nolo contendere to a violation of Vehicle Code section 20002 (failure to comply with specified requirements in accidents resulting only in damage to property) which was originally charged as a violation of Vehicle Section 20001 (failure to comply with specified requirements in accidents resulting in injury to a person) when the prosecution states for the record that the person was involved in an accident where a person was struck.

"However, under current law, courts already have within their discretion the ability to suspend for six months, the driver's privilege of any defendant convicted of a violation of Vehicle Code section 20002 – regardless of whether a defendant was involved in an accident where a person was struck (Vehicle Code section 13201). By requiring courts to immediately suspend driver's privileges in all cases in which a defendant is convicted of a violation of Vehicle Code section 20002 under the circumstances described by the bill, AB 534 unnecessarily and improperly strips courts of their discretion."

4) **Prior Legislation:**

- a) AB 1532 (Gatto), of the 2013-14 Legislative Session, would have required that the privilege to operate a motor vehicle shall be suspended for six months for any person convicted of being a driver of a vehicle involved in an accident where a person is struck, but not injured, and the driver of the vehicle leaves the scene of the accident without exchanging required information, as specified. AB 1532 was vetoed by the Governor.
- b) AB 2337 (Linder), of the 2013-14 Legislative Session, would have increased from one to two years the mandatory suspension of the privilege to operate a motor vehicle for any person convicted of leaving the scene of an accident resulting in injury or death without exchanging required identification information. AB 2337 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Highway Patrolmen
Association for Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
Riverside Sheriffs' Association
Crime Victims United of California
American Motorcyclist Association
City of Torrance
Walk & Bike Mendocino

Opposition

California Public Defenders Association
American Civil Liberties Union
California Attorneys for Criminal Justice
Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744