

VICE CHAIR
MELISSA A. MELENDEZ

MEMBERS

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

Assembly
California Legislature



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

CHIEF COUNSEL
GREGORY PAGAN

COUNSEL
GABRIEL CASWELL
STELLA Y. CHOE
SHAUN NAIDU
SANDY URIBE

AGENDA

9:00 a.m. – April 21, 2015
State Capitol, Room 126

REVISED

<u>Item</u>	<u>Bill No. & Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
1.	AB 86 (McCarty)	Mr. Billingsley	PULLED BY AUTHOR.
2.	AB 262 (Lackey)	Mr. Pagan	Sex offenders.
3.	AB 303 (Gonzalez)	Mr. Caswell	Searches: county jails.
4.	AB 390 (Cooper)	Mr. Billingsley	Criminal law: DNA evidence.
5.	AB 443 (Alejo)	Mr. Caswell	Forfeiture.
6.	AB 526 (Holden)	Ms. Uribe	Abduction.
7.	AB 619 (Weber)	Ms. Choe	Reports: uses of force and deaths in law enforcement custody.
8.	AB 813 (Gonzalez)	Ms. Uribe	Criminal procedure: postconviction relief
9.	AB 953 (Weber)	Ms. Choe	Law enforcement: racial profiling.
10.	AB 1001 (Maienschein)	Mr. Pagan	PULLED BY AUTHOR.



11.	AB 1168 (Salas)	Mr. Caswell	Peace officers: basic training requirements.
12.	AB 1207 (Lopez)	Mr. Pagan	Mandated child abuse reporting: child day care licensees: training.
13.	AB 1214 (Achadjian)	Mr. Billingsley	Probation sentencing report: good cause continuance.
14.	AB 1227 (Cooper)	Mr. Caswell	Peace officer training: mental health training.
15.	AB 1289 (Cooper)	Ms. Uribe	Community safety and policing study.
16.	AB 1310 (Gatto)	Mr. Billingsley	PULLED BY AUTHOR.
17.	AB 1343 (Thurmond)	Mr. Billingsley	Criminal procedure: defense counsel.
18.	AB 1351 (Eggman)	Ms. Choe	Deferred entry of judgment: pretrial diversion.
19.	AB 1352 (Eggman)	Ms. Choe	Deferred entry of judgment: withdrawal of plea.
20.	AB 1415 (Steinorth)	Ms. Uribe	Firearms: felons in possession of firearms.
21.	AB 1475 (Cooper)	Mr. Pagan	Sexual assault response team.

Individuals who, because of a disability, need special assistance to attend or participate in an Assembly committee hearing or in connection with other Assembly services, may request assistance at the Assembly Rules Committee, Room 3016, or by calling 319-2800. Requests should be made 48 hours in advance whenever possible.

Date of Hearing: April 21, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 86 (McCarty) – As Amended March 26, 2015

PULLED BY AUTHOR

Date of Hearing: April 21, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 262 (Lackey) – As Amended March 26, 2015

SUMMARY: Places additional residency restrictions on Sexually Violent Predators (SVP's) conditionally released for community outpatient treatment. Specifically, **this bill:**

- 1) Provides that a person adjudicated as an SVP shall only reside in a dwelling or abode within 10 miles of a permanent physical police or sheriff station that has jurisdiction over the location and has 24 hour a day peace officer staffing on duty and available to respond to call for service.
- 2) States that a person adjudicated as an SVP shall not lease, rent, or otherwise reside in any dwelling or other abode, nor shall a dwelling or other abode be leased or rented on behalf of an SVP for purposes of residence by that person, if that dwelling or a bode is occupied or owned in whole or in part by a felon convicted of a "violent" or "serious" felony, as specified.
- 3) Provides that the provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

EXISTING LAW:

- 1) Provides that notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which sex offender registration is required, that person may not during the period of parole, reside in any single family dwelling with any other person also required to register as a convicted sex offender, unless those persons are legally related by blood. "Single family dwelling" shall not include a residential facility that serves six or fewer persons. (Pen. Code, § 3003.5, subd. (a).)
- 2) States notwithstanding any other provision of law, it is unlawful for any person for whom sex offender registration is required to reside within 2,000 feet of any public or private school, or park where children regularly gather. (Pen. Code, § 3003.5, subd. (b).)
- 3) 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.)

- 4) 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).)
- 5) Permits a person committed as a SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code, § 6604.1.)
- 6) 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.)
- 7) Allows a SVP to seek conditional release with the authorization of the Director DSH 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.)
- 8) 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).)
- 9) 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).)
- 10) 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).)
- 11) 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).)
- 12) 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).)

- 13) 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))
- 14) 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, "AB 262 restricts sexually violent predators (SVPs) from residing in rural areas, which are more than 10 miles away from a full-time police station. It also stops SVPs from renting from landlords who are registered sex offenders or living with another sex offender.
- 2) **SVP Law Generally:** The Sexually Violent Predator Act (SVPA) establishes an extended civil commitment scheme for sex offenders who are about to be released from prison, but are referred to the DSH for treatment in a state hospital, because they have suffered from a mental illness which causes them to be a danger to the safety of others.

The Department of State Hospitals uses specified criteria to determine whether an individual qualifies for treatment as a SVP. Under existing law, a person may be deemed a SVP if: (a) the defendant has committed specified sex offenses against two or more victims; (b) the defendant has a diagnosable 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; and, (c) two licensed psychiatrists or psychologists concur in the diagnosis. If both clinical evaluators find that the person meets the criteria, the case is referred to the county district attorney who may file a petition for civil commitment.

Once a petition has been filed, a judge holds a probable cause hearing; and if probable cause is found, the case proceeds to a trial at which the prosecutor must prove to a jury beyond a reasonable doubt that the offender meets the statutory criteria. The state must prove "[1] a person who has been convicted of a sexually violent offense against [at least one] victim[] and [2] who has a diagnosed mental disorder that [3] makes the person a danger to the health and safety of others in that it is likely that he or she will engage in [predatory] sexually violent criminal behavior." (*Cooley v. Superior Court (Martinez)* (2002) 29 Cal.4th 228, 246.) If the prosecutor meets this burden, the person then can be civilly committed to a DSH facility for treatment.

The Department of State Hospitals must conduct a yearly examination of a SVP's mental condition and submit an annual report to the court. This annual review includes an examination by a qualified expert. (Welf. & Inst. Code, § 6604.9.) In addition, DSH has an

obligation to seek judicial review any time it believes a person committed as a SVP no longer meets the criteria, not just annually. (Welf. & Inst. Code, § 6607.)

The SVPA was substantially amended by Proposition 83 ("Jessica's Law"), which became operative on November 7, 2006. Originally, a SVP commitment was for two years; but now, under Jessica's Law, a person committed as a SVP may be held for an indeterminate term upon commitment or until it is shown that the defendant no longer poses a danger to others. (See *People v. McKee* (2010) 47 Cal. 4th 1172, 1185-87.) Jessica's Law also amended the SVPA to make it more difficult for SVPs to petition for less restrictive alternatives to commitment. These changes have survived due process, ex post facto, and, more recently, equal protection challenges. (See *People v. McKee, supra*, 47 Cal. 4th 1172 and *People v. McKee* (2012) 207 Cal.App.4th 1325.)

- 3) **Obtaining Release From Commitment;** A person committed as a SVP may petition the court for conditional release or unconditional discharge after one year of commitment. (Welf. & Inst. Code, § 6608, subd. (a).) The petition can be filed with, or without, the concurrence of the Director of State Hospitals. The Director's concurrence or lack thereof makes a difference in the process used.

A SVP can, with the concurrence of the Director of State Hospitals, petition for unconditional discharge if the patient "no longer meets the definition of a SVP," or for conditional release. (Welf. & Inst. Code, § 6604.9, subd. (d).) If an evaluator determines that the person no longer qualifies as a SVP or that conditional release is in the person's best interest and conditions can be imposed to adequately protect the community, but the Director of State Hospitals disagrees with the recommendation, the Director must nevertheless authorize the petition. (*People v. Landau* (2011) 199 Cal.App.4th 31, 37-39.) When the petition is filed with the concurrence of the DSH, the court order a show cause hearing. (Welf. & Inst. Code, § 6604.9, subd. (f).) If probable cause is found, the patient thereafter has a right to a jury trial and is entitled to relief unless the district attorney proves "beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent behavior if discharged." (Welf. & Inst. Code, § 6605.)

A committed person may also petition for conditional release or unconditional discharge notwithstanding the lack of recommendation or concurrence by the Director of State Hospitals. (Welf. & Inst. Code, § 6608, subd. (a).) Upon receipt of this type of petition, the court "shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing." (Welf. & Inst. Code, § 6608, subd. (a).)¹ If the petition is not found to be frivolous, the court is required to hold a hearing. (*People v. Smith* (2013) 216 Cal.App.4th 947.)

¹ Recently, in *People v. McCloud* (2013) 213 Cal.App.4th 1076, the Court of Appeal recognized that the provision in Welfare and Institutions Code section 6608, subdivision (a) allowing for dismissal of a frivolous petition for release without a hearing, may violate the equal protection clause. The petitioner's equal protection claim was based on the fact that "[n]o other commitment scheme allows the judge to deem the petition 'frivolous' and thereby deny the petitioner a hearing." (*Id.* at p. 1087.) The court found there might well be actual disparate treatment of similarly situated persons—and if there was disparate treatment, the State might or might not be justified in so distinguishing between persons. The court remanded the case for further proceedings on the equal protection claim. (*Id.* at p. 1088.)

The SVPA does not define the term "frivolous." The courts have applied the definition of "frivolous" found in Code of Civil Procedure section 128.5, subdivision (b)(2): "totally and completely without merit" or "for the sole purpose of harassing an opposing party." (*People v. Reynolds* (2010) 181 Cal.App.4th 1402, 1411; see also *People v. McKee, supra*, 47 Cal.4th 1172; *People v. Collins* (2003) 110 Cal.App.4th 340, 349.) Additionally, in *Reynolds, supra*, 181 Cal.App.4th at p. 1407, the court interpreted Welfare and Institutions Code section 6608 to require the petitioner to allege facts in the petition that will show he or she is not likely to engage in sexually-violent criminal behavior due to a diagnosed mental disorder, without supervision and treatment in the community, since that is the relief requested.

Once the court sets the hearing on the petition, then the petitioner is entitled to both the assistance of counsel, and the appointment of an expert. (*People v. McKee, supra*, 47 Cal.4th 1172, 1193.) At the hearing, the person petitioning for release has the burden of proof by a preponderance of the evidence. (Welf. & Inst. Code, § 6608, subd. (i); *People v. Rasmuson* (2006) 145 Cal.App.4th 1487, 1503.) If the petition is denied, the SVP may not file a subsequent petition until one year from the date of the denial. (Welf. & Inst. Code, § 6608, subd. (h).)

- 4) **Difficulty in Finding Compliant Housing:** Among other things, this bill provides that a person adjudicated as an SVP shall only reside in a dwelling or abode within 10 miles of a permanent physical police or sheriff station that has jurisdiction over the location and has 24 hour a day peace officer staffing on duty and available to respond to call for service. This, effectively, would prevent an SVP from residing in a rural area, and rural locations, often, are the only areas where an SVP can find a residence which complies with "Jessica's Law", which prohibits a person required to register as a convicted sex offender from residing within 2,000 feet of a public or private school, or park where children regularly congregate.

Liberty Health Care, the contract provider for DSH, goes to great lengths at considerable expense to find suitable housing for an SVP on conditional release in the community. In the case of *People v. Superior Court (Karsai)* (2013) 213 Cal App 4th 774, Liberty Health Care reported that its staff had travelled 6,793 miles in one year searching for a residence for Karsai and had viewed 1,261 properties in Santa Barbara, Ventura, and San Luis Obispo Counties. The only potential residence was Karsai's mother's home in Santa Maria, and the Court determined that Karsai's mother's home was not disqualified as a potential residence despite its proximity to a park and an elementary school. Later, Liberty informed the court that the Karsai family had withdrawn his mother's home as a placement/residence site because the family had been beset upon by the local media.

The court then found that "extraordinary circumstances existed, justifying a search for 'any' available housing "without being constrained to San Luis Obispo or Santa Barbara County." Approximately five months later, Liberty had reviewed more than 1,830 sites and had identified two possible locations: an apartment in Sacramento and a small home in Auburn. At a hearing, both the People and Karsai objected to the locations. The People objected due to the proximity of Karsai's victims, and both sides objected "on the basis that the placement would provide no support structure for Mr. Karzai". Agreeing that it would be "fruitless" to pursue those placements, the court ordered Liberty to check into the option of placing Karzai in a travel trailer on a pad next to the San Luis Obispo County Sheriff's Office. Liberty shortly informed the court that there had been objections to Karzai's placement in a trailer and that the pad was "not Jessica's law compliant. Because it appeared to the court that

"there was no suitable placement available either in Mr. Karsai's county of domicile, or elsewhere," the court ordered Karsai be "released in Santa Barbara County as a transient." Santa Barbara then sought a writ of mandate in the court of appeal, seeking to vacate the superior court's order releasing Karsai into Santa Barbara as a transient.

The court eventually ruled that nothing in the law forbids the conditional release of an SVP as a transient. "Moreover, to imply such a limitation into the law would raise serious constitutional issues. 'Because civil commitment involves a significant deprivation of liberty, a defendant in an SVP proceeding is entitled to due process protections.' (*People v. Otto* (2001) 26 Cal.4th 200, 209 [109 Cal. Rptr. 2d 327, 26 P.3d 1061].) Once a court has determined that a particular SVP would not be a danger to the health and safety of others in that it is not likely that he or she would engage in sexually violent criminal [*789] behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community, that person unquestionably has a significant liberty interest in being released. To authorize an unspecified delay in that release by implying in the SVPA a requirement that the person must have a specific resident before release, when under the statutory scheme the securing of a specific residence is not a prerequisite to a finding that the person would pose no danger to others if under outpatient supervision and treatment, would run the risk that a person who is no longer dangerous will nonetheless have to remain in custody in a secure facility indefinitely simply because of some [***28] extraneous factor, such as public outrage, that interferes with finding and securing a fixed residence for that person. To avoid such a potential due process problem, we believe the more prudent—as well as that most consistent with the established canons of statutory interpretation—is to not imply in the SVPA something the Legislature did not expressly include in it: the limitation that an SVP cannot be conditionally released in the community without a specific residence."

If this bill were to pass, and it becomes impossible to place SVP's in a compliant residence in the community, the courts could be compelled to release SVP's in the community as transients, which would present a risk to the public safety, as they would not be under the watchful eye of Liberty Health Care. It should be noted, that DSH has informed Committee staff that there has never been instance of an SVP on conditional release having committed a new offense. This is largely due to the stringent protocol imposed on SVP's by Liberty Health Care, which includes a compliant and stable residence.

- 5) **Impact of Residency Restrictions:** In October of 2014, the Office of the Inspector General (OIG) conducted a review and assessment of sex offenders on parole and the impact of residency restrictions on this same population. The Executive Summary of the OIG Report concluded, "The residency restrictions imposed by Jessica's Law, which prohibit parole sex offenders from living within 2,000 feet of a school or park where children congregate, contribute to homelessness among parole sex offenders. According to the California Sex Offender Management Board, there were only 88 sex offenders on parole registered as transient when Proposition 83 was passed in November 2006. As of June 2014, there were 1556 sex offender parolees identified as transient by the California Department of Corrections and Rehabilitation (CDCR). While this represents 3.38 percent of all parolees, the incidence of homelessness is 19.95 percent (approximately one in five) among the subset of parolees who are sex offenders"

"Transient sex offenders are more 'labor intensive' than are parolees who have a permanent residence. The OIG interviewed parole administrators in 12 parole districts, who said that

because transient sex offenders are moving frequently, monitoring their movement is time consuming. Transient sex offenders must register with law enforcement monthly (as opposed to yearly for those with permanent residences), thus requiring more frequent registration compliance tracking by parole agents. Adding further to the workload associated with monitoring transients, agents are required to conduct weekly face-to-face contacts with them."

"While Jessica's Law leaves open the door for local governments to impose their own restrictions on paroled sex offenders, parolees are finding relief from residency restrictions in the courts."

The California Supreme Court in *In Re Taylor* (2014) 60 Cal. 4th 1019, recently, ruled that CDCR's enforcement of the Jessica's Law residency restrictions was unconstitutionally unreasonable as applied to San Diego County. The court held that because blanket enforcement had caused many parolees to be homeless and thus had hampered efforts to supervise and rehabilitate them in the interests of public safety, such enforcement was arbitrary and oppressive, violating due process under the 14th Amendment to the U.S. Constitution, under a rational basis analysis because it bore no rational relationship to advancing the state's legitimate goal of protecting children from sexual predators. On March 26th of this year the CDCR announced, that upon advice of the Attorney General, it would no longer be enforcing Jessica's Law's blanket residency restrictions in any parole region in the state. To the extent that the residency restriction in this bill would result in SVP's becoming homeless, these restrictions would likely, also be found to be unconstitutional.

- 6) **Severability Clause:** This bill contains a provision which states, "The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application." Severability clauses are frequently contained in Voter Initiatives because the constitutionality of the measure has not been subjected to scrutiny. However, it is an unusual provision in a bill introduced in the Legislature. Is the severability clause a recognition by the author of the significant constitutional issue in this bill?
- 7) **Argument in Support:** *Supervisor Michael Antonovich of the Los Angeles County Board of Supervisors* states, "In 1995, the Sexually Violent Predators (SVP) Program was established. An SVP is a separate category of sex offender, and is defined as "a person who has been convicted of a sexually violent offense against one or more victims 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." As a result, SVP's are admitted into State Hospitals for further treatment following the end of their prison sentence.

"SVP's have committed very serious crimes, such as Christopher Hubbart who was dubbed the "pillowcase rapist" for assaulting more than 40 women between 1971 and 1983.

"After being granted conditional release, numerous sexually violent predators have been given conditional releases into Southern California communities—most of which are rural. These areas lack sufficient law enforcement protection to quickly respond to incidents should an SVP cause a problem. This makes the placement of a SVP in a rural area highly problematic for the community's safety and residents are understandably concerned.

“AB 262 offers a solution to this problem by designating appropriate locations for sexually violent predators to be released by requiring that a full-time police or sheriff station be within 10 miles of the placement. It also prevents sexually violent predators from engaging in a tenant-landlord relationship or living with other sex offenders.

“The goal is to provide a safe environment for community where law enforcement is available to quickly respond in an emergency, and help reduce the potential for negative influences on SVP’s by other sex offenders who may be a roommate or landlord.”

- 8) **Argument in Opposition:** According to *The California Public Defenders Association*, “AB 262 is a bald example of “Not in My Backyard” legislation. By prohibiting sexually violent predators from living further than 10 miles from a fully staffed police station, AB 262 would force individuals who have been adjudicated as sexually violent predators to be placed by the state contractor for conditional release to the community, Liberty Healthcare, in urban or suburban areas. Such legislation is not in the best interests of all of the people of the State of California, regardless of where they reside.

“AB 262 may also be unconstitutional because in some cases it would be tantamount to banishment. Liberty Healthcare has had tremendous difficulty finding housing for individuals who have completed sex offender treatment and have been found by the courts to be appropriate candidates for conditional release. According to the Executive Director of Liberty, the average wait for Liberty to find housing is one year.²

“The court in *People v. Superior Court (Karsai)* (2013) 213 Cal.App. 4th 774 detailed the extraordinary efforts that Liberty went through to place Mr. Karsai in the community over a span of several years. Housing offers were repeatedly withdrawn including a trailer next to the San Luis Obispo County Sheriffs’ Department. The Karsai court noted that “Liberty (Health Care) (the conditional release provider for the State) reported that its staff had traveled 6,793 miles in a year of searching for a residence for Karsai and had viewed 1,261 properties in Santa Barbara, Ventura, and San Luis Obispo Counties.” (Id at 781-782.)

“The United States Supreme Court has allowed the civil commitment and custody of individuals as long as they have a currently diagnosed mental disorder which causes them to be a danger to the community in that they are likely to reoffend. Holding individuals who are not likely to reoffend and are no longer dangerous in custody merely because of community pressure or displeasure would not pass constitutional muster.

The constitutional problems with AB 262 are compounded by the prohibition against living with or in properties owned or rented by people with serious or violent felonies. This prohibition has no exceptions for family members.

AB 262 wastes scarce public resources. Liberty has reported that it typically pays two to three times fair market rate to secure housing for individuals placed on conditional release.³ Most individuals released pursuant to W&I section 6608 need financial assistance. Given the

² Alan Stillman, Executive Director of Liberty, talk to California Coalition on Sexual Offending, East Bay Chapter, March 31, 2014.

³ Alan Stillman, Executive Director of Liberty, talk to California Coalition on Sexual Offending, East Bay Chapter, March 31, 2014.

low vacancy rates and high occupancy rates in California's cities, excluding individuals on conditional release will cost taxpayers even more.

"Again the financial waste in AB 262 is exacerbated by the prohibition against individuals released pursuant to W&I section 6608 living with or in properties owned or rented by people with serious or violent felonies. Since it would bar any transitional housing or half house or religious program that sought to help convicted felons and sex offenders rehabilitate and reintegrate into society. Many church groups offer housing to help felons and sex offenders. Under this proposed legislation, they would be curtailed in their efforts to do so. Some research has found that housing people together who have been previously convicted of serious offenses can have beneficial consequences since they tend to police each other better and be more attuned to a misstep by other members of the community.

"Finally, the prohibition against individuals released pursuant to W&I section 6608 living with or in properties owned or rented by people with serious or violent felonies is unnecessarily restrictive and duplicative. Penal Code section 3003.5 bars registered sex offenders who are released on parole from living with any other sex offender. The parole tolling provision of Penal Code section 3000(a)(4) which states that for anyone adjudicated a sexually violent predator their parole is tolled until they are released."

REGISTERED SUPPORT / OPPOSITION:

Support

Supervisor Michael D. Antonovich, Los Angeles County Board of Supervisors
Supervisor Diane Jacob, San Diego County
Agua Dulce Town Council
Santa Ana Police Officers Association
Long Beach Police Officers Association
California Fraternal Order of Police
Los Angeles County Professional Peace Officers Association
Sacramento County Deputy Sheriffs' Association
Crime Victims United

Opposition

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

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

Date of Hearing: April 21, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 303 (Gonzalez) – As Amended: April 16, 2015

SUMMARY: Requires that all persons within sight of specified pre-arraignment detainees and incarcerated juveniles during a strip search or visual or physical body cavity search be of the same sex as the person being searched, except for physicians or licensed medical personnel.

EXISTING LAW:

- 1) Makes legislative findings and declarations that law enforcement policies and practices for conducting strip or body cavity searches of detained persons vary widely throughout California. Consequently, some people have been arbitrarily subjected to unnecessary strip and body cavity searches after arrests for minor misdemeanor and infraction offenses. Some present search practices violate state and federal constitutional rights to privacy and freedom from unreasonable searches and seizures. (Pen. Code, § 4030, subd. (a).)
- 2) States the intent of the Legislature in enacting this section to protect the state and federal constitutional rights of the people of California by establishing a statewide policy strictly limiting strip and body cavity searches. (Pen. Code, § 4030, subd. (a).)
- 3) Provides that all persons conducting or otherwise present during a strip search or visual or physical body cavity search shall be of the same sex as the person being searched, except for physicians or licensed medical personnel. (Pen. Code, § 4030, subd. (l).)
- 4) Provides that the provisions these specified searches shall apply only to pre-arraignment detainees arrested for infraction or misdemeanor offenses and to any minor detained prior to a detention hearing on the grounds that he or she is a person described in specified sections of the Welfare and Institutions Code alleged to have committed a misdemeanor or infraction offense. The provisions of this section shall not apply to any person in the custody of the Director of the Department of Corrections or the Director of the Youth Authority. (Pen. Code, § 4030, subd. (b).)
- 5) Defines "strip search" as a search which requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person. (Pen. Code, § 4030, subd. (c).)
- 6) Defines "body cavity" as the stomach or rectal cavity of a person, and vagina of a female person. (Pen. Code, § 4030, subd. (d)(1).)
- 7) Defines "visual body cavity search" as the visual inspection of a body cavity. (Pen. Code, § 4030, subd. (d)(2).)

- 8) Defines "physical body cavity search" as the physical intrusion into a body cavity for the purpose of discovering any object concealed in the body cavity. (Pen. Code, § 4030, subd. (d)(3).)
- 9) States that when a person is arrested and taken into custody, 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. (e).)
- 10) Provides that no person arrested and held in custody on a misdemeanor or infraction offense, except those involving weapons, controlled substances or violence nor any minor detained prior to a detention hearing on the grounds that he or she is a person described in specified sections of the Welfare and Institutions Code, except for those minors alleged to have committed felonies or offenses 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 a strip search will result in the discovery of the weapon or contraband. No strip search or visual body cavity search or both may be conducted without the prior written authorization of the supervising officer on duty. The authorization shall include the specific and articulable facts and circumstances upon which the reasonable suspicion determination was made by the supervisor. (Pen. Code, § 4030, subd. (f).)
- 11) Provides that no person arrested on a misdemeanor or infraction offense, nor any minor, shall be subjected to a physical body cavity search except under the authority of a search warrant issued by a magistrate specifically authorizing the physical body cavity search. (Pen. Code, § 4030, subd. (h).)
- 12) Provides that persons conducting a strip search or a visual body cavity search shall not touch the breasts, buttocks, or genitalia of the person being searched. (Pen. Code, § 4030, subd. (j).)
- 13) States that a physical body cavity search shall be conducted under sanitary conditions, and only by a physician, nurse practitioner, registered nurse, licensed vocational nurse or emergency medical technician Level II licensed to practice in this state. Any physician engaged in providing health care to detainees and inmates of the facility may conduct physical body cavity searches. (Pen. Code, § 4030, subd. (k).)
- 14) Provides that all strip, visual and physical body cavity searches shall be conducted in an area of privacy so that the search cannot be observed by persons not participating in the search. Persons are considered to be participating in the search if their official duties relative to search procedure require them to be present at the time the search is conducted. (Pen. Code, § 4030, subd. (m).)
- 15) States that a person who knowingly and willfully authorizes or conducts a strip, visual or physical body cavity search in violation of this section is guilty of a misdemeanor. (Pen. Code, § 4030, subd. (n).)

- 16) States that nothing in this section shall be construed as limiting any common law or statutory rights of any person regarding any action for damages or injunctive relief, or as precluding the prosecution under another provision of law of any peace officer or other person who has violated this section. (Pen. Code, § 4030, subd. (o).)
- 17) States that any person who suffers damage or harm as a result of a violation of this section may bring a civil action to recover actual damages, or one thousand dollars (\$1,000), whichever is greater. In addition, the court may, in its discretion, award punitive damages, equitable relief as it deems necessary and proper, and costs, including reasonable attorney's fees. (Pen. Code, § 4030, subd. (p).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "'AB 303 will strengthen current law regarding strip searches – which already prohibits officers of the opposite sex to be present— and give further clarification to prevent the unnecessary visual contact between individuals during these procedures. This is a small but necessary step to protect the state and federal constitutional rights of inmates, especially those in juvenile detention centers."
- 2) **Modification of Current Law:** This bill is a small modification of existing law, which already requires that persons conducting strip searches of persons in police custody must be of the same gender as the person being searched. This bill simply specifies that all persons within view of the search must also be of the same gender. There have been reports of officers being in view of searches, who were not in the immediate vicinity. This modification, while small, will make a significant difference to those persons being searched and will not impose a significant burden on law enforcement agencies conducting these searches.
- 3) **Strip Searches before Entering General Population:** On April 2, 2012, the Supreme Court upheld the validity of strip searches by jail officials for even minor offenses when a person is being placed in the general population. (*Florence v. Board of Chosen Freeholders of County of Burlington*, 2012 US Lexis 2712.) However, the Court did not directly address the issue of strip searches before a person's detention is reviewed by a judicial officer and who could be held in a facility apart from the general population. (See Justice Alioto Concurrence, *id.*)

California law currently regulates when and how strip searches occur in local detention facilities. The provision, which was passed in 1984, has the codified legislative intent to strictly limit strip and body cavity searches. The provisions of the law apply only to adult and juvenile pre-arraignment detainees arrested for infractions or misdemeanors. The legislative history is interesting on this provision. The original bill was vetoed. That same year the language appears to have been put into a number of other bills one of which was signed. The language of the original bill and the one signed was not substantially different. The Senate Judiciary Committee analysis of the vetoed bill discusses the expected concerns by the law enforcement opposition regarding jail safety and potential contraband but also discusses the intent of the bill to not subject minor offenders to strip searches before they are arraigned. The intent of the bill to not allow strip searches prior to arraignment is clear in the

exception which allows strip searches when a person has to enter general population because of a documented emergency. The legislative history of passing more than one bill in the same year with the same language may point to the importance the Legislature placed on protecting people charged with infractions or misdemeanors from these searches.

This bill maintains the existing practice of permitting strip searches of inmates prior to them entering the general population. However, the bill mandates that these searches be conducted out of view of all persons not of the same gender as the person being searched. This bill seeks a minor clarification which is wholly consistent with existing law.

- 4) **Argument in Support:** According to the *California Public Defenders Association*, "Current law requires that any strip search, physical body cavity search, or visual body cavity search of an arrestee be conducted by a person of the same sex as the arrestee, and only in the presence of others of the same sex as the arrestee. AB 303 would amend Penal Code section 4030 to also require that when such searches are conducted, any person "within sight of the inmate" be of the same sex as the person being searched. The new requirement will maintain current exceptions for physicians or licensed medical personnel. Penal Code section 4030 applies only to prearrangement detainees, including minors, arrested for infraction or misdemeanor cases.

"CPDA supports the goal of AB 303, which is to ensure that such searches are conducted in a manner that helps to minimize, at least in some measure, the indignity suffered by those arrested for low-level offenses."

5) **Prior Legislation:**

- a) SB 1536 (Leno), 2011-2012 Legislative Session, would have clarified that a person charged with a misdemeanor or infraction shall be brought before a magistrate before being confined in the general population of the jail. SB 1536 failed passage in the Senate Appropriations Committee.
- b) AB 1367 (Waters), Chapter 35, Statutes of 1984, created the current statute authorizing strip searches for inmates prior to release into the general population.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union
 California Attorneys for Criminal Justice
 California Public Defenders Association
 L.A. County Probation Officers Union
 Riverside Sheriffs' Association
 Youth Law Center

Opposition

None

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

Date of Hearing: April 21, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 390 (Cooper) – As Amended April 6, 2015

SUMMARY: Expands provisions to require persons convicted of specified misdemeanors to provide buccal swab samples (DNA), right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required for law misdemeanor offenses, to the list of individuals required to provide DNA cheek swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples chapter for law enforcement identification analysis. The specified offenses are as follows:

- 1) Shoplifting.
- 2) Forgery where the value for the forged document does not exceed \$950.
- 3) Check fraud where the total amount of checks does not exceed \$950.
- 4) Grand theft that is punishable as a misdemeanor.
- 5) Possession of stolen property that is punishable as a misdemeanor.
- 6) A misdemeanor violation for possession of a list of specified drugs, including cocaine, methamphetamine, concentrated cannabis.
- 7) A misdemeanor violation of petty theft with specified prior theft convictions, and prior convictions for serious or violent felonies, or required to register as a sex offender.

EXISTING LAW:

- 2) Requires the following persons provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis.
 - a) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile where a court has found that they have committed any felony offense. (Pen. Code, § 296, subd. (a)(1).)
 - b) Any adult person who is arrested for or charged with a felony offense. (Pen. Code, § 296, subd. (a)(2)(C).)

- c) Any person, including any juvenile, who is required to register as a sex offender or arson offender because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense. (Pen. Code, § 296, subd. (a)(3).)
- 3) The term "felony" includes an attempt to commit the offense. (Pen. Code, § 296, subd. (a)(4).)
- 4) Allows the collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense. (Pen. Code, § 296, subd. (a)(5).)
- 5) Requires submission of specimens, samples, and print impressions as soon as administratively practicable by qualified persons and shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles (Pen. Code, § 296, subd. (c).)
- a) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender. (Pen. Code, § 296, subd. (c)(1).)
- b) Any person who is designated a mentally ordered offender. (Pen. Code, § 296, subd. (c)(2).)
- c) Any person found to be a sexually violent predator. (Pen. Code, § 296, subd. (c)(3).)
- 6) Specifies that the court shall inquire and verify, prior to final disposition or sentencing in the case, that the specimens, samples, and print impressions have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. (Pen. Code, § 296, subd. (f).)
- 7) Provides that failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements to provide samples. (Pen. Code, § 296, subd. (f).)
- 8) Provides that The Department of Justice(DOJ), through its DNA Laboratory, is responsible for the management and administration of the state's DNA and Forensic Identification Database and Data Bank Program and for liaising with the Federal Bureau of Investigation (FBI) regarding the state's participation in a national or international DNA database and data bank program such as the Combined DNA Index System (CODIS) that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide. (Pen. Code, § 295, subd. (g).)
- 9) Provides that DOJ can perform DNA analysis, other forensic identification analysis, and examination of palm prints pursuant to the Act only for identification purposes. (Pen. Code, § 295.1, subs. (a) & (b).)

- 10) Provides that the DOJ DNA Laboratory is to serve as a repository for blood specimens, buccal swab, and other biological samples collected and is required to analyze specimens and samples and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following (Pen. Code, § 295.1, subd. (c).):
- a) Forensic casework and forensic unknowns. (Pen. Code, § 295.1, subd. (c)(1).)
 - b) Known and evidentiary specimens and samples from crime scenes or criminal investigations. (Pen. Code, § 295.1, subd. (c)(2).)
 - c) Missing or unidentified persons. (Pen. Code, § 295.1, subd. (c)(3).)
 - d) Persons required to provide specimens, samples, and print impressions. (Pen. Code, § 295.1, subd. (c)(4).)
 - e) Legally obtained samples. (Pen. Code, § 295.1, subd. (c)(5).)
 - f) Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control. (Pen. Code, § 295.1, subd. (c)(6).)
- 11) Specifies the Director of Corrections, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, buccal swab samples, and thumb and palm print impressions were collected send them promptly to the Department of Justice. (Pen. Code, § 298.)
- 12) Requires the DNA Laboratory of DOJ to establish procedures for entering data bank and database information. (Cal. Penal Code § 298(b)(6).)
- 13) Specifies that a person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her DNA specimen and sample destroyed and searchable database profile expunged from the data bank program if the person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Data Bank Program and there otherwise is no legal basis for retaining the specimen or sample or searchable profile. (Cal. Pen. Code § 299, subd. (b).)
- a) Following arrest, no accusatory pleading has been filed within the applicable period allowed by law charging the person with a qualifying offense or if the charges which served as the basis for including the DNA profile in the state's DNA Database and Data Bank Identification Program have been dismissed prior to adjudication by a trier of fact (Pen. Code, § 299, subd.(b)(1).); or
 - b) The underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed (Pen. Code, § 299, subd.(b)(2).); or
 - c) The person has been found factually innocent of the underlying offense (Pen. Code, § 299, subd.(b)(3).); or

- d) The defendant has been found not guilty or the defendant has been acquitted of the underlying offense. (Pen. Code, § 299, subd.(b)(4).)
- 14) Requires the person requesting the data bank entry to be expunged send a copy of his or her request to the trial court of the county where the arrest occurred, or that entered the conviction or rendered disposition in the case, to the DNA Laboratory of the Department of Justice, and to the prosecuting attorney of the county in which he or she was arrested or, convicted, or adjudicated, with proof of service on all parties. The court has the discretion to grant or deny the request for expungement. The denial of a request for expungement is a nonappealable order and shall not be reviewed by petition for writ. (Pen. Code, § 299, subd. (c)(1).)
- 15) Requires DOJ destroy a specimen and sample and expunge the searchable DNA database profile pertaining to the person who has no present or past qualifying offense of record upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following (Pen. Code, § 299, subd. (c)(2).):
- a) The written request for expungement pursuant to this section. (Pen. Code, § 299, subd.(c)(2)(A).);
 - b) A certified copy of the court order reversing and dismissing the conviction or case, or a letter from the district attorney certifying that no accusatory pleading has been filed or the charges which served as the basis for collecting a DNA specimen and sample have been dismissed prior to adjudication by a trier of fact, the defendant has been found factually innocent, the defendant has been found not guilty, the defendant has been acquitted of the underlying offense, or the underlying conviction has been reversed and the case dismissed. (Pen. Code, § 299, subd.(c)(2)(B).)
 - c) Proof of written notice to the prosecuting attorney and the Department of Justice that expungement has been requested. (Pen. Code, § 299, subd.(c)(2)(C).)
 - d) A court order verifying that no retrial or appeal of the case is pending, that it has been at least 180 days since the defendant or minor has notified the prosecuting attorney and the Department of Justice of the expungement request, and that the court has not received an objection from the Department of Justice or the prosecuting attorney . (Pen. Code, § 299, subd.(c)(2)(D).)
- 16) States that the Department of Justice shall destroy not any specimen or sample collected from the person and any searchable DNA database profile pertaining to the person, if department determines that the person is subject to the provisions of this chapter because of a past qualifying offense of record or is or has otherwise become obligated to submit a blood specimen or buccal swab sample as a result of a separate arrest, conviction, juvenile adjudication, or finding of guilty or not guilty by reason of insanity for an offense requiring a DNA sample, or as a condition of a plea. (Pen. Code, § 299, subd. (d).)
- 17) The Department of Justice is not required to destroy analytical data or other items obtained from a blood specimen or saliva, or buccal swab sample, if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed or otherwise compromised. (Pen. Code, § 299, subd. (d).)

- 18) States that a judge is not authorized to relieve a person of the separate administrative duty to provide specimens, samples, or print impressions required, including reduction to a misdemeanor (Cal. Penal Code § 17.), or dismissal following conviction. (Cal. Penal Code §§ 1203.4, 1203.4a.) (Cal. Penal Code § 299(f).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 390 will allow for restoration of DNA sample collection for crimes which were previously felonies but were *reclassified* as misdemeanors by Proposition 47. The passage of Proposition 47 created an unintended consequence which will limit the ability of law enforcement to solve rapes, murders, robberies and other serious and violent crimes through reliable DNA evidence. With one of the largest databases in the world, California has been able to accurately identify those who have committed prior unsolved violent crimes. This has benefitted the people of California by allowing for the introduction of reliable scientific evidence that provides powerful proof of identity, both in exonerating some individuals and convicting others.
- "It has been said that DNA technology "constitutes the single greatest advance in the 'search for truth', and the goal of convicting the guilty and acquitting the innocent, since the advent of cross-examination." (See *United States v. Kincade* (9th Cir. 2004) 379F.3d 813; *People v. Robinson* (2010) 47 Cal. 4th 1104; *People v. Wesley* (1998) 533 N.Y.S. 2d 643, 644.)
- "AB 390 reaffirms Proposition 69 by making the criminal justice system more reliable and more just through accurate and expeditious identification using DNA of recidivist criminal offenders, and by focusing investigations on existing unsolved rapes, murders, robberies and other serious and violent cases."
- 2) **California DNA Database:** The profile derived from the DNA sample is uploaded into the state's DNA databank, which is part of the national Combined DNA Index System (CODIS), and can be accessed by local, state and federal law enforcement agencies and officials. When a DNA profile is uploaded, it is compared to profiles contained in the Convicted Offender and Arrestee Indices; if there is a "hit," the laboratory conducts procedures to confirm the match and, if confirmed, obtains the identity of the suspect. The uploaded profile is also compared to crime scene profiles contained in the Forensic Index; again, if there is a hit, the match is confirmed by the laboratory. CODIS also performs weekly searches of the entire system. In CODIS, the profile does not include the name of the person from whom the DNA was collected or any case-related information, but only a specimen identification number, an identifier for the agency that provided the sample, and the name of the personnel associated with the analysis. CODIS is also the name of the related computer software program. CODIS's national component is the National DNA Index System (NDIS), the receptacle for

all DNA profiles submitted by federal, state, and local forensic laboratories. DNA profiles typically originate at the Local DNA Index System (LDIS), then migrate to the State DNA Index System (SDIS), containing forensic profiles analyzed by local and state laboratories, and then to NDIS.

- 3) **Proposition 69:** Proposition 69 was passed by the voters in 2004. That proposition expanded the categories of people required to provide DNA samples for law enforcement identification analysis to include any adult person arrested or charged with any felony offense. Proposition 69 provided for an expungement process for those individuals who were not convicted of a qualifying offense and had no prior qualifying offense.
- 4) **Proposition 47:** Proposition 47 was passed by the voters in 2014. By passing Proposition 47, the voters determined that certain offense can only be charged and punished as misdemeanors. The offenses that were affected by the voters in Prop. 47 were predominantly “wobblers.” A wobbler is an offense which can be charged as a felony, or a misdemeanor, at the discretion of the district attorney’s office responsible for charging the crime. The only offense affected by Proposition 47, that was chargeable exclusively as a felony, was possession of specified drugs, primarily cocaine. (Health and Saf. Code, § 11350(a).)
- 5) **The Proposed Legislation Would Result in DNA Samples Being Taken From Individuals that Would Not Have Been Required to Provide DNA Prior to Proposition 47.** The proposed legislation requires that DNA samples be taken from individuals convicted of misdemeanors that were all affected by Prop. 47. Given that these offenses were wobblers (except possession of cocaine), an individual arrested for one of these offenses, could have been arrested for a felony or a misdemeanor, at the discretion of the officer. Similarly, these offenses could have been charged as either misdemeanors or felonies at the discretion of the district attorney’s offices responsible for making charging decisions. Thus, many instances covered by the proposed legislation would not have triggered DNA collection prior to Proposition 47.
- 6) **Argument in Support:** According to the *California Peace Officers Association (CPOA)*, “California voters in November 2004 passed Proposition 69, the “DNA Fingerprint, Unsolved Crime and Innocence Protection Act”, to expand and modify state law regarding the collection and use of criminal offender DNA samples and palm print impressions. Proposition 69 was aimed at making the criminal justice system a more reliable, accurate and expeditious identification system through the use of DNA from recidivist criminal offenders and by focusing investigations on existing unsolved rapes, murders, and other serious and violent cases. The impact of Proposition 69 has helped solve many old murders, rapes, assaults, home burglaries and other serious and violent crimes and has insured the integrity of convictions so that innocent individuals are not needlessly arrested, prosecuted or convicted.

“Proposition 47, The Safe Neighborhoods and Schools Act, approved in November 2014, reclassified as misdemeanors a number of felonies including drug offenses, fraud crimes,

theft and forgery. The reclassification of felony offenses to misdemeanors will result in a significant reduction of DNA samples collected from offenders and will negatively impact the ability of law enforcement to solve rapes, murders and other serious and violent crimes through reliable DNA evidence. It is estimated that approximately 255,000 DNA samples of criminal offenders could be affected by the passage of Proposition 47. Prior to Proposition 47, the DNA database was expanding and had tremendous success accurately identifying individuals who have committed prior unsolved violent crimes while exonerating others.

“In Sacramento County, DNA helped solve a 20-year old murder of an elderly woman. Sophia McAllister, 80 years old, was brutally raped, robbed and murdered in her home in 1989. The killing went unsolved for 20 years until Donald Carter was arrested in 2009 on an unrelated low level drug possession charge. A DNA sample was taken and entered into the DNA database resulting in a match with the forensic sample taken at the scene of the murder. A jury found Carter guilty in the murder.

“In Santa Cruz County, a young woman was kidnapped, beaten and sexually assaulted. A DNA sample was collected and entered into the database without any matches. A few months later Octavio Castillo was arrested in Watsonville for receiving stolen property and auto burglary and a DNA sample was collected. When the sample was entered into the DNA database, a match was made with the assault of the young woman. The suspect was arrested for the sexual assault and was convicted for assault, sodomy and false personation.

“Both cases are examples of the many cases which have been solved through the DNA database by connecting low level offenders to unsolved crimes of the past. Under Proposition 47, neither case would have been solved.

“AB 390 will enhance California’s DNA Fingerprint, Unsolved Crime and Innocent Protection Act to include specified misdemeanor convictions subject to DNA sample database collection when such crimes are committed by adult offenders. Solving rapes, murders, and other serious or violent crimes through reliable DNA evidence will help keep neighborhoods safe from dangerous recidivist offenders who would otherwise remain undetected. The Association for Los Angeles Deputy Sheriffs, the Association of Deputy District Attorneys, the California Association of Code Enforcement Officers, the California College and University Police Chiefs Association, the California Narcotic Officers Association, the Los Angeles Police Protective League and the Riverside Sheriffs Association are all in favor of Assembly Bill 390. We commend you for bringing this bill forward.”

- 7) **Argument in Opposition:** According to *The American Civil Liberties Union of California*, “AB 390 is an unnecessary invasion of our privacy and undermines the will of California voters who, by passing Proposition 47, determined that the minor crimes targeted by AB 390 should not be treated like felonies.

“Expanding the DNA database will not necessarily make our communities safer.

“Historically, increasing the number of people from whom DNA is collected in California has not increased the overall rate at which law enforcement have been able to identify perpetrators of violent crimes. In fact, just the opposite is true. According to the California Department of Justice (DOJ), the clearance rate for unsolved violent crimes in California was higher in 2004 – the year voters passed Prop 69, expanding the database – than it was nearly 10 years later, in 2013. This means that while more people have been added to the DNA database, and additional taxpayer dollars have gone towards greater collection efforts, the rate at which law enforcement officers have been able to solve violent crimes has not increased.

“The use of DNA in solving crimes is limited by our ability to detect and collect DNA at crime scenes, not by the number of profiles in the DNA database. Needless expansion of the database could further overwhelm already backlogged crime labs, delaying investigations and forcing victims of crimes to wait even longer for evidence from their crime to be processed.

“Law enforcement and governmental agencies often point towards higher “hit” rates as evidence of successful DNA database expansion. However, hit rates are misleading. Hits only indicate that a match was made – not whether the hit resulted in a person being apprehended and prosecuted, or, more importantly, whether the right person was apprehended and prosecuted. In addition, hit rates are not an accurate measure of cases solved by DNA evidence because such figures include cases in which individuals were charged and convicted without the use of DNA – for example, if the hit occurs subsequent to the conviction.

“DNA evidence is not infallible.

“Like any procedure that relies on human precision, DNA testing is susceptible to human error. There are already innumerable opportunities for error in the DNA sampling process, and putting more people into the DNA database could create backlogs and undermine quality control at crime laboratories. Even without the thousands of new samples that would require testing under AB 390, a number of cases have already come to light in which people have been wrongly convicted because of mishandled DNA evidence or mistakes made in DNA testing. Most notably, in Santa Clara County in 2013, Lukis Anderson – a 26-year-old man of color – spent six months in jail for a murder he could not possibly have committed, after paramedics accidentally transferred his DNA to the body of the crime victim. At the time the mistake was discovered, Mr. Lukis was facing life in prison and possibly the death penalty for the crime.

“AB 390 seeks to expand California’s DNA database beyond what most of the country has determined is necessary or reasonable.

“DNA collection has very serious privacy implications. Unlike fingerprints – which are merely two dimensional representations of the surface of a person’s finger and reveal nothing other than a person’s identity – DNA contains our genetic codes, which reveal the most intimate, private information, not only about the person whose DNA is collected but for everyone else in that person’s extended family. Permanent collection and storage of our genetic blueprints represents a serious threat of governmental intrusion when this database is inevitably used for other purposes. A single breach of security could divulge sensitive information that a person might not even know about him or herself to employers, insurance companies, and identity thieves. For this reason, most state legislatures and the United States Supreme Court have taken great care to limit collection of DNA to more serious crimes.”

“AB 390 – which seeks to add minor misdemeanor offenses, such as simple drug possession and shoplifting, to the list of crimes that trigger DNA collection – goes far beyond the scope of what most of the country has determined is necessary or reasonable. In 2013, while 41 other states required DNA collection from people convicted of misdemeanor sex offenses, only 18 required DNA samples from people convicted of misdemeanors other than sex offenses. Of those, most states limit collection to individuals convicted of serious misdemeanors. Alabama, for example, collects misdemeanor DNA samples only from people convicted of offenses involving danger to the person. North Carolina limits its misdemeanor collection to people convicted of certain sex offenses, certain arson-related offenses, assaults on handicapped persons, and stalking.

“Expansion of the DNA database will reinforce racial disparities, and could lead to greater numbers of people of color being accused and convicted of crimes they did not commit.

“People of color – who are stopped, searched, and arrested at much higher rates than white people – are disproportionately represented in DNA databases. This racial disparity means that communities of color will be exposed to the negative effects of crime lab error and intrusive police investigations far more often than white people.

“Expanding the DNA database as AB 390 proposes to include low level, nonviolent misdemeanors could result in additional people of color being falsely accused and convicted of crimes they did not commit. This will only add to the existing racial inequalities in our criminal justice system.”

- 8) **Related Legislation:** AB 84 (Gatto) expands the collection of DNA samples to include persons convicted of specified misdemeanors. Authorizes samples collected during felony arrests to be forwarded to Department of Justice (DOJ) upon a judicial finding of probable cause, if the California Supreme Court upholds the decision in *People v. Buza*. Streamlines the process to expunge DNA samples and profiles, if the California Supreme Court upholds the decision in *People v. Buza*. Pending hearing in Assembly Appropriations.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Deputy District Attorneys
California Association of Code Enforcement Officers
California College and University Police chiefs Association
California District Attorneys Association
California Narcotic Officers Association
California Peace Officers' Association
California Police Chiefs Association
California State Sheriffs' Association
Chief Probation Officers of California
Fraternal Order of Police
Insurance Commissioner Dave Jones
Long Beach Police Officers Association
Los Angeles County Professional Peace Officers Association
Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
Riverside Sheriffs Association
Sacramento County Deputy Sheriffs' Association
Sacramento County District Attorney Anne Marie Schubert
San Bernardino County District Attorney Mike Ramos
Santa Ana Police officers Association

Opposition

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

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

Date of Hearing: April 21, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 443 (Alejo) – As Introduced February 23, 2015

SUMMARY: Permits prosecutors to seize assets and property of individuals up to 60 days prior to the filing of criminal charges pursuant to criminal profiteering forfeiture proceedings. Additionally adds trafficking of firearms or other deadly weapons, and trafficking of endangered species to the list of offenses which can constitute criminal profiteering activity. Specifically, **this bill:**

- 1) Provides that the prosecuting agency may, prior to the commencement of a criminal proceeding, file a petition of forfeiture with the superior court of the county in which the defendant will be charged with a criminal offense, which shall allege that the defendant has engaged in a pattern of criminal profiteering activity, including the acts or threats chargeable as crimes and the property forfeitable, provided the court determines that:
 - a) The value of the assets to be seized exceeds \$10,000.
 - b) There is a substantial probability that the prosecuting agency will file a criminal complaint or seek a grand jury indictment against the defendant.
 - c) There is a substantial probability that the prosecuting agency will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture.
 - d) The need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.
- 2) If a forfeiture petition is filed prior to the filing of the complaint in a criminal action, the motion and any injunctive order shall be dismissed by operation of law unless a criminal complaint or grand jury indictment is filed within 60 days of the grant of the motion. If a forfeiture petition is dismissed pursuant to this subdivision, the motion shall not be refiled, except upon the filing of a criminal complaint.
- 3) Adds trafficking in firearms or other deadly weapons, and trafficking in endangered species to the list of crimes that can constitute criminal profiteering activity.

EXISTING LAW:

- 1) Establishes the "California Control Profits of Organized Crime Act." (Pen. Code, § 186.)
- 2) Declares that the Legislature finds and declares that an effective means of punishing and deterring criminal activities of organized crime is through the forfeiture of profits acquired and accumulated as a result of such criminal activities. It is the intent of the Legislature that the "California Control of Profits of Organized Crime Act" be used by prosecutors to punish and deter only such activities. (Pen. Code, § 186.1).
- 3) Defines "criminal profiteering activity" as any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following offenses: arson, bribery, child pornography or exploitation, felonious assault, embezzlement, extortion, forgery, gambling, kidnapping, mayhem, murder, pimping and pandering, receiving stolen property, robbery, solicitation of crimes, grand theft, trafficking in controlled substances, violation of the laws governing corporate securities, specified crimes involving obscenity, presentation of a false or fraudulent claim, false or fraudulent activities, schemes, or artifices, money laundering, offenses relating to the counterfeit of a registered mark, offenses relating to the unauthorized access to computers, computer systems, and computer data, conspiracy to commit any of the crimes listed above, offenses committed on behalf of a criminal street gang, offenses related to fraud or theft against the state's beverage container recycling program, human trafficking, any crime in which the perpetrator induces, encourages, or persuades a person under 18 years of age to engage in a commercial sex act, any crime in which the perpetrator, through force, fear, coercion, deceit, violence, duress, menace, or threat of unlawful injury to the victim or to another person, causes a person under 18 years of age to engage in a commercial sex act, theft of personal identifying information, offenses involving the theft of a motor vehicle, abduction or procurement by fraudulent inducement for prostitution. (Pen. Code, § 186.2(a).)
- 4) Defines "pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering, as defined by this chapter, that meet the following requirements: (Pen. Code, § 186.2(b)(1).)
 - a) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics;
 - b) Are not isolated events; and/or
 - c) Were committed as a criminal activity of organized crime.
- 5) Defines "organized crime" as a crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as narcotics, prostitution, loan-sharking, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, or systematically encumbering the assets of a business for the purpose of defrauding creditors. "Organized crime" also means crime committed by a criminal street gang, as defined. "Organized crime" also means false or fraudulent activities,

schemes, or artifices, as defined, and the theft of personal identifying information, as defined. (Pen. Code, § 186.2(d).)

- 6) States that the following assets of any person who is convicted a specified underlying offense and of engaging in a pattern of criminal profiteering activity are subject to forfeiture (Pen. Code, § 186.3):
 - a) Any property interest whether tangible or intangible, acquired through a pattern of criminal profiteering activity; and
 - b) All proceeds of a pattern of criminal profiteering activity, which property shall include all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity.
- 7) States that, notwithstanding that no response or claim has been filed, in all cases where property is forfeited, as specified, and, if necessary, sold by the Department of General Services (DGS) or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows (Pen. Code, § 186.8):
 - a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all those lien holders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed;
 - b) To DGS or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized, as specified; and
 - c) To the State's General Fund or local governmental entity, whichever prosecutes.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 443 seeks to empower a prosecuting agency's ability to effectively dismantle criminal organizations by targeting the proceeds of criminal activity while respecting the due process rights of suspects, arrestees, and criminal defendants.

"Specifically, AB 443 provides a prosecuting agency with the ability to freeze criminal assets before the commencement of a criminal proceeding. Waiting until the filing of a criminal proceeding to bring a petition for asset forfeiture brings the risk of providing an early notification to the criminal organization under investigation. Criminal organizations benefit from the early warning system by transferring or removing their assets from the jurisdiction of the court. While the criminal proceeding may affect an individual in the criminal

organization, the criminal operations of these gangs can proceed as their funds remain available.

"Although this tool allows for a forfeiture petition to be filed before the filing of a criminal complaint, the bill includes several safeguards to protect the due process rights of criminal suspects, arrestees, and defendants. The bill strikes an appropriate line between these constitutional rights and the need for protecting the public from organized crime. Many of these organizations are operating in cities throughout the state.

"In addition, AB 443 aims to punish and deter the trafficking in firearms and endangered species by adding these crimes to the definition of "criminal profiteering activity," making the profits of these crimes subject to forfeiture."

- 2) **Due Process: Seize and Freeze:** This bill seeks to add a provision to the criminal profiteering section which will allow prosecutors to seize assets up to 60 days prior to filing a criminal action if the following criteria are shown to a judge by a prosecutor:
- a) The value of the assets to be seized exceeds \$10,000.
 - b) There is a substantial probability that the prosecuting agency will file a criminal complaint or seek a grand jury indictment against the defendant.
 - c) There is a substantial probability that the prosecuting agency will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture.
 - d) The need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

The showing is made by a prosecutor in an ex parte proceeding. Thus the person whose property is being seized is not present at the proceeding and is not able to refute any allegations made by the prosecution prior to the seizing of the assets. The bill, as drafted does not provide a person with an opportunity to be heard prior to the seizure of their property. A person's property may not be confiscated by the state without "some kind of notice and opportunity to be heard." *Fuentes v. Shevin* (1972) 407 U.S. 67, 79-80. "We start with the basic proposition that in every case involving a deprivation of property within the purview of the due process clause, the Constitution requires some form of notice and a hearing." *Beaudreau v. Superior Court* (1975) 14 Cal.3d. 448, 458). The bill's sponsor argues that the ex parte nature of the proceeding is necessary to prevent the property owner from hiding or moving assets. Opponents argue that prosecutors can first seize the property without sufficient evidence to bring criminal charges against a prospective defendant and will allow for seizure of an innocent owner's property without due process.

- 3) **Substantial Probability:** The bill does provide that the prosecution must allege to a magistrate that there is a "substantial probability" that the agency will file a criminal complaint or seek a criminal grand jury indictment. Additionally, the prosecutor must allege

that there is a "substantial probability" that the prosecuting agency will prevail on the issue of forfeiture.

According to the sponsor, the standard of substantial probability is intended to be at least as demanding as probable cause. California courts have found the term to be synonymous with "strong probability" or "strong likelihood." (*Walbrook Ins. Co. v. Liberty Mut. Ins. Co.* (1992) 5 Cal.App.4th 1445, 1460-1461.) In the search warrant context, the term is also synonymous with "probable cause." (See *Fenwick & W. v. Superior Court* (1996) 43 Cal.App.4th 1272, 1278-1279 ["Probable cause must attach to each place to be searched. Thus, an affidavit for a search warrant must contain facts demonstrating a substantial probability that evidence of a crime will be located in a particular place."]; *People v. Garcia* (2003) 111 Cal.App.4th 715, 721 [same].) "Substantial probability" also appears several times in the U.S. Code, including in the asset forfeiture context (21 U.S.C. § 853(e)(1)(B)(i)). Courts addressing the use of the term in federal statutes have uniformly held that substantial probability actually affords defendants greater protection than the probable cause standard. (See *United States v. Gotti* (2d Cir. 1986) 794 F.2d 773, 777 ["Congress was aware that the 'probable cause' standard is less demanding than a requirement of 'substantial probability'"]; *United States v. Wong* (D. Haw. 2012) 2012 WL 5464178, at *3 [same].)

- 4) **Threshold Amount:** The threshold amount triggering the seize and freeze provisions is \$10,000. Forfeiture covers anything from liquid (or cash) assets, to vehicles, to real estate. The author's office has indicated a willingness to modify this threshold amount to \$100,000.
- 5) **Interim Property Value:** The bill would allow for seizure of property for up to 60 days prior to the filing of criminal proceedings against the property owner or asset holder. The bill does provide however that the property may not be forfeited if the agency fails to file criminal charges within the prescribed 60-day window allotted. However, the bill does not address compensation to the property owner for the interim value of the property. For instance, if a business owner must shut down his or her business, there is no provision for that owner to receive remuneration for their economic losses during that period. In fact, such a seizure could result in the loss of a business completely.
- 6) **Criminal Profiteering Asset Forfeiture Generally:** Criminal profiteering asset forfeiture is a criminal proceeding held in conjunction with the trial of the underlying criminal offense. Often, the same jury who heard the criminal charges also determines whether the defendant's assets were the ill-gotten gains of criminal profiteering. As a practical matter, the prosecution must assemble its evidence for the forfeiture matter simultaneously with the evidence of the crime.

Under Penal Code Section 186.2, asset forfeiture for is allowed upon conviction of more than thirty crimes under specified circumstances.

"Criminal profiteering activity means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime [under various criminal statutes]. Those crimes include: arson; bribery, child pornography or exploitation, which may be prosecuted as a felony; felonious assault, embezzlement; extortion, forgery, gambling, kidnapping, mayhem, murder, pimping and pandering, receiving stolen property, robbery, solicitation of crimes, grand theft, trafficking in controlled substances, violation of the laws governing corporate securities, crimes related to possession and distribution of

obscene or harmful matter, presentation of a false or fraudulent claim, false or fraudulent activities, schemes, or artifices, money laundering, offenses relating to the counterfeit of a registered mark, offenses relating to the unauthorized access to computers, computer systems, and computer data, conspiracy to commit any of the crimes listed above, felony gang activity, as specified, any offenses related to fraud or theft against the state's beverage container recycling program, including, but not limited to, those offenses specified in this subdivision and those criminal offenses specified in the California Beverage Container Recycling and Litter Reduction Act, human trafficking, any crime in which the perpetrator induces, encourages or persuades a person under 18 years of age to engage in a commercial sex act, any crime in which the perpetrator, through force, fear, or coercion, deceit violence, duress, menace, or threat of unlawful injury to the victim or to another person, causes a person under 18 years of age to engage in a commercial sex act, theft of personal identifying information, motor vehicle theft, and abduction or procurement by fraudulent inducement for prostitution". (Pen. Code, § 186.2(a)(1) to (33).)

- 7) **Criminal Profiteering Proceeds:** Under existing law, forfeited assets are distributed as follows:
- a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all those lien holders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed.
 - b) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized, as specified.
 - c) To the State's General Fund or local governmental entity, whichever prosecutes.

Under existing law, the forfeited proceeds of criminal profiteering are placed in the county general fund with no directions for use. There is an exception for forfeiture in child pornography cases. In such cases, the money is deposited in the county or State Children's Trust Fund for child abuse and neglect prevention and intervention. (Pen. Code, § 186.8 and Welf. and Inst. Code, § 18966 and 18969.) In California drug asset forfeiture, law enforcement receives 65% of forfeiture proceeds. (Health and Safety Code Sections 11469 *et seq.*) Of this amount, 15% must be placed in a special county or city fund used "to combat drug abuse and divert gang activity." Under federal forfeiture law allowing "adoption" of state seizures of drug proceeds, the agency seizing that property may receive as much as 80% of these proceeds. This money must be used according to guidelines set by the United States Department of Justice and require that the money be used largely for law enforcement.

- 8) **Elements of the Offense:** Proceeds can be forfeited if the proceeds were gained through a pattern of criminal activity and were gained through involvement in organized crime.
- a) **Pattern of Criminal Activity:** "Pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering (listed above), that meet the

following requirements

- i) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics;
 - ii) Are not isolated events; and/or
 - iii) Were committed as a criminal activity of organized crime.
- b) **Organized Crime:** "Organized crime" means crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as narcotics, prostitution, loan-sharking, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, or systematically encumbering the assets of a business for the purpose of defrauding creditors. "Organized crime" also means crime committed by a criminal street gang. "Organized crime" also means false or fraudulent activities, schemes, or artifices, and the theft of personal identifying information.
- 9) **Trans-National Gangs:** The sponsor of the bill has indicated that the intention of the bill is to target trans-national gangs. However, the language of the bill applies across the board to all criminal profiteering activity. Nothing in this bill prevents local law enforcement from going into court and seizing assets prior to the filing of criminal charges on any number of criminal offenses which do not involve trans-national gangs. Perhaps the author would consider limiting the applicability of the bill to only target trans-national gangs rather than revising the entire criminal profiteering section.
- 10) **Argument in Support:** According to the *The Attorney General*, "AB 443 has been carefully crafted to preserve due process rights. Moreover, existing law has protections that would apply to any changes made by AB 443. These include:
- the burden to prove that the assets are subject to forfeiture and tied to criminal activity lies on the state
 - the state must prove their tie by the legal standard "beyond a reasonable doubt"
 - any proceeds from the forfeiture of assets or monies does not go back to the seizing entity.
- "The first two provisions ensure one of the cornerstones of our legal system: innocent until proven guilty. Laws that permit the seizure of assets prior to a conviction receive criticism by placing the burden of proof on the defendant. States that place the burden of proof on the owner create a barrier to due process and force innocent owners to navigate the legal system. California law protects innocent owners by placing the burden on the government entity. Moreover, the standard of proof required increases the burden. As reported by the Institute for Justice, 'beyond a reasonable doubt' is the hardest standard under which it is hardest to forfeit assets. Not only does the government have the responsibility to prove the assets are subject to forfeiture but it must also do so by meeting the highest standards of a courtroom.

"Finally, California law does not create an incentive for law enforcement to seize assets. . . Currently, California's order of distribution statute mandates any money forfeited or proceeds from a sale to be distributed accordingly:

1. To any innocent purchasers, conditional sales vendor, or holder of a valid lien, mortgage, or security interest
2. To the Department of General Services or local governmental entity for all expenses related to the sales
3. To the General Fund of the State or the general fund of a local governmental entity

"There are also provisions that allow for the funds to go into a County's Children's Trust Fund, the California Beverage Container Recycling Fund, and to the Victim-Witness Assistance Fund for certain crimes for which the assets were forfeited. State and local law enforcement are not on the order of distribution. They do not receive any budget increases as a result of any proceeds from seized assets.

"In California, the intent of asset forfeiture is not to fund local enforcement agencies. In California, assets are seized to reduce the profitability of criminal enterprises, remove the assets required to fund these criminal activities, and protect public safety throughout the state.

"While California law currently ensures these protections, AB 443 also implements further provisions to safeguard due process. Foremost, the bill merely establishes a process by which a prosecuting agency can petition to freeze assets for an individual suspected of engaging in a pattern of criminal profiteering activity. The power to approve a petition for the preservation of assets will remain with the courts. Given this provision, no law enforcement or prosecuting agency will have the ability to freeze or seize assets without the approval of the petition. This will protect many assets from seizure. For example, an individual pulled over for a traffic stop, found in the possession of a large sum of money, may not have his or her assets frozen. The law enforcement officer will not have the approval of a court as no petition was sought beforehand nor does a traffic stop count as 'engaged in a pattern of criminal profiteering'.

"In deciding whether or not to approve a petition to freeze assets, the court cannot grant approval unless certain conditions are met. As mentioned earlier, the court must find that the value of the assets to be seized exceeds \$10,000. In a review of the recently terminated Federal Equitable Sharing Program, which was a means for states to seize assets without charges or a conviction, the Washington Post found that half of the seizures were below \$8,800. AB 443 casts a much narrower net by setting the floor at \$10,000. This provision ensures that law enforcement agencies target larger operations.

"Second, the court must find a substantial probability that the prosecuting agency will file a criminal complaint and that there is a substantial probability that the prosecuting agency will prevail on the issue of forfeiture. When a prosecuting agency petitions the court for asset preservation before filing for a criminal proceeding, they will still need to convince the courts that the assets are tied to criminal activity. Without securing substantial probability on these two fronts, the courts may deny the petition. Finally, in the case where a prosecuting agency may be granted permission but does not file for a criminal proceeding, the order to freeze the assets will be dismissed within 60 days from when it was granted. Nor could a

prosecuting agency return to the court and petition to freeze the same assets unless accompanied by a new criminal complaint.

"With these protections, the people of California can feel confident that their rights are protected. As the chief law enforcement officer in the state, the Attorney General is deeply committed to protecting the rights of Californians. AB 443 protects and ensures due process while also enabling law enforcement agencies to dismantle transnational organizations. These criminal organizations threaten the safety of our neighborhoods and place Californians in danger. We are proud to sponsor AB 443 as part of the efforts to rid these international criminal organizations from California's streets."

- 11) **Argument in Opposition:** According to *California Attorneys for Criminal Justice*, "This bill allows a prosecuting agency to file a petition of forfeiture prior to the commencement of the underlying criminal proceeding if there is a 'substantial probability' that the prosecuting agency will file a criminal complaint and there is a 'substantial probability' the prosecuting agency will prevail on the issue of forfeiture.

"As written, the agency anticipating the commencement of criminal proceedings can seize first without sufficient evidence to bring charges. This will cause the forfeiture of an innocent owner's valuable property without provision of any concomitant avenue of Due Process. The implied hearing rights suggested in context of pre-complaint seizure would be a plenary action in the superior court. In other words, an action that the aggrieved property owner would have to both initiate and pay for, or suffer forfeiture. The provision in AB 443 dismissing the motion by 'operation of law' does absolutely nothing to restore the interim value of property that has been seized. The interim harm could be significant to someone who is not charged with a crime, especially if all his or her assets are seized for the two-month period.

"The statutory provision for pre-charging /post-seizure hearing inherent in AB 443 fails to meet constitutional requirements. A person's property may not be confiscated by the state without 'some kind of notice and opportunity to be heard.' *Fuentes v. Shevin* (1972) 407 U.S. 67, 79-80. . "We start with the basic proposition that in every case involving a deprivation of property within the purview of the due process clause, the Constitution requires some form of notice and a hearing.' *Beaudreau v. Superior Court* (1975) 14 Cal.3d 448, 458. Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property . . . be preceded by notice and opportunity for hearing appropriate to the nature of the case.' *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 313. CACJ believes that the proposed governmental 'need' for private property in AB 443 can never outweigh the need of the true owner not to be deprived of property without due process of law.

"Such hearings are virtually always required before the taking. *Kash Enterprises, Inc. v. City of Los Angeles* (1977) 19 Cal.3d 294, 308. Postponement of notice and provision of a due process hearing until after the initial taking has occurred is generally disfavored. *Id.* Even if criminal charges are ultimately filed, due to the time sensitive value of various instruments and property, the delays inherent in AB 443 would probably cause many seizing agencies to become belatedly liable to the person whose property was seized. *Hunt v. United States Dep't of Justice* (5th Cir. Tex. 1993) 2 F.3d 96.

"AB 443 contains a self-executing clause which vests inappropriate authority in the hands of prosecutors. This bill requires showing that it is 'substantially probable' that charges will be filed since this pre-hearing is attended only by the prosecutor, the prosecutor would simply be able to make an assertion and that assertion is to be taken as fact. The defense is not present to cross-examine the prosecutor to assure the veracity of the statement. The burden is met simply because the prosecutor says so.

"Affected property owners would be caught in an inevitable and unconstitutional 'Catch-22'. On the one hand between seeking immediate redress, or, requiring the Court to delay discovery (which, due to the civil nature of a pre-complaint seizure, the seizing agency would then have an obligation to provide) until disposition of the criminal matter. *Pacers, Inc. v. Superior Court* (1984) 162 Cal. App. 3d 686, 690. Given the ever increasing statutes of criminal limitations in this state, such cases could take decades to resolve. Viewed in this context, the mischief of a pre-complaint 'criminal' seizure statute becomes plainly apparent not only in the cost to individuals, but to the already heavily burdened superior courts of this state.

"The state can have no legitimate interest in the seizure of the property of others, until such time as there occurs a nexus and sufficient evidence to support the filing of a criminal charge against the owner that will then allow the accused person to litigate the matter in a single action, thus saving scarce judicial resources and preserving the accused's established rights to due process of law."

12) **Related Legislation:**

- a) AB 160 (Dababneh), adds piracy, insurance fraud, and tax fraud to the list of crimes for which a prosecutor can seek criminal profiteering forfeiture. Additionally, amends the organized crime element of criminal profiteering to provide additional examples of matter which constitute criminal profiteering. AB 160 is awaiting a hearing in the Assembly Appropriations Committee.
- b) SB 298 (Block), adds money laundering for criminal profiteering to the crimes for which a wiretap may be sought. SB 298 is awaiting a hearing in the Senate Appropriations Committee.

13) **Prior Legislation:**

- a) AB 1791 (Galgiani), of the 2011-2012 Legislative Session, would have included within the definition of "criminal profiteering activity" the sale of tangible personal property or other secondhand goods, including, but not limited to, gold and other precious metals, excluding "coin dealers" as defined, without a license. AB 1791 failed passage in the Assembly Public Safety Committee.
- b) AB 17 (Swanson), Chapter 211, Statutes of 2009, included abduction or procurement by fraudulent inducement for prostitution within the definition of criminal profiteering activity.

- c) AB 924 (Emerson), Chapter 111, Statutes of 2007, included vehicle theft within the definition of criminal profiteering activity.
- d) AB 988 (Bogh), Chapter 53, Statutes of 2005, included identity theft within the definition of criminal profiteering activity.
- e) AB 22 (Lieber), Chapter 240, Statutes of 2005, included human trafficking within the definition of criminal profiteering activity.
- f) SB 968 (Bowen), Chapter 125, Statutes of 2003, included Beverage Act fraud within the definition of criminal profiteering activity.
- g) SB 1520 (Schiff), Chapter 994, Statutes of 2000, requires that secondhand dealers make reports electronically to local law enforcement, of pawned property, and requires DOJ, in consultation with law enforcement agencies, to develop clear descriptive categories of personal property that a secondhand dealer must report to local law enforcement agencies.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorney General's Office (sponsor)
Alameda County District Attorney's Office
California Police Chiefs Association
California Statewide Law Enforcement Association
Gonzalez Police Department
Law Center to Prevent Gun Violence
Monterey County District Attorney's Office
Peace Officers Research Association of California
Santa Clara District Attorney's Office
Soledad Police Department

Opposition

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

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

Date of Hearing: April 21, 2015
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 526 (Holden) – As Introduced February 23, 2015

SUMMARY: Increases the fine for the crime of abducting a minor for prostitution from a maximum of \$2,000 to a maximum of \$5,000.

EXISTING LAW:

- 1) Provides that every person who takes away any other person under the age of 18 years from the parent, guardian, or other person having the legal charge of the other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison and a fine not exceeding \$2,000. (Pen. Code, § 267.)
- 2) States that upon conviction of any person for a violation of either procurement of a child under 16 for lewd or lascivious acts or abduction of a minor for purposes of prostitution, the court may impose an additional fine not to exceed \$25,000. (Pen. Code, § 266k, subd. (b).)
- 3) States that a person who, for the purpose of committing a lewd or lascivious act, persuades or entices by false promises, misrepresentations, or the like, any child under 14 years of age, to go out of the country, state, county, or into another part of the same county, is guilty of kidnapping. (Pen. Code, § 207, subd. (b).)
- 4) Provides that when a person is convicted of kidnapping a victim under 14 years of age, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years. (Pen. Code, § 208.)
- 5) Provides that where a person is convicted of pimping or pandering involving a minor the court may order the defendant to pay an additional fine of up to \$5,000. In setting the fine, the court shall consider the seriousness and circumstances of the offense, the illicit gain realized by the defendant and the harm suffered by the victim. The proceeds of this fine shall be deposited in the Victim-Witness Assistance Fund and made available to fund programs for prevention of child sexual abuse and treatment of victims. (Pen. Code § 266k, subd. (a).)
- 6) States any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, when the prostitute is a minor, is guilty of pimping a minor, a felony, and shall be punishable as follows:
 - a) If the person engaged in prostitution is a minor over the age of 16 years, the offense is punishable by imprisonment in the state prison for three, four, or six years.

- b) If the person engaged in prostitution is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 266h, subd. (b).)
- 7) Provides that any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of enticement of a minor into prostitution, pimping or pandering, abduction of a minor for the purposes of prostitution, child pornography, or extortion, is guilty of human trafficking, and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than \$500,000. (Penal Code Section 236.1, subd. (b).)
- 8) States that any person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of enticement of a minor into prostitution, pimping or pandering, abduction of a minor for the purposes of prostitution, child pornography, or extortion, is guilty of human trafficking, and shall be punishable by imprisonment in the state prison as follows:
- a) Five, 8, or 12 years and a fine of not more than \$500,000.
- b) Fifteen years to life and a fine of not more than \$500,000 when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Penal Code Section 236.1, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "For more than 30 years, the penalty for committing abduction for the purposes of prostitution has not been increased to match the growing criminal enterprise of human trafficking. AB 526 would increase the penalty threshold of committing abduction for the purposes of prostitution from up to a \$2,000 fine to up to a \$5,000 fine."
- 2) **Existing Penalty Assessments:** There are penalty assessments and fees assessed on the base fine for a crime. Assuming a defendant was fined the maximum \$5,000, as provided in this bill, the following penalty assessments would be imposed pursuant to the Penal Code and the Government Code:

Base Fine:	\$ 5,000
Penal Code 1464 state penalty on fines:	5,000 (\$10 for every \$10)
Penal Code 1465.7 state surcharge:	1,000 (20% surcharge)
Penal Code 1465.8 court operation assessment:	40 (\$40 fee per offense)
Government Code 70372 court construction penalty:	2,500 (\$5 for every \$10)
Government Code 70373 assessment:	30 (\$30 per felony/misdo)
Government Code 76000 penalty:	3,500 (\$7 for every \$10)
Government Code 76000.5 EMS penalty:	1,000 (\$2 for every \$10)
Government Code 76104.6 DNA fund penalty:	500 (\$1 for every \$10)

Government Code 76104.7 add'l DNA fund penalty: 2,000 (\$4 for every \$10)

Total Fine with Assessments: \$20,570

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

- 3) **Practical Considerations:** Criminal fines and penalties have climbed steadily in recent decades. Government entities tasked with collecting these fines have realized diminishing returns from collection efforts. Government resources can be wasted in futile collection attempts. A recent San Francisco Daily Journal article noted, "When it comes to collecting fines, superior court officials in several counties describe the process as 'very frustrating,' 'crazy complicated' and 'inefficient.'" (See *State Judges Bemoan Fee Collection Process*, San Francisco Daily Journal, 1/5/2015 by Paul Jones and Saul Sugarman.)

The fines applicable to procuring and abducting minors for purposes of prostitution may provide an example of this problem. Simply put, criminal defendants can generally not produce a substantial flow of money for fines. That well will quickly run dry. In the same Daily Journal article, the Presiding Judge of San Bernardino County was quoted as saying "the whole concept is getting blood out of a turnip." (*Daily Journal, supra.*) The article noted in particular that "Felons convicted to prison time usually can't pay their debts at all. The annual growth in delinquent debt partly reflects a supply of money that doesn't exist to be collected." (*Ibid.*)

- 4) **Prioritization of Court-Ordered Debt:** Current law under Penal Code section 1203.1d prioritizes the order in which delinquent court-ordered debt received is to be satisfied. The priorities are 1) victim restitution, 2) state surcharge, 3) restitution fines, penalty assessments, and other fines, with payments made on a proportional basis to the total amount levied for all of these items, and 4) state/county/city reimbursements, and special revenue items.
- 5) **Potential Double Punishment Issues:** Penal Code section 654 states, in relevant part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." Fines are penal in nature and therefore subject to the limitations of Penal Code section 654. (*People v. Tarris* (2009) 180 Cal.App.4th 612, 628.)

As the author correctly notes, the fine for the crime of abducting a minor for prostitution has not been increased in decades. The fine was doubled in 1983. (See AB 1485 (Sher), Chapter 1092, Statutes of 1983.)

Nevertheless, other fines that affect the same or similar conduct have been enacted or increased. Most notably, in 2009 the Legislature enacted a *separate* and *additional* fine of up to \$20,000 specifically applicable to convictions for the crime of abduction of a minor for purposes of prostitution. (Pen. Code, § 266k, subd. (b).) That fine was increased to \$25,000 last year. (SB 1388 (Lieu), Chapter 714, Statutes of 2014.) Admittedly that fine is discretionary. (Pen. Code, § 266k, subd. (b).) However, it raises the question whether if the

larger fine is imposed, the fine at issue in the bill can also be imposed.

- 6) **Argument in Support:** According to the *California Police Chiefs Association*, "After drug trafficking, human trafficking is the world's second most profitable criminal enterprise, a status it shares with illegal arms trafficking. Like drug and arms trafficking, the United States is one of the top destination countries for trafficking in persons.

"For more than 30 years, California Penal Code Section 267 has not been altered to match the growth of this criminal practice. AB 526 would increase the penalty and serve as a deterrent for committing abduction for the purposes of prostitution."

- 7) **Argument in Opposition:** According to the *California Public Defenders Association*, "This bill would modify a seldom-invoked penal code section. After the passage of Prop 35 in 2012, Penal Code § 236.1 was amended to read, in part, "Any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).

"The punishment is increased for victims who are minors; under certain circumstances, the possible punishment is a life sentence under Penal Code § 236.1(c)(1)-(2).

"Prosecutors will not use Penal Code § 267, because Penal Code § 236.1 is available to them. In the unlikely event that PC § 267 is charged, it will serve only to hamper low-income defendants from complying with their sentence. Wealthier defendants will be much more able to pay a \$5,000 fine than poor defendants. Furthermore, any money that a defendant has ought to go to the true victim—the prostituted minor. Increasing the statutory fine will take money away from victims and give it to the State."

- 8) **Related Legislation:** AB 733 (Chavez), among other things, would make the fine for a person convicted of soliciting a minor mandatory and would fix the amount of the fine at \$10,000. AB 733 is pending hearing in this committee.

9) **Prior Legislation:**

- a) SB 1388 (Lieu), Chapter 714, Statutes of 2014, in pertinent part, imposed a number of "additional" fines on top of existing criminal fines related to commercial sex acts with minors.
- b) AB 17 (Swanson), Chapter 211, Statutes of 2009, in pertinent part, created an additional fine not to exceed \$20,000 for abduction of a minor for purposes of prostitution and procurement of a minor under the age of 16 for purposes of lewd acts.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association
52 Private Individuals

Opposition

California Public Defenders Association

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

Date of Hearing: April 21, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 619 (Weber) – As Amended April 15, 2015

SUMMARY: Requires law enforcement agencies to report use of force incidents to the Attorney General (AG) and requires the AG to annually issue a report containing this information. Specifically, **this bill:**

- 1) Requires, beginning January 1, 2018, each state and local agency that employs a peace officer to annually report to the AG data on the use of force by that agency's sworn personnel.
- 2) Provides that the uses of force to be reported include any use of force resulting in or contributing to medical treatment or hospitalization of a person, and any of the following types of force:
 - a) The discharge of a firearm at a person;
 - b) Use of an electronic control or conducted energy device on a person;
 - c) A strike by a baton or other instrument; and,
 - d) Any strike to a person's head, neck, or chest.
- 3) Requires each report made pursuant to the above provisions to include, at minimum, the following information:
 - a) The time, date, and location of the use of force or death;
 - b) The setting in which the use of force occurred, including, but not limited to, a traffic stop, pedestrian stop, or in a correctional facility or other correctional setting;
 - c) The characteristics of each peace officer involved in the use of force or death, including, but not limited to, each officer's race, ethnicity, gender, age, assignment, division or station, shift, and whether the officer was in uniform;
 - d) A description of any person upon whom a use of force was applied, or of the person who died. A description of a person upon whom a use of force was applied shall be based on the observation and perception of the peace officer who used force, and the information shall not be requested from the person upon whom force was used, unless otherwise required by law. The description shall include, but not be limited to the following:

- i) The race, ethnicity, and age of the person;
- ii) The sexuality and religion of the person, if any is perceived;
- iii) Whether the person had limited English proficiency;
- iv) Whether the person had any perceived mental or physical disability, or preexisting injury or medical condition;
- v) Whether mental health personnel were called to the scene of the use of force or death, and whether the personnel were called before or after the use of force or death occurred;
- vi) Whether the person was homeless; and,
- vii) Whether the person was perceived to be under the influence of alcohol or narcotics;
- e) Whether the officer previously stopped the person upon whom force was applied prior to the incident;
- f) Whether the person was armed, and if so, with what type of weapon; and,
- g) Details, if applicable, concerning the force used by the officer, including but not limited to:
 - i) The type of force used;
 - ii) Any injuries sustained by the person; and,
 - iii) The length of time between when force was used and when the person received medical treatment.
- 4) Applies the reporting requirements in this bill to the current provision of law that requires law enforcement agencies to report to the AG deaths of persons while in custody.
- 5) Provides that "custody" for purposes of the above provision includes, but is not limited to, any point in time when a person's freedom of movement is curtailed or limited by a peace officer, or when a person is led to believe, as a reasonable person, that he or she is so deprived of the freedom to move, such as during a stop, a stop and frisk, an interrogation, an arrest, transport prior to booking, or correctional confinement.
- 6) Specifies that the writings described in the provisions above are public records within the meaning of the California Public Records Act.
- 7) States that the AG shall annually issue a report that summarizes the information collected pursuant to the provisions of this bill. The report shall list the statewide total number separately from the disaggregated total number for each of the data collection criteria specified for each agency that submits a report.

- 8) Directs the AG to make the reports available to the public by posting those reports in their entirety on the Department of Justice's (DOJ) Internet Web site. The first reports shall be posted no later than July 1, 2018. The reports shall remain posted on DOJ's Internet Web site in order to be available to the public in an ongoing, continuous manner.

EXISTING LAW:

- 1) Provides that it is the duty of each city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, as well as other agencies or persons dealing with crimes and criminals or with delinquency or delinquents, when requested by the AG:
 - a) To install and maintain records needed for the correct reporting of statistical data required by the AG;
 - b) To report statistical data to the DOJ at those times and in the manner that the AG proscribes; and,
 - c) To give to the AG, or his or her accredited agent, access to the statistical data for the purpose of carrying out the purposes of carrying out the relevant law. (Pen. Code, § 13020.)
- 2) Requires each sheriff and chief of police to annually furnish the DOJ, in the manner prescribed by the Attorney General, a report of all justifiable homicides committed in his or her jurisdiction. In cases where both a sheriff and chief of police would be required to report a justifiable homicide under this section, only the chief of police shall report the homicide. (Pen. Code, § 13022.)
- 3) States that, subject to the availability of adequate funding, the AG shall direct local law enforcement agencies to report to DOJ, in a manner to be prescribed by the AG, any information that may be required relative to hate crimes, as specified, and requires, on or before July 1 of each year, DOJ to submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies. (Pen. Code, § 13023, subds. (a) and (b).)
- 4) Includes within DOJ's annual reporting requirements the number of citizens' complaints received by law enforcement agencies. These statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only. (Pen. Code, § 13012, subd. (e).)
- 5) Mandates in any case in which a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in this state, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the AG, within 10 days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death. Proscribes that these writings are public records within the meaning of the California Public Records Act and are open to public inspection, except confidential medical information. (Gov. Code, §

12525.)

- 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, "Peace officers risk their lives daily, and the people of California greatly appreciate their hard work and dedication to public safety. Recently, the President's Task Force on 21st Century Policing, FBI Director James Comey, state Attorney General Kamala Harris, and the people of California have all expressed a significant interest in strengthening police-community relationships through adopting evidenced-based approaches to public safety. In furtherance of this goal, AB 619 would enhance transparency by ensuring that death in custody and law enforcement use of force data is regularly made available to the public."
- 2) **Reporting on Criminal Statistics:** DOJ is statutorily required to collect and maintain data and develop statistical reports related to crime and the criminal justice process in California. Local agencies are also statutorily required to maintain statistical data and provide those to DOJ.

Under existing law, local law enforcement agencies are required to report to DOJ all justifiable homicides committed in that agency's jurisdiction. (Pen. Code, § 13022.) Local jurisdictions must also report on the number of non-criminal and criminal complaints reported by citizens against law enforcement personnel and the number of complaints that were sustained. (Pen. Code, § 13012.) Arrest information from local agencies must also be provided to DOJ in order to maintain its arrest and citation database. (Pen. Code, §§ 13020 and 13021.) This database contains information including name, race/ethnicity, date of birth, sex, date of arrest, offense level, offense type, status of the offense, and law enforcement disposition. (Office of the Attorney General, *Criminal Statistics Reporting Requirements* (April 2014), p. 8.) Using statistical data from local jurisdictions, DOJ publishes an annual report on crime, as well as other reports as required by statute.

The Federal Bureau of Investigation also collects data on deadly force used by officers, but reporting by law enforcement agencies is voluntary, and the data only covers justifiable homicides. "[B]etween 400 and 500 times a year, an officer kills a citizen in what police consider justifiable homicide of a felon—usually under threat from an armed citizen. But there is no reliable way of knowing what that number would be if included a comprehensive tally of all incidents—including, for example, those not considered justified." (Neumann, *How Often Do Cops Kill Citizens? Why, Given "Scandalous" Data Gaps, Nobody Knows,*

California Magazine (Feb. 2015).) A recent study conducted by Franklin Zimring, Professor of Law at the University of California at Berkeley, found that in the past four decades, there has been a downward trend in the number of killings both of, and by, police. While the ratio of citizens killed by police, to police killed, was about 3 to 1, it now is nearly 8 to 1. Although police killings of whites are drastically higher than police killings of African-Americans, killings of African-Americans are proportionally about three times higher than whites. (Zimring and Arsiniega, *Trends in Killings of and by Police: A Preliminary Analysis*, 2015, Ohio State Journal of Criminal Law, Vol. 13.)

This bill requires local law enforcement agencies to report to DOJ incidents of use of force by its officers. Use of force refers to any use of force resulting in or contributing to medical treatment or hospitalization, or when certain weapons are used such as a firearm or baton. The bill also requires specified information to be reported about the person upon whom use of force was used, such as the perceived characteristics of the person, the setting in which the force was used, the type of force used, and the type of injury sustained. This bill also applies these reporting requirements on the current duty of law enforcement agency to report deaths in custody. The purpose of this bill is to address the deficiency of data on police use of force and to enhance transparency by ensuring that the data is made available to the public.

- 3) **Argument in Support:** According to the *Youth Justice Coalition*, a co-sponsor of this bill, "In response to the apparent increase in law enforcement use of force, we sought data on the number of people killed by law enforcement and was shocked to find that local law enforcement agencies either didn't keep accurate data, or didn't release it regularly to the public. We pulled together homicide data from the Coroner's Office and combined it with the experiences of victims' families in order to issue a report on use of force in Los Angeles County. The data revealed that LA County leads the nation on officer-involved homicides; at least 618 people have been killed since 2000.

"Similarly, throughout California, the public is far too often left in the dark when it comes to information about force used by law enforcement. All state and local law enforcement agencies have submitted information concerning deaths in custody – including those that occur during arrest – to the state Department of Justice since 1980. However, the DOJ has been unable to provide the public with detailed information about such deaths on a routine basis. In fact, its last report on the issue, released in 2005, provided less than four-pages of information, highlighted that it was 'intended as a brief overview,' and explained that 'additional detailed research could be done if resources were available.' This lack of transparency not only inhibits public trust, but also hinders the development of potentially life-saving law enforcement reforms. . . .

"AB 619 will expand the current death in custody reporting requirement to include use of force that results in serious bodily injury. It would also ensure that the public has regular access to important facts concerning law enforcement use of force practices."

4) **Related Legislation:**

- a) AB 71 (Rodriguez) would require local law enforcement agencies to annually furnish a report to DOJ of all instances when a peace officer is involved in shootings that occur in his or her jurisdiction where an individual or a peace officer is injured or killed and

require DOJ to include a summary of the information received in its annual crime report.

- b) AB 86 (McCarty) would require DOJ to conduct an independent investigation if a peace officer, in the performance of his or her duties, uses deadly physical force upon another person and that person dies as a result of the use of that deadly force, and would require DOJ to prepare and submit a written report setting forth specified information and recommendations. AB 86 will be heard by this Committee today.
- c) AB 953 (Weber) would establish RIPA to eliminate racial and identity profiling and improve diversity and racial sensitivity in law enforcement. AB 953 is being heard by the Committee today.
- d) SB 227 (Mitchell) would prohibit the use of grand jury in cases of officer-involved shootings or in cases where excessive force used by an officer results in the death of a suspect. SB 227 is pending hearing by the Senate Committee on Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (Sponsor)
 Youth Justice Coalition (Co-Sponsor)
 A New PATH (Parents for Addiction Treatment & Healing)
 A New Way of Life Reentry Project
 Alliance for Boys and Men of Color
 API Equality-LA
 Asian Law Alliance
 Black Women for Wellness
 California Federation of Teachers
 California Public Defenders Association
 Californians United for a Responsible Budget
 Center on Juvenile and Criminal Justice
 Central American Resource Center – Los Angeles
 Coalition on American-Islamic Relations, California Chapter
 Community Coalition
 Council on American-Islamic Relations, California Chapter
 Courage Campaign
 Dignity and Power Now
 Drug Policy Alliance
 Ella Baker Center for Human Rights
 Empowering Pacific Islander Communities
 Equality California
 FACTS Education Fund
 Fair Chance Project
 Filipino Migrant Center of Southern California
 Friends Committee on Legislation of California
 GSA Network
 Inland Empire Immigrant Youth Coalition
 InterCity Struggle

Japanese Americans Citizens League – Pacific Southwest District
Justice for Immigrants Coalition of Southern Inland California
Justice Not Jails
K.W. Lee Center for Leadership
LA Voice
Legal Services for Prisoners with Children
Long Beach Immigrant Rights Coalition
Los Angeles Black Worker Center
Los Angeles LGBT Center
Los Angeles Regional Reentry Partnership
National Association of Social Workers – California Chapter
National Center for Lesbian Rights
National Employment Law Project
New Covenant Church
Pilipino Workers Center of Southern California
Progressive Christians Uniting
Public Advocates
Riverside Coalition for Police Accountability
Root & Rebound
Sacramento Area Congregations Together
San Francisco Organizing Project
San Francisco Tenants Union
Social Justice Learning Institute
Southeast Asia Resource Action Center
Starting Over, Inc.
Students for Sensible Drug Policy, Whittier Law School
The Brown Boi Project
The Greenlining Institute
The W. Haywood Burns Institute
Transgender Law Center
True North Organizing Network

Two private individuals

Opposition

None

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

Date of Hearing: April 21, 2015
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 813 (Gonzalez) – As Amended March 26, 2015

SUMMARY: Creates a mechanism of post-conviction relief for a person to vacate a conviction or sentence based on error damaging his or her ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction. Specifically, **this bill:**

- 1) Permits a person no longer imprisoned or restrained to file a motion to vacate a conviction or sentence for either of the following reasons:
 - a) The conviction or sentence is legally invalid due to error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of the conviction; or,
 - b) Newly discovered evidence of actual innocence exists which requires the conviction or sentence be vacated either as a matter of law, or in the interests of justice.
- 2) Requires a motion to vacate be filed with reasonable diligence after the later of the following:
 - a) The date the moving party receives a notice to appear in immigration court or other notice from immigration authorities that asserts the conviction or sentence as a basis for removal;
 - b) The date a removal order against the moving party, based on the existence of the conviction or sentence, becomes final;
 - c) The date the moving party discovered, or could have discovered with the exercise of due diligence, the evidence that provides a basis for relief under this section; or
 - d) The effective date of this section.
- 3) Entitles the moving party to a hearing; however, at the request of the moving party, the court may hold the hearing without his or her personal presence if counsel for the moving party is present and the court finds good cause as to why the moving party cannot be present.
- 4) Requires the court to grant the motion to vacate the conviction or sentence if the moving party establishes, by a preponderance of the evidence, the existence of any of the specified grounds for relief.

- 5) Requires the court when ruling on the motion to make specific findings of fact and conclusions of law on all issues presented.
- 6) Requires the court to allow the moving party to withdraw the plea if it grants the motion to vacate a conviction or sentence obtained through a plea of guilty or nolo contendere.
- 7) Permits an appeal from an order granting or denying a motion to vacate the conviction or sentence.

EXISTING STATE LAW:

- 1) Requires a court before accepting a plea to advise a criminal defendant as follows: "If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." (Pen. Code, § 1016.5, subd. (a).)
- 2) Permits a defendant to make a motion to withdraw his or her plea if the court fails to admonish him or her about the possible immigration consequences of entering the plea. (Pen. Code, § 1016.5, subd. (a).)
- 3) Permits a defendant to move to withdraw a plea at any time before judgment, or within six months after an order granting probation when the entry of judgment is suspended, or if the defendant appeared without counsel at the time of the plea. (Pen. Code, § 1018.)
- 4) Allows every person unlawfully imprisoned or restrained of his or her liberty to prosecute a writ of habeas corpus to inquire into the cause of his or her restraint. (Pen. Code, § 1473, subd. (a).)
- 5) Authorizes a person no longer unlawfully imprisoned or restrained to prosecute a motion to vacate the judgment based on newly discovered evidence, as specified, if the motion is brought within one year of the discovery. (Pen. Code, § 1473.6.)

EXISTING FEDERAL LAW:

- 1) Lists several categories of crimes which render a non-citizen removable from the United States, including: crimes of moral turpitude; aggravated felony convictions; domestic violence convictions; firearm convictions, and drug convictions. (INA § 237(a)(2), see also 8 U.S.C. § 1227(a)(2).)
- 2) Lists several categories of crimes which will render a non-citizen inadmissible to the United States, including: crimes of moral turpitude; drug convictions; and prostitution convictions. (INA § 212(a)(2), see also 8 U.S.C. § 1182(a)(2).)

FISCAL EFFECT: Unknown**COMMENTS:**

- 1) **Author's Statement:** According to the author, "AB 813 will give hope to those who have been wronged by an unlawful conviction by establishing a way to challenge it after their criminal custody has ended. Even though current law requires defense counsel to inform noncitizen defendants of the immigration consequences of convictions, some defense attorneys still fail to do so. Failure to understand the true consequences of pleading guilty to certain felonies, for example, has led to the unnecessary separation of families across California. AB 813 does not guarantee an automatic reversal of the conviction, but an opportunity to present their case in front of a judge, a procedure that already exists in most of the country."
- 2) ***People v. Kim* (2009) 45 Cal.4th 1078:** Kim was a legal resident, but not a citizen of the United States, when he suffered multiple criminal convictions. The federal government sought to deport him based on the convictions, and Kim petitioned for a writ of error coram nobis, seeking to vacate the convictions which triggered the deportation proceedings based on his unawareness of the immigration consequences of his plea. The California Supreme Court granted review to address whether persons in similar situations are entitled to have their guilty pleas vacated by a writ of error coram nobis. (*Id.* at p. 1084.)

The Supreme Court observed, the writ of coram nobis is granted only when three requirements are met. First, the petitioner must demonstrate that some fact existed which, through no fault or negligence on his part, was not presented to the court at the trial, and which if presented would have prevented the rendition of the judgment. Next, the petitioner must show that the newly discovered evidence does not go to the merits of issues tried because issues of fact, once adjudicated, even if incorrectly, cannot be reopened except on motion for new trial. This requirement applies even though the evidence in question is not discovered until after the deadline for filing a motion for new trial time or after the motion has been denied. Finally, the petitioner must show that the relied-upon facts were not known to him or her and could not in the exercise of due diligence have been discovered at any time substantially earlier than the time of the motion for the writ. (*People v. Kim, supra*, 45 Cal.4th at pp. 1092-1093, citing *People v. Shipman* (1965) 62 Cal.2d 226.)

The Court held that Kim was ineligible for a coram nobis relief. Kim was put on notice of the possible immigration consequences pertaining to the plea agreement. The fact that the actual immigration consequences of the plea were unknown to the court and the parties was a mistake of law, not a mistake of fact. Kim's claim amounted to a claim of ineffective assistance of counsel, which is not reviewable by way of writ of coram nobis. Here, Kim's contention was not a basic flaw which would have prevented rendition of the judgment, but rather facts which went to the legal effect of the judgment. (*People v. Kim, supra*, 45 Cal.4th at pp. 1102-1103.)

In *Kim*, the Court concluded by noting, "[T]he Legislature has been active in providing statutory remedies when the existing remedies such as habeas corpus have proven ineffective. Section 1016.5 especially shows the Legislature's concern that those who plead guilty or no contest to criminal charges are aware of the immigration consequences of their pleas. Because the Legislature remains free to enact further statutory remedies for those in defendant's position, we are disinclined to reinterpret the historic writ of error coram nobis to provide the remedy he seeks." (*People v. Kim, supra*, 45 Cal.4th at p. 1107.)

This bill creates a new mechanism for post-conviction relief for a person who is no longer in

actual or constructive custody. Specifically, it allows a person to move to vacate a conviction due to error affecting his or her ability to meaningfully understand, defend against, or knowingly accept the actual or potential immigration consequences of the conviction.

- 3) **Options for Post-Conviction Relief:** In *Padilla v. Kentucky* (2010) 559 U.S. 356, the United States Supreme court held that the Sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. (*Id.* at p. 360.) Specifically, the United States Supreme Court held that defense counsel is constitutionally deficient if there is a failure to advise a noncitizen client entering a plea to a criminal offense of the risk of deportation. "Deportation as a consequence of a criminal conviction has become an integral part of the penalty for a criminal conviction for noncitizens, sometimes the most important part. (*Id.* at p. 364.) The court's holding is not limited to only affirmative mis-advice of the consequence because that would encourage defense counsel to remain silent on a matter of great importance to a noncitizen client, and that would be inconsistent with counsel's duty to provide advice to a client considering the advantages and disadvantages of a plea agreement. (*Id.* at pp. 370-371.)

For a defendant who is granted probation, he or she may be able to obtain post-conviction relief based on ineffective assistance of counsel with regard to advice about immigration consequences by moving to vacate the plea under Penal Code section 1018, but only within six months of the granting of probation. (See e.g. *People v. Perez* (2015) 233 Cal.App.4th 736.)

An appeal is the most common method for most defendants to challenge a judgment of conviction. However, a notice of appeal must be filed within 60 days of the judgment. (Cal. Rules of Court, Rule 8.308.) Moreover, an appeal is limited to matters that appear on the face of the record. Usually, the record on appeal fails to show why counsel acted or failed to act in the instance asserted to be ineffective. To accept an ineffective assistance of counsel claim on direct appeal the appellate record must make it clear that the challenged omission was "mistake beyond the range of reasonable competence." (*People v. Montiel* (1993) 5 Cal.4th 877, 911.) "In some cases . . . the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged. In such circumstances, unless counsel was asked for an explanation and failed to provide one or unless there simply could be no satisfactory explanation, these cases are affirmed on appeal." (*People v. Lewis* (1990) 50 Cal.3d 262, 288; *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266.)

Habeas corpus is the main vehicle for review of orders where an appeal is precluded or would be an inadequate remedy. Habeas corpus is also used to bring to the court's attention to matters outside the record which are crucial to the petitioner's claims for relief, and which have resulted in a constitutional violation, thereby rendering the petitioner's restraint unlawful. (*In re Bower* (1985) 38 Cal.3d 865, 872.) One common example of the use of habeas corpus is ineffective assistance of counsel claims. An individual could allege that his or her attorney was ineffective by failing to advise him or her of the adverse immigration consequences of accepting a plea, or by providing erroneous advice. (See e.g. *People v. Soriano* (1987) 194 Cal.App.3d 1470.) However, to be eligible for habeas corpus the individually must be considered "unlawful imprisoned or restrained." (Pen. Code, § 1473.) Actual incarceration in prison or jail is not required for a petition for writ of habeas corpus;

persons on bail, probation, parole, or committed to a state hospital are considered to be in constructive custody for purposes of habeas corpus writ review. (*In re Bandmann* (1959) 51 Cal.2d 388, 396-397; *In re Petersen* (1958) 51 Cal.2d 177, 181.) However, federal immigration custody alone, does not qualify as "custody" for purposes of habeas corpus writ review. (*People v. Villa* (2009) 45 Cal.4th 1063.) Therefore, a non-citizen who did not learn of an immigration consequence until many years later, such as at a naturalization interview, would be precluded from using the writ of habeas corpus to challenge the conviction based on ineffective assistance of counsel.

A criminal defendant who is no longer in "custody" for purposes of the writ of habeas corpus, can move to withdraw a guilty plea if the trial court accepting the plea, failed to admonish the defendant of the possible immigration consequence of the plea under Penal Code section 1016.5. There is no time limit within which such a motion must be filed, but there is a due diligence requirement. (*People v. Zamudio* (2000) 23 Cal.4th 183.) However, the grounds for this basis of relief are quite limited. It is only available where the court fails to give the general admonishment or the record is silent on the matter. (*People v. Martinez* (2013) 57 Cal.4th 555, 565.)

So at this time, under California law, there is no vehicle to for a person who is no longer in actual or constructive custody to challenge his or her conviction based on a mistake of law regarding immigration consequences or ineffective assistance of counsel in properly advising of these consequences when the person learns of the error post-custody. It seems particularly important to create such a vehicle given that it was *after* the California Supreme Court prohibited the use of a writ of coram nobis in these instances that the United States Supreme Court explicitly held that defense counsel has a duty to properly advise on these matters.

- 4) **Argument in Support:** According to the *American Civil Liberties Union of California*, a co-sponsor of this bill, "Currently, only people who are in prison, on parole, or on probation may ask a court to review the validity of their conviction. After the opportunity for habeas corpus relief has passed, people with old convictions – who long ago completed their sentence and have become productive members of society – have no way to raise a claim of innocence or otherwise challenge the legal validity of the convictions. California is one of very few states that lacks a vehicle for post-custodial review. In fact, forty-four other states and the federal government all provide individuals with a way of challenging unjust convictions after criminal custody has ended.

"This deficiency in current law has a particularly devastating impact on California's immigrant communities. While the criminal penalty for a conviction is obvious and immediate, the immigration penalty can remain 'invisible' until an encounter with the immigration system raises the issue. Since 1987, California law has required defense counsel to inform noncitizen defendants about the immigration consequences of convictions. But, despite this requirement, some defense attorneys still fail to do so. Immigrants may find out that their conviction makes them deportable only when, years later, Immigration and Customs Enforcement initiates removal proceedings. By then, however, it is too late. Without any vehicle to challenge their convictions in state court, immigrants are routinely deported on the basis of convictions that should never have existed in the first place and would be thrown out if habeas corpus were available.

"Previously, Californians facing deportation for old, legally invalid convictions used a

process called *corum nobis* to challenge these convictions. But in 2009, the California Supreme Court decided *People v. Kim*, ruling that *corum nobis* could not be used to raise claims of ineffective assistance of counsel, thereby eliminating the last post-custodial vehicle to vacate legally invalid convictions. (*People v. Kim* 45 Cal.4th 1078 (Cal. 2009)). However, the Court specifically invited legislative action, noting that, 'when established remedies have proved inadequate, the Legislature has enacted statutory remedies to fill the void.' (*People v. Kim*)

"AB 813 answers the Supreme Court's call to action and fills a gaping hole in California law."

- 5) **Argument in Opposition:** The *California District Attorneys Association* writes, "In the context of a conviction obtained by a guilty plea, I can follow the logic that a person who didn't fully understand the immigration consequences of that plea should be given an opportunity to have the conviction vacated and the plea withdrawn because they may not have pled guilty if they understood how that plea may impact their immigration status. It would represent a tremendous failure by defense counsel to meet their constitutional obligation to inform their client, by the court to advise the defendant as required under PC 1016.5, and likely be grounds for an appeal based on ineffective assistance of counsel, but it makes logical sense.

"However, in cases where an individual chose to go to trial, and was found guilty by verdict, this logic falls apart. Would a person have tried harder to not be found guilty if they were concerned about adverse immigration consequences? Would they somehow have been less culpable of the crime for which a jury has found them guilty?"

"Consider this example – a person is charged with armed robbery (or forcible rape, or murder, or literally any other crime, as the bill contains no restrictions based on the seriousness of the offense) and enters a plea of not guilty. The evidence against the defendant is overwhelming, and the jury returns a unanimous guilty verdict. After the convicted defendant completes his sentence, he files a motion under this new right given to him by AB 813, contesting his conviction because he didn't meaningfully understand that there might be adverse immigration consequences as a result of his conviction. The court would then be required to vacate his conviction if they found, by a preponderance of the evidence, that he didn't understand the potential immigration consequences.

"This makes no sense. At no point is the convicted person alleging that he did not commit the crime for which a jury found him guilty, yet he would be allowed to have that conviction vacated because of what amounts to a failure by defense counsel to meet their constitutional obligation of ensuring that their client was informed about the consequences of a conviction. It's unclear how a better understanding of those consequences would have changed someone's trial strategy when they already decided not to enter a guilty plea.

"Even more troubling is the fact that if that person later committed another offense, they would not be eligible for any sort of enhanced sentence that would normally apply to a person who has committed multiple offenses, because their prior conviction has been vacated. Again, in the case of a motion under new PC 1473.7(a)(1), this would be done without any showing of actual innocence.

"The bill also contains no provisions covering whether a person could be retried after a conviction was vacated or plea withdrawn.

"We have additional concerns that AB 813 would be sent directly to the floor if it were to pass out of committee. Certainly there would be a cost attributed to the hearings that would be required for these new motions. Since the bill, as drafted, would apply to literally everyone who has ever been convicted of any crime, as long as they can show that the conviction might negatively impact their immigration status, these potential costs would be substantial. Having the Appropriations Committee estimate and consider these potential costs seems like a good idea."

6) Related Legislation:

- a) AB 267 (Jones-Sawyer) would require the court, prior to the acceptance of a guilty plea to a felony offense, to inform the defendant of the various consequences that may result from conviction of a felony. AB 267 is pending a vote on the Assembly Floor.
- b) AB 1343 (Thurmond) would require defense counsel to provide accurate and affirmative advice to a defendant regarding the potential immigration consequences of a proposed disposition and attempt to defend against those consequences. AB 1343 will be heard in this Committee today.
- c) AB 1352 (Eggman) would require the court to allow a defendant to withdraw his or her plea in a deferred entry of judgment case in order to avoid specified adverse consequences, including deportation. AB 1352 is will be heard in this Committee today.

7) Prior Legislation:

- a) SB 1310 (Lara), Chapter 174, Statutes of 2014, reduced the maximum sentence for a misdemeanor from 365 days to 364 days to prevent some offenses from being classified as aggravated felonies for purposes of federal immigration law.
- b) Chapter 1088, Statutes of 1977, required trial courts, prior to acceptance of guilty or nolo contendere pleas from noncitizens, to advise them that conviction might result in deportation or other immigration consequences.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (Co-Sponsor)
California Public Defenders Association (Co-Sponsor)
California Attorneys for Criminal Justice
California Immigrant Policy Center
Centro Legal de la Raza
Lawyers Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
National Day Laborer Organizing Network

Pangea Legal Services
Public Counsel
Root and Rebound
Rubicon Programs
San Francisco Public Defender

Opposition

California District Attorneys Association

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

Date of Hearing: April 21 2015
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 953 (Weber) – As Amended April 16, 2015

SUMMARY: Modifies the definition of "racial profiling;" requires local law enforcement agencies to report specified information on traffic, public transit, and pedestrian stops to the Attorney General's office; and establishes the Racial and Identity Profiling Advisory Board (RIPA). Specifically, **this bill:**

- 1) Requires, beginning July 1, 2017, each state and local agency that employs peace officers to report to the Attorney General's Office, at least on a quarterly basis, data on all traffic, public transportation, and pedestrian stops conducted by that agency's peace officers.
- 2) Requires the data collected to include the following information for each stop, search, or seizure:
 - a) The time, date, and location of the stop, search, or seizure;
 - b) The characteristics of each peace officer involved in the stop, including, but not limited to, his or her badge or identification number, race or ethnicity, gender, age, assignment, division or station, and shift, and whether he or she was in uniform;
 - c) The basis for the stop, including, but not limited to, the offense suspected, and whether the action was initiated in response to a call for service, and, if the action was initiated in response to a call for services, the incident identifier;
 - d) The result of the stop, such as no action, warning, citation, property seizure, or arrest;
 - e) If a warning or citation was issued, the warning provided or violation cited;
 - f) If an arrest was made, the offense charged;
 - g) A description of all persons detained during the stop. The description shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped, unless otherwise required by law. The description shall include, but not be limited to:
 - i) The number of people stopped;
 - ii) The race or ethnicity, gender, and age of all people stopped;
 - iii) The sexual orientation and religious affiliation, if any was perceived;

- iv) Whether the person stopped had limited English proficiency;
 - h) Any mental or physical disability of a person stopped;
 - i) Whether the officer previously stopped the person;
 - j) Specifically as to traffic stops, whether the person was a driver or passenger;
 - k) Actions taken by the officer during the stop, including, but not limited to, the following:
 - i) Whether the officer asked for consent to frisk or search any person, and if so, whether consent was provided;
 - ii) Whether the officer searched any person or property, and if so, which persons were searched and what property was searched, the basis for the search, and the type of contraband or evidence discovered, if any;
 - iii) Whether the officer seized any property and, if so, the type of property that was seized, the person from whom the property was seized, and the basis for seizing the property; and,
 - iv) Whether the officer used force during the encounter, and if so, the type of force used and reason for using the force.
 - l) A description of any person upon whom force was used. The description must be based on the officer's observations and perceptions, and cannot be obtained by asking the person, unless otherwise required by law. The description shall include, but not be limited to:
 - i) The person's race or ethnicity, gender, and age;
 - ii) The person's sexual orientation and religious affiliation, if any was perceived;
 - iii) Whether the person had limited English proficiency;
 - iv) Any perceived mental or physical disability or preexisting injury or medical condition of the person; and,
 - v) Whether the person was homeless.
 - m) Whether any other governmental or nongovernmental agency or service provider was called to respond to the scene, and if so, what agency or service provider, and the reason the agency or service provider was called to respond; and
 - n) Whether any person sustained any injuries during the encounter, and if so, which person, and the nature of the injuries and medical treatment provided, if any.
- 3) Prohibits state and local law enforcement agencies from reporting the name, address, social security number, or other unique personal identifying information of persons stopped,

searched, or subjected to a property seizure.

- 4) States that, notwithstanding any other law, the data reported shall be made available to the public to the extent which release is permissible under state law, with the exception of badge number, or other unique identifying information of the officer involved.
- 5) Requires the Attorney General, to issue regulations for the collection and reporting of the required data by January 1, 2017. The Attorney General should consult with specified stakeholders in issuing the regulations.
- 6) Mandates that the regulations specify all data to be reported, and provide standards, definitions, and technical specifications to ensure uniform reporting practices. To the extent possible, the regulations should also be compatible with any similar federal data collection or reporting program.
- 7) Requires each state and local law enforcement agency to publicly report the data on an annual basis beginning on July 1, 2018. The report should be posted on the law enforcement agency's Website, and in the event the agency does not have a Website, it shall be posted on the Department of Justice (DOJ) Website.
- 8) Requires retention of the reported data for at least five years.
- 9) Mandates that the Attorney General annually analyze the data collected and report its findings from the first analysis by July 1, 2018. Reports are to be posted on the DOJ Website.
- 10) Specifies that all data and reports made under these provisions are public records, as specified, and are open to public inspection.
- 11) Revises the content of the DOJ annual report on criminal statistics to report the total number of each of the following citizen complaints:
 - a) Citizen complaints against law enforcement personnel;
 - b) Citizen complaints alleging criminal conduct of either a felony or misdemeanor;
 - c) Citizen complaints alleging racial or identity profiling, disaggregated by the specific type of racial or identity profiling alleged.
- 12) Specifies that the statistics on citizen complaints must identify their dispositions as being sustained, exonerated, not sustained, unfounded, as specified.
- 13) Mandates the Attorney General establish RIPA beginning July 1, 2016 for the purpose of eliminating racial and identity profiling, and improving diversity and racial sensitivity in law enforcement.
- 14) Provides that RIPA shall include the following members:

- a) the Attorney General, or a designee;
 - b) The President of the California Public Defenders Association, or a designee;
 - c) The President of the California Police Chiefs Association, or a designee;
 - d) The President of the California State Sheriffs' Association, or a designee;
 - e) The President of the Peace Officers Research Association of California, or a designee;
 - f) The President of the Chief Probation Officers of California, or a designee;
 - g) The Chair of the California Legislative Black Caucus, or designee;
 - h) The Chair of the California Latino Legislative Caucus, or designee;
 - i) The Chair of the California Asian and Pacific Islander Legislative Caucus, or designee;
 - j) The Chair of the California Lesbian, Gay, Bisexual, and Transgender Legislative Caucus, or designee;
 - k) A university professor who specializes in policing, and racial and identity equity;
 - l) Two representatives of civil or human rights tax-exempt organizations who specialize in civil and human rights and criminal justice;
 - m) Two representatives of community organizations specializing in civil or human rights and criminal justice and who work with victims of racial and identity profiling;
 - n) Two clergy members who specialize in addressing and reducing bias toward individuals and groups based on religious beliefs or practices; and,
 - o) Up to two other members that the Attorney General may prescribe.
- 15) Renames "racial profiling" as "racial or identity profiling" and redefines it as "consideration of or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to routine or spontaneous law enforcement activities or in deciding upon the scope and substance of law enforcement activities following an initial contact. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as, asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest."
- 16) Revises legislative findings and declarations regarding racial and identity profiling.
- 17) Requires any peace officer who has a sustained complaint of racial or identity profiling that is sustained to participate in training to correct racial and identity profiling at least every six

months for two years.

18) Tasks RIPA with the following:

- a) Analyzing data reported, as specified;
- b) Analyzing law enforcement training on racial and identity profiling;
- c) Investigating and analyzing law enforcement agencies' racial and identity profiling policies and practices;
- d) Issuing an annual report; and,
- e) Holding at least three annual public meetings to discuss racial and identity profiling and potential reforms, as specified.

EXISTING LAW:

- 1) Prohibits a law enforcement officer from engaging in racial profiling. (Pen. Code, § 13519.4, subd. (f).)
- 2) Defines "racial profiling," as "the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped." (Pen. Code, § 13519.4, subd. (e).)
- 3) Requires that the course of basic training for law enforcement officers include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. (Pen. Code, § 13519.4, subd. (b).)
- 4) Requires the DOJ to present to the Governor, on or before July 1st, an annual report containing the criminal statistics of the preceding calendar year. (Pen. Code, § 13010, subd. (g).)
- 5) Mandates that the annual report contain statistics showing all of the following:
 - a) The amount and the types of offenses known to the public authorities;
 - b) The personal and social characteristics of criminals and delinquents;
 - c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents;
 - d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or

otherwise initiated in an adult criminal court; and,

- e) The number of citizens' complaints received by law enforcement agencies, as specified. The statistics must indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only. (Pen. Code, § 13012.)
- 6) Requires state and local law enforcement agencies to report statistical data to the DOJ at those times and in the manner that the Attorney General prescribes. (Pen. Code, § 13020.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 953 will help eliminate the harmful and unjust practice of racial and identity profiling, and improve the relationship between law enforcement and the communities they serve. AB 953 promotes equal protection and prevents unreasonable searches and seizures.

"Peace officers risk their lives every day, and the people of California greatly appreciate their hard work and dedication to public safety. At the same time, a recent poll shows that 55% of Californians and 85% of African-Americans in California believe that 'blacks and other minorities do not receive equal treatment in the criminal justice system.'¹ Racial and identity profiling significantly contributes to this lack of confidence in our justice system.

"Racial and identity profiling occurs when law enforcement personnel stop, search, seize property from, or interrogate a person without evidence of criminal activity. Studies show that profiling often occurs due to unconscious biases about particular demographic identities.²

"AB 953 would prevent profiling by, among other things, clarifying and modernizing California's current prohibition against profiling to better account for the ways in which profiling occurs, establishing a uniform system for collecting and analyzing data on law enforcement-community interactions, and establishing an advisory board that investigates profiling patterns and practices and provides recommendations on how to curb its harmful impact."

- 2) **Racial Profiling:** Racial profiling is a violation of our constitutional rights against unreasonable searches and seizures, and equal protection. Existing state and federal law prohibits law enforcement officers from engaging in racial profiling. (Pen. Code, § 13519.4, subd. (f).) "Racial profiling" is currently defined as the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any

¹ Mark Aaldassare et al., *Californians & their government*, (PPIC Jan. 2015).

² Tracey G. Gove, *Implicit Bias and Law Enforcement*, Police Chief Magazine (Oct. 2011), <http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2499&issue_id=102011>.)

individualized suspicion of the particular person being stopped. (Pen. Code, § 13519.4, subd. (e).)

Although racial profiling is prohibited, studies show that racial profiling by law enforcement does occur. For example, according to a report by the Oakland Police Department released last week, African-Americans, who compose 28 percent of Oakland's population, accounted for 62 percent of police stops from last April to November. The figures also showed that stops of African-Americans were more likely to result in felony arrests. And, while African-Americans were more likely to be searched after being stopped, police were no more likely to find contraband from searching African-Americans than members of other racial groups. (<http://www.mercurynews.com/crime-courts/ci_25410009/report-blacks-comprise-62-percent-oakland-police-stops>.)

Likewise, in 2010, the Los Angeles Times reported that "The U.S. Department of Justice has warned the Los Angeles Police Department that its investigations into racial profiling by officers are inadequate and that some cops still tolerate the practice." ... "The Justice Department's concerns, which were conveyed in a recent letter obtained by The Times, are a setback for the LAPD, which remains under federal oversight on the issue." The article noted, "Profiling complaints typically occur after a traffic or pedestrian stop, when the officer is accused of targeting a person solely because of his or her race, ethnicity, religious garb or some other form of outward appearance. About 250 such cases arise each year, but more damaging is the widely held belief, especially among black and Latino men, that the practice is commonplace." (<<http://articles.latimes.com/2010/nov/14/local/la-me-lapd-bias-20101114>>.)

- 3) **Argument in Support:** According to the *Youth Justice Coalition*, a co-sponsor of this bill, "Racial and identity profiling – the practice of law enforcement stops, searches, property seizures, and/or interrogations in absence of evidence of criminal activity – have eroded public trust, led to humiliation and false detentions of thousands of Californians, and contribute to an increase in law enforcement use of force resulting in serious injury and death.

"In March 2015, the *President's Task Force on 21st Century Policing* recommended that profiling based on race, color, ethnicity, national origin, religion gender, sexual orientation, or mental or physical disability, and other demographic characteristics, be prohibited.³

"Here in California, people throughout our state have long been plagued by the humiliating and frightening act of racial and identity profiling. In 2000, the Legislature found that 'racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society,' and declared that 'it is abhorrent and cannot be tolerated.'⁴ Subsequently, the Legislative Analyst's Office concluded that California's current prohibition against such acts is overvague (sic) and that law enforcement agencies have resisted following it.⁵

As one of numerous examples, a 2015 report by a police department in California found that

³ http://www.cops.usdoj.gov/pdf/taskforce/Interim_TF_Report.pdf

⁴ http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_1101-1150/sb_1102_bill_20000926_chaptered.html

⁵ http://www.lao.ca.gov/2002/racial_profiling/8-02_racial_profiling.pdf

blacks were stopped twice as often as their driving age demographic representation, and that blacks and Latinos were *less likely* to be arrested.⁶

"The persistence of profiling in our state violates the U.S. and California Constitutions by betraying the fundamental promise of equal protection, and infringing upon the guarantee that all people shall be free from unreasonable searches and seizures. It also misdirects limited resources away from evidence-based policing and the efficient pursuit of individuals who actually pose a threat to public safety, thus making all Californians less safe."

4) Arguments in Opposition:

- a) The *Peace Officers Research Association of California* writes, "Our officers pride themselves on the fact that all stops are made justly and for probable cause. They are rigorously trained by the Commission on Peace Officers Standards and Training (POST), which includes thorough training on racial profiling.

"In addition, our officers have already compiled, for many years now, a lot of the information set forth in your bill, including race, ethnicity, gender, age, reason for stop, result of stop, whether the vehicle was searched, and if so, why, whether a warrant was issued, etc. We believe the additional information required will take much more of the officer's time and result in less service to the public."

- b) The *California Police Chiefs Association* states, "The burden created by this mandate will result in significant officer time spent writing reports, thereby diminishing the time an officer is able to spend interacting with members of the community.

"Law enforcement agencies strive every day to maintain legitimacy within their communities. Currently, officers are trained to interact and engage with members of the communities in which they police whether an officer pulls someone over for a traffic stop or stops someone while out patrolling the streets on foot.

"Unfortunately, we believe that AB 953 would weaken the aforementioned relations. While we support legislation that would encourage, support, and strengthen law enforcement-community relations, we do not believe that AB 953 represents a productive or efficient means to this goal."

5) Related Legislation:

- a) AB 334 (Cooley) requires training for law enforcement officers on the profiling of motorcycle riders. AB 334 is pending hearing in the Assembly Appropriations Committee.
- b) AB 619 (Weber) requires the Attorney General to provide the Legislature an annual report on use-of-force incidents involving law enforcement and to make the information available on its Website. AB 619 is being heard in this Committee today.

⁶ <http://www.utsandiego.com/documents/2015/feb/25/san-diego-police-traffic-stops-report/>

6) Prior Legislation:

- a) AB 2133 (Torrico), of the 2005-2006 Legislative session, would have created a state policy of prohibiting racial profiling and provided for required information to be gathered and tracked regarding the specifics of traffic stops. AB 2133 was never heard by this Committee.
- b) AB 788 (Firebaugh), of the 2001-2002 Legislative session, would have clarified the definition of racial profiling and required data collection by specified law enforcement agencies. AB 788 died on the Assembly Inactive File.
- c) SB 1102 (Murray), Chapter 684, Statutes of 2000, states findings and declarations of the Legislature regarding racial profiling and requires law enforcement officers to participate in expanded training as prescribed and certified by POST.
- d) SB 78 (Murray) of the 1999-2000 Legislative Session, would have required the California Highway Patrol (CHP) Commissioner to gather specified data regarding traffic stops conducted by CHP officers, and would have required POST to present to the Legislature a report containing the information. SB 78 was vetoed.
- e) AB 1264 (Murray), of the 1997-98 Legislative session, would have required the Attorney General's office to annually report specified statistics regarding all motorists stopped by law enforcement officers. AB 1264 was vetoed.

REGISTERED SUPPORT / OPPOSITION:**Support**

American Civil Liberties Union of California (Co-Sponsor)
Youth Justice Coalition (Co-Sponsor)
Alliance for Boys and Men of Color
Alliance San Diego
American Federation of State, County and Municipal Employees
Asian Law Alliance
Black Women for Wellness
Brown Boi Project
California Federation of Teachers
California Immigrant Policy Center
California Public Defenders Association
Californians United for a Responsible Budget
Center on Juvenile and Criminal Justice
Central American Resource Center, Los Angeles
Community Coalition
Council on American-Islamic Relations
Courage Campaign
Dignity and Power Now
Drug Policy Alliance
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities

Equality California
FACTS Education Fund & Fair Chance Project
Filipino Migrant Center of Southern California
Friends Committee on Legislation of California
GSA Network
Greenlining Institute
Immigrant Legal Resource Center
Immigrant Youth Coalition
Inland Empire Immigrant Youth Coalition
Inner City Struggle
Japanese American Citizens League
Justice for Immigrants Coalition of Inland Southern California
Justice Not Jails
K.W. Lee Center for Leadership
LA Voice
Long Beach Immigrant Rights Coalition
Los Angeles Black Worker Center
Los Angeles LGBT Center
Los Angeles Regional Reentry Partnership
Merced Organizing Project
National Center for Lesbian Rights
National Day Laborer Organizing Network
National Employment Law Project
New Covenant Church
New PATH, Parents for Addiction Treatment & Healing
New Way of Life Reentry Project
Pilipino Workers Center of Southern California
Placer People of Faith Together
Private Individual
Progressive Christians Uniting
Public Advocates
Reform California
Riverside Coalition for Police Accountability
Root & Rebound
Sacramento Area Congregations Together
Sadler Healthcare
San Francisco Organizing Project
San Francisco Tenants Union
Services, Immigrant Rights, and Education Network
Social Justice Learning Institute
Southeast Asia Resource Action Center
Starting Over, Inc.
Students for Sensible Drug Policy, Whittier Law School
Transgender Law Center
True North Organizing Network
W. Haywood Burns Institute

One Private Individual

Opposition

Association for Los Angeles Deputy Sheriffs
California Association of Highway Patrolmen
California College and University Police Chiefs Association
California Correctional Supervisors Organization
California Police Chiefs Association
California State Sheriffs' Association
Los Angeles Police Protective League
Peace Officers Research Association of California
Riverside Sheriffs Association

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

Date of Hearing: April 21, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1001 (Maienschein) – As Introduced February 26, 2015

PULLED BY AUTHOR

Date of Hearing: April 21, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1168 (Salas) – As Introduced February 27, 2015

SUMMARY: Specifies that custodial peace officers, who have completed full basic peace officer academy training, do not have to complete re-examination if they have been continuously employed as a custodial peace officer for a period not exceeding five years.

EXISTING LAW:

- 1) Provides that every peace officer shall satisfactorily complete an introductory training course prescribed by the Commission on Peace Officer Standards and Training (POST). On or after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by the commission. Training in the carrying and use of firearms shall not be required of a peace officer whose employing agency prohibits the use of firearms. (Pen. Code, § 832, subd. (a).)
- 2) States that every peace officer, prior to the exercise of the powers of a peace officer, shall have satisfactorily completed the training course specified (Pen. Code, § 832, subd. (b)(1).)
- 3) Specifies that persons described in this chapter as peace officers who have not satisfactorily completed specified courses shall not have the powers of a peace officer until they satisfactorily complete the course. (Pen. Code, § 832, subd. (c).)
- 4) Exempts a peace officer who, on March 4, 1972, possesses or is qualified to possess the basic certificate as awarded by the Commission on Peace Officer Standards and Training (POST). (Pen. Code, § 832, subd. (d).)
- 5) Provides that a person completing the basic peace officer 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 the powers of a peace officer, except for the following specified individuals: (Pen. Code, § 832, subd. (e).)
 - a) A peace officer is returning to a management position that is at the second level of supervision or higher.
 - b) A peace officer has successfully re-qualified for a basic course through the Commission on Peace Officer Standards and Training (POST).
 - c) A peace officer has maintained proficiency through teaching the basic peace officer training course.

- d) A peace officer, during the break in California service, was continuously employed as a peace officer in another state or at the federal level.
- e) A peace officer, who has previously met the requirements of basic training, has been appointed as a specified custodial peace officer, and has been continuously employed as a custodial officer by the agency making the peace officer appointment since completing the basic peace officer training.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Prior to becoming employed as a peace officer in California, applicants are required to complete a basic training course and pass an examination. If a person does not become employed as a peace officer within 3 years of passing the examination, or has a break in service of 3 years or longer, they must repeat their training and retake the examination.

"Many peace officers begin their public safety service with custodial or detention assignments, performing duties like working in courtrooms, transporting inmates, conducting criminal investigations, testifying in court, attending training courses, and preparing reports. While considered peace officers under California law, custodial and detention deputy positions have limited peace officer powers.

"Custodial and detention deputies often aim to transfer to patrol assignments with full peace officer powers. Even though they are employed, if these deputies do not find patrol positions within 3 years they must repeat their training and examination. Openings for patrol positions are rare, particularly in rural regions of the state, often making the three-year requalification an impediment to career advancement.

"Assembly Bill 1168 would, until January 2019, extend the validity of the basic training courses and examinations for a custodial or detention deputy who has been continuously employed as a peace officer for five years."

- 1) **POST Training Requirements:** POST was created by the legislature in 1959 to set minimum selection and training standards for California law enforcement. (Pen. Code, § 13500, subd. (a).) Their mandate includes establishing minimum standards for training of peace officers in California. (Pen. Code § 13510, subd. (a).) As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. (Pen. Code, § 832, subd. (a).)

According to the POST Web site, the Regular Basic Course Training includes 42 separate topics, ranging from juvenile law and procedure to search and seizure. [POST, *Regular Basic Course Training Specifications*; <<http://post.ca.gov/regular-basic-course-training-specifications.aspx>>.] These topics are taught during a minimum of 664 hours of training. [POST, *Regular Basic Course, Course Formats*, available at: [<<http://post.ca.gov/regular-basic-course.aspx>>.] Over the course of the training, individuals are trained not only on

policing skills such as crowd control, evidence collection and patrol techniques, they are also required to recall the basic definition of a crime and know the elements of major crimes. This requires knowledge of the California Penal code specifically.

- 2) **Peace Officer Status Lapses for Custodial Officers and Re-Training:** All peace officers in California are required to complete a mandated basic training course which is certified by POST. Additionally, the peace officer must pass an examination. Once the officer completes the course and satisfactorily passes the examination, the officer must become a peace officer within three years of passing the examination, and may not have a break in service of three years or longer. If the officer does not become employed as a peace officer, or has the proscribed break in service they must repeat the training and retake the examination.

Some officers who complete the full basic training course for peace officers and pass the examination are assigned to custodial officer positions. These positions may also be filled by officers who complete a significantly less strenuous training course, and thus they do not have the full powers of peace officers. Since these positions are not "patrol" positions, the officers who have completed full training experience a lapse in their full peace officer status and must re-train and pass the examination after three years in a custodial position. However, many counties only hire fully trained peace officers for the same custodial positions so their officers are considered peace officers with the full powers permitted under Penal Code § 832 and they do not experience a lapse in status. Therefore, a fully trained peace officer who is hired in Marin County and employed as a custodial officer will not have to re-train if he or she later decides to transfer to a patrol position. While at the same time, a fully trained peace officer who is hired in Kings County as a custodial officer will have to re-train after three years because their peace officer status has lapsed.

This bill would *extend the three year re-training requirement to five years* in the counties where fully trained peace officers are hired for custodial positions where the county has elected to also hire officers with the less stringent training requirements to fill those custodial positions.

- 3) **Argument in Support:** According to the *California State Sheriffs' Association*, "Assembly Bill 1168, which will bring parity to deputy sheriffs that are hired to work in the county jails. Existing law allows for two different classifications of peace officers to work in county jails: 830.1(a) officers, which are peace officers at all times and 830.1(c) deputies, which are correctional officers that have limited peace officer powers. In order for a person to be employed as an 830.1(a) officer, he or she must complete the full basic academy (664 hours of training) while an 830.1(c) officer must only complete a 64 hour course.

"In rare instances, a person that has completed the full basic academy course gets hired by a county as an 830.1(c) deputy in the county jail. In this situation, the person has 3 years from the time the person graduates from the academy to obtain an 830.1(a) position before his or her POST certificate/eligibility expires. While many counties work to ensure that jail deputies that wish to transfer to patrol do so in less than 3 years, in some counties (such as Kings and Butte), patrol positions may not be available prior to the expiration of a person's eligibility. In those situations, the deputy must then complete a refresher course, which costs money for the deputy and requires the county to backfill the person's time while the person is

taking the class. (Note: all officers, regardless of classification, must continue to maintain their perishable skills through POST training.)

"However, for those deputies that are hired in counties as 830.1(a) officers in the jails, that person's eligibility to transfer to a patrol position never expires even though that officer is doing the same exact work as an 830.1(c) deputy in another county. We believe that creates an inequity for those counties that have chosen to utilize 830.1(c) deputies in the jails. It also incentivizes deputies that wish to move to patrol to leave the hiring agency prior to the expiration of their POST certificate.

"AB 1168 will fix the inequity between counties utilizing different classifications in the county jails by allowing deputies that have gone through the full basic academy course and have been hired as an 830.1(c) deputy to maintain eligibility for an additional two years before moving to a patrol position within the same agency."

4) **Related Legislation:**

- a) AB 373 (Medina), requires that peace officers that work near or upon Indian tribal land complete a course that includes a review of Public Law 280 that is approved by POST. AB 373 is awaiting a hearing in the Assembly Appropriations Committee.
- b) AB 546 (Gonzalez), authorizes a probation department to apply to either POST or the BSCC to become a certified provider of probation officer training. AB 546 is awaiting a hearing in the Assembly Appropriations Committee.
- c) AB 1118 (Bonta), requires every peace officer in the state to complete training on a course in procedural justice within 18 months of POST certifying the course. AB 1118 is set for hearing in this committee on April 28, 2015.
- d) AB 1227 (Cooper), requires POST to conduct a review and report to the legislature on training courses regarding interactions with mentally or developmentally disabled persons. AB 1227 is scheduled for hearing in this committee today.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association

Opposition

None

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

Date of Hearing: April 21, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1207 (Lopez) – As Introduced February 27, 2015

SUMMARY: Requires a child day care licensee applicant to take training in the duties of mandated reporters under the Child Abuse and Neglect Reporting Act (CANRA) as a condition of licensure, and requires child day care administrators and employees to take mandated reporter training within the first six weeks of employment. Specifically, **this bill:**

- 1) Requires the Office of Child Abuse Prevention (OCAP) within the Department of Social Services (DSS) in consultation with Community Care Licensing Division within DSS to do all of the following:
 - a) Develop and disseminate information to all licensees, administrators, and employees of licensed child day care facilities regarding detecting and reporting child abuse.
 - b) Provide statewide guidance on the responsibilities of a mandated reporter who is a licensee, administrator, or employee of a licensed child day care facility in accordance with CANRA. These guidelines shall include, but is not necessarily limited to, both of the following:
 - i) Information on the identification of child abuse and neglect; and,
 - ii) Reporting requirements for child abuse and neglect.
 - c) Develop appropriate means of instruction child care licensees, administrators, and employees of licensed child day care facilities in detecting child abuse and neglect and the proper action that a child care licensee, administrator, or employees of a licensed child day care facility is required to take, including, but not limited to, using the free online Mandated Reporter "General Training Module" and "Child Care Professionals Training Module" provided by the OCAP.
- 2) Provides that a child care licensee shall do both of the following:
 - a) Complete training, as specified, using the online training model provided by the OCAP and provide the training to their administrators, employees, and persons working on their behalf, who are mandated reporters of suspected child abuse and neglect, of the mandated reporting requirements. Completing mandated reporter training is a condition of licensure, and child care administrators and employees of licensed child day care facilities shall mandated reporter training during the first six weeks of employment. This training shall include information that failure to failure to report an incident of known or reasonably suspected child abuse or neglect, is a misdemeanor punishable by up to six months confinement in a county jail, or by a fine of one thousand dollars (\$1,000), or by

both that imprisonment and fine.

- b) States that a child care licensee, administrator, or employee of licensed child day care facility shall take required the training as frequently as prescribed by regulations adopted by DSS.
- 3) Requires the OCAP to develop a process for all persons required to receive CANRA training to obtain proof of completing the training as a condition of licensure, or within the first six weeks of that person's employment. The process may include, but is not necessarily limited to, a child care licensee applicant obtaining a certificate of completion and submitting the certificate to the DSS prior to acquiring a child care license. A child care administrator, or employee of a licensed child day care facility shall submit a current certificate of completion to the child care director or the licensee within six weeks of employment. A current certificate of completion for each child day care licensee, administrator, or employee of a licensed child day care facility, shall be submitted to the DSS upon inspection of the facility, when proof of other required training is submitted to DSS, or upon request of the DSS.
- 4) Requires the DSS to issue a notice of deficiency at the time of a site visit to a licensee who is not in compliance with proof of training requirements. The licensee shall, at the time the notice is issued develop a plan of correction to correct the deficiency within 90 days of receiving the notice. The DSS may revoke the facility's license if the facility fails to correct the deficiency within the 90-day period.
- 5) States that a child care licensee, administrator, or employee of a licensed child day care facility who does not use the online training module provided by the DSS shall report to, and obtain approval from the DSS regarding the training that person shall use in lieu of the online training module.
- 6) Requires the DSS to adopt regulations to implement the required CANRA training, and proof of completion of training requirements, including, but not limited to, defining "current certificate of completion" and prescribing how frequently a licensee is required to take the training.
- 7) Makes conforming cross references.

EXISTING LAW:

- 1) Defines "mandated reporter" under CANRA as any of the following: a teacher; an instructional aide; a teacher's aide or teacher's assistant employed by any public or private school; a classified employee of any public school; an administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis; a licensee, an administrator, or an employee of a licensed community care or child day care facility; a Head Start program teacher; a licensing

worker or licensing evaluator employed by a licensing agency as defined; a public assistance worker; an employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker, probation officer, or parole officer; an employee of a school district police or security department; any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed to represent a minor; a peace officer, as defined, who is not otherwise described in this section; a firefighter, except for volunteer firefighters; a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed as a health care professional as specified; any emergency medical technician I or II, paramedic, or other person certified to provide emergency medical services; a registered psychological assistant; a marriage and family therapist trainee, as defined; a registered unlicensed marriage and family therapist intern; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a medical examiner, or any other person who performs autopsies; a commercial film and photographic print processor, as defined; a child visitation monitor, as defined; an animal control officer or humane society officer, as defined; a clergy member, as defined; any custodian of records of a clergy member, as specified; any employee of any police department, county sheriff's department, county probation department, or county welfare department; an employee or volunteer of a Court Appointed Special Advocate program, as defined; any custodial officer, as defined; any person providing services to a minor child, as specified; an alcohol and drug counselor, as defined; a clinical counselor trainee, as defined; and a registered clinical counselor intern. (Pen. Code, § 11165.7 subd. (a).)

- 2) Provides that when two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report. (Pen. Code, § 11166, subd. (h).)
- 3) Provides that volunteers of public or private organizations, except a volunteer of a Court Appointed Special Advocate program, whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to a specified agency. (Pen. Code, § 11165.7, subd. (b).)
- 4) Strongly encourages employers to provide their employees who are mandated reporters with training in the duties imposed by CANRA. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with a statement that informs the employee that he or she is a mandated reporter and informs the employee of his or her reporting obligations and of his or her confidentiality rights. (Pen.

Code, § 11165.7, subd. (c).)

- 5) Encourages public and private organizations to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect. (Pen. Code, § 11165.7, subd. (f).)
- 6) Requires a mandated reporter to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written follow-up report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident. (Pen. Code, § 11166, subd. (a).)
- 7) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a specified agency discovers the offense. (Pen. Code, § 11166, subd. (c).)
- 8) Defines "child" under CANRA to mean person under the age of 18 years. (Pen. Code, § 11165.)
- 9) Defines "child abuse or neglect" under CANRA to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child as defined, and unlawful corporal punishment or injury as defined. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer. (Pen. Code, § 11165.6.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Although licensees, administrators, and employees of licensed child day care facilities and employees of child care institutions are mandated reporters under California's Child Abuse and Neglect Reporting Act, the law does not require them to complete any training on recognizing the signs of child abuse or neglect or how to comply with mandated reporter requirements.

"California Community Care Licensing Division requires child care licensee applicants to sign a statement entitled 'Statement Acknowledging Requirement to Report Child Abuse.' However, without instruction or guidance on how to recognize the signs of child abuse and

neglect, how to support a child and work with a family during or after a report, and how to make a report, many child care providers are unaware of what being a mandated reporter entails. This bill adds section 1596.8662 to the Health and Safety Code, amends Health and Safety Code section 1596.866 to delete that training in identification and reporting of signs and symptoms of child abuse is optional, and amends Penal Code section 11165.7 to require child care licensees, administrators, and employees of licensed child day care facilities to complete training in how to meet their responsibilities as mandated reporters.

- 2) **Background Supplied by Author:** Despite their status as “mandated reporters” — professionals who are legally obligated to report suspected abuse or neglect to CPS agencies, California law does not require that child care providers receive any training in recognizing signs of child maltreatment or in how to navigate the complicated reporting system.ⁱ The California Penal Code only requires mandated reporters to “sign a statement” attesting to their knowledge of and willingness to comply with the reporting obligation.ⁱⁱ Pursuant to this law, California Community Care Licensing Division of the California Department of Social Services (Licensing) issues a form to child care licensee applicants entitled “Statement Acknowledging Requirement to Report Child Abuse.”ⁱⁱⁱ The one-and-a-half page form generally informs child care providers that they are mandated reporters, briefly describes what, when, and where to report, and explains that reporters are immune from civil or criminal liability and their identity is confidential. The form also explains the criminal and civil penalties for failure to report.

The only information that accompanies the form is in Licensing’s orientation training for family child care home licensees and child care center directors. This training touches on the mandatory reporting requirement and lists several agencies to which reports should be directed (law enforcement, CPS or Child Abuse Hotline, and/or Licensing). Trainees are informed that they must sign and keep a copy of the signed Licensing form on file. The orientation training is only required to be taken by child care licensees and child care center directors – child care staff are not required to take the training. Without instruction or guidance on how to recognize the signs of child abuse and neglect, how to support a child, and work with a family during or after a report, or the process of how to make a report, these child care providers can be unaware of what being a mandated reporter entails.^{iv}

Many child care providers express confusion about their legal reporting obligations.^v Child care providers who were surveyed statewide described some of the barriers that prevent them from reporting: 50% did not know how to make a CPS report, 65% expressed discomfort because of their close relationship with the families they serve, 36% feared being accused of the abuse, and 45% feared losing future business.^{vi} Moreover, a large majority of child care providers—83%—say that they would find training on these issues useful, and 78% feel that it should be required.^{vii}

Proper CPS intervention following a CPS report is a key deterrent to recurring child abuse and neglect.^{viii} A required comprehensive training in recognizing and reporting child abuse and neglect will offer child care providers tools for supporting families, including those who present risk factors for child maltreatment, possibly preventing child abuse before it occurs. It will also empower child care providers to become proactive reporters when they recognize signs of abuse and neglect, helping eradicate child abuse, and in turn dramatically reduce costs to the state for medical and mental health services used by victims of child abuse and neglect.^{ix} Moreover, training will decrease the number of unsubstantiated reports, sparing

agencies from spending limited resources on investigating unfounded allegations or reports containing insufficient information.^x

AB 1432 offers a model for similar requirements in the child care setting. Additionally, a free online training for child care providers in English and Spanish already exists on the California Department of Social Services website.^{xi}

- 3) **Prior Legislation:** AB 1432 (Gatto), Chapter 797, Statutes of 2014, required annual training in the identification of, and reporting of, known or suspected child abuse and neglect by all school district, county office of education, state special schools, and diagnostic centers operated by the California Department of Education, and charter school personnel within the first six weeks of each school year, or within six weeks of employment.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees
California Child Care Health Program
Child Care Law Center
Health Officers Association of California
National Association of Social Workers, California Chapter
Public Counsel

One private individual

Opposition

None

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

ⁱ Cal. Penal Code § 11165.79(a)(10) (“A licensee, an administrator, or an employee of a licensed community care or child care facility” are mandated reporters), (a)(14) (“An employee of a child care institution, including but not limited to, foster parents, group home personnel, and personnel of residential care facilities” are mandated reporters), (b) (employers are strongly encouraged, but not required, to train employees who are mandated reporters on their duty to report suspected child abuse or neglect); Cal. Health & Safety Code § 1598.866(a)(3) (required health and safety training for “at least one director or teacher at each day care center, and each family day care home licensee who provides care,” may include identification and reporting of signs and symptoms of child abuse).

ⁱⁱ Cal. Penal Code § 11166.5 (a).

ⁱⁱⁱ Cal. Dep’t. Soc. Servs., Statement Acknowledging Requirement to Report Child Abuse, *available at* <http://bit.ly/ZRCORd>.

^{iv} Despite the lack of any training requirement, as a mandated reporter, a child care provider who “fails to report an incident of known or reasonably suspected child abuse or neglect ... is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine.” Cal. Penal Code, § 11166 (c)). The law does, however, protect child care providers and other mandated reporters if they mistakenly make an unfounded report. Unless a false report is made intentionally, a child care provider will not be civilly or criminally liable. Cal. Penal Code, 11172(a).

^v See “Child Care Provider Surveys: Child Abuse Training Needs” (2013) available at <http://childcarelaw.org/resource/recognize-and-report-child-care-providers-have-the-power-to-prevent-child-abuse/>; “Child Care Provider Survey Opinions on Training to Recognize and Report Signs of Child Abuse and Neglect” (2015) (online survey distributed in English and Spanish to California child care providers. 178 child care providers responded, of whom 44% were family child care home providers and 46% worked in child care centers), available at <http://childcarelaw.org/resource/recognize-and-report-child-care-providers-have-the-power-to-prevent-child-abuse-survey-results/>.

^{vi} See “Child Care Provider Survey Opinions on Training to Recognize and Report Signs of Child Abuse and Neglect” (2015), available at <http://childcarelaw.org/resource/recognize-and-report-child-care-providers-have-the-power-to-prevent-child-abuse-survey-results/>.

^{vii} “*Id.*”

^{viii} See Victor Vieth, *Unto the Third Generation: A Call to End Child Abuse in the United States Within 120 Years*, *Journal of Aggression, Maltreatment & Trauma* (2004) 14-17, available at <http://bit.ly/1tHw38I>; see Victor Vieth et al., *Lessons From Penn State: A Call to Implement a new Pattern of Training for Mandated Reporters and Child Protection Professionals* 1, 5 *Centerpiece*, Vol. 3, Issues 3 & 4 (2012), available at <http://bit.ly/1tUasuG>; see Aileen McKenna, *Reluctant to Report: The Mandated Reporter Practices of Child Care Providers*, Western Michigan University (2010) 1 (Ph.D. dissertation explaining why child care providers are the professionals least likely to report suspected child abuse and neglect. McKenna states “the failure to report abuse and neglect can have fatal consequences (Besharov, 1990). Studies in Texas, Colorado, and North Carolina revealed that over 40% of child fatalities attributed specifically to child maltreatment had not been reported prior to their death. This was despite the fact that these children had been seen by a public or private agency around the time of their death).

^{ix} Theresa Dolezal et al., *Academy on Violence and Abuse*, *Hidden Costs in Health Care: The Economic Impact of Violence and Abuse* 9 (March 2009), available at <http://bit.ly/1tUaZgi>

^x Douglas Besharov, *Responding to Child Sexual Abuse: The Need for a Balanced Approach* 137, 139-144 *Sexual Abuse of Children*, Vol. 4, Number 2 (1994), available at http://futureofchildren.org/futureofchildren/publications/docs/04_02_07.pdf.

^{xi} Cal. Dep’t of Social Servs., *Child Abuse Mandated Reporter Training California, Child Care Providers*, <http://bit.ly/1DhYvxY> (last visited April 1, 2015).

Date of Hearing: April 21, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1214 (Achadjian) – As Introduced February 27, 2015

SUMMARY: This bill would require a court to find good cause to grant a defendant's request for continuance of their sentencing hearing when the probation department fails to provide the probation report by the statutory timeline.

EXISTING LAW:

- 1) Defines "probation" as 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. As used in this code, "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. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors. (Pen. Code, § 1203, subd. (a).)
- 2) States that except as specified, if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. (Pen. Code, § 1203, subd. (b)(1).)
- 3) Requires the probation officer to immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. (Pen. Code, § 1203, subd. (b)(2)(A).)
- 4) Requires the probation officer to include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation, or to deny probation. (Pen. Code, § 1203, subd. (b)(2)(B).)
- 5) States that if the person was convicted of an offense that requires him or her to register as a sex offender or if the probation report recommends that registration be ordered at sentencing, the probation officer's report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO). (Pen. Code, § 1203, subd. (b)(2)(C).)
- 6) Allows the probation officer to include in the report his or her recommendation of both of the following:

- a) The amount the defendant should be required to pay as a restitution fine. (Pen. Code, § 1203, subd. (b)(2)(D)(i).)
 - b) Whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund and the amount thereof. (Pen. Code, § 1203, subd. (b)(2)(D)(ii).)
- 7) Mandates that the report be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney nine days, prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court. (Pen. Code, § 1203, subd. (b)(2)(E).)
 - 8) Specifies that at a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer, including the results of the SARATSO, if applicable, and shall make a statement that it has considered the report, which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections and Rehabilitation at the prison or other institution to which the person is delivered. (Pen. Code, § 1203, subd. (b)(3).)
 - 9) States that the preparation of the report or the consideration of the report by the court may be waived only by a written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court, except that a waiver shall not be allowed unless the court consents thereto. However, if the defendant is ultimately sentenced and committed to the state prison, a probation report shall be completed pursuant to Section 1203c. (Pen. Code, § 1203, subd. (b)(4).)
 - 10) Provides that if a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant. (Pen. Code, § 1203, subd. (c).)
 - 11) Specifies that if a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation officer recommends that the court, at sentencing, order the offender to register as a sex offender, the court shall refer the matter to the probation officer for the purpose of obtaining a report on the results of the State-Authorized Risk Assessment Tool for Sex Offenders, which the court shall consider. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her

to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced. (Pen. Code, § 1203, subd. (d).)

- 12) States that if a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine. (Pen. Code, § 1203, subd. (g).)
- 13) Specifies that if a defendant is convicted of a felony and a probation report is prepared, the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings concerning the offense. (Pen. Code, § 1203, subd. (h).)
- 14) States that to continue any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and served on all parties to the proceeding at least two court days before the hearing sought to be continued, together with affidavits or declarations detailing specific facts showing that a continuance is necessary and (2) within two court days of learning that he or she has a conflict in the scheduling of any court hearing, including a trial, an attorney shall notify the calendar clerk of each court involved, in writing, indicating which hearing was set first. (Pen. Code, § 1050, subd. (b).)
- 15) States that a party shall not be deemed to have been served within the meaning of this section until that party actually has received a copy of the documents to be served, unless the party, after receiving actual notice of the request for continuance, waives the right to have the documents served in a timely manner. Regardless of the proponent of the motion, the prosecuting attorney shall notify the people's witnesses and the defense attorney shall notify the defense's witnesses of the notice of motion, the date of the hearing, and the witnesses' right to be heard by the court. (Pen. Code, § 1050, subd. (b).)
- 16) Allows a party to make a motion for a continuance without complying with the requirements of that subdivision. However, unless the moving party shows good cause for the failure to comply with those requirements, the court may impose sanctions as provided in Section 1050.5. (Pen. Code, § 1050, subd. (c).)
- 17) Requires the court to hold a hearing, if a party makes a motion for a continuance without complying with the requirements, on whether there is good cause for the failure to comply with those requirements. At the conclusion of the hearing, the court shall make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of the finding and a statement of facts proved shall be entered in the minutes. If the moving party is unable to show good cause for the failure to give notice, the motion for continuance shall not be granted. (Pen. Code, § 1050, subd. (d).)

- 18) Requires that continuances be granted only upon a showing of good cause. Neither the convenience of the parties nor a stipulation of the parties is in and of itself good cause. (Pen. Code, § 1050, subd. (e).)
- 19) Requires that at the conclusion of the motion for continuance, the court make a finding whether good cause has been shown and, if it finds that there is good cause, shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes. (Pen. Code, § 1050, subd. (f).)
- 20) States that when deciding whether or not good cause for a continuance has been shown, the court shall consider the general convenience and prior commitments of all witnesses, including peace officers. Both the general convenience and prior commitments of each witness also shall be considered in selecting a continuance date if the motion is granted. The facts as to inconvenience or prior commitments may be offered by the witness or by a party to the case. (Pen. Code, § 1050, subd. (g)(1).)
- 21) States that a continuance shall be granted only for that period of time necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the court shall state on the record the facts proved that justify the length of the continuance, and those facts shall be entered in the minutes. (Pen. Code, § 1050, subd. (i).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1214 ensures courts have the discretion to determine on a case by case basis whether a continuance due to noncompliance with the probation report deadline is justified. As a result, AB 1214 brings efficiencies to the courts by eliminating extraneous sentencing proceedings as well as easing the administrative burdens associated with unnecessary remands for sentencing at the same time; AB 1214 protects the defendant's right to have sufficient opportunity to evaluate the probation report by preserving the right to request a continuance for good cause."
- 2) **Defendant's Right to Have the Probation Report Prior to Sentencing.** California requires that that the probation report be provided to a defendant's attorney five days prior to sentencing, or nine days upon defense request. (Pen. Code, § 1203, subd. (b)(1)(E).) Penal Code section 1203 was amended in 1969 to provide that the report of the probation officer had to be made available to the court and attorneys at least two days "or, upon the request of the defendant, five days" prior to the time fixed for hearing and determination of such report. It was amended again in 1977 to provide the present nine-day time limit. When the Legislature amended this section in 1969 it made the following statement: "The Legislature, by this act, does not intend that the preparation or submission of probation reports be accelerated in relation to present law and practice. It is the intention of the Legislature that the courts exercise their discretion in fixing dates for pronouncing judgments five or more days after all the interested parties have received copies of probation reports so that such parties have adequate time to evaluate such reports." (Stats. 1969, ch. 522).

Courts have held that a failure to provide the probation report within the statutory guidelines, is grounds for a continuance of a sentencing hearing, without requiring any showing of good

cause. In *People v. Leffel*, (1987) 196 Cal.App.3d 1310, the defendant did not receive the probation report within the time frame required by law. The defendant made a proper objection to this error, indicated that they were not prepared to proceed, and requested a continuance. The court refused the request for a continuance and moved forward to sentence the defendant. The appellate court in *Leffel*, found that the failure to grant a continuance rendered the sentencing hearing fundamentally unfair. *Id.* at 1319. The court found that “. . . the possibilities for prejudice are clear and the actual prejudice suffered is a matter of conjecture. What the defendant might have been able to object to or to add further to the report cannot be determined because he was not afforded the proper opportunity to comprehend, analyze, investigate and evaluate the report. It is clear that the Legislature intended that he be given this opportunity.” *Id.* at 1318.

The defense attorney is the party in the criminal proceeding responsible for knowing how much time he or she needs within the statutory framework to adequately address the issues that will be raised in a probation report. The law has a default requiring the probation report five days prior to the sentencing. However, if the defense attorney in evaluating the issues that are likely to be raised in the probation report, needs more time, they can request that the report be provided nine days in advance of the sentencing hearing. On the other hand, if the defense attorney in evaluating their case does not need the statutory time to review the probation report, the defense attorney can waive the right to have the sentencing report provided by the statutory deadline. (Pen. Code, § 1203, subd. (b)(1)(E).)

- 3) **Argument in Support:** According to *The Judicial Council of California*, “Under current law, probation sentencing reports must be provided to the parties at least five days before the sentencing hearing unless the deadline is waived by the parties either in writing or by oral stipulation in open court. (Pen. Code, § 1203(b)(2)(E).) The purpose of the deadline is to afford defendants a “proper opportunity to comprehend, analyze, investigate and evaluate the report.” (*People v. Bohannon* (2000) 82 Cal.App.4th 798, 808-809; *People v. Leffel* (1987) 196 Cal.App.3d 1310, 1318.) If the probation department does not provide the report by the deadline and the defendant objects and request a continuance, failure by the court to grant the continuance entitles the defendant to a remand for sentencing. (*People v. Bohannon, supra*, 82 Cal.App.4th at pp.808-809.) Defendants are not required to show actual prejudice as a result of the late probation report when requesting a continuance. (*Id.* at 809.) As a result, court routinely grant automatic continuances whenever the statutory deadline for probation reports is missed, regardless of whether the missed deadline had any impact on the defendant’s ability to review and investigate the probation report.

"AB 1214 vests courts with discretion to decide on a case by case basis whether the circumstances of a particular case warrant a continuance, rather than requiring courts to grant automatic continuances without regard to actual prejudice. For example, even if the deadline is missed, a defendant may still have adequate time to review the report and raise concerns about the report’s contents, in which case AB 1214 would give the court authority to deny a request for continuance. In contrast, if the lateness of a report impacts the ability of the defendant to report and raise concerns about the report, AB 1214 would give the court discretion to continue the sentencing hearing.

"AB 1214 brings efficiencies to the courts by eliminating unnecessary continuances of sentencing proceedings and easing the administrative burdens associated with unnecessary remands for sentencing, without compromising the defendant’s right to have sufficient

opportunity to evaluate a probation report by preserving the right to request a continuance for good cause.

- 4) **Argument in Opposition:** According to *The California Public Defenders Association*, “Penal Code section 1203 provides that, prior to sentencing on a felony, the probation officer must prepare a report to be provided to the court and to the parties at least 5 days, or 9 days upon request of the defendant or prosecuting attorney, before the sentencing hearing.

“This bill would authorize a court to grant the defendant’s request for continuance when the probation department fails to provide the report by the 5-day or 9-day deadline, only if the court finds good cause to grant the continuance.

“This bill is not needed. Penal Code section 1050, subdivision (d) already provides that the court cannot continue a criminal hearing unless it finds good cause.

“There is no need to separately state that again in Penal Code section 1203. Our Penal Code is already way too long and prolix. It does not need repetitive verbiage.”

- 5) **Prior Legislation:** SB 794 (Evans), of the 2013-2014 Legislative Session, would have proposed to limit the defendant is to five preemptory challenges in any criminal case where the offense was punishable with a maximum term of imprisonment of one year or less. SB 794 was never heard in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Judicial Council of California
California District Attorneys Association

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association

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

Date of Hearing: April 21, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1227 (Cooper) – As Amended March 26, 2015

SUMMARY: Requires that the Commission on Peace Officer Status and Training (POST) shall study and submit a report to the Legislature that assesses the status of training courses on peace officer interactions with mentally ill or developmentally disabled persons. Specifically, **this bill:**

- 1) Requires that POST study and assess training courses on peace officer interactions with mentally ill or developmentally disabled persons.
- 2) Requires that POST submit a report to the Legislature on their study on or before December 31, 2017.
- 3) Requires that the POST report assess whether the courses cover all appropriate topics and identify where additional training may be needed.
- 4) Specifies that POST collaborate with all relevant stakeholders.

EXISTING LAW:

- 1) Provides that POST shall establish and keep updated a continuing education training course relating to law enforcement interaction with mentally disabled and developmentally disabled persons living within a state mental hospital or state developmental center. The training course shall be developed by the commission in consultation with appropriate community, local, and state organizations and agencies that have expertise in the area of mental illness and developmental disability, and with appropriate consumer and family advocate groups. In developing the course, the commission shall also examine existing courses certified by the commission that relate to mentally disabled and developmentally disabled persons. The commission shall make the course available to all law enforcement agencies in California, and the course shall be required for law enforcement personnel serving in law enforcement agencies with jurisdiction over state mental hospitals and state developmental centers, as part of the agency's officer training program. (Pen. Code, § 13515.30, subd. (a).)
- 2) Specifies that the course may consist of video-based or classroom instruction. The course shall include, at a minimum, core instruction in all of the following: (Pen. Code, § 13515.30, subd. (b).)
 - a) The prevalence, cause, and nature of mental illnesses and developmental disabilities.

- b) The unique characteristics, barriers, and challenges of individuals who may be a victim of abuse or exploitation living within a state mental hospital or state developmental center.
 - c) How to accommodate, interview, and converse with individuals who may require assistive devices in order to express themselves.
 - d) Capacity and consent of individuals with cognitive and intellectual barriers.
 - e) Conflict resolution and de-escalation techniques for potentially dangerous situations involving mentally disabled or developmentally disabled persons.
 - f) Appropriate language usage when interacting with mentally disabled or developmentally disabled persons.
 - g) Community and state resources and advocacy support and services available to serve mentally disabled or developmentally disabled persons, and how these resources can be best utilized by law enforcement to benefit the mentally disabled or developmentally disabled community.
 - h) The fact that a crime committed in whole or in part because of an actual or perceived disability of the victim is a hate crime.
 - i) Information on the state mental hospital system and the state developmental center system.
 - j) Techniques in conducting forensic investigations within institutional settings where jurisdiction may be shared.
 - k) Examples of abuse and exploitation perpetrated by caregivers, staff, contractors, or administrators of state mental hospitals and state developmental centers, and how to conduct investigations in instances where a perpetrator may also be a caregiver or provider of therapeutic or other services.
- 3) Defines a "mandated reporter" as any person who has assumed the care or custody of an elder or dependent adult, including administrators, supervisors, or licensed staff of a public or private facility that provides care to elder or dependent adults, elder or dependent adult care custodian, health practitioner, clergy member, employee of county adult protective services, or a local law enforcement agency. (Welf & Inst. Code, § 15630, subd. (a)(1).)
- 4) Requires any mandated reporter under the Elder Abuse and Adult Civil Protection Act who, within the scope of his or her employment, observes, has knowledge of physical abuse, financial abuse or neglect, or is told by an elder or dependent adult that he or she has experienced abuse, or reasonably suspects abuse, to immediately report the known or suspected abuse, as specified. (Welf & Inst. Code, § 15630, subd. (b)(1).)
- 5) Provides that if the abuse has occurred in long-term care facility, except a state mental hospital or developmental center, the report shall be made to the local ombudsperson or the local law enforcement agency. (Welf & Inst. Code, § 15630, subd. (b)(1)(a).)

- 6) Provides that failure to report elder abuse under the mandated reporting requirement is a misdemeanor, punishable by imprisonment in the county jail not to exceed six months; by a fine of not more than \$1,000; or by both. Failure to report abuse that results in a death or great bodily injury shall be punished by imprisonment in the county jail not to exceed one year; by a fine not to exceed \$5,000; or by both. (Welf & Inst. Code, § 15630, subd. (h).)
- 7) Vests in the State Department of Developmental Services (DDS) jurisdiction over state hospitals referred to as developmental centers for the provision of residential care to persons with developmental disabilities. (Welf & Inst. Code, § 4440.)
- 8) Provides that a developmental center shall immediately report all resident deaths and serious injuries of unknown origin to the appropriate local law enforcement agency, which may, at its discretion, conduct an independent investigation. The reporting requirements of this subdivision are in addition to, and do not substitute for, the reporting requirements of mandated reporters. (Welf & Inst. Code, § 4427.5, subd. (a).)
- 9) Mandates DDS to do the following:
 - a) Annually provide written information to every developmental center employee regarding all of the following:
 - i) The statutory and departmental requirements for mandatory reporting of suspected or known abuse;
 - ii) The rights and protections afforded to individuals' reporting of suspected or known abuse;
 - iii) The penalties for failure to report suspected or known abuse; and
 - iv) The telephone numbers for reporting suspected or known abuse or neglect to designated investigators of the department and to local law enforcement agencies.
 - b) On or before August 1, 2001, in consultation with employee organizations, advocates, consumers, and family members, develop a poster that encourages staff, residents, and visitors to report suspected or known abuse and provides information on how to make these reports. (Welf & Inst. Code, § 4427.5, subd. (b).)
- 10) States that any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter. (Welf & Inst. Code, § 15630, subd. (a).)
- 11) States that any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined,

- abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone or through a confidential Internet reporting tool, as authorized, immediately or as soon as practicably possible. (Welf & Inst. Code, § 15630, subd. (b)(1).)
- 12) Provides any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse to the specified agency. (Welf & Inst. Code, § 15630, subd. (c)(1).)
 - 13) Provides a mandated reporter in a long-term care facility other than a state mental health hospital or state developmental center, who has knowledge, or reasonably suspects abuse that is not mandated to be reported, may report the known or suspected abuse to the long-term care ombudsperson program. Except in an emergency, the local ombudsperson shall report the case of known or suspected abuse to the Department of Health Services. (Welf & Inst. Code, § 15630, subd. (c)(2).)
 - 14) Provides if the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson. Except in an emergency, the local ombudsperson and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable. (Welf & Inst. Code, § 15630, subd. (c)(3).)
 - 15) If the suspected or alleged abuse occurred in a place other than those specified, the report may be made to the county adult protective services agency. (Welf & Inst. Code, § 15630, subd. (c)(3).)
 - 16) Provides if the conduct involves criminal activity other than physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, it may be immediately reported to the appropriate law enforcement agency. (Welf & Inst. Code, § 15630, subd. (d).)
 - 17) States that a failure to report, or impeding or inhibiting a report of, physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than \$1,000, or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than \$5,000, or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until a law enforcement agency as specified discovers the offense. (Welf & Inst. Code, § 15630, subd. (h).)
 - 18) Defines "dependent adult" as any person between the ages of 18 and 64 years who resides in California and who has physical or mental limitations that 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; and includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility, as defined. (Welf & Inst. Code, §§ 15610.23 & 15630, subd. (i).)

- 19) Requires all peace officers to complete an introductory course of training prescribed by POST, demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)
- 20) Establishes the Commission on Peace Officer Training and Standards. (Pen. Code, § 13500.)
- 21) Empowers POST to develop and implement programs to increase the effectiveness of law enforcement. (Pen. Code, § 13503.)
- 22) Authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental and moral fitness and training that shall govern the recruitment of any peace officers in California. (Pen. Code § 13510, subd. (a).)
- 23) Requires POST to conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability and adopt standards supported by this research. (Pen. Code, § 13510, subd. (b).)
- 24) Requires POST to establish a certification program for peace officers, which shall be considered professional certificates. (Pen. Code § 13510.1, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1227 directs the Commission on Peace Officer Standards and Training (POST) to collaborate with appropriate stakeholders to conduct a study on mental health course offerings for peace officer basic and continuing education training and assess whether those courses cover all appropriate topics and identify areas where additional training may be needed."
- 2) **Background on this Form of Training:** The requirement for POST to train officers related to interaction with the mentally disabled or developmentally disabled came about in legislation in 2013. AB 602 (Yamada), Chapter 673, of the statutes of 2013 mandated this training because of reports of abuse and exploitation in state hospitals.

When a patient at one of the state's developmental centers is seriously injured or dies, the following occurs. Employees must notify the facility's police force, Office of Protective Services (OPS), whenever a patient dies or is seriously injured. OPS officers are required to respond immediately and secure the scene for evidence. OPS must then notify the coroner's office and a local law enforcement agency of all deaths or serious injuries. The developmental center must also report patient deaths to the state Department of Public Health, which regulates facilities. Doctors, nurses and caretakers are mandatory reporters.

Local police or sheriff's departments can open criminal investigations at their discretion. OPS conducts criminal investigations and internal administrative reviews of suspicious deaths. Coroner and medical examiner officers can perform autopsies to find the cause of death. The Department of Public Health investigates to determine if facility errors contributed to the death. If regulators find the developmental center at fault, they can issue fines and citations which can put the facility's license in jeopardy. However, the state has not revoked the license of its own centers even after they receive multiple citations. Disability Rights California, a nonprofit group, has authority under federal and state law to investigate abuse of the disabled and publish its findings. It has access to developmental patient records and police files the public does not.

City police and sheriff's departments can refer the results of their investigations to district attorneys' offices, which decide whether to file criminal charges. Detectives with OPS must show their reports to lawyers for the state DDS, which operates the centers, before sending cases out to prosecutors." [Alvarado and Springfield, *Who is Accountable for Suspected Abuse at Developmental Centers?* California Watch (Feb. 23, 2012).]

Increasing incidents of unexplained injuries and deaths have raised questions as to whether the current process provides sufficient protections for residents of developmental centers. According to inspection data from the Department of Public Health, "The developmental centers have been the scene of 327 patient abuse cases since 2006 Patients have suffered an additional 762 injuries of 'unknown origin' – often a signal of abuse that under state policy should be investigated as a potential crime. At the state's five centers, the list of unexplained injuries includes patients who suffered deep cuts on the head; a fractured pelvis; a broken jaw; busted ribs, shins and wrists; bruises and tears to male genitalia; and burns on the skin the size and shape of a cigarette butt." [Gabrielson, *Police Force's Sloppy Investigations Leave Abuse of Disabled Unsolved*, California Watch (Feb. 23, 2012).] The OPS "often learns about potential abuse hours or days after the fact – if they find out at all. Of the hundreds of abuse cases reported at the centers since 2006, California Watch could find just two cases where the department made an arrest." (*Id.*)

- 3) **Argument in Support:** According to the *Fraternal Order of Police*, "AB 1227 will require POST, in collaboration with relevant stakeholders, to assess the status of the various peace officer training courses relating to mental illness and developmental disabilities. The bill will also require POST to assess whether the courses cover all appropriate topics, identify areas where additional training may be needed and report their findings to the legislature.

"The California Fraternal Order of Police is supportive of legislation that seeks to improve the training received by California's peace officers and assist officers in their interactions with various segments of the population."

- 4) **Prior Legislation:** AB 602 (Yamada), Chapter 673, of the Statutes of 2013, mandated that POST develop and implement training for officers regarding mentally and developmentally disabled persons.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Fraternal Order of Police
Long Beach Police Officers Association
Los Angeles County Professional Peace Officers Association
Sacramento County Deputy Sheriffs' Association
Santa Ana Police Officers Association

Opposition

None

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

Date of Hearing: April 21, 2015
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1289 (Cooper) – As Amended April 16, 2015

SUMMARY: Require the Commission on Peace Officer Standards and Training (POST) to conduct a study of community policing and engagement programs, efforts, strategies, and policies in the state, and to report its findings the Legislature. Specifically, **this bill:**

- 1) Requires POST to conduct a study to determine the effectiveness of community policing and engagement programs, efforts, strategies, and policies in the state, including, but not limited to, police activities leagues, neighborhood watch, and integrated policing.
- 2) Requires POST to report its findings with regard to the study to the Legislature by December 31, 2017.
- 3) States that the report must comply with the requirements for submission of reports by state or local agencies.

EXISTING LAW:

- 1) Establishes POST. (Pen. Code, § 13500.)
- 2) Empowers POST to develop and implement programs to increase the effectiveness of law enforcement. (Pen. Code, §13503.)
- 3) Authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental and moral fitness and training that shall govern the recruitment of any peace officers in California. (Pen. Code, § 13510, subd. (a).)
- 4) Requires POST to conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability and adopt standards supported by this research. (Pen. Code, § 13510, subd. (b).)
- 5) Requires POST to establish a certification program for peace officers, which shall be considered professional certificates. (Pen. Code, § 13510.1, subd. (a).)
- 6) Requires POST to undertake a feasibility study when a person or persons desire peace-officer status, or a person or persons desire a change in peace-officer designation or status. (Pen. Code, § 13540.)
- 7) Requires POST to develop regulations and professional standards for the operation of law enforcement agencies. (Pen. Code, § 13551.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1289 helps California take stock of community policing efforts, programs, policies and best practices statewide in order to reevaluate, recommit, and renew a focus on sustaining and enhancing trusting community-police relationships with all segments of the community."
- 2) **Community Policing:** "Community policing is, in essence, a collaboration between the police and the community that identifies and solves community problems. With the police no longer the sole guardians of law and order, all members of the community become active allies in the effort to enhance the safety and quality of neighborhoods. Community policing has far-reaching implications. The expanded outlook on crime control and prevention, the new emphasis on making community members active participants in the process of problem solving, and the patrol officers' pivotal role in community policing require profound changes within the police organization. The neighborhood patrol officer, backed by the police organization, helps community members mobilize support and resources to solve problems and enhance their quality of life. Community members voice their concerns, contribute advice, and take action to address these concerns. Creating a constructive partnership will require the energy, creativity, understanding, and patience of all involved." (See U.S. Department of Justice, Bureau of Justice Assistance, *Understanding Community Policing: A Framework for Action*, p. vii.)

A recent report from the United States Conference of Mayors notes, "Recent events have demonstrated that, despite instituting community policing in many departments and realizing substantial reductions in the crime rate in many cities, mistrust between the police and the communities they serve and protect continues to be a challenge that must be addressed." (See *Strengthening Police Community Relations in America's Cities*, Jan. 22, 2015, <<http://www.usmayors.org/83rdWinterMeeting/media/012215-report-policing.pdf>>.)

There are many examples of community policing taking place in California. This bill requires POST to conduct a study to determine the effectiveness of community policing and engagement programs, efforts, strategies, and policies in the state.

- 3) **POST:** POST was created by the legislature in 1959 to set minimum selection and training standards for California law enforcement. (Pen. Code, § 13500, subd. (a).) Their mandate includes establishing minimum standards for training of peace officers in California. (Pen. Code, § 13510, subd. (a).) As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. (Pen. Code, § 832, subd. (a).) POST is also tasked with developing and implementing programs to increase the effectiveness of law enforcement. (Pen. Code, § 13503, subd. (e).)

Does POST have the capabilities to conduct the study required by this bill? Should another agency be tasked with conducting the study?

- 4) **Argument in Support:** According to the *Fraternal Order of Police, California State Lodge*, "The purpose of collecting and analyzing this information is to ultimately improve community outreach programs. These programs are critical in ensuring that the community and local law enforcement agencies work in partnership to improve public safety.

"The studies to be conducted by the LAO [sic] pursuant to AB 1289 will provide much needed data for the legislature to consider in their future deliberations regarding the maintenance, funding and establishment of such programs. Better information will hopefully result in better programs."

- 5) **Related Legislation:** AB 1227 (Cooper) requires that POST study and submit a report to the Legislature assessing the status of training courses on peace officer interactions with mentally ill or developmentally disabled persons. AB 1227 will be heard in this Committee today.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Fraternal Order of Police, California State Lodge
Long Beach Police Officers Association
Los Angeles County Professional Peace Officers Association
Sacramento County Deputy Sheriffs' Association
Santa Ana Police Officers Association

Opposition

None

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

Date of Hearing: April 21, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

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

PULLED BY AUTHOR

Date of Hearing: April 21, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1343 (Thurmond) – As Amended April 16, 2015

SUMMARY: Requires defense counsel to provide accurate advice of the potential immigration consequences of a proposed disposition and attempt to defend against those consequences. Requires the prosecution and defense counsel contemplate immigration consequences in the plea negotiation process. Specifically, **this bill:**

- 1) Requires defense counsel to provide accurate and affirmative advice of the potential immigration consequences of a proposed disposition and attempt to defend against those consequences.
- 2) Requires that prosecution and defense counsel, in the interests of justice, to contemplate and consider immigration consequences in the plea negotiation process in an effort to reach a just resolution.
- 3) States that this code section shall not be interpreted to change the requirements of Section 1016.5, including the requirement that no defendant shall be required to disclose his or her immigration status to the court.
- 4) The Legislature makes the following findings:
 - a) In *Padilla v. Kentucky* (2010), 559 U.S. 356, the United States Supreme Court held that the Sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. California courts also have held that defense counsel must investigate, advise regarding, and defend against, potential adverse immigration consequences of a proposed disposition (*People v. Soriano*, 194 Cal.App.3d 1470 (1987), *People v. Barocio*, 216 Cal.App.3d 99 (1989), *People v. Bautista*, 115 Cal.App.4th 229 (2004));
 - b) In *Padilla*, the United States Supreme Court sanctioned the consideration of immigration consequences by both parties in the plea negotiating process. The court stated that “informed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea-bargaining process. By bringing deportation consequences into this process, the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties.”;
 - c) In *Padilla*, the United States Supreme Court found that for noncitizens, deportation is an integral part of the penalty imposed for criminal convictions. Deportation may result from serious offenses or a single minor conviction. It may be by far the most serious penalty flowing from the conviction;

- d) With an accurate understanding of immigration consequences, many noncitizen defendants are able to plead to a conviction and sentence that satisfy the prosecution and court, but that have no, or fewer, adverse immigration consequences than the original charge;
- e) Defendants who are misadvised or not advised at all of the immigration consequences of criminal charges often suffer irreparable damage to their current or potential lawful immigration status, resulting in penalties such as mandatory detention, deportation, and permanent separation from close family. In many cases, these consequences could have been avoided had counsel provided informed advice and defense;
- f) Once in removal proceedings, a noncitizen may be transferred to any of over 200 immigration detention facilities across the country. Many criminal offenses trigger mandatory detention, so that the person may not request bond. In immigration proceedings, there is no court-appointed right to counsel and as a result, the majority of detained immigrants go unrepresented. Immigration judges often lack the power to consider whether the person should remain in the United States in light of equitable factors such as serious hardship to United States citizen family members, length of time living in the United States, or rehabilitation;
- g) The immigration consequences of criminal convictions have particularly strong impact in California. One out of every four persons living in the state is foreign-born. One out of every two children lives in a household headed by at least one foreign-born person. The majority of these children are United States citizens. It is estimated that 50,000 parents of California United States citizen children were deported in a little over two years. Once a person is deported, especially after a criminal conviction, it is extremely unlikely that he or she ever is permitted to return; and,
- h) It is the intent of the Legislature to codify *Padilla v. Kentucky* and California case law.

EXISTING LAW:

- 1) Requires the court prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, to administer the following advisement on the record to the defendant:

“If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” (Pen. Code, § 1016.5, subd. (a).)
- 2) States that upon request, the court shall allow the defendant additional time to consider the appropriateness of the plea in light of the advisement as described in this section. (Pen. Code, § 1016.5, subd. (b).)
- 3) Requires the court the, on defendant's motion, to vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty, if court fails to advise the defendant as required by this section and the defendant shows that

conviction of the offense to which defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement. (Pen. Code, § 1016.5, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "In *Padilla v. Kentucky*, (2010) 559 U.S. 356, the U.S. Supreme Court held that the Sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. California courts have long since held the same, including that defense counsel must investigate, advise regarding, and defend against, potential adverse immigration consequences of a proposed disposition.

"In order for the consideration of immigration consequences to result in meaningful change, it is important for both the prosecution and defense to consider immigration consequences in plea negotiations. The Supreme Court agreed, stating that "informed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea-bargaining process. By bringing deportation consequences into this process, the defense and prosecution may well be able to reach agreements that better satisfy the interests of both parties."

"The effects of even a minor criminal conviction on the life of an immigrant cannot be understated. Immigrants can suffer irreparable consequences including loss of legal status, loss of ability to obtain legal status, inability to apply for citizenship (temporary or permanent), mandatory detention in immigration proceedings (no bond), or permanent deportation, and subsequent family separation. Once in deportation proceedings, the injustice continues, where immigrants are often transferred to over 200 facilities across the country, often states away from friends or family, and without being provided an attorney. Offenses which can trigger these consequences can include possession of a controlled substance, petty thefts, and many more.

"In many cases, these consequences could have been avoided or mitigated had the immigration consequences been considered in the criminal case. The result is disproportionate punishment, where immigrants are essentially punished twice for the same offense, with the immigration consequences often being worse than the criminal punishment.

"These negative effects can be particularly felt in California, where one out of every four persons is foreign-born. One out of every two children lives in a household headed by at least one foreign-born person. When parents are deported, children may be left parentless and are thereafter more likely to enter the criminal justice system themselves. The majority of these children are U.S. citizens. It is estimated that 50,000 parents of California U.S. citizen children were deported in a little over two years. Once a person is deported, especially after a criminal conviction, it is extremely unlikely that he or she is ever permitted to return. Thus, countless California families are needlessly separated each year."

- 2) **Previous Legislative Findings Regarding Advisement of Immigration Consequences Arising From Criminal Proceedings:** In 1977, the legislature enacted law requiring criminal defendants to be advised prior to the acceptance of a plea of guilty or no contest, that conviction may result in deportation, exclusion from admission, or denial of naturalization, if the defendant is not a citizen. At that time, the legislature found and declared:

“ . . . that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty or nolo contendere is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the Legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is also the intent of the Legislature that the court in such cases shall grant the defendant a reasonable amount of time to negotiate with the prosecuting agency in the event the defendant or the defendant's counsel was unaware of the possibility of deportation, exclusion from admission to the United States, or denial of naturalization as a result of conviction. It is further the intent of the Legislature that at the time of the plea no defendant shall be required to disclose his or her legal status to the court.” (Pen. Code, § 1016.5, subd. (d).)

- 3) **Argument in Support:** According to *The Immigrant Legal Resource Center*, “In *Padilla v. Kentucky* (2010), 559 U.S. 356, the U.S. Supreme court held that the sixth Amendment requires defense counsel to provide affirmative and competent advice to noncitizen defendants regarding the potential immigration consequences of their criminal cases. This conforms with California court decisions, which have held that defense counsel must investigate, advise regarding, and defend against, potential adverse immigration consequences of a proposed disposition. In order for the consideration of immigration consequences to have meaning, it is important for both the prosecution and defense to consider immigration consequences in plea negotiations. The U.S. Supreme Court sanctioned this practice, stating that “informed consideration of possible deportation can only benefit both the State and noncitizen defendants during the plea-bargaining process.” *Padilla*, 559 U.S. at 373.

“The consequences are especially devastating to an immigrant-rich state like California, where one out of every four persons is foreign-born and mixed citizen/immigrant families are the norm. For example, one out of every two children in California lives in a household headed by a least one foreign-born person, and the great majority of these children are U.S. citizens.

“Thousands of California families are destroyed each year by deportations. In many cases, these consequences could have been avoided or mitigated had the immigration consequences been considered in the criminal case. The result is disproportionate punishment, where immigrants are essentially punished twice for the same offense, with the immigration consequences often being worse than the criminal punishment.

“California has a legacy of statewide policies that support immigration reform. In the face of Congressional gridlock, this legislation continues our state’s legacy as a leader in responsive and effective immigration policy reform by ensuring that immigrants receive competent and effective legal assistance and fair treatment in our state system.”

4) Prior Legislation:

- a) AB 142 (Fuentes), of the 2011-12 Legislative Session, would have required that courts advise defendants that if they are deported from the United States and return illegally, they could be charged with a separate federal offense. AB 142 was vetoed by the Governor.
- b) AB 806 (Fuentes), of the 2009-10 Legislative Session, would have required that courts advise defendants that if they are deported from the United States and return illegally, they could be charged with a separate federal offense. AB 806 was vetoed by the Governor.
- c) AB 15 (Fuentes), of the 2009-10 Legislative Session, would have required that courts advise defendants that if they are deported from the United States and return illegally, they could be charged with a separate federal offense. AB 15 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Immigrant Legal Resource Center
American Civil Liberties Union of California
California Immigrant Policy Center
Coalition for Humane Immigrant Rights of Los Angeles
Dolores Street Community Services
Pangea Legal Services

Opposition

None

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

Date of Hearing: April 21, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1351 (Eggman) – As Amended April 16, 2015

SUMMARY: Changes the existing deferred entry of judgment (DEJ) program for specified offenses involving personal use or possession of controlled substances into a pretrial drug diversion program. Specifically, **this bill:**

- 1) Requires, to be eligible for diversion, the defendant must not have a prior conviction for any offense involving a controlled substance other than the offenses that may be diverted as specified; the offense charged must not have involved a crime of violence or threatened violence; there must be no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of an offense that may be diverted; and the defendant must not have any prior convictions within five years prior to the alleged commission of the charged offense for a serious or violent felony, as defined.
- 2) Provides that a defendant's participation in pretrial diversion shall not constitute a conviction or an admission of guilt in any action or proceeding.
- 3) Changes the minimum time allowed prior to dismissal of the case from 18 months to six months, and the maximum time the proceedings in the case can be suspended from three years to one year.
- 4) Provides that if it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is convicted of an offense that reflects the defendant's propensity for violence, or the defendant is convicted of a felony, the prosecuting attorney, the court on its own, or the probation department may make a motion for termination of pre-trial diversion.
- 5) Provides that if the court finds that the defendant is not performing satisfactorily in the assigned program, or the court finds that the defendant has been convicted of a specified type of crime, the court shall reinstate the criminal charge or charges and schedule the matter for further proceedings.
- 6) States if the defendant has completed pretrial diversion, at the end of that period, the criminal charge or charges shall be dismissed. Upon successful completion of a pretrial diversion program, the arrest upon which the defendant was diverted shall be deemed to have never occurred.
- 7) Retains provisions in current law but changes references from DEJ to pre-trial diversion and deletes references to affecting judgment to be entered against the defendant.

- 8) States that a person participating in a pretrial diversion program or a preguilty plea program shall be allowed, under the direction of a licensed health care practitioner, to use medications to treat substance use disorders if the participant allows release of his or her medical records to the court for the limited purpose of determining whether or not the participant is using such medications under the direction of a licensed health care practitioner and is in compliance with the pretrial diversion or preguilty plea program rules.

EXISTING LAW:

- 1) Provides that a defendant may qualify for DEJ of specified non-violent drug possession offenses if the following apply to the defendant:
 - a) The defendant has no prior conviction for any offense involving controlled substances;
 - b) The offense charged did not involve a crime of violence or threatened violence;
 - c) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the specified deferrable drug offenses;
 - d) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed;
 - e) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense;
 - f) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense. (Pen. Code, § 1000, subd. (a).)
- 2) Specifies the offenses that are eligible for DEJ, which include possession for personal use of specified controlled substances, possession of certain drug paraphernalia, being under the influence of a controlled substance, cultivation of marijuana for personal use, and being present in a place where controlled substances are being used. (Pen. Code, 1000, subd. (a).)
- 3) States a prosecutor has a duty to review files to decide whether the defendant is eligible for DEJ. The prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for DEJ at the arraignment. (Pen. Code, § 1000, subd. (b).)
- 4) Requires all referrals for DEJ granted by the court pursuant to this chapter to be made only to programs that have been certified by the county drug program administrator, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria specified. (Pen. Code, § 1000, subd. (c).)
- 5) Provides that the court shall hold a hearing and, after consideration of any information relevant to its decision, shall determine if the defendant consents to further proceedings and

if the defendant should be granted DEJ. If the court does not deem the defendant a person who would be benefited by deferred entry of judgment, or if the defendant does not consent to participate, the proceedings shall continue as in any other case. The period during which deferred entry of judgment is granted shall be for no less than 18 months nor longer than three years. Progress reports shall be filed by the probation department with the court as directed by the court. (Pen. Code, § 1000.2.)

- 6) Requires, if the defendant has performed satisfactorily during the period in which DEJ was granted, at the end of that period, the criminal charge or charges to be dismissed. If the defendant does not perform satisfactorily, DEJ may be terminated and the defendant may be sentenced as he or she would for a conviction. (Pen. Code, § 1000.3.)
- 7) States that upon successful completion of a DEJ program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified for employment as a peace officer. A record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1000.4, subd. (a).)
- 8) Authorizes counties to establish and conduct a preguilty plea drug court program wherein criminal proceedings are suspended without a plea of guilty for designated defendants if so agreed upon in writing by the presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender. If the defendant is not performing satisfactorily in the program, the court may reinstate criminal proceedings. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed. (Pen. Code, § 1000.5.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "This bill seeks to limit harsh consequences to immigrants by changing the current process for nonviolent, misdemeanor drug offenses from deferred entry of judgment (DEJ) to pretrial diversion. While the current DEJ process eliminates a conviction if a defendant successfully completes DEJ, the defendant may still face federal consequences, including deportation if the defendant is undocumented, or the prohibition from becoming a U.S. citizen if the defendant is a legal permanent resident. This is systemic injustice to immigrants in this country, but even U.S. citizens may face federal consequences, including loss of federal housing and educational benefits.

"Given that President Obama has publicly called for immigration officials to focus on violent, dangerous felons, this bill will have a profoundly positive impact on more than \$2 million undocumented immigrants and the more than 3 million legal permanent residents living in California by eliminating the draconian consequences faced by immigrants who participate in diversion programs in good faith. This bill will keep families together, help people retain eligibility for U.S. citizenship, and also preserve access to other benefits for

those who qualify."

- 2) **DEJ as Compared to Diversion:** Under existing law, a defendant charged with violations of certain specified drug may be eligible to participate in a DEJ program if he or she meets specified criteria. (Pen. Code, §§ 1000 et seq.) With DEJ, a defendant must enter a guilty plea and entry of judgment on the defendant's guilty plea is deferred pending successful completion of a program or other conditions. If a defendant placed in a DEJ program fails to complete the program or comply with conditions imposed, the court may resume criminal proceedings and the defendant, having already pleaded guilty, would be sentenced. If the defendant successfully completes DEJ, the arrest shall be deemed to never have occurred and the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted pretrial diversion for the offense.

Diversion on the other hand suspends the criminal proceedings without requiring the defendant to enter a plea. Diversion also requires the defendant to successfully complete a program and other conditions imposed by the court. Unlike DEJ however, if a defendant does not successfully complete the diversion program, criminal proceedings resume but the defendant, having not entered a plea, may still proceed to trial or enter a plea. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense.

In order to avoid adverse immigration consequences, diversion of an offense is preferable to DEJ because the defendant is not required to plea guilty in order to participate in the program. Having a conviction for possession of controlled substances, even if dismissed, could trigger deportation proceedings or prevent a person from becoming a U.S. citizen. (*Paredes-Urrestarazu v. U.S. INS* (9th Cir. 1994) 36 F3d. 801.) This bill seeks to minimize the potential exposure to adverse immigration consequences for persons who commit minor drug possession offenses by re-establishing a pretrial diversion program for minor drug possession. Prior to 1997, the program pursuant to Penal Code § 1000 et seq. was a pretrial diversion program. SB 1369 (Kopp), Chapter 1132, Statutes of 1996, changed the diversion program to a DEJ program.

- 3) **Argument in Support:** The *Immigrant Legal Resource Center (ILRC)*, a sponsor of this bill, writes, "According to data published by Syracuse University, over 250,000 people have been deported from the U.S. for nonviolent drug offenses since 2008. A nonviolent drug offense was the cause of deportation for more than one in every ten people deported in 2013 for any reason.

"This is particularly devastating to families in California, which is the most immigrant-rich state in America. One out of every four persons living in the state is foreign-born. Half of California's children live in households headed by at least one foreign-born parent – and the majority of these children are U.S. citizens. It is estimated that 50,000 parents of U.S. citizen children were deported in a little over two years, leaving many children parentless. Deportation due to minor drug offenses destroys California families.

"AB 1351 will amend Penal Code 1000 et seq. to allow courts to order pre-trial diversion, rather than require a guilty plea. This was the way that PC 1000 worked until 1997. Because there will be no guilty plea, there will be no 'conviction' for federal immigration purposes.

For any person who fails to adhere to conditions of a pre-trial diversion program, the court could reinstate the charges and schedule proceedings pursuant to existing law. Diversion will not be allowed for any person charged with drug sale, or possession for sale, nor will be allowed for persons who involve minors in drug sales or provide drugs to minors."

- 4) **Argument in Opposition:** According to the *California District Attorneys Association*, "AB 1351 would turn [the current] process on its head, allowing the defendant to enter a treatment program *before* entering a plea. If the program was not completed successfully, only then would criminal proceedings actually begin. From a practical standpoint, this creates tremendous problems for prosecutors, as it becomes much more difficult to locate witnesses and maintain evidence many months after the offense has occurred.

"Additionally, AB 1351 would reduce the length of drug treatment programs down to one-third of what they currently are. Right now, someone participates in drug diversion for 18 months to 36 months. This bill would only allow 6 to 12 months of treatment. Much of the success of drug diversion is based on this long-term treatment. Reducing the required length of treatment might lead to more people completing their programs, but it also reduces the likelihood that those programs will actually have positive long-term outcomes for drug offenders. It's unclear how reducing the amount of drug treatment that someone receives would have any positive impact on their immigration consequences.

"Further, AB 1351 removes many of the pre-requisites for participation in drug diversion. Currently, a defendant must not have any prior drug convictions in order to be eligible for drug diversion. Under AB 1351, as long as the prior offenses were all diversion-eligible offenses, there is no limit to the number of drug offenses someone could accumulate while maintaining drug diversion eligibility. This bill also eliminates the requirement that a defendant have no felony convictions in the previous five years, instead only requiring that a defendant not have any prior serious or violent felonies."

5) **Related Legislation:**

- a) AB 1352 (Eggman) requires a court to allow a defendant to withdraw his or her guilty or nolo contendere plea and thereafter dismiss the case upon a finding that the case was dismissed after the defendant completed DEJ and that the plea may result in the denial or loss to the defendant, as specified. AB 1352 will be heard by this Committee today.
- b) AB 813 (Gonzales) would create an avenue of post-conviction relief for a person to vacate a conviction or sentence based on error damaging the petitioner's ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction. AB 813 will be heard by this Committee today.
- 6) **Prior Legislation:** SB 1369 (Kopp), Chapter 1132, Statutes of 1996, changed the diversion program for drug offenders to a deferred entry of judgment program. Increased the time allowed before a case can be dismissed from a period of no less than six months to two years, to a period of no less than 18 months to 3 years.

REGISTERED SUPPORT / OPPOSITION:

Support

Drug Policy Alliance (Sponsor)
Immigrant Legal Resource Center (Sponsor)
American Civil Liberties Union of California (Co-Sponsor)
Coalition for Humane Immigrant Rights of Los Angeles (Co-Sponsor)
Mexican American Legal Defense and Education Fund (MALDEF) (Co-Sponsor)
National Council of La Raza (Co-Sponsor)
African Advocacy Network
Asian Americans Advancing Justice – Asian Law Caucus
Asian Americans Advancing Justice – L.A.
Asian Law Alliance
California Immigrant Policy Center
California Partnership
California Public Defenders Association
California Rural Legal Assistance Foundation
Californians for Safety and Justice
Californians United for a Responsible Budget
Central American Resource Center – Los Angeles
Chinese for Affirmative Action
Community United Against Violence
Congregations Building Community
ConXión to Community
Del Sol Group
Dolores Street Community Services
Faith in Action Kern County
Harvey Milk LGBT Democratic Club
Human Rights Watch
Immigration Action Group
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
Los Angeles Regional Reentry Partnership
Justice Not Jails
MAAC
Mujeres Unidas y Activas
National Association of Social Workers – California Chapter
National Day Laborer Organizing Network
Pangea Legal Services
PICO California
Placer People of Faith
Presente.org
Progressive Christians Uniting
Red Mexicana de Lideres y Organizaciones Migrantes
Santa Clara County Public Defender's Office
Silicon Valley De-Bug
Solutions for Immigrants
William C. Velasquez Institute
Vital Immigrant Defense Advocacy and Services (VIDAS)

Two private individuals

Opposition

California District Attorneys Association

California State Sheriff's Association

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

Date of Hearing: April 21, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1352 (Eggman) – As Introduced February 27, 2015
As Proposed to be Amended in Committee

SUMMARY: Requires the court to allow a defendant to withdraw his or her guilty or nolo contendere plea in order to avoid specified adverse consequences if certain conditions are met. Specifically, **this bill:**

- 1) Provides in any case in which a defendant was granted deferred entry of judgment (DEJ), on or after January 1, 1997, after pleading guilty or nolo contendere to the charged offense, the defendant shall be permitted by the court to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty if the defendant shows both of the following:
 - a) The charges were dismissed after the defendant performed satisfactorily during the DEJ period; and,
 - b) The plea may result in the denial or loss to the defendant of any employment, benefit, license, or certificate, including, but not limited to, causing a noncitizen defendant to potentially be found inadmissible, deportable, or subject to any other kind of adverse immigration consequence.
- 2) Requires the court to dismiss the complaint or information against the defendant.
- 3) States the Legislative finding that the statement in Penal Code Section 1000.4, that "successful completion of a DEJ program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate" constitutes misinformation about the actual consequences of making a plea in the case of some defendants, including all noncitizen defendants, because the disposition of the case may cause adverse consequences, including adverse immigration consequences.
- 4) Declares based upon this misinformation and the potential harm, the defendant's prior plea is invalid.

EXISTING LAW:

- 1) Provides that a defendant may qualify for DEJ of specified non-violent drug possession offenses if the following apply to the defendant:
 - a) The defendant has no prior conviction for any offense involving controlled substances;
 - b) The offense charged did not involve a crime of violence or threatened violence;

- c) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the specified deferrable drug offenses;
 - d) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed;
 - e) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense;
 - f) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense. (Pen. Code, § 1000, subd. (a).)
- 2) States a prosecutor has a duty to review files to decide whether the defendant is eligible for DEJ. The prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for DEJ at the arraignment. (Pen. Code, § 1000, subd. (b).)
 - 3) Requires all referrals for DEJ granted by the court pursuant to this chapter to be made only to programs that have been certified by the county drug program administrator, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria specified. (Pen. Code, § 1000, subd. (c).)
 - 4) Provides that the court shall hold a hearing and, after consideration of any information relevant to its decision, shall determine if the defendant consents to further proceedings and if the defendant should be granted DEJ. If the court does not deem the defendant a person who would be benefited by deferred entry of judgment, or if the defendant does not consent to participate, the proceedings shall continue as in any other case. The period during which deferred entry of judgment is granted shall be for no less than 18 months nor longer than three years. Progress reports shall be filed by the probation department with the court as directed by the court. (Pen. Code, § 1000.2.)
 - 5) Requires, if the defendant has performed satisfactorily during the period in which DEJ was granted, at the end of that period, the criminal charge or charges to be dismissed. If the defendant does not perform satisfactorily, DEJ may be terminated and the defendant may be sentenced as he or she would for a conviction. (Pen. Code, § 1000.3.)
 - 6) States that upon successful completion of a DEJ program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense, except as specified for employment as a peace officer. A record pertaining to an arrest resulting in successful completion of a DEJ program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1000.4, subd. (a).)

- 7) Authorizes counties to establish and conduct a preguilty plea drug court program wherein criminal proceedings are suspended without a plea of guilty for designated defendants if so agreed upon in writing by the presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender. If the defendant is not performing satisfactorily in the program, the court may reinstate criminal proceedings. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed. (Pen. Code, § 1000.5.)
- 8) States that in any case in which (a) a defendant has fulfilled the conditions of probation for the entire period of probation, or (b) has been discharged prior to the termination of the period of probation, or (c) in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant. (Pen. Code, § 1203.4, subd. (a).)

EXISTING LAW: Provides circumstances that allow non-citizens to be deported, which include having been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance as defined, other than a single offense involving possession for one's own use of 30 grams or less of marijuana. (8 U.S.C.S. § 1227, subd. (a)(2)(B)(i).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1352 provides a minor expungement procedure to prevent the needless disruption of thousands of California families. The expungement proposed by this bill does not retroactively change the effect of the person's DEJ disposition under California law. Instead, it will eliminate the disposition as a conviction for federal immigration purposes. It also will make right the injustice inadvertently committed against the immigrant defendants who relied upon PC 1000.4 in deciding to enter a guilty plea.

"This bill will prevent terrible harm to California families and immigrant communities. The last several years have seen mass deportations from the U.S. Of deportations based on criminal conviction, the largest number has been for minor, non-trafficking drug offenses. This especially affects California, the nation's most immigrant-rich state, where one out of two children lives in a household headed by at least one foreign born person (and the great majority of the children are U.S. citizens). Deportation of a parent devastates a family emotionally and economically and can drain state resources as U.S. citizen children go into foster care, homes go into foreclosure, and remaining citizen family seek public benefits."

- 2) **Expungement Relief Generally:** To "expunge" is to erase or destroy. The expungement of a record is the removal of a conviction from a person's criminal record. (*United States v. Hayden* (9th Cir. 2001) 255 F.3d 768, 771.) In California, Penal Code section 1203.4 is the statute typically referred to as the expungement statute. Defendants who have successfully completed probation (including early discharge) can petition the court to set aside a guilty verdict or permit withdrawal of the guilty or nolo contendere plea and dismiss the complaint, accusation, or information. (Pen. Code, §1203.4.) However, the relief under Penal Code section 1203.4 does not actually provide expungement of the defendant's records. The prior conviction may still be used in a "subsequent prosecution of the defendant for any other offense," and if plead and proven, "shall have the same effect as if probation had not been granted or the accusation or information dismissed." (Pen. Code, § 1203.4, subd. (a).) Instead, there will be an entry made on the record that states that the case was dismissed. The records still remain fully a public document.

A dismissal under section 1203.4 does not constitute "expungement" as defined in the Federal Sentencing Guidelines, and therefore may be considered as a prior conviction when calculating a defendant's criminal history. (*Hayden, supra*, 255 F3d at p. 774.) In *Hayden*, the court looked at the specific language contained in 1203.4 to find that because the statute expressly authorizes the dismissed case to be used as a prior conviction in a subsequent prosecution, it is clear that the prior conviction is not expunged or erased so it could be considered for federal immigration purposes. (*Id.* at p. 772.)

In order to constitute an actual expungement, the withdrawal of the plea and dismissal of the case must not be allowed to be used for any purpose. Because immigration is the purview of the federal government, state laws cannot mandate what the federal government can consider in immigration proceedings. However, the state can craft a statute that avoids or minimizes a person's exposure to adverse immigration consequences. One of the circumstances that may trigger deportation proceedings is a conviction related to controlled substances. (8 U.S.C.S. § 1227, subd. (a)(2)(B)(i).) This bill allows a person to withdraw a guilty or nolo contendere plea that exposed the person to adverse immigration consequences and requires the court thereafter to dismiss the case. The intended outcome is that the person would not have a "conviction" as interpreted under federal law to cause the person to be deported. However, the bill is silent as to whether, after the case is re-dismissed, the records are expunged or completely erased from a person's record. Therefore, it is unclear whether the dismissal created under this bill prevents the federal government from accessing those records for immigration purposes.

- 3) **Deferred Entry of Judgment:** Participation in a DEJ program requires a defendant must enter a guilty plea and entry of judgment on the defendant's guilty plea is deferred pending successful completion of a program or other conditions. If the defendant successfully completes DEJ, the arrest shall be deemed to never have occurred. The Legislature intended the benefits and protections of a successful completion of DEJ be given the broadest possible application. (*B.W. v. Board of Med. Quality Assurance* (1985) 169 Cal.App. 3d 219.) A defendant who completes DEJ and has his or her case dismissed cannot have the offense used against him or her to deny any employment benefit, license or certificate unless the defendant consents to the release of his or her record. (Pen. Code, § 1000.3.)

DEJ provides an opportunity for non-violent drug offenders to participate in drug treatment programming and probation supervision rather than being imprisoned. The purpose of

dismissal upon successful completion of DEJ is to allow offenders to take advantage of having a clean record so that they can get or retain jobs become, or remain, productive members of society. However, a dismissal after completion of a DEJ program for a drug related offense may subject an immigrant defendant to immigration consequences such as deportation. (*Paredes-Urrestarazu v. U.S. INS* (9th Cir. 1994) 36 F3d. 801.)

This bill requires a court to allow a defendant to withdraw his or her guilty or nolo contendere plea upon a showing that charges were dismissed after the defendant performed satisfactorily during the DEJ period and that the plea may lead to a denial of a benefit, including adverse immigration consequences. A defendant's lack of knowledge of immigration consequences can constitute good cause to withdraw a guilty plea. (*People v. Superior Court (Giron)* (1974) 11 Cal. 3d 793.)

- 4) **Withdrawal of a Plea on a Dismissed Case:** This bill creates a statutory mechanism for the court to assume jurisdiction in a case for the limited purpose of authorizing the person to withdraw his or her guilty or nolo contendere plea if it is shown that their case was dismissed after successful completion of DEJ, and that the plea may result in the denial or loss to the defendant of any employment, benefit, license, or certificate, including adverse immigration consequences such as deportation.

This bill applies to cases that have already been dismissed. A court may have jurisdiction over a case that has been dismissed. In *People v. Delong* (2002), 101 Cal. App. 4th 482, the defendant successfully completed drug treatment and the terms of probation pursuant to Proposition 36. Thereafter her conviction was set aside and the court dismissed the complaint against the defendant. The statute authorizing the dismissal states that "the conviction is deemed never to have occurred" and the defendant is "released from all penalties and disabilities" resulting from the conviction. (*Id.* at p. 491; Pen. Code, § 1210.1, subd. (e)(1).) The defendant subsequently appealed her conviction and the prosecution argued that the appeal was moot because the case had been dismissed. The court held that the appeal was not moot because the conviction continues to exist for certain purposes, and the defendant "continues to suffer disadvantageous and prejudicial collateral consequences therefrom. . ." (*Id.* at pp. 491-492) Similarly, in cases dismissed pursuant to DEJ, the conviction continues to exist for certain purposes and may disadvantage the defendant, even though the defendant is advised that the completion of the program "shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate." (Pen. Code, § 1000.4, subd. (a).)

- 5) **Proposed Amendments:** This bill is being considered as proposed to be amended. The proposed amendments require the court, after the defendant has withdrawn his or her plea, to dismiss the complaint or information. The bill as currently written does not direct the court on how to proceed after the defendant has withdrawn his or her plea. Without stating that the necessary outcome, the case would remain open and without a disposition. Therefore, the amendments require the court to re-dismiss the case.
- 6) **Argument in Support:** According to the *American Civil Liberties Union of California*, the co-sponsor of this bill "Current California law provides for deferred entry of judgment (DEJ) for minor drug offenses. Under the program, a defendant is required to plead guilty, waive his or her right to a speedy trial, and complete a drug treatment program. If the defendant successfully completes the program, the charges against the defendant are dismissed.

Participants are told that once the charges are dismissed, there will be no conviction for any purpose, the arrest will be deemed never to have occurred, and they will not be denied any legal benefit based on the disposition whatsoever.

"Unfortunately, the dismissal of the charges following completion of deferred entry of judgement does not, in fact, protect defendants from certain federal consequences. This is because the guilty plea remains on their record and counts as a "conviction" for certain purposes under federal law. Even for U.S. citizens, these guilty pleas can carry long-term negative consequences, including loss of federal housing and educational benefits. For noncitizens, the consequences can be immediate and devastating, including deportation, mandatory detention, and permanent separation from families.

...

"AB 1352 adds to our existing expungement process a means for people who have successfully completed DEJ to remove the guilty plea from their record. The expungement provision will permit people to withdraw their plea in a manner that immigration authorities will accept. This expungement will not retroactively change the effect of California DEJ dispositions because under state law, the person already is deemed to have no conviction or even arrest. Instead, this bill provides a technical withdrawal of a guilty plea to meet federal standards, in order to prevent the needless and unfair destruction of California families."

- 7) **Argument in Opposition:** According to the *California District Attorneys Association*, "Beyond the constitutional right to effective defense counsel, which has an obligation to ensure that a defendant understands the terms and ramifications of a plea, Penal Code 1016.5 already requires the court to administer an advisement to the defendant about potential adverse immigration consequences prior to accepting a guilty plea.

"Allowing defendants to petition the court for this form of relief, simply because those consequences ultimately occurred, would create tremendous workload issues within the criminal justice system in terms of calendaring and preparing for hearings. By making this remedy available to anyone who was granted deferred entry of judgment since 1997, tens of thousands of individuals will be eligible for a determination on whether they may withdraw their pleas – many of whom have suffered no adverse consequences at all.

"For those whose pleas may trigger some immigration action, certainly any adverse consequences – immigration, employment, or otherwise – would have already been suffered in the intervening 18 years. Conversely, if those adverse consequences have not yet occurred, perhaps the problem that AB 1352 seeks to address is not as prevalent as initially thought."

8) **Related Legislation:**

- a) AB 813 (Gonzalez) would create an avenue of post-conviction relief for a person to vacate a conviction or sentence based on error damaging the petitioner's ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction. AB 813 will be heard by this Committee today.
- b) AB 1351 (Eggman) would change the existing drug DEJ program to a pretrial drug diversion program. AB 1351 will be heard by this Committee today.

REGISTERED SUPPORT / OPPOSITION:

Support

Drug Policy Alliance (Sponsor)
Immigrant Legal Resource Center (Sponsor)
American Civil Liberties Union of California (Co-Sponsor)
Coalition for Humane Immigrant Rights of Los Angeles (Co-Sponsor)
Mexican American Legal Defense and Education Fund (MALDEF) (Co-Sponsor)
National Council of La Raza (Co-Sponsor)
African Advocacy Network
Asian Americans Advancing Justice – Asian Law Caucus
Asian Americans Advancing Justice – L.A.
Asian Law Alliance
California Attorneys for Criminal Justice
California Immigrant Policy Center
California Partnership
California Public Defenders Association
California Rural Legal Assistance Foundation
Californians for Safety and Justice
Californians United for a Responsible Budget
Central American Resource Center – Los Angeles
Chinese for Affirmative Action
Community United Against Violence
Congregations Building Community
Del Sol Group
Dolores Street Community Services
Faith in Action Kern County
Harvey Milk LGBT Democratic Club
Human Rights Watch
Immigration Action Group
Institute for Justice
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
Los Angeles Regional Reentry Partnership
Justice Not Jails
MAAC
Mujeres Unidas y Activas
National Association of Social Workers – California Chapter
National Day Laborer Organizing Network
National Immigration Law Center
Pangea Legal Services
PICO California
Placer People of Faith
Presente.org
Progressive Christians Uniting

Red Mexicana de Lideres y Organizaciones Migrantes
Santa Clara County Public Defender's Office
Silicon Valley De-Bug
Solutions for Immigrants
William C. Velasquez Institute
Vital Immigrant Defense Advocacy and Services (VIDAS)

One private individual

Opposition

California District Attorneys Association
California State Sheriffs' Association

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

Amendments Mock-up for 2015-2016 AB-1352 (Eggman (A))

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

Mock-up based on Version Number 99 - Introduced 2/27/15
Submitted by: Stella Choe, Assembly Public Safety Committee

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

SECTION 1. Section 1203.43 is added to the Penal Code, to read:

1203.43. (a) (1) The Legislature finds and declares that the statement in Section 1000.4, that “successful completion of a deferred entry of judgment program shall not, without the defendant’s consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate” constitutes misinformation about the actual consequences of making a plea in the case of some defendants, including all noncitizen defendants, because the disposition of the case may cause adverse consequences, including adverse immigration consequences.

(2) Accordingly, the Legislature finds and declares that based on this misinformation and the potential harm, the defendant’s prior plea is invalid.

(b) In any case in which a defendant was granted deferred entry of judgment on or after January 1, 1997, after pleading guilty or nolo contendere to the charged offense, the defendant shall be permitted by the court to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty, **and thereafter the court shall dismiss the complaint or information against the defendant**, if the defendant shows both of the following:

(1) The charges were dismissed after the defendant performed satisfactorily during the deferred entry of judgment period.

(2) The plea of guilty or nolo contendere may result in the denial or loss to the defendant of any employment, benefit, license, or certificate, including, but not limited to, causing a noncitizen defendant to potentially be found inadmissible, deportable, or subject to any other kind of adverse immigration consequence.

Date of Hearing: April 21, 2015
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1415 (Steinorth) – As Introduced February 27, 2015
As Proposed to be Amended in Committee

SUMMARY: Criminalizes for 10 years the ownership or possession of a firearm by a person who has, under Proposition 47, had a felony conviction recalled and has been resentenced to a misdemeanor, or who has had a felony designated as a misdemeanor after the completion of the sentence. Specifically, **this bill:**

- 1) Provides that a person who was either previously convicted of a felony and had his or her sentence recalled and was resentenced to a misdemeanor, as specified, or who had his or her felony conviction designated as a misdemeanor, as specified, after completing his or her sentence, and who within 10 years of the recall and resentencing or designation, owns, purchases, receives, or has in possession or under custody or control a firearm, is guilty of a public offense.
- 2) Punishes that offense by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

EXISTING LAW:

- 1) Prohibits any person previously convicted of a felony, or any person who is a narcotics addict, 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).)
- 2) Prohibits any person convicted of numerous misdemeanors involving violence or threats of violence from owning or possessing a firearm within 10 years of the conviction, and punishes that offense as an alternate felony/misdemeanor. (Pen. Code, § 29805.)
- 3) Allows specified persons to petition for recall of a sentence and resentencing for a crime that was previously a felony but amended to be misdemeanor under Proposition 47. (Pen. Code, § 1170.18, subd. (a).)
- 4) Requires the court to deny resentencing if the petitioner has a prior disqualifying conviction, is required to register as a sex offender under section, or if the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. (Pen. Code, § 1170.18, subd. (b).)
- 5) Allows a person who has completed his or her sentence for a conviction of a felony who would have been guilty of a misdemeanor under the provisions of Proposition 47 if it would

have in effect at the time of the offense, to apply to have the felony conviction designated as a misdemeanor. (Pen. Code, § 1170.18, subd. (f).)

- 6) Provides that any felony conviction that is recalled and resentenced or designated as a misdemeanor shall be considered a misdemeanor for all purposes, except for the right to own or possess firearms. (Pen. Code, § 1170.18, subd. (k).)
- 7) Provides that when the trial court reduces an offense from a felony to a misdemeanor, it is "a misdemeanor for all purposes." (Pen. Code, § 17, subd. (b).)
- 8) Provides a procedure for some felons and misdemeanants granted formal probation, with the exception of those convicted of certain crimes, to have a conviction expunged. This includes those who successfully complete formal probation, as well as any other case in which a court, in its discretion and in the interests of justice, determines the relief is warranted. However, the expungement does not permit the person to own or possess a firearm, or prevent him or her from being convicted of the offense of being an ex-felon in possession of a firearm. (Pen. Code, § 1203.4, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1415 corrects an oversight of Proposition 47, which stated that those serving or who have served sentences for felonies may be re-sentenced with misdemeanors, but that they still maintain their prohibition against firearm possession. While this was passed in Proposition 47, statutory changes to the Penal code are necessary to follow through with this policy and fulfill the intent of Proposition 47. AB 1415 will make those statutory changes.

"This policy only applies to persons re-sentenced or re-classified, not those who are or have been convicted with misdemeanors after the passage of Proposition 47. Further, this legislation does not alter Proposition 47, and thus does not need to return to the voters for approval."

- 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) **Recall and Resentencing Provisions of Proposition 47:** Proposition 47 added Penal Code section 1170.18 which provides that a "person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a

misdemeanor under had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing...." (Pen. Code, § 1170.18, subd. (a).) For individuals who have completed their sentences, Penal Code section 1170.18 provides that a "person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors." (Pen. Code, § 1170.18, subd. (f).)

Significantly, as to these procedures, the same statute also provides, "Any felony conviction that is recalled and resentenced ... or designated as a misdemeanor ... shall be considered a misdemeanor for all purposes, *except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.*" (Pen. Code, § 1170.18, subd. (k), emphasis added.) The language intended that those people who had originally been convicted of a felony be prohibited from owning a firearm.

This bill makes a conforming cross-reference to the statute which makes it a crime for some misdemeanants to own or possess firearms in order to reflect that limitation. It criminalizes the ownership or possession of a firearm by a person who successfully has had his or her prior felony reduced to a misdemeanor under the provisions of Proposition 47.

- 4) **Prohibitions on Firearms Access:** Current California law provides that certain people are prohibited from owning or possessing a firearm. The length of the prohibition depends on the nature of the crime.

A lifetime ban applies to anyone convicted of a felony; anyone addicted to a narcotic drug; any juvenile convicted of a violent crime with a gun and tried in adult court; 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; and anyone convicted of certain violent misdemeanors, e.g., assault with a firearm or brandishing a firearm in the presence of a police officer. (Pen. Code, §§ 29800 & 23515.) A violation of these provisions is a felony. (*Id.*)

A ten-year ban is enforced against a person convicted of numerous misdemeanors involving violence or threats of violence, including: threatening a public official, unauthorized possession of a weapon in a state building, assault, battery, and assault with a deadly weapon or by force likely to produce great bodily injury. (Pen. Code, § 29805.) A violation of this provision is an alternate felony/misdemeanor. (*Id.*) There are also five-year bans and temporary bans that are not relevant for purposes of this bill.

As introduced, the bill would have specified a life-time ban for individuals who benefited from Proposition 47 by having their felony convictions declared to be misdemeanors. However, as noted above, very few misdemeanors are subject to a lifetime ban. Most misdemeanants who are prohibited from possessing a firearm are subject to a 10-year ban. Because the firearm prohibition at issue in this bill would apply to non-serious, non-violent misdemeanors, the proposed amendments apply to a 10-year ban from the date of the

resentencing or re-classification of the crime, rather than a life-time ban.

- 5) **Equal Protection:** The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution is essentially a direction that all persons similarly situated should be treated alike. (*Lawrence v. Texas* (2003) 539 U.S. 558, 579 (conc. opn. of O'Connor J., citations and quote marks omitted.) Under current law, a person can be punished more severely for transporting marijuana for personal use than for transporting methamphetamine or cocaine. That they are treated differently raises equal protection concerns.

"The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner." (*In re Eric J.* (1979) 25 Cal.3d 522, 530; *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) Under the equal protection clause, a court does not inquire "whether persons are similarly situated for all purposes, but 'whether they are similarly situated for purposes of the law challenged.'" (*Cooley v. Superior Court, supra*, 29 Cal.4th at p. 253, quoting *People v. Gibson* (1988) 204 Cal.App.3d 1425, 1438.) "The 'similarly situated' prerequisite simply means that an equal protection claim cannot succeed, and does not require further analysis, unless there is some showing that the two groups are sufficiently similar with respect to the purpose of the law in question that some level of scrutiny is required in order to determine whether the distinction is justified. (*People v. Nguyen* (1997) 54 Cal.App.4th 705, 714.)

With respect to this bill and the application of Proposition 47, as noted by the author, "This policy only applies to persons re-sentenced or re-classified, not those who are or have been convicted with misdemeanors *after* the passage of Proposition 47." Thus, two people convicted of the same offense may or may not be able to possess a firearm depending simply on the date of conviction. These people would be similarly situated for purpose of the challenged law.

If it is found that that the groups are similarly situated, in the second prong of an equal protection analysis, the court will apply different levels of scrutiny to different types of classifications. "In the absence of a classification that is inherently invidious or that impinges upon fundamental rights, a state statute is to be upheld against equal protection attack if it is rationally related to the achievement of legitimate governmental ends." (*Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 514.)

Defendants who have their prior felonies reduced under the reclassification procedures established by Proposition 47 and are subject to the lifetime ban will argue that there is no rational basis to treat them any differently than a person convicted for the same crime after the effective date of Proposition 47.

Therefore, while the provisions of this bill are consistent with the language and intent of Proposition 47, there still remains an arguable equal protection challenge. It should be noted, however, that whether or not this bill passes, the equal protection challenge remains under Proposition 47.

- 6) **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 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.) Yet, despite the strict bar on the Legislature's authority to amend initiative statutes, judicial decisions have recognized that the Legislature is not thereby precluded from enacting laws addressing the general subject matter of an initiative. The Legislature remains free to address a "related but distinct area" or a matter that an initiative measure "does not specifically authorize or prohibit." (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025-1026.)

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.edn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47>.)

Because Proposition 47 specifically did not restore gun ownership rights to individuals who successfully petitioned to have their felony sentences recalled and reduced to misdemeanors, the provisions of this bill do not amend the initiative; but rather are consistent with its language and intent.

- 7) **Argument in Support:** The *California District Attorneys Association*, a co-sponsor of this bill, states, "As you know, Proposition 47 (2014) established a process through which individuals currently serving, or who have previously served, sentences for felonies that were reduced to misdemeanors by Proposition 47 can petition the court for resentencing or reclassification as a misdemeanor. The language in Penal Code section 1170.18(k), as added by Proposition 47, also maintains existing gun possession prohibitions, stating that:

"Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit the person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6."

"The drafters of Proposition 47, and the voters who passed it, very clearly intended existing

prohibitions against firearm possession to apply to individuals who are resentenced or reclassified under PC 1170.18. However, the initiative did not make the necessary amendments to include those individuals in PC 29800, the section that actually contains the prohibition language.

"AB 1415 corrects this oversight, and in doing so, furthers the intent of Proposition 47 by making sure that individuals who benefit from reduced or reclassified sentences do not have access to firearms."

- 8) **Argument in Opposition:** According to the *California Public Defenders Association*, "Proposition 47, by its own terms does not allow persons who have their convictions reduced per Penal Code section 1170.18 are not permitted to own firearms. This bill is unnecessary."
- 9) **Related Legislation:**
 - a) AB 150 (Melendez) specifies that theft of a firearm valued at \$950 dollars or less is a felony. AB 150 is pending hearing in the Assembly Appropriations Committee.
 - b) AB 390 (Cooper) would require persons convicted of crimes newly categorized as misdemeanors under Proposition 47, approved by the voters on Nov. 4, 2014, to provide DNA samples. AB 390 is pending hearing in this Committee today.
 - c) AB 1104 (Rodriguez) authorizes the issuance of a search warrant on the grounds that the property or things to be seized consist of an item or constitute evidence that tends to show a violation of a crime affected by Proposition 47. AB 1104 is pending hearing in this Committee today.
 - d) SB 333 (Galgiani) is substantially similar to AB 46 (Lackey). SB 333 is pending hearing in the Senate Public Safety Committee.
 - e) SB 347 (Jackson) adds specifies misdemeanor offenses to those for which a conviction results in a 10-year prohibition on possession of a firearm. SB 347 is pending hearing in the Senate Appropriations Committee.
 - f) SB 452 (Galgiani) is substantially similar to AB 150 (Melendez), but also addresses the crime of grand theft from the person. SB 452 is pending hearing in the Senate Public Safety Committee.
- 10) **Prior Legislation:** Proposition 47 of the November 2014 general election, the Safe Neighborhoods and Schools Act, reduced the penalties for certain drug and property crimes from felonies to misdemeanors.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Co-Sponsor)
San Diego County District Attorney (Co-Sponsor)
California State Lodge, Fraternal Order of Police
California State Sheriffs' Association
Long Beach Police Officers Association
Los Angeles County Professional Peace Officers Association
Peace Officers Research Association of California
Sacramento County Deputy Sheriffs' Association
San Bernardino County District Attorney
San Bernardino County Sheriff's Department
San Diego County Sheriff's Department
Santa Ana Police Officer's Association

Opposition

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

Amendments Mock-up for 2015-2016 AB-1415 (Steinorth (A))

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

Mock-up based on Version Number 99 - Introduced 2/27/15
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. ~~Section 29800 of the Penal Code is amended to read:~~

~~29800. (a) (1) A person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 23515, or who is addicted to the use of any narcotic drug, and who owns, purchases, receives, or has in possession or under custody or control any a firearm is guilty of a felony.~~

~~(2) A person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417 and who owns, purchases, receives, or has in possession or under custody or control a firearm is guilty of a felony.~~

~~(b) Notwithstanding subdivision (a), a person who has been convicted of a felony or of an offense enumerated in Section 23515, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, and who owns or has in possession or under custody or control any a firearm is guilty of a felony.~~

~~(c) A person who was either previously convicted of a felony and had his or her sentence recalled and was resentenced to a misdemeanor pursuant to Section 1170.18, or who had his or her felony conviction designated as a misdemeanor pursuant to Section 1170.18 after completing his or her sentence, and who owns, purchases, receives, or has in possession or under custody or control a firearm is guilty of a felony.~~

~~(d) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:~~

~~(1) Conviction of a like offense under California law can only result in imposition of felony punishment.~~

~~(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both punishments.~~

Section 29805 of the Penal Code is amended to read:

29805. (a) Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

(b) A person who was either previously convicted of a felony and had his or her sentence recalled and was resentenced to a misdemeanor pursuant to Section 1170.18, or who had his or her felony conviction designated as a misdemeanor pursuant to Section 1170.18 after completing his or her sentence, and who, within 10 years of the recall and resentencing or designation, owns, purchases, receives, or has in possession or under custody or control a firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

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: April 21, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1475 (Cooper) – As Amended March 26, 2015

SUMMARY: Authorizes each county to establish and implement an interagency sexual assault response team (SART) program for the purpose of, among other things, effectively addressing the problem of sexual assault. Specifically, **this bill:**

- 1) Authorizes each county to establish and implement a SART program for a the purpose of providing a forum for interagency cooperation and coordination, to assess and make recommendations for the improvement in the local sexual assault intervention, and to facilitate improved communications and working relationships to effectively address the problem of sexual assault in California.
- 2) States that each SART may consist of representatives of following public and private agencies or organizations:
 - a) Law enforcement agencies;
 - b) County district attorney's offices;
 - c) Rape crisis centers;
 - d) Local sexual assault forensic teams; and,
 - e) Crime laboratories.
- 3) Provides that depending on local needs and goals, each SART may consist of representatives of following public and private agencies or organizations:
 - a) Child protective services;
 - b) Local victim and witness service centers;
 - c) County public health departments;
 - d) County mental health service departments; and,
 - e) Forensic interview centers.

- 4) Requires SART programs to have the following objectives:
 - a) Review of local sexual assault intervention undertaken by all disciplines to promote effective intervention and best practices;
 - b) Assessment of relevant trends, including drug-facilitated sexual assault, the incidence of predator date rape, and human sex trafficking;
 - c) Evaluation of the cost-effectiveness and feasibility of a per capita funding model for local sexual assault forensic examination teams to achieve stability for this component; and,
 - d) Evaluation of the effectiveness of individual agency and interagency protocols and systems by conduction case reviews of cases involving sexual assault.

EXISTING LAW:

- 1) Authorizes counties to establish and implement a Sexual Assault Felony Enforcement (SAFE) Team programs. (Pen. Code, § 13887.)
- 2) Provides that the mission of the SAFE Team program shall be to reduce violent sexual assault offenses in the county through proactive surveillance and arrest of habitual sex offenders, and by the strict enforcement of sex offender registration requirements. (Pen. Code §13887.1, subd. (a).)
- 3) States that the proactive surveillance and arrest authorized for SAFE Team programs shall be conducted within the limits of statutory and constitutional law. (Pen. Code §13887.1, subd. (b).)
- 4) Provides that the mission of the SAFE Team program shall also be to provide community education on sex offender registration requirements. The goal of community education requirements is to do all of the following:
 - a) Provide information to the public about ways to protect themselves and families from sexual assault;
 - b) Emphasize the importance of using the knowledge of the presence of registered sex offenders to enhance public safety.
 - c) Explain that harassment or vigilantism against sex offender registrants may cause them to disappear and attempt to live without supervision, or to register as transients, which defeat the purpose of sex offender registration. (Pen. Code, § 13887.1, subd. (c)(1)-(3).)
- 5) States that the regional SAFE Teams may consist of officers and agents from the following law enforcement agencies:
 - a) Police departments;
 - b) Sheriff's departments;

- c) The Bureau of Investigations of the Office of the District Attorney;
 - d) County probation departments; (Pen Code, § 13887.2 subds (a)-(d).)
- 6) Provides to the extent that these agencies have available resources, SAFE Teams may consist of officers and agents of the following agencies:
- a) The Department of Justice;
 - b) The Department of the California Highway Patrol;
 - c) The Department of Corrections and Rehabilitation; and,
 - d) The Federal Bureau of Investigation. (Pen. Code, § 13887.2, subd. (e)(1)-(4).)
- 7) Requires SAFE Team programs to have the following objectives:
- a) To identify, monitor, arrest, and assist in the prosecution of habitual sex offenders who violate the terms and conditions of their probation or parole, who fail to comply with sex offender registration requirements, or who commit new sexual assault offenses;
 - b) To collect data to determine if the proactive law enforcement procedures of this program are effective in reducing violent sexual assaults; and,
 - c) To develop procedures for operating a multi-jurisdictional task force. (Penal Code Section 13887.3.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Slow and steady progress has been made over the past 40 years since the first rape crisis center was established in Berkeley, California in 1971. Law enforcement officers, prosecutors, forensic scientists, sexual assault forensic examination teams and rape crisis centers have brought about positive change. Given the endemic nature of sexual assault in today's society, effectively organized SART teams are essential. Existing and new SARTs will benefit from statutory recognition by the California Legislature that these multi-disciplinary teams have an important role and responsibility in their county; and statutory policy direction to assess and improve the local intervention system, collaborate between agencies, and identify relevant trends such as drug facilitated sexual assault, predator date rape, and human trafficking. This bill will ensure that sexual assault victims receive compassionate and competent care. It will also ensure the best possible outcomes for the victim and the criminal justice system, and build community confidence in the local SART intervention system."
- 2) **Argument in Support:** The *California Coalition Against Sexual Assault* states, "In California over 2 million women are survivors of rape and approximately 8.5 million men and women are survivors of sexual violence other than rape over the course of their lifetime. SART programs provide a mechanism for coordinated community response to incidents of

sexual assault. SARTs bring together sexual assault counselors, law enforcement, forensic examiners, and other allied professionals to support survivors in their time of need. AB 1475 will formally recognize SARTS, which support multi-disciplinary teams and provide statutory policy direction to assess and improve local intervention systems, collaborate between agencies, and identify relevant trends such as drug facilitated sexual assault, predator date rape, and human trafficking, to name a few."

3) **Prior Legislation:**

- a) AB 406 (Torres), Chapter 406, Statutes of 2013, Deleted the January 1, 2014 sunset date on provisions of law that authorizes counties to establish child abuse multidisciplinary personnel teams within that county to allow provider agencies to share confidential information in order to investigate reports of suspected child abuse and neglect
- b) AB 2229 (Brownley), Chapter 464, Statutes of 2010, authorized members of a multidisciplinary personnel team engaged in the prevention, identification, and treatment of child abuse to disclose and exchange information telephonically and electronically if there is adequate verification of the identity of the multidisciplinary team members involved in the disclosure or exchange of information.
- c) AB 1441 (Garcia), of the 2003-04 Legislative Session appropriated \$15 million from the General Fund to the Controller for distribution to county sheriffs for the implementation of county and regional SAFE Team programs. AB 1441 was held on the Assembly Appropriations suspense file.
- d) AB 1858 (Hollingsworth), Chapter 1090, Statutes of 2002, authorized counties to establish and implement SAFE Team programs.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Deputy District Attorneys
 Association for Los Angeles Deputy Sheriffs
 California Association of Code Enforcement Officers
 California Coalition Against Sexual Assault
 California College and University Police Chiefs
 California Narcotics Officers Association
 California Police Chiefs Association
 California Sexual Assault Investigators Association
 Los Angeles Police Protective League
 Riverside Sheriffs Association

Opposition

None

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