

VICE CHAIR
MELISSA A. MELENDEZ

MEMBERS
REGINALD BYRON JONES-SAWYER, SR.
TOM LACKEY
PATTY LÓPEZ
EVAN LOW
MIGUEL SANTIAGO

**Assembly
California Legislature**



**ASSEMBLY COMMITTEE ON
PUBLIC SAFETY**
BILL QUIRK, CHAIR
ASSEMBLYMEMBER, TWENTIETH DISTRICT

CHIEF COUNSEL
GREGORY PAGAN

COUNSEL
DAVID BILLINGSLEY
GABRIEL CASWELL
STELLA Y. CHOE
SANDY URIBE

AGENDA

9:00 a.m. – July 14, 2015
State Capitol, Room 126

PART II

SB 519 (Hancock) – SB 795 (PUB. S.)

Date of Hearing: July 14, 2015
Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 519 (Hancock) – As Amended June 2, 2015
As Proposed to be Amended in Committee

SUMMARY: Makes reforms to rules governing the processing of claims by the California Victim Compensation and Government Claims Board (board). Specifically, **this bill:**

- 1) Prohibits the board from requiring an applicant to submit documentation from the Internal Revenue Service, the Franchise Tax Board, the State Board of Equalization, the Social Security Administration, or the Employment Development Department in order to determine eligibility for compensation.
- 2) Requires all correspondence by the board to an applicant to be written in specified languages.
- 3) Prohibits the denial of a claim for a victim who is a minor based on the grounds of failing to cooperate with law enforcement.
- 4) Provides that a felon on probation or parole is eligible for compensation for mental health counseling despite this status.
- 5) Prohibits the board from establishing policy or regulations limiting the amount recoverable for funeral expenses to less than \$7500.
- 6) Requires the board to approve or deny an application within 90 days of acceptance.
- 7) Allows an applicant to be accompanied by a service animal at a hearing to contest the denial of a claim.
- 8) Permits a crime victim to testify at a restitution hearing or a modification hearing by live, two-way audio and video transmission, if it is available at the court.

EXISTING LAW:

- 1) Establishes the board to operate the California Victim Compensation Program (CalVCP). (Gov. Code, § 13950 et. seq.)
- 2) Provides that an application for compensation shall be filed with the board in the manner determined by the board. (Gov. Code, § 13952, subd.(a).)
- 3) 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.)
- 4) 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).)

- 5) 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.)
- 6) 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.
- 7) 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).)
- 8) Requires the board to approve or deny applications, based on recommendations by the board staff, within an average of 90 calendar days and no later than 180 calendar days of acceptance by the board. (Gov. Code, § 13958, subd. (a).)
- 9) Requires the board, if it fails to meet the 90-day average, to report to the Legislature on a quarterly basis its progress and current average processing time. (Gov. Code, § 13958, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "It should not be surprising that crime incurs all kinds of costs on its victims. In 2004, a National Institute of Justice report estimated that the nationwide costs of crime are \$105 billion per year. When factoring in pain-and-suffering and reduced quality of life, that figure jumps to \$450 billion. Making sure that victims are compensated by their victimizers is not only good economic policy, but morally sound.

"Providing justice and compensation to Californians who are the victims of crime are among the paramount missions of our government. The intent of SB 519 is to improve the way that the Victim Compensation and Government Claims Board provides compensation for crime victims."

- 2) **Background:** The 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) **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 LAO 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>>.)
- 4) **Bureau of State Audit Recommendations:** In 2008, the Bureau of State Audits conducted a review of the CalVCP. (*Victim Compensation and Government Claims Board: It Has Begun Improving the Victim Compensation Program, but More Remains to Be Done*, (Dec. 2008), <<http://www.bsa.ca.gov/pdfs/reports/2008-113.pdf>>.) One of the areas the bureau considered was how long it took the board to process applications. The bureau concluded that, at times, applications were not processed in a timely manner:

State law related to eligibility determinations for the program requires the board to approve or deny applications, based on the recommendation of board staff, within an average of 90 calendar days, and no later than 180 calendar days after the acceptance date for an individual application. For the 49 applications we reviewed, the board's average processing time was 76 days, which is well within the statutory average. However, the board did not make a determination within 180 days in two instances. We also noted various instances in which the board did not demonstrate that it approved or denied the applications as promptly as it could have after receiving the information necessary to make the determination. (*Id.* at pp. 30-31.)

For the 49 applications we reviewed from fiscal years 2003–04 through 2007–08, we found that the board's average processing time was 76 days, which is well within the 90-day average required under state law. However, we noted that in 16 of the 49 applications we reviewed, the board took more than 90 days from acceptance to notify the applicant of its recommended decision to approve or deny the application. Although taking more than 90 days to approve or deny an individual application is not a violation of state law, any unnecessary delays in processing contribute to crime victims waiting longer than necessary to be reimbursed for out-of-pocket expenses. Delays may also cause providers to become frustrated and stop participating in the program, reducing services available to crime victims and their families. (*Id.* at p. 31.)

Because the delay in disbursing payments has persisted, this bill requires the board to approve or deny an application within 90 days, not within an average of 90 days.

- 5) **Argument in Support:** According to *Californians for Safety and Justice*, "Through our outreach, time and again we have encountered victims and survivors of crime in need of support opportunities to heal from trauma. The overwhelming impact of serious crime is often exacerbated by the justice system process and crime victims often face challenges finding the right supports for recovery. We often hear survivors talk about how support services to heal from trauma are an ongoing unmet need. Our 2013 survey of crime victims in California, the first of its kind, found that four of the five services available to crime victims, including assistance accessing victims' compensation and navigating the criminal justice process, were unknown to the majority of victims. SB 519 will begin to address these barriers and help more crime victims get the support they need."
- 6) **Related Legislation:**
 - a) AB 1140 (Bonta) revises various rules governing the CalVCP. AB 1140 is pending hearing in the Senate Public Safety Committee.
 - b) SB 556 (De León) defines "application processing time" for the approval or denial of a victim's compensation claim. SB 556 is pending hearing in the Assembly Appropriations Committee.
- 7) **Prior Legislation:**
 - a) AB 1911 (Patterson), of the 2013-2014 Legislative session, would have shortened the time period in which the board must approve or deny an application to within 30 calendar days of the date of acceptance, and also would have shortened the time period in which the board must make disbursements of funds for emergency awards. AB 1911 was never heard by this committee.
 - b) 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.

- c) AB 2869 (Leno), Chapter 582, Statutes of 2006, specified that the provisions authorizing reimbursement for funeral and burial expenses apply without respect to any felon status of the victim.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco District Attorney (Sponsor)
California Catholic Conference of Bishops
California Department of Justice
Californians for Safety and Justice
City and County of San Francisco
Crime Victims United of California
Institute on Aging
Legal Services for Prisoners with Children
Santa Clara County District Attorney

Opposition

None

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

Amendments Mock-up for 2015-2016 SB-519 (Hancock (S))

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

**Mock-up based on Version Number 97 - Amended Senate 6/2/15
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 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.

(3) The board shall not require an applicant to submit documentation from the Internal Revenue Service, the Franchise Tax Board, the State Board of Equalization, the Social Security Administration, or the Employment Development Department in order to determine eligibility for compensation.

(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) An attorney.

(B) If the victim or derivative victim is a minor or an incompetent adult, the legal guardian or conservator, or an immediate family member, parent, or relative caregiver who is not the perpetrator of the crime that gave rise to the claim.

(C) A victim assistance advocate certified pursuant to Section 13835.10 of the Penal Code.

(D) An immediate family member of the victim or derivative victim, who has written authorization by the victim or derivative victim, and who is not the perpetrator of the crime that gave rise to the claim.

(E) Other persons who shall represent the victim or derivative victim pursuant to rules adopted by the board.

(F) A county social worker designated by a county department of social services to represent a child abuse victim or an elder abuse victim if that victim is unable to file on his or her own behalf.

(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.

(e) All correspondence by the board to an applicant shall be written in English, Spanish, Chinese (Mandarin and Cantonese), Vietnamese, Korean, East Armenian, Tagalog, Russian, Arabic, Farsi, Mong, and Khmer.

SEC. 2. 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 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, knowingly and willingly participated in the commission of the crime that resulted in the pecuniary loss for which compensation is being sought pursuant to this chapter. However, this subdivision shall not apply if the injury or death occurred as a direct result of a crime committed in violation of Section 261, 262, or 273.5 of, or a crime of unlawful sexual intercourse with a minor committed in violation of subdivision (d) of Section 261.5 of, the Penal Code.

(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. However, 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, 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. An application for a claim shall not be denied pursuant to this paragraph in any case in which the victim is eligible for compensation as a minor.

(2) An application for a claim based on domestic violence 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 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 the fact that the victim has obtained a temporary or permanent restraining order, or all of these.

(3) 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.

(4) (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) An application for compensation 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 persons whose injury or death gives rise to the application. In the case of a minor, the board shall consider the minor'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 a derivative victim of trafficking under 18 years of age may not be denied on the basis of the denial of the victim's application under this subdivision.

(d) (1) Notwithstanding Section 13955, a person who is convicted of a felony shall not 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, if any, unless the compensation is solely used to fund mental health counseling. 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.

(2) A person who has been convicted of a felony 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).

(3) Applications of victims who are not felons shall receive priority in the award of compensation over an application submitted by a felon who has met the requirements for compensation set forth in paragraph (1).

SEC. 3. 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, 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, sibling, child, 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 victim of a crime of unlawful sexual intercourse with a minor committed in violation of subdivision (d) of Section 261.5 of the Penal Code. A derivative victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not be eligible for reimbursement of mental health counseling expenses.

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

(3) Reimburse the expenses of nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(4) 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.

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

(6) Reimburse the claimant for the expense of installing or increasing residential security, not to exceed one thousand dollars (\$1,000). Reimbursement shall be made either upon verification by law enforcement that the security measures are necessary for the personal safety of the claimant or verification by a mental health treatment provider that the security measures are necessary for the emotional well-being of the claimant. 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. 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.

(7) Reimburse the expense of renovating or retrofitting a victim's residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle 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.

(8) (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.

(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.

(9) 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). ~~The board shall consider granting an applicant an award up to seven thousand five hundred dollars (\$7,500).~~ Any regulation or policy by the board creating a maximum amount of an award pursuant to this provision for less than seven thousand five hundred dollars (\$7,500) is prohibited.

(10) When the crime occurs in a residence, 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.

(11) 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).

(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 amount may be increased to seventy thousand dollars (\$70,000) if federal funds for that increase are available.

SEC. 4. Section 13958 of the Government Code is amended to read:

13958. The board shall approve or deny applications, based on recommendations of the board staff, within 90 calendar days of acceptance by the board or victim center.

(a) If the board does not meet the 90-day requirement prescribed in this subdivision, the board shall, thereafter, report to the Legislature, on a quarterly basis, its progress and its current average time of processing applications. These quarterly reports shall continue until the board meets the 90-day requirement for two consecutive quarters.

(b) If the board fails to approve or deny an individual application within 90 days of the date it is accepted, pursuant to this subdivision, the board shall advise the applicant and his or her representative, in writing, of the reason for the failure to approve or deny the application.

SEC. 5. Section 13959 of the Government Code is amended to read:

13959. (a) The board shall grant a hearing to an applicant who believes he or she is entitled to compensation pursuant to this chapter to contest 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) (1) 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.

(2) The board shall allow a service animal to accompany and support a witness while testifying at a hearing.

(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.

(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.

~~SEC. 6. Section 1050 of the Penal Code is amended to read:~~

~~1050. (a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings. In further accordance with this policy, death penalty cases in which both the prosecution and the defense have informed the court that they are prepared to proceed to trial shall be given precedence over, and set for trial and heard without regard to the pendency of, other criminal cases and any civil matters or proceedings, unless the court finds in the interest of justice that it is not appropriate.~~

~~(b) To continue any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary and (2) within two court days of learning that he or she has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the calendar clerk of each court involved, in writing, indicating which hearing was set first. A party shall not be deemed to have been served within the meaning of this section until that party actually has received a copy of the documents to be served, unless the party, after receiving actual notice of the request for continuance, waives the right to have the documents served in a timely manner. Regardless of the proponent of the motion, the prosecuting attorney shall notify the people's witnesses and the defense attorney shall notify the defense's witnesses of the notice of motion, the date of the hearing, and the witnesses' right to be heard by the court.~~

~~(c) Notwithstanding subdivision (b), a party may make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the failure to comply with those requirements, the court may impose sanctions as provided in Section 1050.5.~~

~~(d) When a party makes a motion for a continuance without complying with the requirements of subdivision (b), the court shall hold a hearing on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted.~~

~~(e) Continuances shall be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause.~~

~~(f) At the conclusion of the motion for continuance, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.~~

~~(g) (1) When deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case.~~

~~(2) For purposes of this section, "good cause" includes, but is not limited to, those cases involving murder, as defined in subdivision (a) of Section 187, allegations that stalking, as defined in Section 646.9, a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or Section 11165.6, domestic violence, as defined in Section 13700, a hate crime, as defined in Title 11.6 (commencing with Section 422.6) of Part 1, or elder abuse, as defined in Section 368 of the Penal Code, has occurred, or a case being handled in the Career Criminal Prosecution Program pursuant to Sections 999b through 999h, and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. A continuance under this paragraph shall be limited to a maximum of 10 additional court days.~~

~~(3) Only one continuance per case may be granted to the people under this subdivision for cases involving stalking, hate crimes, or cases handled under the Career Criminal Prosecution Program. Any continuance granted to the people in a case involving stalking or handled under the Career Criminal Prosecution Program shall be for the shortest time possible, not to exceed 10 court days.~~

~~(h) Upon a showing that the attorney of record at the time of the defendant's first appearance in the superior court on an indictment or information is a Member of the Legislature of this state and that the Legislature is in session or that a legislative interim committee of which the attorney is a duly appointed member is meeting or is to meet within the next seven days, the defendant shall be entitled to a reasonable continuance not to exceed 30 days.~~

~~(i) A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes.~~

~~(j) Whenever it shall appear that any court may be required, because of the condition of its calendar, to dismiss an action pursuant to Section 1382, the court must immediately notify the Chair of the Judicial Council.~~

~~(k) This section shall not apply when the preliminary examination is set on a date less than 10 court days from the date of the defendant's arraignment on the complaint, and the prosecution or the defendant moves to continue the preliminary examination to a date not more than 10 court days from the date of the defendant's arraignment on the complaint.~~

~~(l) This section is directory only and does not mandate dismissal of an action by its terms.~~

~~SEC. 7. SEC. 6~~ Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime.

(2) Upon a person being convicted of a crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense. If the person is convicted of a felony, the fine shall not be less than two hundred forty dollars (\$240) starting on January 1, 2012, two hundred eighty dollars (\$280) starting on January 1, 2013, and three hundred dollars (\$300) starting on January 1, 2014, and not more than ten thousand dollars (\$10,000). If the person is convicted of a misdemeanor, the fine shall not be less than one hundred twenty dollars (\$120) starting on January 1, 2012, one hundred forty dollars (\$140) starting on January 1, 2013, and one hundred fifty dollars (\$150) starting on January 1, 2014, and not more than one thousand dollars (\$1,000).

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of the minimum fine pursuant to paragraph (1) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. A defendant's inability to pay

shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the minimum fine pursuant to paragraph (1) of subdivision (b). The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Section 11469 of the Health and Safety Code, be applied to the restitution fine if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the minimum fine pursuant to paragraph (1) of subdivision (b), the court shall consider any relevant factors, including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments authorized in Section 1464 or Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, or the state surcharge authorized in Section 1465.7, and shall be deposited in the Restitution Fund in the State Treasury.

(f) Except as provided in subdivisions (q) and (r), in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so and states them on the record. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Section 11469 of the Health and Safety Code, be applied to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion. A victim at a restitution hearing or modification hearing described in this paragraph may testify by live, two-way audio and video transmission, if testimony by live, two-way audio and video transmission is available at the court.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of a third party. Restitution ordered pursuant to this subdivision shall be ordered to be deposited to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance from the California Victim Compensation and Government Claims Board pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Mental health counseling expenses.

(D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include commission income as well as base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include commission income as well as base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(I) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary

lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified 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.

(J) Expenses to install or increase residential security incurred related to a violent felony, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

(K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

(L) Expenses for a period of time reasonably necessary to make the victim whole, for the costs to monitor the credit report of, and for the costs to repair the credit of, a victim of identity theft, as defined in Section 530.5.

(4) (A) If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, the amount of assistance provided shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered.

(B) The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the California Victim Compensation and Government Claims Board reflecting the amount paid by the board and whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills provided by the board and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement.

(C) If the defendant offers evidence to rebut the presumption established by this paragraph, the court may release additional information contained in the records of the board to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order.

(5) Except as provided in paragraph (6), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. The financial disclosure statements shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. A defendant who willfully states as true a material matter that he or she knows to be false on the disclosure required by this

subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(6) A defendant who fails to file the financial disclosure required in paragraph (5), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (5), and paragraphs (7) to (10), inclusive, shall not apply.

(7) Except as provided in paragraph (6), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(8) In its discretion, the court may relieve the defendant of the duty under paragraph (7) of filing with the clerk by requiring that the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) A report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) A stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) A report by the probation officer, or information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(9) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (5) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(10) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (5) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (5) as a condition of probation or suspended sentence.

(11) If a defendant has any remaining unpaid balance on a restitution order or fine 120 days prior to his or her scheduled release from probation or 120 days prior to his or her completion of a conditional sentence, the defendant shall prepare and file a new and updated financial disclosure identifying all assets, income, and liabilities in which the defendant holds or controls or has held or controlled a present or future interest during the defendant's period of probation or conditional sentence. The financial disclosure shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed and prepared by the defendant on the same form as described in paragraph (5). A defendant who willfully states as true a material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty. The financial disclosure required by this paragraph shall be filed with the clerk of the court no later than 90 days prior to the defendant's scheduled release from probation or completion of the defendant's conditional sentence.

(12) In cases where an employer is convicted of a crime against an employee, a payment to the employee or the employee's dependent that is made by the employer's workers' compensation insurance carrier shall not be used to offset the amount of the restitution order unless the court finds that the defendant substantially met the obligation to pay premiums for that insurance coverage.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent

that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include all of the following:

(1) The immediate surviving family of the actual victim.

(2) A corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(3) A person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:

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

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

(C) 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 subparagraph (A).

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

(E) Is the primary caretaker of a minor victim.

(4) A person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(5) A governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material, as defined in subdivision (e) of Section 594, and that has sustained an economic loss as the result of a violation of Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code.

(l) At its discretion, the board of supervisors of a county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation

shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13963 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) The court clerk shall notify the California Victim Compensation and Government Claims Board within 90 days of an order of restitution being imposed if the defendant is ordered to pay restitution to the board due to the victim receiving compensation from the Restitution Fund. Notification shall be accomplished by mailing a copy of the court order to the board, which may be done periodically by bulk mail or email.

(q) Upon conviction for a violation of Section 236.1, the court shall, in addition to any other penalty or restitution, order the defendant to pay restitution to the victim in a case in which a victim has suffered economic loss as a result of the defendant's conduct. The court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or another showing to the court. In determining restitution pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim's labor as guaranteed under California law, or the actual income derived by the defendant from the victim's labor or services or any other appropriate means to provide reparations to the victim.

(r) (1) In addition to any other penalty or fine, the court shall order a person who has been convicted of a violation of Section 350, 653h, 653s, 653u, 653w, or 653aa that involves a recording or audiovisual work 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. The order of restitution shall be based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles from which sounds or visual images are devised corresponding to the number of nonconforming devices or articles involved in the offense, unless a higher value can be proved in the case of (A) an unreleased audio work, or (B) an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc. For purposes of this subdivision, possession of nonconforming devices or articles intended for sale constitutes actual economic loss to an owner or lawful producer in the form of displaced legitimate wholesale purchases. The order of restitution shall

also include reasonable costs incurred as a result of an investigation of the violation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner or lawful producer. "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized sound or audiovisual recordings. Proof of the specific wholesale value of each nonconforming device or article is not required.

(2) As used in this subdivision, "audiovisual work" and "recording" shall have the same meaning as in Section 653w.

Date of Hearing: July 14, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 541 (Hill) – As Amended June 2, 2015
As Proposed to be Amended in Committee

SUMMARY: Codifies the State Auditor report’s recommendations on strengthening the California Public Utilities Commission’s (CPUC) oversight of transportation-related activities. Allows peace officers to impound buses and limousines of specified companies that carry passengers when they lack the required permits or licensing. Specifically, **this bill:**

- 1) Directs the CPUC to coordinate enforcement with peace officers, including:
 - a) Education outreach to ensure that those peace officers are aware of the transportation-related services, as specified, and
 - b) Establishing lines of communications to ensure that the CPUC is notified if an action is commenced so that CPUC can take appropriate action to enforce the fine and penalty provisions.
- 2) Authorizes the Attorney General, a district attorney, or a city attorney to prosecute actions or proceedings for the violation of any law committed in connection with a transaction involving the transportation of household goods and personal effects.
- 3) Requires the CPUC to establish the following goals related to its existing authority to provide oversight and regulation of transportation-related activities of household goods carriers and Charter Party Carriers (CPC) and Passenger Stage Corporations (PSC):
 - a) Prioritize the timely processing of applications and hold “application workshops” for potential applicants around the state;
 - b) Enable electronic filing of applications, reports, and fee payments;
 - c) Dedicate staff to answering telephone calls, mailings, and electronic inquiries from carriers;
 - d) Prioritize the timely processing of consumer complaints;
 - e) Implement electronic case tracking of complaints and their disposition;
 - f) Implement a process for appropriate and timely enforcement against illegally operating carriers, including by performing staff-driven investigations and performing enforcement through sting operations and other forms of presence in the field;

- g) Maintain relationships with, and implement outreach and education programs to local law enforcement, district attorneys, and airports;
 - h) Meet with carrier trade associations at least annually; and,
 - i) Implement a consolidated case tracking system that integrates each of the transportation program core functions and data collection, administrative compliance details, complaints, and investigations.
- 4) Requires the CPUC to assess its capabilities to carry out the activities, specified in the goals, and report to the Legislature with an analysis of current capabilities and deficiencies, and recommendations to overcome any deficiencies identified by January 1, 2017.
- 5) Allows peace officer to impound a bus or limousine of a CPC or PSC for 30 days if the officer determines that any of the following violations occurred while the driver was operating the vehicle of the charter-party carrier:
- a) The driver was operating the bus or limousine of a CPC or PSC when the charter-party carrier did not have a permit or certificate issued by the CPUC;
 - b) The driver was operating the bus or limousine of a CPC when the CPC or PSC was operating with a suspended permit or certificate from the CPUC; or,
 - c) The driver was operating the bus or limousine of a CPC or PSC without having a current and valid driver's license of the proper class.
- 6) Allows a peace officer to impound a bus or limousine of a CPC for 30 days if the officer determines that the driver was operating the bus or limousine without a passenger vehicle endorsement, or the required certificate.
- 7) Clarifies that impoundment provisions do not apply to privately owned, personal vehicles, or to charter-party carriers that are not required to carry individual permits.

EXISTING LAW:

- 1) Authorizes the CPUC to regulate PSCs, through the issuance of a certificate, require insurance and workers compensation, and take appropriate enforcement actions and other provisions, as specified. (Pub. Utilities Code, §§ 1031-1045.)
- 2) Specifies that "Passenger stage corporation" includes every corporation or person engaged as a common carrier, for compensation, between fixed termini (airport shuttles) or over a regular route (buses). (Pub. Utilities Code, § 226.)
- 3) Directs the CPUC to issue permits or certificates to CPCs, investigate complaints against carriers, cancel, revoke, or suspend permits and certificates for specific violations. (Public Utilities Code Section 5387.)
- 4) Defines "charter party carriers of passengers" as "every person engaged in the transportation of person by motor vehicle for compensation, whether in common or contract carriage, over

- any public highway in the state." (Pub. Utilities Code, § 5360.)
- 5) Authorizes the CPUC to regulate private carriers of passengers, including requiring public liability and property insurance, cargo insurance, knowledge of rates, documentation, timely reporting of revenues and payment fees, and take appropriate enforcement actions and other provisions, as specified. (Pub. Utilities Code, §§ 4000-4022.)
 - 6) Defines "private carrier" as not-for-hire motor carriers that transports passengers and is required to obtain a carrier identification number, as specified. (Pub. Utilities Code, § 4001.)
 - 7) Authorizes the CPUC to regulate household goods carriers, including requiring public liability and property insurance, cargo insurance, knowledge of rates, documentation, timely reporting of revenues and payment fees, and take appropriate enforcement actions and other provisions, as specified. (Pub. Utilities Code, §§ 5101-5335.)
 - 8) Defines "household goods carrier" as "every corporation or person engaged in the transportation for compensation by means of a motor vehicle being used in the transportation of used household goods and personal effects over any public highway in the state." (Pub. Utilities Code, § 5109.)
 - 9) States that if a peace officer arrests a person for operating a CPC without a valid permit or certificate, the officer may impound the vehicle. (Pub. Utilities Code, § 5411.5, subd. (a).)
 - 10) States that if a peace officer arrests a person for operating a CPC of passengers as a taxicab in violation of an ordinance or resolution of a city, county, or city and county, the peace officer may impound the vehicle. (Pub. Utilities Code, § 5411.5, subd. (b).)
 - 11) Specifies that the operation of a motor vehicle used in the business of transporting household goods and personal effects that does not possess a valid permit or operating authority may be removed from the highway by a peace officer. The peace officer may impound the vehicle for up to 72 hours at the request of the Public Utilities Commission, Attorney General, district attorney, or county counsel. (Pub. Utilities Code, § 5133, subd. (c).)
 - 12) Allows an officer of the Department of the California Highway Patrol (CHP) to impound a bus of a charter-party carrier for 30 days if the officer determines that any of the following violations occurred while the bus driver was operating the bus of a charter-party carrier:
 - a) The driver was operating the bus of a charter-party carrier when the charter-party carrier did not have a permit or certificate issued by the Public Utilities Commission; (Veh. Code, § 14602.9, subd. (a)(1), (Pub. Utilities Code, § 5387, subd. (d).).)
 - b) The driver was operating the bus of a charter-party carrier when the charter-party carrier was operating the bus with a suspended permit or certificate from the Public Utilities Commission; or (Veh. Code, § 14602.9, subd. (a)(2), (Pub. Utilities Code, § 5387, subd. (d).).)
 - c) The driver was operating the bus of a charter-party carrier without having a current and valid driver's license of the proper class, a passenger vehicle endorsement, or the required certificate. (Veh. Code, § 14602.9, subd. (a)(3) (Pub. Utilities Code, § 5387, subd. (d).).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "SB 541 improves the functions of the Transportation Enforcement Branch ("the branch") at the California Public Utilities Commission (CPUC) to improve customer service and enforcement against illegally operating charter-party carriers, passenger stage corporations, and moving companies.

"In a 2014 report, the California State Auditor concluded that the CPUC Transportation Enforcement Branch "does not provide sufficient oversight of charter-party carriers and passenger Stage Corporation (passenger carriers) to ensure consumer safety." The Auditor found a multitude of problems including: the branch has not established written guidelines for processing consumer complaints, it takes the branch an average of 238 days to complete an investigation and the branch does not conduct proper investigations, the branch does not know if revenue is aligned with program activities, and the branch was not aware of the significant fund surplus it had accumulated, which at the time of the audit was over \$9 million and has since grown to \$14 million.

"In addition, many carriers experience long delays when they apply for carrier certificates and permits. Limousine operators report that the CPUC frequently loses their permit applications and no one answers the phone, nor responds promptly to inquiries. One carrier told our office, 'we tried calling the PUC on several occasion and at various times throughout the working days in the months of June, July, and December 2014 and January 2015 but no one answered. So we emailed the licensing [division] but never got replies.'"

- 2) **Background:** California law regulates different modes of passenger transportation for compensation, including taxi services, which are regulated by cities and/or counties, as well as CPCs and PSCs, which are regulated by the CPUC. The division within the CPUC responsible to ensure that services are delivered in a safe and reliable manner is the Safety and Enforcement Division. The division is responsible for safety oversight in specific industries, including electric, natural gas, and telecommunications infrastructure; railroads, rail crossings, and light rail transit system; passenger carriers, ferries; and household goods carriers.

The Division is funded through a fee assessed on various types of state-regulated vehicles, including passenger carriers. The CPUC collects these fees from operators and deposits them in the Transportation Reimbursement Account. The CPUC has set the fee for passenger carriers that seat no more than 15 persons at 1/3 of 1 percent of their annual gross revenue, plus a \$10 quarterly fee or a \$25 annual fee. The CPUC is allowed to maintain an appropriate reserve in the account based on past and projected operating experiences.

- 3) **Charter-Party Carriers (CPC):** CPCs are services that charter a vehicle, on a prearranged basis, for the exclusive use of an individual or group. Charges are based on the mileage or time of use, or a combination of both. The CPUC does not regulate the level of charges for CPCs. Types of CPCs include limos, tour buses, sightseeing services, and charter and party buses.

The CPUC requires CPCs to meet a number of requirements until an operating permit or certificate is issued. These requirements include providing sufficient proof of financial responsibility, maintain a preventative maintenance program for all vehicles, possessing a safety education and training program, and regularly checking the driving records of all persons operating vehicles used in transportation for compensation. Taxis are excluded from the definition of CPCs and are regulated by cities or counties.

- 4) **Passenger Stage Corporations (PSC):** PSCs are services that provide transportation to the general public on an individual fare basis, such as scheduled bus operators, which are buses that operate on a fixed route and scheduled services, or airport shuttles, which operate on an on-call door-to-door share the ride service.
- 5) **Private Carriers of Passengers and Household Good Carriers:** Private carriers of passengers are not-for-hire motor carriers that do not receive any compensation for services and are required to obtain a carrier identification number. Examples of private carriers of passengers include vehicles used by employers to transport employees or vehicles used by an organization to transport members to and from a location.

Household good carriers are often referred to as moving companies which transports used household goods and personal effects for residential moves. They may also conduct office moves if granted a permit by the CPUC.

- 6) **State Auditor Report:** In June 2014, the California State Auditor released a report examining the CPUC's Transportation Enforcement Branch, within the Safety and Enforcement Division, efforts to regulate passenger carriers, as well as its use of fees collected from carriers. The report found that the branch did not provide sufficient oversight of CPCs and PSCs to ensure consumer safety.

The report made a number of recommendations to address problems identified by the Auditor. This bill codifies these recommendations by requiring the CPUC to establish specific goals and assess its capabilities to achieve such goals, and report to the Legislature with an analysis of current capabilities and deficiencies, and recommendations to overcome any deficiencies identified by January 1, 2017.

To improve enforcement of the branch, this bill authorizes peace officers to help in the enforcement of transportation-related services. The CPUC would coordinate efforts with peace officers through educational outreach and establishing lines of communication.

- 7) **Proposed Committee Amendments:** The proposed amendments clarify that law enforcement can impound buses and limousines of CPC's when they are operating without required permits. The proposed amendments also allow law enforcement to impound buses and limousines from PSC's operating without required permits or licensing. The proposed amendments specify that the language in this bill related to impoundment does not authorize the impoundment of privately owned personal vehicles, or the impoundment of charter-party carriers that are not required to carry individual permits.
- 8) **Argument in Support:** According to the *California Moving and Storage Association*, "SB 541 improves the functions of the transportation Enforcement branch at the California Public Utilities Commission to improve customer service and enforcement against illegally

operating moving companies, limousines and buses.

“In addition to regulating telecommunication companies and investor owned energy utility companies, the CPUC has also regulated various transportation services, including moving companies, limousines and buses since the 1960’s. The Transportation Enforcement Branch is under the CPUC’s Safety and Enforcement Division and oversees the regulation of transportation services with a staff of about 47.

“SB 41 helps implement audit recommendation and makes additional legislative changes to improve the functions of the CPUC Transportation Enforcement Branch.

“The CMSA feels very strongly that the most critical threat to California consumers who are moving is not coming from license, insured moving companies, but rather from a significant amount of unlicensed, unregulated, illegal companies that do not follow California law and jeopardize the protection of consumers. We urge the CPUC Transportation and Enforcement Branch to take appropriate action against unlawful companies in California.”

9) Related Legislation:

- a) SB 697 (Hill), requires CPC vehicles to display a distinctive identifying symbol, showing their classification. SB 697 is pending hearing in the in Assembly Appropriations Committee.

10) Prior Legislation:

- a) AB 636 (Jones), Chapter 248, Statutes of 2009, requires the CPUC to permanently revoke the authority of a charter-party carrier if the carrier knowingly employs a non-licensed or inappropriately licensed driver, and allows a CHP officer to impound the bus if driven by a non-licensed driver.

REGISTERED SUPPORT / OPPOSITION:

Support

California Moving and Storage Association
Greater California Livery Association

Opposition

None

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

Amendments Mock-up for 2015-2016 SB-541 (Hill (S))

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

**Mock-up based on Version Number 96 - Amended Senate 6/2/15
Submitted by: Staff Name, Office Name**

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

SECTION 1. (a) The Transportation Enforcement Branch of the Safety and Enforcement Division of the state's Public Utilities Commission has regulatory oversight of various for-hire transportation carriers, including limousines, airport shuttles, charter buses, and moving companies. The Transportation Enforcement Branch administers licensing, enforces state law, and manages consumer complaints to ensure the reliable and safe transport of passengers and goods within the state.

(b) The California State Auditor's Report 2013-130 concluded that the Transportation Enforcement Branch does not adequately ensure that passenger carriers operate safely. Among the numerous problems cited by the California State Auditor are that the branch does not have formal policies for dealing with complaints against carriers, it does not resolve complaints in a timely manner, it does not have adequate investigatory techniques, and it fails to properly account for fees paid by carriers. In addition, the California State Auditor concluded that without major improvements to its management processes, the branch has little ability to resolve its deficiencies.

(c) While the commission is undertaking an internal process to implement the California State Auditor's recommendations, it is in the public interest for the Legislature to further ensure that the Transportation Enforcement Branch improves its performance to ensure passenger safety.

SEC. 2. Section 1046 is added to the Public Utilities Code, to read:

1046. (a) ~~For purposes of this section, "peace officer" means all of the following:~~

~~(1) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county; any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions; and any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city.~~

~~(2) An officer of the Department of the California Highway Patrol.~~

David Billingsley
Assembly Public Safety
07/09/2015
Page 1 of 13

~~(3) Any person regularly employed as an airport law enforcement officer by a city, county, or district operating the airport or by a joint powers agency, created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, operating the airport, if the primary duty of the person is the enforcement of the law in or about properties owned, operated, and administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency, in or about the properties owned, operated, and administered by the employing agency.~~

~~(b)~~ **(a)** A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may, with respect to a passenger stage corporation, enforce and assist in the enforcement of Sections 2110 and 2112, resulting from a violation of Section 1031, 1041, or 1045, or more than one of those sections. A peace officer may additionally enforce and assist in the enforcement of Sections 1034.5 and 2119. In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting peace officer may, instead of taking such person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. The provisions of that chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

~~(e)~~ **(b)** A peace officer may impound a ~~vehicle~~ bus or limousine operated by a passenger stage corporation pursuant to Section 14602.9 of the Vehicle Code if the peace officer determines that any of the following violations occurred while the driver was operating the vehicle:

(1) The driver was operating the ~~vehicle~~ bus or limousine when the passenger stage corporation did not have a certificate of public convenience and necessity issued by the commission as required pursuant to this article.

(2) The driver was operating the ~~vehicle~~ bus or limousine when the operating rights or certificate of public convenience and necessity of a passenger stage corporation was suspended, canceled, or revoked pursuant to Section 1033.5, 1033.7, or 1045.

(3) The driver was operating the ~~vehicle~~ bus or limousine without having a current and valid driver's license of the proper class.

~~(d)~~ **(c)** The commission shall coordinate enforcement of this section with those peace officers described in subdivision (a), including undertaking both of the following:

(1) Educational outreach to ensure that those peace officers are aware of the requirements of Sections 1031, 1034.5, 1041, 1045, 2110, 2112, and 2119.

(2) Establishing lines of communication to ensure that the commission is notified if an action is commenced to enforce the requirements of those sections specified in subdivision (b), so that the

commission may take appropriate action to enforce the fine and penalty provisions of Chapter 11 (commencing with Section 2100).

~~(e)~~ (d) The Legislature finds and declares that this section is intended to facilitate and enhance the commission's performance of its functions pursuant to Section 2101 and not diminish the commission's authority or responsibility pursuant to that section-

(e) This section shall not be construed to authorize the impoundment of privately owned personal vehicles, nor the impoundment of charter-party carriers that are not required to carry individual permits.

SEC. 3. Section 5102 of the Public Utilities Code is amended to read:

5102. (a) The use of the public highways for the transportation of used household goods and personal effects for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon those highways; to secure to the people just, reasonable, and nondiscriminatory rates for transportation by carriers operating upon the highways; to secure full and unrestricted flow of traffic by motor carriers over the highways that will adequately meet reasonable public demands by providing for the regulation of rates of all carriers so that adequate and dependable service by all necessary carriers shall be maintained and the full use of the highways preserved to the public; and to promote fair dealing and ethical conduct in the rendition of services involving or incident to the transportation of household goods and personal effects.

(b) To achieve the purposes of subdivision (a) the commission shall do all of the following:

- (1) Prioritize the timely processing of applications and hold "application workshops" for potential applicants around the state.
- (2) Enable electronic filing of applications, reports, and fee payments.
- (3) Dedicate staff to answering telephone calls, mailings, and electronic inquiries from carriers.
- (4) Prioritize the timely processing of consumer complaints.
- (5) Implement electronic case tracking of complaints and their disposition.
- (6) Implement a process for appropriate and timely enforcement against illegally operating carriers, including by performing staff-driven investigations and performing enforcement through sting operations and other forms of presence in the field.
- (7) Maintain relationships with, and implement outreach and education programs to, local law enforcement, district attorneys, and airports.

(8) Meet with carrier trade associations at least annually.

(9) Implement a consolidated case tracking system that integrates each of the transportation program core functions and data collection, administrative compliance details, complaints, and investigations.

(c) (1) The commission shall assess its capabilities to carry out the activities in subdivision (b) and report to the Legislature no later than January 1, 2017. The report shall contain an analysis of current capabilities and deficiencies, and recommendations to overcome any deficiencies identified.

(2) The report shall be submitted in compliance with Section 9795 of the Government Code.

(3) Pursuant to Section 10231.5 of the Government Code, this subdivision is inoperative on January 1, 2021.

SEC. 4. Section 5317.5 of the Public Utilities Code is amended to read:

5317.5. (a) The commission shall ensure that this chapter is enforced and obeyed, and that violations thereof are promptly prosecuted and that penalty moneys due to the state are recovered and collected, and to this end it may sue in the name of the people of the State of California. Upon the request of the commission, the Attorney General or the district attorney of the proper county or city and county may aid in any investigation, hearing, or trial had under this chapter.

(b) For purposes of this section, “peace officer” means all of the following:

~~(1) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county; any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions; and any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city.~~

~~(2) An officer of the Department of the California Highway Patrol.~~

(e) (b) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may enforce and assist in the enforcement of Sections 5311 and 5312, resulting from a violation of Section 5132, 5133, 5140, or 5286, or more than one of those sections. A peace officer may additionally enforce and assist in the enforcement of Sections 5311.3 and 5314.5. In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting peace officer may, instead of taking such person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. The provisions of that chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

~~(d)~~ (c) The commission shall coordinate enforcement of this section with those peace officers described in subdivision (a), including undertaking both of the following:

(1) Educational outreach to ensure that those peace officers are aware of the requirements of Sections 5132, 5133, 5140, 5286, 5311, 5311.3, 5312, and 5314.5.

(2) Establishing lines of communication to ensure that the commission is notified if an action is commenced to enforce the requirements of those sections specified in subdivision (c), so that the commission may take appropriate action to enforce the fine and penalty provisions of this article.

~~(e)~~ (d) The Attorney General, a district attorney of the proper county or city and county, or a city attorney may institute and prosecute actions or proceedings for the violation of any law committed in connection with, or arising from, a transaction involving the transportation of household goods and personal effects.

SEC. 5. Section 5352 of the Public Utilities Code is amended to read:

5352. (a) The use of the public highways for the transportation of passengers for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon the highways; to secure to the people adequate and dependable transportation by carriers operating upon the highways; to secure full and unrestricted flow of traffic by motor carriers over the highways which will adequately meet reasonable public demands by providing for the regulation of all transportation agencies with respect to accident indemnity so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public; and to promote carrier and public safety through its safety enforcement regulations.

(b) To achieve the purposes of subdivision (a) the commission shall do all of the following:

(1) Prioritize the timely processing of applications and hold “application workshops” for potential applicants around the state.

(2) Enable electronic filing of applications, reports, and fee payments.

(3) Dedicate staff to answering telephone calls, mailings, and electronic inquiries from carriers.

(4) Prioritize the timely processing of consumer complaints.

(5) Implement electronic case tracking of complaints and their disposition.

(6) Implement a process for appropriate and timely enforcement against illegally operating carriers, including by performing staff-driven investigations and performing enforcement through sting operations and other forms of presence in the field.

(7) Maintain relationships with, and implement outreach and education programs to, local law enforcement, district attorneys, and airports.

(8) Meet with carrier trade associations at least annually.

(9) Implement a consolidated case tracking system that integrates each of the transportation program core functions and data collection, administrative compliance details, complaints, and investigations.

(c) (1) The commission shall assess its capabilities to carry out the activities in subdivision (b) and report to the Legislature no later than January 1, 2017. The report shall contain an analysis of current capabilities and deficiencies, and recommendations to overcome any deficiencies identified.

(2) The report shall be submitted in compliance with Section 9795 of the Government Code.

(3) Pursuant to Section 10231.5 of the Government Code, this subdivision is inoperative on January 1, 2021.

SEC. 6. Section 5387 of the Public Utilities Code is amended to read:

5387. (a) It is unlawful for the owner of a charter-party carrier of passengers to permit the operation of a vehicle upon a public highway for compensation without (1) having obtained from the commission a certificate or permit pursuant to this chapter, (2) having complied with the vehicle identification requirements of Section 5385 or 5385.5, and (3) having complied with the accident liability protection requirements of Section 5391.

(b) A person who drives a bus for a charter-party carrier without having a current and valid driver's license of the proper class, a passenger vehicle endorsement, or the required certificate shall be suspended from driving a bus of any kind, including, but not limited to, a bus, schoolbus, school pupil activity bus, or transit bus, with passengers for a period of five years pursuant to Section 13369 of the Vehicle Code.

(c) (1) A charter-party carrier shall have its authority to operate as a charter-party carrier permanently revoked by the commission or be permanently barred from receiving a permit or certificate from the commission if it commits any of the following acts:

(A) Operates a bus without having been issued a permit or certificate from the commission.

(B) Operates a bus with a permit that was suspended by the commission pursuant to Section 5378.5.

(C) Commits three or more liability insurance violations within a two-year period for which it has been cited.

(D) Operates a bus with a permit that was suspended by the commission during a period that the charter-party carrier's liability insurance lapsed for which it has been cited.

(E) Knowingly employs a busdriver who does not have a current and valid driver's license of the proper class, a passenger vehicle endorsement, or the required certificate to drive a bus.

(F) Has one or more buses improperly registered with the Department of Motor Vehicles.

(2) The commission shall not issue a new permit or certificate to operate as a charter-party carrier if any officer, director, or owner of that charter-party carrier was an officer, director, or owner of a charter-party carrier that had its authority to operate as a charter-party carrier permanently revoked by the commission or that was permanently barred from receiving a permit or certificate from the commission pursuant to this subdivision.

(d) A peace officer, as defined in ~~Section 5417.5~~ **Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code**, may impound a ~~vehicle~~ **bus or limousine** of a charter-party carrier of passengers for 30 days pursuant to Section 14602.9 of the Vehicle Code if the peace officer determines that any of the following violations occurred while the driver was operating the vehicle of a charter-party carrier:

(1) The driver was operating the ~~vehicle~~ **bus or limousine** of a charter-party carrier of passengers when the charter-party carrier of passengers did not have a permit or certificate issued by the commission.

(2) The driver was operating the ~~vehicle~~ **bus or limousine** of a charter-party carrier of passengers when the charter-party carrier of passengers was operating with a suspended permit or certificate from the commission.

(3) The driver was operating the ~~vehicle~~ **bus or limousine** of a charter-party carrier of passengers without having a current and valid driver's license of the proper class, a passenger vehicle endorsement, or the required certificate.

(e) This section shall not be construed to authorize the impoundment of privately owned personal vehicles, nor the impoundment of charter-party carriers that are not required to carry individual permits.

~~SEC. 6.~~ ~~SEC. 7.~~ Section 5411.5 of the Public Utilities Code is amended to read:

~~5411.5. (a) Whenever a peace officer, as defined in Section 5417.5, arrests a person for operation of a vehicle of a charter-party carrier of passengers without a valid certificate or permit, the peace officer may impound and retain possession of the vehicle.~~

~~(b) Whenever a peace officer, as defined in Section 5417.5, arrests a person for operating a vehicle of a charter party carrier of passengers as a taxicab in violation of an ordinance or resolution of a city, county, or city and county, the peace officer may impound and retain possession of the vehicle.~~

~~(c) If the vehicle is seized from a person who is not the owner of the vehicle, the impounding authority shall immediately give notice to the owner by first-class mail.~~

~~(d) The vehicle shall immediately be returned to the owner if the infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of the offense, or it is determined that the vehicle was used in violation of Section 5411 without the knowledge and consent of the owner. The vehicle shall be returned to the owner upon payment of any fine ordered by the court. If the vehicle is seized due to a violation of a person other than the owner of the vehicle, the vehicle shall be returned to the owner after all impoundment fees are paid. After the expiration of six weeks from the final disposition of the criminal case, unless the owner is in the process of making payments to the court, the impounding authority may deal with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.~~

~~(e) At any time, a person may make a motion in superior court for the immediate return of the vehicle on the ground that there was no probable cause to seize it or that there is some other good cause, as determined by the court, for the return of the vehicle. A proceeding under this section is a limited civil case.~~

~~(f) No peace officer, however, may impound any vehicle owned or operated by a nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code which serves youth or senior citizens and provides transportation incidental to its programs or services or a rented motor vehicle that is being operated by a hired driver of a charter party carrier of passengers that is providing hired driver service.~~

~~SEC. 7.~~~~SEC. 8.~~ SEC. 7. Section 5417.5 is added to the Public Utilities Code, to read:

5417.5. (a) The commission shall ensure that this chapter is enforced and obeyed, and that violations thereof are promptly prosecuted and that penalty moneys due to the state are recovered and collected, and to this end it may sue in the name of the people of the State of California. Upon the request of the commission, the Attorney General or the district attorney of the proper county or city and county may aid in any investigation, hearing, or trial under this chapter. The Attorney General, a district attorney of the proper county or city and county, or a city attorney may institute and prosecute actions or proceedings for the violation of any law committed in connection with, or arising from, a transaction involving a charter-party carrier of passengers.

(b) For purposes of this section, “peace officer” means all of the following:

(1) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county; any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions; and any police officer, employed in that capacity

~~and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city.~~

~~(2) An officer of the Department of the California Highway Patrol.~~

~~(3) Any person regularly employed as an airport law enforcement officer by a city, county, or district operating the airport or by a joint powers agency, created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, operating the airport, if the primary duty of the person is the enforcement of the law in or about properties owned, operated, and administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency, in or about the properties owned, operated, and administered by the employing agency.~~

~~(e) (b) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may enforce and assist in the enforcement of Sections 5411 and 5412 resulting from a violation of Section 5371, 5379, 5385, 5385.7, or 5387, or more than one of those sections. A peace officer may additionally enforce and assist in the enforcement of Sections 5411.3 and 5414.5. In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting peace officer may, instead of taking such person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. The provisions of that chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.~~

~~(d) (c) The commission shall coordinate enforcement of this section with those peace officers described in subdivision (b), including undertaking both of the following:~~

~~(1) Educational outreach to ensure that those peace officers are aware of the requirements of Sections 5371, 5379, 5385, 5385.7, 5387, 5411, 5411.3, 5412, and 5414.5.~~

~~(2) Establishing lines of communication to ensure that the commission is notified if an action is commenced to enforce the requirements of those sections specified in subdivision (c), so that the commission may take appropriate action to enforce the fine and penalty provisions of this article.~~

~~(e) (d) The Attorney General, a district attorney of the proper county or city and county, or a city attorney may institute and prosecute actions or proceedings for the violation of any law committed in connection with, or arising from, a transaction involving the transportation of passengers by a charter-party carrier of passengers.~~

~~SEC. 8.~~ ~~SEC. 9.~~ SEC. 8. Section 14602.9 of the Vehicle Code is amended to read:

14602.9. ~~(a) For purposes of this section, "peace officer" means all of the following:~~

~~(1) An officer of the Department of the California Highway Patrol.~~

~~(2) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county; any chief of police of a city or chief, director, or chief executive officer of a consolidated municipal public safety agency that performs police functions; and any police officer, employed in that capacity and appointed by the chief of police or chief, director, or chief executive of a public safety agency, of a city.~~

~~(3) Any person regularly employed as an airport law enforcement officer by a city, county, or district operating the airport or by a joint powers agency, created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, operating the airport, if the primary duty of the person is the enforcement of the law in or about properties owned, operated, and administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency, in or about the properties owned, operated, and administered by the employing agency.~~

~~(b) (a) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may impound a vehicle bus or limousine of a charter-party carrier for 30 days if the officer determines that any of the following violations occurred while the driver was operating the vehicle of the charter-party carrier:~~

~~(1) The driver was operating the vehicle bus or limousine of a charter-party carrier when the charter-party carrier did not have a permit or certificate issued by the Public Utilities Commission, pursuant to Section 5375 of the Public Utilities Code.~~

~~(2) The driver was operating the vehicle bus or limousine of a charter-party carrier when the charter-party carrier was operating with a suspended permit or certificate from the Public Utilities Commission.~~

~~(3) The driver was operating the vehicle bus or limousine of a charter-party carrier without having a current and valid driver's license of the proper class, a passenger vehicle endorsement, or the required certificate.~~

~~(e) (b) A peace officer may impound a vehicle bus or limousine belonging to a passenger stage corporation for 30 days if the officer determines any of the following violations occurred while the driver was operating the vehicle:~~

~~(1) The driver was operating the vehicle bus or limousine when the passenger stage corporation did not have a certificate of public convenience and necessity issued by the Public Utilities Commission as required pursuant to Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1 of the Public Utilities Code.~~

~~(2) The driver was operating the vehicle bus or limousine when the operating rights or certificate of public convenience and necessity of a passenger stage corporation was suspended, canceled, or revoked pursuant to Section 1033.5, 1033.7, or 1045 of the Public Utilities Code.~~

(3) The driver was operating the ~~vehicle~~ bus or limousine without having a current and valid driver's license of the proper class.

(d) Within two working days after impoundment, the impounding agency shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. Failure to notify the legal owner within two working days shall prohibit the impounding agency from charging for more than 15 day's impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a registered owner to request a hearing.

(e) The registered and legal owner of a vehicle that is removed and seized under subdivision (b) or (c) or his or her agent shall be provided the opportunity for a storage hearing to determine the validity of, or consider any mitigating circumstances attendant to, the storage, in accordance with Section 22852.

(f) (1) The impounding agency shall release the vehicle to the registered owner or his or her agent prior to the end of the impoundment period under any of the following circumstances:

(A) When the vehicle is a stolen vehicle.

(B) When the vehicle is subject to bailment and is driven by an unlicensed employee of a business establishment, including a parking service or repair garage.

(C) When, for a charter-party carrier of passengers, the driver of the vehicle is not the sole registered owner of the vehicle and the vehicle is being released to another registered owner of the vehicle who agrees not to allow the driver to use the vehicle until after the end of the impoundment period and the charter-party carrier has been issued a valid permit from the Public Utilities Commission, pursuant to Section 5375 of the Public Utilities Code.

(D) When, for a passenger stage corporation, the driver of the vehicle is not the sole registered owner of the vehicle and the vehicle is being released to another registered owner of the vehicle who agrees not to allow the driver to use the vehicle until after the end of the impoundment period and the passenger stage corporation has been issued a valid certificate of public convenience and necessity by the Public Utilities Commission, pursuant to Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1 of the Public Utilities Code.

(2) A vehicle shall not be released pursuant to this subdivision without presentation of the registered owner's or agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(g) The registered owner or his or her agent is responsible for all towing and storage charges related to the impoundment, and any administrative charges authorized under Section 22850.5.

(h) A vehicle removed and seized under subdivision (b) or (c) shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period if all of the following conditions are met:

(1) The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person who is not the registered owner and holds a security interest in the vehicle.

(2) The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure of the vehicle. A lien sale processing fee shall not be charged to the legal owner who redeems the vehicle prior to the 10th day of impoundment. The impounding authority or any person having possession of the vehicle shall not collect from the legal owner of the type specified in paragraph (1), or the legal owner's agent, any administrative charges imposed pursuant to Section 22850.5 unless the legal owner voluntarily requested a poststorage hearing.

(3) (A) The legal owner or the legal owner's agent presents either lawful foreclosure documents or an affidavit of repossession for the vehicle, and a security agreement or title showing proof of legal ownership for the vehicle. All presented documents may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The impounding agency shall not require a document to be notarized. The impounding agency may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the impounding agency, that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

(B) Administrative costs authorized under subdivision (a) of Section 22850.5 shall not be charged to the legal owner of the type specified in paragraph (1), who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing. A city, county, or state agency shall not require a legal owner or a legal owner's agent to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. The impounding agency shall not require any documents other than those specified in this paragraph. The impounding agency shall not require any documents to be notarized.

(C) As used in this paragraph, "foreclosure documents" means an "assignment" as that term is defined in subdivision (o) of Section 7500.1 of the Business and Professions Code.

(i) (1) A legal owner or the legal owner's agent who obtains release of the vehicle pursuant to subdivision (h) may not release the vehicle to the registered owner of the vehicle or any agents of the registered owner, unless the registered owner is a rental car agency, until after the termination of the impoundment period.

(2) The legal owner or the legal owner's agent shall not relinquish the vehicle to the registered owner until the registered owner or that owner's agent presents his or her valid driver's license or

valid temporary driver's license to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent shall make every reasonable effort to ensure that the license presented is valid.

(3) Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the legal owner in connection with obtaining custody of the vehicle.

(j) (1) A vehicle removed and seized under subdivision (b) or (c) shall be released to a rental agency prior to the end of the impoundment period if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure of the vehicle.

(2) The owner of a rental vehicle that was seized under this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental agency shall not rent another vehicle to the driver of the vehicle that was seized until the impoundment period has expired.

(3) The rental agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the impoundment and any administrative charges authorized under Section 22850.5 that were incurred by the rental agency in connection with obtaining custody of the vehicle.

(k) Notwithstanding any other provision of this section, the registered owner, and not the legal owner, shall remain responsible for any towing and storage charges related to the impoundment, any administrative charges authorized under Section 22850.5, and any parking fines, penalties, and administrative fees incurred by the registered owner.

(l) The impounding agency is not liable to the registered owner for the improper release of the vehicle to the legal owner or the legal owner's agent provided the release complies with this section.

(m) For the purposes of this section, a "charter-party carrier" means a charter-party carrier of passengers as defined by Section 5360 of the Public Utilities Code.

(n) For purposes of this section, a "passenger stage corporation" means a passenger stage corporation as defined by Section 226 of the Public Utilities Code.

(o) This section shall not be construed to authorize the impoundment of privately owned personal vehicles, nor the impoundment of charter-party carriers that are not required to carry individual permits.

Date of Hearing: July 14, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 635 (Nielsen) – As Amended April 29, 2015

SUMMARY: Increases the compensation for innocent persons who were wrongly convicted from \$100 per day of wrongful incarceration to \$140 per day, and requires that time spent in custody in a county jail as part of the term of incarceration be included in the calculation of compensation for the wrongful imprisonment.

EXISTING LAW:

- 1) Provides that any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison for that conviction, is granted a pardon by the Governor for the reason that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her, or who, being innocent of the crime with which he or she was charged for either of the foregoing reasons, shall have served the term or any part thereof for which he or she was imprisoned, may, as specified, present a claim against the state to the Victim Compensation and Government Claims Board (VCGCB) for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment. (Pen. Code, § 4900.)
- 2) Requires a claim to VCGCB to be presented within a period of two years after judgment of acquittal or discharge given, or after pardon granted, or after release from imprisonment. (Pen. Code, § 4901.)
- 3) Requires VCGCB to fix a time and place for the hearing of the claim and mail notice thereof to the claimant and to the AG at least 15 days prior to the time fixed for the hearing. (Penal Code Section 4902.)
- 4) States that at the hearing, the claimant shall introduce evidence in support of the claim, and the Attorney General (AG) may introduce evidence in opposition thereto. The claimant must prove the facts set forth in the statement constituting the claim, including the following:
 - a) The fact that the crime with which he or she was charged was either not committed at all, or, if committed, was not committed by him or her;
 - b) The fact that he or she did not, by any act or omission on his or her part, intentionally contribute to the bringing about of his or her arrest or conviction for the crime with which he or she was charged; and,
 - c) The pecuniary injury sustained by him or her through his or her erroneous conviction and imprisonment. (Pen. Code, § 4903.)

- 5) States if the evidence proves all of the above, VCGCB shall report the facts of the case and its conclusions to the Legislature, with a recommendation that an appropriation be made by the Legislature for the purpose of indemnifying the claimant for the pecuniary injury. The amount of the appropriation recommended shall be a sum equivalent to \$100 per day of incarceration served subsequent to the claimant's conviction and that appropriation shall not be treated as gross income to the recipient under the Revenue and Taxation Code. (Pen. Code, § 4904.)
- 6) States that every person who is unlawfully imprisoned or restrained of his liberty, under any pretense whatever, to prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint. (Pen. Code, § 1473, subd. (a).)
- 7) Provides that a writ of habeas corpus may be prosecuted for, but not limited to, the following reasons (Pen. Code, § 1473, subd. (b)):
 - a) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at any hearing or trial relating to his incarceration; or,
 - b) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person.
- 8) States that nothing in the provisions authorizing a writ of habeas corpus shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies. (Pen. Code, § 1473, subd. (d).)
- 9) Provides that the application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify (Pen. Code, § 1474):
 - a) That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming all the parties, if they are known, or describing them, if they are not known;
 - b) If the imprisonment is alleged to be illegal, the petition must also state in what the alleged illegality consists; and,
 - c) The petition must be verified by the oath or affirmation of the party making the application.
- 10) States that the writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the Court or Judge before whom the writ is returnable, at a time and place therein specified. (Pen. Code, § 1477.)

- 11) Requires the person upon whom the writ is served must state in his return, plainly and unequivocally (Pen. Code, § 1480):
 - a) Whether he has or has not the party in his custody, or under his power or restraint;
 - b) If he has the party in his custody or power, or under his restraint, he must state the authority and cause of such imprisonment or restraint;
 - c) If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof must be annexed to the return, and the original produced and exhibited to the Court or Judge on the hearing of such return; and,
 - d) If the person upon whom the writ is served had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority such transfer took place;
 - e) The return must be signed by the person making the same, and, except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath.
- 12) Requires the Court or Judge before whom the writ is returned, immediately after the return, to proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration. (Pen. Code, § 1483.)
- 13) States that the party brought before the Court or Judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge. The Court or Judge must thereupon proceed in a summary way to hear such proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require, and have full power and authority to require and compel the attendance of witnesses, by process of subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case. (Pen. Code, § 1484.)
- 14) States if no legal cause is shown for such imprisonment or restraint, or for the continuation thereof, such Court or Judge must discharge such party from the custody or restraint under which he is held. (Pen. Code, § 1485.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, " Senate Bill 635 is a long overdue effort to help address perhaps the greatest nightmare that can occur in the American justice system: the wrongful conviction and incarceration of an innocent person. This bill would modestly increase the amount an exonerated person receives in restitution compensation, which has not been adjusted for inflation in nearly two decades.

"Following release, exonerees are faced with the overwhelming task of reintegrating back into society. While even rightfully convicted parolees receive a nominal amount of cash and counseling that facilitate their re-entry into the public, the fully exonerated are given very limited resources.

"In 2000, the Legislature passed AB 1799 (Baugh) with overwhelming support. The bill increased potential compensation for wrongful incarceration from a maximum of \$10,000 to a sum of \$100 per day spent incarcerated. That level of compensation remains unchanged 15 years later.

"SB 635 increases the amount of compensation that an exoneree can receive following the finding of his or her factual innocence. Recompense would be \$140.00 per day spent incarcerated. According to the Bureau of Labor Statistics, this increase corresponds to inflation.

"The fundamental rights to life, liberty and the pursuit of happiness are enshrined in the Declaration of Independence. Americans are recognized globally for their willingness to defend their own freedoms and those of others. But sometimes that commitment to defend freedom must be directed inward, when our own justice system erroneously takes those precious rights from an individual. Taking moral responsibility for one's own errors is a key attribute of a truly just society.

"As a former Chairman of the Board of Prison Terms, I have seen many people who deserve to spend the rest of their lives behind bars because of their vicious crimes against society. However, in cases where an innocent person has been wrongly accused and incarcerated, we as a society have the responsibility to acknowledge that our system is not perfect and they deserve compensation to get their lives back in order"

- 2) **Prior Legislation:** AB 1799 (Baugh), Chapter 630, Statutes of 1999, removed the \$10,000 limitation on the recommended appropriation for a person wrongly convicted, and made the recommended compensation \$100 for each day of incarceration.

REGISTERED SUPPORT / OPPOSITION:

Support

California Innocence Project (Co-sponsor)
Northern California Innocence Project (Co-sponsor)
American Civil Liberties Union
California Public Defenders Association
Legal Services for Prisoners with Children

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: July 14, 2015

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Bill Quirk, Chair

SB 674 (De León) – As Introduced February 27, 2015

SUMMARY: Requires agencies, upon the request of an immigrant victim of crime, to certify victim helpfulness on the applicable form so that the victim may apply for a U-visa to temporarily live and work in the United States. Specifically, **this bill:**

- 1) Provides that upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.
- 2) States that in determining helpfulness, there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.
- 3) Requires a certifying official to fully complete and sign the Form I-918 Supplement B certification and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.
- 4) States that a certifying entity shall process an I-918 Supplement B certification within 90 days of request, unless the non-citizen is in removal proceedings, in which case the certification shall be processed within 14 days of request.
- 5) Specifies that a current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.
- 6) Provides that a certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested.
- 7) Prohibits a certifying entity from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-918 Supplement B certification.
- 8) Mandates a certifying entity that receives a request for a Form I-918 Supplemental B certification to report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested Form I-918 Form B certifications from the

entity, the number of those certification forms that were signed, and the number that were denied.

- 9) Defines a "certifying entity" to include any of the following:
- a) A state or local law enforcement agency;
 - b) A prosecutor;
 - c) A judge;
 - d) Any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity; or
 - e) Agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Department of Fair Employment and Housing, and the Department of Industrial Relations.
- 10) States that for purposes of this bill, a "certifying official" is any of the following:
- a) The head of the certifying entity;
 - b) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency;
 - c) A judge; or
 - d) Any other certifying official as defined in federal regulations.
- 11) Provides the following list of "qualifying criminal activity": rape; torture; human trafficking; incest; domestic violence; sexual assault; abusive sexual conduct; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; perjury; involuntary servitude; slavery; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; fraud in foreign labor contracting; or stalking.
- 12) States that a "qualifying crime" includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in the list of "qualifying criminal activity", and the attempt, conspiracy, or solicitation to commit any of those offenses.

EXISTING FEDERAL LAW:

- 1) Allows an immigrant who has been a victim of a crime to receive a U-visa if the Secretary of Homeland Security determines the following:

- a) The petitioner has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity as described;
- b) The petitioner, or if the petitioner is under 16 years of age, the petitioner's parent, possesses information concerning the criminal activity;
- c) The petitioner, or if the petitioner is under 16 years of age, the petitioner's parent, has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity as described;
- d) The criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States; and,
- e) The criminal activity is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. (8 U.S.C. § 1011(a)(15)(U).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "The Victim of Crime Visa, also referred to as the U-Visa, is available to immigrants who are victims of certain crimes committed in the United States – rape, incest, sexual assault, torture, or domestic violence, for example. The bearer of a U-Visa gets relief from deportation and permission to work in the United States.

"Federal immigration authorities make the determination of whether a victim of crime qualifies for a U-Visa. However, the State and local governments play an important role in this process.

"In order for the victim to apply to the federal government for the U-Visa, the victim must receive a certification from law enforcement, a prosecutor, or a judicial officer. The document certifies that the individual was a victim of a qualifying crime. And, the certification must state that the victim was helpful or likely helpful to the prosecution or investigation of the crime.

"There are some local law enforcement agencies that do an exemplary job granting certifications. For example, the Oakland Police Department and L.A. Police Department.

"There are other law enforcement agencies – the Kern County Sheriff, for example – that

systematically deny certifications on the basis of political views on immigration matters. They are making the determination of whether one belongs in this county or not, irrespective of the crime that has been committed against an immigrant and irrespective of whether that victim was helpful to law enforcement.

"This bill makes clear that all entities that can certify victim helpfulness must certify victim helpfulness if the victim was a victim of one of the qualifying crimes and the victim was helpful or likely to be helpful to the prosecution or investigation of the crime.

"The Kern County Sheriff and other entities will no longer be permitted to subjectively make immigration decisions. That is for the federal government to do.

"Whether you are a victim of crime in Kern County or Alameda County should not matter in terms of whether you obtain a U-Visa. This bill brings equity to immigrant victims of crime."

- 2) **Background:** "In 2000, Congress created the U-visa under the Violence Against Women Act (VAWA) as a form of relief for immigrant victims of crimes. The intent of Congress was: (1) to strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking and other crimes; and (2) to offer protection to victims of such crimes.¹ Congress recognized that a victim's cooperation and assistance are essential to the effective detection, investigation and prosecution of crimes. However, where a victim fears deportation, s/he will be unlikely to come forward to cooperate and assist in investigative efforts. Without this cooperation victims and entire communities are less safe. Thus, Congress provided a specific avenue for immigrant crime victims to obtain lawful immigration status and to create a shield of protection for immigrant victims.

"To be eligible for a U-visa, the immigrant victim must meet four statutory requirements and s/he must include a certification from a certifying official (such as a judge) or agency that s/he aided in the detection, investigation or prosecution of a qualifying criminal activity.² To meet the four statutory eligibility requirements for the U-visa, the applicant must: (1) have suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity; (2) possess information concerning such criminal activity; (3) have been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of a crime; and (4) have been the victim of a criminal activity that occurred in the United States or violated the laws of the United States.³

"A U-visa application must include a signed certification form completed by a Federal, State

¹ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,015 (citing Battered Immigrant Women Protection Act (BIWPA) § 1513(a)(2)(A)).

² INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (outlines four statutory requirements for U-visa eligibility and contains nonexhaustive list of qualifying activities); INA § 214(p)(1), 8 U.S.C. § 1184(p)(1) (details certification requirement).

³ INA § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U).

or local qualifying official (such as, but not limited to, a law enforcement officer, prosecutor, or judge).⁴ The certification must affirm the immigrant victim's helpfulness in the detection, investigation or prosecution of certain qualifying criminal activity.⁵ The certification does not confer any immigration status upon the victim, but enables the victim to meet one of the eligibility requirements as s/he submits the application to the Department of Homeland Security (DHS). (*U-visa Certification: Information for Judges, Legal Momentum*, <<http://niwaplibrary.wcl.american.edu/immigration/u-visa/tools/judges/U-Visa-Judge-Q-A.pdf>> (as of July 6, 2015).)

- 3) **Uneven U-visa Certification Policies:** According to an investigation by Reuters news, there are wide disparities among jurisdictions in how likely law enforcement is to certify a victim.

"In some cities, police and prosecutors readily verify that an undocumented crime victim cooperated; in others, they stonewall. From 2009 through May 2014, law enforcement in New York City verified 1,151 crime victims, according to figures provided by federal immigration authorities in response to public records requests by Reuters. Meanwhile, police and prosecutors verified 4,585 crime victims in Los Angeles, a city with less than half of New York's population.

"Oakland, California, has less than 5 percent of New York's population, yet law enforcement there verified 2,992 immigrants during the same period - more than twice as many. Sacramento, California, has a slightly higher population than Oakland, but verified just 300 crime victims.

"The federal data do not include the number of immigrants whose requests for verification are ignored or denied by the police. Nor is it possible to determine how many of those would have ultimately been rejected anyway because the applicant would not qualify under the program. Victims of misdemeanor assault, for instance, do not qualify.

"But wide variations in the numbers of certifications among jurisdictions of similar size suggest that thousands of victims of violent crimes who have embraced the offer of a U visa haven't got one.

"'There is a significant portion of the country where law enforcement is not providing certifications,' said Gail Pendleton, co-founder of ASISTA, which helps lawyers who work with immigrant survivors of domestic violence and sexual assault. 'That means that you have tens of thousands of victims of crimes like domestic violence and rape that are just not getting help, and their perpetrators are not being held accountable.'

"In a nationwide survey of advocates and attorneys in 2013, researchers at the University of North Carolina School of Law found that the U visa program 'is kind of like geography roulette,' said Deborah Weissman, a UNC law professor.

⁴ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1); 8 C.F.R. § 214.14(a)(3)(ii).

⁵ INA § 214(p)(1), 8 U.S.C. § 1184(p)(1).

...
 "Interviews with attorneys across the country reveal wide disparities in approaches to law enforcement certification. Some agencies will only certify for open cases, others only for cases that are closed. Others put further limits on the type of crime or rule out victims whose injuries aren't deemed severe enough.

"In some jurisdictions, law enforcement is split: Police may refuse to certify crime victims, while prosecutors will sign off, meaning that only those victims whose cases result in arrest and prosecution can apply for the visa, though that is not a requirement under the law. (Levine and Cook, *Special Report: U.S. visa program for crime victims is hit-or-miss prospect* (Oct. 21, 2014), Reuters <<http://www.reuters.com/article/2014/10/21/us-usa-immigration-uvisa-specialreport-idUSKCN0IA1H420141021>> (as of July 6, 2015).)

- 4) **Argument in Support:** According to the *Immigrant Legal Resource Center*, "Victims of certain crimes may be eligible for legal status through a U-Visa. However, a victim of crime cannot apply to the federal government for a U-Visa without a signed certification from law enforcement confirming that the person was a victim of a qualifying crime and has been or is likely to be helpful in the investigation or prosecution of that criminal activity. This certification is called a Form I-918 Supplement B certification. It is the federal immigration authorities that determine whether the crime victim qualifies for the U-Visa. But, without a completed certification, the application for the U-Visa is denied.

"A problem these victims are facing in California is that some entities that can certify victim helpfulness refuse to even consider signing Form I-918 Supplement B certifications. Others place their own restrictions on which victims can receive the certification. These refusals arbitrarily prevent these victims from seeking relief to stay in this country. This bill is necessary to bring consistent treatment and equity to victims of crime and require that all certifying entities certify victim helpfulness in a consistent and fair manner."

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
 American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
 California Attorneys for Criminal Justice
 California Immigrant Policy Center
 California Partnership to End Domestic Violence
 Central American Resource Center
 Immigrant Legal Resource Center
 Kamala Harris, Attorney General of California
 Los Angeles Center for Law and Justice
 YWCA of Glendale

Opposition

None

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



Date of Hearing: July 14, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 694 (Leno) – As Amended July 2, 2015

SUMMARY: Codifies a standard for habeas corpus petitions filed on the basis of new evidence. Specifically, **this bill:**

- 1) Permits a writ of habeas corpus to be prosecuted on the basis of new evidence which would raise a reasonable probability of a different outcome if a new trial were granted.
- 2) Requires the Victims Compensation and Government Claims Board to recommend payment for incarceration of a person if the court finds that the person is factually innocent.
- 3) Makes additional clarifying and technical changes.

EXISTING LAW:

- 1) Provides that every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint. (Pen. Code, § 1473 subd. (a).)
- 2) States that a writ of habeas corpus may be prosecuted for, but not limited to, the following reasons: (Pen. Code, § 1473 subd. (b).)
 - a) False evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to his incarceration;
 - b) False physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person.
- 3) Provides that any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus. (Pen. Code, § 1473 subd. (c).)
- 4) States that nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies. (Pen. Code, § 1473 subd. (d).)
- 5) Provides that in a contested proceeding, if a court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained, the court vacates a judgment on the basis of new evidence concerning a person who is no longer unlawfully imprisoned or restrained

and if the court finds that the new evidence on the petition *points unerringly to innocence*, that finding shall be binding on the California Crime Victims Compensation and Government Claims board for acclaim presented to the board, and upon application by the person, the board shall, without a hearing, recommend to the legislation that an appropriation be made. (Pen. Code, § 1485.55 subd. (a).)

- 6) Provides that “new evidence” means evidence that was not available or known at the time of trial that completely undermines the prosecution case and points unerringly to innocence. (Pen. Code, § 1485.55, subd. (b).)
- 7) Establishes the Victim Compensation and Government Claims Board (board). (Gov. Code, § 13950 et. seq.)
- 8) Provides that an application for compensation shall be filed with the board in the manner determined by the board. (Gov. Code, § 13952, subd.(a).)
- 9) 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 period 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.)
- 10) 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).)
- 11) 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.)
- 12) 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.
- 13) 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, "Under existing California law an inmate who has been convicted of committing a crime, but claims that they are factually innocent, may file a petition for writ of habeas corpus, which, if a court agrees with their claim, could potentially result in a new trial if warranted. The burden for proving one's innocence in such cases that are based on newly available evidence is not currently defined by statute, but has evolved from appellate court opinions, and is practically impossible to achieve in California.

"In order to prevail on a new evidence claim under current law, an individual must undermine the prosecution's entire case and 'point unerringly to innocence with evidence no reasonable jury could reject.' The California Supreme Court has acknowledged that this standard is very high, much higher than the 'preponderance of the evidence' standard that governs other habeas corpus claims, such as those based on ineffective assistance of counsel. It is by far the most difficult standard to meet in the entire nation.

"As a legal and practical matter, current case law requires wrongfully incarcerated individuals who have produced new evidence to conclusively and affirmatively prove their innocence, often decades after the fact when witness memories have faded, other evidence has disappeared, and re-litigating the original case is essentially impossible. Even when new evidence shows that their conviction would have never occurred in the first place, an individual is likely to remain wrongfully incarcerated under the status quo in California.

"This proposed standard in SB 694 simply brings claims of actual innocence based on new evidence into alignment with other post-conviction remedies for various established constitutional violations, such as claims of ineffective assistance of counsel, prosecutorial misconduct, or false evidence, as well as bringing California in line with 39 other states. Simply put, the wrongful incarceration of an innocent citizen, no matter how rare, is the greatest injustice society can perpetrate. When it occurs it is our moral obligation to address that shortcoming in our justice system, which is what SB 694 will accomplish for those wrongfully behind bars."

- 2) **Background:** According to the background provided by the author, "under existing California law, an inmate who has been convicted of committing a crime for which he or she claims that s/he has new evidence pointing to innocence may file a petition for writ of habeas corpus. The burden for proving that newly discovered evidence entitles an individual to a

new trial is not currently defined by statute, but has evolved from appellate court opinions. In order to prevail on a new evidence claim, a petitioner must undermine the prosecution's entire case and 'point unerringly to innocence with evidence no reasonable jury could reject' (In re Lawley (2008) 42 Cal.4th 1231, 1239). The California Supreme Court has stated that this standard is very high, much higher than the preponderance of the evidence standard that governs other habeas claims. (Ibid.)

"This standard is nearly impossible to meet absent DNA evidence, which exists only in a tiny portion of prosecutions and exonerations. For example, if a petitioner has newly discovered evidence that completely undermines all evidence of guilt and shows that the original jury would likely not have convicted, but the new evidence does not "point unerringly to innocence" the petitioner will not have met the standard and will have no chance at a new trial. Thus, someone who would likely never have been convicted if the newly discovered evidence had been available in their original trial is almost guaranteed to remain in prison under the status quo in California. The proposed new standard in SB 694 addresses this anomaly. Our criminal justice system was built on the understanding that even innocent people cannot always affirmatively prove innocence, which is why the burden is on the prosecution to prove guilt when a charge is brought to trial, and absent evidence of guilt beyond a reasonable doubt, innocence is presumed. The new standard contained in this bill ensures that innocent men and women do not remain in prison even after new evidence shows that a conviction never would have occurred had it been available.

"SB 694 seeks to bring California's innocence standard into line with the vast majority of other states' standards, thirty-nine in total, and to make it consistent with other post-conviction standards for relief in California such as ineffective assistance of counsel, or prosecutorial misconduct. There is no justification for a different standard to govern these types of claims, as opposed to those brought on the basis of newly discovered evidence. Our laws must recognize that if evidence exists that a jury did not hear (regardless of whether it is the fault of a mistaken or lying witness, an ineffective attorney, or the misconduct of law enforcement) creates a reasonable probability of a different outcome, the conviction should be reversed.

"As a result of the onerously high standard governing new evidence claims, individuals often choose to re-package evidence of innocence into other types of claims, such as ineffective assistance of counsel for example. The impact of this is not just a dearth in case law on new evidence claims but it also means that some exonerees may never receive legal recognition of their innocence. To illustrate, consider the case of Maurice Caldwell. Caldwell was convicted of murder in 1991 based on the mistaken identification of a single eyewitness. It was later established that it was scientifically impossible for the witness to have identified the perpetrator from her vantage point, thus rendering his conviction invalid. It was not for the fact that there was new evidence available, however, that the conviction was overturned. It was a claim of ineffective assistance of counsel that ultimately ended Caldwell's wrongful incarceration. While Caldwell no longer suffers from the immediate harm of a wrongful conviction he still has no legal recognition of his innocence, which may limit his ability to continue to recover from the long-lasting and difficult burdens of a wrongful conviction. A finding of innocence is a crucial component of recovery for many people who have been wrongfully convicted in California and without justification for such a high standard, there is no basis for requiring the victims of wrongful incarceration to meet it."

- 3) **Writ of Habeas Corpus Generally:** Habeas corpus, also known as "the Great Writ", is a process guaranteed by both the federal and state constitutions to obtain prompt judicial relief from illegal restraint. The functions of the writ is set forth in Penal Code Section 1473(a): "Every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint." Penal Code Section 1473(d) specifies that "nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted." A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:
- a) False evidence that is substantially material or probative on the issue of guilt, or punishment was introduced against a person at any hearing or trial relating to his incarceration;
 - b) False physical evidence believed by a person to be factual, material or probative on the issue of guilt, which was known by the person at the time of entering a plea of guilty and which was a material factor directly related to the plea of guilty by the person; and,
 - c) Any allegation that the prosecution knew or should have known of the false nature of the evidence is immaterial to the prosecution of a writ of habeas corpus. (Pen. Code, § 1473, subd. (b).)

A habeas corpus claim of false testimony requires proof that false evidence was introduced against the petitioner at his or her trial and that such evidence was material or probative on the issue of his or her guilt. (*In re Bell* (2007) 42 Cal.4th 630.) False evidence introduced at trial against a defendant is substantially material or probative if there is a reasonable probability that, had the false evidence not been introduced, the result would have been different. (*In re Roberts* (2003) 29 Cal.4th 726.) A reasonable probability that the result would have been different if false evidence had not been introduced against defendant is a chance great enough, under the totality of circumstances, to undermine the court's confidence in the outcome. (*Ibid.*) A habeas claim of false testimony does not require a showing of perjury or other knowledge of impropriety. (*In re Hall* (1981) 30 Cal.3d 308.)

A writ of habeas corpus may also be prosecuted based on newly discovered evidence, and shall be granted only if the new evidence undermines the entire prosecution case and point unerringly to innocence or reduced culpability. (*In re Clark* (1993) 5 Cal.4th 750, 766.)

- 4) **Reasonable Probability Standard:** In California, there is no codified standard of proof for a writ of habeas corpus brought on the basis of new evidence. The current standard is based on case law. *In re Lawley* (2008) 42 Cal. 4th 1231, 1239 found that newly discovered evidence "must undermine the entire prosecution case and point unerringly to innocence or reduced culpability;" and "if 'a reasonable jury could have rejected' the evidence presented, a petition has not satisfied this burden." This bill would instead set the standard for the granting of a writ of habeas corpus as "new evidence exists which would raise a reasonable probability of a different outcome if a new trial were granted. The reasonable probability standard is the same standard that is used in most other states, and in California is used for cases of: ineffective assistance of counsel; false evidence; and, prosecutorial misconduct. In support the ACLU notes that: "SB 694 would incorporate into California law a standard of proof that is in alignment with almost all other states. SB 694 will allow a wrongfully

convicted person to receive a new trial if he or she presents the reviewing court with evidence that is of such a decisive value and force that there is a reasonable probability of a different outcome if a new trial were granted. This standard brings the actual innocence claim into alignment with other post-conviction remedies for established constitutional violations, including claims of ineffective assistance of counsel, prosecutorial misconduct, and false evidence."

This bill also makes conforming changes, making it clear the standard is a finding of factual innocence by a court in the section requiring the Victim Compensation and Government Claims Board to make a recommendation for an appropriation when the court has granted a writ of habeas corpus on the basis of new evidence.

- 5) **Argument in Support:** According to *The California Innocence Project*, "The burden for proving one's actual innocence with new evidence of innocence is not defined by statute in California. Rather, California case law from more than sixty years ago requires a wrongfully convicted person seeking relief from their conviction to meet a very high burden. Specifically, they must present evidence no reasonable jury would reject, evidence which undermines the prosecution's entire case and points unerringly to innocence. Even the California Supreme Court has recognized this standard as much higher than other standards for relief which govern other habeas claims.

"The inordinately high burden currently in place in California means individuals who are actually innocent often cannot get relief through new evidence shows their convictions should be reversed. The case of William Richards demonstrates this tragic scenario. Richards was convicted in 1999 of the murder of his wife, Pamela Richards. After the conviction, the California Innocence Project discovered DNA evidence on the murder weapon and under the victim's fingernails. Experts testified this male DNA profile, which did not match Richards, belonged to the perpetrator. The DNA evidence, in combination with other evidence, completely undermined the prosecution case, establishing that Richards was not the killer. Unfortunately, however, the court reasoned the DNA, even in combination with the other evidence, did not point unerringly to innocence, partially because the DNA profile did not match any known perpetrator in the DNA database.

"SB 694 would amend the existing California statute to incorporate a standard of proof that is in alignment with most all other jurisdictions—38 states and the District of Columbia—and create a standard which is at once practical, achievable, and effective. Specifically, SB 694 will allow a wrongfully convicted person to receive a new trial if he or she presents evidence demonstrating there is a reasonable probability of a different outcome if a new trial were granted. This standard brings the actual innocence claim into alignment with other post-conviction remedies for established constitutional violations, including claims of ineffective assistance of counsel, prosecutorial misconduct, and false evidence."

- 6) **Argument in Opposition:** According to *The Judicial Council of California*, "While recognizing that establishing the standard of review for writs of habeas corpus as contemplated by SB 694 is within the purview of the Legislature, the council regretfully opposes SB 694 for significant procedural reasons that impact the administration of justice and because the council has significant concerns about the potential workload and costs associated with the bill would it be signed into law.

"Currently there is no codified standard of proof for a writ of habeas corpus brought on the basis of new evidence and the current standard is based on case law. The Supreme Court, in *In re Lawley*, held that for newly discovered evidence to be used to overturn a conviction it 'must undermine the entire prosecution case and point unerringly to innocence or reduced culpability;' ((2008) 42 Cal. 4th 1231, 1239). Further the court stated 'if a reasonable jury could have rejected the evidence presented, a petitioner has not satisfied his burden.; (*Id.*) SB 694 would lower the current judicially established standard of review for a writ of habeas corpus based on new evidence from 'undermines the prosecution of the case and points unerringly to innocence' to a standard of 'raises a reasonable probability of a different outcome if a new trial were granted.'

"The council believes that changing the standard of review for writs of habeas corpus in this manner will substantially increase the workload of trial courts and appellate courts, including the Supreme Court, in at least three instances. First, the council believes that SB 694's standard of review would substantially increase the number of writs of habeas corpus filed in trial courts and appellate courts. Second, the council believes that the standard will substantially increase the number of evidentiary hearings and new trials. Third, under certain circumstances, including writs of habeas corpus in capital cases, the costs of appointed council for petitioners are paid by the courts. An increase in habeas petitions will therefore lead to an increase in costs to the courts. Additionally, the council is concerned that the new lower standard undermines the conviction process as it has the appearance of questioning the integrity of trial court proceedings. As a result, numerous subsequent writs could be filed based on newly discovered evidence."

7) **Prior Legislation:**

- a) SB 1058 (Leno), Chapter 623, Statutes of 2014, allowed a writ of habeas corpus when evidence given at trial has subsequently been repudiated by the expert that testified or undermined by later scientific research or technological advances.
- b) SB 618 (Leno), Chapter 800, Statutes of 2013, streamlined the process for compensating persons who have been exonerated after being wrongfully convicted and imprisoned.
- c) AB 1593 (Ma), Chapter 809, Statutes of 2012, allows a writ of habeas corpus to be prosecuted if expert testimony relating to intimate partner battering and its effects was received into evidence but was limited at the trial court proceedings relating to a prisoner's incarceration for the commission of a violent felony committed prior to August 29, 1996, and there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that if the testimony had not been limited, the result of the proceedings would have been different.
- d) SB 1471 (Runner), of the 2007-08 Legislative Session, would have required habeas petitions in death penalty cases to be filed within one year and change the standards for competent counsel. SB 1471 failed passage in Senate Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

California Innocence Project (Co-sponsor)
Northern California Innocence Project (Co-sponsor)
American Civil Liberties Union
California Attorneys for Criminal Justice
California Public Defenders Association
Drug Policy Alliance
Friends Committee on Legislation of California
Innocence Project
Legal Services for Prisoners with Children
Westward Liberty

Opposition

California District Attorneys Association
Judicial Council of California
Los Angeles County District Attorney's Office
Sacramento County District Attorney's Office

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

Date of Hearing: July 14, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 707 (Wolk) – As Amended July 2, 2015

SUMMARY: Specifies that persons who possess a concealed weapons permit may not possess that firearm on school grounds as specified. Specifically, **this bill:**

- 1) Deletes the exemption that allows a person holding a valid license to carry a concealed firearm to possess a firearm on the campus of a university or college.
- 2) Permits a person holding a valid license to carry a concealed firearm to carry a 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 or grades 1 to 12.
- 3) Specifies further exceptions to the prohibition on carrying ammunition on school grounds:
 - a) Exempts specified active and honorably retired peace officers from the prohibition;
 - b) Exempts persons carrying ammunition onto school ground that is in a motor vehicle which is in a locked container within the trunk of the vehicle; and,
 - c) Deletes an existing exemption permitting persons who possess a concealed weapons permit.

EXISTING LAW:

- 1) Creates the Gun-Free School Zone Act of 1995. (Pen. Code, § 626.9 subd. (a).)
- 2) Defines a “school zone” to mean an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, or within a distance of 1,000 feet from the grounds of the public or private school. (Pen. Code, § 626.9, subd. (e).)
- 3) Provides that any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, unless it is with the written permission of the school district superintendent, or equivalent school authority, is punished as follows: (Pen. Code, § 626.9, subds. (f)-(i).)
 - a) Any person who possesses a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to imprisonment for two, three, or five years.

- b) Any person who possesses a firearm within a distance of 1,000 feet from a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to:
 - i) Imprisonment in a county jail for not more than one year or by imprisonment for two, three, or five years; or,
 - ii) Imprisonment for two, three, or five years, if any of the following circumstances apply:
 - (1) If the person previously has been convicted of any felony, or of any specified crime.
 - (2) If the person is within a class of persons prohibited from possessing or acquiring a firearm, as specified.
 - (3) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony, as specified.
- c) Any person who, with reckless disregard for the safety of another, discharges, or attempts to discharge, a firearm in a school zone shall be punished by imprisonment for three, five, or seven years.
- d) Every person convicted under this section for a misdemeanor violation who has been convicted previously of a misdemeanor offense, as specified, must be imprisoned in a county jail for not less than three months.
- e) Every person convicted under this section of a felony violation who has been convicted previously of a misdemeanor offense as specified, if probation is granted or if the execution of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.
- f) Every person convicted under this section for a felony violation who has been convicted previously of any felony, as specified, if probation is granted or if the execution or imposition of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.
- g) Any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for two, three, or four years.
- h) Any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for one, two, or three years.

- 4) States that the Gun-Free School Zone Act of 1995 does not apply to possession of a firearm under any of the following circumstances: (Pen. Code, § 626.9, subd. (c).)
 - a) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.
 - b) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.
 - c) The lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.
 - d) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified.
 - e) When the person is exempt from the prohibition against carrying a concealed firearm, as specified.
- 5) States that the Gun-Free School Zone Act of 1995 does not apply to: (Pen. Code, § 626.9, subd. (l).)
 - a) A duly appointed peace officer;
 - b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California;
 - c) Any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer;
 - d) A member of the military forces of this state or of the United States who is engaged in the performance of his or her duties;
 - e) A person holding a valid license to carry a concealed firearm;
 - f) An armored vehicle guard, engaged in the performance of his or her duties, as specified;
 - g) A security guard authorized to carry a loaded firearm;
 - h) An honorably retired peace officer authorized to carry a concealed or loaded firearm; or,
 - i) An existing shooting range at a public or private school or university or college campus.
- 6) Specifies that unless it is with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting

within the scope of their duties or persons exempted under specified peace officer exceptions to concealed weapons prohibitions. Exempts the following persons:

- a) A duly appointed peace officer as defined.
- b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California.
- c) Any person summoned by any of these officers to assist in making an arrest or preserving the peace while that person is actually engaged in assisting the officer.
- d) A member of the military forces of this state or of the United States who is engaged in the performance of that person's duties.
- e) A person holding a valid license to carry the firearm.
- f) An armored vehicle guard, who is engaged in the performance of that person's duties.

FISCAL EFFECT:

COMMENTS:

- 1) **Author's Statement:** According to the author, "The California Gun Free School Act prohibits bringing a firearm on any school, college, or university campus, but exempts those who carry a concealed weapons permit. SB 707 repeals this exemption, yet retains the authority of campus officials to allow firearms, including concealed ones, on campus as they see deem appropriate. Closing the CCW school grounds exemption in California is consistent with efforts to maintain school and college campuses as safe, gun free, environments. SB 707 will ensure that students and parents who expect a campus to be safe and 'gun free' can be confident that their expectation is being met and that school officials are fully in charge of who is allowed to bring a firearm on their campus."
- 2) **Gun-Free School Zone Act of 1995:** Enacted by AB 645 (Allen), Chapter 1015, Statutes of 1994, the Gun-Free School Zone Act, hereafter referred to as the "Act," generally provides that any person who possesses, discharges, or attempts to discharge a firearm, in a place that the person knows, or reasonably should know, is a within a distance of 1,000 feet from the grounds of any public or private school, kindergarten or Grades 1 to 12, (a "school zone"), without written permission, may be found guilty of a felony or misdemeanor and is subject to a term in county jail or state prison.

The Act does not require that notices be posted regarding prohibited conduct under the Act; therefore, it is incumbent on the individual possessing the firearm to be knowledgeable of and adhere to the Act.

A "school zone" is defined as an area in, or on the grounds of, a public or private school providing instruction in kindergarten or Grades 1 to 12, inclusive, and within a distance of 1,000 feet from the grounds of the public or private school. The Act also provides specific definitions of a "loaded" firearm and a "locked container" for securing firearms.

- 3) **Effect of this Bill and the Honorably Retired Peace Officer Amendments:** Honorably retired peace officers authorized to carry a concealed or loaded firearm and individuals who possess a valid concealed carry permit, are currently allowed to carry a firearm on school campuses, including grade schools, high schools and college campuses. This legislation would, instead, prohibit CCW permit holders from carrying firearms on school grounds, but would allow them to carry firearms within 1,000 feet of a school. The bill as originally drafted also prohibited honorably retired peace officers from carrying firearms on school campuses. The July 2, 2015 amendments to the bill exempt honorably retired peace officers from the prohibition.

Opposition groups argue that because the bill now exempts honorably retired peace officers, the bill is not in violation of the Equal Protection Clause of the 14th Amendment. The *Firearms Policy Coalition* cites *Silveira v. Lockyer* (9th Cir. 2002) 312 F.3d 1052; which struck down a provision exempting retired peace officers from the prohibitions of the California Assault Weapons Control Act on Equal Protection grounds, holding that there was no rational basis to treat retired officers differently from similarly situated members of the general public. The constitutional question for this bill would be whether there is a rational basis for exempting honorably retired peace officers from the prohibitions of the Gun-Free School Zone Act of 1995.

- 4) **Argument in Support:** According to *The California Chapters of the Brady Campaign to Prevent Gun Violence*, "Existing law prohibits a person from possessing a firearm in a school zone without the written permission of certain school district officials. A school zone includes school grounds and a distance within 1,000 feet of a public or private K-12 school. Additionally, existing law prohibits a person from possessing a firearm upon the grounds of a public or private university or college campus without the written permission of specified university or college officials. Persons holding a valid license to carry a concealed and loaded weapon (CCW) and retired peace officers authorized to carry concealed and loaded firearms are exempt from the school zone and university or college prohibitions. SB 707 would allow persons holding a CCW license to carry a concealed firearm within 1,000 feet but not on the grounds of a K-12 school and not on the campus of a university or college. Firearms, including concealed, loaded handguns, could still be allowed on school grounds or campuses with the permission of school officials.

"The Brady Campaign strongly believes that the discretion to allow hidden, loaded guns on a school grounds and college or university campuses must lie with school authorities, who bear the responsibility for the wellbeing and safety of their students. Under existing law, county sheriffs issue CCW permits and thereby determine who may carry a concealed, loaded gun on school grounds or campuses. This creates the opportunity for a 21 year old from a rural county to obtain a CCW permit and carry a loaded, hidden handgun in a dormitory on an urban campus.

"This is one area of firearm law in which California lags behind many other states. According to the Law Center to Prevent Gun Violence, which tracks state firearm laws, 39 states and the District of Columbia prohibit those with CCW permits from possessing concealed firearms within school zones and 23 states specify that CCW permit holders may not carry concealed firearms on college and university campuses. California is not one of these states.

"The national trend on this issue is disturbing as legislation has been introduced in at least 16 states that would force guns onto college and university campuses. Proponents are even suggesting that more guns on campuses would stop student rape. Additionally, legislation is being pushed in 20 states to allow people to carry hidden, loaded handguns in public without a permit. Moreover, federal reciprocity legislation (H.R. 402 and S. 498) has been introduced that would require states to recognize CCW permits from other states, including those with reprehensibly low standards. States that use law enforcement discretion, such as California, would be forced to recognize CCW permits from other states, even if the permit holder would not pass a background check in the state where they are carrying. The threat of national CCW reciprocity heightens the importance of SB 707 and the need to remove the exemption that allows CCW license holders to carry guns on school grounds and campuses in California.

"In *Peruta v. County of San Diego*, the Ninth Circuit Court of Appeals found, in February 2014, that California's CCW standard, which requires the applicant to show good cause and gives discretion to local law enforcement, was unconstitutional. After the ruling, several counties in California began to issue more CCW permits. Although the 9th Circuit vacated and reheard *Peruta en banc* in June, the recent increase in CCW permits allows for more guns to be carried in school zones and college and university campuses.

"College aged students may engage in risky or impulsive behavior, be under the influence of alcohol or drugs, or suffer from pressure or depression and be at risk of suicide. Allowing a student CCW license holder to carry guns on college and university campuses means that more students will have access to firearms. Furthermore, the Violence Policy Center has documented homicides, suicides, accidental shootings and at least 29 mass shootings (since May 2007) committed by CCW license holders.

"Under SB 707, the number of hidden, loaded firearms legally brought onto school grounds and college campuses will be reduced and the safety of students and others will increase. The California Brady Campaign Chapters urge your AYE vote on this important measure."

- 5) **Argument in Opposition:** According to the *National Rifle Association of America*, "This bill was introduced in the wake of an incident involving vice principal Kent Williams of Tevis Junior High School, who was arrested in 2014 for bringing a firearm onto school property despite possessing a valid CCW license. All criminal charges against him were dropped, and he is now suing the city and police department for wrongful arrest. *Williams v. Bakersfield*, No. 14-01955 (E.D.Cal. filed Dec. 8, 2014).

"Senate Bill 707 would effectively prohibit CCW holders from possessing firearms on any properties that make up the grounds of a K-12 school or university, including many parking lots, common areas that may not be readily identifiable as school grounds, and student apartment buildings. Due to imprecise language used in current penal code section 626.9, SB 707 will further promote inadvertent violations and unjust prosecutions of otherwise law-abiding firearm owners. This legislation raises significant concerns under the Second Amendment by further infringing the rights of law-abiding—and properly licensed and trained individuals—to possess a firearm for self-defense. From a practical perspective, SB 707 improperly expands prohibitions on the possession of firearms by persons who pose no threat to public safety. In doing so, this legislation would leave these individuals, and all other persons on California campuses, defenseless against violent criminals that target

California schools and universities without regard for these restrictions, barring what a majority of law enforcement officers believe to be the most effective line of defense against mass shootings."

6) Prior Legislation:

- a) AB 2609 (Lampert), Chapter 115, Statutes of 1998, clarified the Gun Free School Zone Act (Act) to forbid the bringing or possession of any firearm on the grounds of, or in any buildings owned or operated by a public or private university or college used for the purpose of student housing, teaching, research or administration, that are contiguous or are clearly marked university property. Exempts specified law enforcement and security personnel.
- b) AB 624 (Allen), Chapter 659, Statutes of 1995, passed the Gun-Free School Zone Act of 1995.

REGISTERED SUPPORT / OPPOSITION:

Support

California College and University Police Chiefs Association (Sponsor)
Association for California School Administrators
Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California Chapters of the Brady Campaign
California Correctional Supervisors Organization
California Narcotic Officers Association
California Police Chiefs Association
California School Boards Association
California School Employees Association
California State PTA
California State University System
Courage Campaign
Davis College Democrats
Davis Joint Unified School District
Fraternal Order of Police
L.A. County Probation Officers Union
Law Center to Prevent Gun Violence
Long Beach Police Officers Association
Los Angeles County Democratic Party
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Los Angeles Unified School District
Peace Officers Research Association of California
Physicians for Social Responsibility, Sacramento Chapter
Retired and Disabled Police of America
Riverside Sheriffs' Association
Sacramento Deputy Sheriffs' Association

Santa Ana Police Officers Association
South County Citizens Against Gun Violence
Violence Prevention Coalition
Women Against Gun Violence
Youth Alive

1 private individual

Opposition

California Association of Licensed Investigators
California Rifle and Pistol Association
Firearms Policy Coalition
Gun Owners of California
National Rifle Association of America

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

Date of Hearing: July 14, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 722 (Bates) – As Amended May 5, 2015

SUMMARY: Creates a new state prison felony for any person who willfully disables an electronic, global positioning system (GPS) if the device was affixed as a condition of parole, postrelease community supervision (PRCS), or probation as a result of a conviction for a specified sex offense. Specifically, **this bill:**

- 1) Requires that the person must have intended to evade supervision and either does not surrender, or is not apprehended, within one week of the issuance of a warrant for absconding.
- 2) States that there shall be a rebuttable presumption that the person intended to evade supervision.
- 3) Makes the violation of this provision a felony, punishable by imprisonment in the state prison for 16 months, or two or three years.
- 4) Exempts the removal or disabling of a monitoring device by a physician, emergency medical services technician, or by any other emergency response or medical personnel when doing so is necessary during the course of medical treatment of the person subject to the device.
- 5) Requires the terms of probation or parole of a person who has committed a violation of these provisions to include participation and completion of a sex offender management program.

EXISTING LAW:

- 1) Authorizes the California Department of Corrections and Rehabilitation (CDCR) to utilize continuous electronic monitoring, including GPS, to electronically monitor the whereabouts of persons on parole as specified. (Pen. Code, § 3010.)
- 2) Provides that every inmate who has been convicted for any felony violation of a registerable sex offense or any attempt to commit any of those offenses and who was committed to prison and released on parole shall be monitored by GPS for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less. (Pen. Code, § 3000.07, subd. (a).)
- 3) Provides, as enacted by Proposition 83 of 2006, that every inmate who has been convicted for any felony violation of a registerable sex offense, or any attempt to commit one of those sex offenses, and who is committed to prison and released on parole shall be monitored by GPS for life. (Pen. Code, § 3004, subd. (b).)

- 4) Provides that whenever a parole officer supervising an individual has reasonable cause to believe that the individual is not complying with the rules or conditions set forth for the use of continuous electronic monitoring as a supervision tool, the officer supervising the individual may, without a warrant of arrest, take the individual into custody for a violation of parole. (Pen. Code, § 3010.7.)
- 5) Authorizes the court, upon revocation of parole, to do any of the following:
 - a) Reinstate parole with modification of conditions, if appropriate, including a period of incarceration;
 - b) Revoke parole and order the parolee to serve time in the county jail; or,
 - c) Refer the parolee to a reentry program or other evidence-based program. (Pen. Code Section 3000.08, subd. (f).)
- 6) Limits confinement in the county jail for up to 180 days of incarceration per revocation. (Pen. Code Section 3000.08, subd. (g).)
- 7) Provides that parolees who are registered sex offenders and are required to have a GPS device as a condition of parole shall be subject to parole revocation and incarcerated in a county jail for 180 days if they remove or otherwise disable the device, as specified. (Pen. Code, § 3010.10.)
- 8) Establishes an enhanced sentencing structure that applies to crimes of rape, oral copulation, sodomy, and sexual penetration committed by force, duress or threats; lewd conduct with a child under the age of 14 and continuous sexual abuse of a child which, depending on the number and kinds of aggravating factors attendant to the crime, require a term of 15- or 25-years-to-life, or life without parole for specified crimes against a minor. (Pen. Code, § 667.61.)
- 9) Requires persons placed on parole or formal probation for an offense that requires the person to register as a sex offender to complete a sex offender management program. (Pen. Code, §§ 1203.067, subd. (b) and 3008, subd. (d).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "SB 722 focuses upon high risk predatory sex offenders by limiting its application to the offenses deemed most egregious by the legislature when it approved the 'One Strike Rape' law. These offenses are: rape, spousal rape, foreign object rape, lewd or lascivious acts against children, sodomy, oral copulation, and continuous sexual abuse of a child. The premise behind 'One Strike Rape' is that one victim is enough.

"The circumstances of some sex offenses are so aggravated that the state imposes a life sentence to avoid the potential of another victim. When a rapist or child molester cuts off his GPS device and evades the law the state has been put on notice that others are at great risk. SB 722 is needed because in the cases of Gordon and Cano the state simply waited for

another victim."

- 2) **Due Process Concerns:** The Due Process Clause of the Fourteenth Amendment denies States the power to deprive the accused of liberty unless the prosecution proves beyond a reasonable doubt every element of the charged offense. (U.S. Const., 14th Amend.; *In re Winship* (1970) 397 U.S. 358, 364.) Where intent of the accused is an element of the crime, its existence is a question of fact to be determined by the jury. (*Morissette v. United States* (1952) 342 U.S. 246, 274.) A presumption on one of the required elements of a crime, regardless of whether it is rebuttable, relieves the prosecution of the affirmative burden of persuasion by instructing the jury that it must find the presumed element unless the defendant persuades the jury not to make such a finding. (*Francis v. Franklin* (1985) 471 U.S. 307, 317.) Such shifting of the burden of persuasion onto the defendant is impermissible under the Due Process Clause. (*Ibid.*, citing *Patterson v. New York* (1977) 432 U.S. 197, 215.)

In *Francis v. Franklin*, *supra*, defendant, an escapee from prison, had fled to a nearby home and demanded the resident's car keys. The resident slammed the door and the defendant's gun went off. The bullet traveled through the wooden door and into the resident's chest killing him. The defendant was charged with murder which requires proof of the intent to kill. At trial the jury was instructed as follows on the issue of intent: "The acts of a person of sound mind and discretion are presumed to be the product of the person's will, but the presumption may be rebutted. A person of sound mind and discretion is presumed to intend the natural and probable consequences of his acts, but the presumption may be rebutted. . . ." (*Francis v. Franklin*, *supra*, 471 U.S. at p. 311.) Defendant was found guilty of murder. Defendant appealed and ultimately had his conviction overturned by the United States Supreme Court.

The Court held that the jury instruction contained a mandatory presumption that violated the Due Process Clause. The Court's inquiry involved ascertaining whether the challenged portion of the instruction creates a mandatory presumption or merely a permissive inference. A mandatory presumption requires the jury to come to a certain conclusion, while a permissive inference suggests a possible conclusion but does not require it. The Court found that the instruction in *Francis* was a mandatory presumption because it "directs the jury to presume an essential element of the offense – intent to kill – upon proof of other elements of the offense – the act of slaying another. In this way the instructions 'undermine the factfinder's responsibility at trial, based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt.'" (*Id.* at p. 316, citing *County Court v. Allen* (1979) 442 U.S. 140, 152.) Even though the jury instructions allowed the presumption to be rebutted, the presumption was still found to be unconstitutional because it shifted the burden of persuasion on the crucial element of intent from the prosecution to the defense. (*Id.* at p. 325.)

This bill contains a mandatory presumption that is rebuttable. This relieves the prosecution of its burden of persuasion on an element of the offense created by this bill. Specifically, this bill requires that a person disabled or removed a GPS device with the "intent to evade supervision." The defendant's intent is an element of the offense, and unless it is proven by the prosecution beyond a reasonable doubt that the defendant intended to evade supervision, the defendant cannot be found guilty. However, this bill further provides that "there shall be a rebuttable presumption that the person intended to evade supervision." Thus, similar to *Francis*, *supra*, this bill creates a mandatory presumption that the jury must find to be true, unless the defendant persuades them otherwise. As stated in *Francis*, the Due Process Clause

"prohibits the State from using evidentiary presumptions in a jury charge that have the effect of relieving the State of its burden of persuasion beyond a reasonable doubt of every essential element of a crime." (*Francis v. Franklin, supra*, 471 U.S. at p. 313.) The presumption in this bill improperly shifts the burden of persuasion from the prosecution to the defendant and therefore violates the defendant's constitutional right to due process.

- 3) **State Prison Overcrowding Considerations:** In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In its most recent status report to the court (June 2015), the administration reported that as "of June 10, 2015, 111,370 inmates were housed in the State's 34 adult institutions, which amounts to 134.7% of design bed capacity, and 7,726 inmates were housed in out-of-state facilities. The current population is 2,352 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' June 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, Three-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

The state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).)

Moreover, there are still approximately 6,262 prisoners being housed in private prisons. (See the latest CDCR monthly population report, as of June 24, 2015; <http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Weekly_Wed/TPOP1A/TPOP1Ad150624.pdf>.)

This bill creates a new state prison felony for any person who disables or removes a GPS device affixed as a condition of parole, probation, or PRCS as a result of a conviction for specified sex offenses. According to CDCR's most recent statistics, from January 2014 through March 2015, there were a total of 2,584 warrants issued for sex offenders who absconded from parole. Of those absconders, 1,261 were apprehended after 7 days, which is the amount of time specified under this bill. Under the newly enacted Penal Code Section

3010.10 (SB 57 (Lieu), Chapter 776, Statutes of 2013), which created a new parole violation for sex offenders who disable or remove a GPS device, there were a total of 1,675 violations from January 1, 2014 through March 2015. These numbers can be used to approximate the frequency of the type of violation this bill seeks to address. This bill could potentially send hundreds, if not thousands, of people to state prison, who would otherwise serve their time in county jail.

Although the state is currently in compliance with the court-ordered population cap (not counting the prisoners housed in out-of-state or private prisons), creating new state prison felonies will reverse the progress made in reducing the state prison population. This is contrary to the court's order for a durable solution to prison overcrowding.

- 4) **Changes to Parole As a Result of Criminal Justice Realignment:** Prior to realignment, individuals released from prison were placed on parole and supervised in the community by parole agents of CDCR. If it was alleged that a parolee had violated a condition of parole, he or she would have a revocation proceeding before the Board of Parole Hearings (BPH). If parole was revoked, the offender would be returned to state prison for violating parole.

Realignment shifted the supervision of some released prison inmates from CDCR parole agents to local probation departments. Parole under the jurisdiction of CDCR for inmates released from prison on or after October 1, 2011 is limited to those defendants whose term was for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. (Pen. Code, §§ 3000.08, subds. (a) and (c), and 3451, subd. (b).) All other inmates released from prison are subject to up to three years of PRCS under local supervision. (Pen. Code, § 3000.08, subd. (b) and 3451, subd. (a).)

Realignment also changed the process for revocation hearings, which was implemented in phases. Until July 1, 2013, individuals supervised on parole by state agents continue to have revocation hearings before BPH. After July 1, 2013, the trial courts will assume responsibility for holding all revocation hearings for those individuals who remain under the jurisdiction of CDCR. In contrast, since the inception of realignment, individuals placed on PRCS stopped appearing before the BPH for revocation hearings. Their revocation hearings are handled by the trial court.

Additionally, realignment changed where an offender is incarcerated for violating parole or PRCS. Most individuals can no longer be returned to state prison for violating a term of supervision; offenders serve their revocation term in county jail. (Pen. Code, §§ 3056, subd. (a) and 3458.) The only offenders who may be returned to state prison if parole is revoked are those with life terms. (Pen. Code, § 3000.1.) Generally, there is a 180-day limit to incarceration on a parole or PRCS violation. (Pen. Code, §§ 3056, subd. (a) and 3455, subd. (c).)

SB 57 (Lieu), Chapter 776, Statutes of 2013, carved out a mandatory 180-day term in county jail for sex offenders who violate parole by removing or disabling a GPS or other monitoring device. This bill creates a new felony offense for certain sex offenders who remove or disable a GPS device and states that the offense is punishable by imprisonment in the state prison for 16 months, or two or three years. Assuming that a person convicted pursuant to

the provisions of this bill receives the mid-term sentence of two years, and that the person would be eligible for worktime credits (day-for-day) because the new offense is not a "violent" felony or punishable under the three strikes law, the time actually served would be one year in state prison. If the person received the lower term of 16 months, the time actually served would be 8 months. Any days that the person spent in county jail awaiting disposition on his or her case would also reduce the term. Considering that under current law, this offense would receive a mandatory 180 days in county jail, does this bill create any deterrence for someone who would be facing minimally increased time in state prison?

- 1) **Effectiveness of GPS Devices:** In October 2014, the Office of the Inspector General (OIG), at the request of the Senate Rules Committee pursuant to subdivision (b) of Penal Code section 6126, conducted a review and assessment of electronic monitoring of sex offenders on parole. According to the report:

"There exists little objective evidence to determine to what extent, if any, GPS tracking is a crime deterrent, although a small 2012 study funded by the National Institute of Justice of 516 high-risk sex offenders found that offenders who were not subjected to GPS monitoring had nearly three times more sex-related parole violations than those who were monitored by GPS technology. Despite the rarity of studies defending GPS as a crime deterrent, the OIG's interviews with parole agents and local law enforcement personnel found that they value GPS technology as a tool for its ability to locate parolees, track their movements, and provide valuable information in solving crimes."

(Office of the Inspector General, *Special Review: Assessment of Electronic Monitoring of Sex Offenders on Parole and the Impact of Residency Restrictions* (Oct. 2014), available at http://www.oig.ca.gov/media/reports/Reports/Reviews/OIG_Special_Review_Electronic_Monitoring_of_Sex_Offenders_on_Parole_and_Impact_of_Residency_Restrictions_November_2014.pdf) (as of July 7, 2015), pg. 2.)

While anecdotally, GPS is an effective monitoring tool allowing parole agents to track the movement and locate parolees more quickly than is the case when supervising non-GPS parolees, the report found that GPS technology adds to a parole agent's workload in certain aspects, including reviewing GPS tracks for each working day for all GPS-monitored offenders, logging their tracking reviews daily, and responding to after-hours alerts from the GPS monitoring center.

"Parole administrators told the OIG that a typical parole agent spends approximately two hours reviewing a parolee's GPS tracks for a single-day period. During the course of a GPS track review, a parole agent is expected to thoroughly investigate all points of interest and alerts, using the various viewing capabilities of the department's GPS system. These capabilities include point-by-point playback, where the parole agent views each individual GPS track collected by the GPS system; point-pattern analysis, where the agent views groups of GPS points to identify and assess the parolee's patterns; zoom levels, which allow the parole agent to adjust the view of the GPS points; and mapping tools, which allow parole agents to superimpose the GPS tracks on a map.

"Department policy requires parole agents to document the completion of their GPS review in parole supervision records. The parole agent documents the date and time range of the tracks reviewed as well as the findings observed and any further investigation

needed as a result of the review. If the parole agent discovers during the review that a parolee violated the conditions of parole—such as travelling outside of his or her residence during curfew hours—the parole agent would document the violation and take the appropriate enforcement actions.

"Parole agents assigned to GPS duties also receive and respond to alerts generated by the GPS system. The department's GPS vendor monitors the information generated by the GPS devices and notifies the parole agent when the system identifies a condition that requires review. Less urgent alerts (such as low-battery notices) are communicated to the parole agent by email, while more urgent alerts (such as notices regarding tampering with or removing GPS devices) are sent by text message or telephone call. Department policy requires parole agents to resolve all alerts within six business days and to document in the GPS system their actions taken, in addition to making appropriate entries into the parolee's report of supervision."

(Id. at pg. 8.)

Additionally, the report found that a majority of parole agents carried caseloads exceeding department policy limits:

"Department policy states that a GPS caseload will consist of 20 high-risk or 40 non-high-risk cases, or an equitable combination of both. Accordingly, the department included in its policy the following matrix for its managers to follow in assigning caseloads of high-risk and non-high-risk sex offenders.

"However, when comparing actual parole agent caseloads with the department's caseload matrix, the OIG found that 145 of its 231 parole agents (63 percent) carried caseloads exceeding the matrix limits. Although the average caseload size for the 231 parole agents was just over 30 parolees per agent, when the OIG factored in the mix of high-risk and non-high-risk parolees in the caseloads, most parole agents exceeded the matrix limits."

(Id. at pg. 10.)

As illustrated by the case of Franc Cano and Steven Gordon, two registered sex offenders who were being monitored by GPS when they allegedly raped and killed four women in Orange County over the period of 5 months, high caseloads can prevent the ability of parole agents to effectively monitor the whereabouts of those being tracked.

As reported by the Los Angeles Times, "In the two months before the first victim disappeared, the agent supervising Cano and Gordon went at least three weeks with 15 to 17 high-risk parolees on his watch, along with another 21 to 25 sex offenders. State rules should have limited him to six to 10 additional parolees. The agent exceeded the allowed ratios again in October, as did three other agents assigned to supervise either Cano or Gordon between August and February. Ondre Henry, president of the Parole Agents Assn. of California, said caseloads consistently exceed 40 parolees, and almost all agents have more than 20 cases. The workload, he said, hampers the ability to oversee sex offenders and fully investigate their whereabouts tracked on GPS devices. 'In the case of Gordon and Cano ... yes, you can review the tracks. It's a very useful tool. But unless you can actually do the investigative work ... it kind of defeats the purpose,' Henry said. 'When you have caseload

sizes that are so big, it's hard to drill into those specific factors." (St. John and Esquivel, *California not following recommendation on parole agent caseloads*, L.A. Times (Aug. 10, 2014) <<http://www.latimes.com/local/la-me-ff-serial-killer-parole-20140804-story.html>>.)

- 2) **Argument in Support:** According to the *Orange County Sheriff's Department*, "The management of sex offenders continues to be a complex challenge for the law enforcement community. Once a sex offender serves his time in custody, a GPS device is the best tool available to ensure that these types of offenders are complying with state law. Due to the fact that these devices are so integral to the management of this population, offenders must know that there will be serious consequences for device tampering. Creating this added level of deterrence is a necessary addition to the penal code."
- 3) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice (CACJ)*, "Current law allows for parole revocation and incarceration in county jail for 180 days for the disabling or removing of a GPS device. This law, as a result of SB 57 (2013), went into effect on January 1, 2014. In addition, AB 2121 (2014) 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 the release from custody for the purpose of affixing the GPS device. The law also allows a certain amount of discretion in deciding whether certain individuals should be incarcerated for such violations."

"In the last two legislative sessions, our laws have been changed to provide certain oversight on tracked sex offenders. However, there has been insufficient time to evaluate whether the implementation of this new law has proven to be effective at deterring persons from disabling or removing their GPS devices. Notwithstanding these laws, sending a person back to prison for a minor offense does not address the root issues of persons being ill-prepared to reenter their communities upon release. The enormous cost of incarceration and parole revocations for even minor offenders continue to contribute to budget constraints and fuel public cries for fiscal reform.

"This legislation is premature and unnecessary considering Penal Code section 3010.10 was recently amended in the prior legislative session. There are no statistics or research proving current law is insufficient or incarceration time must be extended. For these reasons, CACJ must regretfully oppose SB 722."

4) **Prior Legislation:**

- a) AB 2121 (Gray), Chapter 603, Statutes of 2014, requires sex offender parolees to report to their parole officers within one working day following release from prison, or as instructed by a parole officer, to be fitted with a GPS tracking device.
- b) SB 57 (Lieu), Chapter 776, Statutes of 2013, created a new parole violation for a sex offender to remove or disable an electronic GPS or other monitoring device affixed as a condition of parole and required the person to be incarcerated in county jail for 180 days.
- c) AB 63 (Patterson), of the 2013-14 Legislative Session, created an alternative felony/misdemeanor offense for removal of a GPS monitoring device affixed as a condition of post-release community supervision or parole. AB 63 failed passage in this

Committee.

- d) SB 722 (Nielson), of the 2013-14 Legislative Session, would have created new penalties for any person to willfully remove or disable an electronic monitoring or supervising 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. SB 742 failed passage in Senate Public Safety.
- e) AB 2016 (Gorell), of the 2011-12 Legislative Session, would have prohibited a person from willfully removing or disabling an electronic, GPS or other monitoring device affixed to his or her person or the person of another, knowing that the device was affixed as a condition of a criminal sentence, juvenile court disposition, parole, probation, post-release community supervision or mandatory supervision. AB 2016 was not heard by this Committee.
- f) AB 179 (Gorell), of the 2011-12 Legislative Session, was substantially similar to AB 2016. AB 179 failed passage in this Committee.
- g) SB 566 (Hollingsworth), of the 2009-10 Legislative Session, would have established a penalty scheme for persons who have been lawfully ordered to submit to a GPS or electronic monitoring device, and willfully interfered with the device, with penalties ranging from misdemeanors to felonies depending upon the offense underlying the GPS sanction. SB 566 failed passage in the Senate Public Safety Committee.
- h) SB 619 (Speier), Chapter 484, Statutes of 2005, authorized the use of GPS technology to supervise persons on probation and parole.

REGISTERED SUPPORT / OPPOSITION:

Support

California Against Slavery
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California District Attorneys Association
California Narcotic Officers Association
California State Lodge, Fraternal Order of Police
California State Sheriffs' Association
Crime Victims United of California
Long Beach County Police Officers Association
Los Angeles County Professional Peace Officers Association
Orange County Board of Supervisors
Orange County District Attorney's Office
Orange County Sheriff's Department
Sacramento County Deputy Sheriffs' Association
San Diego County Sheriff's Department
San Diego County District Attorney's Office

Opposition

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

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

Date of Hearing: July 14, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

SB 795 (Committee on Public Safety) – As Amended June 29, 2015
As Proposed to be Amended in Committee

SUMMARY: Makes technical and corrective changes, as well as non-controversial substantive changes, to various code sections relating to criminal justice. Specifically, **this bill:**

- 1) Exempts a person from the requirement that they be taken in front of a magistrate without unreasonable delay, if the person is arrested for driving under the influence of alcohol or drugs and the person is delivered to a hospital for medical treatment that prohibits immediate delivery to a magistrate.
- 2) Deletes the January 1, 2016 repeal date on the provisions of the interstate compact and would thereby extend the operation of the provisions indefinitely.
- 3) Clarifies that a person who violates the rules and regulations relating to damage to state park property, and state vehicle recreation areas and trail system is guilty of an alternate misdemeanor/infraction.
- 4) Makes other additional non-substantive technical changes.

EXISTING LAW:

- 1) Requires that when a person is arrested without a warrant, they must be taken without unnecessary delay before the nearest or most accessible magistrate in the county in which the offense is triable with certain specific exceptions. (Pen. Code, § 849.)
- 2) Establishes the Interstate Compact for Juveniles, which is an interstate commission comprised of the compacting states to, among other things, oversee, supervise, and coordinate the interstate movement of juveniles. These provisions sunsets on January 1, 2016. (Welf. & Institutions Code, § 1403.)
- 3) Requires the Department of Parks and Recreation (DPR) to protect the state park system, the state vehicle recreations area and trail system from damage and to preserve the peace therein, and a person who violates the rules and regulations of the DPR is guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment not to exceed 90 days, except that at the time a particular action is commenced, the judge may considering the recommendation of the district attorney, reduce the charged offense from a misdemeanor to an infraction punishable by a fine not less than \$10 nor more than \$1,000. (Pub. Resources Code, § 5008.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, " This is the annual public safety omnibus bill. The omnibus bill is introduced by all members of the Senate Public Safety Committee, and it is similar to other public safety omnibus bills, introduced in the past, in that:

- The bill's provisions make only technical or minor changes to the law; and,
- There is no opposition by any member of the Legislature, or recognized group to the proposal.

This procedure has allowed for the introduction of fewer minor bills and has saved the Legislature time and expense over the years."

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

**Amendments Mock-up for 2015-2016 SB-795 (Committee on Public Safety (S)
- (Senators Hancock (Chair), Anderson, Leno, Liu, McGuire, Monning, and
Stone))**

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

**Mock-up based on Version Number 96 - Amended Assembly 6/29/15
Submitted by: Gregory Pagan, Committee on Public Safety**

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

SECTION 1. Section 1031 of the Government Code is amended to read:

1031. Each class of public officers or employees declared by law to be peace officers shall meet all of the following minimum standards:

(a) Be a citizen of the United States or a permanent resident alien who is eligible for and has applied for citizenship, except as provided in Section 2267 of the Vehicle Code.

(b) Be at least 18 years of age.

(c) Be fingerprinted for purposes of search of local, state, and national fingerprint files to disclose a criminal record.

(d) Be of good moral character, as determined by a thorough background investigation.

(e) Be a high school graduate, pass the General Education Development Test or other high school equivalency test approved by the State Department of Education that indicates high school graduation level, pass the California High School Proficiency Examination, or have attained a two-year, four-year, or advanced degree from an accredited college or university. The high school shall be either a United States public school, an accredited United States Department of Defense high school, or an accredited or approved public or nonpublic high school. Any accreditation or approval required by this subdivision shall be from a state or local government educational agency using local or state government approved accreditation, licensing, registration, or other approval standards, a regional accrediting association, an accrediting association recognized by the Secretary of the United States Department of Education, an accrediting association holding full membership in the National Council for Private School Accreditation (NCPSA), an organization holding full membership in AdvancED, an organization holding full membership in the Council for American Private Education (CAPE), or an

Gregory Pagan

Committee on Public Safety

07/09/2015

Page 1 of 8

accrediting association recognized by the National Federation of Nonpublic School State Accrediting Associations (NFNSSAA).

(f) Be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer.

(1) Physical condition shall be evaluated by a licensed physician and surgeon.

(2) Emotional and mental condition shall be evaluated by either of the following:

(A) A physician and surgeon who holds a valid California license to practice medicine, has successfully completed a postgraduate medical residency education program in psychiatry accredited by the Accreditation Council for Graduate Medical Education, and has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued after completion of the psychiatric residency program.

(B) A psychologist licensed by the California Board of Psychology who has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued postdoctorate.

The physician and surgeon or psychologist shall also have met any applicable education and training procedures set forth by the California Commission on Peace Officer Standards and Training designed for the conduct of preemployment psychological screening of peace officers.

(g) This section shall not be construed to preclude the adoption of additional or higher standards, including age.

SEC. 2. Section 384a of the Penal Code is amended to read:

384a. (a) (1) A person shall not willfully or negligently cut, destroy, mutilate, or remove plant material that is growing upon state or county highway rights-of-way.

(2) A person shall not willfully or negligently cut, destroy, mutilate, or remove plant material that is growing upon public land or upon land that is not his or hers without a written permit from the owner of the land, signed by the owner of the land or the owner's authorized agent, as provided in subdivision (c).

(3) A person shall not knowingly sell, offer or expose for sale, or transport for sale plant material that is cut or removed in violation of this subdivision.

(b) For purposes of this section, "plant material" means a tree, shrub, fern, herb, bulb, cactus, flower, huckleberry, or redwood green, or a portion of any of those, or the leaf mold on those

plants. "Plant material" does not include a tree, shrub, fern, herb, bulb, cactus, flower, or greens declared by law to be a public nuisance.

(c) (1) The written permit required by paragraph (2) of subdivision (a) shall be signed by the landowner, or the landowner's authorized agent, and acknowledged before a notary public, or other person authorized by law to take acknowledgments. The permit shall contain the number and species of trees and amount of plant material, and shall contain the legal description of the real property as usually found in deeds and conveyances of the land on which cutting or removal shall take place. One copy of the permit shall be filed in the office of the sheriff of the county in which the land described in the permit is located. The permit shall be filed prior to the commencement of cutting or removal of plant material authorized by the permit.

(2) The permit required by this section need not be notarized or filed with the sheriff when five or less pounds of shrubs or boughs are to be cut or removed.

(d) A county or state fire warden; personnel of the Department of Forestry and Fire Protection, as designated by the Director of Forestry and Fire Protection; personnel of the United States Forest Service, as designated by the Regional Forester, Region 5, of the United States Forest Service; or a peace officer of the State of California, may enforce the provisions of this section and may confiscate any and all plant material unlawfully cut or removed or knowingly sold, offered, or exposed or transported for sale as provided in this section.

(e) This section does not apply to any of the following:

(1) An employee of the state or of a political subdivision of the state who is engaged in work upon a state, county, or public road or highway while performing work under the supervision of the state or a political subdivision of the state.

(2) A person engaged in the necessary cutting or trimming of plant material for the purpose of protecting or maintaining an electric powerline, telephone line, or other property of a public utility.

(3) A person engaged in logging operations or fire suppression.

(f) A violation of this section shall be a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000), by imprisonment in a county jail for not more than six months, or by both that fine and imprisonment.

SEC. 3. Section 849 of the Penal Code is amended to read:

849. (a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before the magistrate.

(b) A peace officer may release from custody, instead of taking the person before a magistrate, a person arrested without a warrant in the following circumstances:

(1) The officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.

(2) The person arrested was arrested for intoxication only, and no further proceedings are desirable.

(3) The person was arrested only for being under the influence of a controlled substance or drug and the person is delivered to a facility or hospital for treatment and no further proceedings are desirable.

(4) The person was arrested for driving under the influence of alcohol or drugs and the person is delivered to a hospital for medical treatment that prohibits immediate delivery before a magistrate.

(c) The record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (b) shall include a record of release. Thereafter, the arrest shall not be deemed an arrest, but a detention only.

~~SEC. 4. Section 4030 of the Penal Code is amended to read:~~

~~4030. (a) (1) The Legislature finds and declares that law enforcement policies and practices for conducting strip or body cavity searches of detained persons vary widely throughout California. Consequently, some people have been arbitrarily subjected to unnecessary strip and body cavity searches after arrests for minor misdemeanor and infraction offenses. Some present search practices violate state and federal constitutional rights to privacy and freedom from unreasonable searches and seizures.~~

~~(2) It is the intent of the Legislature in enacting this section to protect the state and federal constitutional rights of the people of California by establishing a statewide policy strictly limiting strip and body cavity searches.~~

~~(b) The provisions of this section shall apply only to prearrest detainees arrested for infraction or misdemeanor offenses and to any minor detained prior to a detention hearing on the grounds that he or she is a person described in Section 300, 601, or 602 of the Welfare and Institutions Code alleged to have committed a misdemeanor or infraction offense. The provisions of this section shall not apply to a person in the custody of the Secretary of the Department of Corrections and Rehabilitation or the Director of the Division of Juvenile Justice in the Department of Corrections and Rehabilitation.~~

~~(c) As used in this section the following definitions shall apply:~~

Gregory Pagan
Committee on Public Safety
07/09/2015
Page 4 of 8

~~(1) "Body cavity" only means the stomach or rectal cavity of a person, and vagina of a female person.~~

~~(2) "Physical body cavity search" means physical intrusion into a body cavity for the purpose of discovering any object concealed in the body cavity.~~

~~(3) "Strip search" means a search that requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of that person.~~

~~(4) "Visual body cavity search" means visual inspection of a body cavity.~~

~~(d) Notwithstanding any other law, including Section 40304.5 of the Vehicle Code, when a person is arrested and taken into custody, that person may be subjected to patdown searches, metal detector searches, body scanners, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband substances prior to being placed in a booking cell.~~

~~(e) A person arrested and held in custody on a misdemeanor or infraction offense, except those involving weapons, controlled substances, or violence, or a minor detained prior to a detention hearing on the grounds that he or she is a person described in Section 300, 601 or 602 of the Welfare and Institutions Code, except for those minors alleged to have committed felonies or offenses involving weapons, controlled substances, or violence, shall not be subjected to a strip search or visual body cavity search prior to placement in the general jail population, unless a peace officer has determined there is reasonable suspicion, based on specific and articulable facts, to believe that person is concealing a weapon or contraband and a strip search will result in the discovery of the weapon or contraband. A strip search or visual body cavity search, or both, shall not be conducted without the prior written authorization of the supervising officer on duty. The authorization shall include the specific and articulable facts and circumstances upon which the reasonable suspicion determination was made by the supervisor.~~

~~(f) (1) Except pursuant to the provisions of paragraph (2), a person arrested and held in custody on a misdemeanor or infraction offense not involving weapons, controlled substances, or violence, shall not be confined in the general jail population unless all of the following are true:~~

~~(A) The person is not cited and released.~~

~~(B) The person is not released on his or her own recognizance pursuant to Article 9 (commencing with Section 1318) of Chapter 1 of Title 10 of Part 2.~~

~~(C) The person is not able to post bail within a reasonable time, not less than three hours.~~

~~(2) A person shall not be housed in the general jail population prior to release pursuant to the provisions of paragraph (1) unless a documented emergency exists and there is no reasonable alternative to that placement. The person shall be placed in the general population only upon~~

~~prior written authorization documenting the specific facts and circumstances of the emergency. The written authorization shall be signed by the uniformed supervisor of the facility or by a uniformed watch commander. A person confined in the general jail population pursuant to paragraph (1) shall retain all rights to release on citation, his or her own recognizance, or bail that were preempted as a consequence of the emergency.~~

~~(g) A person arrested on a misdemeanor or infraction offense, or a minor described in subdivision (b), shall not be subjected to a physical body cavity search except under the authority of a search warrant issued by a magistrate specifically authorizing the physical body cavity search.~~

~~(h) A copy of the prior written authorization required by subdivisions (e) and (f) and the search warrant required by subdivision (g) shall be placed in the agency's records and made available, on request, to the person searched or his or her authorized representative. With regard to a strip, visual, or body search, the time, date, and place of the search, the name and sex of the person conducting the search, and a statement of the results of the search, including a list of items removed from the person searched, shall be recorded in the agency's records and made available, upon request, to the person searched or his or her authorized representative.~~

~~(i) Persons conducting a strip search or a visual body cavity search shall not touch the breasts, buttocks, or genitalia of the person being searched.~~

~~(j) A physical body cavity search shall be conducted under sanitary conditions, and only by a physician, nurse practitioner, registered nurse, licensed vocational nurse, or emergency medical technician Level II licensed to practice in this state. A physician engaged in providing health care to detainees and inmates of the facility may conduct physical body cavity searches.~~

~~(k) A person conducting or otherwise present during a strip search or visual or physical body cavity search shall be of the same sex as the person being searched, except for physicians or licensed medical personnel.~~

~~(l) All strip, visual, and physical body cavity searches shall be conducted in an area of privacy so that the search cannot be observed by persons not participating in the search. Persons are considered to be participating in the search if their official duties relative to search procedure require them to be present at the time the search is conducted.~~

~~(m) A person who knowingly and willfully authorizes or conducts a strip, visual, or physical body cavity search in violation of this section is guilty of a misdemeanor.~~

~~(n) Nothing in this section shall be construed as limiting the common law or statutory rights of a person regarding an action for damages or injunctive relief, or as precluding the prosecution under another law of a peace officer or other person who has violated this section.~~

~~(o) Any person who suffers damage or harm as a result of a violation of this section may bring a civil action to recover actual damages, or one thousand dollars (\$1,000), whichever is greater. In~~

~~addition, the court may, in its discretion, award punitive damages, equitable relief as it deems necessary and proper, and costs, including reasonable attorney's fees.~~

~~SEC. 5.~~ **4.** Section 4131.5 of the Penal Code is amended and renumbered to read:

243.15. Every person confined in, sentenced to, or serving a sentence in, a city or county jail, industrial farm, or industrial road camp in this state, who commits a battery upon the person of any individual who is not himself or herself a person confined or sentenced therein, is guilty of a public offense and is subject to punishment by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail for not more than one year.

~~SEC. 6.~~ **5.** Section 4504 of the Penal Code is amended to read:

4504. For purposes of this chapter:

(a) A person is deemed confined in a "state prison" if he or she is confined in any of the prisons and institutions specified in Section 5003 by order made pursuant to law, including, but not limited to, commitments to the Department of Corrections and Rehabilitation or the Department of Corrections and Rehabilitation, Division of Juvenile Justice, regardless of the purpose of the confinement and regardless of the validity of the order directing the confinement, until a judgment of a competent court setting aside the order becomes final.

(b) A person is deemed "confined in" a prison although, at the time of the offense, he or she is temporarily outside its walls or bounds for the purpose of serving on a work detail, for the purpose of confinement in a local correctional institution pending trial, or for any other purpose for which a prisoner may be allowed temporarily outside the walls or bounds of the prison. A prisoner who has been released on parole is not deemed "confined in" a prison for purposes of this chapter.

~~SEC. 7.~~ **6.** *Section 5008 of the Public Resources Code is amended to read:*

5008. (a) The department shall protect the state park system and the state vehicular recreation area and trail system from damage and preserve the peace therein.

(b) The director may designate any officer or employee of the department as a peace officer. The primary duties of the peace officer shall be the enforcement of this division, Sections 4442 and 4442.5, the rules and regulations of the department, Chapter 5 (commencing with Section 650) of Division 3 of the Harbors and Navigation Code, the rules and regulations of the ~~Department~~ *Division of Boating and Waterways, Waterways within the department*, Chapter 2 (commencing with Section 9850) of Division 3.5 of the Vehicle Code, and Division 16.5 (commencing with Section 38000) of the Vehicle Code and to arrest persons for the commission of public offenses

within the property under its jurisdiction. The authority and powers of the peace officer shall be limited to those conferred by law upon peace officers listed in Section 830.2 of the Penal Code.

(c) The department shall protect property included in the California recreational trail system and the property included in the recreational trail system under Section 6 of Chapter 1234 of the Statutes of 1980 from damage and preserve the peace therein. The primary duties of any officer or employee designated a peace officer under this section shall include enforcement of the rules and regulations established by the department ~~under subdivision (f) of Section 6 of Chapter 1234 of the Statutes of 1980~~ and the arrest of persons for the commission of public offenses within the property included in the recreational trail system under Section 6 of Chapter 1234 of the Statutes of 1980.

(d) Any person who violates the rules and regulations established by the department is guilty of a ~~misdemeanor and upon conviction shall be punished~~ *either a misdemeanor, punishable* by imprisonment in the county jail not exceeding 90 days, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment, ~~except that at the time a particular action is commenced, the judge may, considering the recommendation of the prosecuting attorney, reduce the charged offense from a misdemeanor to an infraction. Any person convicted of the offense after such a reduction shall be punished by a fine of not less than ten dollars (\$10) nor imprisonment, or an infraction punishable by a fine of not more than one thousand dollars (\$1,000).~~

~~SEC. 7.~~ *SEC 8.* Section 1403 of the Welfare and Institutions Code is repealed.