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California State Assembly

PUBLIC SAFETY



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Consultant
Matt Dean

REGINALD BYRON JONES-SAWYER, SR.
CHAIR

AGENDA

9:00 a.m. – March 15, 2016
State Capitol, Room 126

<u>Item</u>	<u>Bill No. & Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
1.	AB 1571 (Lackey)	Mr. Billingsley	Vehicles: driving under the influence: alcohol abuse programs.
2.	AB 1672 (Mathis)	Mr. Dean	Veterans and community courts: Judicial Council study.
3.	AB 1673 (Gipson)	Mr. Caswell	Firearms: unfinished frame or receiver.
4.	AB 1680 (Rodriguez)	Mr. Billingsley	Crimes: emergency personnel.
5.	AB 1695 (Bonta)	Mr. Caswell	Firearms: notice to purchasers: false reports of stolen firearms.
6.	AB 1705 (Rodriguez)	Ms. Uribe	Jails: searches.
7.	AB 1706 (Chavez)	Mr. Dean	Military fraud.
8.	AB 1718 (Kim)	Mr. Caswell	Elder abuse.
9.	AB 1737 (McCarty)	Mr. Dean	Child death investigations: review teams.

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10.	AB 1744 (Cooper)	Mr. Billingsley	Sexual assault forensic medical evidence kit.
11.	AB 1745 (Hadley)	Mr. Billingsley	Public safety: funding.
12.	AB 1754 (Waldron)	Ms. Uribe	Crime victim compensation: elder or dependent adult financial abuse.
13.	AB 1769 (Rodriguez)	Mr. Dean	911 emergency system: nuisance communications.
14.	AB 1771 (O'Donnell)	Mr. Caswell	Prostitution.
15.	AB 1798 (Cooper)	Mr. Caswell	Firearms: imitation firearms: gun-shaped phone cases.
16.	AB 1802 (Chavez)	Ms. Uribe	California Victim Compensation and Government Claims Board: membership.
17.	AB 1820 (Quirk)	Mr. Billingsley	Unmanned aircraft systems.
18.	AB 1821 (Maienschein)	Ms. Uribe	Sex offenses: disabled victims.
19.	AB 1822 (Irwin)	Mr. Billingsley	California Sex Trade Buyer First Offender Program.
20.	AB 1824 (Chang)	Mr. Caswell	Guide, signal, or service dogs: injury or death.
21.	AB 1854 (Bloom)	Mr. Dean	Bail: attorney's fees: forfeited bail.
22.	AB 1869 (Melendez)	Ms. Uribe	Theft: firearms.
23.	AB 1870 (Gallagher)	Mr. Pagan	Board of State and Community Corrections.

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| 24. | AB 1872 (Gray) | Mr. Pagan | Peace officers: deputy sheriffs. |
| 25. | AB 1906 (Melendez) | Mr. Pagan | Mental health: sexually violent predators. |

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Date of Hearing: March 15, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1571 (Lackey) – As Amended February 23, 2016

SUMMARY: Requires the court to refer a driving under the influence (DUI) first offender whose blood contained a blood-alcohol concentration of 0.15% or more and a controlled substance to a 9 month DUI program. Also requires the court to consider any blood-alcohol concentration in combination with the presence of a controlled substance in the person's blood, as defined, as a special factor for purposes of sentencing. Specifically, **this bill:**

- 1) Requires the court to refer a first offender whose blood contained a blood-alcohol concentration of 0.15% or more, and a controlled substance, as defined under federal law, to a DUI program of at least nine months, with at least 60 hours of program activities.
- 2) Requires that enrollment in an approved DUI program take place within 30 days of conviction.
- 3) Requires the county alcohol program administrator to coordinate court referral and tracking documents with the Department of Motor Vehicles and the State Department of Health Care Services.
- 4) Requires the court to consider a blood-alcohol concentration of 0.08% or more, by weight, in combination with the presence of a controlled substance in the person's blood, as defined under federal law, as a factor that may justify enhancing the penalties and determining conditions of probation.
- 5) Requires a court to refer a person to a licensed program as a condition of probation.
- 6) Requires the clerk of the court to also indicate the duration of the treatment program ordered on court referral and tracking documents.

EXISTING LAW:

- 1) Requires the court to order a first DUI offender whose blood-alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test, to participate for at least nine months or longer, as ordered by the court, in a licensed program that consists of at least 60 hours of program activities. (Veh. Code § 23538, subd. (b)(2).)
- 2) Requires the court to order a first DUI offender whose blood-alcohol concentration was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities. (Veh. Code § 23538, subd. (b)(1).)

- 3) Specifies that if a person is convicted of a violation of Section DUI or DUI with injury, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight, or the refusal of the person to take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation. (Veh. Code § 23578.)
- 4) States that the court shall also impose as a condition of probation, upon conviction of a first DUI, that the driver shall complete a DUI program, licensed as specified, in the driver's county of residence or employment, as designated by the court. (Veh. Code § 23538, subd. (b).)
- 5) In lieu of the DUI education program, a court may impose, as a condition of probation, that the person complete, subsequent to the underlying conviction, a residential live in program dealing with substance abuse, if the person consents and has been accepted into that program. (Veh. Code, § 23598.)
- 6) States that the court shall advise the person at the time of sentencing that the driving privilege shall not be restored until proof satisfactory to the department of successful completion of a DUI program of the length required under this code that is licensed, as specified, has been received in the department's headquarters. (Veh. Code § 23538, subd. (b)(3).)
- 7) Requires the court to refer a first time DUI offender whose concentration of alcohol in his or her blood was less than 0.20 percent, by weight, to participate for at least three months or longer, as a condition of probation, in a licensed program that consists of at least 30 hours of program activities. (Health & Saf. Code § 11837, subd. (c)(1).)
- 8) Requires the court to order a first time DUI offender whose concentration of alcohol in the person's blood was 0.20 percent or more, or the person refused to take a chemical test, to participate, for at least nine months or longer, as ordered by the court, in a licensed program that consists of at least 60 hours of program activities, as a condition of probation. (Health & Saf. Code § 11837, subd. (c)(2).)
- 9) Allows the State Department of Health Care Services to specify in regulations the activities required to be provided in the treatment of participants receiving nine months of licensed program services. Health & Saf. Code § 11837, subd. (d).)
- 10) Specifies that "probation" means "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer." (Pen. Code, § 1203(a).)
- 11) Specifies that "conditional sentence" means "the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer." (Pen. Code, § 1203(a).)
- 12) Provides that the court, in granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those

terms and conditions as it shall determine. (Pen. Code, § 1203.1.)

- 13) States that the court may impose and require any or all of the terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done and for the rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail, as specified. (Pen. Code, § 1203.1, subd. (j).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Drugged-driving has seen a dramatic increase in the past several years. According to the DMV's annual report of the DUI Management Information System (MIS), the number of drug-involved crash fatalities increased by 15.4% in 2012. Drug-involved fatalities represent 28.7% of the total number of deaths associated with car crashes. We should treat the issue of drunk-and drugged-driving as a health issue rather than a criminal one. DUI Treatment Programs include educational group counseling sessions as well as individual interviews that showcase the severity of mixing alcohol with drugs while driving.

"Effective January 1st, 2014, California statute made it explicitly clear that it is unlawful for a person to drive under the combined influence of drugs and alcohol. This bill requires all first DUI offenders convicted with a blood-alcohol concentration of .15 and above and a controlled substance in their system to attend a 9 month program (Current law requires 6 month). Furthermore, this bill allows the courts to consider any blood-alcohol concentration in combination with a controlled substance as special factor that may justify enhancing the terms of a DUI treatment program.

"DUI Treatment Programs have been proven to significantly reduce DUI recidivism for first and repeat offenders through sessions that focus on alcohol and drug abuse. These programs are affordable and in cases of financial hardship some or all fees associated with the program can be waived. This bill narrowly targets first-offenders and will serve as a deterrent for anyone who might get behind the wheel while intoxicated under a mixture of alcohol and drugs."

- 2) **Criminalizing the Otherwise Legal Use of Lawful Prescription Medication:** This bill increases penalties for those individuals with a specified amount of alcohol in their blood and any amount of drugs as defined in the Federal Code. (21 U.S.C. § 812.) That means individuals who have lawfully taken prescription drugs, can find that behavior criminalized and face increased penalties, even if the prescription medication did not contribute to the impairment of their driving.

Examples of drugs that are included in the Federal Schedules of Controlled Substances which are commonly used in a lawful manner are Xanax, Ativan, Ambien, anabolic steroids, Valium, cough suppressants containing codeine (Robitussin AC), and Tylenol with codeine. (<http://www.deadiversion.usdoj.gov/schedules/>, <http://www.drugs.com/schedule-4-drugs.html>)

Lawful consumption of the drugs listed above would result increased penalties under this bill if any amount of the drug was found in the individual's blood in conjunction with specified alcohol levels. As a result, this bill would increase penalties even if the drug(s) contained in the individual's blood does not increase the impairment level of the individual to drive. The increased penalties would result even if the effect of the drug had worn off, but the drug was still contained in the individual's blood.

3) The Effect of Drugs On an Individual's Ability to Drive is Not Well Understood:

Research has established that there is a close relationship between BAC level and impairment. Some effects are detectable at very low BACs (e.g., .02 grams per deciliter, or g/dL) and as BAC rises, the types and severity of impairment increase. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, pp. 2-3.)

The behavioral effects of other drugs are not as well understood compared to the behavioral effects of alcohol. Certain generalizations can be made: high doses generally have a larger effect than small doses; well-learned tasks are less affected than novel tasks; and certain variables, such as prior exposure to a drug, can either reduce or accentuate expected effects, depending on circumstances. However, the ability to predict an individual's performance at a specific dosage of drugs other than alcohol is limited. Most psychoactive drugs are chemically complex molecules whose absorption, action, and elimination from the body are difficult to predict. Further, there are considerable differences between individuals with regard to the rates with which these processes occur. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, pp. 2-3.)

The presence of a drug in a person's blood sample might indicate a drug that was affecting the individual at the time the sample was taken, or it might indicate a drug that was consumed at some point in the past and was no longer affecting the individual at the time the sample was taken. The length of time that a drug or its metabolite is present in a given biological sample is often called its detection time. This may vary depending on the dose (amount), route of administration (injected, inhaled etc.) and elimination rate (how long it takes the body to get rid of the substance). The presence of a drug metabolite in a biological fluid may or may not reflect consumption of the drug recently enough to impair driving performance. (Drug Toxicology for Prosecutors, American Prosecutors Research Institute (2004), p. 8.)

There are additional factors that complicate the determination of the effects on drugs on driving impairment. There are individual differences in absorption, distribution, and metabolism. Some individuals will show evidence of impairment at drug concentrations that are not associated with impairment in others. Wide ranges of drug concentrations in different individuals have been associated with equivalent levels of impairment. In certain instances drugs can be detected in the blood because of accumulation. Blood levels of some drugs or their metabolites may accumulate with repeated administrations if the time-course of elimination is insufficient. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, p. 3.) Because of these factors, specific drug concentration levels cannot be reliably equated with effects on

driver performance.

- 4) **Increasing Penalties in Situations Where There is Not Necessarily a Corresponding Increase in the Seriousness of the Criminal Behavior:** Generally, under California criminal law, an individual only faces increased penalties for conduct that made the nature of the crime more serious. When evaluating the seriousness of a DUI, the most common measure is the impairment level of the driver. The higher the impairment of the driver, the bigger danger the driver represents to the public. Existing law mandates increased penalties in the form of an extended (nine month) DUI program for individuals convicted when their blood is two and a half times (.20) the legal limit, or more. (Veh. Code § 23538, subd. (b)(1).) That increase in penalty is consistent with an increased seriousness of the criminal behavior because there is a strong correlation between higher levels of blood alcohol level and the impairment of drivers. As discussed above, the presence of a controlled substance in an individual's blood does not necessarily reflect a corresponding impairment in the individual's ability to drive.

This bill seeks to increase penalties by imposing a significantly longer DUI school for first time DUI offenders with any level of controlled substance in their blood stream. "Any level" of a controlled substance includes extremely low levels of drugs that do not impair ability to drive. "Any level" of a controlled substance includes drugs consumed at some point in the past that are no longer affecting the individual at the time the blood sample is taken. As a result, this bill doesn't require any showing that the presence of the controlled substance contributed to impairment beyond the impairment caused by the amount of alcohol in the individual's system. This bill mandates a punishment for behavior that does not necessarily correspond to a higher level of criminality.

- 5) **Reducing Judicial Discretion:** Courts have the power under existing law to increase punishments in situations when the combined use of alcohol and drugs warrant such an increase. Courts have broad general discretion to fashion and impose additional probation conditions that are particularized to the defendant. (*People v. Smith* (2007) 152, Cal.App.4th 1245, 1249.) Courts may impose any "reasonable conditions" necessary to secure justice, make amends to society and individuals injured by the defendant's unlawful conduct, and assist the "reformation and rehabilitation of the probationer." (Pen. Code, § 1203.1.) A condition of probation is valid if it is reasonably related to the offense and aimed at deterring such misconduct in the future. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

If the facts demonstrate that the type or level of drugs in the individual's system increased the dangerousness of conduct resulting in a DUI, the court can require that defendant to attend a longer DUI program. Under existing law, the court could also impose additional probation conditions such as substance abuse treatment or testing for drugs, as long as the conditions were reasonably related to the offense.

- 6) **Requiring an Individual to Enroll in DUI Education Program Within 30 Days of Conviction May Create Additional Work for Courts:** This bill requires that enrollment in a DUI education program for a first time DUI offender, take place within 30 days of the conviction. That requirement may create additional workload for the courts.

Under existing law, DMV suspends an individual's driver's license for six months upon conviction of a first DUI (Veh. Code, § 13352.). In order to get full license privileges back,

the individual must complete the DUI education program. If the individual wants to get a restricted license, allowing them to drive to work during the suspension period, the person must be enrolled in the DUI education program. Existing law provides incentives and penalties to enter and complete the program in order to drive. In addition, the DUI education program is a condition of probation. So failure to enroll and complete the program exposes the individual to additional sanctions by the court. Arguably, those are sufficient incentives for an individual to enroll and complete the DUI program.

Under this bill, if an individual fails to enroll within 30 days he will have violated the law. If the individual then attempts to enroll in the program beyond 30 days, it is likely they will not be allowed to enroll by a DUI education program provider. That individual will then have to schedule a court date and make an appearance in front of the judge to be re-referred to the DUI program. This may create additional volume for the courts.

- 7) **Argument in Support:** According to *The California Police Chiefs Association*, “The California Police Chiefs Association is pleased to support AB 1571, which updates the California DUI treatment program structure to reflect the prevalence of concurrent drug and alcohol use by California drivers. In addition to other changes, AB 1571 allows a judge to require all first DUI offenders with a BAC of .08 to .15 *and a controlled substance* in their system to attend a 6-month program and allows a judge to require all first DUI offenders with a BAC above .15 *and a controlled substance* in their system to attend a 9-month program.

“The National Highway Traffic Safety Administration’s (NHTSA’s) 2013-2014 National Roadside Survey found that more than 22 percent of drivers tested positive for illegal, prescription, or over-the-counter drugs. In fact, the National Roadside Survey of Alcohol and Drug Use by Drivers, a nationally representative survey by NHTSA, found that in 2007, approximately one in eight nighttime weekend drivers tested positive for illicit drugs. Equally disturbing are the 2011 results from the National Survey on Drug Use and Health indicating that 9.9 million Americans 12 or older reported driving under the influence of illicit drugs in the past year. Using a health-based treatment approach, AB 1571 will reduce this upward trend.

“DUI Treatment programs have been proven to significantly reduce DUI recidivism for first and repeat offenders. AB 1571 will significantly reduce the number of repeat concurrent use offenders in California. Thank you for your leadership on this matter.”

- 8) **Argument in Opposition:** According to *Drug Policy Alliance*, “First, while we do not advocate for anyone to drive while under the influence of alcohol or drugs, no one should receive sentencing enhancements or additional terms of probation based on arbitrary data. Not enough is known about the effects of drugs, or the combination of drugs and alcohol, on driver safety. Because of the paucity of information on this topic, the National Highway Transportation Safety Administration (NHTSA) noted in 2015 report that “specific drug concentration levels cannot be reliably equated with a specific degree of driver impairment.” The report explained that, unlike alcohol – where there is a strong correlation between blood alcohol levels and the degree of driver impairment – there is a poor correlation between the presence of drugs in the blood and the impairing effects of the drugs. This can be explained, in part, by variations in the level of drug use over time, the metabolism of the user, and the user’s sensitivity or tolerance to a drug. Moreover, the presence of a drug may persist in the blood long after the impairment effects have worn off. Thus, requiring courts to consider the presence of any alcohol in combination with a drug in the blood as a special factor will unnecessarily result in harsher punishments for more people who are no less safe to drive.

“Second, drug testing, like many other forensic disciplines, is highly technical and imperfect. There are a host of problems with drug testing techniques and analyses, including: the substantial risk of false positive test results; false negative test results; specimen contamination; and chain of custody, storage, and re-testing issues. As the toxicological literature makes clear, “a number of routinely prescribed medications have been associated with triggering false-positive results.” In the context of marijuana, for example, research demonstrates that drug tests may return false positives for THC. Studies have found that false positive THC tests results have been associated with the passive ingestion (i.e. second-hand) of marijuana smoke. Similarly, other studies have demonstrated that heavy marijuana users who abstain from marijuana use for at least a week have returned positive THC tests. In addition, the use of some pharmaceutical drugs, like Marinol and Sativex, typically returns positive THC test results. It, therefore, does not make sense to increase a person’s sentence or terms and conditions of parole based on test results that are unreliable and often incorrect.”

9) **Prior Legislation:**

- a) SB 780 (Emmerson), of the 2011-2012 Legislative Session, would have increased minimum county jail to 180 days upon conviction of a third DUI. SB 780 was held in the Senate Public Safety Committee.
- b) AB 1487 (Berryhill), of the 2007-2008 Legislative Session, would have decreased the blood alcohol content (BAC) of a person convicted of DUI for referral to a lengthier driving under the influence program, as specified. AB 1487 died in the Senate Public Safety Committee,
- c) AB 1352 (Liu), Chapter 164, Statutes of 2005, requires a first time DUI offender with blood alcohol content .20 or more to attend a 9 month DUI educational program.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of DUI Treatment Programs (Sponsor)
Alcohol Drug Council
California Police Chiefs Association
California Peace Officers Association
California Narcotic Officers’ Association
Foundation for Advancing Alcohol Responsibility
Health Net
Lifesafers of Northern California
We Save Lives
Zona Seca

3 individuals

Opposition

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
Drug Policy Alliance

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

Date of Hearing: March 15, 2016
Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1672 (Mathis) – As Amended March 8, 2016

SUMMARY: Requires the Judicial Council to study the impact of veterans' courts, or the lack thereof, on veterans involved in the criminal justice system, the availability of technology to increase access to veterans' courts, and the utility of community courts as a substitute. Specifically, **this bill:**

- 1) Requires the Judicial Council to study the impact of veterans' courts, or the lack thereof, on veterans involved in the criminal justice system. The study will begin January 1, 2017 and end January 1, 2018.
- 2) Requires the Judicial Council to study the availability of technology to deliver veterans' courts services to counties without such courts. The study will begin January 1, 2017 and end January 1, 2018.
- 3) Requires the Judicial Council to study the utility of community courts as a substitute for veterans' courts in those counties that do not have veterans' courts. The study will begin January 1, 2017 and end January 1, 2018.
- 4) Requires the Judicial Council to report to the Legislature the results of their studies on the impact of veterans' courts and the feasibility of technology to deliver veterans' courts services that have no such courts by June 1, 2019.
- 5) States that 50% of the cost of this study shall be paid by private funds and 50% shall be paid by public funds.
- 6) Sunsets these provisions on January 1, 2020.

EXISTING LAW:

- 1) Vests in the superior courts the judicial power of California. (Cal. Const. art. VI, § 1.)
- 2) Establishes the Judicial Council and authorizes them to make rules and recommendations regarding the operation of the courts. (Cal. Const. art. VI, § 6(d).)
- 3) Allows courts to make rules for the administration of the courts so long as they are not otherwise prohibited by the Constitution, statute or rules adopted by the Judicial Council. (Gov. Code, § 68070; *Wisniewski v. Clary* (1975) 46 Cal.App.3d 499.)
- 4) Requires judges to identify veteran defendants suffering from sexual trauma, post-traumatic stress disorder, traumatic brain injury, substance abuse, or mental health problems as a result

of his or her service and use this status as a factor in favor of granting probation and/or ordering participation in approved treatment programs. (Pen. Code, § 1170.9.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Every veteran deserves access to courts specifically designed to assist them through our complex justice system. These courts also provide vital information on mental health and substance abuse recovery programs. As such, counties with veterans' courts should support counties without them. AB 1672 will commission a study on the costs associated with permitting counties with veterans courts to provide services to counties without the courts. This simple measure will ensure that no veteran is left without the representation they deserve."
- 2) **Background:** Under California law, every court has the authority to make rules for its own government. This is an inherent power of the courts, but this power has also been codified in the Government Code. This power is limited only by any conflict with the California Constitution, statute or rules adopted by the Judicial Council of California.

Nothing in California's Constitution or statutes prohibits or requires the development of veterans' courts. However, under the Penal Code, courts are required to identify veteran defendants suffering from post-traumatic stress disorder, traumatic brain injury, and other issues for purposes of sentencing. For this and other reasons, the Judicial Council has encouraged the development of veterans' courts.

The Judicial Council has authority under the California Constitution to make rules governing California courts and to make recommendations to the Legislature and Governor regarding the operation of the courts. Under this authority, the Judicial Council created the Collaborative Justice Court Advisory Committee to make recommendations to the Judicial Council on criteria for identifying and evaluating collaborative justice courts and for improving the processing of cases in these courts, which include drug courts, domestic violence courts, youth courts, community courts, veterans' courts and other collaborative justice courts. Currently, at least 12 counties in California have established veterans' courts and two have established community courts.

Collaborative justice courts primary purpose is to connect criminal defendants with mental health, drug treatment and other rehabilitative services to reduce recidivism. In general, community courts have similar aims –in terms of connecting defendants with rehabilitative services- with the additional aims of promoting principles of community involvement, balanced and restorative justice, and accountability. Community courts can channel required community service hours to help meet community needs. In practice, community courts may differ little or not at all from other collaborative justice courts. For example, in Orange County the Community Court is the umbrella court for all of Orange County's collaborative justice courts, including their veterans' court.

Veterans' courts are hybrid drug and mental health courts that use the drug court model to serve veterans struggling with addiction, serious mental illness and/or co-occurring disorders. They promote sobriety, recovery and stability through a coordinated response that involves

cooperation and collaboration with the traditional partners found in drug and mental health courts in addition to the U.S. Department of Veterans Affairs health care networks, the Veterans' Benefits Administration, and, in some programs, volunteer veteran mentors and veterans' family support organizations.

Veterans' Treatment Courts are responses to the growing trend of veterans appearing before the courts to face charges stemming from substance abuse or mental illness. Drug and mental health courts frequently serve veteran populations. Research has shown that traditional services do not always adequately meet the needs of veterans. Many veterans are entitled to treatment through the Veterans' Administration and veterans treatment courts help connect them with these benefits.

According to government reports, there are 23,440,000 veterans in the United States and approximately 1.7 million veterans of Iraq and Afghanistan. The U.S. Department of Veterans Affairs estimates that as many as one third of the adult homeless population have served in the military and that at any given time there are as many as 130,000 homeless veterans. This population mirrors the general homeless population in that 45% suffer mental illness and 75% suffer from substance abuse problems. Veterans are not more likely to be arrested than the general population. But there are significant numbers of veterans involved with the criminal justice system, many of whom struggle with mental health and/or substance abuse illnesses. A 2000 Bureau of Justice Statistics Report found that 81% of all justice involved veterans had a substance abuse problem prior to incarceration, 35% were identified as suffering from alcohol dependency, 23% were homeless at some point in the prior year, and 25% were identified as mentally ill.

While there have been studies on the benefits of many collaborative justice courts, as well as studies on best practices for those courts, there has not been an extensive study on the impact of veterans' courts. However, the studies conducted on other collaborative justice courts have been encouraging. For example, drug courts have seen recidivism reductions of 85% and annual savings of \$90 million among participating counties. This bill would determine if similar positive impacts can be extended to veterans involved in the criminal justice system.

- 3) **Argument in Support:** The *California Public Defenders Association* states, "This bill would implement a pilot program whose purpose is to establish veterans' courts in "counties adjacent to the County of San Luis Obispo" that do not have veterans courts or veterans treatment courts in operation as of January 1, 2017. The bill would empower the Chief Justice to assign an active or retired judge to sit in such veterans' courts, and would establish a special fund in the state treasury that could accept public or private moneys in support of veterans courts in the region.

"The goal of veterans courts is to promote sobriety, recovery, and stability for former service members charged with criminal offenses. Currently, only 12 of 58 California counties have established veterans courts, which are a critical means for connecting veterans to Veterans Administration services for which they are eligible.

"This bill presents a possibility for expansion of this collaborative justice project into new areas of the state, and could provide a model for the establishment of such courts in other regions."

4) Prior Legislation:

- a) AB 2098 (Levine), Chapter 163, Statutes of 2014, requires the court to consider a defendant's status as a veteran suffering from post-traumatic stress disorder (PTSD) or other forms of trauma when making specified sentencing determinations.
- b) AB 201 (Butler) of the 2011-12 Legislative Session, would have authorized superior courts to develop and implement veterans' courts. This bill would have established standards and procedures for veterans' courts and would have specified that county participation in the veterans' courts program is voluntary. AB 201 was vetoed.
- c) AB 1925 (Salas), of the 2009-10 Legislative Session, would have authorized superior courts to develop and implement veterans' courts for eligible veterans of the United States (U.S.) military. AB 1925 was vetoed. The Governor's veto message stated "authorizing legislation is not required for the superior courts to establish specialized courts with dedicated calendars. I would urge the Judicial Council to examine the need for veterans' courts, however, and establish appropriate guidelines for the superior courts to follow."

REGISTERED SUPPORT / OPPOSITION:**Support:**

California Public Defenders Association

Opposition:

None

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: March 15, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1673 (Gipson) – As Introduced January 19, 2016
As Proposed to be Amended in Committee

SUMMARY: Expands the definition of “firearm” to include the frame or receiver of the weapon or a frame or receiver “blank,” “casting” or “machined body” that is designed and clearly identifiable as a component of a functional weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

EXISTING LAW:

- 1) Requires licensed importers and licensed manufacturers to identify each firearm imported or manufactured by using the serial number engraved or cast on the receiver or frame of the weapon, in such manner as prescribed by the Attorney General (AG). (18 U.S.C. § 923 subd. (i).)
- 2) Specifies that the United States Undetectable Firearms Act of 1988 makes it illegal to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm that is not as detectable by walk-through metal detection as a security exemplar containing 3.7 oz. of steel, or any firearm with major components that do not generate an accurate image before standard airport imaging technology. (18 U.S.C. § 922 subd. (p).)
- 3) Prohibits a person, firm, or corporation licensed to manufacture firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code from manufacturing firearms in California, unless the person, firm or corporation is also licensed under California law (Penal Code § 29010). This prohibition does not apply to a person licensed under federal law, who manufactures less than 100 firearms a calendar year. (Pen. Code § 29010 subd. (b).)
- 4) Makes it illegal to change, alter, remove, or obliterate the name of the maker, model, manufacturer’s number, or other mark of identification on any pistol, revolver, or any other firearm, without first having secured written permission from the Department of Justice (DOJ) to make that change, alteration, or removal. (Pen. Code § 23900.)
- 5) Allows the DOJ, upon request, to assign a distinguishing number or mark of identification to any firearm whenever the firearm lacks a manufacturer’s number or other mark of identification, or whenever the manufacturer’s number or other mark of identification, or a distinguishing number or mark assigned by the department has been destroyed or obliterated. (Pen. Code § 23910.)
- 6) Makes it a misdemeanor, with limited enumerated exceptions, for any person to buy, receive, dispose of, sell, offer to sell or have possession any pistol, revolver, or other firearm that has

- had the name of the maker or model, or the manufacturer's number or other mark of identification changed, altered, removed, or obliterated. (Pen. Code §§ 23920 and 23925.)
- 7) Requires a person be at least 18 years of age to purchase a rifle or shotgun. To purchase a handgun, a person must be at least 21 years of age. As part of the DROS process, the purchaser must present "clear evidence of identity and age" which is defined as a valid, non-expired California Driver's License or Identification Card issued by the Department of Motor Vehicles. (Pen. Code §§ 27510 and 16400.)
 - 8) Requires purchasers to present a handgun safety certificate prior to the submission of DROS information for a handgun or provide the dealer with proof of exemption pursuant to California Penal Code Section 31700. Beginning on January 1, 2015, this requirement will be extended to all firearms. (Pen. Code § 26840.)
 - 9) Requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to the DOJ to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. (Pen. Code §§ 28160-28220.)
 - 10) Requires firearms to be centrally registered at the time of transfer or sale by way of transfer forms centrally compiled by the DOJ. The DOJ is required to keep a registry from data sent to the DOJ indicating who owns what firearm by make, model, and serial number and the date thereof. (Pen. Code § 11106 subs. (a) & (c).)
 - 11) Requires that, upon receipt of the purchaser's information, the DOJ shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is prohibited from purchasing a firearm because of a prior felony conviction or because they had previously purchased a handgun within the last 30 days, or because they had received inpatient treatment for a mental health disorder, as specified. (Pen. Code § 28220.)
 - 12) Allows the DOJ to require the dealer to charge each firearm purchaser a fee not to exceed \$14, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations. This fee, known as the Dealer's Record of Sale Entry System (DROS or DROS fee), shall be no more than is necessary to fund specific codified costs. (Pen. Code § 28225.)
 - 13) Provides the AG shall establish and maintain an online database to be known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Pen. Code § 30000.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1673 will expand the definition of a firearm, to include "unfinished frames and receivers", which will close a dangerous loophole that allows anyone to sell, trade and manufacture in partial-completion the only part of a firearm that is subject to serial-number identification and registration. The change will treat unfinished receivers and frames the same way a finished receiver is treated, and require background checks in order to be sold, prohibit them from the possession of the mentally ill and convicted felons, and require mandatory serial number application. This expanded definition will not affect the activities of gun manufacturers or home firearm-crafting enthusiasts. Gun manufacturers and home firearm-crafting enthusiasts will however be required to register their firearms as they manufacture them."

- 2) **Lower Receivers:** There are no provisions in existing law that prevents a person from buying an 80% lower receiver and then making it into a fully functional firearm. According to Tactical Machining, "An 80% Receiver is a partially completed piece of material that requires special tooling and skills to be completed and considered a firearm." (<http://www.tacticalmachining.com/80-lower-receiver.html>.) Because 80% lower receivers are not considered firearms, a person purchasing them does not have to go through a federal firearms dealer, and does not have to undergo a background check. Additionally, according to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) "firearms that began as receiver blanks have been recovered after shooting incidents, from gang members and from prohibited people after they have been used to commit crimes." (<https://www.atf.gov/firearms/qa/have-firearms-made-unmarked-receiver-blanks-been-recovered-after-being-used-crime>.) "ATF successfully traces crime guns to the first retail purchaser in most instances. ATF starts with the manufacturer and goes through the entire chain of distribution to find who first bought the firearm from a licensed dealer. Because receiver blanks do not have markings or serial numbers, when firearms made from such receiver blanks are found at a crime scene, it is usually not possible to trace the firearm or determine its history, which hinders crime gun investigations jeopardizing public safety." (<https://www.atf.gov/firearms/qa/can-functioning-firearms-made-receiver-blanks-be-traced>).

- 3) **Amendments Taken in Committee to Avoid Vagueness:** As currently written the bill is arguably vague. Laws which are so vague that a person is unable to determine whether they are in violation of the law may be held "void for vagueness" by courts. The concept was articulated by Supreme Court Justice Sutherland as the following:

"[T]he terms of a penal statute [...] must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties... and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Connaly v. General Construction Co.*, 269 U.S. 285 (1926)

In this case, a felon in possession of a block of metal could arguably be found to be a felon in possession of a firearm. This crime holds relatively serious consequences in California. The term "readily converted to the functional condition" is arguably vague and overbroad. The author should consider amendments to be more specific in the definition of what constitutes a lower receiver or unfinished frame.

The author has agreed to take amendments that include a much more definite description of the items which will constitute a firearm under the provisions of the bill. Unlike the prior version of the bill, these amendments make it clear that the objects in question must be "clearly identifiable as a component of a functional weapon."

- 4) **Santa Monica Shooting:** According to a July 15, 2013, briefing prepared by the Minority Staff of the Committee on Energy and Commerce, United States House of Representatives:

On June 7, 2013, John Zawahri, 23, killed five people and injured several more during a shooting rampage that lasted approximately 13 minutes in Santa Monica, California. He first shot and killed his father, Samir Zawahri, and brother, Christopher, at their home. He then pulled over and carjacked Laurie Sisk, forcing her to drive at gunpoint to Santa Monica College. Zawahri shot at numerous cars, pedestrians, and a bus en route, killing the college's groundskeeper, Carlos Franco, and his daughter, Marcela. Upon arriving at the campus, he then fatally shot another woman, Margarita Gomez. He then entered the school library, where he attempted to kill several library patrons who were hiding in a safe room. Police, who had been alerted to the shooting and to Zawahri's location by numerous 911 calls, exchanged gunfire in the library with the shooter and pronounced him dead at the scene. According to authorities, Zawahri fired approximately 100 rounds in total.

Zawahri had a history of mental illness. In 2006, a teacher at his high school discovered Zawahri researching assault weapons online. School officials contacted the police and he was subsequently admitted to the psychiatric ward at the University of California, Los Angeles Medical Center. Zawahri attempted to buy a weapon in 2011, but a background check conducted by the California Department of Justice found him ineligible and denied the purchase. The reasons for this denial have not been publicly released.

Zawahri used a modified AR-15 rifle in the shooting and also carried a .44-caliber handgun. He possessed more than 1,300 rounds of ammunition. The AR-15 rifle is the same type of gun used in the mass shootings that occurred in Aurora, Colorado, and Newtown, Connecticut. The AR-15 firearm held 30 rounds. California state law bans the sale of AR-15 rifles with a magazine capacity greater than ten rounds. Authorities believe that Zawahri assembled his AR-15 rifle using parts he bought in pieces from a number of different sources, including an 80% completed lower receiver. Police found a drill press at Zawahri's home, a tool that can make holes in the lower receiver to complete the weapon. (*Citations Omitted.*)

- 5) **Governor's Veto Message of 2013's SB 808 (De Leon):** SB 808 required serial numbers on lower receivers. The governor vetoed the bill with the following message:

"I am returning Senate Bill 808 without my signature.

"SB 808 would require individuals who build guns at home to first obtain a serial number and register the weapon with the Department of Justice.

"I appreciate the author's concerns about gun violence, but I can't see how adding a serial number to a homemade gun would significantly advance public safety."

- 6) **Argument in Support:** According to the *California Chapters of the Brady Campaign*, "In furtherance of our goal to reduce firearm violence in our communities, the California Brady Campaign Chapters support AB 1673, introduced by Assemblymember Mike Gipson. The bill addresses an alarming development in California that threatens public safety.

"A priority policy objective for the California Brady Campaign is to ensure that every firearm owner has passed a background check and that all firearm transfers include a thorough background check, 10-day waiting period, and a record of the transaction that includes the serial number of the firearm. There have been numerous studies indicating that these requirements are good strategies for reducing gun violence and clearly, they further our core goal of keeping weapons out of dangerous hands. Although existing California law requires background checks and the retention of transfer records, people have found that they can avoid these requirements and other California gun laws by creating and marketing partially complete or "80 percent" lower receivers or frames. According to media reports and law enforcement, there is a growing number of firearms assembled from partially complete receivers and frames and these firearms are increasingly used in crime. AB 1673 will address this problem.

"The lower receiver is that part of a long gun that contains the trigger, firing pin, and ammunition feeding mechanisms. They are treated the same as a long gun and are currently legally available, provided that the purchaser passes a background check, the lower receiver has a serial number, and a record of the purchase is created. Similarly, a frame for a pistol is treated as a handgun and has a serial number. However, partially complete or "80 percent" lower receivers and frames are not considered to be firearms, but with a few simple modifications, they can become fully functional. A person with a drill press can easily drill the necessary holes to complete the receiver or frame and advances in 3D printing technology is increasing the availability of unfinished lower receivers and frames. Firearms assembled from these partially complete lower receivers and frames are untraceable for law enforcement.

"AB 1673 will deal with this problem by expanding the definition of firearms to include unfinished frames and receivers that can be readily converted to the functional condition of a finished frame or receiver. The Brady Campaign supports this concept and believes that weapons assembled from unfinished lower receivers and frames should be subject to the full extent of the law. Determining at what point a piece of metal or other material should be considered a firearm is difficult to establish, but the 'readily converted' standard, with, perhaps, more definition, is a good approach.

"The shooter in the 2013 Santa Monica shooting, in which six people were killed, was prohibited from purchasing firearms. Instead, he machined himself an AR-15-type semiautomatic rifle from an aluminum partial lower receiver. This is an example of why it is essential that guns assembled from partial lower receivers and frames be regulated. AB 1673 will help keep weapons out of the hands of those considered at risk of violence, such as criminals, children, and persons with severe mental illness. Accordingly, the California Brady Campaign Chapters are in strong support of AB 1673 and urge your AYE vote."

- 7) **Argument in Opposition:** According to the *Firearms Policy Coalition*, "AB 1673 would change the definition of a firearm to include things that are not firearms.

"In the interest of clarity, and because the best comedy requires no punchline, we offer here the entire substance of AB 1673 (amending § 16520(b) of the Penal Code):

"As used in the following provisions, 'firearm' includes the finished frame or receiver of a weapon, or the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver...

"(Note the obvious lack of definition for the new term of art, 'unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.')

"AB 1673 is as dangerous as it is Orwellian in its linguistic dissonance, creating severe new penalties for non-violent crimes with what amounts to paperweights by calling things firearms that are not actually firearms.

"Given that 'readily convertible' is a function of time, skill, knowledge, experience, and access to tools, information, materials, and equipment (stamps, molds, mandrels, hydraulic presses, jigs, drills, mills, rivets, welders, sandblasters, software, blueprints, CNC machines, computer numerical control routers, raw materials, etc.), one must wonder if AB 1673 is simply lazy or purposefully hostile to people with access to tools, information, knowledge, and commodity materials.

"In order to comply with AB 1673, non-firearm firearms would need to be taken to and transferred through a licensed (real) firearms dealer. These 'readily convertible' pieces of plastic, wood, aluminum, iron, or steel would then need to be entered into the California Department of Justice (DOJ) Dealer's Record of Sale Entry System (DROS DES) in order to provide the DOJ with the information required to register the non-firearm with the state. (Can you imagine what the DOJ's DROS DES technical support logs will look like after AB 1673?)

"Unfortunately for Assemblymember Gipson, the DOJ's systems are designed for actual firearms. AB 1673 would necessitate the promulgation of new regulations as well as costly modifications to DOJ's many systems and databases. (While the cost of doing as much would certainly be substantial, California would at least have bragging rights to the first non-firearm firearm database in the known history of the world.)

"Adding insult to injury, following the entry of the non-firearm firearm into the DROS system, the non-firearm firearm owner would then be required to wait at least 10 days (and up to 30) to take possession of their non-firearm firearm from the transferring dealer.

"And should the non-firearm firearm owner ever be found or thought to be prohibited from firearm possession, the person would be placed into the DOJ's failed Armed Prohibited

Persons system so DOJ agents or local law enforcement could confiscate the non-firearm firearm."

- 8) **Related Legislation:** SB 1407 (De Leon), requires a person who manufactures or assembles a firearm to first apply to the DOJ for a unique serial number or other identifying mark. Requires any person who owns a firearm that does not bear a serial number to likewise apply to the department for a unique serial number or other mark of identification. Prohibits the sale or transfer of ownership of a firearm manufactured or assembled pursuant to these provisions. Prohibits a person from aiding in the manufacture or assembly of a firearm by a person who is prohibited from possessing a firearm. SB 1407 has been referred to Senate Rules Committee for further assignment.
- 9) **Prior Legislation:** SB 808 (De Leon) of the 2013-2014 legislative session, required a person, commencing January 1, 2016, to apply to and obtain from the Department of Justice (DOJ) a unique serial number or other mark of identification prior to manufacturing or assembling a firearm. SB 808 was vetoed by the governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chapters of the Brady Campaign
California Civil Liberties Advocacy
Coalition Against Gun Violence
Firearms Policy Coalition
Law Center to Prevent Gun Violence

Opposition

California Association of Federal Firearms Licensees
California Sportsmen's Lobby
Crossroads of the West Gun Shows
Firearms Policy Coalition
National Rifle Association
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Safari Club International

One private individual.

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

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BILL NUMBER: AB 1673 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Gipson

JANUARY 19, 2016

An act to amend Section 16520 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1673, as introduced, Gipson. Firearms: unfinished frame or receiver.

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

SECTION 1. Section 16520 of the Penal Code is amended to read:

16520. (a) As used in this part, "firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the finished frame or receiver of the weapon, ~~or the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.~~ or a frame or receiver "blank," "casting" or "machined body" that is designed and clearly identifiable as a component of a functional weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion:

- (1) Section 16550.
- (2) Section 16730.
- (3) Section 16960.
- (4) Section 16990.
- (5) Section 17070.
- (6) Section 17310.
- (7) Sections 26500 to 26588, inclusive.
- (8) Sections 26600 to 27140, inclusive.
- (9) Sections 27400 to 28000, inclusive.
- (10) Section 28100.
- (11) Sections 28400 to 28415, inclusive.
- (12) Sections 29010 to 29150, inclusive.
- (13) Sections 29610 to 29750, inclusive.
- (14) Sections 29800 to 29905, inclusive.
- (15) Sections 30150 to 30165, inclusive.
- (16) Section 31615.
- (17) Sections 31705 to 31830, inclusive.
- (18) Sections 34355 to 34370, inclusive.
- (19) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, "firearm" also includes a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material, whether or not the device is designed for emergency or distress signaling purposes:

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- (1) Section 16750.
- (2) Subdivision (b) of Section 16840.
- (3) Section 25400.
- (4) Sections 25850 to 26025, inclusive.
- (5) Subdivisions (a), (b), and (c) of Section 26030.
- (6) Sections 26035 to 26055, inclusive.
- (d) As used in the following provisions, "firearm" does not include an unloaded antique firearm:

- (1) Subdivisions (a) and (c) of Section 16730.
- (2) Section 16550.
- (3) Section 16960.
- (4) Section 17310.
- (5) Chapter 6 (commencing with Section 26350) of Division 5 of Title 4.
- (6) Chapter 7 (commencing with Section 26400) of Division 5 of Title 4.
- (7) Sections 26500 to 26588, inclusive.
- (8) Sections 26700 to 26915, inclusive.
- (9) Section 27510.
- (10) Section 27530.
- (11) Section 27540.
- (12) Section 27545.
- (13) Sections 27555 to 27585, inclusive.
- (14) Sections 29010 to 29150, inclusive.
- (15) Section 25135.

(e) As used in Sections 34005 and 34010, "firearm" does not include a destructive device.

(f) As used in Sections 17280 and 24680, "firearm" has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29150, inclusive, "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

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

Date of Hearing: March 15, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron-Jones-Sawyer, Sr., Chair

AB 1680 (Rodriguez) – As Introduced January 19, 2016

SUMMARY: Makes it a misdemeanor to use a drone to impede specified emergency personnel in the performance of their duties while coping with an emergency. Specifically, **this bill:**

- 1) Amends existing statute which makes it a misdemeanor for a person to go to, or stop at, the scene of an emergency and impedes police officers, firefighters, emergency medical, or other emergency personnel, or military personnel in the performance of their emergency duties.
- 2) Specifies that a person shall include a person who operates or uses an unmanned aerial vehicle, remote piloted aircraft, or drone.

EXISTING LAW:

- 1) States that every person who goes to the scene of an emergency, or stops at the scene of an emergency, for the purpose of viewing the scene or the activities of police officers, firefighters, emergency medical, or other emergency personnel, or military personnel coping with the emergency in the course of their duties during the time it is necessary for emergency vehicles or those personnel to be at the scene of the emergency or to be moving to or from the scene of the emergency for the purpose of protecting lives or property, unless it is part of the duties of that person's employment to view that scene or activities, and thereby impedes police officers, firefighters, emergency medical, or other emergency personnel or military personnel, in the performance of their duties in coping with the emergency, is guilty of a misdemeanor. (Pen. Code, § 402, subd. (a).)
- 2) Provides that every person who knowingly resists or interferes with the lawful efforts of a lifeguard in the discharge or attempted discharge of an official duty in an emergency situation, when the person knows or reasonably should know that the lifeguard is engaged in the performance of his or her official duty, is guilty of a misdemeanor. (Pen. Code, § 402, subd. (b).)
- 3) Specifies that “emergency” includes a condition or situation involving injury to persons, damage to property, or peril to the safety of persons or property, which results from a fire, an explosion, an airplane crash, flooding, windstorm damage, a railroad accident, a traffic accident, a power plant accident, a toxic chemical or biological spill, or any other natural or human-caused event. (Pen. Code, § 402, subd. (c).)
- 4) States that every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as specified, in the discharge or attempt to discharge any duty of his or her office or employment, is guilty of a misdemeanor. (Pen.

Code, § 148, subd. (a).)

- 5) Specifies that the fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of resisting, delaying or obstructing an officer, nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person. (Pen. Code, § 148, subd. (g).)
- 6) States that every person who willfully commits any of the following acts at the burning of a building or at any other time and place where any fireman or firemen or emergency rescue personnel are discharging or attempting to discharge an official duty, is guilty of a misdemeanor:
 - a) Resists or interferes with the lawful efforts of any fireman or firemen or emergency rescue personnel in the discharge or attempt to discharge an official duty; (Pen. Code, § 148.2, subd. (a).)
 - b) Disobeys the lawful orders of any fireman or public officer; (Pen. Code, § 148.2, subd. (b).)
 - c) Engages in any disorderly conduct which delays or prevents a fire from being timely extinguished; or (Pen. Code, § 148.2, subd. (c).)
 - d) Forbids or prevents others from assisting in extinguishing a fire or exhorts another person, as to whom he has no legal right or obligation to protect or control, from assisting in extinguishing a fire. (Pen. Code, § 148.2, subd. (d).)
- 7) Specifies that as used in specified code sections, "fireman" or "firefighter" includes "any person who is an officer, employee or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, whether this person is a volunteer or partly paid or fully paid."
- 8) Specifies that, "emergency rescue personnel" means "any person who is an officer, employee or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, whether this person is a volunteer or partly paid or fully paid, while he or she is actually engaged in the on-the-site rescue of persons or property during an emergency" as specified.
- 9) "Emergency Medical Technician-I" or "EMT-I" means an individual trained in all facets of basic life support according to standards prescribed by this part and who has a valid certificate issued pursuant to this part." This definition shall include, but not be limited to, EMT-I (FS) and EMT-I-A. (Health & Saf., § 1797.80.)
- 10) "Emergency Medical Technician-II", "EMT-II," "Advanced Emergency Medical Technician," or "Advanced EMT" means "an EMT-I with additional training in limited advanced life support according to standards prescribed by this part and who has a valid

certificate issued pursuant to this part." (Health & Saf., § 1797.82.)

- 11) "Emergency Medical Technician-Paramedic," "EMT-P," "paramedic" or "mobile intensive care paramedic" means "an individual whose scope of practice to provide advanced life support is according to standards prescribed by this division and who has a valid certificate issued pursuant to this division." (Health & Saf., § 1797.82.)
- 12) Any person who hinders, delays, or obstructs any portion of the militia parading or performing any military duty, or who attempts so to do, is guilty of a misdemeanor. (Military & Vet. Code, § 396.)
- 13) Specifies that the militia of the State shall consist of the National Guard, State Military Reserve and the Naval Militia. (Military & Vet. Code, § 120.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Recently in California a pilot flying a helicopter with seven firefighters on board who were battling a blaze threatening nearby homes, saw a four-rotor drone only 10 feet from his windshield. This forced him to make a hard left to avoid a collision about 500 feet above ground. In another incident, the sighting of five drones in the area of a wildfire that closed Interstate 15 in Southern California and destroyed numerous vehicles, grounded air tanker crews for 20 minutes as flames spread. The unregulated and irresponsible use of drones is placing Californians, our firefighters and emergency response personnel in increasing danger.

"The existing Penal Code section dealing with interfering with police, fire and EMTs does not specifically state that the crime can be committed by using a drone. By clarifying existing law, police, fire and EMTs will be able to tell drone operators that the use of an unmanned aircraft that interferes with their official activities is a crime and that they must discontinue their use or face being charged.

"Unmanned aircraft or the use of a drone is an emerging industry and technology that is rapidly gaining in popularity. The sheer numbers of drones is creating problems and concerns about how and where they should be used and it is only now that they are being regulated by the FAA. AB 1680 recognizes the fact that drones will need additional federal and state regulation but takes a common sense intermediate approach to doing so."

- 2) **Unmanned Aerial Vehicles or Drones:** The Federal Aviation Administration (FAA), uses the term "unmanned aircraft systems" to refer to vehicles commonly known as drones. Regarding the types of aircraft that may be considered unmanned aircraft systems, the FAA's fact sheet notes:

Unmanned Aircraft Systems (UAS) come in a variety of shapes and sizes and serve diverse purposes. They may have a wingspan as large as a jet airliner or smaller than a radio-controlled model airplane. Regardless of size, the responsibility to fly safely applies equally to manned and unmanned aircraft operations.

Because they are inherently different from manned aircraft, introducing UAS into the nation's airspace is challenging for both the FAA and aviation community. UAS must be integrated into a National Airspace System (NAS) that is evolving from ground-based navigation aids to a GPS-based system in NextGen. Safe integration of UAS involves gaining a better understanding of operational issues, such as training requirements, operational specifications and technology considerations.

(https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297)

Although not always thought of when the word "drone" is used, hobby-size airplanes and helicopters that are equipped with digital cameras are becoming more and more affordable for the average consumer. This hobby aircraft may be used for pure novelty, surveying one's yard, or even checking to see the condition of a roof.

- 3) **FAA Policy on Drones:** If a drone meets the definition of "model aircraft," and operates within specified parameters, the operator does not need specific authorization from the FAA to fly it. Under FAA regulations a 'Model aircraft' is (1) capable of sustained flight in the atmosphere; (2) flown within visual line of sight of the person operating the aircraft; and (3) flown for hobby or recreational purposes. (Section 336 of Public Law 112-95 (the FAA Modernization and Reform Act of 2012).)

The FAA has the authority under its existing regulations to pursue legal enforcement action against persons operating model aircraft when the operations endanger the safety of the National Airspace System, even if they are operating in accordance with UAS regulations. So, for example, a Model aircraft operation conducted, as specified, may be subject to an enforcement action for a violation if the operation is conducted in a careless or reckless manner so as to endanger the life or property of another.

(https://www.faa.gov/uas/regulations_policies/media/FAA_UAS-PO_LEA_Guidance.pdf)

Drone operations that are not model aircraft operations may only be operated with specific authorization from the FAA. It is important to understand that all UAS operations that are not operated as model aircraft are subject to current and future FAA regulation. At a minimum, any such flights are currently required under the FAA's regulations to be operated with an authorized aircraft (certificated or exempted), with a valid registration number ("N-number"), with a certificated pilot, and with specific FAA authorization (Certificate of Waiver or Authorization). Regardless of the type of UAS operation, the FAA's statutes and the Federal Aviation Regulations prohibit any conduct that endangers individuals and property on the surface, other aircraft, or otherwise endangers the safe operation of other aircraft in the National Airspace System.

(https://www.faa.gov/uas/regulations_policies/media/FAA_UAS-PO_LEA_Guidance.pdf)

- 4) **Governor's Veto Message on SB 271 (Gaines) and SB 170 (Gaines) Drone Bills:** SB 168 (Gaines), of the 2015-2016 Legislative Session was vetoed by the Governor, and would have made it a misdemeanor operate a UAS, in a manner that prevents or delays the extinguishment of a fire, or in any way interferes with the efforts of firefighters to control, contain, or extinguish a fire.

SB 271 (Gaines), Legislative Session of 2015-2016 was vetoed by Governor, and would have made it an infraction to knowingly and intentionally operate an unmanned aircraft system on the grounds of, or less than 350 feet above ground level within the airspace overlaying, a

public school providing instruction in kindergarten or grades 1 to 12, inclusive, during school hours and without the written permission of the school principal or higher authority, or his or her designee, or equivalent school authority.

SB 170 (Gaines), Legislative Session of 2015-2016 was vetoed by the Governor, and would have created a felony crime for the use of a UAS to deliver contraband into a prison or county jail and creates a misdemeanor crime for the use of UAS over a prison or capture images of a prison. SB 170 passed the Senate on a 40-0 vote and will be heard in the Assembly Privacy and Consumer Protection Committee on July 7, 2015.

The Governor vetoed those bills and issued this statement applying to all three bills:

“Each of these bills creates a new crime - usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.

“Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded.

“Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective.”

- 5) **Existing Law Already Criminalizes Obstructing or Delaying Firemen, Emergency Rescue Personnel, Emergency Medical Technicians, Police Officers, Peace Officers, Public Officers, and National Guard Members Discharging Their Duties:** The Penal Code specifies that it is a misdemeanor to obstruct, delay, or resist specified positions who are engaged in the discharge of their duties. The list includes firemen, emergency rescue personnel, emergency medical technicians, police officers, peace officers, and public officers in positions for which it is a crime to interfere with discharge of their duties. In addition, a Military & Vet. Code section makes it a misdemeanor for a person to delay or obstructs National Guard or California State Military Reserve from performing any military duty.

The language prohibiting “obstructing or delaying” prohibit such behavior regardless of the particular manifestation. Because of the general prohibition on obstructing or delaying, there is not a need to list specific ways (such as use of a drone) that a person can “obstruct, delay, or resist.”

The Author mentions two situations in which a drone affected firefighting efforts. One involved firefighters in a helicopter and another incident resulted in the grounding of air tankers fighting a wildfire. Both of those incidents could have been charged under Penal Code section 148.2, which prohibits obstructing, delaying, or resisting a fireman, to the extent that the conduct of the drone operator obstructed or delayed the firemen in the performance of their duties.

- 6) **Penal Code Section 402 Does Not Necessarily Criminalize Use of a Drone to Impede Personnel Coping with an Emergency:** Penal Code section 402 prohibits conduct that

impedes specified personnel responding to an emergency. Arguably a person could not be prosecuted under Penal Code section 402 when using a drone from a remote location, because the section only prohibits conduct that impedes specified individuals performing their duties in coping with an emergency when the “person goes to the scene of an emergency, or stops at the scene of an emergency, . . .”

Given the requirement that the person goes to the scene of the emergency, or stops at the scene of the emergency, a person impeding an emergency response by operating a drone when the drone operator was at a remote location, does not fit within the scope of Penal Code section 402.

To the extent that a District Attorney’s Office felt that criminal charges were warranted, the delay or obstruction of personnel at the scene of an emergency with a drone could currently be prosecuted under the codes mentioned above which criminalize delaying or obstructing specified personnel whether or not they are at the scene of an emergency.

If it is important to ensure that Penal Code section 402 addresses the use of drones, it is appropriate to add language to that section. The language of this bill would need to be narrowed or modified to ensure that it addresses the use of a drone at an accident scene from a remote location. The language of this bill does not modify the requirement that the person must go to, or stop at the scene of the emergency, to violate the statute. The current language referring to drones does not necessarily reach individuals that impede an emergency from a location that is remote from the emergency scene.

- 7) **Argument in Support:** According to *Los Angeles Professional Peace Officers Association*, “Existing law provides that it is a misdemeanor to impede the duties of law enforcement officers, firefighters or emergency personnel; but current law is silent regarding the interference of law enforcement activity with a “drone” or “unmanned aerial vehicle.” Over the past few years, the popularity of drones has resulted in an increase of these devices in the sky; often times at accident sites, forest fires, crowded public events and other locations that have proven problematic for law enforcement and emergency response. There have been examples where public safety crews have had to avoid drones in mid-air responses and divert action plans to alternative sites to prevent endangering public safety officers and the public.

“AB 1680 would address this currently unregulated activity and would clarify that these problematic incidents will be classified as misdemeanors; mirroring existing penalties for interfering with law enforcement in any other manner. This appropriate action will likely result in a reduction of these dangerous, unnecessary encounters between drones and law enforcement officers responding to a crisis.”

8) **Prior Legislation:**

- a) SB 168 (Gaines), of the 2015-2016 Legislative Session, would have made it a misdemeanor operate a UAS, in a manner that prevents or delays the extinguishment of a fire, or in any way interferes with the efforts of firefighters to control, contain, or extinguish a fire. SB 168 was vetoed by the Governor.
- b) SB 271 (Gaines), of the 2015-2016 Legislative Session, would have made it an infraction to knowingly and intentionally operate an UAS on the grounds of, or less than 350 feet

above ground level within the airspace overlaying, a public school providing instruction in kindergarten or grades 1 to 12, inclusive, during school hours and without the written permission of the school principal or higher authority, or his or her designee, or equivalent school authority. SB 271 was vetoed by Governor.

- c) SB 170 (Gaines), of the 2015-2016 Legislative Session, would have created a felony crime for the use of a UAS to deliver contraband into a prison or county jail and creates a misdemeanor crime for the use of UAS over a prison or capture images of a prison. SB 170 passed the Senate on a 40-0 vote and will be heard in the Assembly Privacy and Consumer Protection Committee on July 7, 2015. SB 170 was vetoed by the Governor.
- d) SB 411 (Lara), Chapter 177, Statutes of 2015, specifies the fact that a person takes a photograph or makes an audio or video recording of law enforcement officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of willfully resisting, delaying, or obstructing an officer.

REGISTERED SUPPORT / OPPOSITION:

Support

California Fire Chiefs Association
California State Sheriffs' Association
DJI Technology
Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
Los Angeles County Professional Peace Officers Association
Riverside Sheriffs Association

Opposition

None

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

Date of Hearing: March 15, 2016

Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1695 (Bonta) – As Introduced January 21, 2016

SUMMARY: Requires the Department of Justice (DOJ) to send a letter to each firearm purchaser during the 10-day waiting period informing the purchaser of laws relating to firearms and creates a misdemeanor to falsely report to law enforcement that a firearm has been lost or stolen, and institutes a 10-year ban on owning a firearm for those convicted of making a false report. Specifically, **this bill:**

- 1) Requires the Attorney General to send a letter notice to each individual who has applied to purchase a firearm informing him or her of laws relating to firearms, gun trafficking, and safe storage, as provided. Allows the Department of Justice (DOJ) to use funds in the Firearms Safety and Enforcement Special Fund, which is continuously appropriated, to pay for the cost of administering this provision, thereby making an appropriation.
- 2) Creates a misdemeanor to make a false report to law enforcement that a firearm has been lost or stolen, knowing that report to be false.
 - a) Creates a 10-year ban on owning a firearm following a conviction of this provision.
 - b) Possession of a firearm in violation of the 10-year ban is punishable as a misdemeanor.
- 3) Defines “firearm” for these purposes of a lost or stolen firearm to include the frame or receiver of the weapon, and to include a rocket, rocket propelled projectile launcher, or similar device containing an explosive or incendiary material.
- 4) Specifies that DOJ is authorized to use funds in the Firearms Safety and Enforcement Special Fund to pay for the cost of administering this section.

EXISTING LAW:

- 1) Requires that handgun purchasers must take an exam on handgun safety from an instructor and obtain a minimum 75% passing score to receive a certificate. (Pen. Code § 31615.)
- 2) Provides that the sale, loan or transfer of firearms in almost all cases must be processed by, or through, a state-licensed dealer or a local law enforcement agency with appropriate transfer forms being used, as specified. In those cases where dealer or law enforcement processing is not required, as of today a handgun change of title report must still be sent to DOJ and will require that as to all firearms as of January 1, 2014. (Pen. Code § 27545.)

- 3) Requires photo identification for the purchase of a firearm. Additionally requires that persons purchasing a handgun be 21 years of age and those purchasing a long gun be 18 years of age. (Pen. Code § 27510.)
- 4) Requires the completion of the Alcohol Tobacco and Firearms (ATF) Form 4473 and California Dealer's Record of Sale (DROS) form and pass a background check. (Pen. Code § 29820.)
- 5) Provides on or after January 1, 1998, that persons establishing residency within California who bring with them and store firearms within California after that date to report the same to DOJ. This reporting requirement will apply to all firearms as of January 1, 2014. (Pen. Code § 27560.)
- 6) Requires the DOJ, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. Existing law prohibits the delivery of a firearm within 10 days of the application to purchase, or, after notice by the department, within 10 days of the submission to the department of any corrections to the application to purchase, or within 10 days of the submission to the department of a specified fee. (Pen. Code §§ 28200 to 28250.)
- 7) Requires that if a dealer cannot legally deliver a firearm, the dealer shall return the firearm to the transferor, seller, or person loaning the firearm. (Pen. Code § 28050, subd. (d).)
- 8) Requires that in connection with any private party sale, loan or transfer of a firearm, a licensed dealer must provide the DOJ with specified personal information about the seller and purchaser as well as the name and address of the dealer. This personal information of buyer and seller required to be provided includes the name; address; phone number; date of birth; place of birth; occupation; eye color; hair color; height; weight; race; sex; citizenship status; and a driver's license number, California identification card number or military identification number. A copy of the Dealers Record of Sale (DROS), containing the buyer and seller's personal information, must be provided to the buyer or seller upon request. (Pen. Code §§ 28160, 28210, and 28215.)
- 9) Provides that various categories of persons are prohibited from owning or possessing a firearm, including persons convicted of certain violent offenses, and persons who have been adjudicated as having a mental disorder, among others. (Pen. Code §§ 29800 to 29825, inclusive, 29900, 29905, 30305 and Welf. & Inst. Code §§ 8100 and 8103.)
- 10) Prohibits persons who know or have reasonable cause to believe that the recipient is prohibited from having firearms and ammunition to supply or provide the same with firearms or ammunition. (Pen. Code § 27500 and 30306, and Welf. & Inst. Code § 8101.)
- 11) Provides that it shall be unlawful for the following people to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce: [18 USC Section 922(g).]

- a) Who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
 - b) Who is a fugitive from justice;
 - c) Who is an unlawful user of or addicted to any controlled substance, as defined;
 - d) Who has been adjudicated as a mental defective or who has been committed to a mental institution;
 - e) Who, being "an alien" —
 - i) is illegally or unlawfully in the United States; or
 - ii) except as specified, has been admitted to the United States under a non-immigrant visa, as defined;
 - f) Who has been discharged from the Armed Forces under dishonorable conditions;
 - g) Who, having been a citizen of the United States, has renounced his citizenship;
 - h) Who is subject to a court order that —
 - i) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - ii) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - (1) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (2) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
 - i) Who has been convicted in any court of a misdemeanor crime of domestic violence
- 12) Provides that certain people are prohibited from owning or possessing a firearm. This includes (Pen. Code §§ 29800; 23515; 29805.):
- a) Anyone convicted of a felony;
 - b) Anyone addicted to a narcotic drug;
 - c) Any juvenile convicted of a violent crime with a gun and tried in adult court;

- d) Any person convicted of a federal crime that would be a felony in California and sentenced to more than 30 days in prison, or a fine of more than \$1,000;
 - e) Anyone convicted of certain violent misdemeanors, e.g., assault with a firearm; inflicting corporal injury on a spouse or significant other; brandishing a firearm in the presence of a police officer; and
 - f) Provides that a violation of these provisions is a felony.
- 13) Specifies a ten year ban for anyone convicted of numerous misdemeanors involving violence or threats of violence. (Pen. Code § 29805.)
- 14) Provides that a violation of these provisions of the ten year firearm ban may be sentenced to a year in the county jail or up to 3 years in state prison, as specified. (Pen. Code § 29805.)
- 15) Provides that persons who are bound by a temporary restraining order or injunction or a protective order issued under the Family Code or the Welfare and Institutions Code, may be prohibited from firearms ownership for the duration of that court order. (Pen. Code § 29825.)
- 16) Specifies that the Attorney General maintains an online database known as the Armed Prohibited Persons File ("APPS"). The purpose of APPS is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. The information contained in APPS is only be available to specified entities through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Pen. Code § 30000.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1695, the Stop Illegal Gun Sales Act (the Act), seeks to reduce the flow of firearms onto the black market. The Act targets straw purchases, instances in which a person who can pass a background check legally buys a gun and then resells it to someone who was prohibited from purchasing a firearm. Additionally, the Act would make knowingly falsely reporting a gun as lost or stolen a misdemeanor, a tactic of straw purchasers seeking to distance themselves from the gun.

"In 2007, the Los Angeles City Attorney's office notified firearm purchasers of their rights and responsibilities during California's mandatory waiting period. This notification was attempted to deter straw purchasers from illegally transferring firearms, either through failing to complete the transaction or declining to resell the firearm.

"According to a 2010 RAND study, the notification significantly increased the number of firearms reported lost and stolen—more than doubling the reporting. However, it is not clear whether the increased reporting was from increased compliance with the law or straw

purchasers covering their tracks. This is remedied by the second provision of the Act, making the knowingly false reporting of a firearm as lost or stolen a misdemeanor, to ensure only true reports are made. Additionally, the RAND study found there was an increase in approved firearms transactions not being completed, suggesting a deterrent effect, though those results require further research."

- 2) **Targeting Straw Purchasers and Lost or Stolen Firearms:** This legislation is similar in intent to a prior bill run by the same author. AB 1020 (Bonta) from the 2013-2014 Legislative Session intended to replicate statewide a program established by the L.A. City Attorney's Office, in conjunction with local, state and federal officials, to inform gun owners of rights and responsibilities. This bill focuses the letters on informing purchasers of issues related to firearms, gun trafficking, and safe storage. The author cites a 2010 RAND study which concluded the following:

"Between May 2007 and September 2008, 2,120 guns were purchased in two target neighborhoods of the City of Los Angeles. Starting in August 2007, gun buyers initiating transactions on odd-numbered days received a letter signed by prominent law enforcement officials, indicating that law enforcement had a record of their gun purchase and that the gun buyer should properly record future transfers of the gun. The letters arrived during buyers' 10-day waiting periods, before they could legally return to the store to collect their new gun. Subsequent gun records were extracted to assess the letter's effect on legal secondary sales, reports of stolen guns, and recovery of the gun in a crime. An intent-to-treat analysis was also conducted as a sensitivity check to remedy a lapse in the letter program between May and August 2007. The letter appears to have no effect on the legal transfer rate or on the short-term rate of guns subsequently turning up in a crime. *However, we found that the rate at which guns are reported stolen for those who received the letter is more than twice the rate for those who did not receive the letter. Those receiving the letter reported their gun stolen at a rate of 18 guns per 1,000 gun-years and those not receiving the letter reported their gun stolen at a rate of 7 guns per 1,000 gun-years. Of those receiving the letter, 1.9% reported their gun stolen during the study period compared to 1.0% for those who did not receive the letter. The percentage of guns reported stolen in these neighborhoods is high, indicating a high rate of true gun theft, a regular practice of using stolen-gun reports to separate the gun buyer from future misuse of the gun, or some blend of both. Simple, targeted gun law awareness campaigns can modify new gun buyers' behaviors.* Additional follow-up or modifications to this initiative might be needed to impact the rate at which guns enter the illegal gun market and ultimately are recovered in crimes." (emphasis added)

- 3) **City of Los Angeles Letter:** As previously mentioned, this bill seeks to implement statewide a policy that has been in place in the City of Los Angeles for a number of years. The author has provided a copy of the letter which is distributed in the City of Los Angeles when a person purchases a firearm. The letter reads as follows:

John A. Doe
1234 Main Street
Los Angeles, CA 90000

Dear Mr. Doe:

As you are aware, gun violence is a serious problem both within the City of Los Angeles and our country. Nationwide, thousands of our fellow Americans, including children, are killed or seriously injured each year by firearms. It is therefore the hope and intent of the City and the Attorney General to pursue measures that help reduce those deaths and injuries.

To that end, City prosecutors, in conjunction with the California Attorney General and Los Angeles Police Department, are engaged in a program to remind gun purchasers of their legal responsibilities as gun owners.

Records show that you have recently purchased a firearm. It is important that everyone does their part to handle and store firearms in a safe manner, including keeping them out of the hands of children, criminals, and others who may not be authorized to own or possess such a firearm.

In the event you decide to sell or give your gun to another person, both parties must first complete a "Dealer Record of Sale" (DROS) form at any federally-licensed gun dealer. Please remember that, with very few exceptions, it is a crime to transfer a firearm to any person without first completing the DROS form. Additionally, it is a crime to knowingly sell, give or allow possession of a firearm to a person with a known mental disorder. Furthermore, should a child obtain access to your firearm and injure him/herself or another person, you could be subject to criminal prosecution. City prosecutors are also authorized to bring an eviction action against the tenants residing at a property at which certain unlawful conduct takes place, including the illegal possession, use, sale, furnishing or giving away of a firearm.

You should also be aware that in the event the police recover a firearm that has been involved in a crime, City prosecutors can prosecute its previous owner for a misdemeanor, if that owner failed to complete the "Dealer Record of Sale" form.

Please help make Los Angeles a safer community by preventing your gun from falling into the wrong hands. Thank you for your compliance with these very important obligations and responsibilities.

Any inquiries may be directed to City prosecutor Anne Tremblay at (213) 978-4090.

- 4) **Handgun Safety Certificate:** This bill requires the DOJ to provide a letter to firearm purchasers providing them with information related to firearms, gun trafficking, and safe storage. All handgun purchasers in the State of California must take an exam on handgun safety from an instructor and obtain a minimum 75% passing score to receive a certificate (Penal Code Section 31615.) Effective January 1, 2003, the Basic Firearms Safety Certificate Program was replaced with the Handgun Safety Certificate Program. These new statutes affect the general public in two principal ways. First, unless exempt, individuals must possess a Handgun Safety Certificate (HSC) prior to purchasing or acquiring a handgun. Second, unless exempt, individuals must perform a safe handling demonstration prior to taking delivery of a handgun from a licensed dealer. HSCs are acquired by taking and passing a written test on handgun safety, generally at participating firearms dealerships and private firearms training facilities. A written guide is available to help individuals prepare for the Handgun Safety Certificate Test for purchase at firearms dealerships at \$.50 each. There

is also a Handgun Safety Certificate Video available for purchase at firearms dealerships or from DOJ Certified Instructors at \$5.00 each. The handgun safety demonstration protocols and DOJ Certified Instructor standards have been established and implemented by DOJ.

- 5) **Numbers of Gun Sales in California:** The number of gun sales in California is relatively high. From 2007-2016 the numbers have been increasing. In 2007 there were 370,628 Dealer's Records of Sale reported in the state of California. In 2011 there were 601,243 Dealer's Records of Sale reported to the DOJ. It has been widely reported in the media that following the tragedy at Sandy Hook Elementary School on December 14, 2012 that gun sales have increased significantly following proposed legislative efforts throughout the United States to impose stricter regulations on gun sales. In the month following the San Bernardino shooting in California gun dealers sold about 134,000 guns. History has shown that following recent mass shootings there have been severe spikes in gun sales. California has seen between 800,000 and 960,000 gun sales during each of the prior four years, state and federal data show. By comparison, a decade ago, between 2002 and 2005, the state never saw more than 345,000 gun sales in a single year.
- 6) **Firearms Prohibitions for Misdemeanor Offenses:** Current state and federal laws prohibit persons who have been convicted of specific crimes from owning or possessing firearms. For example, anyone convicted of any felony offense is prohibited for life from firearms ownership under both federal and state law. (18 U.S.C. § 922(g); Pen. Code § 29800.) California goes further and imposes a 10-year firearms prohibition on persons convicted of numerous misdemeanor offenses that involve either violence or the threat of violence. (Pen. Code § 29805.) Additionally, anyone who has been found to be a danger to themselves or others due to mental illness is subject to a five-year prohibition (Welf. & Inst. Code §§ 8100, 8103(f)), and people under domestic violence restraining orders are subject to a prohibition for the duration of that court order. (Pen. Code § 29825.)

This bill would specify that any person convicted of the misdemeanor offense of falsely reporting a firearm as lost or stolen to law enforcement is subject to a 10-year ban from owning a firearm. This offense arguably involves the misuse of a firearm so it is consistent with other bans on ownership of a firearm.

- 7) **Argument in Support:** According to the *California Chapters of the Brady Campaign to Prevent Gun Violence*, "It is well known that a significant source (if not the primary source) of crime guns is through the intervention of straw purchasers. A straw purchase occurs when someone who does not have a criminal record, and can therefore pass a background check, purchases a firearm and then transfers it without a background check to someone who is otherwise prohibited from possessing a firearm. This practice violates existing law but it is often difficult to detect and prevent. AB 1695 seeks to address this issue.

"AB 1695 would require the Attorney General to send a notice to each individual who has applied to purchase a firearm informing him or her of laws relating to firearms, gun trafficking, and safe storage. Additionally, the bill would make it a misdemeanor to report to a local law enforcement agency that a firearm has been lost or stolen, knowing that report to be false.

"In 2007, Greg Ridgeway conducted a study to determine whether sending a notification to gun buyers during the ten day waiting period could affect behavior. The notification or letter informed them that law enforcement had a record of their gun purchase and that the gun buyer should properly record any future transfers of the gun. Those receiving the letter reported their

guns lost or stolen with almost twice the frequency of those who did not receive the letter, and at least initially, those receiving the letter were less likely to return to pick up their gun.

"Ridgeway concluded that straw purchasers were much more likely to report their firearms lost or stolen as a defense when guns recovered in a crime were traced to them. It follows therefore, that the act of knowingly filing a false report should have criminal consequences in order to discourage the behavior.

"Preventing the flow of illegal guns is very important to public safety. AB 1695 would not only inform gun purchasers of transfer laws, but would help deter straw buyers. The bill furthers the Brady Campaign's goal of keeping weapons out of dangerous hands.

"Additionally, an important strategy for reducing gun violence is to educate gun owners about child access prevention laws and safe storage requirements. The Brady Campaign supports the concept of informing all prospective gun owners of important firearms laws and injury prevention strategies. The notice to prospective gun buyers advances these education goals.

"Accordingly, The California Brady Campaign Chapters stand in strong support of AB 1695 and urge your AYE vote."

- 8) **Argument in Opposition:** According to the *Firearms Policy Coalition*, "AB 1695 seeks to continuously appropriate firearm purchaser's involuntary contributions to the Firearms Safety and Enforcement Special fund for the purposes of sending a mailed notice to firearms purchasers reminding them of a tiny fraction of the thousands of statutes and regulations that govern the acquisition, possession, transport, storage, carry, loan, use, and transfer of firearms. Strangely, firearm purchasers would only receive this mailing after paying their fees, passing a test on firearm law and safety, and receiving their certification (which remains valid for 5 years).

"The senseless redundancy of AB 1695 is many-fold. Many laws cited in the notice content are, in fact, the same laws that the purchaser is complying with by conducting a lawful firearm transfer to a licensed dealer. Those same laws are required to be posted in plain view at the point of sale.

"And how many times must a purchaser pay for the same notice with the same content to be mailed to them?

"With the Department of Justice processing nearly one million firearm transactions in California on an annual basis, AB 1695 represents the needless waste of forests of paper, pallets of printer toner, and tons of disposed DOJ junk mail every year.

"AB 1695 also creates a new misdemeanor crime for falsifying a report of a lost or stolen firearm, then makes that crime one which subjects the violator to a 10-year total prohibition on firearm possession."

- 9) **Related Legislation:** SB 1006 (Wolk) would enact the California Firearm Violence Research Act. The bill would declare the intent of the Legislature that the Regents of the University of California establish the California Firearm Violence Research Center to research firearm-related violence. The bill would declare legislative intent regarding the principles by which the university would administer the center and award research funds, as

prescribed. The bill would require the university to report, on or before December 31, 2017, and every 5 years thereafter, specified information regarding the activities of the center and information pertaining to research grants. The bill would require the center to provide copies of its research publications to the Legislature. The bill would specify that its provisions would apply to the university only to the extent that the Regents, by resolution, make any of the provisions of the bill applicable to the university. SB 1006 is set for hearing in Senate Education Committee on March 16, 2016.

10) Prior Legislation:

- a) AB 1020 (Bonta), of the 2013-2014 legislative session, required the Attorney General (AG) to send a letter during the 10-day waiting period to each individual who has applied to purchase a firearm informing him or her of firearms laws relating to gun trafficking and safe storage. AB 1020 was held in the Assembly Appropriations Committee.
- b) SB 819 (Leno), Chapter 743, Statutes of 2011, provided that the Department of Justice may use dealer record of sale funds for costs associated with its firearms-related regulatory and enforcement activities regarding the possession as well as the sale, purchase, loan, or transfer of firearms, as specified.
- c) AB 302 (Beall), Chapter 344, Statutes of 2010, requires that by July 1, 2012, specified mental health facilities shall report to the Department of Justice exclusively by electronic means when a person is admitted to that facility either because that person was found to be a danger to themselves or others, or was certified for intensive treatment for a mental disorder, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics
California Chapters of the Brady Campaign to Prevent Gun Violence
Law Center to Prevent Gun Violence

Opposition

California Sportsman's Lobby
California Right to Carry
Firearms Policy Coalition
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Safari Club International

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

Date of Hearing: March 15, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1705 (Rodriguez) – As Introduced January 25, 2016

SUMMARY: Authorizes law enforcement to use a body scanner to search a person arrested for the commission of any misdemeanor or infraction and taken into custody. Specifically, **this bill:** Provides that if a person is arrested and taken into custody for a misdemeanor or infraction, that person may be subjected to a body scanner search in order to discover and retrieve concealed weapons and contraband substances before being placed in a booking cell.

EXISTING STATE LAW:

- 1) States legislative intent 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 after arrests for minor misdemeanor and infraction offenses. (Pen. Code, § 4030, subd. (a)(2).)
- 2) States that when a person is arrested and taken into custody for a misdemeanor or infraction, that person may be subjected to pat-down searches, metal-detector searches, and thorough-clothing searches in order to discover and retrieve concealed weapons and contraband substances prior to being placed in a booking cell. (Pen. Code, § 4030, subd. (d).)
- 3) Provides that no arrestee held in custody for a misdemeanor or infraction, except for those involving weapons, controlled substances or violence shall 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 such person is concealing a weapon or contraband, and that a strip search will result in the discovery of the weapon or contraband. (Pen. Code, § 4030, subd. (e).)
- 4) Allows a strip search or body cavity search without reasonable suspicion based on specific and articulable facts if a person is arrested on a misdemeanor or infraction involving weapons, controlled substances, or violence. (Pen. Code, § 4030, subd. (e).)
- 5) Requires the supervising officer on duty to authorize a strip search or *visual* body cavity search. (Pen. Code, § 4030, subd. (e).)
- 6) Prohibits a person arrested and held in custody for a misdemeanor or infraction not involving weapons, controlled substances, or violence from being confined in the general jail population unless the person is not cited and released, is not released on his or her own recognizance, and is not able to post bail within a reasonable time, not less than three hours. (Pen. Code, § 4030, subd. (f).)

- 7) Prohibits law enforcement from subjecting a person arrested and held in custody for a misdemeanor or infraction to a *physical* body cavity search without obtaining a search warrant. (Pen. Code, § 4030, subd. (h).)
- 8) States that when a detainee is being subjected to a strip search or a body cavity search, the person conducting the search, as well as persons present or within sight of the detainee, must be of the same sex as the detainee being searched. (Pen. Code, § 4030, subd. (k).)
- 9) Defines "strip search," "physical body cavity search," and "visual body cavity search" as specified. (Pen. Code, § 4030, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Body scanners are non-invasive devices that efficiently search individuals for unauthorized substances or weapons, often times reducing the need for additional and otherwise intrusive search procedures such as patdowns and full clothing searches. The same principle of security is used in airports across the country to screen for unauthorized devices or paraphernalia. AB 1705 would authorize law enforcement to utilize this time-saving and effective technology to screen individuals who have been taken into custody."
- 2) **Jail Searches before Entering the General Population:** In *Florence v. Board of Chosen Freeholders of County of Burlington* (2012) 566 U.S. ___, 132 S.Ct. 1510, the Supreme Court, in a 5-4 decision, held that the strip searches for inmates entering the general population of a prison do not violate the Fourth Amendment. The Court explicitly refused to limit the authority to use strip searches only to situations in which a specific individual gave officers a reason to consider that prisoner to be dangerous or likely to be carrying a concealed weapon or drugs. The Court upheld the validity of strip searches by jail officials for even minor offenses. The Court concluded that a prisoner's likelihood of possessing contraband based on the severity of the current offense or an arrestee's criminal history is too difficult to determine effectively.

Under California law, a person arrested for a minor misdemeanor or infraction and taken into custody is subject to pat down searches, metal detector searches, and thorough clothing searches in order to discover contraband before being placed in a booking cell. But the Legislature declared its intent to strictly limit strip and body cavity searches on adult and juvenile pre-arraignment detainees arrested for infractions or misdemeanors. Thus, existing state law regulates when and how strip searches occur in local detention facilities for this population. A person arrested for a misdemeanor not involving weapons, controlled substances, or violence cannot as a matter of course be subjected to a strip search or body cavity search before being placed in the general population. Strip-searches or body-cavity searches on these persons require some individualized suspicion.

This bill permits a person arrested for *any* misdemeanor or infraction to be subject to a body-scanner search.

- 3) **Body Scanners:** Body scanners are designed to uncover what a physical pat-down could turn up but a metal detector would not find. The machines would also find guns, knives and other metallic objects that would set off a metal detector. There are two main types of body scanners: "millimeter wave" and "backscatter" machines.

Millimeter wave scanners send millimeter waves over a person and produce a three-dimensional image by measuring the energy reflected back. Several studies have determined that millimeter wave scanners pose little risk to persons subjected to the scan. The waves produced by these scanners are much larger than X-rays and are of the non-ionizing variety. Similar waves surround people every day. For example, a cell phone relies on millimeter wave technology to send and receive data and calls. (See e.g., <http://science.howstuffworks.com/backscatter-machines-vs-millimeter-wave-scanners.htm>.)

Many millimeter wave scanners use a feature known as automated target recognition (ATR), which means it can detect threats and highlight them for easy identification. A millimeter wave scanner with ATR software produces a generic outline of a person -- exactly the same for everyone -- highlighting any areas that may require additional screening. (See e.g., Transportation Security Administration (TSA) Website <<https://www.tsa.gov/travel/security-screening>>.)

In contrast, backscatter scanners use low-level X-rays to create a two-dimensional image of the body. X-rays used in airport full body scanners have minimal interaction at the surface of the skin. (<http://science.howstuffworks.com/backscatter-machines-vs-millimeter-wave-scanners.htm>) One study concluded "there is no significant threat of radiation from the scans." "The radiation doses emitted by the scans are extremely small; the scans deliver an amount of radiation equivalent to 3 to 9 minutes of the radiation received through normal daily living." (Mehta & Smith-Bindman (2011) *Airport Full-Body Screening: What is the Risk?*, <<http://www.ncbi.nlm.nih.gov/pubmed/21444831>>.) The images produced by backscatter scanners are more detailed than those produced with millimeter wave scanners.

The original backscatter scanners used by the TSA were criticized because they revealed precise anatomical detail. Most of these were pulled from airports and given to prisons and jails around the country. (*Los Angeles Times*, March 9, 2016, <<http://www.latimes.com/business/la-fi-fullbody-scanners-airports-prisons-20140523-story.html>>.) In July 2014, The Monterey County Board of Supervisors authorized the Sheriff to purchase of one of these scanners at a reduced cost. (<<https://monterey.legistar.com/LegislationDetail.aspx?ID=1854033&GUID=551AC963-2790-44E7-985C-7566FC819129>>.)

This bill treats all body scanners the same, despite the differences in resulting images. Should there be a distinction based on the detailed nature of the image? Should backscatter and full body x-ray scanners be treated like a virtual strip search?

Similarly, if a jail uses a backscatter or full body x-ray scanner which shows soft-tissue images, should there be a policy that jail personnel viewing the image, or within its sight, be of the same sex as the person being searched, as is the policy with strip searches? (See Pen. Code, 4030, subd. (k).)

- 4) **Pregnant Arrestees:** According to the U.S. Food and Drug Administration (FDA), "Diagnostic x-rays and other medical radiation procedures of the abdominal area also deserve extra attention during pregnancy." "[X]-rays of the mother's lower torso - abdomen, stomach, pelvis, lower back, or kidneys - may expose the unborn child to the direct x-ray beam." Thus, the FDA advises, that x-rays of this area "should be used only when they will give the doctor information needed to treat you." (<http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/MedicalImaging/MedicalX-Rays/ucm142632.htm>.)

If a jail uses a backscatter scanner or a full-body x-ray scanner, should an exception be made for female arrestees who are, or think they may be, pregnant?

- 5) **Retention of Images:** Should a law-enforcement agency using body scanners in a custodial institution have a policy on the retention of the images?
- 6) **Argument in Support:** The *California State Sheriffs Association*, the sponsor of this bill, states, "Existing law, Penal Code Section 4030, establishes a statewide policy strictly limiting the use of strip and cavity searches for pre-arraignment detainees arrested for infraction and misdemeanor offenses, due to their intrusive nature. The statute specifically states that a person who is arrested and taken into custody may be subjected to pat down searches, metal detector searches, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband.

The constant flow of contraband is of great concern for correctional facilities and can present a safety hazard for the individual, staff, and other inmates. The use of body scanners is a more efficient, effective, and less invasive means of assessing if an individual is harboring weapons or contraband substances than many other methods currently authorized under state law. Body scanning technology can detect contraband hidden inside and on a person's body in less time than conventional search methods and is currently successfully used in many correctional facilities nationwide. While current law does not restrict the use of this technology, it has yet to be updated to specifically authorize law enforcement personnel to subject individuals who have been arrested and booked to this type of search."

- 7) **Argument in Opposition:** The *American Civil Liberties Union* writes, "The Legislature carefully put strict limits on strip searches and visual body cavity searches in order to protect and respect Californians state and federal constitutional rights to privacy and freedom from unreasonable searches and seizures. Expanding the law to include body scanners triggers these same rights.

"Body scanners have been the focus of much public debate in recent years. Chief among the concerns raised by critics are those related to the images produced by the scanners, as certain body scanners have the ability to produce strikingly graphic images of the searched person's body under the person's clothes. This type of body scanner, one that displays a person's soft tissue, or naked body, is essentially a virtual strip search, permitting those viewing the image to see the searched person's private body parts, including the size and shape of the person's breasts and genitals....

"Without limits to ensure that inmates who are subjected to a virtual strip search as described above are afforded the same types of protections as those subject to a traditional strip search

or visual body cavity search, we fear that the privacy and unreasonable search and seizure concerns so carefully addressed by Legislatures past may resurface."

8) Prior Legislation:

- a) SB 795 (Committee on Public Safety), Chapter 499, Statutes of 2015, originally included a provision authorizing the use of body scanners on a person arrested before placing that person in a booking cell. This provision was deleted from the bill.
- b) AB 303 (Gonzalez), Chapter 464, Statutes of 2015, requires that during a strip search or body cavity search of a juvenile, all persons within sight be of the same sex as the person being searched, except for physicians or licensed medical personnel.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs Association (Sponsor)
Association for Los Angeles Deputy Sheriffs
California Peace Officers Association
California Police Chiefs Association
California State Association of Counties
Los Angeles Police Protective League
Los Angeles Professional Peace Officers Association

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice

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

Date of Hearing: March 15, 2016

Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1706 (Chávez) – As Amended March 8, 2016

SUMMARY: Adds to the list of misdemeanors punishable under the California Stolen Valor Act. Specifically, **this bill:**

- 1) Updates the California Stolen Valor Act to require a conviction under the federal Stolen Valor Act of 2013 rather than the 2005 version, which the U.S. Supreme Court ruled unconstitutional.
- 2) Clarifies the intent requirements for misdemeanors punishable under the California Stolen Valor Act.
- 3) Defines “district” as "any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries for purposes of the California Stolen Valor Act."
- 4) Defines “tangible benefit” as "financial remuneration, an effect on the outcome of a criminal or civil court proceeding, or any benefit relating to service in the military that is provided by a federal, state, or local governmental entity for purposes of the California Stolen Valor Act."
- 5) Adds the California National Guard, the State Military Reserve, the Naval Militia, the national guard of any other state, or any other reserve component of the Armed Forces of the United States to the list of military service branches covered by the California Stolen Valor Act.
- 6) Adds to the list of misdemeanors punishable under the California Stolen Valor Act as any person who:
 - a) Forges documentation reflecting the awarding of any military decoration that he or she has not received for the purposes of obtaining money, property, or other tangible benefit;
 - b) Wears a uniform or military decoration authorized for use by the members or veterans of those forces for the purposes of obtaining money, property, or receiving a tangible benefit;
 - c) Knowingly utilizes falsified military identification for the purposes of obtaining money, property, or receiving a tangible benefit'
 - d) Knowingly, with the intent to impersonate, for the purposes of promoting a business, charity, or endeavor, misrepresents himself or herself as a member or veteran of the Armed Forces of the United States, the California National Guard, the State Military

Reserve, or the Naval Militia by wearing the uniform or military decoration authorized for use by the members or veterans of those forces; and

- e) Knowingly, with the intent to gain an advantage for employment purposes, misrepresents himself or herself as a member or veteran of the Armed Forces of the United States, the California National Guard, the State Military Reserve, or the Naval Militia by wearing the uniform or military decoration authorized for use by the members or veterans of those forces.

EXISTING LAW:

- 1) States that it is a misdemeanor for any person to falsely represent himself or herself as a veteran when soliciting aid or selling property. (Pen. Code, § 532b, subd. (a).)
- 2) States that it is a misdemeanor for any person to falsely represent himself or herself as a veteran in an attempt to defraud. (Pen. Code, § 532b, subd. (b).)
- 3) States that it is a misdemeanor for any person to falsely represent himself or herself as a recipient of any "military decoration" in an attempt to defraud. If the individual is a veteran of any U.S. war, the individual is guilty of either an infraction or a misdemeanor. (Pen. Code, § 532b, subd. (c)(1) & (2).)
- 4) States that the California Stolen Valor Act does not apply to face-to-face solicitations involving less than ten dollars. (Pen. Code, § 532b, subd. (d).)
- 5) Defines "military decoration" for the purpose of this subdivision as "any decoration or medal from the Armed Forces of the United States, the California National Guard, the State Military Reserve, or the Naval Militia, or any colorable imitation of that item." (Pen. Code, § 532b, subd. (c)(3).)
- 6) States that any elected officer of the state or a city, county, city and county or district in this state forfeits his or her office upon the conviction of a crime under the California Stolen Valor Act. (Gov. Code, § 3003, Pen. Code, § 532b.)
- 7) States that any elected officer of the state or a city, county, city and county or district in this state forfeits his or her office upon the conviction of a crime under the federal Stolen Valor Act of 2005 if the crime involves a false claim to a "military decoration" or medal described in that Act. (Gov. Code, § 3003, 18 U.S.C. § 704.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "It is important to create conformity between state and federal law to ensure elected officials are held accountable to be honest about their service or lack thereof."
- 2) **Background:** Currently, California requires that an elected officer forfeit their office upon conviction of a crime pursuant to either the federal Stolen Valor Act of 2005 or the California

Stolen Valor Act. The federal Stolen Valor Act was updated in 2013 after the Supreme Court ruled it was unconstitutional. (See *United States v. Alvarez* (2012) 132 S.Ct. 2537, 2556 [183 L.Ed.2d 574].) This bill updates the California Stolen Valor Act by requiring a conviction pursuant to the federal Stolen Valor Act of 2013.

This bill also adds new misdemeanors to the California Stolen Valor Act and changes the intent requirement for a conviction under the Act to also mirror federal law.

- 3) **First Amendment:** The First Amendment of the United States Constitution protects the people's right to free speech from Congressional action. (U.S. Const., 1st Amend.) State action restricting free speech is likewise prohibited by the Due Process Clause of the Fourteenth Amendment. (*First Nat. Bank of Boston v. Bellotti* (1978) 435 U.S. 765, 779.) Not all speech is protected, but categories of unprotected speech are strictly limited. For example, child pornography, obscenity and criminal threats are considered unprotected speech. (*U.S. v. Stevens* (2010) 559 U.S. 460, 468-469.) If speech does not fall into one of these strictly defined categories, then that speech enjoys at least some level of First Amendment protection.

The threshold question in determining what level of protection to give speech is whether the regulation is content-based or content-neutral. This reflects the understanding of the U.S. Supreme Court that not all speech serves the purposes for which the First Amendment was adopted. Specifically, the Court has said the highest rung of First Amendment protection is reserved for discussion of public issues and debate over the qualifications of candidates. (*McIntyre v. Ohio Elections Comm'n* (1995) 514 U.S. 334, 346-47.) For this reason, restrictions of speech based on the content of that speech receive the strictest level of scrutiny by the courts. Such a content-based speech restriction only survives strict scrutiny if the government shows a compelling interest in regulating such speech, and the regulative means employed must be the least restrictive means available to achieve the government's ends. For content-neutral restrictions of speech, the less restrictive intermediate scrutiny test applies. (*Ward v. Rock Against Racism* (1989) 491 U.S. 781, 798-800.) Under intermediate scrutiny, the government's interest need only be legitimate, and their means chosen narrowly tailored so as to be reasonably necessary to achieve the government's ends. In contrast to strict scrutiny, the means chosen need not be the least restrictive means. (*Id.* at 800.)

The Supreme Court has ruled on the speech implicated in this bill when it examined the federal Stolen Valor Act in the case of *United States v. Alvarez*, *supra*, 132 S.Ct. 2537. The Supreme Court's ruling on the federal Stolen Valor Act centers on the language used in the statute. The relevant provision of the federal Stolen Valor Act of 2005 reads:

"Whoever falsely represents himself or herself, verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States, any of the service medals or badges awarded to the members of such forces, the ribbon, button, or rosette of any such badge, decoration, or medal, or any colorable imitation of such item shall be fined under this title, imprisoned not more than six months, or both."

The plurality –that is, four Justices- held this provision content-based and therefore subject to strict scrutiny. (*Alvarez*, *supra*, 132 S.Ct. at p. 2543.) Critical to their holding is that the statute prohibited false claims without any requirement of cognizable harm as a result of the false claims. The plurality stated that the government's interest is compelling, but that other

means exist to achieve their ends without restricting protected speech. In particular, the Court held the combination of a database for medal recipients coupled with public condemnation would serve just as well to deter false claims regarding military service. (*Alvarez, supra*, at pp. 132 S.Ct. at pp. 2550-2551.) Because alternative means exist to address the government's ends, the Court held the statutory provision unconstitutional. (*Ibid.*)

The concurring Justices –here, two Justices- applied intermediate scrutiny because they found the false speech to be of limited value. (*Alvarez, supra*, 132 S.Ct. at p. 2552.) The false claims at issue here were easily verifiable, and therefore unlikely to aid in the debate of public issues which is the heart of the First Amendment's speech protections. However, the Court still held the statutory provision unconstitutional because of its potential to chill protected speech. Critical to the concurring Justices was the lack of an intent to cause some legally cognizable harm, such as obtaining unearned benefits from the VA or unearned employment preferences. (*Id.* at pp. 2555-2556.)

The dissent would have upheld the statute as constitutional. (*Alvarez, supra*, 132 S.Ct. at p. 2557.)

The language of the federal Stolen Valor Act has since been amended to reflect the Court's interpretation. An intent to cause some legally cognizable harm has been added. As of now, there has not been a challenge to the federal Act. Moreover, the Court specifically addressed the receipt of unearned benefits and the impacting of judicial proceedings in its holding in *Alvarez* and stated that such restrictions are likely constitutional. This bill's language largely mirrors the language of the federal Act.

- 4) **Argument in Support:** According to the *American G.I. Forum of California* and the *AMVETS- Department of California*, the co-sponsors of this bill, "We do not believe elected officials should benefit by lying about their military service and that they should be removed from office."
- 5) **Prior Legislation:**
 - a) AB 167 (Cook), Chapter 69, Statutes of 2011, requires that elected officers forfeit their office upon conviction of any of the crimes specified in the California Stolen Valor Act in addition to the federal Stolen Valor Act.
 - b) AB 265 (Cook), Chapter 93, Statutes of 2009, expands the provision requiring local elected officers to forfeit office upon conviction of a crime pursuant to the federal Stolen Valor Act to include elected state officers.
 - c) SB 1482 (Correa), Chapter 118, Statutes of 2008, provides that an elected officer of a city, county, city and county, or district in this state forfeits his or her office upon the conviction of a crime pursuant to the federal Stolen Valor Act, that involves a false claim of receipt of a military decoration or medal described in that Act.

REGISTERED SUPPORT / OPPOSITION:

Support

American G.I. Forum of California (Sponsor)
AMVETS-Department of California (Sponsor)
American Legion – Department of California
California Association of County Veterans Service Officers
California State Commanders Veterans Council
Military Officers Association of America, California Council of Chapters
VFW-Department of California
Vietnam Veterans of America-California Council

Opposition

None

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: March 15, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1718 (Kim) – As Amended February 29, 2016

SUMMARY: Requires the court to sentence a defendant convicted of felony financial abuse of an elder or dependent adult to state prison. Specifically, **this bill:** Allows the sentence for the crime of theft from an elder or dependent adult, when the value of the property exceeds \$950, to be served in state prison rather than in county jail.

EXISTING LAW:

- 1) Defines a "felony" as "a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail."
(Pen. Code, § 17, subd. (a).)
- 2) Prohibits a term of more than one year in the county jail except for executed felony sentences. (Pen. Code, § 19.2.)
- 3) Specifies that any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:
 - a) By a fine not exceeding \$2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, or by imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950; or
 - b) By a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950. (Pen. Code, § 368, subd. (d).)
- 4) Provides that any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:
 - a) By a fine not exceeding \$2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, or by imprisonment in the county jail for two, three, or four years, or by both that fine and

imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950; or

- b) By a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950. (Pen. Code, § 368, subd. (e).)
- 5) Defines "elder" as "any person who is 65 years of age or older." (Pen. Code, § 368, subd. (g).)
 - 6) States that upon conviction of any felony it shall be considered a circumstance in aggravation in imposing the upper term if the victim of an offense is particularly vulnerable, or unable to defend himself or herself, due to age or significant disability. (Pen. Code, § 1170.85, subd. (b).)

FISCAL EFFECT:

COMMENTS:

- 1) **Author's Statement:** According to the Author, "AB 1718 strengthens seniors' protections against financial abuse by giving judges the option to sentence criminals convicted of felony financial elder abuse to state prison instead of the current option of only county jail. We have an obligation to protect the most vulnerable in our society, and our senior citizens are regularly targeted for financial abuse. By sending these criminals to state prison, we can end slap-on-the wrist punishments for doing the unconscionable – preying on the savings of seniors. "
- 2) **Legislative History and Intent of Elder Abuse:** Specifically, elder abuse was punished as a crime in 1986; abuse of a dependent person was punished in 1984. (See Statutes of 1984, Chapter 144, Section 160.) Although the statute has been renumbered, the language originally stated:

"Any person, who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be placed in a situation in which his or her person or health is endangered is punishable by imprisonment in the county jail not exceeding one year or in state prison for two, three or four years." [Original Pen. Code § 368, subd. (a) as cited in *People vs. Heitzman* (1994) 9 Cal.4th 189, 194]

In 1994, the California Supreme Court construed Penal Code Section 368 as requiring a tort grounded duty of care to save the statute from being unconstitutionally vague. The Court in *Heitzman* stated:

"In 1983, the Legislature passed the state's first law focusing exclusively on those 65 years of age or older, requiring elder care custodians and other specified professionals to report instances of elder abuse. (Welf. & Inst. Code, § 9380- 9386, added by Stats. 1983, ch. 1273, § 2 and repealed by Stats. 1986, ch. 769, § 1.3, eff. Sept. 15, 1986.) That same year, Senate

Bill No. 248, 1983-1984 Regular Session, was introduced at the request of the Santa Ana Police Department. An analysis of the bill prepared for the Senate Committee on the Judiciary indicates that the goal of the legislation was to aid in the prosecution of people who harm or neglect dependent adults. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 248 (1983-1984 Reg. Sess.) p. 2.) According to this document, law enforcement agencies receiving reports concerning suspected abuse or neglect of dependent adults were having difficulty finding Penal Code sections under which they could prosecute such cases. (*Ibid.*) The solution proposed by the bill was to establish the same criminal penalties for the abuse of a dependent adult as those found in sections 273a and 273d for child abuse. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 248.) When drafting the new legislation, the bill's author lifted the language of the child abuse statutes in its entirety, replacing the word 'child' with 'dependent adult' throughout (*internal citation omitted*).

"After the statute was enacted late in 1983, several non-substantive changes were made. (Stats. 1984, ch. 144, § 160, p. 482.) Later, in conjunction with legislation designed to consolidate the two sets of conflicting reporting laws for elder abuse and dependent adult abuse, a 1986 amendment to section 368(a) made the section expressly applicable to elders as well as dependent adults. (Stats. 1986, ch. 769, § 1.2, p. 2531, urgency measure eff. Sept. 15, 1986.) [*Heitzman* at 245.]"

In 2004, AB 3095 (Committee on Aging and Long Term Care), Chapter 893, Statutes of 2004, related to conditions of probation when an offender is guilty of the crime of elder abuse, as specified. However, the Senate amended AB 3095 to strike "with knowledge that he or she is an elder or dependent adult" and instead included any person who "knows or reasonably should know that a person is an elder or dependent adult". This language is presumably broader than simple knowledge because it includes persons who reasonably should have known of the victim's status as an elderly or dependent person.

The stated intent behind the increased penalty for crimes against the elderly is to punish those who would prey on person who might not be able to defend himself or herself. (Pen. Code § 368, subd. (a).) The offenses specified in the elder abuse section, such as battery and fraud, are all punishable as substantive offenses. Pen. Code § 368 is meant to impose a more severe punishment on a person who victimizes an elderly person. The intent behind the legislation was to make crimes against the elderly more severe, not necessarily to be punished by imprisonment in the state prison.

- 3) **Effect on Criminal Justice Realignment:** Criminal justice realignment created two classifications of felonies: those punishable in county jail and those punishable in state prison. Realignment limited which felons can be sent to state prison, thus requiring that more felons serve their sentences in county jails. The law applies to qualified defendants who commit qualifying offenses and who were sentenced on or after October 1, 2011. Specifically, sentences to state prison are now mainly limited to registered sex offenders and individuals with a current or prior serious or violent offense. In addition to the serious, violent, registerable offenses eligible for state prison incarceration, there are approximately 70 felonies which have be specifically excluded from eligibility for local custody (i.e., the sentence for which must be served in state prison).

This bill specifies that any defendant who is convicted of theft from an elder or dependent adult, when the value of the property taken is more than \$950, shall serve that sentence in

state prison rather than in the county jail. Thus, this bill creates a new exclusion for county-jail eligibility.

- 4) **On-Going Concerns for Prison Overcrowding:** 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 February of last year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, 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).

However, even though the state has complied with the federal court order, the prison population needs to be maintained, not increased. And according to the Legislative Analyst's Office (LAO), "CDCR is currently projecting that the prison population will increase by several thousand inmates in the next few years and will reach the cap by June 2018 and exceed it by 1,000 inmates by June 2019."

(<http://www.lao.ca.gov/reports/2014/budget/criminal-justice/criminal-justice-021914.aspx>.)

The LAO also notes that predicting the prison population is "inherently difficulty" and subject to "considerable uncertainty." (*Ibid.*) Nevertheless, creating a new exclusion for county jail sentences when the prison population is already expected to increase seems imprudent.

- 5) **Argument in Support:** According to the *California Long-Term Care Ombudsman Association*, "Currently the law allows a person convicted of committing a crime against a senior or dependent adult, when the value of money, goods, services, or personal property stolen exceeds \$950, to be sentenced to county jail for either a misdemeanor or a felony.

"AB 1718 revises California statute to allow for the court's discretion when sentencing a person found guilty of a misdemeanor in a county jail or as a felony in state prison.

"Without changes to the penalties levied by the court, persons inclined to commit crimes against seniors are not sufficiently discouraged from committing illegal conduct; hence frail, elderly and vulnerable adults suffer needlessly."

- 6) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice*, "This bill would revise the penalty for violation of Penal Code 3689(e) from incarceration in county jail to imprisonment in state prison.

"Existing law makes it a crime for a caretaker of an elder or dependent adult to knowingly steal or defraud an elder or dependent adult. The existing penalty for a violation of Penal Code section 368, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950.

"CACJ understands that admirable intent of the legislation to continue protecting the vulnerable elder population. However, CACJ must object to the increased penalties without any showing that the existing laws are deficient. Current law allows for the sentencing of a person for up to three years in county jail. This bill would not only remove that sentence from jail to state prison, but also increase the maximum time served to four years.

"Furthermore, without express justification for this sentencing increase and expansion of state prison crimes, California is still under a court order to reduce the state prison population. This would further exacerbate this issue and prevent offenders from receiving much needed specialized reentry services that are provided in county jail."

7) **Prior Legislation:**

- a) AB 441 (Wilk), of the 2015-2016 Legislative Session, would have created a sentence enhancement of two additional years of imprisonment for any person convicted of identity theft if the victim was 65 years of age or older at the time of the offense. AB 441 failed passage in this committee.
- b) AB 332 (Butler), Chapter 366, Statutes of 2011, increased the fines for fraud, embezzlement, theft, and identity theft against an elder or dependent adult when the amount taken is more than \$950.
- c) AB 1293 (Blumenfield), Chapter 371, Statutes of 2011, authorizes prosecutors to petition for forfeiture of assets in specified cases involving financial abuse of elder or dependent adults.

REGISTERED SUPPORT / OPPOSITION:

Support

California Long-Term Care Ombudsman Association

Opposition

American Civil Liberties Union
 California Attorneys for Criminal Justice
 California Public Defenders Association
 Coalition for elder and Dependent Adult Rights

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

Date of Hearing: March 15, 2016

Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1737 (McCarty) – As Introduced February 1, 2016

SUMMARY: Requires counties to establish interagency child death review teams to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases.

EXISTING LAW:

- 1) Allows counties to establish interagency child death review teams to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases, but does not require counties to establish child death review teams. (Pen. Code, § 11174.32.)
- 2) States that interagency child death teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and non-offending family members receive the appropriate services in cases where a child has expired. (Pen. Code, § 11174.32(a).)
- 3) States that each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death. (Pen. Code, § 11174.32(b).)
- 4) States that in developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including, but not limited to, the following:
 - a) Experts in the field of forensic pathology;
 - b) Pediatricians with expertise in child abuse;
 - c) Coroners and medical examiners;
 - d) Criminologists;
 - e) District attorneys;

- f) Child protective services staff;
 - g) Law enforcement personnel;
 - h) Representatives of local agencies which are involved with child abuse or neglect reporting;
 - i) County health department staff who deals with children's health issues; and
 - j) Local professional associations of persons described in paragraphs (1) to (9), inclusive. (Pen. Code, § 11174.32(c).)
- 5) Clarifies that records exempt from disclosure to third parties pursuant to state or federal law shall remain exempt from disclosure when they are in the possession of a child death review team. (Pen. Code, § 11174.32(d).)
- 6) Requires each child death review team to make available to the public findings, conclusions and recommendations of the team, including aggregate statistical data on the incidences and causes of child deaths. The team is required to withhold the child's last name unless certain exceptions apply. (Pen. Code, § 11174.32(e).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1737 aims to increase accountability and transparency and as a community improve protection services for children. The purpose of producing an annual child death report is to provide vital information should children be dying of similar reasons in one county compared to another. With no data of common occurrences, county officials do not have accurate information to link these occurrences and therefore prevent future deaths. This bill requires all counties to produce an annual child death review report in order to identify how and why children die, to further facilitate the creation and implementation of strategies to prevent future deaths."
- 2) **Background:** According to the background submitted by the author, "the child death review teams in California began as informal gatherings of concerned parents and professionals that wanted to take proper steps in order to review child deaths and learn from them in order to save other children's lives.

"In 1988, California legislation was enacted to establish child death review teams in order to investigate suspicious child deaths and facilitate communication among the various entities that could provide useful information for the annual report.

"Today, the Centers for Disease Control and Prevention, recorded over 23,000 infant deaths in the United States for 2014. In California, the Department of Social Services (CDSS) reported that 88 child fatalities resulted from abuse and/or neglect for 2014, but a complete summary of child death reports had not been finalized at the time the data was collected. Despite efforts to produce an annual child death report, there are only an estimated 22 active child death review teams throughout the state, leaving many counties without a reporting mechanism. We believe that one reason for the lack of participation in every county is due to a lack of existing law's explicit requirement to report. It is the intent of this legislation to

create uniformity among counties by requiring all to produce an annual child death report in hopes of learning from past deaths and prevent future ones.”

The primary purpose of child death review teams is to prevent future child deaths. At the county level, these teams produce educational materials so that the more common causes of child death can be prevented. For example, according to the author, in Sacramento “The Sacramento County Child Death Review Team, which reviews the deaths of every child that dies in Sacramento County, has used the report’s findings in order to create public awareness campaigns. The recommendations have translated to the *Shaken Baby Syndrome Prevention Campaign*, the *Infant Safe Sleep Campaign*, and the *Drowning Prevention Campaign* to reduce preventable deaths.” However, each county’s experience is different. This is where statewide child death review can help prevent counties from duplicating efforts.

The statewide child death review council is responsible for collecting data and information from the counties and turning it into reports to the public and Legislature. Part of the statutory scheme that created child death review teams included creation of the Child Death Review Council “to coordinate and integrate state and local efforts to address fatal child abuse or neglect, and to create a body of information to prevent child deaths.” (Penal Code Section 11174.34(a)(1).) The Child Death Review Council is required to “[a]nalyze and interpret state and local data on child death in an annual report to be submitted to local child death review teams with copies to the Governor and the Legislature, no later than July 1 each year. Copies of the report shall also be distributed to California public officials who deal with child abuse issues and to those agencies responsible for child death investigation in each county. The report shall contain, but not be limited to, information provided by state agencies and the county child death review teams for the preceding year.” (Penal Code Section 11174.34(d)(1).) Therefore, a report analyzing the data collected by each local child death review team is currently a public document. Requiring each local child death review team to also make public its own data appears to be consistent with the overall objectives of the teams, i.e., creating a body of information on the causes of child deaths to help prevent such tragedies. Increased transparency may also enhance the public’s trust in local child death review.

Finally, as the author stated, “Some child death review teams create elaborate, comprehensive reports, while other child death review teams do not report anything at all. Because of the wide discrepancy of reporting, the statewide council cannot get a full picture of what is occurring statewide. While all child death review teams are coming to important conclusions about local child fatalities, not all of the review teams are communicating the information to the public, which contradicts the basic premise for having them. How can child death review teams reduce future preventable child deaths if no one knows that child death review teams do?” This bill, by mandating child death review teams, would certainly increase the information available to counties and the public.

- 3) **Argument in Support:** According to the *Sierra Health Foundation*, “In 2009, Sacramento County Child Death Review Team found that in Sacramento County African American children die at twice the rate of other children. Appropriately, this news was cause for considerable alarm. Perhaps even more disturbing was the recognition that a significant disparity in African American child death rates has persisted in the county for 20 consecutive years. The revelation of this long term trend and the underwhelming response it previously

generated served as a call to action for Sacramento County's African American community, and for all Sacramentans who care about the health and well-being of all children.

"We are not reacting to a single fatality, as devastating as that is. This data has allowed us to analyze child mortality rates and causes over time which revealed that child mortality in Sacramento is about more than improving child welfare or reducing violence in communities. In short, interventions beyond child protective services and law enforcements were needed. This would not be the case without the data provided by the Child Death Review Team. Consequently, we have been able to identify six focus neighborhoods with the highest level of disproportionality and the four leading causes of those deaths, which include infant sleep-related deaths, perinatal conditions, child abuse and neglect homicides and third-party homicides. Additionally, we have been able to create strategic and implementation plans with specific steps to reduce the African American child death rate 10-20% by 2020. And despite the fact that data shows the alarming disparity impacting African American children and families, we are consciously focused on developing responses that support the safety and well-being of all children.

"Requiring each county to have an active child death review team will create uniformity across the state; with accurate data this information could be used to create public awareness campaigns and reduce the number of child deaths much like our efforts here in Sacramento County."

- 4) **Related Legislation:** AB 2083 (Chu) would authorize the voluntary disclosure of specified information, including mental health records, criminal history information, and child abuse reports, by an individual or agency to an interagency child death review team. AB 2083 is pending hearing in this committee.
- 5) **Prior Legislation:**
 - a) SB 39 (Migden), Chapter 468, Statutes of 2007, required that juvenile case files that pertain to any child who died as the result of child abuse or neglect shall be released to the public, subject to certain limitations set forth in the bill. The bill would also add specified attorneys to the persons allowed access to a juvenile case file.
 - b) AB 1668 (Bowen), Chapter 813, Statutes of 2006, provided that interagency child death review team records that are exempt from disclosure to third parties pursuant to state or federal law remain exempt from disclosure when they are in the possession of a child death review team; provides confidentiality provisions for child death review teams; and provided that each child death review team shall annually make available to the public findings, conclusions and recommendations of the team, including aggregate statistical data on the incidences and causes of child death.
 - c) SB 525 (Polanco), Chapter 1012, Statutes of 1999, added more state and private entities to the members of the California State Child Death Review Council, specified additional duties for the council and the Department of Justice in connection with gathering and tracking information regarding child deaths from abuse or neglect, and specified additional duties for the State Department of Health Services in connection with tracking child abuse information in specified state data systems.

- d) AB 4585 (Polanco), Chapter 1580, Statutes of 1988, authorized counties to establish interagency child death teams and autopsy protocol.

REGISTERED SUPPORT / OPPOSITION:

Support:

Sierra Health Foundation

Opposition:

None

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: March 15, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1744 (Cooper) – As Introduced February 1, 2016

SUMMARY: Requires the Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists to work collaboratively with public crime laboratories, in conjunction with the California Clinical Forensic Medical Training Center, to develop a standardized sexual assault forensic medical evidence kit to be used by all California jurisdictions. Specifically, **this bill:**

- 1) Directs the Department of Justice's Bureau of Forensic Services, the California Association of Crime Laboratory Directors, and the California Association of Criminalists to provide leadership and work collaboratively with public crime laboratories to develop a standardized sexual assault forensic medical evidence kit to be used by all California jurisdictions.
- 2) Allows the packaging and appearance of the rape kits to vary, but requires the elements of the kit shall be comparable with a minimum number of similar components.
- 3) Requires the development of the rape kit to be completed in conjunction with the California Clinical Forensic Medical Training Center, as specified.

EXISTING LAW:

- 1) Codifies the "Sexual Assault Victims' DNA Bill of Rights." (Pen. Code, § 680.)
- 2) Finds and declares the following as part of the Sexual Assault Victims' DNA Bill of Rights:
 - a) Deoxyribonucleic acid (DNA) and forensic identification analysis is a powerful law enforcement tool for identifying and prosecuting sexual assault offenders. (Pen. Code, § 680, subd. (b)(1).)
 - b) Existing law requires an adult arrested for or charged with a felony and a juvenile adjudicated for a felony to submit DNA samples as a result of that arrest, charge, or adjudication. (Pen. Code, § 680, subd. (b)(2).)
 - c) Victims of sexual assaults have a strong interest in the investigation and prosecution of their cases. (Pen. Code, § 680, subd. (b)(3).)
 - d) Law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention, and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases. (Pen. Code, § 680, subd. (b)(4).)

- e) The growth of the Department of Justice's Cal-DNA databank and the national databank through the Combined DNA Index System (CODIS) makes it possible for many sexual assault perpetrators to be identified after their first offense, provided that rape kit evidence is analyzed in a timely manner. (Pen. Code, § 680, subd. (b)(5).)
- f) Timely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California. (Pen. Code, § 680, subd. (b)(6).)
- g) In order to ensure that sexual assault forensic evidence is analyzed within the two-year timeframe, as specified, and to ensure the longest possible statute of limitations for sex offenses, including sex offenses designated pursuant to those subparagraphs, the following should occur:
 - i) A law enforcement agency whose jurisdiction is specified sex offenses, should do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - (1) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence. (Pen. Code, § 680, subd. (b)(7)(A)(i).)
 - (2) Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim. (Pen. Code, § 680, subd. (b)(7)(A)(ii).)
 - ii) The crime lab should do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016:
 - (1) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence. (Pen. Code, § 680, subd. (b)(7)(B)(i).)
 - (2) Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab should upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA. (Pen. Code, § 680, subd. (b)(7)(B)(ii).)
 - iii) This subdivision does not require a lab to test all items of forensic evidence obtained in a sexual assault forensic evidence examination. A lab is considered to be in compliance with the guidelines of this section when representative samples of the evidence are processed by the lab in an effort to detect the foreign DNA of the perpetrator. (Pen. Code, § 680, subd. (b)(7)(C).)
 - iv) This section does not require a DNA profile to be uploaded into CODIS if the DNA profile does not meet federal guidelines regarding the uploading of DNA profiles into

CODIS. (Pen. Code, § 680, subd. (b)(7)(D).)

- v) For purposes of this section, a "rapid turnaround DNA program" is a program for the training of sexual assault team personnel in the selection of representative samples of forensic evidence from the victim to be the best evidence, based on the medical evaluation and patient history, the collection and preservation of that evidence, and the transfer of the evidence directly from the medical facility to the crime lab, which is adopted pursuant to a written agreement between the law enforcement agency, the crime lab, and the medical facility where the sexual assault team is based. (Pen. Code, § 680, subd. (b)(7)(E).)
 - h) If the law enforcement agency does not analyze DNA evidence within six months prior to the time limits established, the victim of a specified sexual assault offense shall be informed, either orally or in writing, of that fact by the law enforcement agency. (Pen. Code, § 680, subd. (d).)
 - i) If the law enforcement agency intends to destroy or dispose of rape kit evidence or other crime scene evidence from an unsolved sexual assault case prior to the expiration of the statute of limitations, the victim of a specified violation shall be given written notification by the law enforcement agency of that intention. (Pen. Code, § 680, subd. (e).)
- 3) States that to ensure the delivery of standardized curriculum, essential for consistent examination procedures throughout the state, one hospital-based training center shall be established through a competitive bidding process, to train medical personnel on how to perform medical evidentiary examinations for victims of child abuse or neglect, sexual assault, domestic violence, elder abuse, and abuse or assault perpetrated against persons with disabilities. (Pen. Code, § 13823.99, subd. (b).)
 - 4) Requires the hospital based training center to provide training for investigative and court personnel involved in dependency and criminal proceedings, on how to interpret the findings of medical evidentiary examinations. (Pen. Code, § 13823.99, subd. (b).)
 - 5) The training provided by the training center shall be made available to medical personnel, law enforcement, and the courts throughout the state and meet specified criteria. (Pen. Code, § 13823.99, subd. (b) and (c).)
 - 6) Requires the training center to develop and implement a standardized training program for medical personnel that has been reviewed and approved by a multidisciplinary peer review committee. (Pen. Code, § 13823.99, subd. (d)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Sexual assault victims and California communities expect effective and competent intervention at from all disciplines in response to sexual assault. Inter-agency cooperation and collaboration within disciplines is essential to deliver optimum care to victims of sexual assault.

“There are approximately 10-12 different sexual assault evidence “rape kits” used in California. Some forensic medical examination teams are required to be familiar with multiple kits which creates the potential for error.

“Currently, crime laboratories create their own kits based on the statutory exam elements and the required standard state form. As a result, there are variations among crime laboratories. Some exam teams serve multiple crime laboratories depending upon which law enforcement jurisdiction the crime occurred and must adapt to variations in crime laboratory evidence kits.

“AB 1744 would require that the California Department of Justice’s Bureau of Forensic Services, the California Association of Crime Laboratory Directors, the California Association of Criminalists and the California Clinical Forensic Medical Training Center to collaborate and develop a standardized sexual assault evidence kit.”

- 2) **Bureau of Forensic Services:** The Bureau of Forensic Services (BFS) is the scientific arm of the Attorney General’s Office whose mission is to serve the people of California on behalf of the Attorney General's Office. Forensic scientists collect, analyze, and compare physical evidence from suspected crimes. They provide analysis of evidence in toxicology, including alcohol, controlled substances and clandestine drug labs, biology and DNA, firearms, impression evidence such as shoeprints, tire marks or fingerprints, trace evidence including hair, fibers, and paint, and crime-scene analysis of blood spatter patterns and evidence collection, and they testify in state and federal court cases about their analyses in criminal trials. Descriptions of the forensic services BFS provides as well as the BFS regional service areas can be found on the BFS Laboratory Services page. BFS also offers specialized forensic science training to personnel who are practitioners in the field of forensic science through the California Criminalistics Institute (CCI). (<https://oag.ca.gov/bfs>)
- 3) **California Clinical Forensic Medical Training Center:** The California Clinical Forensic Medical Training Center was established by state law in 1995 to increase access by victims of interpersonal violence to trained nursing and medical professionals. The California legislature determined that access to healthcare professionals knowledgeable about medical evidentiary examinations and psychological trauma caused by violence and abuse was uneven in both rural and urban areas throughout California. As a result, laws were enacted to meet this need and create this public policy direction. The Center is primarily funded by the California Governor’s Office of Emergency Services (Cal OES) with Federal and State funds, and other sources of funding. (www.ccfmtc.org/about-us-2/history-and-mission/)
- 4) **Standardized Sexual Assault Evidence Collection Kits:** The U.S. Department of Justice developed a national protocol for sexual assault examinations in 2004. The protocol has continued to be updated. This protocol was developed with the input of national, local, and tribal experts throughout the country, including law enforcement representatives, prosecutors, advocates, medical personnel, forensic scientists, and others.

The protocol recommended that sexual assault examine kits meet minimum standards. It also suggested standardization of sexual assault evidence collection kits within a jurisdiction and across a state, although it recognized potential issues with standardization. (A National Protocol for Sexual Assault Medical Forensic Examinations, U.S. DOJ, Office on Violence Against Women, April 2013, p. 71.)

To the extent that evidence kits are standardized, the protocol makes the following recommendations (Id. at p. 72.):

- a) That a designated agency in the jurisdiction be responsible for oversight of kit development and distribution.
- b) Ensure that facilities that conduct sexual assault medical forensic exams are involved in kit development and supplied with kits.
- c) Work with relevant agencies (e.g., crime labs, law enforcement agencies, exam facilities and examiner programs, advocacy programs, and prosecutors' offices) to keep abreast of related changes in technology, scientific advances, and cutting-edge practice.
- d) Review periodically (e.g., every 2 to 3 years) kit efficiency and usefulness.
- e) Make adjustments to the kit as necessary.
- f) Establish mechanisms to ensure that kits at exam facilities are kept up to date (e.g., if a new evidence collection procedure is added, facilities need to know what additional supplies should be readily available).

The protocol recognized the potential challenges of a standardized sexual assault evidence collection kit. Some challenges could include building consensus across communities regarding best practices, obtaining buy-in from involved agencies, and costs to the state and local communities.

- 5) **Argument in Support:** According to *California Coalition Against Sexual Assault*, "Sexual assault forensic nurse examiners are required by state law to follow the California Protocol for Examination of Sexual Assault victims and complete the detailed Cal OES 2-293 Sexual Assault Forensic Medical Report form. The protocol and standard state form are required by Penal Code Section 13823.5-13823.11. However, California does not have one standardized sexual assault evidence kit, resulting in variation in DNA evidence collection, preservation, packaging, and labeling in multiple jurisdictions.

"It is time for the state's crime labs to collaborate and agree upon one evidence kit to minimize confusion and the potential for error."

- 6) **Related Legislation:** AB 909 (Quirk), requires law enforcement agencies to make annual reports to the Department of Justice (DOJ) pertaining to the processing of rape kits, as specified, and would require the DOJ to submit annual reports to the appropriate policy committees of the Legislature summarizing the information the department receives pursuant to these provisions. AB 909 is being held in Senate Appropriations Committee.

7) **Prior Legislation:**

- a) AB 1475 (Cooper), Chapter 210, Statutes of 2015, authorizes each county to establish an interagency sexual assault response team (SART) program for the purpose of providing a forum for interagency cooperation and coordination to effectively address the problem of

sexual assault.

- b) AB 1517 (Skinner), Chapter 874, Statutes of 2014, "Sexual Assault Victims' DNA Bill of Rights" encourages law enforcement to submit sexual assault DNA evidence to the crime lab with 20 days of when the evidence is booked and encourages laboratories to test that DNA evidence with 120 days of receipt.
- c) AB 322 (Portantino), of the 2011-2012 Legislative Session, would have established a pilot program in 10 counties where rape kits in those counties would have been processed by the Department of Justice in department laboratories. AB 322 was vetoed by the Governor.
- d) SB 271 (Wyland), of the 2011-2012 Legislative Session, would have required law enforcement agencies that obtained rape kits in connection with the investigation of a criminal case to submit those rape kits to a specified laboratory within 10 business days of receipt and would have required the laboratory that received a rape kit to complete analysis of that rape kit within 6 months of receipt if sufficient staffing and resources are available. SB 271 was held in Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
California Coalition Against Sexual Assault
California District Attorneys Association
California Peace Officers' Association

Opposition

None

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

Date of Hearing: March 15, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1745 (Hadley) – As Introduced February 1, 2016

SUMMARY: Appropriates \$85,000,000 from the General Fund in the State Treasury to be allocated by the State Controller to each city's and city and county's Supplemental Law Enforcement Services Account (SLESA) for local agencies to use for front-line law enforcement activities, including drug interdiction, antigang, community crime prevention, and juvenile justice programs. Specifically, **this bill:**

- 1) Specifies that the sum of eighty-five million dollars (\$85,000,000) is appropriated from the General Fund in the State Treasury for allocation by the State Controller to the counties for law enforcement purposes.
- 2) Requires the Controller to allocate those moneys to each SLESA, established by each county and city and county, consistent with the percentage schedule developed by the Department of Finance.
- 3) Mandates that in any fiscal year in which a county receives moneys to be expended, as specified, the county auditor shall allocate the moneys received as specified and deposited in the county's SLESA within 30 days of the deposit of those moneys into the fund.
- 4) Requires the specified SLESA related money to be allocated to the county and the cities within the county, as specified.
- 5) Requires moneys allocated to the county, as specified, to be retained in the county SLESA, and moneys allocated to a city, as specified to be deposited an SLESA established in the city treasury.
- 6) Mandates that funds received, as specified, shall be expended or encumbered, as specified, no later than June 30 of the following fiscal year.
- 7) Requires money allocated from a SLESA to a recipient entity to be expended exclusively to provide front-line law enforcement services and those moneys shall not be used by a local agency to supplant other funding for Public Safety Services, as defined.
- 8) Allows funding received as specified, is to be used for any of the following:
 - a) Drug interdiction programs;
 - b) Acquisition, maintenance, and training related to the use of body-worn cameras;
 - c) Costs, including personnel costs, related to peace officer training, including training relating to the instruction in the handling of persons with developmental disabilities or mental illness, or both; and

- d) Other front-line law enforcement services.
- 9) States that in no event shall any moneys allocated from the county's SLESA, as specified, be expended by a recipient agency to fund administrative overhead costs in excess of 0.5 percent of a recipient entity's SLESA allocation, as specified, for that year.
- 10) Specifies that "front-line law enforcement services" includes antigang, community crime prevention, and juvenile justice programs.

EXISTING LAW:

- 1) Specifies that there shall be established in each county treasury a Supplemental Law Enforcement Services Account (SLESA), to receive all amounts allocated to specified law enforcement purposes. (Gov. Code, § 30061, subd. (a).)
- 2) States that in any fiscal year for which a county receives moneys to be expended for the implementation of this chapter, the county auditor shall allocate the moneys in the county's SLESA within 30 days of the deposit of those moneys into the fund and allocated as follows:
 - a) Five and fifteen-hundredths percent to the county sheriff for county jail construction and operation. (Gov. Code, § 30061, subd. (b)(1).)
 - b) Five and fifteen-hundredths percent to the district attorney for criminal prosecution. (Gov. Code, § 30061, subd. (b)(2).)
 - c) Thirty-nine and seven-tenths percent to the county and the cities within the county, and other agencies and jurisdictions, as specified. (Gov. Code, § 30061, subd. (b)(3).)
 - d) Moneys allocated to the county, as specified, shall be retained in the county SLESA, and moneys allocated to a city, as specified, shall be deposited in an SLESA established in the city treasury. (Gov. Code, § 30061, subd. (b)(3).)
 - e) Fifty percent to the county or city and county to implement a comprehensive multiagency juvenile justice plan, as specified. The juvenile justice plan shall be developed by the local juvenile justice coordinating council in each county and city and county with the membership, as specified. If a plan has been previously approved by the Corrections Standards Authority or, commencing July 1, 2012, by the Board of State and Community Corrections, the plan shall be reviewed and modified annually by the council. The plan or modified plan shall be approved by the county board of supervisors, and in the case of a city and county, the plan shall also be approved by the mayor. The plan or modified plan shall be submitted to the Board of State and Community Corrections by May 1 of each year. (Gov. Code, § 30061, subd. (b)(4).)
- 3) Specifies that for each fiscal year in which the county, each city, and specified agencies and jurisdictions receive money for SLESA, the county, each city, and each district specified in this subdivision shall appropriate those moneys in accordance with the following procedures:
 - a) In the case of the county, the county board of supervisors shall appropriate existing and anticipated moneys exclusively to provide frontline law enforcement services, as

- specified; (Gov. Code, § 30061, subd. (c)(1).)
- b) In the case of a city, the city council shall appropriate existing and anticipated moneys exclusively to fund frontline municipal police services, in accordance with written requests submitted by the chief of police of that city or the chief administrator of the law enforcement agency that provides police services for that city; and (Gov. Code, § 30061, subd. (c)(2).)
 - c) In the case of specified districts, the legislative body of that special district shall appropriate existing and anticipated moneys exclusively to fund frontline municipal police services, in accordance with written requests submitted by the chief administrator of the law enforcement agency that provides police services for that special district. (Gov. Code, § 30061, subd. (c)(3).)
- 4) States that for each fiscal year in which the county, a city, or specified district receives any money, as specified, in no event shall the governing body of any of those recipient agencies subsequently alter any previous, valid appropriation by that body, for that same fiscal year, of moneys allocated to the county or city, as specified. (Gov. Code, § 30061, subd. (d).)
 - 5) Specifies that commencing with the 2013-14 fiscal year, subsequent to the allocation as specified, the Controller shall allocate 23.54363596 percent the remaining amount deposited in the Enhancing Law Enforcement Activities Subaccount in the Local Revenue Fund 2011 for the specified purposes, and, subsequent to the allocation, as specified, shall allocate 23.54363596 percent of the remaining amount for specified purposes. (Gov. Code, § 30061, subd. (g).)
 - 6) Provides that the Controller shall allocate the specified funds in monthly installments to local jurisdictions for public safety in accordance with this section as annually calculated by the Director of Finance. (Gov. Code, § 30061, subd. (g).)
 - 7) Orders the county auditor to redirect unspent funds that were remitted after July 1, 2012, by a local agency to the County Enhancing Law Enforcement Activities Subaccount to the local agency that remitted the unspent funds in an amount equal to the amount remitted. (Gov. Code, § 30061, subd. (j).)
 - 8) States that except as specified, moneys allocated from a Supplemental Law Enforcement Services Account (SLESA) to a recipient entity shall be expended exclusively to provide front line law enforcement services. (Gov. Code, § 30062, subd. (a).)
 - 9) Specifies that moneys from SLESA shall not be transferred to, or intermingled with, the moneys in any other fund in the county or city treasury, except that moneys may be transferred from the SLESA to the county's or city's general fund to the extent necessary to facilitate the appropriation and expenditure of those transferred moneys in the manner required. (Gov. Code, § 30063.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “Law enforcement officers put their lives on the line to protect our communities; AB 1745 is the first step to protect them and our community from the budget stress we and the recent U.S. DOJ decision have placed upon them.”
- 2) **Supplemental Law Enforcement Services Account (SLESA):** Assembly Bill 3229 (Lockyer), Chapter 134, Statutes of 1996, established the Citizen’s Option for Public Safety (COPS) Program. Compliant cities are allocated a proportionate share of COPS funds by the State, for the exclusive purpose of funding supplemental law enforcement services. Proportionate shares are based on population estimates determined by the California Department of Finance.
- 3) **Loss of Federal Equitable Sharing Funds:** In December of 2015, The Department of Justice (DOJ) announced that it was suspending its equitable sharing program. Equitable sharing was a program in which local law enforcement agencies received money from the federal forfeiture actions of property seized from individuals. The program sent a portion of the money (up to 80%) from forfeitures directly to local law enforcement agencies that had been involved in the seizure.

The Washington Post had an article on the Federal DOJ’s suspension of the equitable sharing program, shortly after the decision was made.

“The Department of Justice announced this week that it's suspending a controversial program that allows local police departments to keep a large portion of assets seized from citizens under federal law and funnel it into their own coffers.

“The 'equitable-sharing' program gives police the option of prosecuting asset forfeiture cases under federal instead of state law. Federal forfeiture policies are more permissive than many state policies, allowing police to keep up to 80 percent of assets they seize -- even if the people they took from are never charged with a crime.

“The DOJ is suspending payments under this program due to budget cuts included in the recent spending bill.” (www.washingtonpost.com/news/wonk/wp/2015/12/23/the-feds-just-shut-down-a-huge-program-that-lets-cops-take-your-stuff-and-keep-it/)

It is unclear if, or when, DOJ will return to equitable sharing with local law enforcement agencies. The author estimates that the suspension of equitable sharing will result in approximately \$85 million in lost revenue for California law enforcement agencies, based on 2014 receipts.

- 4) **Law Enforcement Primarily Funded at the Local Level:** Police protection constitutes less than 1% of direct expenditures by the state but accounts for 6.6% and 14.1%, at the county and city levels, respectively. Local police protection is funded by property, business, and sales taxes; federal and state grants; local fees and fines; and voter-approved increases in general and special sales taxes. For example, voters recently approved a three-quarter cent sales tax increase in the city of Stockton, with most of that money going toward hiring 120 police officers over the next three years. In 2010, California law enforcement agencies spent \$15.6 billion for police protection, slightly more than the \$14.8 billion the state and the counties spent on corrections. PPIC (2013),

Policing in California (http://www.ppic.org/main/publication_show.asp?i=1081)

- 5) **Investing in Law Enforcement:** A review of academic research by the Chief Justice Earl Warren Institute on Law and Policy led to a conclusion that channeling resources to law enforcement as opposed to corrections was an effective allocation of resources. (Fact Sheet: Police, Prisons, and Public Safety in California, April, 2013, The Chief Justice Earl Warren Law Institute on Law and Social Policy, University of California, Berkeley School of Law.)

“There is mounting research that suggests that investing in police rather than expanding corrections is a more effective public safety strategy – a matter of prevention rather than reaction.” (Id.)

The Institute noted that police departments across the state had been shrinking and that a review of the literature suggested that larger numbers of police officers corresponded with lower levels of crime. (Id.)

- 6) **Argument in Support:** According to the City of Torrance, “Funding for local law enforcement programs has not kept pace with statewide growth in population or inflation. What was once funding of \$489.9 million has increased to \$549.1 million. However, based on increases in the State Appropriations Limit since 2006-07, funding should be 28.82% higher, or \$85 million above current levels.

“Additionally, a letter dated December 21, 2015 from the U.S. Department of Justice stated that, for the foreseeable future, the Department would be halting equitable funding payments to state, local and tribal law enforcement partners. For California law enforcement agencies, this will result in approximately \$85 million in lost revenue based on 2014 receipts.

“AB 1745, the BADGE Funding bill will appropriate \$85 million from the State’s General Fund to fully fund law enforcement. The State’s policy of shifting offenders into the jurisdiction of local law enforcement under Realignment to reduce State costs, coupled with recent federal DOJ decision to halt equitable funding from asset forfeitures, will result in the lack of adequate funding for recidivism reduction programs, drug and gang enforcement, training of officers, and purchasing necessary equipment or new technology like body cameras.”

7) **Prior Legislation:**

- a) SB 144 (Cannella), of the 2012-2013 Legislative Session, would have appropriated \$819,857,000 from the General Fund to the Realignment Reinvestment Fund. SB 144 was held in the Senate Committee on Budget and Fiscal Review.
- b) SB 1023 (Budget Committee), Chapter 43, Statutes of 2012, removed the reporting requirement to the State Controller for Supplemental Law Enforcement Oversight Committees.
- c) AB 3229 (Brulte), Chapter 134, Statutes of 1996, established the Citizen’s Option for Public Safety (COPS) Program.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Torrance

Opposition

None

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

Date of Hearing: March 15, 2016

Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1754 (Waldron) – As Amended March 7, 2016

As Proposed to be Amended in Committee

SUMMARY: Creates a pilot program in San Diego County permitting the Victims of Crime Program (CalVCP) to reimburse victims of elder and dependent adult financial abuse for costs of financial and mental-health counseling. Specifically, **this bill:**

- 1) Contains legislative findings and declaration about the extent of financial abuse of the elderly and dependent adults, the response of other legislative bodies to the problem, of the need for a pilot program, and of why San Diego County is well-situated for the pilot program.
- 2) Establishes the San Diego County Elder or Dependent Adult Financial Abuse Crime Victim Compensation Pilot Program.
- 3) Limits compensation to direct victims of theft, identity theft, embezzlement, forgery, or fraud of an elder or dependent adult, and deems derivative victims ineligible.
- 4) Limits compensation to a particular victim to \$3,000.
- 5) Permits compensation for up to 10 sessions of mental health counseling and up to 10 session of financial counseling.
- 6) Limits the distribution of the total funds under the pilot program to one million dollars.
- 7) States that funding authorization stops on January 1, 2019.
- 8) Sunsets the program on January 1, 2020.
- 9) Requires the California Victim Compensation and Government Claims Board (board) to report to the Legislature and the Governor, by July 1, 2020, the following:
 - a) The number of victims who received payment under the pilot program;
 - b) The number of victims who received mental health counseling;
 - c) The average payment for mental health counseling per recipient;
 - d) The number of victims who received financial counseling;
 - e) The average payment for financial counseling per recipient; and,

- f) Any other data on the pilot program that the board wishes to include.
- 10) States that a special law is necessary because of the unique circumstances in the County of San Diego where a high number of reported elder and dependent adult financial abuse crimes occur.

EXISTING LAW:

- 1) States that all persons who suffer loss as a result of criminal activity shall have the right to restitution from the perpetrators. (Cal. Const. Art. 1, § 28(b).)
- 2) Establishes Victim's Compensation Program (CalVCP) administered by the board to reimburse crime victims for the pecuniary losses they suffer as a direct result of criminal acts. Indemnification is made from the Restitution Fund, which is continuously appropriated to the board for these purposes. (Gov. Code, §§ 13901 & 13950 et. seq.)
- 3) Authorizes the board to reimburse victims of crimes causing physical injury or emotional injury with a threat of physical injury for pecuniary loss for specified types of losses, including medical expenses, mental-health counseling, loss of income or loss of support, and installing or increasing residential security. (Gov. Code, §§ 13955, subd. (f), and 13957.)
- 4) Authorizes the board to establish maximum rates and service limitations for medical and medical-related services, and for mental health and counseling services. (Gov. Code, § 13957.2)
- 5) Defines an "elder" as "any person who is 65 years of age or older." (Pen. Code, § 368, subd. (g).)
- 6) Defines a "dependent adult" as "any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age." (Pen. Code, § 368, subd. (h).)
- 7) Specifies that any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:
 - a) By a fine not exceeding \$2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, or by imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950.
 - b) By a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950. (Pen. Code, § 368,

subd. (d).)

- 8) Provides that any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:
- a) By a fine not exceeding \$2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, or by imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950; or
 - b) By a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950. (Pen. Code, § 368, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Assembly Bill 1754 would establish a pilot program for victims of elder and dependent adult financial abuse in San Diego County to be eligible for financial assistance through the California Victims' Compensation program. Elder and dependent adult financial abuse can lead to large costs to victims, families, and society. In 2014-2015, San Diego County's Adult Protective Services confirmed a total of 1,148 unique cases of elder and dependent adult financial abuse. The San Diego District Attorney estimates approximately 600 elderly and dependent adult victims are served annually, averaging about 50 clients per month. This bill establishes a two-year pilot project in San Diego County to provide mental health and financial counseling, as well as other support services to this vulnerable population. This bill also gives the state the opportunity to gather essential data for the use of mental health and financial counseling by elderly and dependent adult victims of financial abuse."
- 2) **CalVCP:** The CalVCP provides compensation for victims of violent crime, or more specifically those who have been physically injured or threatened with injury. It reimburses eligible victims for many crime-related expenses, such as medical treatment, mental health services, funeral expenses, and home security. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as from federal matching funds. (See board Website <<http://www.vcgcb.ca.gov/board>>.)
- 3) **Other Victims Services Programs:** The board is not the only state agency which administers programs to assist victims. The Office of Emergency Services (OES) also oversees several such programs, including the Unserved/Underserved Victim Advocacy and Outreach Program, the Victim/Witness Assistance Program. (See OES Website: <<http://www.caloes.ca.gov/cal-oes-divisions/grants-management/criminal-justice-emergency-management-victim-services-grant-programs/victim-services-programs>>.) It is unclear whether elder or dependent adult victims of financial abuse qualify for compensation

through any OES programs, but the description of both of the aforementioned programs do reference elder abuse in general. Thus, it is possible that funding for mental health and financial counseling might be compensable through one of these OES programs without broadening the scope of the CalVCP program.

For example, in January of this year, the Criminal Justice/Emergency Management and Victims Services Branch of the OES was soliciting proposals for the Elder Abuse (XE) Program for fiscal year 2016-2017. The stated purpose of the the XE Program is to enhance the safety of elder and dependent adult victims of crime by providing direct services to victims and bridging the gap between elder justice service providers (including Adult Protective Services (APS), Long-Term Care Ombudsman programs, providers of legal assistance, etc.) and victim service providers. (See Elder Abuse (XE) Program RFP, pp, 3-4, <<http://www.caloes.ca.gov/GrantsManagementSite/Documents/16XE%20RFP.pdf>>.) Although the RFP period has closed, it is possible that there are other funds available through OES to fund the pilot program proposed by this bill.

On the other hand, the Governor's budget for 2015-16 proposes to reorganize the board beginning in 2016-17. The proposed change would have the board primarily administer victim programs including some currently handled by other agencies, such as the OES.¹

- 4) **Concerns Raised by San Diego County:** The County of San Diego has submitted a letter raising some concerns with the bill. The main concerns relate to workload and financial implications. The county is concerned that it would bear the responsibility for the implementation and operation of the program, as well as the data collection. The financial concerns lie in the fact that the "bill does not appear to create a new funding stream for the Restitution Fund."

As to workload concerns, it should be noted that the San Diego County District Attorney's Office already operates the Victim/Witness Assistance Program which helps victims with filing compensation claims with CalVCP. (<<http://www.sdcda.org/helping/victims/victim-services.html>>.) Additionally, this bill directs the board, not the county, to collect data and issue a report to the Governor and the Legislature.

- 5) **Argument in Support:** According to "*California Commission on Aging (CCoA)*, a co-sponsor of this bill, "This bill establishes a pilot program in San Diego County to demonstrate the cost and benefits of providing essential victim services to these vulnerable groups. San Diego County is well-situated to implement this pilot program quickly, given the County's strong array of victims' and aging services, as well as the county's large retiree population. County officials also report a large number of elder/dependent adult financial abuse cases.

"The CCoA is a citizen's advisory body designated by law to act as the principal advocate in the state on behalf of California's older adults. Our members are gubernatorial and legislative appointees from throughout the state who represent a wealth of experience both in

¹ Government claims would be moved to the Department of General Services. The board would still retain the responsibility for administering claims for the wrongfully convicted.

and out of the aging services area. The California Elder Justice Coalition (CEJC) is a statewide multidisciplinary network devoted to elder justice.

"Studies show that elderly and dependent adult victims of financial abuse have a decreased life-span, suffer emotional trauma, and often face impoverishment. The California Department of Social Services reports that statewide as many as 1,600 reports of elder and financial abuse are under investigation in a given month by Adult Protective Services, yet almost no services are available for this population.

"Many states have already begun providing assistance to elderly and dependent victims of financial crimes, ... Covered services include payment for mental health counseling, assistance with travel to court, and financial counseling. California, despite having the largest over-60 population, has not yet made CalVCP compensation available to these victims."

6) **Related Legislation:** AB 1718 (Kim) authorizes the court to sentence a defendant convicted of felony financial abuse of an elder or dependent adult to state prison. AB 1718 will be heard by this committee today.

7) **Prior Legislation:**

- a) SB 847 (Block), of the 2013-2014 Legislative session, would have allowed an elderly person or dependent adult who was the victim of financial abuse to seek reimbursement of up to \$2,000 for mental health and financial counseling from the CalVCP. SB 847 was held in the Senate Appropriations Committee.
- b) SB 60 (Wright), Chapter 147, Statutes of 2013, was originally drafted to extend compensation to elderly and dependent adult victims of financial abuse. The bill was amended to only extend eligibility to victims of human trafficking.

REGISTERED SUPPORT / OPPOSITION:

Support

California Commission on Aging (Co-Sponsor)
 California Elder Justice Coalition (Co-Sponsor)
 Arc and Cerebral Palsy California Collaboration
 California Association of Area Agencies on Aging
 Office of the State Long-Term Care Ombudsman
 San Diego County District Attorney

One Private Individual

Opposition

None

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

Amendments Mock-up for 2015-2016 AB-1754 (Waldron (A))

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

**Mock-up based on Version Number 98 - Amended Assembly 3/7/16
Submitted by: Sandy Uribe, Assembly Public Safety Committee**

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

SECTION 1. The Legislature finds and declares all of the following:

- (a) California has the highest number of older adults compared to any other state in the nation, with 4.2 million individuals over 65 years of age counted in the 2010 census.
- (b) Elderly and dependent adults are seen as easy targets by financial predators who take advantage of their victims' loneliness, isolation, and vulnerability. This population often falls victim to scams such as foreign lotteries, the sale of costly and ineffective annuities, identity theft, reverse mortgage scams, and fraudulent home repairs. Financial abuse is also committed by family members or caregivers who take advantage of an elder's isolation and dependence.
- (c) A 1998 study reported in the Journal of the American Medical Association found that an elder victimized by financial abuse has a decreased projected lifespan when compared to elders who have not suffered that exploitation.
- (d) The State Department of Social Services reports that as many as 1,600 reports of elder and dependent adult financial abuse are under investigation per month by Adult Protective Services offices statewide.
- (e) The California Victims of Crime Program does not serve this population even though federal law allows Victims of Crime Act funds to be used to do so. Federal guidelines identify elders and dependent adults as being underserved in this area.
- (f) Many states already provide assistance to victims of financial crimes, including Colorado, Florida, Idaho, New Jersey, New York, Oklahoma, Pennsylvania, Vermont, and Wyoming.
- (g) Elderly and dependent adult victims who lack the means to recover or replace misappropriated assets or property often suffer severe consequences including failing health; severe anxiety, depression, and hopelessness; and dependence on public assistance. Research has

shown the benefits of mental health and financial counseling in helping these victims remain independent and regain the confidence to take perpetrators to court.

(h) A pilot program is needed to provide the Legislature with data on the demand for victim services, including mental health and financial counseling, by this population and the costs and outcomes of these services. The collection of this data could further help the state track the types and frequency of financial crimes against elder and dependent adults, identify services that are most needed by victims and the rates at which these services are utilized, and establish best practice protocols for serving these victims.

(i) The County of San Diego is well-situated to provide victims of elder and dependent adult financial abuse with access to services, including mental health and financial counseling. ~~The county's Financial Abuse Specialist Team (FAST), which provides expertise to law enforcement, adult protective services, and others in investigating cases of elder and dependent adult financial abuse, would provide another avenue to identify victims in need of immediate support services following victimization.~~

SEC. 2. Article 7 (commencing with Section 13967) is added to Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, to read:

Article 7. San Diego County Elder or Dependent Adult Financial Abuse Crime Victim Compensation Pilot Program

13967. (a) The San Diego County Elder or Dependent Adult Financial Abuse Crime Victim Compensation Pilot Program is hereby established.

(b) Notwithstanding Section 13955, and except as otherwise provided in subdivision (c), a person who meets the requirements listed in subdivision (a) of Section 13955, shall be eligible for compensation under subdivision (d) if he or she was a victim of a violation of subdivision (d) or (e) of Section 368 of the Penal Code, and the crime occurred in the County of San Diego.

(c) A person shall not be eligible for compensation pursuant to subdivision (b) if he or she is a derivative victim and the only crime the victim suffered is elder or dependent adult abuse described in subdivision (d) or (e) of Section 368 of the Penal Code.

(d) Notwithstanding Section 13957, the board may grant for pecuniary loss, upon appropriation by the Legislature before January 1, 2019, if the board determines it will best aid the person seeking compensation to reimburse the expense of financial counseling, mental health counseling, or supportive services for a victim of a crime described in subdivision (d) or (e) of Section 368 of the Penal Code or financial abuse as defined by Section 15610.30 of the Welfare and Institutions Code, that occurred in the County of San Diego, as follows, up to a total of not more than ~~five thousand dollars (\$5,000)~~ **three thousand dollars (\$3,000)** per person:

(1) The cost of not more than 10 sessions of financial counseling provided by a financial counselor, as described in the Victims of Crime Act Victim Compensation Grant Program (66 F.R. 27158-01), or an adviser providing services such as analysis of a victim's financial situation, including income-producing capacity and crime-related financial obligations, assistance with restructuring budget and debt, assistance in accessing insurance, public assistance, and other benefits, and assistance in completing the financial aspects of victim impact statements.

(2) The cost of not more than 10 sessions of mental health counseling.

~~(3) The cost of supportive services, including, but not limited to, all of the following:~~

~~(A) Cognitive assessment for the purpose of determining additional service needs.~~

~~(B) Emergency shelter or rehousing.~~

~~(C) Transportation to appointments.~~

(e) Compensation pursuant to subdivision (d) shall not exceed an aggregate total of one million dollars (\$1,000,000) for all persons compensated pursuant to the San Diego County Elder or Dependent Adult Financial Abuse Crime Victim Compensation Pilot Program.

(f) This section shall become inoperative on January 1, 2020.

13967.1. (a) On or before July 1, 2020, the California Victim Compensation and Government Claims Board shall report to the Legislature and Governor all of the following:

(1) The number of victims who received payments pursuant to this article.

(2) The number of victims who received mental health counseling.

(3) The average payment for mental health counseling per recipient.

(4) The number of victims who received financial counseling.

(5) The average payment for financial counseling per recipient.

(6) Any other data on the pilot program that the board wishes to include.

(b) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

13967.5. This article shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances in the County of San Diego where a high number of reported elder and dependent adult financial abuse crimes occur. The County of San Diego is well-suited for a pilot program that would allow the Legislature to gather data on the demand for victim services, including mental health and financial counseling, by elderly and dependent adult victims of financial crimes so as to effectively develop policies and resources for this underserved population. ~~Furthermore, the County of San Diego is well-situated to provide victims of elder and dependent adult financial abuse with access to the mental health and financial counseling services due in part to the existence of its Financial Abuse Specialist Team (FAST), which investigates cases of elder and dependent adult financial abuse.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: March 15, 2016

Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1769 (Rodriguez) – As Introduced February 3, 2016

As Proposed to be Amended in Committee

SUMMARY: Prohibits contacting the 911 system via electronic communication -such as texting- for the purpose of annoying, harassing, or any purpose other than an emergency. Specifically, **this bill:**

- 1) Prohibits the use of electronic communications for the purpose of annoying or harassing an individual through the 911 system.
- 2) States that the intent to annoy or harass is established by proof of repeated communications that are unreasonable under the circumstances.
- 3) States that anyone of who knowingly contacts the 911 system via electronic communication for any reason other than an emergency is guilty of an infraction.

EXISTING LAW:

- 1) Prohibits the use of a telephone for the purpose of annoying or harassing an individual through the 911 line. (Pen. Code, § 653x, subd. (a).)
- 2) States that the intent to annoy or harass is established by proof of repeated calls that are unreasonable under the circumstances. (Pen. Code, § 653x, subd. (b).)
- 3) States that anyone guilty of using the 911 line to annoy or harass is responsible for all reasonable costs incurred by the unnecessary emergency response. (Pen. Code, § 653x, subd. (c).)
- 4) States that anyone who knowingly uses the 911 telephone system for any reason other than because of an emergency is guilty of an infraction, punishable by a warning for a first offense, and fines for subsequent offenses. (Pen. Code, § 653y)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Calling 911 from a phone in California connects you with the emergency telephone response system. A "legacy system," it was first established in California in the early 1970s to summon aid for medical, law enforcement, and fire department emergencies.

“The 911 system was initially designed and developed for use with landlines. With the advent of cellular phones, the 911 landline system was adopted to use this new technology but has not significantly changed to reflect problems with the use of this new technology.

“California is currently in the process of adopting what is referred to as Next Generation 911 or NextGen911. This is an effort aimed at updating the 911 service infrastructure to improve public emergency communications services in an increasingly wireless mobile society by enabling the public to transmit text, images, video and other electronic data to a 911 center. NextGen911 is a digital system that will give intelligent routing so all calls will be taken to the closest dispatch center.

“Existing law contained in Section 635X of the Penal Code was enacted to criminalize the behavior of those who fraudulently or repeatedly and unnecessarily phone the 911 system. “Tying up the 911 system with repeated requests for aid or fraudulently asking for police, fire, ambulances and emergency medical resources to be sent to places where they are not needed is not only an abuse of the system but endangers lives.

“As the technology of the 911 system changes to include texts, emails, videos and other forms of electronic communication, California law must also change to protect the integrity and safety of the 911 system. San Bernardino County, one of the first locations in California to institute NextGen911 is already reporting nuisance texts.

“Nuisance calls to 9-1-1 have been an issue for many years. As the first region in the State of California to provide Text to 9-1-1 Service for our citizens, it was evident early in the deployment process that amending PC653x to include any electronic device would be necessary,' stated San Bernardino County Sheriff John McMahon.”

- 2) **Background:** The Warren 911 Emergency Assistance Act established the original 911 line in California as part of a national push to make 911 the primary contact number for emergencies nationwide. The Local Emergency Telephone Systems Article required localities to develop their own system or join a regional system for police, fire and medical emergency dispatch using the 911 phone number rather than the thousands of separate emergency numbers for each local department which previously existed. The regional dispatchers who connect 911 callers to the appropriate emergency response entity are called Public Safety Answering Points (PSAPs). Currently, there are 452 PSAPs statewide receiving tens of millions of calls each year, with approximately half of these coming from cell phones. The volume of calls and the difficulty in locating cell phone callers, among other issues, precipitated the need for an upgrade to the 911 system.

The Office of Emergency Services (OES) is responsible for planning and implementation - and therefore, upgrades- of the 911 system statewide. Through the California 911 Emergency Communications Branch of the Logistics Operation Directorate, OES has begun the process of upgrading the 911 system as required under the Government Code. The IP based network of NextGen911 (NG911) will allow for capabilities such as location based routing, policy based routing and dynamic call routing between PSAPs. Additionally, applications like text, video, and photos along with continual advancements in communications technology create the desire for a more advanced system to access emergency care. Currently, there are five NG911 pilot programs in the state. As these

expand, the volume of text and other electronic communications to the 911 system will increase.

The Penal Code provisions amended by this bill deter frivolous or harassing calls which can clog the 911 system. The National Emergency Number Association 911 dispatchers' goal of answering 90% of calls in ten seconds or less not being met in many California counties due to high volume of calls. Frivolous calls, non-emergency calls, prank calls including 'swatting' and other harassment consume dispatchers' time and prevent them from helping individuals in actual emergencies. The Penal Code attempts to deter frivolous, harassing or otherwise inappropriate non-emergency calls by imposing a schedule of warnings and fines in the case of frivolous and non-emergency calls, or fines and jail time for use of the 911 system to annoy or harass. However, both of these Code Sections prohibit only telephone calls –not the other electronic communications methods enabled by NG911 systems. This bill would prohibit those electronic communications.

- 3) **Argument in Support:** The *San Bernardino Sheriff's Department*, the sponsor of this bill, writes, "On behalf of the San Bernardino County Sheriff's Department and all public safety agencies in the Inland Empire, I would like to thank you for sponsoring Assembly Bill (AB) 1769. AB 1769, which amends Penal Code (PC) 653x to include nuisance texting. The current law only addresses nuisance 9-1-1 phone calls.

"As of November 5, 2015, twenty-one agencies in the Inland Empire went live with text to 9-1-1. Soon after its inception, the command center received several nuisance text messages. Amending PC 653x to include the nuisance 9-1-1 texting will not increase the fine or penalty. It will simply add nuisance texting to the current language."

4) **Prior Legislation:**

- a) SB 1211 (Padilla), Chapter 926, Statutes of 2014, requires the Office of Emergency Services to develop a plan and timeline of target dates for testing, implementing, and operating a Next Generation 911 emergency communication system, including text to 911 service, throughout California.
- b) SB 333 (Lieu), Chapter 284, Statutes of 2013, makes a person convicted of filing a false emergency report liable to a public agency for the costs of the emergency response by that agency.
- c) AB 538 (Arambula) of the 2009-2010 Legislative Session, would have authorized an entity that provides emergency medical services to report a violation of this law to the public safety entity that originally received the call. AB 538 would have required the public safety entity originally receiving the call, if the public safety entity has verified that a violation has occurred, to issue the applicable warnings and citations, as specified. By imposing new duties on local officials, AB 538 would have imposed a state-mandated local program. AB 538 was vetoed.
- d) AB 2741 (Cannella), Chapter 262, Statutes of 1994, provides that it is a misdemeanor to telephone the 911 emergency line with the intent to annoy or harass another person, as defined, punishable by a fine of not more than \$1,000, by imprisonment in a county jail for not more than six months, or by both the fine and imprisonment. This statute also

provides that, upon conviction of a violation of this provision, a person shall be liable for all reasonable costs incurred by any unnecessary emergency response.

REGISTERED SUPPORT / OPPOSITION:

Support

San Bernardino County Sheriff's Department (Sponsor)
Association of Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Fire Chiefs Association
California Narcotics Officers Association
California Peace Officers Association
California Police Chiefs Association
California State Sheriffs Association
Fire Districts Association of California
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Riverside Sheriffs Association

Opposition

None

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Amendments Mock-up for 2015-2016 AB-1769 (Rodriguez (A))

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

Mock-up based on Version Number 99 - Introduced 2/3/16
Submitted by: Matt Dean, Assembly Public Safety

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

SECTION 1. Section 653x of the Penal Code is amended to read:

653x. (a) Any person who telephones or uses an electronic communication device to initiate communication with the 911 emergency system with the intent to annoy or harass another person is guilty of 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 the fine and imprisonment. Nothing in this section shall apply to telephone calls or communications using electronic devices made in good faith.

(b) An intent to annoy or harass is established by proof of repeated calls or communications over a period of time, however short, that are unreasonable under the circumstances.

(c) Upon conviction of a violation of this section, a person also shall be liable for all reasonable costs incurred by any unnecessary emergency response.

SEC. 2. Section 653y of the Penal Code is amended to read:

653y. (a) Any person who knowingly allows the use or who uses the 911 telephone emergency system for any reason other than because of an emergency is guilty of an infraction, punishable as follows:

(1) For a first violation, a written warning shall be issued to the violator by the public safety entity originally receiving the call or communication using an electronic device describing the punishment for subsequent violations. The written warning shall inform the recipient to notify the issuing agency that the warning was issued inappropriately if the recipient did not make, or knowingly allow the use of the 911 telephone emergency system for, the nonemergency 911 call or nonemergency communication using an electronic device. The law enforcement agency may provide educational materials regarding the appropriate use of the 911 telephone emergency system.

(2) For a second or subsequent violation, a citation may be issued by the public safety entity originally receiving the call or communication using an electronic device pursuant to which the violator shall be subject to the following penalties that may be reduced by a court upon consideration of the violator's ability to pay:

(A) For a second violation, a fine of fifty dollars (\$50).

(B) For a third violation, a fine of one hundred dollars (\$100).

(C) For a fourth or subsequent violation, a fine of two hundred and fifty dollars (\$250).

(b) The parent or legal guardian having custody and control of an unemancipated minor who violates this section shall be jointly and severally liable with the minor for the fine imposed pursuant to this section.

(c) For purposes of this section, "emergency" means any condition in which emergency services will result in the saving of a life, a reduction in the destruction of property, quicker apprehension of criminals, or assistance with potentially life-threatening medical problems, a fire, a need for rescue, an imminent potential crime, or a similar situation in which immediate assistance is required.

(d) Notwithstanding subdivision (a), this section shall not apply to a telephone corporation or any other entity for acts or omissions relating to the routine maintenance, repair, or operation of the 911 emergency system or 311 telephone system.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: March 15, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1771 (O'Donnell) – As Introduced February 3, 2016

SUMMARY: Increases the punishment for supervising or aiding a prostitute from up to 6 months in the county jail to up to a year in the county jail, and adds additional circumstances that can be considered in determining whether someone is guilty of a violation of supervising or aiding a prostitute. Specifically, **this bill:**

- 1) Increases the penalty for soliciting or aiding a prostitute from a maximum sentence of 6 months in the county jail to a maximum of one year in the county jail.
- 2) Specifies that if someone is repeatedly speaking to or communicating with a person who is soliciting sex for money or a person who is offering sexual services for compensation, they may be guilty of the crime of supervising or aiding a prostitute.
- 3) Specifies that if someone repeatedly or continuously monitors or watches another person who is soliciting sex for money or a person who is offering sexual services for compensation, they may be guilty of the crime of supervising or aiding a prostitute.
- 4) Specifies that if someone receives or appears to receive money from another person who is soliciting sex for money or a person who is offering sexual services for compensation, they may be guilty of the crime of supervising or aiding a prostitute.
- 5) Permits prior human trafficking convictions to be considered in determining whether a person may be guilty of the crime of supervising or aiding a prostitute.
- 6) Specifies that being an active participant in a criminal street gang and the commission of any gang offense under the California Street Terrorism Enforcement and Prevention Act may be considered in determining whether a person has committed the crime of supervising or aiding a prostitute.

EXISTING LAW:

- 1) Provides that a person may not direct, supervise, recruit, or otherwise aid another person in the commission of a violation of specified prostitution offenses. Additionally, a person may not collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person. Violation of these provisions is a misdemeanor punishable by up to six months in the county jail. (Pen. Code § 653.23, subds. (a) & (b); Pen. Code § 653.26.)

- 2) Provides that in determining whether a person is guilty of directing or supervising a prostitute, the following circumstances may be considered:
 - a) The offender repeatedly speaks or communicates with another person who is acting in violation of loitering for the purpose of engaging in prostitution.
 - b) The offender repeatedly or continuously monitors or watches another person who is acting in violation of loitering for the purpose of engaging in prostitution.
 - c) The offender repeatedly engages or attempts to engage in conversation with pedestrians or motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of loitering for the purpose of engaging in prostitution.
 - d) The offender repeatedly stops or attempts to stop pedestrians or motorists to solicit, arrange, or facilitate an act of prostitution between pedestrians or motorists and another person who is acting in violation of loitering for the purpose of engaging in prostitution.
 - e) The offender circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of loitering for the purpose of engaging in prostitution.
 - f) The offender receives or appears to receive money from another person who is acting in violation of loitering for the purpose of engaging in prostitution.
 - g) The offender engages in any of the behavior described above, inclusive, in regard to, or on behalf of two or more persons who are in violation of loitering for the purpose of engaging in prostitution.
 - h) The offender has been convicted of violating specified prostitution related offenses.
 - i) The offender has engaged, within six months prior to the arrest in any behavior described in this subdivision, or in any other behavior indicative of prostitution activity.
- 3) Provides that any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in a state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail. (Pen. Code, § 186.22, subd. (d).)
- 4) Enacts the California Street Terrorism Enforcement and Prevention (STEP) Act which seeks the eradication of criminal activity by street gangs by focusing upon patterns of criminal

gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. (Pen. Code, §§ 186.20 & 186.21.)

- 5) States that any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years. (Pen. Code, § 186.22, subd. (a).)
- 6) Adds an additional and consecutive term of confinement to the base term when a person is convicted of a felony committed for the benefit of, at the direction of, or an association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members. (Pen. Code § 186.22(b).)
- 7) Defines a "criminal street gang" as "any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in existing law having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity." (Pen. Code § 186.22, subd. (f).)
- 8) Contains provisions for punishing gang-related activity as a conspiracy. (Pen. Code., § 182.5.)
- 9) Criminalizes gang recruitment or solicitation to actively participate in a gang. (Pen. Code, § 186.26.)
- 10) Requires convicted criminal gang offenders to register with the local chief of police or sheriff within 10 days of release from custody, as specified. (Pen. Code, §§ 186.30 & 186.32.)
- 11) Provides that a violation of the registration requirements is a crime. (Pen. Code, § 186.33.)

FISCAL EFFECT: Unknown

COMMENTS:

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

"AB 1771 gives discretion to judges to impose a longer sentence when justified. The bill also makes admissible evidence that can help judges and juries determine when a suspect is an integral piece of gang operations. This will allow us to deal significant damage to the human trafficking operations of these gangs and help protect the victims of this horrible

underground sexual abuse."

- 2) **Existing Law Permits Additional Relevant Evidence:** Under existing law, the list of circumstances set forth as circumstances that can be considered as evidence that a person is supervising or aiding a prostitute is not an exclusive list. (Pen. Code § 653.23, subd. (c).) In fact, the code specifies that "any other relevant circumstance may be considered...[m]oreover, no one circumstance or combination of circumstances is in itself determinative. A violation shall be determined based on an evaluation of the particular circumstances of each case." (Pen. Code § 653.23, subd. (c).)
 - a) **Relevant Evidence:** Under these provisions, prosecutors can already introduce evidence that an alleged offender is a member of a gang if that information is relevant as to whether the offender is guilty of aiding or supervising a prostitute. Under California law, "relevant evidence" means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Cal. Evid. Code § 210.) The standard of relevance is a rather low standard. Since the passage of Proposition 8 in 1982, California criminal law has operated under a legal concept known as "Truth in Evidence." Following the passage of Proposition 8, Section 28 of Article I of the California Constitution was amended to include a "right to truth in evidence." Under this provision state courts cannot exclude any "relevant evidence" even if gathered in a manner that violates the rights of the accused. The U.S. Constitution takes priority over the California constitution so courts may still be obliged to exclude evidence under the federal Bill of Rights. In practice the law prevented the California courts from interpreting the state constitution so as to impose an exclusionary rule more strict than that required by the federal constitution. Exceptions may be made to the "truth in evidence" rule by a two-thirds vote of both houses of the California Legislature.
 - b) **Evidence of Prior Offenses:** Prior convictions can be used to enhance a sentence, establish a mandatory minimum sentence, restrict a defendant's license to drive, prohibit the possession of firearms, *make otherwise innocent conduct criminal*, elevate a misdemeanor to a felony, and eliminate probation as a sentencing choice. Priors can also be used as evidence to prove identity or an element of the crime, such as intent, or to impeach the defendant if he or she testifies. There are a wide variety of methods and reasons to challenge the admission of prior convictions by prosecutors on constitutional grounds. This bill would statutorily authorize the use of prior incidents of gang activity regardless of the existing rules on the admissibility of prior bad acts of the offender.

This bill would permit the introduction of gang membership even if the evidence does not meet the liberal California standard of relevancy, and the standard of admitting prior bad acts of the alleged offender. This evidence would go before a jury and they would be able to consider it in determining whether or not a person is guilty of supervising or aiding a prostitute.

- 3) **Differences between Supervising or Aiding a Prostitute and Pimping or Pandering:** A person may be guilty of both supervising or aiding a prostitute as well as pimping and pandering. However, the crimes are certainly distinct from one another.

- a) **Pimping:** Pimping is a felony and may be punished by three, four, or six years in state prison (or three, six, or eight years if the prostitute was under 16). Aiding a prostitute is only a misdemeanor and may be punished by six months in the county jail, a fine of no more than one thousand dollars (\$1,000), or both. Pimping is defined as either soliciting prostitution by finding a john for a prostitute and collecting a fee from the john *or* some of the prostitute's pay, or collecting some or all of a prostitute's pay even if you played no part in finding the john.

To be convicted of pimping, you have to have helped find customers for a prostitute and received some money for your role in the transaction. But you can be convicted of aiding a prostitute even if you did not find the john or arrange the transaction, and even if you receive no money for your role. To be convicted of pimping because you received money from a prostitute, you have to be living off of that person's prostitution earnings. You also need to know that they are a prostitute. In contrast, you can be convicted of aiding a prostitute if you receive any money that was earned from prostitution, for any reason. You can't be convicted of pimping unless a prostitution transaction actually takes place. But you can be convicted of aiding a prostitute even if you only helped someone loiter with the intent to commit prostitution-even if they didn't find any customers.

- b) **Pandering:** Pandering is similar to pimping. A person can violate California's law against pandering when you encourage or persuade someone to engage in prostitution, and make that person available for the purpose of prostitution. Like pimping, pandering is a felony and may be punished by three, four, or six years in state prison (or three, six, or eight years if the prostitute was under 16). The crime of supervising or aiding a prostitute includes "recruiting" someone to engage in an act of prostitution or to loiter for the purpose of prostitution. But the California 6th District Court of Appeal has held that you only violate Penal Code 653.23 PC when you recruit "customers for prostitutes or prostitutes for customers," not when you recruit someone to become a prostitute. In other words, a person is guilty of supervising or otherwise aiding a prostitute only if the person who was recruited actually starts working as a prostitute or loitering for prostitution.
- 4) **Gang Statutes:** Penal Code Section 186.22 has three separate charging provisions. First, subdivision (a) of the statute contains the criminal offense of gang participation. It prohibits actively participating in a criminal street gang combined with willfully promoting, furthering, or assisting in any felonious conduct by members of that gang. The gravamen of the offense is the "participation in the gang itself." (*People v. Herrera* (1999) 70 Cal.App.4th 1456, 1467, fns. omitted.) The second provision is an enhancement allegation contained in subdivision (b)(1). If plead and proven, it increases the sentence for an underlying felony. The allegation is applicable to any felony "committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members." The third, subdivision (d) of the statute, is an alternate penalty allegation which technically applies to all felonies and misdemeanors "committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members," but whose practical application is to raise the sentences only for gang-related misdemeanors.
- 5) ***People v. Rodriguez* (2012) 55 Cal.4th 1125:** In *Rodriguez*, the California Supreme Court resolved conflicting Court of Appeal interpretations of Penal Code Section 186.22(a), the

substantive crime of active participation in a criminal street gang. That subdivision provides in full: "Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years." (Penal Code Section 186.22(a).) The lower courts had split on whether the phrase "criminal conduct by members of that gang" required participation by more than a single gang member.

In *Rodriguez*, the defendant, a Norteno gang member, acted alone in committing an attempted robbery. Among other offenses, he was convicted of the criminal street gang offense. (*People v. Rodriguez, supra*, 55 Cal.4th at pp. 1128-1129.) He appealed that conviction. Interpreting the phrase "criminal conduct by members of that gang," the Court held that the plain meaning of the statute requires that the conduct in question be committed by at least two gang members, one of whom may be the defendant if he is a gang member. (*Id.* at p. 1132.) The Court noted that "members" is a plural noun. (*Ibid.*) Thus, if the defendant acts alone, he cannot be guilty of violating subdivision (a). The statute requires at least two perpetrators whose felonious conduct benefits the gang. This Court noted that requiring that a defendant commit the underlying felony with at least one other gang member reflects the Legislature's attempt to avoid "any potential due process concerns that might be raised by punishing mere gang membership." [*Id.* at p. 1133, citing *Scales v. United States* (1961) 367 U.S. 203.] Penal Code Section 186.22(a) imposes criminal liability not for lawful association, but only when a defendant actively participates in a criminal street gang while also acting with guilty knowledge and intent.

By requiring that a defendant commit an underlying felony with at least one other gang member, the Legislature avoided punishing mere gang membership. (*Id.* at p. 1134.) Use of the plural word "members" reflects the Legislature's attempt to provide a nexus between the felonious conduct and the gang activity to satisfy due process. (*Id.* at p. 1135.) The Court also relied heavily on its earlier opinion in *People v. Albillar* (2010) 51 Cal.4th 47, which interpreted the gang enhancement in subdivision (b) to distinguish the two provisions. The substantive offense, unlike the enhancement, does not require a specific intent to promote the gang, but rather only knowledge of the gang's pattern of criminal activity. And the enhancement, unlike the substantive offense, requires that the underlying felony be gang related. (*Id.* at pp. 1134-1135.) The court emphasized the two provisions "strike at different things." (*Id.* at p. 1138.) The enhancement punishes gang-related conduct, i.e. felonies committed with the specific intent to benefit, further, or promote the gang; whereas the substantive offense punishes gang members who act in concert with other gang members in committing a felony, regardless of whether the felony is gang related. (*Ibid.*) The Supreme Court noted that a gang member who commits a felony by himself or herself will not go unpunished. Not only will that person be convicted of the underlying felony, but he or she may also be eligible for punishment under the gang enhancement, which carries a longer term of incarceration than the substantive gang crime. (*Id.* at pp. 1138-1139.)

- 6) **Gang Members vs. Active Participants:** Under the current language of the statute, in order to prove the elements of the substantive offense, the prosecution must prove that defendant: (a) is an *active participant* of a criminal street gang, (b) that he or she had knowledge that its *members* engage in or have engaged in a pattern of criminal gang activity, and (c) he or she willfully promoted, furthered, or assisted in ... felonious criminal conduct *by members* of

that gang. [*People v. Lamas* (2007) 42 Cal.4th 516, 524, italics added.] Thus, the statute distinguishes between gang members and active participants. As to the active participation requirement, that statute says it is not necessary to prove that the defendant is a member of the criminal street gang. (Penal Code Section 186.22(i); see also *In re Jose P.* (2003) 106 Cal.App.4th 458, 466.) The California Supreme Court has previously construed the phrase "active participation" in Penal Code Section 186.22(a) as being "some enterprise or activity" in which the defendant's participation is more than "nominal or passive." (*People v. Castaneda* (2000) 23 Cal.4th 743, 747, 749-750; see also *In re Jose P.* (2003) 106 Cal.App.4th 458, 466.) California jury instructions also echo this definition of "active participant." Relevant portions instruct the jury that "[a]ctive participation means involvement with a criminal street gang in a way that is more than passive or in name only. (See CALCRIM No. 1400.)

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

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

This bill seeks to use the mere fact that a person is a member of a gang as evidence that they are supervising a prostitute. The crime in question does not have to meet the statutorily required elements that the conduct be committed at the direction or for the benefit of a criminal street gang.

- 8) **Argument in Support:** According to the *Long Beach City Prosecutor*, "In 2010, prostitution was reportedly the second largest source of income for gangs in San Diego, California. There is every reason to believe this trend exists in other parts of our state. Although gang members are increasingly becoming involved in prostitution and sex trafficking it is not always possible to prosecute them with felony charges.

"Unfortunately, in many cases the victim (who is detained for suspicion of prostitution) will not cooperate with law enforcement due to fear of her pimp, leaving misdemeanor 'supervising a prostitute' [PC 653.23] as the only viable charging option for prosecutors. Incredibly, violation of this section is only a misdemeanor with a cap of six months in the county jail.

"AB 1771 fixes the current law to provide for up to twelve months in jail for those convicted of 'supervising a prostitute.' AB 1771 does not require any specific sentence, and judges would still have the discretion to impose lesser sentences, such as probation or a fine. If approved, AB 1771 will also permit the admission of gang-related convictions at trial or sentencing."

- 9) **Argument in Opposition:** According to the *California Public Defenders Association*, "AB 1771 proposes to amend Penal Code Section 653.23 which states that it is unlawful to supervise, direct or assist an individual who is soliciting an act of prostitution. AB 1771

would add to the list of circumstances that may be considered in determining if someone is supervising, directing or supervising a prostitute repeatedly speaking or communicating with the working prostitute or watching the working prostitute. The bill also adds a section explicitly bringing the crime into the ambit of Penal Code section 186.22(d) enhanced punishment for activities done for the benefit of, at the direction of, or in association with a street gang.

"Our objection to AB 1771 is that it is overbroad and would further criminalize street prostitutes, many of whom are vulnerable runaways, victims of domestic violence or substance abusers. We suggest that the bill be amended to delete the references to Penal Code Section 647(b) in Penal Code section 653.23 (b)(1) and (b)(2).

"What constitutes repeatedly speaking or communicating? Are individuals exercising their First Amendment right to speech at risk of being arrested for a violation of Penal Code section 653.23? Is talking to someone on a street corner for five minutes okay, but criminal if the conversation lasts 30 minutes?

"What constitutes assisting by watching a working prostitute? Is a sociologist gathering data assisting by watching? What if the prostitute's mother, sister, daughter is watching to make sure that the prostitute is safe? Is that assisting?

"Prostitutes who congregate together to avoid abduction or worse, under this proposed legislation would be swept up by the enhanced punishments provided for under this bill. For instance, a more street wise prostitute might be able to warn a younger or less experienced prostitute against a known violent customer. If unable to persuade the younger or more desperate woman, the other woman might be able to deter the customer who plans to harm the prostitute by merely witnessing the other woman going with the customer. If nothing else, the more experienced woman could alert the police to the other woman's plight or serve as a witness after the fact. This proposed legislation would further endanger those whom it seeks to protect.

"We also object to increasing the punishment from 6 months to one year for Penal Code section 653.26. Repeatedly increasing punishment for crimes is not an evidence based practice. It wastes scarce public resources by incarcerating more people for ever longer periods of time."

- 10) **Related Legislation:** AB 1491 (O'Donnell), sought to make the crime of "supervising a prostitute" punishable as a felony when the defendant is a member of a criminal street gang. The bill was referred and never had a hearing in Assembly Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

Long Beach City Prosecutor (Co-Sponsor)
Long Beach Human Trafficking Taskforce (Co-Sponsor)

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
California Public Defenders Association

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

Date of Hearing: March 15, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1798 (Cooper) – As Introduced February 8, 2016

SUMMARY: Specifies that an imitation firearm includes a cell phone case that is substantially similar in coloration and overall appearance to a firearm as to lead a reasonable person to perceive that the case is a firearm.

EXISTING FEDERAL LAW:

- 1) States that no person shall manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has permanently affixed to it a blaze orange plug inserted in the barrel of such toy, look-alike, or imitation firearm. Such plug shall be recessed no more than six millimeters from the muzzle end of the barrel of such firearm. (15 U.S.C. § 5001, subds. (a) & (b).)
- 2) Provides that the term "look-alike firearm" means any imitation of any original firearm which was manufactured, designed, and produced since 1898, including and limited to toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles. The term "look-alike firearm" does not include traditional BB, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure. (15 U.S.C. § 5001, subd. (c).)
- 3) States that the provisions of this section shall supersede any provision of State or local laws or ordinances which provide for markings or identification inconsistent with provisions of this section provided that no State shall (15 U.S.C. § 5001, subd. (g)):
 - a) Prohibit the sale or manufacture of any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898; or,
 - b) Prohibit the sale (other than prohibiting the sale to minors) of traditional BB, paint ball, or pellet-firing air guns that expel a projectile through the force of air pressure.
- 4) Provides that no person shall manufacture, enter into commerce, ship, transport or receive any toy, look-alike, or imitation firearm covered by these regulations, unless such device contains, or has affixed to it, one of the markings set forth in the following section related to approved markings, or unless this prohibition has been waived because the device will be used in the theatrical, movie or television industry, as specified. (15 C.F.R. § 272.2 (2014).)
- 5) Specifies that the prohibition above does not apply to the following (15 C.F.R. § 272.1 (2014)) :
 - a) Non-firing collector replica antique firearms;

- b) Traditional BB, paint-ball, or pellet-firing air guns that expel a projectile through the force of compressed air, compressed gas, or mechanical spring action, or any combination thereof, as described; or,
 - c) Decorative, ornamental, and miniature objects having the appearance, shape and/or configuration of a firearm, provided that the objects measure no more than 38 millimeters in height by 70 millimeters in length, excluding any gun stock length measurement.
- 6) States that the following markings are approved for toy, look-alike, and imitation firearms (15 C.F.R. § 272.3 (2014)):
- a) A blaze orange, or brighter orange as specified, solid plug permanently affixed to the muzzle end of the barrel as an integral part of the entire device and recessed no more than six millimeters from the muzzle end of the barrel;
 - b) A blaze orange, or brighter orange as specified, marking permanently affixed to the exterior surface of the barrel, covering the circumference of the barrel from the muzzle end for a depth of at least six millimeters;
 - c) Construction of the device entirely of transparent or translucent materials which permits unmistakable observation of the device's complete contents; and,
 - d) Coloration of the entire exterior surface of the device in white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern.
- 7) Provides that the provisions in the federal regulations supersede any provisions of State or local laws or ordinances which provides for markings or identification inconsistent with the federal provisions. (15 C.F.R. § 272.5 (2014).)

EXISTING LAW:

- 1) Prohibits, subject to specific exceptions, purchase, sale, manufacture, shipping, transport, distribution, or receipt, by mail order or in any other manner, of an imitation firearm. Manufacture for export is permitted. (Penal Code § 20165.)
- 2) Defines "imitation firearm" as "any BB device, toy gun, replica of a firearm, or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm." (Pen. Code, § 16700, subd. (a).)
- 3) States that an "imitation firearm," for purposes of the prohibition on purchase, sale, manufacture, etc., of an imitation firearm, does not include the following (Pen. Code, § 16700, subd. (b)):
 - a) A nonfiring collector's replica that is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case;

- b) A BB device; or,
 - c) A device where the entire exterior surface of the device is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern, as provided by federal regulations governing imitation firearms, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device's complete contents, as provided by federal regulations governing imitation firearms.
- 4) Defines "BB device" to mean "any instrument that expels a projectile, such as a BB or a pellet, not exceeding 6mm caliber, through the force of air pressure, gas pressure, or spring action, or any spot marker gun." (Pen. Code, § 16250.)
 - 5) Provides that sale of any BB device to a minor is a misdemeanor, punishable by up to six months in county jail, a fine of up to \$1,000, or both. (Pen. Code, § 19910.)
 - 6) States that every person who furnishes any BB device to any minor, without the express or implied permission of a parent or legal guardian of the minor, is guilty of a misdemeanor, punishable by up to six months in county jail, a fine of up to \$1,000, or both. (Pen. Code, § 19915.)
 - 7) Makes it a misdemeanor, with specified exceptions, for any person to change, alter, remove, or obliterate any coloration or markings that are required by any applicable state or federal law or regulation for any imitation firearm in a way that makes the imitation firearm or device look more like a firearm. (Pen. Code, § 20150.)
 - 8) Requires any imitation firearm manufactured after July 1, 2005, at the time of offer for sale in this state, to be accompanied by a conspicuous advisory in writing as part of the packaging to the effect that the product may be mistaken for a firearm by law enforcement officers or others, that altering the coloration or markings required by state or federal law or regulations so as to make the product look more like a firearm is dangerous, and may be a crime, and that brandishing or displaying the product in public may cause confusion and may be a crime. (Pen. Code, § 20160.)
 - 9) Prohibits any person from openly displaying or exposing any imitation firearm in a public place, as defined. (Pen. Code, § 20170.)
 - 10) Provides that a violation of the above provision is an infraction punishable by a fine of \$100 for the first offense, and \$300 for a second offense. A third or subsequent violation is punishable as a misdemeanor. (Pen. Code, § 20180.)
 - 11) States that any person who, except in self-defense, draws or exhibits an imitation firearm, as defined, in a threatening manner against another in such a way as to cause a reasonable person apprehension or fear of bodily harm is guilty of a misdemeanor punishable by imprisonment in a county jail for a term of not less than 30 days. (Penal Code § 417.4.)

COMMENTS:

- 1) **Author's Statement:** According to the author, "Currently available for purchase on-line are cellular/smartphone cases that are similar in color, shape, and even operation to a real handgun. These cellular/smartphone cases have a handgun grip and trigger system protruding from the phone cover. Some of the cases have an operational trigger that when pulled creates a gun like clicking sound. On the backside of the case is a two dimensional replica of a semi-automatic handgun barrel and slide mechanism. The gun shaped cellular/smartphone case has no markings that depict it as an imitation. These devices are fairly new and this bill takes a proactive approach to stop a problem before it happens. This bill is necessary because existing law is not sufficient in its definition to clearly prohibit the manufacture, import or distribution of gun shaped cellular/smartphone cases."
- 2) **No Clear Federal Preemption Issues:** Article VI of the U.S. Constitution contains the Supremacy Clause, which provides that the Constitution, and the laws made pursuant to it, are the supreme law of the land. If there is a conflict between federal and state law, federal law controls and state law is invalidated. Traditionally, the Supreme Court has identified two major situations where preemption occurs. One is where federal law expressly preempts state or local law and the other is where preemption is implied by clear congressional intent to preempt state or local law. (*Jones v. Rath Packing Co.*, (1977) 430 U.S. 519, 525.) Even if a federal law contains an express preemption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress' displacement of state law still remains. (*Freightliner Corp. v. Myrick*, (1995) 514 U.S. 280, 287.)

Quite often when issues regarding imitation firearms arise there is generally a federal preemption issue because the federal government frequently makes regulations in this area. The most seminal area of law in this area is the Federal Toy Gun Law (15 U.S.C. § 5001). However, this issue has not been addressed by federal law. The novelty of these cell phone cases is the most likely reason for this issue not having been addressed. United States Senator Chuck Schumer has called for federal action¹, but at this time it appears that the federal government has not taken any action in this area. In fact, a number of local jurisdictions have banned, and contemplated bans, on the use of these cases due to public safety concerns.^{2 3}

¹ <http://thehill.com/policy/technology/247209-ny-senator-raises-alarms-about-gun-shaped-iphone-cases>

² <http://chicago.cbslocal.com/2015/07/29/cell-phone-gun-cases-illegal-in-chicago/>

³ <http://www.nydailynews.com/new-york/pistol-grip-iphone-cases-banned-nyc-advocate-article-1.2276450>

- 3) Argument in Support:** According to the *California Peace Officers' Association (CPOA)*, "[AB 1798] is a common sense measure to ensure the safety of all Californians by adding cell phone cases resembling firearms to the definition of 'imitation firearm.' CPOA's nearly 3,000 peace officer members across California do not wish to come across persons carrying such a case so to not mistake it for being a gun or other similar firearm, especially when partially concealed in a pocket or other attire.

"As more instances of these cases are discovered across the United States, AB 1798 is a smart bill that would protect all Californians from any consequences related to carrying anything resembling a gun."

REGISTERED SUPPORT / OPPOSITION:

Support

California Peace Officers Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
Fraternal Order of Police

Opposition

None

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

Date of Hearing: March 15, 2016

Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1802 (Chávez) – As Introduced February 8, 2016

SUMMARY: Expands the membership of the Victims Compensation and Government Claims Board (board) to include a victims' rights advocate and a provider of victims' health services. Specifically, **this bill:**

- 1) Adds an expert in the rights of crime victims or a representative of a recognized organization that advocates for the rights of crime victims to the board's membership. This person shall be appointed by, and serve at the pleasure of, the Governor.
- 2) Adds a physician, psychiatrist, or psychologist with expertise in treating or providing services to crime victims to the board's membership. This person shall be appointed by, and serve at the pleasure of, the Governor.
- 3) Compensates any board member, who is not a state officer acting ex officio, \$50 per day of actual attendance at board meetings, not to exceed eight meetings per month, as well as necessary traveling expenses to attend the meetings.

EXISTING LAW:

- 1) Establishes the board, which, in pertinent part, operates the California Victim's Compensation Program (CalVCP). (Gov. Code, §§ 13901 & 13950 et. seq.)
- 2) States that the board consists of the Secretary of Government Operations or his or her designee, the Controller, and a third member to be appointed by the Governor. (Gov. Code, § 13901, subd. (b).)
- 3) Provides that if the board's third member is not a state officer acting ex officio, that person shall be compensated \$50 per day of actual attendance at board meetings, not to exceed eight meetings per month. (Gov. Code, § 13902.)
- 4) Authorizes the board to reimburse victims of crimes for pecuniary loss for specified types of losses, including medical expenses, mental-health counseling, loss of income or loss of support, and installing or increasing residential security. (Gov. Code, § 13957.)
- 5) 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).)
- 6) Requires the board to grant a hearing to an applicant who contests a staff recommendation to deny compensation in whole or in part. (Gov. Code, § 13959, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, ""The Governor's proposal to reorganize the VCGCB to primarily handle victims programs is a step in the right direction. This bill will help ensure that the composition of the board is best suited to take the lead as the primary administer of victims programs."
- 2) **Victim Compensation and Government Claims Board:** "The VCGCB is a board within the Government Operations Agency that is comprised of three members—the Secretary of the Government Operations Agency, the State Controller, and a Governor's appointee. As discussed below, VCGCB's primary responsibility is administering four of the state's victim programs: the California victim compensation program (CalVCP), trauma recovery center (TRC) grants, Good Samaritan Program, and the Missing Children Reward Program. The board also administers programs unrelated to victims, including the Government Claims Program, which processes claims for money or damages against the state, and a program that pays claims to wrongfully imprisoned individuals." (See *Improving State Programs for Crime Victims*, Legislative Analyst's Office, March 18, 2015, p. 6, <<http://www.lao.ca.gov/reports/2015/budget/crime-victims/crime-victims-031815.pdf>>.)
- 3) **Governor's Budget Proposal:** As noted above, the board currently administers not only CalVCP, but also some non-victim programs, including the government claims, which processes claims for money or damages against the state, as well as claims for the wrongfully convicted.

The Governor's budget for 2015-16 proposes to reorganize the board beginning in 2016-17. The proposed change would have the board primarily administer victim programs including some currently handled by other agencies, such as the Office of Emergency Services. Government claims would be moved to the Department of General Services. The board would still retain the responsibility for administering claims for the wrongfully convicted.

The addition of a victim's advocate and a treatment provider to the board membership aligns with the Governor's plan to reorganize the board as the primary administrator for victims' programs.

- 4) **Legislative Analyst's Office Recommendations:** In its report on improving programs for crime victims, the LAO recommended changing the composition of the board. The LAO noted:

"Two of the three members of the board have expertise that is primarily applicable to the Government Claims Program and not related to victim services—the Government Operations Agency Secretary and the State Controller. Accordingly, we recommend that the Legislature change the membership of the board. First, we recommend removing the Secretary of the Government Operations Agency and the State Controller from the board. Second, we recommend that additional members be added to the board to provide expertise in victim issues. For example, the Legislature could consider requiring the board to

include an expert in providing trauma-informed services or a victim of crime, as well as representatives from the other state departments that administer victim programs (such as the Attorney General or the Secretary of CDCR). We also recommend that the Legislature appoint some of the board members in addition to having the Governor's appointees on the board. Finally, we recommend that the appointed members serve fixed terms to increase their independence."

(*Improving State Programs for Crime Victims, supra*, pp. 18-19, <
<http://www.lao.ca.gov/reports/2015/budget/crime-victims/crime-victims-031815.pdf>>.)

This bill partially adopts the recommendations of the LAO by adding to the membership of the board a victims' advocate and a victims' services provider in the medical or mental-health field.

- 5) **Argument in Support:** None submitted.
- 6) **Argument in Opposition:** According to *California Civil Liberties Advocacy*, "It is a well-known fact that many trade associations have established 'astroturf' organizations to advance an ulterior motive. For instance, according to the book, *Lockdown America: Police and Prisons in the Age of Crisis*, by investigative journalist Christian Parenti, groups like the California Correctional Peace Officers Association have established 'grassroots' lobbies, such as Crime Victims United, that aggressively lobby for tougher minimum sentences and new criminal statutes. (Parenti, *Lockdown America: Police and Prisons in the Age of Crisis*, Verso (2005) p. 227.) Thus, the CCLA is concerned about the following language:

"One member who shall be appointed by, and serve at the pleasure of, the Governor and an expert in the rights of crime victims or a representative of a recognized organization that advocates for the rights of crime victims."

"The CCLA strongly encourages the author to amend the bill to define the qualifications of an 'expert' and to delete the language allowing the Governor to appoint a representative of a crime victims organization."

7) **Prior Legislation:**

- a) AB 1317(Frazier), Chapter 352, Statutes of 2013, made conforming name changes to properly reflect the assignment and reorganization of the functions of state government among newly-established executive entities, including for membership on the board.
- b) AB 702 (Jackson), Chapter 84, Statutes of 2003, consolidated the board under the jurisdiction of the State Consumer Services Agency and allowed the Secretary of the State Consumer Services Agency or his or her designee to serve on the board.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

California Civil Liberties Advocacy

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

Date of Hearing: March 15, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1820 (Quirk) – As Amended March 8, 2016

SUMMARY: Regulates the use of unmanned aircraft systems (UAS) by law enforcement agencies. Specifically, **this bill:**

- 1) Defines "UAS" as an unmanned aircraft and associated elements, including communication links and the components that control the unmanned aircraft, that are required for the pilot in command to operate safely and efficiently in the national airspace system.
- 2) Prohibits a law enforcement agency from using an UAS, obtaining a UAS from another public agency by contract, loan or other arrangement, or using information obtained from an UAS used by another public agency, except as provided in the provisions of this bill.
- 3) Specifies that the provisions of this bill apply to all law enforcement agencies and private entities when contracting with or acting as the agent of a law enforcement agency for the use of an UAS.
- 4) Allows a law enforcement agency to use UAS system, or use information obtained from a UAS system used by another public agency, only if the law enforcement agency complies with the regulations of this bill and all other applicable federal, state, and local laws.
- 5) Requires a search warrant if the use of a UAS by a local law enforcement agency involves the collection of images or data from another city or county, unless an exigent circumstance exists.
- 6) Requires a law enforcement agency to develop and make available to the public the policy on its use of the UAS, and requires training of the law enforcement agency's officers and employees on the policy, if they elect to use a UAS.
- 7) Requires a law enforcement agency to use the unmanned aircraft system consistent with the policy developed regarding UAS.
- 8) States that a law enforcement agency shall present the proposed UAS policy at their regularly scheduled and noticed public meeting of its governing body with an opportunity for public comment, before finalizing the policy.
- 9) Specifies that a law enforcement agency's UAS policy must include the following:
 - a) The circumstances under which an unmanned aircraft system may or may not be used;

- b) The rules and processes required before using an unmanned aircraft system;
 - c) The individuals who may access or use an unmanned aircraft system or the information collected by an unmanned aircraft system and the circumstances under which those individuals may do so;
 - d) The safeguards to protect against unauthorized use or access;
 - e) The training required for any individual authorized to use or access information collected by an unmanned aircraft system;
 - f) The guidelines for sharing images, footage, or data with other law enforcement agencies and public agencies;
 - g) The manner in which information obtained from another public agency's use of an unmanned aircraft system will be used; and
 - h) Mechanisms to ensure that the policy is adhered to.
- 10) Prohibits a law enforcement agency from using a UAS, or information obtained from an UAS used by another public agency, to surveil private property unless the law enforcement has obtained a search warrant or express permission of the person or entity with legal authority to authorize a search of the property.
- 11) Allows a law enforcement agency, without first obtaining a warrant or consent from the property owner over private property, to use an UAS if an exigent circumstance exists.
- 12) Specifies that exigent circumstances include, but are not limited to, the following:
- a) In emergency situations if there is an imminent threat to life or of great bodily harm, including, but not limited to fires, hostage crises, "hot pursuit" situations if reasonably necessary to prevent harm to law enforcement officers or others; and search and rescue operations on land or water.
 - b) To determine the appropriate response to an imminent or existing environmental emergency or disaster, including, but not limited to, oils spills or chemical spills.
- 13) Requires images, footage, or data obtained through the use of an UAS shall be permanently destroyed with one year, except in the following circumstances the agency may retain the data:
- a) For training purposes of the law enforcement agency's employees in matters related to the mission of the law enforcement agency;
 - b) For academic research or teaching purposes;
 - c) If a search warrant authorized collection of the images, footage, or data; and

- d) If the images, footage, or data are evidence in any claim filed or any pending litigation, internal disciplinary proceeding, enforcement proceeding, or criminal investigation.
- 14) Prohibits a person, entity, or public agency from equipping or arming an UAS with a weapon or other device that may be carried by or launched from an UAS and that may cause bodily injury or death or damage to, or the destruction of, real or personal property, unless authorized by federal law.
- 15) Specifies that law enforcement agencies using unmanned aircraft systems shall operate them to minimize the collection of images, footage, or data of persons, places, or things not specified with particularity in the warrant authorizing the use of an unmanned aircraft system, or, if no warrant was obtained, for purposes unrelated to the justification for the operation.
- 16) States that none of the provisions in this bill are intended to conflict with or supersede federal law, including rules and regulations of the Federal Aviation Administration (FAA)
- 17) Authorizes a local legislative body to adopt more restrictive policies on the acquisition or use of unmanned aircraft systems by a law enforcement agency.
- 18) States that except for provisions of this bill, that surveillance restrictions on electronic devices shall also apply to UAS.
- 19) Defines "surveil" as "the purposeful observation of a person or private property with the intent of gathering criminal intelligence."
- 20) Defines "criminal intelligence" as "information compiled, analyzed, or disseminated in an effort to anticipate, prevent, monitor, or investigate criminal activity."
- 21) Defines "law enforcement agency" as "the Attorney General, each district attorney, and each agency of the state or subdivision of the state authorized by statute to investigate or prosecute law violators and that employs peace officers."

EXISTING LAW:

- 1) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. (Cal. Const., art. 1, sec. 13.)
- 2) States that a search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)
- 3) Permits a search warrant to be issued for any of the following grounds:
 - a) When the property subject to search was stolen or embezzled;

- b) When property or things were used as the means to commit a felony;
- c) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered;
- d) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony;
- e) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child or possession of matter depicting sexual conduct of a person under the age of 18 years has occurred or is occurring;
- f) When there is a warrant to arrest a person;
- g) When a provider of electronic communication service or remote computing service has records or evidence, as specified, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery;
- h) When the property or things to be seized include an item or any evidence that tends to show a violation of a specified section of the Labor Code, or tends to show that a particular person has violated that section;
- i) When the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as specified;
- j) When the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of, specified persons;
- k) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms, as specified, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a specified protective order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law;
- l) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation

of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code;

- m) When a sample of the blood of a person constitutes evidence that tends to show a violation of specified provisions in the Vehicle Code relating to driving under the influence offenses and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as specified; and,
 - n) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order, as specified. (Pen. Code, § 1524, subd. (a).)
- 4) Prohibits wiretapping or eavesdropping on confidential communications, which excludes communications made in public or in any circumstance that the parties may reasonably expect that the communication may be overheard or recorded. (Pen. Code, § 632, subd. (c).)
 - 5) Provides that nothing in the sections prohibiting eavesdropping or wiretapping prohibits specified law enforcement officers or their assistants or deputies acting within the scope of his or her authority, from overhearing or recording any communication that they could lawfully overhear or record. (Pen. Code, § 633.)
 - 6) California Public Records Act generally provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 6250 et. seq.)
 - 7) Provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Gov. Code, § 6253)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Technology has played a critical role in helping law enforcement groups strategize new ways to fight crime. A UAS, or drone, can be a great asset to the state and can play an important role in improving public safety. For example, the California Military Department provided firefighters with aerial surveillance while battling the massive Rim Fire in 2013 along the foothills of the Sierra Nevada. This aerial surveillance allowed firefighters to track the fire in real time, allowed commanders to move firefighters out of harm's way and reposition firefighters as the wind shifted the fire across the mountainside.

"Drones may also be able to observe areas that are difficult or dangerous for officers to enter,

they can help assess dangerous situations (such as a hostage situation or bomb threat) and assist in strategizing responses to these incidents.

“Though drone technology is growing quickly, high-tech capabilities (such as detailed imagery from high altitudes, ability to travel large distances) are still under development or cost prohibitive for law enforcement agencies. However, without parameters to guide the use of these devices, the possibility for abuse exists.

“AB 1820 will establish a set of parameters for the use of drones by law enforcement agencies. Specifically, the bill requires law enforcement agencies to develop a set of policies to govern the use of drones that will be presented as a regularly scheduled meeting of the governing body to allow for public comment.

“Additionally, AB 1820 indicates instances in which a warrant is needed for the use of a drone and how long the images captured by a drone must be retained before they can be destroyed.”

- 2) **Background:** According to the Federal Aviation Administration (FAA), an unmanned aircraft system (UAS) is an unmanned aircraft and all of the associated support equipment, control station, data links, telemetry, communications and navigation equipment necessary to operate the unmanned aircraft. A UAS is flown either by a pilot via a ground control system or autonomously through use of an on-board computer, communication link and any additional equipment used to operate the UAS.

An UAS is inherently different from manned aircrafts, both in size and flying capability. Some unmanned aircraft weigh 1,900 pounds and can remain aloft for 30 hours or more because there is no need for them to land to change pilots. Some are six inches long. Others can perform dangerous missions without risking loss of life. However, most UAS currently available for purchase by law enforcement lack the capability to do more than simply hover for small periods of time before needing to recharge.

UAS have myriad practical applications. For example, UAS can be used to survey damage, locate victims, and assess threats in natural and manmade disasters without risking the lives of rescue workers. UAS can be used in agriculture to observe and measure crops while conserving resources and avoiding the use of heavy equipment. UAS can also give the media safe, economical, and environmentally-friendly access to aerial views for news broadcasts when compared to the current use of helicopters and other manned aircraft. Some law enforcement agencies have acquired UAS for the intended use in emergency situations such as hostage-taking, school shootings, and kidnapping-related crimes.

California lacks any law or regulation governing the acquisition and use of UAS by law enforcement agencies. Several jurisdictions have already purchased drones with very little, if any, public announcement or discussion.

- 3) **FAA Regulatory Action on UAS:** The FAA has proposed a framework of regulations that would allow routine use of certain small UAS in today's aviation system, while maintaining flexibility to accommodate future technological innovations. The FAA proposal offers safety rules for small UAS (under 55 pounds) conducting non-recreational operations. The rule would limit flights to daylight optional use of a visual observer, aircraft registration and

marking, and operational limits. (<https://www.faa.gov/uas/nprm/>)

FAA rules prohibit UAS use in FAA airspace but allow commercial users to apply for an exemption from the FAA rules along with an FAA Certificate of Authorization (COA) permitting commercial uses, such as real estate marketing, wedding photography, television, film, mapping, and land surveys. Federal, state and local government agencies, law enforcement, and public colleges and universities can also receive a COA from the FAA, authorizing specific uses of UAS for specific time periods.

For public aircraft operations, the FAA issues a Certificate of Waiver or Authorization (COA) that permits public agencies and organizations to operate a particular aircraft, for a particular purpose, in a particular area. The COA allows an operator to use a defined block of airspace and includes special safety provisions unique to the proposed operation. COAs usually are issued for a specific period – up to two years in many cases. (https://www.faa.gov/uas/public_operations/)

The FAA works with these organizations to develop conditions and limitations for UAS operations to ensure they do not jeopardize the safety of other aviation operations. The objective is to issue a COA with parameters that ensure a level of safety equivalent to manned aircraft. Usually, this entails making sure that the UAS does not operate in a populated area and that the aircraft is observed, either by someone in a manned aircraft or someone on the ground to ensure separation from other aircraft in accordance with right-of-way rules. Common public uses today include law enforcement, firefighting, border patrol, disaster relief, search and rescue, military training, and other government operational missions.

The FAA manages public aircraft COAs through its COA Online system. Before the FAA grants an agency access to COA Online, the agency will be asked to provide the FAA with a "declaration letter" from the city, county, or state attorney's office assuring the FAA that the proponent is recognized as a political subdivision of the government of the State, as specified, and that the proponent will operate its unmanned aircraft in accordance with federal law. (https://www.faa.gov/uas/public_operations/)

- 4) **Fourth Amendment Considerations: Technology and Warrantless Searches:** Both the United States and the California Constitutions guarantee the right of all persons to be secure from unreasonable searches and seizures. (U.S. Const., amend. IV; Cal. Const., art. 1, sec. 13.) This protection applies to all unreasonable government intrusions into legitimate expectations of privacy. (*United States v. Chadwick* (1977) 433 U.S. 1, 7, overruled on other grounds by *California v. Acevedo* (1991) 500 U.S. 565.) In general, a search is not valid unless it is conducted pursuant to a warrant. The mere reasonableness of a search, assessed in light of the surrounding circumstances, is not a substitute for the warrant required by the Constitution. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 758, overruled on other grounds by *California v. Acevedo*, supra.) There are exceptions to the warrant requirement, but the burden of establishing an exception is on the party seeking one. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 760, overruled on other grounds by *California v. Acevedo*, supra.)

Courts have been confronted with questions of how evolving technology intersects with the Fourth Amendment. In *Kyllo v. United States* (2001) 533 U.S. 27, the U.S. Supreme Court considered whether the use of a thermal imager, which detects infrared radiation invisible to

the naked eye, to determine whether the defendant was growing marijuana in his apartment, was a search in violation of the Fourth Amendment. The Court held that "[w]here, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant." (*Id.* at p. 40.)

In *United States v. Jones* (2012) 132 S. Ct. 945, the Supreme Court was presented with a Fourth Amendment challenge to the use of a Global Positioning System (GPS) tracking device by law enforcement officers to monitor the movements of a suspected drug trafficker's vehicle over a period of 28 days. The Court held that the government's installation of the GPS device on the defendant's private property for the purpose of conducting surveillance constituted a "search" under the Fourth Amendment. GPS technology is intrusive because it "generates a precise, comprehensive, record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations. The Government can store such records and efficiently mine them for information years into the future." (*Id.* at pp. 955-956.)

Because technology is always evolving it is important to consider how new technology should be regulated in order to avoid governmental abuse. The Court's decisions in prior cases provide some guidance on how new technology may be evaluated within the framework of the Fourth Amendment's protections against unreasonable searches and seizures. As illustrated in *Kyllo* and *Jones*, even in a public space, the use of advanced technology to conduct surveillance without a warrant may be restricted by the Fourth Amendment.

- 5) **Reasonable Notice Requirement:** The proposed use of UAS by law enforcement has been a divisive issue for some local jurisdictions. Public outcry against the unrestrained use of UAS by the government has led some counties to reconsider their use. In 2013, the sheriff of Alameda County attempted to request funding for UAS by the County Board of Supervisors. The sheriff pulled the item from consideration after public criticism. At the end of 2014, it was revealed that the Alameda County Sheriff went ahead and purchased the UAS using the department's own funds. Critics, including the American Civil Liberties Union, described the issue as "'a troubling example of law enforcement trying to acquire invasive and extremely unpopular surveillance technology in secret.'" (Lee, *Alameda County Sheriff Reveals that He's Bought 2 Drones*, S.F. Gate (Dec. 3, 2014).)

San Jose, after purchasing an UAS, was also met with a hostile response for not informing the public of the device either before or after its purchase. San Jose police issued a statement acknowledging that the department 'should have done a better job of communicating the purpose and acquisition of the (drone) to [the] community. The community should have the opportunity to provide feedback, ask questions, and express their concerns before we move forward with this project.' (Lee, *Alameda County Sheriff Reveals that He's Bought 2 Drones*, S.F. Gate (Dec. 3, 2014).)

This bill requires a law enforcement agency to provide its UAS policy to the public before deploying UAS technology. This bill also requires the law enforcement agency to present its proposed UAS policy at a regularly scheduled and noticed meeting of its governing body with an opportunity for public comment.

- 6) **Weaponized UAS:** UAS devices have the capability of being armed with weapons, lethal and nonlethal. The United States has used armed UAS to target militants in military operations abroad. (Christopher Drew, *Drones Are Weapons of Choice in Fighting Qaeda*, New York Times (Mar. 17, 2009).) Domestically, there has been a push by some law enforcement agencies to arm UAS to fire rubber bullets and tear gas. (See *Drones over US to get weaponized – so far, non-lethally*, RT.com (May 24, 2012).) This bill would prohibit the equipping or arming of an UAS with a weapon or other launchable device that may cause injury, death, or property damage, unless authorized by federal law.
- 7) **Argument in Opposition:** According to *California State Sheriffs' Association*, “. . . , we are concerned with the bill's provision that would prohibit the use of a UAV in another city or county absent a warrant or exigent circumstances. There is no reason to prohibit the use of a UAV during a search and rescue mission, for example, because the local law enforcement agency with jurisdiction does not own one. Moreover, it is simply impractical that a UAV that is operating on the edge of the jurisdictional boundaries of an authorized city or county could limit the collection of data or images to those found solely within that jurisdiction. If anything, the use of UAVs in neighboring counties should be governed by mutual aid agreements or be allowed in multijurisdictional task forces.

“In addition, we must oppose the provisions that would require the promulgation of specific law enforcement policies before the legislative body with “jurisdiction” over the law enforcement agency seeking to use a UAV. While public input is appreciated and is often sought, the state Legislature should not mandate the method in which law enforcement policies are adopted at the local level. We do not believe the public comment period at a board of supervisors meeting – assuming a board of supervisors can be considered the governing body of the office of the elected sheriff – would be conducive to creating appropriate policies and procedures.”

- 8) **Related Legislation:** AB 56 Quirk, of the 2015-2016 Legislative Session, would authorize a law enforcement agency to use an UAS if the law enforcement agency complies with specified requirements. AB 56 is on the Senate Inactive File
- 9) **Prior Legislation:**
 - a) SB 262 (Galgiani), of the 2015-2016 Legislative Session, would have authorize a law enforcement agency to use UAS if the use of the UAS complies with protections against unreasonable searches guaranteed by the United States Constitution and the California Constitution, federal law, and state law applicable to a law enforcement agency's use of an UAS.
 - b) AB 1327 (Gorell), of the 2013-2014 Legislative Session, would have regulated the use of UAS by public agencies and the dissemination and use of any images, data and footage obtained by those systems. AB 1327 was vetoed.
 - c) SB 15 (Padilla), of the 2013-2014 Legislative Session, would have required law enforcement to get a warrant for drone use if it implicated a legitimate expectation of privacy. Would have limited drone use by public agencies to within the scope of the agencies authority and prevented public agencies from providing drone information to law enforcement without a warrant. Would have directed public agencies to destroy

drone information after one year except as specified. SB 15 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

American Civil Liberties Union of California
California State Sheriffs' Association

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

Date of Hearing: March 15, 2016
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1821 (Maienschein) – As Introduced February 8, 2016

SUMMARY: Makes specified sex crimes committed against victims with mental disorders or physical or developmental disabilities qualifying crimes for the "One Strike Sex Law" and the vulnerable victim enhancement. Specifically, **this bill:**

- 1) Adds the crimes of rape, sexual penetration, sodomy, and oral copulation committed against a person who is incapable of giving legal consent due to of a mental disorder or developmental or physical disability to the list of offenses which qualify for application of the "One Strike Sex Law."
- 2) Adds the crimes of rape, sexual penetration, sodomy, and oral copulation committed against a person who is incapable of giving legal consent due to of a mental disorder or developmental or physical disability to the list of offenses which qualify for the vulnerable-victim enhancement.

EXISTING LAW:

- 1) Provides that a person who commits an act of rape against a victim who is incapable of giving legal consent due to of a mental disorder or developmental or physical disability, shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 264.)
- 2) Provides that a person who commits an act of sodomy against a victim who is incapable of giving legal consent due to a mental disorder or developmental or physical disability, shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 286, subd. (g).)
- 3) Provides that a person who commits an act of oral copulation against a victim who is incapable of giving legal consent due to a mental disorder or developmental or physical disability, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. (Pen. Code, § 288a, subd. (g).)
- 4) Provides that a person who commits an act of sexual penetration against a victim who is incapable of giving legal consent due to a mental disorder or developmental or physical disability shall be punished by imprisonment in the state prison for a period of three, six, or eight years. (Pen. Code, § 289, subd. (b).)
- 5) Provides an additional punishment of one year when the defendant knows or reasonably should know that the victim of an enumerated offense is 65 years of age or older, blind, deaf, developmentally disabled, a paraplegic, a quadriplegic, or under 14 years old. (Pen. Code, §

667.9, subd. (a).)

- 6) Provides an additional punishment of two years when the defendant knows or reasonably should know that the victim of an enumerated offense is 65 years of age or older, blind, deaf, developmentally disabled, a paraplegic, a quadriplegic, or under 14 years old, and where the defendant also has a prior conviction for one of those crimes. (Pen. Code, § 667.9, subd. (b).)
- 7) Defines "developmentally disabled" for purposes of the vulnerable victim enhancement as "a severe, chronic disability of a person, which is all of the following:
 - a) Attributable to a mental or physical impairment or a combination of mental and physical impairments;
 - b) Likely to continue indefinitely; and
 - c) Results in substantial functional limitation in three or more of the following areas of life activity:
 - i) Self-care;
 - ii) Receptive and expressive language;
 - iii) Learning;
 - iv) Mobility;
 - v) Self-direction;
 - vi) Capacity for independent living;
 - vii) Economic self-sufficiency." (Pen. Code, § 667.9, subd. (d).)
- 8) Provides that persons who commit rape, spousal rape, rape in concert, lewd and lascivious acts on a minor, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, shall be punished by 25-years-to-life if (Pen. Code, § 667.61, subd. (a)):
 - a) One or more of the following circumstances exist:
 - i) The defendant has been previously convicted of a specified sex offense;
 - ii) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm to him or her;
 - iii) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense;
 - iv) The defendant committed the present offense during the commission of a burglary of the first degree;

- v) The defendant committed rape by a foreign object, sodomy in concert, as specified, oral copulation in concert as specified; or,
- b) Two or more of the following circumstances exist:
 - i) The defendant kidnapped the victim of the present offense, as specified.
 - ii) The defendant committed the present offense during the commission of a burglary, as specified.
 - iii) The defendant personally used a dangerous or deadly weapon or a firearm in the commission of the present offense, as specified.
 - iv) The defendant has been convicted in the present case or cases of committing an offense specified against more than one victim.
 - v) The defendant engaged in the tying or binding of the victim or another person in the commission of the present offense.
 - vi) The defendant administered a controlled substance to the victim in the commission of the present offense, as specified.
- 9) Provides that persons who commit rape, spousal rape, rape in concert, lewd and lascivious acts on a minor, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, shall be punished with 15-years-to-life if one of the following circumstances exist (Pen. Code, § 667.61, subd. (b)):
 - i) The defendant kidnapped the victim of the present offense, as specified.
 - ii) The defendant committed the present offense during the commission of a burglary, as specified.
 - iii) The defendant personally used a dangerous or deadly weapon or a firearm in the commission of the present offense, as specified.
 - iv) The defendant has been convicted in the present case or cases of committing an offense specified against more than one victim;
 - v) The defendant engaged in the tying or binding of the victim or another person in the commission of the present offense; or,
 - vi) The defendant administered a controlled substance to the victim in the commission of the present offense, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Under AB 1821, the scope of existing penalty enhancements in Penal Code section 667.9 will be expanded, thus allowing prosecutors to obtain higher penalties when sex crimes are committed against vulnerable individuals specifically where it is difficult or impossible to prove force was used due to the nature of the victim's disability. In the recent California example, this was imperative as the victim's disability makes her incapable of speech or movement.

"Additionally, AB 1821 will expand One Strike base crime offenses to include sex crimes involving a victim who is incapable of giving consent due to a disability when performed in conjunction with other aggravating circumstances, such as kidnapping, restraining or use of a deadly weapon.

"All victims deserve equal protection under the law. AB 1821 will allow for more equitable punishment for those who commit heinous crimes against victims who do not have the ability to protect themselves."

- 2) **Dual Use of Facts:** "Although a single factor may be relevant to more than one sentencing choice, such dual or overlapping use is prohibited to some extent. For example, the court generally cannot use a single fact both to aggravate the base term and to impose an enhancement, nor may it use a fact constituting an element of the offense either to aggravate or to enhance a sentence." (*People v. Scott* (1994) 9 Cal.4th 331, 350 & fn. 12.)

For example, Penal Code section 12022.7, the great bodily injury enhancement, which allows for enhanced punishment for actual infliction of great bodily injury where a great bodily injury occurred, can be applied to any offense except those where serious bodily injury is already an element of the substantive offense charged. (*People v. Parrish* (1985) 170 Cal.App.3d 336, 343-344; see also Pen. Code, § 12022.7, subd. (e), and Cal. Rules of Court, rule 4.420.)

However, "where the facts surrounding the charged offense exceed the minimum necessary to establish the elements of the crime, the trial court can use such evidence to aggravate the sentence." (*People v. Castorena* (1996) 51 Cal.App.4th 558, 562.) So, for example, where an age is an element of the offense, the victim's age alone may not be used as a factor in aggravation (*People v. Fernandez* (1990) 226 Cal.App.3d 669, 680), unless the victim is extremely young within the given age range so as to make a victim "particularly vulnerable" in relation to others within the age range (*People v. Ginese* (1981) 121 Cal.App.3d 468, 477).

As pertains to this bill, the victim's developmental or physical disability is an element of the enhancement. CALCRIM No. 3222 instructs the jury that it must decide whether the victim was, inter alia, "blind/deaf/developmentally disabled/paraplegic/[or] quadriplegic." The instruction also gives a specific definition for a developmental disability. For a true finding on the enhancement based on this characteristic, the jury must find developmentally disabled means a severe, chronic disability of a person that: 1) is attributable to a mental or physical impairment or a combination of mental and physical impairments; 2) is likely to continue indefinitely; and 3) results in substantial functional limitation in three or more of the following abilities: to care for one's self; to understand and express language; to learn; to be independently mobile; to engage in self-direction; to live independently; or to be economically self-sufficient. (CALCRIM No. 3222.)

The instructions on the substantive crimes also reference the victim's disability. The jury is required to find that a mental disorder/development or physical disability prevents the victim from legally consenting. (See e.g., CALCRIM No. 1004 [rape of a disabled woman].) The finding that there is a disability is limited to whether that disability affects the victim's ability to consent.

Arguably, the jury would have to make additional findings to impose the vulnerable-victim enhancement. The jury would be required to find that the developmental disability satisfied the criteria listed in the jury instruction. Alternatively, the jury could find that a victim suffered from one of the other physical disabilities which would not necessarily have prevented the person from legally consenting to the sex act. So, imposing the victim-vulnerability enhancement on a sex crime committed against a disabled person would not necessarily constitute impermissible dual use of facts.

- 3) **One Strike Law:** The One Strike Sex Crime Law is a separate sentencing scheme which was enacted to provide life sentences for certain aggravated sex offenders, even if they do not have prior convictions. Under this scheme, a first-time offender who commits a qualifying sex offense under one or more of the circumstances listed in the statute is subject to a mandatory sentence of 15 years to life or 25 years to life. (Pen. Code, § 667.61.) The facts that bring a defendant within the provisions of the One Strike Law are grouped into two categories. If a defendant commits a qualifying crime under one circumstance listed in subdivision (e), then he or she will receive a sentence of 15 years to life. If a defendant commits a qualifying crime under one or more circumstances listed under subdivision (d), or two or more circumstances listed under subdivision (e), then he or she will receive a sentence of 25 years to life. The distinction is that the aggravating circumstances listed in subdivision (d) are more severe than those listed in subdivision (e).

This bill adds crimes to the list of offenses which can be prosecuted under the One Strike Law. The additional aggravating circumstances must still be pled and proven to a jury.

- 4) **Prison Overcrowding:** 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.

A recent report on the status of corrections notes:

"The Department's total adult inmate population as of December 9, 2015, was 127,468, of which 112,510 were housed in the Department's adult institutions, and the remaining 14,958 were housed in fire camps or contract beds. The December 9, 2015 institution population was 136.0 percent of design capacity, or 1,212 inmates below the 137.5-percent population cap based on currently constructed capacity. While the activation of three infill facilities will add capacity of 3,267, fall 2015 population projections estimate the total inmate population will increase to 131,092 by June 2020, an increase of 3,624 inmates over the December 9, 2015 population. Therefore, without further population reduction measures or capacity, the state will not be able to further reduce the use of contract beds, or close state-owned facilities." (*An Update to the Future of California Corrections*, January 2016, p. 25, <<http://www.cdcr.ca.gov/Blueprint-Update-2016/An-Update-to-the-Future-of-California-Corrections-January-2016.pdf>>.)

In other words, the state needs a "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).) However, the prison population is currently projected to increase.

CDCR has informed this Committee that in in the last four fiscal years (FY), there were the following admissions to prison for the offenses targeted under this bill:

FY 2011/12

	Principal	Subordinate	Both
PC § 261(a)(1)	4	4	8
PC §286(h)	0	0	0
PC § 286(g)	1	6	7
PC § 288a(g)	3	8	11
PC § 289(b)	1	0	1
Totals	9	18	27

FY 2012/13

	Principal	Subordinate	Both
PC § 261(a)(1)	9	4	13
PC §286(h)	0	1	1
PC § 286(g)	1	1	2
PC § 288a(g)	3	6	9
PC § 289(b)	1	0	1
Totals	14	12	26

FY 2013/14

	Principal	Subordinate	Both
PC § 261(a)(1)	5	4	9
PC § 286(h)	0	0	0
PC § 286(g)	1	0	1
PC § 288a(g)	1	9	10
PC § 289(b)	3	5	8
Totals	10	18	28

FY 2014/15

	Principal	Subordinate	Both
PC § 261(a)(1)	1	7	8
PC § 286(h)	0	0	0
PC § 286(g)	0	0	0
PC § 288a(g)	2	1	3
PC § 289(b)	3	1	4
Totals	6	9	15

However, it should be noted that not all of these admissions would be prosecuted under the One-Strike Law or allege the vulnerable-victim enhancement. Moreover, in those cases in which the vulnerable-victim enhancement is pled and proven, the court retains the discretion to strike it. (Pen. Code, § 1385.) Therefore, expanding the scope of these provisions to include the specified crimes would likely result in minor increased state incarceration.

- 5) **Argument in Support:** According to the *Arc and United Cerebral Palsy California Collaboration*, "Sexual assault of people with developmental disabilities can legitimately be called an epidemic. Your bill will increase penalties for the relatively few persons who the criminal justice system is able to convict of this vile crime, keeping them in prison and preventing their predation of non-incarcerated persons [with] developmental disabilities for longer periods of time."
- 6) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice (CACJ)*, "CACJ understands the needs to protect those in our community who are handicapped or disabled in some manner. Current law imposes very long prison sentences on any individual who sexually assaults another person, and Penal Code § 667.9 currently aggravates that prison sentence if the victim is developmentally disabled.

"AB 1821 would dramatically increase the prison sentence for an individual who sexually assaults the victim who is developmentally disabled as defined in section 667.9. There is no requirement the defendant know he/she is assaulting a person who is developmentally disabled. Hence, the new life sentences in prison authorized by AB 1821 will be imposed on a strict liability offense – a suspect's honest and legitimate ignorance that the victim is developmentally disabled makes no difference. Even if the crime is deemed to require the suspect reasonably should have known that the victim was developmentally disabled, plainly the suspect need not know – it is enough that some imaginary 'reasonable' person would have known.

"Some individuals who are developmentally disabled live in community settings – institutional or otherwise – with other developmentally disabled individuals. As occasional press accounts have reported, one developmentally disabled resident has sometimes engaged in sexual relations with another. As the law provides that a developmentally disabled generally cannot legally consent to sex, such sexual relations will subject the developmentally disabled person who initiates sex to life in prison. Indeed, under the amendment of section 667.61 proposed by AB 1821, if that developmentally disabled person enters the separate room of the second developmentally disabled person in a residential facility to have sex, the 'offender' will be subject to 'imprisonment in state prison for life

without the possibility of parole' as provided in section 667.61, subdivision (l). There is no demonstrated need for the changes proposed and no evidence the targeted crimes will be deterred or that others will be any better protected."

7) Related Legislation:

- a) AB 1272 (Grove) requires the court to make reasonable efforts to avoid scheduling a case involving a crime committed against a person with a developmental disability when the prosecutor has another trial set. AB 1272 is pending in the Senate Public Safety Committee.
- b) AB 2606 (Grove) requires law enforcement agencies to forward reports of alleged sexual assault and abuse committed by individuals to whom state agencies issue credentials, licenses, or permits to provide services to people with disabilities, children, elders, or dependent adults, to the licensing agency. AB 2606 is pending hearing in this Committee.

8) Prior Legislation:

- a) AB 962 (Maienschein), of the 2015 Legislative session was identical to this bill. AB 962 was held on the Assembly Appropriations Committee suspense file.
- b) AB 1335 (Maienschein), of the 2013-2014 Legislative Session, also contained the same provisions as this bill. AB 1335 was held on the Senate Appropriations Committee suspense file.
- c) AB 313 (Zettel), Chapter 569, Statutes of 1999, added deaf and developmentally disabled persons as qualifying victims to the existing enhancement statute for serious crimes committed against the elderly, children under age 14, and persons who are either blind, a paraplegic, or quadriplegic.
- d) SBx1 26 (Bergeson), Chapter 14, Statutes of 1994, codified the One-Strike Sex Law.

REGISTERED SUPPORT / OPPOSITION:

Support

Arc and United Cerebral Palsy California Collaboration
Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
Easter Seals
Los Angeles Police Protective League
Los Angeles Probation Officers Union
Los Angeles Professional Peace Officers Association
Riverside Sheriffs Association
San Diego County District Attorney

Opposition

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

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

Date of Hearing: March 15, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1822 (Irwin) – As Amended March 1, 2016

SUMMARY: Authorizes the court to order a person who has been convicted of providing, or attempting to provide, money, in exchange for an act of prostitution, to attend and successfully complete a sex trade buyer first offender program. Specifically, **this bill:**

- 1) Allows the court to order a person who has been convicted of his or her first violation of solicitation of prostitution, for providing, or offering or attempting to provide, money or another thing of value, in exchange for an act of prostitution, to attend and successfully complete a sex trade buyer first offender program, as specified, if an approved program is available.
- 2) Requires the probation department in each county to design and implement an approval and renewal process for sex trade buyer first offender programs, as specified.
- 3) Specifies that the probation department shall solicit input from criminal justice agencies and sex trafficking victims' advocacy programs in developing the sex trade buyer first offender program.
- 4) States that the probation department shall have exclusive authority over the issuance of annual and provisional approval to operate a sex trade buyer first offender program, provided that all approved programs meet all of the following criteria:
 - a) Are in substantial compliance with applicable laws and regulations.
 - b) Provide six to eight hours of education for each defendant, including information regarding all of the following topics:
 - i) The legal consequences of subsequent offenses;
 - ii) Sex buyers' vulnerability to being robbed or assaulted while participating in the sex trade;
 - iii) Health education, describing the elevated risk of HIV and other STD infections associated with the sex trade;
 - iv) Effects of the sex trade on sellers of sex, many of whom are victims of sex trafficking, focusing on the numerous negative consequences for sellers of sex, including vulnerability to rape and assault, health problems, drug addiction, and various forms of exploitation;

- v) Dynamics of sex trafficking, including how pimps and traffickers recruit, control, and exploit women and children for profit, the experiences of a sex trafficking survivor, either in video or in person, and an explanation of the prevalence of human trafficking in the sex trade;
 - vi) Effects of the sex trade on the community, describing drug use, violence, health hazards, and other adverse consequences; and
 - vii) Sexual addictions, focusing on how involvement in commercial sex may be driven by sexual addiction and how to seek help for this condition.
- c) Provide adequate reporting requirements to ensure that all participants in the programs may be identified for failing to successfully complete the program.
 - d) Approval by the probation department on an annual basis.
- 5) The probation department shall adopt and implement procedures for approving a new or existing program, and for revoking or suspending approval of an existing program, including procedures that do all of the following:
- a) Require the applicant to complete a written application containing necessary and pertinent information describing the program.
 - b) Require the program to demonstrate that it possesses adequate administrative and operational capability.
 - c) Require the department to conduct an onsite review of the program, including monitoring a session to determine that the program adheres to applicable statutes and regulations.
 - d) Impose all of the following requirements regarding an existing program that the probation department determines is not in compliance with the standards set by the department:
 - i) Require the probation department to send written notice to the program regarding areas of noncompliance.
 - ii) Require the program to submit a written plan of corrections within 14 days of the date of the written notice of noncompliance.
 - iii) Require the department to review and approve all, or any part of, the plan of correction and notify the program of approval or disapproval in writing, or to consider whether to revoke or suspend approval of the program, and upon the revocation or suspension of approval, to prohibit further referrals of participants to the program.

EXISTING LAW:

- 1) Specifies that a person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to engage in prostitution, regardless of whether the offer or solicitation was made by a person who also

- possessed the specific intent to engage in prostitution. (Pen. Code, § 647, subd. (b).)
- 2) States that no agreement to engage in an act of prostitution shall constitute a criminal violation, as specified, unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. (Pen. Code, § 647, subd. (b).)
 - 3) States that "prostitution" includes "any lewd act between persons for money or other consideration." (Pen. Code, § 647, subd. (b).)
 - 4) Specifies that "probation" means "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer." (Pen. Code, § 1203(a).)
 - 5) Specifies that "conditional sentence" means "the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. (Pen. Code, § 1203(a).)
 - 6) Provides that the court, in granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those terms and conditions as it shall determine. (Pen. Code, § 1203.1.)
 - 7) States that the court may impose and require any or all of the terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. (Pen. Code, § 1203.1, subd. (j).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Human trafficking is a major issue in California. According to a 2012 report by the California Attorney General, between mid-2010 and mid-2012, California's regional task forces initiated over 2,500 investigations, identified nearly 1,300 victims of human trafficking, and arrested nearly 1,800 individuals. Studies have shown that human trafficking increases based on the demand. AB 1822 will decrease the demand for human trafficking, specifically sex trafficking, by reducing the recidivism rate of convicted sex buyers.

"This bill would establish statewide standards for local Sex Trade Offender Programs (STOP) that educate convicted sex trade buyers about the harms of the sex trade. This

program would be in addition to any existing penalties required by law, including jail time or fines. The education required by STOP includes the legal consequences of subsequent offenses, health education including the increased risk of HIV and other STDs and the effects of the sex trade on sellers of sex and sex trafficking victims and survivors. This bill would authorize the court to require a convicted sex buyer to attend and successfully complete a Sex Trade Offender Program in addition to any other penalty required by existing law.

“As of 2012, approximately 50 cities and counties in the U.S. including Santa Clara, San Diego, Los Angeles, and Fresno have programs that focus on reducing the demand for sex trafficking by educating sex buyers. These programs have been proven to reduce the rate of re-offense. AB 1822 uses local best practices and evidence-based programming to establish statewide standards to reduce the demand for sex trafficking in California. Establishing the Sex Trade Offender Program would reduce recidivism by exposing perpetrators to the harms of the sex trade, particularly the harm caused to sex trafficking victims and survivors, and reduce the demand side of the sex trafficking industry.”

- 2) **San Francisco District Attorney’s Office First Offender Prostitution Program (FOPP):** FOPP is a court diversion program aimed at reducing the volume and impact of sex buying by targeting those who purchase sex. The program was first started in San Francisco in 1995. The program is based on the belief that education as opposed to punishment was an effective strategy to address the problems created by the sex industry.

The program is focused on educating the purchasers of sex, sometimes referred to as “john’s.” Purchasers of sex that are dealing with criminal charges for that behavior are predominantly men. The curriculum of the first offender is designed to help men understand the negative effects of being raised in a culture that promotes a system of male superiority and entitlement toward women.

The program has incorporated evidence-based practices into the FOPP programming. It includes: Social Learning Theory, Cognitive Behavioral Interventions, Brief Interventions, Harm Reduction, and Peer Reeducation. As part of the FOPP, the legal consequences for subsequent arrests for solicitation of prostitution are emphasized. Participants in the FOPP, are educated about the impacts of prostitution on the participants in the sex industry, the impact of sexual exploitation, the health risks of engaging in prostitution, and the impact of prostitution on the neighborhoods where it occurs.

- 3) **Success of Education Programs for Buyers of Sex:** As of 2012, approximately 50 cities and counties in the U.S. including Santa Clara, San Diego, Los Angeles, and Fresno have similar programs. (An Overview of John Schools in the United States, (2012), pp. 3-5.)

A 2008 study commissioned by the Department of Justice and conducted by Abt Associates found that the First Offender Prostitution Program (FOPP) was successful in substantially reducing recidivism among men arrested for soliciting prostitutes. According to the report, data collected from 10 years prior to implementation and 10 years after implementation (1985 through 2005) showed a sharp drop in re-offense rates (recidivism) in 1995, the first year of implementation. This low level of recidivism was sustained throughout the 10 years studied between 1995 and 2005. The study also found that data from San Diego showed that recidivism rates were cut in half after their education program was implemented. In summary, “FOPP significantly reduces recidivism” and is highly transferable, having been

successfully replicated and adapted in other cities in the U.S. (Final Report on the Evaluation of the First Offender Prostitution Program (2008), Abt Associate, pp. v-vi and x.)

- 4) **Courts General Power to Impose Conditions of Probation:** Courts have broad general discretion to fashion and impose additional probation conditions that are particularized to the defendant. (*People v. Smith* (2007) 152, Cal.App.4th 1245, 1249.) Courts may impose any “reasonable conditions” necessary to secure justice, make amends to society and individuals injured by the defendant’s unlawful conduct, and assist the “reformation and rehabilitation of the probationer.” (Pen. Code, § 1203.1.) A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)
- 5) **Argument in Support:** According to the *California State Sheriffs’ Association*, “The STOP program is another tool the court can use to educate persons convicted of soliciting prostitution about the negative impact of prostitution in general and exposing perpetrators to the harms of the sex trade, particularly the harm caused to sex trafficking victims and survivors”
- 6) **Related Legislation:** SB 776 (Block), of the 2015-2016 Legislative Session, specifies a minimum fine upon offenders who engage in prostitution and directs that money to be spent on services for commercially exploited persons in the county in which they are collected. SB 776. SB 776 was referred to interim study.
- 7) **Prior Legislation:** AB 2040 (Swanson), Chapter 197, Statutes of 2012, provides that a person who was juvenile ward of the court for the commission of a violation of specified prostitution offenses, may petition a court to have his or her records sealed, as specified. States that the relief provided by the bill does not apply to a person who paid money, or attempted to pay money, to any person for the purposes of prostitution.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs’ Association

Opposition

None

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

Date of Hearing: March 15, 2016
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1824 (Chang) – As Introduced February 8, 2016

SUMMARY: Expands the situations in which an individual can be charged with causing injury to, or the death of, any guide, signal, or service dog. Specifically, **this bill:**

- 1) Deletes, specified crimes against guide, signal, or service dogs, the requirement that the dog be in discharge of its duties when the injury or death occurs and would make these crimes applicable to the injury or death of dogs that are enrolled in a training school or program for guide, signal, or service dogs, as specified.
- 2) Requires the defendant, convicted of either crime, to also make restitution to the person for medical or medical-related expenses, or for loss of wages or income, incurred by the person as a direct result of the crime.

EXISTING LAW:

- 1) Defines "guide dog" as any guide dog that was trained by a licensed person, as specified. (Cal. Civ. Code § 54.1, subd. (6)(C)(i).)
- 2) Defines a "signal dog" as any dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds. (Civil Code § 54.1, subd. (6)(C)(ii).)
- 3) Defines a "service dog" as any dog individually trained to the requirements of the individual with a disability including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items. (Civil Code § 54.1, subd. (6)(C)(iii).)
- 4) Provides that it is a crime for any person to permit any dog which is owned, harbored, or controlled by him or her to cause injury to or the death of any guide, signal, or service dog, while the guide, signal, or service dog is in discharge of its duties: (Pen. Code § 600.2, subd. (a).)
 - a) Provides that a violation of this section is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) if the injury or death to any guide, signal, or service dog is caused by the person's failure to exercise ordinary care in the control of his or her dog; (Pen. Code § 600.2, subd. (b).)
 - b) Provides that a violation of this section is a misdemeanor if the injury or death to any guide, signal, or service dog is caused by the person's reckless disregard in the exercise of control over his or her dog, under circumstances that constitute such a departure from the conduct of a reasonable person as to be incompatible with a proper regard for the safety and life of any guide, signal, or service dog. A violation of this subdivision shall be

- punishable by imprisonment in a county jail not exceeding one year, or by a fine of not less than two thousand five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000), or both. The court shall consider the costs ordered when determining the amount of any fines; and (Pen. Code § 600.2, subd. (c).)
- c) Provides that in any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the person with a disability who has custody or ownership of the guide, signal, or service dog for any veterinary bills and replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court. The costs ordered pursuant to this subdivision shall be paid prior to any fines. The person with the disability may apply for compensation by the California Victim Compensation and Government Claims Board, in an amount not to exceed ten thousand dollars (\$10,000). (Pen. Code § 600.2, subd. (d).)
- 5) Specifies that any person who intentionally causes injury to or the death of any guide, signal, or service dog, while the dog is in discharge of its duties, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both a fine and imprisonment. The court shall consider the costs ordered when determining the amount of any fines: (Pen. Code § 600.5, subd. (a).)
- a) Provides for any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the person with a disability who has custody or ownership of the dog for any veterinary bills and replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court; and (Pen. Code § 600.5, subd. (b).)
- b) Provides the costs ordered pursuant to this subdivision shall be paid prior to any fines. The person with the disability may apply for compensation by the California Victim Compensation and Government Claims Board pursuant to Chapter 5 in an amount not to exceed ten thousand dollars (\$10,000). (Pen. Code § 600.5, subd. (b).)
- 6) Provides that any person who maliciously strikes, beats, kicks, stabs, shoots, or throws, hurls, or projects any rock or object at any horse being used by a peace officer, or any dog being supervised by a peace officer in the performance of his or her duties is a public offense. If the injury inflicted is a serious injury, as specified, the person shall be punished by imprisonment for 16 months, two or three years, or in a county jail for not exceeding one year, or by a fine not exceeding two thousand dollars, or by both a fine and imprisonment. If the injury inflicted is not a serious injury, the person shall be punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars, or by both a fine and imprisonment. (Pen. Code, § 600, subd. (a).)
- 7) States that any person who willfully and maliciously interferes with, or obstructs, any horse or dog being used by a peace officer or any dog being supervised by a peace officer in the performance of his or her duties by frightening, teasing, agitating, harassing, or hindering the horse or dog shall be punished by imprisonment in a county jail not exceeding one year; by a fine not exceeding \$1,000; or by both. (Pen. Code, § 600, subd. (b).)

- 8) Provides that any person who, with the intent to inflict serious injury or death, personally causes the death, destruction, or serious physical injury of a horse or dog being used by, or under the direction of, a peace officer shall, shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment pursuant for one year. (Pen. Code, § 600, subd. (c).)
- 9) Defines "serious injury" to include "bone fracture, loss or impairment of function of any bodily member, wounds requiring extensive suturing, or serious crippling." (Pen. Code, § 600, subd. (c).)
- 10) Provides that any person with the intent to inflict that injury, personally causes great bodily injury to a person not an accomplice, shall, upon conviction of a felony under this section, in addition and consecutive, be punished by an additional term of imprisonment in the state prison for two years unless the conduct can be punished under Penal Code section 12022.7 or it is an element of a separate offense for which the person is convicted. . (Pen. Code, § 600, subd. (d).)
- 11) Requires the defendant to make restitution to the agency owning the animal and employing the peace officer for any veterinary bills, replacement costs of the animal if it is disabled or killed, and the salary of the peace officer for the period of time his or her services are lost to the agency. (Pen. Code, § 600, subd. (e).)
- 12) Provides that when battery is committed against any person, including a peace officer and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in the state prison for two, three, or four years or by imprisonment in a county jail not exceeding one year. (Pen. Code, § 243, subd. (d).)
- 13) Specifies the actions of a person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal as a criminal offense. (Pen. Code, § 597.)
- 14) Specifies when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor as a criminal offense. (Pen. Code, § 597, subd. (b).)
- 15) Specifies the actions of a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, as specified as a criminal offense. (Pen. Code, § 597, subd. (c).)
- 16) Requires punishment as a felony by, or by a fine of not more than twenty thousand dollars (\$20,000), or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail for not more than one year, or by a fine of not more than

twenty thousand dollars (\$20,000), or by both that fine and imprisonment for violations of animal cruelty. (Pen. Code, § 597, subd. (d).)

- 17) Specifies that upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as specified, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as specified, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition. (Pen. Code, § 597, subd. (g).)
- 18) Specifies that mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state. (Pen. Code, § 597, subd. (g).)
- 19) Requires that if a defendant is granted probation for a conviction animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. The counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This does not apply to cases involving police dogs or horses as described in Section 600. (Pen. Code, § 597, subd. (h).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "California took a positive step forward when they adopted legislation to make it a crime to attack a service dog while in performance of its duties. Unfortunately, there are still situations that leave guide dogs and their owners vulnerable. AB 1824 will make it a crime to attack a service dog regardless of if it is in discharge of its duties. These animals go beyond monetary value by providing a service which countless members of the disabled community depend on. Without the aid of these animals, the independence of their owners is put on hold. Members of the disabled community are likely to miss work or even get injured while trying to get through their day to day life without their service animal. For this purpose, my legislation will also enable victims to receive restitution for any lost wages or medical expenses incurred while they are without the service of their dog."
- 2) **The Cost of Injury to Guide and Service Dog:** If a guide dog must be retired due to attacks by people and/or their unleashed dogs, the cost, in both economic and human terms, is significant. According to The Seeing Eye, which provides specially bred and trained dog guides for blind persons, it costs \$50,000 to breed, raise, and train a dog. It takes approximately 18 months to adequately train a seeing eye dog, followed by an additional

month with the disabled person to which they will be paired; the program provides a blind person with airfare, room and board for four weeks, during the course of instruction, as well as the dog's equipment; and provide follow-up services for life. A dog will work on average eight years. Guide Dog Users, Inc., states, "To disrupt the working life of a trained dog guide because a pet owner did not control its dog is a shameful waste."

The Legislator's Handbook written by Guide Dog Users, Inc., also states, "Imagine the hurt and rage, the sorrow and frustration at the needless waste when a working dog is changed into a being that cowers and trembles when it...sees another dog and that brings back that fearful, awful moment when, from out of nowhere, it was attacked by a loose dog. Imagine fear so strong that the dog finds it impossible to work for the [person with a disability] to whom it has lovingly and selflessly devoted its life. Imagine all the emotions felt by the handler as they try to rescue the dog. The handler cannot describe the attacking dog, can only stand alone, angry and afraid, soon realizing that no one will come forward to testify to what has happened. Every year, [our] members contact us with versions of this tale of horror and needless waste and pain."

- 3) **Argument in Support:** According to the *California Council of the Blind*, "Under existing law, it is an infraction or a misdemeanor for any person to permit any dog which is owned, harbored, or controlled by him or her to cause injury to or the death of any guide, signal, or service dog while the dog is not engaged in these duties. Under these circumstances, it is very difficult for guide, signal, or service dog users to recover the costs incurred due to these attacks. This bill would expand these provisions by eliminating the requirements that the guide, signal, or service dog be in discharge of its duties, thus allowing recovery in those situations.

"Existing law requires a person convicted of these crimes to make restitution for specified costs incurred by the handler of the guide, signal, or service dog. This bill would expand these restitution provisions to cover medical or medical-related expenses and loss of wages or income."

- 4) **Prior Legislation:** AB 2264 (Levine), Statutes of 2014, Chapter 502, allowed a person with a disability who has ownership or custody of a guide, signal, or service dog that has been injured or killed due to the intentional actions of another individual, as specified, to seek reimbursement from the board for veterinary bills, replacement costs, or other costs deemed reasonable by the court, if the defendant is unable to pay restitution.

REGISTERED SUPPORT / OPPOSITION:

Support

California Council of the Blind

Opposition

None

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

Date of Hearing: March 15, 2016

Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1854 (Bloom) – As Introduced February 10, 2016

SUMMARY: Allows for the recovery of incurred attorney's fees out of forfeited bail money when the district attorney, county counsel, or applicable prosecuting agency successfully opposes a motion to vacate the forfeiture or in collecting on the summary judgment. Specifically, **this bill:** States that county counsel, district attorneys or other applicable prosecuting agencies shall recover costs and attorney's fees incurred when those attorneys successfully oppose a motion to vacate bail forfeiture.

EXISTING LAW:

- 1) States that bail permits a defendant to be released from custody by posting bond, which is a promise to pay the bond amount unless the defendant meets the conditions, which is generally to make all of their court appearances. (Pen. Code, § 1269.)
- 2) Entitles defendants to bail prior to conviction as a matter of right unless the offense is punishable by death or a public safety exception is established. (Cal. Const., art. I, sec. 12.)
- 3) States that bail is set by the magistrate at the defendant's first court appearance. (Cal. Const. art. I, section 12; Pen. Code, § 1271.)
- 4) States that judges fix the bail amount according to a countywide schedule which sets bail amounts according to the offense charged. (Pen. Code, § 1269b, subd. (c).)
- 5) States that the availability of bail after conviction in felony cases is up to the judge's discretion if the felony is one of the enumerated felonies. (Pen. Code, § 292.)
- 6) Allows judges to adjust the bail up or down from the fee schedule when certain conditions exist, but public safety is the primary concern. (Pen. Code, § 1268, 1269c, 1275, 1289.)
- 7) Permits judges to attach conditions on bail which, if violated, can result in forfeiture of the bail. (Pen. Code, § 1269c)
- 8) States that defendants forfeit their bail when they abscond, i.e. when the defendant fails to appear for their court hearing without a valid excuse. (Pen. Code, § 1275, 1305.)
- 9) Allows the bail surety agents may contest bail forfeiture by filing a motion to vacate the forfeiture of bail. (Pen. Code, § 1305.)
- 10) States that county counsel, district attorneys or other applicable prosecuting agency shall recover costs incurred when the attorneys successfully oppose a motion to vacate bail

forfeiture. (Pen. Code, § 1305.3.)

- 11) Holds that costs do not include attorney's fees in bail forfeiture hearings. (*People v. U.S. Fire Ins. Co.* (2012) 210 Cal.App4th 1423, 1426.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1854 would help restore funding for the costs incurred by prosecutorial agencies in litigating bail forfeiture motions. Forfeiture of bail due to failure of a defendant to appear in court is often followed by a counter-motion to challenge the forfeiture. A significant amount of time and attorney's fees are involved in opposing these motions, and financially strapped local prosecutors, district attorneys, and county counsels bear the costs. This bill would allow them to recover a portion of those costs out of the forfeited bail money when they have successfully opposed a motion to vacate a bail forfeiture."
- 2) **Summary:** A defendant forfeits the bail they posted when they fail to appear in court or when they do not fulfill the conditions of their bail, such as committing another offense or intimidating witnesses in their case. A motion to vacate forfeiture of bail is simply a motion to contest the forfeiture of the bail posted by the defendant. These motions are filed either by defense counsel or the bond surety agent in order to recover the bail funds they posted. When defense counsel, or a surety agent, file a motion to vacate forfeiture of bail, a prosecuting attorney has the option to contest the motion. This bill would allow those prosecuting attorneys to recover their attorneys' fees when they successfully contest motions to vacate forfeiture of bail.
- 3) **Background:** As provided by the author, "This proposal would restore funding for prosecutorial agencies and county counsel offices for the costs that are incurred in successfully opposing a motion to vacate the forfeiture of bail. It would amend Section 1305.3 of the Penal Code to include 'attorney fees.'

"Existing law sets forth procedures under which the court is authorized to declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for certain proceedings. The defendant's surety or bail bond agency in turn often files a motion to vacate the forfeiture--challenging the court's forfeiture and countering with a claim explaining why the bail should not be forfeited. There are significant costs for district attorney, county counsel, and prosecuting offices in opposing these motions.

"California Penal Code section 1305.3 states:

'The district attorney, county counsel, or applicable prosecuting agency, as the case may be, shall recover, out of the forfeited bail money, the costs incurred in successfully opposing a motion to vacate the forfeiture and in collecting on the summary judgment prior to the division of the forfeited bail money between the cities and counties in accordance with Section 1463.'

“Following the enactment of Penal Code section 1305.3, prosecutorial agencies successfully recovered attorneys’ fees in a number of bail forfeiture cases. For example, in *Lincoln General Ins. Co. & Aladdin Bail Bonds v. Superior Court* (Case No. SJ1570; Crim. Case No. NA052587), after upholding the trial court’s forfeiture on appeal, the Los Angeles District Attorney’s Office received \$2,024.95 in attorney fees. Similarly, in *People v. Hernandez (Aegis Security Ins. Co.)* (Case No. 0SJ0213; Crim. Case No. GA047929), the trial court awarded LADA \$3,181.21 in attorneys’ fees.

“Unfortunately, in November of 2012, the Court of Appeal in *People v. U.S. Fire Ins. Co.* (2012) 210 Cal.App4th 1423, 1426, found that the provision in section 1305.3 allowing the recovery of “costs” did not include attorney fees. They reached this conclusion by holding that the ordinary and usual meaning of “costs” in California has only encompassed reporter’s transcripts and filing costs, but not attorney fees.

“The court in *People v. U.S. Fire Ins. Co.* (2012) stated: “In sum, applying the rules of statutory construction and the law regarding the award of attorney fees as costs, we must conclude that an award of costs under section 1305.3 does not include attorney fees. *Including attorney fees as costs in this context is a change that should be left to the Legislature.*

“This proposal seeks to insert the term ‘attorney fees’ into the statute.

“Prosecuting offices are often financially constrained and currently fund all of these bail forfeiture cases. This bill would allow them to recover a significant portion of the costs and lessen the cost burden. Since these cases can often involve multiple court appearances and unique legal issues, the attorney costs generated are significant. Los Angeles County District Attorney Office observed, ‘Given the financial constraints faced by our Office, it is imperative that all deputies make every effort to recover attorneys’ fees when they have successfully opposed a motion to vacate a bail forfeiture.’

“Due to denial of attorney fee recovery, local government prosecutors sometimes avoid bail forfeiture litigation altogether. This bill provides a revenue stream that would otherwise have been lost.”

- 4) **Distribution of Bail Forfeiture Funds:** When bail is forfeited, state penalties, county penalties, special penalties, service charges, and penalty allocations are distributed to the proper funds first. The arresting agency and courts then receive their portions of the bail funds to alleviate their costs. After these distributions are made, the prosecuting attorney who successfully defends a motion to vacate forfeiture of bail can recover their costs. This bill would allow the prosecuting attorneys to recover their attorneys’ fees. After collection of costs (and attorneys’ fees should this bill becomes law), the cities and counties receive the remainder according to Penal Code Sections 1463.001 and 1463.002.
- 5) **Bail:** The 8th Amendment to the United States of America states: "*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*"
 - a) **Generally:** Bail is a security given to the court to guarantee a defendant's future attendance at court proceedings. The amount of bail required is typically set according to the local bail schedule that lists common offenses and a suggested amount. These bail

schedules are set by county judges. At arraignment, the magistrate will review the case and set bail in an amount he or she deems sufficient to ensure the defendant's appearance. While the usual practice is to adhere to scheduled bail, either the prosecution or the defense may argue for a departure from the bail schedule based on aggravating and mitigating factors, danger to the public, and ties to the community.

Bail permits a defendant to be released from actual custody into the constructive custody of a surety on a bond given to procure the defendant's release. Bail, once posted, stands until forfeited or exonerated to ensure the defendant's appearance at all stages of the proceedings on the original charge. (Pen. Code §§ 1273, 1278 subd. (a), 1458-1459.) If bail was posted through a bail bond agency, the agent and the defendant sign a bail agreement that will usually fix the term of the bail bond as one year. The defendant must pay a renewal premium for any additional period.

- b) **Bail Bonds:** A bail bond is a document, executed by a surety, that is a promise to pay the face amount of the bond equivalent to the sum set as bail, unless the defendant fulfills the conditions of the bond. (Pen. Code § 1269.)
- c) **Bail Forfeiture:** If a defendant fails to appear as ordered by the court and does not have a sufficient excuse, the court must declare the bail forfeited. (Pen. Code § 1305.) Sufficient reasons for failure to appear are usually based on representations made by counsel. (*People v. Amwest Sur. Ins. Co.* (1997) 56 CA4th 915, 925.)

A surety or the surety and the defendant must appear before the court within 180 calendar days after notice of forfeiture to establish a satisfactory excuse for the defendant's neglect. (Pen. Code § 1305.) The surety is entitled to be released from the forfeiture if any of the following applies (Pen. Code § 1305.):

- i) The court fails to meet the requirement of mailing notice;
- ii) The defendant and his or her surety appear with a satisfactory excuse for the defendant's absence;
- iii) The defendant surrenders to the court or to custody;
- iv) The defendant dies or has permanent inability to appear due to illness, insanity, or detention by other authorities, all without connivance of the surety.

Forfeiture of the defendant's bail as a result of his or her failure to appear is proper only when the defendant failed to appear on the charges for which the bail was posted. *People v. King Bail Bond Agency* (1990) 224 CA3d 1120.

Before forfeiture, the surety or other person who deposited the assets may surrender the defendant into custody to obtain exoneration of the bail money. (Pen. Code, § 1300, subd. (a).)

- 6) **Argument in Support:** According to the *Los Angeles County District Attorney's Office*, a sponsor of this bill, "AB 1854 will help restore funding for the costs incurred by prosecutorial agencies in litigating bail forfeiture motions. Forfeiture of bail due to failure of a defendant to appear in court is often followed by a counter-motion to

challenge the forfeiture. A significant amount of time and attorney's fees are involved in opposing these motions, and financially strapped local prosecutors, district attorneys, and county counsels bear the costs. AB 1854 will allow prosecutorial offices and county counsels to recover the cost for litigating these motions out of the forfeited bail money when they have successfully opposed a motion to vacate a bail forfeiture.

“Existing law sets forth procedures under which the court is authorized to declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for certain proceedings. The defendant's surety or bail bond agency in turn often files a motion to vacate the forfeiture--challenging the court's forfeiture and countering with a claim explaining why the bail should not be forfeited. There are significant costs for district attorney, county counsel, and prosecuting offices in opposing these motions.

“California Penal Code section 1305.3 states:

"The district attorney, county counsel, or applicable prosecuting agency, as the case may be, shall recover, out of the forfeited bail money, the costs incurred in successfully opposing a motion to vacate the forfeiture and in collecting on the summary judgment prior to the division of the forfeited bail money between the cities and counties in accordance with Section 1463.

Since 1994, prosecutorial agencies successfully recovered attorneys' fees pursuant to Penal Code section 1305.3. Unfortunately, in November of 2012, the Court of Appeal in *People v. U.S. Fire Ins. Co.* (2012) 210 Cal.App4th 1423, 1426, found that the provision in section 1305.3 allowing the recovery of "costs" did not include attorney fees. They reached this conclusion by holding that the ordinary and usual meaning of "costs" in California has only encompassed reporter's transcripts and filing costs, but not attorney fees.

The court in *People v. U.S. Fire Ins. Co.* (2012) stated:

‘In sum, applying the rules of statutory construction and the law regarding the award of attorney fees as costs, we must conclude that an award of costs under section 1305.3 does not include attorney fees. Including attorney fees as costs in this context is a change that should be left to the Legislature.’

“AB 1854 inserts the term "attorney fees" into the statute.

“Prosecuting offices are often financially constrained and currently fund all of these bail forfeiture cases. This bill would allow them to recover a significant portion of the costs and lessen the cost burden. Since these cases can often involve multiple court appearances and unique legal issues, the attorney costs generated are significant. Los Angeles County District Attorney Office observed, "Given the financial constraints faced by our Office, it is imperative that all deputies make every effort to recover attorneys' fees when they have successfully opposed a motion to vacate a bail forfeiture."

“Due to denial of attorney fee recovery, local government prosecutors sometimes avoid bail forfeiture litigation altogether.”

- 7) **Argument in Opposition:** According to the *Golden State Bail Agents Association*, “GSBAA opposes AB 1854 (Bloom) because it seeks to create a one-way attorney fee provision where attorney fees would only be awarded when the county counsel or district attorney prevails in a motion to vacate a bail forfeiture. Bail agents would not be awarded attorney fees when they prevail in a motion to vacate a forfeiture. This would not only be unfair to bail agents, it will lead to oppressive negotiation of disputes, oppressive litigation tactics and will negatively impact bail consumers, as shown below.

“Most bail bond forfeitures are paid without the need for litigation, however, occasionally disputes arise and litigation ensues. Under current law, when bail bond forfeitures are contested, each side to the litigation pays their own attorney fees. In 2012, the 5th District Court of Appeals [sic] made it clear that county counsel is not entitled to attorney fees when they prevail in bail bond forfeiture litigation:

“Appellant further argues that the legislative history for section 1305.3 supports awarding attorney fees as costs. This history primarily explains that the statute was amended to make clear that county counsel, while not technically a prosecuting agency, should be able to recover costs for successfully opposing the vacation of forfeiture before the money is divided between cities and counties. However, contrary to appellant’s position, county counsel being given the ability to recoup some operating costs before the bail money is divided does not demonstrate a legislative intent to award county counsel attorney fees. (*People v. U.S. Fire Ins. Co.* (2012) 210 Cal.App.4th 1423, 1428.)

“This bill will overrule the above case and allow county counsel to recover attorney fees out of the forfeited bail money when they prevail. These attorney fees would be paid prior to the division of the forfeited bail money between cities and counties in accordance with Penal Code § 1463. Since county counsel would be paid their fees prior to division, *this bill would reduce the county’s share of the forfeiture money.*

“The public policy behind the enactment of Civil Code § 1717 is applicable to the proposed one-way attorney fee provision of AB 1854. Civil Code § 1717 provides that a contract with a one-way attorney fee provision is deemed to implement two-way fee shifting:

“[T]he party who is determined to be the prevailing party on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney fees.” (Civil Code Sec. 1717(a))

“The public policy purpose of Civil Code § 1717 is not solely to protect weaker individuals, but also to prevent oppressive negotiation of contracts, oppressive negotiation of disputes, and oppressive litigation tactics. As stated by the California Court of Appeal:

““Civil Code section 1717 is not designed exclusively for the benefit of individuals or unsophisticated, weaker parties to a contract. Rather, it reflects a general policy to prevent one-sided attorney fee provisions. Thus, it promotes certainty, and prevents overreaching both in the negotiation of a contract and in the use of the courts during litigation. ‘One-sided attorney’s fees clauses can . . . be used as instruments of oppression to force settlements of

dubious or unmeritorious claims.’ This litigation concern applies, whether the parties are of different or equal bargaining strength in the negotiation of the contract.” (*ABF Capital Corp. v. Grove Props. Co.*, (2005) 126 Cal. App. 4th 204, 218-219, quoting *Int’l Billing Servs., Inc. v. Emigh*, (2000) 84 Cal.App.4th 1175, 1188)

“As was the case with contract one-way attorney fee provisions before Civil Code § 1717, enactment of AB 1854’s proposed one-way attorney fee provision would lead to a greater number of frivolous oppositions to bail bond forfeiture motions and other oppressive litigation tactics. These oppressive litigation tactics would especially impact small mom and pop bail agencies and the defendants who buy bail bonds because it will lead to increased litigation costs which will be passed on to bail bond co-signers, thereby increasing the cost of bail.”

8) Prior Legislation:

- a) AB 1082 (Linder) of the 2015-2016 Legislative Session, would have extended from 10 to 12 days the notice of motion a surety must give the court prior to requesting an extension of the 180 day period in which the surety must return an offender to court in order to avoid a permanent forfeiture of bail. AB 1082 was referred to this committee but was never heard.
- b) AB 1118 (Hagman), of the 2013-14 Legislative Session, requires the Judicial Council, on or before January 1, 2015, to prepare, adopt and annually revise a statewide bail schedule for all bailable felony, misdemeanor, and infraction offenses except Vehicle Code infractions. The version of the bill that passed out of this Committee also required the superior courts, in annually adopting countywide bail schedules, to consider the statewide bail schedule. That provision was later deleted in an amendment. AB 1118 failed passage in the Senate Committee on Public Safety.
- c) AB 805 (Jones-Sawyer), Chapter 17, Statutes of 2013, provides that in setting bail, a judge or magistrate may consider factors such as the report prepared by investigative staff for the purpose of recommending whether a defendant should be released on his/her own recognizance.
- d) AB 723 (Quirk), of the 2013-14 Legislative Session, allows a person on post-release community supervision who has a revocation petition filed against him or her to file an application for bail with the superior court. AB 723 was held on the Senate Committee on Appropriations' Suspense File.
- e) AB 1264 (Hagman), of the 2011-12 Legislative Session, would have repealed the uniform countywide schedule of bail and instead establish the Statewide Bail Commission. The bill would require the commission to prepare, adopt, and annually revise a statewide bail schedule for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. AB 1264 was never heard by this Committee and returned to the Chief Clerk.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office (Sponsor)
County Counsels' Association of California (Sponsor)
California Department of Insurance
California Police Chiefs Association
California State Association of Counties
California State Association of Counties
San Diego County District Attorney's Office

Opposition

Golden State Bail Agents Association

Analysis Prepared by: Matt Dean / PUB. S. / (916) 319-3744

Date of Hearing: March 15, 2016

Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1869 (Melendez) – As Introduced February 10, 2016

SUMMARY: Calls for a special election to amend Proposition 47 and make the theft of a firearm grand theft in all cases and punishable by a state prison term. Specifically, **this bill:**

- 1) Declares that the theft of a firearm is grand theft in all cases, punishable by imprisonment in the state prison for 16 months, or two or three years.
- 2) States that every person who buys or receives a stolen firearm is guilty of an alternate felony/misdemeanor offense punishable by imprisonment in the county jail for a period of not more than one year, or by imprisonment in the county jail pursuant to realignment.
- 3) Provides that this bill amends Proposition 47, the Safe Neighborhoods and Schools Act, and shall become effective only when submitted to and approved by the voters.
- 4) Calls for a special election to be held on November 8, 2016, for voter approval of these provisions.
- 5) Requires consolidation of the special election with the statewide general election to be held on that date.
- 6) Requires the consolidated election be held and conducted in all respects as if there were only one election, and only one form of ballot shall be used.

EXISTING LAW:

- 1) Divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)
- 2) Defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding \$950 dollars, except as specified. (Pen. Code, § 487.)
- 3) States that notwithstanding any provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed \$950 shall be considered petty theft and shall be punished as a misdemeanor, except in the case where a person has prior serious, violent, or sex convictions, in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment. (Pen. Code, § 490.2, subd. (a).)
- 4) Prohibits carrying a concealed firearm upon the person or in a vehicle, and punishes that crime as a felony under certain circumstances, including if the person is an ex-felon or a gang

member, or if the firearm was stolen. (Pen. Code, § 25400.)

- 5) Prohibits carrying a loaded firearm on the person or in a vehicle while in any public place or on any public street and punishes that crime as a felony under certain circumstances, including if the person is an ex-felon or a gang member, or if the firearm was stolen. (Pen. Code, § 25850.)
- 6) Prohibits any person previously convicted of a felony from owning, purchasing, receiving, possessing, or having in his or her custody a firearm, and punishes that offense as a felony. (Pen. Code, § 29800, subd. (a)(1).)
- 7) Deems grand theft involving a firearm to be a serious felony. (Pen. Code, § 1192.7, subd. (c)(26).)
- 8) States that a felony is a crime that is punishable with death, imprisonment in the state prison, or in the county jail under the provisions of Penal Code section 1170, subdivision (h). All other crimes are misdemeanors, except those classified as infractions. (Pen. Code, § 17, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The vast majority of handguns, rifles, and shotguns are valued under \$950. By reducing penalties, this would make current law ineffective in curtailing gun theft and gun trafficking. This change in law has put the safety of our constituents at risk. Not only will it be harder to prosecute gun theft, we are essentially giving criminals the green light by lessening the penalty. A criminal doesn't steal a gun to go duck hunting, they steal a gun to commit crimes.

"It is important that California continues to enforce a strong stance against the illegal acquisition and use of firearms."

- 2) **Proposition 47:** Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. Specifically, the initiative reduced the penalties for possession for personal use of most illegal drugs to misdemeanors. The initiative also reduced the penalties for theft, shoplifting, receiving stolen property, writing bad checks, and check forgery valued at \$950 or less from felonies to misdemeanors. However, the measure limited the reduced penalties to offenders who do not have prior convictions for serious or violent felonies and who are not required to registered sex offenders. (See Legislative Analyst's Office analysis of Proposition 47 <<http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>>.)
- 3) **Proposition 47 As it Relates to the Theft of a Gun:** Proposition 47 added Penal Code section 490.2 which provides a new definition for grand theft: "*Notwithstanding Section 487 or any other provision of law defining grand theft*, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty

dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor" (Pen. Code, § 490.2, subd. (a), emphasis added.) In other words, Proposition 47 put in a blanket \$950 threshold for conduct to be grand theft. Previously, there were a number of carve-outs which made conduct grand theft based on the conduct involved or the manner in which the crime is committed or based on the value being less than \$950.

Because the new statute specifically states "notwithstanding Section 487," it trumps all of Penal Code section 487, including subdivision (d)(2), which says that grand theft occurs when the property taken is a firearm. The question becomes whether notwithstanding newly-created Penal Code section 490.2, another provision of law deems this conduct to be a felony.

Penal Code section 1192.7, states that grand theft involving a firearm is a serious felony. Some may argue that this is a "provision of law defining grand theft" because of how it characterizes the crime. But not every description in section 1192.7 is coextensive with the statutory definition of a specific crime. The general purpose of section 1192.7 is to prohibit plea bargaining in cases arising out of the listed offenses, and to enumerate crimes for sentence enhancements under other statutory schemes.

The drafters of Proposition 47 stated that they did not intend to reduce the penalty for the theft of a firearm. The rebuttal to the argument against Proposition 47 contained in the ballot arguments stated: "Proposition 47 maintains penalties for gun crimes. Under Prop. 47, possessing a stolen concealed gun remains a felony. Additional felony penalties to prevent felons and gang members from obtaining guns also apply."

<<http://vig.cdn.sos.ca.gov/2014/general/pdf/proposition-47-arguments-rebuttals.pdf>>) The ballot argument by itself does not mean that they did not inadvertently do so.

Notably, a recent appellate court decision concluded otherwise in dicta. (*People v. Perkins* (2016) 244 Cal.App.4th 129.) In *People v. Perkins, supra*, the defendant was convicted of burglary, receiving stolen property, three counts of grand theft of a firearm, and several other offenses. He was sentenced to state prison. After California voters passed Proposition 47, the defendant filed a petition for resentencing to convert some of his offenses to misdemeanors. (*Id.* at p. 132-133.) The petition was denied and he appealed. The Court of Appeal did not squarely address the issue of whether Proposition 47 reduced the theft of a firearm to a misdemeanor when its value is less than \$950. Rather, what was at issue in the case was the adequacy of the petition. The defendant actually had petitioned only for resentencing on the receiving stolen property count because the form provided by the superior court excluded the option of petitioning for resentencing grand theft offenses. (*Id.* at p. 136.) In affirming denial of the petition without prejudice, the court noted, "Proposition 47 added a new provision, section 490.2, subdivision (a), which reclassifies felony section 487, subdivision (d)(2) grand theft violations into misdemeanors. Thus, petitioner would be entitled to resentencing on each conviction, provided he can meet his burden of showing, separately for each firearm, that its value does not exceed \$950." (*Id.* at p. 141.)

- 4) **Practical Considerations:** Assuming arguendo that Proposition 47 reduced the theft of a firearm to a misdemeanor offense, the theft of a firearm or receipt or purchase of a stolen firearm will not usually happen in isolation. That single act will often involve violations of multiple criminal statutes, many of which are felonies.

For example, if a firearm is stolen from a home, the defendant could be charged with

residential burglary, which is a felony and a strike. (See Pen. Code, §§ 460, 461, and 1192.7, subd. (c)(18).) If a firearm is stolen from a commercial establishment, the defendant can be charged with second-degree burglary, which can be punished as a felony (second-degree burglary is an alternate felony/misdemeanor). (See Pen. Code, §§ 460 and 461, subd. (b).) If a firearm is stolen from a locked vehicle, the defendant can be charged with auto burglary, which can be punished as a felony (auto burglary is an alternate felony/misdemeanor). (See Pen. Code, §§ 459, 460, and 461, subd. (b).) If the firearm is taken from another person by force or fear, then the defendant can be charged with robbery, which is a felony and a strike. (See Pen. Code, §§ 211, 213 and 1192.7, subd. (19).) Proposition 47 did nothing to changes these laws.

Moreover, one cannot steal a firearm, or receive or purchase a stolen firearm without also possessing it. There are several other statutes providing for felony punishment for conduct related to firearms possession. For example, felons, narcotic addicts, and those convicted of certain crimes of violence can be prosecuted for a new felony if they own, purchase, receive, possess or have a firearm in their custody or control. (Pen. Code, §§ 29800, subd. (a), and 29900, subd. (a).) Since an ex-felon is prohibited from possessing a firearm, presumably that person would carry it in a concealed manner, either on the person or in a vehicle, thereby committing a separate felony. (Pen. Code, § 25400.) Additionally, if the firearm was loaded and carried on the person or in a vehicle while in any public place or on any public street, that conduct would be punishable as a felony. (Pen. Code, 25850.) Thus, many of the individuals convicted of stealing a firearm, or receiving or purchasing a stolen firearm will also violate another section in the Dangerous Weapons Control Act.¹

Last year, the California Department of Corrections and Rehabilitation (CDCR) informed the committee that in Fiscal Year 2013/14 the numbers of new admissions with grand theft of a firearm as the principal controlling offense was 37.

- 5) **California Constitutional Limitations on Amending a Voter Initiative:** Because Proposition 47 was a voter initiative, the Legislature may not amend the statute without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd. (c).) The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." (Cal. Const., art. II, § 10, subd. (c).) Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative.

The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a duty to jealously guard the people's initiative power and, hence, to apply a liberal

¹ Under Penal Code section 654, a defendant can be punished only once for multiple convictions involving a single act or omission. (*People v. Jones* (2012) 54 Cal.4th 350, 358.) However, Penal Code section 654 does not bar multiple punishment for multiple violations of the same criminal statute. (*People v. Correa* (2012) 54 Cal.4th 331, 334.)

construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473.)

As to the Legislature's authority to amend the initiative, Proposition 47 states: "This act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor so long as the amendments are consistent with and further the intent of this act. The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this act."

(<http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47>.)

If Proposition 47 is deemed not to have changed the punishment for the theft of a firearm, then the provisions of this bill do not amend the initiative, but rather would be consistent with the language and intent of the initiative. On the other hand, if Proposition 47 is interpreted as having reduced the punishment for the theft of a firearm valued at \$950 or less, as well as the receipt or purchase of a stolen firearm with the same value, then the change will have to go before the voters for ratification.

This bill, upon its approval by the Legislature, calls for a special election to be held on November 8, 2016, for the voters of California to approve its provisions.

- 6) **Argument in Support:** The *California District Attorneys Association*, a co-sponsor of this bill, writes, "As we have seen many times over the last year, and as it was plainly put by the 4th District Court of Appeal earlier this year, Proposition 47 'converted receipt of stolen property and grand theft of a firearm into misdemeanors where the value of the stolen property does not exceed \$950.' *People v. Perkins* (2015) 241 Cal.App.4th __ (E062878). Despite assertions to the contrary from the proponents of Proposition 47, it has become quite clear that this was one of the greatest unintended consequences of that initiative.

"Stolen firearms are often used in other serious and violent crimes because they are difficult to trace back to the perpetrator. The Legislature recognized this inherent threat posed by firearms in the hands of criminals, which was why, prior to Prop 47, theft of a firearm was always treated as a felony.

"Under current law, the penalty for stealing a firearm is based wholly on value – as if stealing a \$300 gun is somehow ultimately less dangerous than stealing a \$951 gun – and thus fundamentally misunderstands why theft of a firearm was ever treated as grand theft in the first place."

- 7) **Argument in Opposition:** The *American Civil Liberties Union* states, "The voters made their decision after being fully apprised of the arguments now being raised in support of AB 1869. The Official Voter Information Guide, published by the Secretary of State and mailed to every voter in California, specifically explained the following arguments in opposition to the ballot initiative:

- “Stealing any handgun valued at less than \$950 will no longer be a felony.”
- “Prop. 47 would eliminate automatic felony prosecution for stealing a gun. Under current law, stealing a gun is a felony, period. Prop. 47 would redefine grand theft in such a way that theft of a firearm could only be considered a felony if the value of the gun is greater than \$950. Almost all handguns (which are the most stolen kind of firearm) retail for well below \$950. People don’t steal guns just so they can add to their gun collection. They steal guns to commit another crime. People stealing guns are protected under Proposition 47.”
- “Reduces penalties for stealing guns.”

“In response to the arguments against Proposition 47, the Guide provided voters with the following rebuttal argument:

- “Proposition 47 maintains penalties for gun crimes. Under Prop. 47, possessing a stolen concealed gun remains a felony. Additional felony penalties to prevent felons and gang members from obtaining guns also apply.”

"After reviewing the arguments both in favor and against the ballot initiative, the majority of California voters chose to approve Proposition 47. The arguments in favor of the initiative were true in 2014 and remain true today: there are already numerous state and federal laws that impose felony penalties on those who steal guns or use stolen guns to commit crimes. Proposition 47 did nothing to change those laws. California voters understood the decision they made when they approved Proposition 47, and there is no justification for nullifying their decision."

8) **Related Legislation:**

- a) AB 2369 (Patterson) authorizes the prosecutor to charge a defendant with a felony if the person has been convicted twice or more in a 12-month period of the crimes reduced to a misdemeanor by Proposition 47. AB 2369 also makes it a felony when stolen items include a firearm. AB 2369 is pending referral.
- b) AB 2854 (Cooper) is substantially similar to this bill, but calls for a special election to be held in June 2016. AB 2854 is pending referral.

9) **Prior Legislation:**

- a) AB 150 (Melendez) of the 2015 Legislative session was substantially similar to this bill. AB 150 was held on the Assembly Appropriation Committee's suspense file.
- b) Proposition 47 of the November 2014 general election, the Safe Neighborhoods and Schools Act, reduced the penalties for certain drug and property crimes.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Co-Sponsor)
California Peace Officers Association (Co-Sponsor)
California Police Chiefs Association
California Sportsman's Lobby
California State Sheriffs' Association
California Statewide Law Enforcement Association
City of Burbank
City of Indian Wells
Fraternal Order of Police
Gun Owners of California
League of California Cities
Los Angeles Professional Peace Officers Association
National Rifle Association
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Riverside County Board of Supervisors
Rural County Representatives of California
Sacramento County Sheriff's Department
San Diego County District Attorney
Safari Club International

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
California Right to Carry
Legal Services for Prisoners with Children

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

Date of Hearing: March 15, 2016

Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1870 (Gallagher) – As Introduced February 10, 2016

SUMMARY: Requires the Board of State and Community Corrections (BSCC) to collect and analyze data regarding recidivism rates of all persons who receive a felony sentence or who are placed on postrelease community supervision (PRCS), as specified. Specifically, **this bill:**

- 1) Requires, commencing on and after July 1, 2017, BSCC, in consultation with the Administrative Office of the Courts, the California State Association of Counties, the California State Sheriffs' Association, the California District Attorneys Association, and the Chief Probation Officers of California, to collect and analyze data regarding recidivism rates of all persons who receive a felony sentence punishable by imprisonment in county jail or who are placed on PRCS on or after July 1, 2017.
- 2) Mandates that the data shall include, as it becomes available, recidivism rates for these offenders one, two, and three years after their release in the community.
- 3) States that BSCC shall make any data collected pursuant to this paragraph available on the board's Internet Web site on a quarterly basis beginning on September 1, 2018.

EXISTING LAW:

- 1) Establishes, commencing July 1, 2012, BSCC and states that all references to the Board of Corrections or the Corrections Standards Authority shall refer to BSCC. (Pen. Code, § 6024, subd. (a).)
- 2) States that the mission of BSCC shall include providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. This mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations. (Pen. Code, § 6024, subd. (b).)
- 3) Provides that it shall be the duty of BSCC to collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, including, but not limited to, prevention, intervention, suppression, supervision, and incapacitation, as they relate to both adult corrections, juvenile justice, and gang problems. The board shall seek to collect and make publicly available up-to-date data and information reflecting the impact of state and community correctional, juvenile justice, and gang-related

policies and practices enacted in the state, as well as information and data concerning promising and evidence-based practices from other jurisdictions. (Pen. Code, § 6027, subd. (a).)

- 4) Requires, commencing on and after July 1, 2012, BSCC, in consultation with the Administrative Office of the Courts, the California State Association of Counties, the California State Sheriffs' Association, and the Chief Probation Officers of California, shall support the development and implementation of first phase baseline and ongoing data collection instruments to reflect the local impact of Public Safety Realignment, specifically related to dispositions for felony offenders and postrelease community supervision. The board shall make any data collected pursuant to this paragraph available on the board's Internet Web site. It is the intent of the Legislature that the board promote collaboration and the reduction of duplication of data collection and reporting efforts where possible. (Pen. Code, § 6027, subd. (b)(12).)
- 5) Authorizes BSCC to do either of the following:
 - a) Collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of criminal justice in the state; or,
 - b) Perform other functions and duties as required by federal acts, rules, regulations, or guidelines in acting as the administrative office of the state planning agency for distribution of federal grants. (Pen. Code, § 6027, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "It is imperative that we track the recidivism rates of offenders who, before realignment, would have served their sentence in prison, but now serve those sentences in county jails or being released early. This is important data that is necessary to evaluate the effects of realignment on public safety in our communities and the effectiveness of rehabilitation programs.

"This bill builds on AB 1050 (Dickinson 2013) which required the Board of State and Community Corrections to develop a common definition of the term "recidivism." AB 602 requires the Board, after July 1, 2016, to report the recidivism rates of those either sentenced under, or receiving post-release community supervision under the public safety realignment law. Consistent with the Department of Corrections and Rehabilitation's data for parolees, it would require this to be reported for those 1, 2, and 3 years after release. Collecting and reporting recidivism data is an essential part of evaluating the success of realignment and in identifying any need for changes."

- 2) **Background:** BSCC was established, commencing July 1, 2012, by SB 92 (Committee on Budget and Fiscal Review), Chapter 36, Statutes of 2011. "From 2005 through 2012, BSCC was the Correction Standards Authority, a division of CDCR. Prior to that it was the Board of Corrections, an independent state department. The BSCC is responsible for administering various criminal justice grant programs and ensuring compliance with state and federal standards in the operation of local correctional facilities. It is also responsible for providing

technical assistance to local authorities and collecting data related to the outcomes of criminal justice policies and practices." (LAO, *The 2013-14 Budget: The Governor's Criminal Justice Proposals*, p. 44 (Feb. 15, 2013).)

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

- 3) **Effect of Realignment on Crime Rates:** A fact sheet recently released by Public Policy Institute of California (PPIC) on the state's crime rates for 2013 shows that there was an overall decrease in violent crime and property crime rates. Specifically, the violent crime rate dropped by 6.5% in 2013, to a 46-year low of 397 per 100,000 residents. As for property crimes, after a noticeable uptick in 2012, the 2013 rate of 2,665 per 100,000 residents is down 3.9% from 2012 and close to the 50-year low of 2,594 reached in 2011. The fact sheet noted that crime rates vary by region and by category. While some regions did experience increased crime rates, "41 of the state's 58 counties—including 14 of the 15 largest—saw decreases in their violent crime rates in 2013" and "some of the state's largest counties saw substantial decreases in property crime rates in 2013. Orange and Fresno Counties both observed double-digit drops (10% and 13.2% respectively), while the property crime rate in Sacramento County decreased by 9.4%." (Lofstrom and Martin, *Crime Trends in California*, PPIC (Nov. 2014) <http://www.ppic.org/main/publication_show.asp?i=1036> [as of Mar. 27, 2015].)

4) **Prior Legislation:**

- a) AB 602 (Gallagher) of the 2014 Legislative Session, would have required, commencing July 1, 2016, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2016, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2017. AB 602 was held on the Assembly Committee on Appropriations' Suspense File.
- b) AB 2521 (Hagman), of the 2013 Legislative Session, would have required, commencing July 1, 2015, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2015, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2016. AB 2521 was held on the Senate Committee on Appropriations' Suspense File.
- c) AB 1050 (Dickinson), Chapter 270, Statutes of 2013, requires BSCC, in consultation with certain individuals that represent or are selected after conferring with specified stakeholders, to develop definitions of key terms, which include, but are not limited to, "recidivism," "average daily population," "treatment program completion rates," and any other terms deemed relevant in order to facilitate consistency in local data collection, evaluation, and implementation of evidence-based practices, promising evidence-based practices, and evidence-based programs.

- d) AB 526 (Dickinson), Chapter 850, Statutes of 2012, requires BSCC to identify and consolidate gang intervention and delinquency prevention programs and grants and focus funding on evidenced-based practices.
- e) SB 92 (Budget and Fiscal Review Committee), Chapter 36, Statutes of 2011, starting July 1, 2012, eliminates the Corrections Standards Authority, and assigns its former duties to the newly created 12-member BSCC and assigns additional duties, as provided.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association

Opposition

None

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

Date of Hearing: March 15, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1872 (Gray) – As Amended March 8, 2016

SUMMARY: Makes deputy sheriffs employed by the county of Merced assigned to perform custodial duties peace officers while engaged in the performance of the duties of their employment, and appropriates \$1,315,000 from the General Fund to be allocated to the University of California (UC), Merced for the purpose of purchasing public safety equipment. Specifically, **this bill:**

- 1) Adds the County of Merced to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially relating to custodial assignments with responsibility for operating a county custodial facility are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of his or her respective employment.
- 2) Appropriates one million three hundred and fifteen thousand dollars (\$1,315,000) from the General Fund to the Regents of UC, for allocation to UC, Merced, for the following public safety purposes:
 - a) Forty thousand dollars (\$40,000) for two mobile traffic message boards;
 - b) Three thousand dollars (\$3,000) for two fire area of refuge consoles;
 - c) Eighteen thousand dollars (\$18,000) for fire extinguisher training equipment;
 - d) Twenty-four thousand dollars (\$24,000) for three fixed license plate recognition (LPR) camera systems;
 - e) One hundred forty thousand dollars (\$140,000) for 40 EvacuChairs;
 - f) Fifty-two thousand dollars (\$52,000) for 40 automated external defibrillators with training equipment;
 - g) Four hundred twenty thousand dollars (\$420,000) for a mobile incident management vehicle and equipment;
 - h) One hundred fifty thousand dollars (\$150,000) for a mobile use of force options system;
 - i) Thirty thousand dollars (\$30,000) for six mobile computers with service;
 - j) Forty-two thousand dollars (\$42,000) for six in-car video systems;

- k) Ten thousand dollars (\$10,000) for two vehicle mounted LPR camera systems;
- l) Fifteen thousand dollars (\$15,000) for one Cellebrite system;
- m) Seventy-five thousand dollars (\$75,000) for one crime scene mapping system;
- n) Sixty thousand dollars (\$60,000) for three portable wireless camera systems;
- o) Thirty-six thousand dollars (\$36,000) for 360 crowd control barriers; and,
- p) Two hundred thousand dollars (\$200,000) for safety improvements to an energy dissipator on Fairfield Canal.

EXISTING LAW:

- 1) Provides that any deputy sheriff of the Counties of Los Angeles, Butte, Calaveras, Colusa, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa, Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in California only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to custodial assignments or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency. (Pen. Code, §830.1, subd. (c).)
- 2) Provides that all cities and counties are authorized to employ custodial officers who are public officers but not peace officers for the purpose of maintaining order in local detention facilities. Custodial officers under this section do not have the right to carry or possess firearms in the performance of his or her duties. However, custodial officers may use reasonable force to establish and maintain custody and may make arrests for misdemeanors and felonies pursuant to a warrant. (Pen. Code, § 831.)
- 3) Provides that notwithstanding existing law, law enforcement agencies in counties with a population of 425,000 or less and the Counties of San Diego, Fresno, Kern, Riverside, Santa Clara, and Stanislaus may employ custodial officers with enhanced powers. The enhanced powers custodial officers are empowered to serve warrants, writs, or subpoenas within the custodial facility and, as with regular custodial officers, use reasonable force to establish and maintain custody. (Pen. Code § 831.5, subd. (a).)
- 4) Provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the Commission on Peace Officers Standards and Training (POST) course. (Pen. Code § 832, subd. (b).)

- 5) Provides that the enhanced powers custodial officers may carry firearms under the direction of the sheriff while fulfilling specified job-related duties such as while assigned as a court bailiff, transporting prisoners, guarding hospitalized prisoners, or suppressing jail riots, escapes, or rescues. (Pen. Code § 831.5, subd. (b).)
- 6) Provides that enhanced powers custodial officers may also make warrantless arrests within the facility. (Pen. Code, §831.5, subd. (f).)
- 7) Provides that every peace officer shall satisfactorily complete an introductory course of training prescribed by POST and that, after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by POST. (Pen. Code § 832, subd. (a).)
- 8) Provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the POST course. (Pen. Code, § 832, subd. (b).)
- 9) Provides that a person shall not have the powers of a peace officer until he or she has satisfactorily completed the POST course. (Pen. Code, § 832, subd. (c).)
- 10) Provides that any person completing the POST training who does not become employed as a peace officer within three years from the date of passing the examination, or who has a three-year or longer break in service as a peace officer, shall pass the examination prior to the exercise of powers as a peace officer, except as specified. (Pen. Code, § 832, subd. (e)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "According to the California Department of Justice's 2014 homicide statistics, Merced County has the highest homicide rate in the state among counties with populations of 100,000 or more. The Merced County Sheriff's Office and local police departments continue to have difficulties filling deputy sheriff and police officer vacancies. For example, Merced County currently has 21 deputy sheriff vacancies and continues to experience double digit unemployment and significantly higher poverty rates than the rest of the state. AB 1872 will help Merced County maximize its existing law enforcement resources and join the 32 other counties in California that currently have this status.

"Also, this bill appropriates \$1,315,000 to UC Merced for purposes of purchasing public safety equipment. During the initial growth of the UC Merced campus, some areas related to safety were under-resourced and do not presently have the safety equipment of the sister UC campuses in the police and fire areas. Although the November 4, 2015 incident on the UC Merced campus was handled in a professional manner by the responding UC Merced Police Officers, it caused the Assistant Vice Chancellor for Campus and Public Safety to conduct a review of safety equipment available to police and fire during and after an emergency situation or major event. After consultation with other UC Chiefs of Police and first responder partners, a list of equipment was developed which would benefit not only the UC Merced campus, but also the larger Merced city and county region."

- 2) **Argument in Support:** The *Merced County Law Enforcement Chiefs Association* states, "The Merced County Sheriff's Office and local police departments continue to have difficulty in filling deputy sheriff and police officer vacancies. This legislation is necessary to relieve significant staffing issues. The following are examples of how this legislation will benefit the Merced County Sheriff's Office:

"Correctional staff can be deployed to positions requiring peace officer powers during a local state of emergency. In past emergencies, correctional officers were unable to assist in the field. During an emergency such as a flood, major fire, or mass casualty event, the use of correctional officers could provide the sheriff's office more flexibility and assistance for field deputies. An example would be the recent event at U.C. Merced. Correctional staff could have handled traffic control freeing up deputies for other duties.

"Correctional staff conduct exterior security perimeter checks of jail facilities. Their authority to detain or arrest a violator outside of the jail is limited to that of any other citizen. If these employees had peace officer status, they could detain and potentially arrest offenders.

"On a routine basis, people will arrive at the jail lobby to surrender themselves on an outstanding warrant. The law does not allow non-peace officers to make warrant arrests outside the jail. Consequently, if there are no peace officers in the building, one must be called in from patrol in order to make an arrest.

"Penal Code 831.5(D) states any time there are 20 or more correctional officers on duty, there shall be one peace officer on duty to supervise the performance of the correctional officers. Future jail consolidation and expansion plans at the John Latorroca Correctional Center could exceed this staffing number and Penal Code 830.1(c) would remedy this issue.

"Correctional staff could be utilized in criminal courtrooms allowing deputies to be utilized for patrol duties."

3) **Prior Legislation:**

- a) SB 1254(La Malfa), Chapter 66, Statutes of 2012, added Trinity and Yuba Counties to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially related to custodial assignments are peace officers whose authority extends to any place in the state while engaged in the duties of his or her respective employment .
- b) AB 1695(Bell), Chapter 575, Statutes of 2010, allowed the duties of custodial officers employed by the Santa Clara County Department of Corrections to be performed at other health care facilities in Santa Clara County, in addition to their duties performed at the Santa Clara Valley Medical Center.
- c) AB 2215 (Berryhill), Chapter 15, Statutes of 2008, added Calaveras, Lake, Mariposa, and San Benito Counties to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially related to custodial assignments are peace officers whose authority extends to any place in the state while engaged in the

duties of his or her respective employment .

- d) AB 151 (Beryhill), Chapter 84, Statutes of 2007, added Glenn, Lassen, and Stanislaus to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially related to custodial assignments are peace officers whose authority extends to any place in the state while engaged in the duties of his or her respective employment .

REGISTERED SUPPORT / OPPOSITION:

Support

Merced County Sheriff's Office
Merced County Law Enforcement Chief's Association
Merced County Law Enforcement Sergeant's Association

Opposition

None

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

Date of Hearing: March 15, 2016

Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1906 (Melendez) – As Introduced February 11, 2016

SUMMARY: Requires the Director of the Department of State Hospitals (DSH) to forward a request to a county that a petition be filed for a person to be committed to the DSH for sexually violent predator (SVP) treatment no later than 20 calendar days prior to the scheduled release date of the person.

EXISTING LAW:

- 1) Provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be a SVP after the person has served his or her prison commitment. (Welf. & Inst. Code, § 6600, et seq.)
- 2) Defines a "sexually violent predator" as "a person who has been convicted of a sexually violent offense against at least one victim, and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (Welf. & Inst. Code, § 6600, subd. (a)(1).)
- 3) Permits a person committed as a SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code, § 6604.1.)
- 4) Requires that a person found to have been a SVP and committed to the Department of State Hospitals (DSH) have a current examination on his or her mental condition made at least yearly. The report shall include consideration of conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and also what conditions can be imposed to adequately protect the community. (Welf. & Inst. Code, § 6604.9.)
- 5) Allows a SVP to seek conditional release with the authorization of the DSH Director when DSH determines that the person's condition has so changed that he or she no longer meets the SVP criteria, or when conditional release is in the person's best interest and conditions to adequately protect the public can be imposed. (Welf. & Inst. Code, § 6607.)
- 6) Allows a person committed as a SVP to petition for conditional release or an unconditional discharge any time after one year of commitment, notwithstanding the lack of recommendation or concurrence by the Director of DSH. (Welf. & Inst. Code, § 6608, subd. (a).)

- 7) Provides that, if the court deems the conditional release petition not frivolous, the court is to give notice of the hearing date to the attorney designated to represent the county of commitment, the retained or appointed attorney for the committed person, and the Director of State Hospitals at least 30 court days before the hearing date. (Welf. & Inst. Code, § 6608, subd. (b).)
- 8) Requires the court to first obtain the written recommendation of the director of the treatment facility before taking any action on the petition for conditional release if the is made without the consent of the director of the treatment facility. (Welf. & Inst. Code, § 6608, subd. (c).)
- 9) Provides that the court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. Provides that the attorney designated the county of commitment shall represent the state and have the committed person evaluated by experts chosen by the state and that the committed person shall have the right to the appointment of experts, if he or she so requests. (Welf. & Inst. Code, § 6608, subd. (e).)
- 10) Requires the court to order the committed person placed with an appropriate forensic conditional release program operated by the state for one year if the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community. Requires a substantial portion of the state-operated forensic conditional release program to include outpatient supervision and treatment. Provides that the court retains jurisdiction of the person throughout the course of the program. (Welf. & Inst. Code, § 6608, subd. (e).)
- 11) Provides that if the court denies the petition to place the person in an appropriate forensic conditional release program, the person may not file a new application until one year has elapsed from the date of the denial. (Welf. & Inst. Code, § 6608, subd. (h))
- 12) Allows, after a minimum of one year on conditional release, the committed person, with or without the recommendation or concurrence of the Director of State Hospitals, to petition the court for unconditional discharge, as specified. (Welf. & Inst. Code, § 6608, subd. (k).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "When the California Department of Corrections and Rehabilitation (CDCR) and the Board of Parole Hearings (BPH) determine that an individual in custody may be an SVP, based on their commitment offense and a review of their social, criminal, and institutional history, the individual is referred to the DSH for a full SVP evaluation.

"Following that evaluation, if DSH determines that the individual is an SVP, the Director of DSH is required to request that the District Attorney or County Counsel in the county in which the person was convicted file a petition for commitment. The filing of that petition begins a civil commitment process, which can lead to the individual being confined at

Coalinga State Hospital to receive treatment until it is determined that they no longer pose a risk of re-offense.

"The SVP Act, as currently written, contains a statutory timeline for each step of the evaluation process, as well as time limits for the filing of the petition and certain court proceedings. It does not, however, contain a time frame for the submission of the request for the filing of a petition to the DA or County Counsel. Because of this, DSH often submits filing materials less than 48 hours before the release of an inmate who has already been determined to qualify as an SVP.

The result of these late requests is that the prosecuting agency bears the burden of filing a case and transporting a defendant at the last minute at an enormous cost and use of resources. The better, and long accepted operating practice is for DSH to submit the filing in time for the DA to be able to meaningfully review the request, file the petition, and arrange for transportation through Statewide Transportation. In at least one instance in Los Angeles County, the filing request was submitted too late for the filing of a petition. In several instances, the supporting documents that are necessary for the filing of a petition were not certified and there was little to no time to correct this egregious error by DSH.

The simple solution to this problem is to create a statutory requirement that DSH submit the request for the filing of a petition no fewer than 20 days prior to the release of a person determined to be an SVP. This provides the attorneys with time to meaningfully review and prepare a petition, and protects public safety by helping to ensure that nobody slips through the cracks due to a last minute filing request.

- 2) **Argument in Support:** The *California District Attorneys Association* states, " The SVP Act (Welfare & Institutions Code section 6600 et seq), as currently written, contains a statutory timeline for each step of the evaluation process, as well as time limits for the filing of the petition and certain court proceedings. It does not, however, contain a time frame for the submission of the request for the filing of a petition to the DA or County Counsel. Because of this, DSH often submits filing materials less than 48 hours before the release of an inmate who has already been determined to qualify as an SVP.

"The result of these late requests is that the prosecuting agency bears the burden of filing a case and transporting a defendant at the last minute at an enormous cost and use of resources. The better, and long accepted operating practice is for DSH to submit the filing in time for the DA to be able to meaningfully review the request, file the petition, and a arrange for transportation through Statewide Transportation. In at least one instance in Los Angeles County, the filing request was submitted too late for the filing of a petition. In several instances, the support documents that are necessary for the filing of a petition were not certified and there was little to no time to correct this egregious error by DSH.

"AB 1906 would create a statutory requirement that DSH submit the request for the filing of a petition no fewer than 20 days prior to the release of a person determined to be an SVP. This provides the attorneys with time to meaningfully review and prepare a petition, and protects public safety by helping to ensure that nobody slips through the cracks due to a last minute filing request."

- 3) **Prior Legislation:** AB 1003 of the 2015 Legislative Session created an SVP oversight board comprised of members from the DSH and the criminal justice system to make recommendation to the Governor and Legislature regarding the SVP program. AB 1003 was held on the Assembly Appropriations Committee suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California State Sheriffs' Association

Opposition

None

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