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Assembly
California Legislature



ASSEMBLY COMMITTEE ON
PUBLIC SAFETY
REGINALD BYRON JONES-SAWYER, SR., CHAIR
ASSEMBLYMEMBER, FIFTY-NINTH DISTRICT

CHIEF COUNSEL
GREGORY PAGAN

COUNSEL
DAVID BILLINGSLEY
GABRIEL CASWELL
STELLA Y. CHOE
SANDY URIBE

AGENDA

9:00 a.m. – April 12, 2016
State Capitol, Room 126

<u>Item</u>	<u>Bill No. & Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
1.	AB 1760 (Santiago)	Mr. Billingsley	Human trafficking
2.	AB 1761 (Weber)	Ms. Uribe	Human trafficking: victims: affirmative defense.
3.	AB 1772 (Beth Gaines)	Mr. Pagan	Disorderly conduct.
4.	AB 1909 (Lopez)	Mr. Pagan	Falsifying evidence.
5.	AB 1912 (Achadjian)	Mr. Caswell	Sex offenders.
6.	AB 1940 (Cooper)	Mr. Pagan	Peace officers: body-worn cameras: policies and procedures.
7.	AB 1957 (Quirk)	Ms. Uribe	Public records: body-worn cameras.
8.	AB 1975 (Waldron)	Mr. Billingsley	Driving under the influence: alcohol abuse treatment.
9.	AB 1999 (Achadjian)	Mr. Dean	Prohibited Armed Persons File: initial review.
10.	AB 2013 (Jones-Sawyer)	Mr. Billingsley	Criminal procedure: arraignment pilot program.
11.	AB 2165 (Bonta)	Mr. Pagan	Firearms: prohibitions: exemptions.

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| 12. | AB 2177 (Maienschein) | Ms. Uribe | Victims of crime: federal
Victims of Crime Act
funding: advisory committee. |
| 13. | AB 2199 (Campos) | Mr. Caswell | Sexual offenses against
minors: persons in a position
of authority. |
| 14. | AB 2205 (Dodd) | Ms. Uribe | Supervised persons: credits. |
| 15. | AB 2221 (Cristina Garcia) | Mr. Billingsley | Criminal procedure: arrests:
human trafficking witnesses. |
| 16. | AB 2229 (Grove) | Mr. Caswell | Firearms. |
| 17. | AB 2298 (Weber) | Mr. Caswell | Criminal gangs. |
| 18. | AB 2361 (Santiago) | Mr. Pagan | Peace officers: independent
institutions of higher
education. |
| 19. | AB 2417 (Cooley) | Mr. Dean | Child abuse reporting. |
| 20. | AB 2440 (Gatto) | Mr. Caswell | County DNA Identification
Fund: penalty assessment. |
| 21. | AB 2459 (McCarty) | Mr. Caswell | Firearms dealers: conduct of
business |
| 22. | AB 2478 (Melendez) | Mr. Caswell | Firearms: violations. |
| 23. | AB 2481 (Lackey) | Ms. Uribe | Sentencing: enhancements:
crossbows. |
| 24. | AB 2499 (Maienschein) | Mr. Dean | Sexual assault evidence kits. |
| 25. | AB 2508 (Mathis) | Mr. Pagan | Firearms: unsafe handguns. |
| 26. | AB 2533 (Santiago) | Mr. Billingsley | Public safety officers:
recording devices: release of
recordings. |

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| 27. | AB 2606 (Grove) | Ms. Uribe | Crimes against children, elders, dependent adults, and persons with disabilities. |
| 28. | AB 2695 (Oberholte) | Mr. Billingsley | Juvenile proceedings: competency. |
| 29. | AB 2792 (Bonta) | Mr. Billingsley | Local law enforcement agencies: federal immigration policy enforcement. |
| 30. | AB 2839 (Thurmond) | Mr. Dean | PULLED BY COMMITTEE |

MOTION TO GRANT RECONSIDERATION ONLY

<u>Item</u>	<u>Bill No. & Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
31.	AB 2340 (Gallagher)	Mr. Caswell	Gun-free school zone.

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 12, 2016
Counsel: David Billingsley

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

AB 1760 (Santiago) – As Introduced February 2, 2016
As Proposed to be Amended in Committee

SUMMARY: Directs a peace officer who determines that a minor is a victim of human trafficking to report such abuse, consult with a child welfare worker about a safe placement for the minor, and transport the minor to such placement, unless the minor is otherwise arrested. Specifies that the officer should provide information that the minor has committed crimes as a direct result of being a human trafficking victim to the district attorney's office for independent evaluation. Specifically, **this bill:**

- 1) Directs a peace officer coming in contact with a person suspected to be a victim of human trafficking to make best efforts to determine whether the person is a minor who is a human trafficking victim.
- 2) Allows the officer to seek the assistance of human trafficking experts within or affiliated with the law enforcement agency, and Non-Governmental Organizations with specialized training and experience in human trafficking, to make a determination whether a person is minor who is a human trafficking victim.
- 3) Specifies that if the peace officer determines that the person is a minor who is a human trafficking victim and the officer has probable cause to believe that the minor has committed other crimes as a direct result of being a human trafficking victim, the peace officer shall make a record of those determinations and provide the district attorney of the county with such record for independent evaluation.
- 4) States that unless the minor is otherwise arrested, upon making the determination that the minor is a victim of human trafficking the peace officer shall:
 - a) Report suspected abuse or neglect of that minor to the agency given responsibility for investigation of cases of neglect and abuse; and
 - b) Consult with the child welfare worker regarding safe placement for the minor which will separate the minor from the trafficker and from being trafficked and transport the minor to that placement.
- 5) Allows an officer to take a minor into temporary protective custody upon a reasonable belief that specified conditions are met, including that custody is necessary to protect the minor from a person found or suspected to have committed human trafficking.

- 6) Requires the Commission on Peace Officer Standards and Training (POST) to update its training to conform with changes in law that this bill would make.
- 7) Enacts the State Plan to Serve and Protect Child Trafficking Victims and would require the California Health and Human Services Agency, no later than January 30, 2017, to convene an interagency workgroup, as specified, to develop the plan with the following minimum requirements:
 - a) A multiagency-coordinated child trafficking response protocol and guidelines for local implementation that establish clear lines of ongoing responsibility to ensure that child trafficking victims have access to the necessary continuum of treatment options; and
 - b) Requires the workgroup to submit the plan to the Legislature, Judicial Council, and Governor no later than January 30, 2018.
- 8) Requires the State Department of Social Services to establish a working group in consultation with county welfare departments and other stakeholders to develop recommendations for the board, care, and supervision of child trafficking victims who are in need of placement in facilities that will protect them from traffickers and provide needed specialized support and services.
- 9) States that the State Department of Social Services, with input from specified stakeholders, to identify, develop, and disseminate screening tools for use by county child welfare and probation staff to identify children who are child trafficking victims.
- 10) Requires the State Department of Social Services, no later than December 31, 2017, to provide counties with guidance on the use of the screening tools.
- 11) Specifies that the State Department of Social Services and the State Department of Health Care Services, in consultation with specified stakeholders, shall identify tools and best practices to screen, assess, and serve child trafficking victims.
- 12) Requires the State Department of Social Services to develop curriculum and provide training to local multidisciplinary teams no later than December 31, 2017.
- 13) Requires each county to develop an interagency protocol to be utilized in serving child trafficking victims. The bill would require each county's protocol to be adopted by the board of supervisors no later than June 30, 2017. The bill would require the protocols to identify the roles and responsibilities of county based agencies and local service responders in serving victims of trafficking or commercial sexual exploitation.
- 14) States that the administrator certification program for group homes, the administrator certification program for short-term residential treatment centers, mandatory training for licensed or certified foster parents, and training for mandated child abuse reporters and child welfare personnel shall include instruction on cultural competency and sensitivity and related best practices for providing adequate care to child trafficking victims.

- 15) Requires the California Child Welfare Council to provide recommendations and updates to the State Plan to Serve and Protect Child Trafficking Victims.

EXISTING LAW:

- 1) Requires law enforcement agencies to use due diligence to identify all victims of human trafficking, regardless of the citizenship of the person. (Pen. Code, § 236.2.):
- 2) Specifies that when a peace officer comes into contact with a person who has been deprived of his or her personal liberty, a minor who has engaged in a commercial sex act, a person suspected of violating specified prostitution offenses, or a victim of a crime of domestic violence or sexual assault, the peace officer shall consider whether the following indicators of human trafficking are present (Pen. Code, § 236.2.):
 - a) Signs of trauma, fatigue, injury, or other evidence of poor care;
 - b) The person is withdrawn, afraid to talk, or his or her communication is censored by another person;
 - c) The person does not have freedom of movement;
 - d) The person lives and works in one place;
 - e) The person owes a debt to his or her employer;
 - f) Security measures are used to control who has contact with the person; and
 - g) The person does not have control over his or her own government-issued identification or over his or her worker immigration documents.
- 3) States that 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). (Pen. Code § 236.1, subd. (a).)
- 4) Specifies that any person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of specified sex offenses, 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 five hundred thousand dollars (\$500,000). (Pen. Code § 236.1, subd. (b).)
- 5) Provides that any person who causes or persuades, or attempts to cause or persuade, a person who is a minor to engage in a commercial sex act, with the intent to effect a violation of specified sex offenses is guilty of human trafficking. A violation of this subdivision is punishable by imprisonment in the state prison as follows:

- a) Five, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000). (Pen. Code § 236.1, subd. (c)(1).)
- a) Fifteen years to life and a fine of not more than five hundred thousand dollars (\$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. (Pen. Code § 236.1, subd. (c)(2).)
- 6) Defines "coercion" as "any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; the abuse or threatened abuse of the legal process; debt bondage; or providing and facilitating the possession of any controlled substance to a person with the intent to impair the person's judgment." (Pen. Code § 236.1, subd. (h)(1).)
- 7) Defines "commercial sex act" as "sexual conduct on account of which anything of value is given or received by any person." (Pen. Code § 236.1, subd. (h)(2).)
- 8) Defines "deprivation or violation of the personal liberty of another" as "substantial and sustained restriction of another's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out." (Pen. Code § 236.1, subd. (h)(3).)
- 9) Defines "duress" as a "direct or implied threat of force, violence, danger, hardship, or retribution sufficient to cause a reasonable person to acquiesce in or perform an act which he or she would otherwise not have submitted to or performed; a direct or implied threat to destroy, conceal, remove, confiscate, or possess any actual or purported passport or immigration document of the victim; or knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim." (Pen. Code § 236.1, subd. (h)(5).)
- 10) Defines "forced labor or services" as "labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person." (Pen. Code § 236.1, subd. (h)(5).)
- 11) Specifies that the total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be factors to consider in determining the presence of "deprivation or violation of the personal liberty of another," "duress," and "coercion" as described in this section. (Pen. Code § 236.1, subd. (i).)
- 12) States that except as specified, a mandated reporter shall make a report to an agency, as specified, 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. (Pen. Code, § 11166, subd. (a).)

- 13) Requires the mandated reporter to make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written follow-up report within 36 hours of receiving the information concerning the incident. (Pen. Code, § 11166, subd. (a).)
- 14) Specifies that POST shall implement by January 1, 2007, a course or courses of instruction for the training of law enforcement officers in California in the handling of human trafficking complaints and also shall develop guidelines for law enforcement response to human trafficking. (Pen. Code 13519.14, subd. (a).)
- 15) States that the instruction and the guidelines shall stress the dynamics and manifestations of human trafficking, identifying and communicating with victims, providing documentation that satisfy the Law Enforcement Agency (LEA) endorsement required by federal law, collaboration with federal law enforcement officials, therapeutically appropriate investigative techniques, the availability of civil and immigration remedies and community resources, and protection of the victim. (Pen. Code 13519.14, subd. (a).)
- 16) Requires every law enforcement officer who is assigned field or investigative duties to complete a minimum of two hours of training in a course or courses of instruction pertaining to the handling of human trafficking complaints as described in subdivision (a) by July 1, 2014, or within six months of being assigned to that position, whichever is later. (Pen. Code 13519.14, subd. (e).)
- 17) Specifies that any peace officer may, without a warrant, take into temporary custody a minor when the officer has reasonable cause for believing that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety, and the minor meets other specified criteria. (Welf. & Inst. Code, § 305.)
- 18) Specifies that if a child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, is within the jurisdiction of the juvenile court and may be found to be a dependent child of the court. (Welf. & Inst. Code, § 300, subd. (b)(1).)
- 19) States that a child who is sexually trafficked, as specified, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts as specified, and whose parent or guardian failed to, or was unable to, protect the child, is within the jurisdiction of the juvenile court and may be found to be a dependent child of the court. (Welf. & Inst. Code, § 300, subd. (b)(2).)
- 20) Specifies that persons who committed the act or made the omission under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused, are not guilty of a crime (unless the crime be punishable with death). (Pen. Code, § 26.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Child victims of human trafficking are forced, induced, or coerced into providing labor services, or sex. A trafficked child may be compelled to engage in illegal activities such as prostitution or selling drugs. Instead of being identified as trafficked and treated as victims, many are treated as criminals and prosecuted for the very crimes that were part of the traffickers' victimization and profit.

"Currently in California, a minor can be prosecuted for prostitution and for non-violent crimes their traffickers forced them to commit. Arrest and prosecution further traumatizes the victim and leaves him or her with a profound distrust of law enforcement. This can deter victims from seeking assistance or leave them vulnerable to continued exploitation. Furthermore, the criminal record that results from being arrested and prosecuted as a child can create long-term barriers to education, employment, housing, and other opportunities.

"AB 1760 is necessary in order to protect trafficked child victims from being criminalized and to ensure there is a system in place that effectively identifies, houses, and cares for all trafficked children. This measure will reduce a trafficked child victims' distrust of law enforcement, establish multi-leveled coordinated efforts, ensure diversion to supportive services, and prevent the negative psychological impacts child trafficked victims have due to arrest and detention."

- 2) **Peace Officers are Already Mandated Reporters of Child Abuse or Neglect:** The California Child Abuse Neglect Reporting Act (CANRA) requires mandatory reporting when certain individuals suspect that a child has been abused or neglected. Law enforcement officers are one of the groups which have mandatory reporting responsibilities.

A mandated reporter must make a report whenever, in his/her professional capacity or within the scope of his/her employment, he/she has knowledge of, or observes a child (a person under 18) whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Abuse includes the sexual exploitation of a child.

When law enforcement suspects abuse or neglect they inform child protective services and the district attorney's office of the suspected abuse.

- 3) **The Existing Legal Defenses of Duress and Necessity Can Apply to Victims of Human Trafficking Forced to Commit Crimes:** California law provides the possibility of defenses based on duress or necessity when a person commits a crime to avoid a significant danger to themselves or others. These defenses certainly can apply to situations in which victims of human trafficking are forced into criminal behavior by their trafficker. Circumstances consistent with a defense of duress or necessity can be considered by a district attorney's office when they decide what criminal charges to file, or whether charges will be filed at all. If charges are filed, evidence to establish these defenses can be presented as part of the court process.

The instruction the jury would receive when considering the defense of duress is as follows:

The defendant acted under duress if, because of threat or menace, (he/she) believed that (his/her/ [or] someone else's) life would be in immediate danger if (he/she) refused a demand or request to commit the crime[s]. The demand or request may have been express or implied.

The defendant's belief that (his/her/ [or] someone else's) life was in immediate danger must have been reasonable. When deciding whether the defendant's belief was reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in the same position as the defendant would have believed. (Calcrim 3402.)

A defense of necessity is similar to duress.

To justify an instruction on the defense of necessity, a defendant must present evidence sufficient to establish that she violated the law (1) to prevent a significant bodily harm or evil to themselves or someone else, (2) with no reasonable legal alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief that the criminal act was necessary to prevent the greater harm, (5) with such belief being objectively reasonable, and (6) under circumstances in which she did not substantially contribute to the emergency. (Calcrim 3403.)

- 4) **As Proposed to be Amended in Committee:** The proposed amendments:
- a) **Delete** language which prohibits the arrest or prosecution of minors engaged in prostitution related offenses.
 - b) **Delete** language which requires a peace officer to determine whether a suspect of a crime is a minor who has engaged in a commercial sex act or is a minor who is a human trafficking victim, and whether any nonviolent crime that person is suspected of was committed as a direct result of being trafficked.
 - c) **Delete** language which provides immunity from prosecution for non-violent offenses determined by a peace officer to be directly related to being a victim of human trafficking.
 - d) **Delete** language which requires any record of an arrest previously made to be sealed and destroyed if an officer makes the specified factual determination.
 - e) **Add** language which requires a peace officer coming in contact with a person suspected to be a victim of human trafficking to make best efforts to determine whether the person is a minor who is a human trafficking victim.
 - f) **Add** language which allows the officer to seek the assistance of human trafficking experts within or affiliated with the law enforcement agency, and Non-Governmental Organizations with specialized training and experience in human trafficking, to make a

determination whether a person is minor who is a human trafficking victim.

- g) **Add** language which specifies that if the peace officer determines that the person is a minor who is a human trafficking victim and the officer has probable cause to believe that the minor has committed other crimes as a direct result of being a human trafficking victim, the peace officer shall make a record of those determinations and provide the district attorney of the county with such record for independent evaluation.
 - h) **Add** language which states that unless the minor is otherwise arrested, upon making the determination that the minor is a victim of human trafficking the peace officer shall:
 - i) report suspected abuse or neglect of that minor to the agency given responsibility for investigation of cases of neglect and abuse; and
 - ii) consult with the child welfare worker regarding safe placement for the minor which will separate the minor from the trafficker and from being trafficked and transport the minor to that placement.
 - i) **Add** language which allows an officer to take a minor into temporary protective custody upon a reasonable belief that specified conditions are met, including that custody is necessary to protect the minor from a person found or suspected to have committed human trafficking.
 - j) Make technical, non-substantive changes.
- 5) **Argument in Support:** According to *The California Public Defenders Association*, “Commercial sexual exploitation and sex trafficking of minors should be understood as acts of abuse and violence against minors. Minors who are commercially sexually exploited or trafficked for sexual purposes should not be considered criminals. Identification of victims and survivors and any intervention, above all, should do no further harm to any child or adolescent. There is substantial and compelling evidence that commercial exploitation and sex trafficking of minors in the United States are serious problems with immediate and long-term adverse consequences for children and adolescents, as well as for families, communities, and society as a whole. Efforts to identify and respond to the commercial sexual exploitation and sex trafficking of minors in the United States are emerging, but efforts to date are largely under supported, insufficient, uncoordinated, and unevaluated. Efforts to prevent, identify, and respond to commercial sexual exploitation and sex trafficking of minors require collaborative approaches that build upon the core capabilities of people and entities from a range of sectors.

“Law enforcement officers are often the earliest to respond to minors that are the victims of commercial sexual exploitation and sex trafficking. Their knowledge and ability to identify victims, investigate cases for appropriate treatment/services, and make appropriate referrals/recommendations to the court is crucial to the development of an overall response to commercial sexual exploitation and sex trafficking of minors at the earliest opportunity. That said, many law enforcement personnel do not recognize commercial sexual exploitation and sex trafficking of minors as serious problems. As a result, they may fail to identify victims of these crimes and may be uncertain about how to handle these cases.

“Recently the Committee on The Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States (Committee), Institute of Medicine and National Research Council issued a report with The National Academies Press entitled *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States*, found that “Although efforts to train personnel within the legal system to address human trafficking have increased, the majority of personnel in the system have not been trained to recognize and respond to suspected or confirmed cases of commercial sexual exploitation and sex trafficking of minors.” The Committee further observed that “Juvenile justice personnel need training in identifying victims of trafficking who are in the system on charges unrelated to prostitution through intake screenings, runaway and homeless programs, and programming in juvenile detention centers.” Recommendations by the Committee included the establishment of diversion programs so that youth identified as victims of commercial sexual exploitation and sex trafficking receive treatment as part of their rehabilitation or in lieu of punishment; and that juvenile justice agency personnel should refer youth identified as victims of commercial sexual exploitation and sex trafficking to appropriate treatment services. The Committee further recommended that states should develop laws and policies that redirect young victims and survivors of commercial sexual exploitation and sex trafficking from arrest and prosecution as criminals or adjudication as delinquents to systems, agencies and services that are equipped to meet their needs and that such laws should apply to all children and adolescents under age 18.

“It has also been recognized that many victim and support service providers working with vulnerable youth lack an understanding of commercial sexual exploitation and sex trafficking, and therefore may not recognize youth in their care who are at risk of or are victims/survivors of these abuses. As a result, these service providers sometime fail to connect youth in need to appropriate and timely services. The Committee further acknowledged that victims and survivors of commercial sexual exploitation and sex trafficking are frequently in need of services, often including out-of-home placement, which are limited and often nonexistent. This bill would assist in insuring that law enforcement offices, other stakeholders, and providers receive the appropriate training to better assist the victims of commercial sexual exploitation and sex trafficking and where necessary the appropriate treatment and services for the care and treatment of exploited children. This bill would further provide for a consistent and appropriate legal response to victims and survivors of commercial sexual exploitation and sex trafficking.”

- 6) **Argument in Opposition:** According to *The California State Sheriffs’ Association*, “We are sympathetic to the plight of crime victims, especially minor victims of human trafficking. That said, this bill’s response to horrific situation is to inappropriately blend the roles of members of the criminal justice system, potentially allow criminals to escape liability, and inadvertently encourage human traffickers to use minors in their illicit trade.

“It is not the role of a frontline law enforcement officer to make a determination that a person is actually the victim of a crime. Rather, officers gather facts and investigate crime scenes to form reasonable beliefs about what might have transpired. It is the duty of the prosecutor to allege liability and victim status, and perhaps confer immunity to certain parties. This bill jumbles that relationship and requires peace officers to effectively determine whether or not certain persons are criminally liable for their behavior. The bill further usurps the roles of judges and juries who ultimately determine culpability and punishment.

“We also fear that this bill, inasmuch as it automatically grants immunity to a minor who has committed any offense that is not a violent felony if it results from human trafficking, will allow offenders to escape punishment. Again, this decision should be made by the judicial system and not frontline law enforcement officers. Additionally, given the immunity provisions this bill creates, we believe that human traffickers would be encouraged to utilize minors in their illegal activities because minors are effectively precluded from being arrested, charged, or penalized.”

7) Related Legislation:

- a) AB 1675 (Stone) would provide that a minor who commits the crimes of solicitation, prostitution, or loitering with the intent to commit prostitution, is subject to the jurisdiction of the juvenile dependency court rather than delinquency court. AB 1675 is pending in the Assembly Judiciary Committee.
- b) AB 1731 (Atkins), authorizes the chief probation officer of a county to create a program to provide services to youth within the county that address the need for services relating to the commercial sexual exploitation of youth. AB 1731 is pending hearing in the Assembly Appropriations Committee.
- c) AB 1761 (Weber), would create an affirmative defense against a charge of a nonviolent crime that was committed as a direct result of being a human trafficking victim. AB 1761 is being heard in this committee today.
- d) AB 1762 (Campos), would allow an individual convicted of a nonviolent crime while he or she was human trafficking victim to apply to the court to vacate the conviction at any time after it was entered. AB 1762 is pending hearing in the Assembly Appropriations Committee.
- e) SB 1322 (Mitchell), would decriminalize specified prostitution related offenses committed by person under 18, but would authorize a peace officer to take a minor into temporary custody. SB 1322 is pending hearing in Senate Public Safety Committee.

8) Prior Legislation:

- a) AB 1585 (Alejo), Chapter 708, Statutes of 2014, provides that a defendant who has been convicted of solicitation or prostitution may petition the court to set aside the conviction if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.
- b) AB 2040 (Swanson), Chapter 197, Statutes of 2012, provides that a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution may petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained.
- c) AB 1940 (Hill), of the 2011-12 Legislative Session, would have authorized a court to seal a record of conviction for prostitution based on a finding that the petitioner is a victim of

human trafficking, that the offense is the result of the petitioner's status as a victim of that crime, and that the petitioner is therefore factually innocent. AB 1940 was held on the Assembly Committee on Appropriations' Suspense File.

- d) AB 702 (Swanson), of the 2011-12 Legislative Session, would have allowed a person adjudicated a ward of the court or a person convicted of prostitution to have his or her record sealed or conviction expunged without showing that he or she has not been subsequently convicted or that he or she has been rehabilitated. AB 702 was never heard by this Committee and was returned to the Chief Clerk.
- e) AB 22 (Lieber), Chapter 240, Statutes of 2005, created the California Trafficking Victims Protection Act, which established civil and criminal penalties for human trafficking and allowed for forfeiture of assets derived from human trafficking. In addition, the Act required law enforcement agencies to provide Law Enforcement Agency Endorsement to trafficking victims, providing trafficking victims with protection from deportation and created the human trafficking task force.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition to Abolish Slavery & Trafficking (Sponsor)
 ACT for Women and Girls
 American Academy of Pediatrics
 American Association of University Women Long Beach
 California Church IMPACT
 California Public Defenders Association
 California Women's Law Center
 CAST Survivor Advisory Caucus
 California Public Defenders Association
 Clergy and Laity United for Economic Justice
 Coalition for Humane Immigrant Rights of Los Angeles
 Department on the Status of Women, City and County of San Francisco
 Housing California
 Jewish Public Affairs Committee of California
 Legal Services for Prisoners with Children
 Los Angeles Alliance for a New Economy
 Opening Doors
 National Association of Social Workers, California Chapter
 National Council of Jewish Women CA
 Religious Action Center of Reform Judaism
 Shared Hope International

Opposition

California State Sheriffs' Association
 Office of the District Attorney, Alameda County
 Sacramento County District Attorney

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

Amended Mock-up for 2015-2016 AB-1760 (Santiago (A))

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

**Mock-up based on Version Number 99 - Introduced 2/2/16
Submitted by: David Billingsley, Assembly Public Safety Committee**

Co-Authors: Christina Garcia and Brian Maienschein

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

SECTION 1. Section 1522.41 of the Health and Safety Code is amended to read:

1522.41. (a) (1) The department, in consultation and collaboration with county placement officials, group home provider organizations, the Director of Health Care Services, and the Director of Developmental Services, shall develop and establish an administrator certification training program to ensure that administrators of group home facilities have appropriate training to provide the care and services for which a license or certificate is issued.

(2) The department shall develop and establish an administrator certification training program to ensure that administrators of short-term residential treatment center facilities have appropriate training to provide the care and services for which a license or certificate is issued.

(b) (1) In addition to any other requirements or qualifications required by the department, an administrator of a group home or short-term residential treatment center shall successfully complete a specified department-approved training certification program, pursuant to subdivision (c), prior to employment.

(2) In those cases when the individual is both the licensee and the administrator of a facility, the individual shall comply with all of the licensee and administrator requirements of this section.

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility.

(4) The licensee shall notify the department within 10 days of any change in administrators.

(c) (1) The administrator certification programs for group homes shall require a minimum of 40 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of the type of facility for which the applicant will be an administrator.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial and educational needs of the facility residents, including, but not limited to, the information described in subdivision (d) of Section 16501.4 of the Welfare and Institutions Code.

(E) Community and support services.

(F) Physical needs of facility residents.

(G) Assistance with self-administration, storage, misuse, and interaction of medication used by facility residents.

(H) Resident admission, retention, and assessment procedures, including the right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(I) Instruction on cultural competency and sensitivity and related best practices for providing adequate care for children across diverse ethnic and racial backgrounds, as well as children identifying as lesbian, gay, bisexual, or transgender.

(J) Instruction on cultural competency and sensitivity and related best practices for providing adequate care to child trafficking victims.

(K) Nonviolent emergency intervention and reporting requirements.

(L) Basic instruction on the existing laws and procedures regarding the safety of foster youth at school and the ensuring of a harassment- and violence-free school environment contained in Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19 of Division 1 of Title 1 of the Education Code.

(2) The administrator certification programs for short-term residential treatment centers shall require a minimum of 40 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of the type of facility for which the applicant will be an administrator.

(B) Business operations and management and supervision of staff, including staff training.

(C) Physical and psychosocial needs of the children, including behavior management, de-escalation techniques, and trauma informed crisis management planning.

(D) Permanence, well-being, and educational needs of the children.

(E) Community and support services, including accessing local behavioral and mental health supports and interventions, substance use disorder treatments, and culturally relevant services, as appropriate.

(F) Understanding the requirements and best practices regarding psychotropic medications, including, but not limited to, court authorization, uses, benefits, side effects, interactions, assistance with self-administration, misuse, documentation, storage, and metabolic monitoring of children prescribed psychotropic medications.

(G) Admission, retention, and assessment procedures, including the right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(H) The federal Indian Child Welfare Act (25 U.S.C Sec. 1901 et seq.), its historical significance, the rights of children covered by the act, and the best interests of Indian children as including culturally appropriate, child-centered practices that respect Native American history, culture, retention of tribal membership, and connection to the tribal community and traditions.

(I) Instruction on cultural competency and sensitivity and related best practices for providing adequate care for children across diverse ethnic and racial backgrounds, as well as children identifying as lesbian, gay, bisexual, or transgender.

(J) Instruction on cultural competency and sensitivity and related best practices for providing adequate care to child trafficking victims.

(K) Nonviolent emergency intervention and reporting requirements.

(L) Basic instruction on the existing laws and procedures regarding the safety of foster youth at school and the ensuring of a harassment- and violence-free school environment contained in Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19 of Division 1 of Title 1 of the Education Code.

(d) Administrators who possess a valid group home license, issued by the department, are exempt from completing an approved initial certification training program and taking a written test, provided the individual completes 12 hours of classroom instruction in the following uniform core of knowledge areas:

(1) Laws, regulations, and policies and procedural standards that impact the operations of a short-term residential treatment center.

(2) (A) Authorization, uses, benefits, side effects, interactions, assistance with self-administration, misuse, documentation, and storage of medications.

(B) Metabolic monitoring of children prescribed psychotropic medications.

(3) Admission, retention, and assessment procedures, including the right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(4) The federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), its historical significance, the rights of children covered by the act, and the best interests of Indian children as including culturally appropriate, child-centered practices that respect Native American history, culture, retention of tribal membership, and connection to the tribal community and traditions.

(5) Instruction on cultural competency and sensitivity and related best practices for providing adequate care for children across diverse ethnic and racial backgrounds, as well as children identifying as lesbian, gay, bisexual, or transgender.

(6) Instruction on cultural competency and sensitivity and related best practices for providing adequate care to child trafficking victims.

(7) Physical and psychosocial needs of children, including behavior management, deescalation techniques, and trauma informed crisis management planning.

(e) Individuals applying for administrator certification under this section shall successfully complete an approved administrator certification training program, pass a written test administered by the department within 60 days of completing the program, and submit to the department the documentation required by subdivision (f) within 30 days after being notified of having passed the test. The department may extend these time deadlines for good cause. The department shall notify the applicant of his or her test results within 30 days of administering the test.

(f) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars (\$100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation from the applicant that he or she has passed the written test.

(4) Submission of fingerprints pursuant to Section 1522. The department may waive the submission for those persons who have a current clearance on file.

(5) That person is at least 21 years of age.

(g) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of a group home or short-term residential treatment center. Any person willfully making any false representation as being a certified administrator or facility manager is guilty of a misdemeanor.

(h) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the core of knowledge specified in subdivision (c). No more than one-half of the required 40 hours of continuing education necessary to renew the certificate may be satisfied through online courses. All other continuing education hours shall be completed in a classroom setting. For purposes of this section, an individual who is a group home or short-term residential treatment center administrator and who is required to complete the continuing education hours required by the regulations of the State Department of Developmental Services, and approved by the regional center, may have up to 24 of the required continuing education course hours credited toward the 40-hour continuing education requirement of this section. The department shall accept for certification, community college course hours approved by the regional centers.

(2) Every administrator of a group home or short-term residential treatment center shall complete the continuing education requirements of this subdivision.

(3) Certificates issued under this section shall expire every two years on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after July 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars (\$100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate shall be proof of compliance with this paragraph.

(5) A suspended or revoked certificate shall be subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall submit proof of compliance with paragraphs (1) and (2) of this subdivision, and shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension. Delinquency fees, if any, accrued subsequent to the time of its revocation or suspension and prior to an order for reinstatement, shall be waived for a period of 12 months to allow the individual sufficient time to complete the required continuing education units and to submit the required documentation. Individuals whose certificates will expire within 90 days after the order for reinstatement may be granted a three-month extension to renew their certificates during which time the delinquency fees shall not accrue.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification training program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars (\$25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status and change of mailing address within 30 days of any change.

(i) Unless otherwise ordered by the department, the certificate shall be considered forfeited under either of the following conditions:

(1) The department has revoked any license held by the administrator after the department issued the certificate.

(2) The department has issued an exclusion order against the administrator pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897, after the department issued the certificate, and the administrator did not appeal the exclusion order or, after the appeal, the department issued a decision and order that upheld the exclusion order.

(j) (1) The department, in consultation and collaboration with county placement officials, provider organizations, the State Department of Health Care Services, and the State Department of Developmental Services, shall establish, by regulation, the program content, the testing instrument, the process for approving administrator certification training programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification training programs and continuing education courses. The department may also grant continuing education hours for continuing courses offered by accredited educational institutions that are consistent with the requirements in this section. The department may deny vendor approval to any agency or person in any of the following circumstances:

(A) The applicant has not provided the department with evidence satisfactory to the department of the ability of the applicant to satisfy the requirements of vendorization set out in the regulations adopted by the department.

(B) The applicant person or agency has a conflict of interest in that the person or agency places its clients in group homes or short-term residential treatment centers.

(C) The applicant public or private agency has a conflict of interest in that the agency is mandated to place clients in group homes or short-term residential treatment centers and to pay directly for the services. The department may deny vendorization to this type of agency only as long as there are other vendor programs available to conduct the certification training programs and conduct education courses.

(2) The department may authorize vendors to conduct the administrator's certification training program pursuant to this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(3) The department shall prepare and maintain an updated list of approved training vendors.

(4) The department may inspect administrator certification training programs and continuing education courses, including online courses, at no charge to the department, to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the requirements of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(5) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(6) The department may charge a reasonable fee, not to exceed one hundred fifty dollars (\$150) every two years, to certification program vendors for review and approval of the initial 40-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee, not to exceed one hundred dollars (\$100) every two years, for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(7) (A) A vendor of online programs for continuing education shall ensure that each online course contains all of the following:

(i) An interactive portion in which the participant receives feedback, through online communication, based on input from the participant.

(ii) Required use of a personal identification number or personal identification information to confirm the identity of the participant.

(iii) A final screen displaying a printable statement, to be signed by the participant, certifying that the identified participant completed the course. The vendor shall obtain a copy of the final screen statement with the original signature of the participant prior to the issuance of a certificate of completion. The signed statement of completion shall be maintained by the vendor for a period of three years and be available to the department upon demand. Any person who certifies as true any material matter pursuant to this clause that he or she knows to be false is guilty of a misdemeanor.

(B) Nothing in this subdivision shall prohibit the department from approving online programs for continuing education that do not meet the requirements of subparagraph (A) if the vendor demonstrates to the department's satisfaction that, through advanced technology, the course and the course delivery meet the requirements of this section.

(k) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

(l) Notwithstanding any law to the contrary, vendors approved by the department who exclusively provide either initial or continuing education courses for certification of administrators of a group home or short-term residential treatment center as defined by regulations of the department, an adult residential facility as defined by regulations of the department, or a residential care facility for the elderly as defined in subdivision (k) of Section 1569.2, shall be regulated solely by the department pursuant to this chapter. No other state or local governmental entity shall be responsible for regulating the activity of those vendors.

SEC. 2. Section 1529.2 of the Health and Safety Code, as added by Chapter 773 of the Statutes of 2015, is amended to read:

1529.2. (a) It is the intent of the Legislature that all foster parents have the necessary knowledge, skills, and abilities to support the safety, permanency, and well-being of children in foster care. Initial and ongoing preparation and training of foster parents should support the foster parent's role in parenting vulnerable children, youth, and young adults, including supporting the children's connection with their families. Their training should be ongoing in order to provide foster parents with information on new practices and requirements and other helpful topics within the child welfare and probation systems and may be offered in a classroom setting, online, or individually.

(b) A licensed or certified foster parent shall complete a minimum of eight training hours annually, a portion of which shall be from one or more of the following topics, as prescribed by the department, pursuant to subdivision (a):

(1) Age-appropriate child and adolescent development.

(2) Health issues in foster care, including, but not limited to, the authorization, uses, risks, benefits, assistance with self-administration, oversight, and monitoring of psychotropic or other medications, and trauma, mental health, and substance use disorder treatments for children in

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foster care under the jurisdiction of the juvenile court, including how to access those treatments. Health issues in foster care, including, but not limited to, the authorization, uses, risks, benefits, assistance with self-administration, oversight, and monitoring of psychotropic or other medications, and trauma, mental health, and substance use disorder treatments for children in foster care under the jurisdiction of the juvenile court, including how to access those treatments, as the information is also described in subdivision (d) of Section 16501.4 of the Welfare and Institutions Code.

(3) Positive discipline and the importance of self-esteem.

(4) Preparation of children and youth for a successful transition to adulthood.

(5) The right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(6) Instruction on cultural competency and sensitivity and related best practices for providing adequate care for children across diverse ethnic and racial backgrounds, as well as children identifying as lesbian, gay, bisexual, or transgender.

(7) Instruction on cultural competency and sensitivity and related best practices for providing adequate care to child trafficking victims.

(c) In addition to any training required by this section, a foster parent may be required to receive specialized training, as relevant, for the purpose of preparing the foster parent to meet the needs of a particular child in care. This training may include, but is not limited to, the following:

(1) Understanding how to use best practices for providing care and supervision to commercially sexually exploited children.

(2) Understanding cultural needs of children, including, but not limited to, cultural competency and sensitivity and related best practices for providing adequate care to children across diverse ethnic and racial backgrounds, as well as children identifying as lesbian, gay, bisexual, or transgender.

(3) Understanding the requirements and best practices regarding psychotropic medications, including, but not limited to, court authorization, benefits, uses, side effects, interactions, assistance with self-administration, misuse, documentation, storage, and metabolic monitoring of children prescribed psychotropic medications.

(4) Understanding the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), its historical significance, the rights of children covered by the act, and the best interests of Indian children, including the role of the caregiver in supporting culturally appropriate, child-centered

practices that respect Native American history, culture, retention of tribal membership and connection to the tribal community and traditions.

(5) Understanding how to use best practices for providing care and supervision to nonminor dependents.

(6) Understanding how to use best practices for providing care and supervision to children with special health care needs.

(d) No child shall be placed with a foster parent unless each foster parent in the home meets the requirements of this section.

(e) (1) Upon the request of the licensed or certified foster parent for a hardship waiver from the annual training requirement or a request for an extension of the deadline, the county may, at its option, on a case-by-case basis, waive the training requirement or extend any established deadline for a period not to exceed one year, if the training requirement presents a severe and unavoidable obstacle to continuing as a foster parent.

(2) Obstacles for which a county may grant a hardship waiver or extension are:

(A) Lack of access to training due to the cost or travel required or lack of child care to participate in the training, when online resources are not available.

(B) Family emergency.

(3) Before a waiver or extension may be granted, the licensed or certified foster parent should explore the opportunity of receiving training online or by video or written materials.

(f) (1) Foster parent training may be obtained through sources that include, but are not necessarily limited to, community colleges, counties, hospitals, foster parent associations, the California State Foster Parent Association's conference, online resources, adult schools, and certified foster parent instructors.

(2) In addition to the foster parent training provided by community colleges, foster family agencies shall provide a program of training for their certified foster families.

(g) (1) Training certificates shall be submitted to the appropriate licensing or foster family agency.

(2) Upon completion, a licensed or certified parent shall submit a certificate of completion for the annual training requirements.

(h) Nothing in this section shall preclude a county or a foster family agency from requiring foster parent training in excess of the requirements in this section.

(i) This section shall become operative on January 1, 2017.

(j) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 3. Section 236.1 of the Penal Code is amended to read:

236.1. (a) A 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).

(b) A person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 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 five hundred thousand dollars (\$500,000).

(c) A 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 Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking. A violation of this subdivision is punishable by imprisonment in the state prison as follows:

(1) Five, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).

(2) Fifteen years to life and a fine of not more than five hundred thousand dollars (\$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.

(d) In determining whether a minor was caused, induced, or persuaded to engage in a commercial sex act, the totality of the circumstances, including the age of the victim, his or her relationship to the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be considered.

(e) Consent by a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.

(f) Mistake of fact as to the age of a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.

(g) The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in Section 7102(9) of Title 22 of the United States Code.

(h) For purposes of this chapter, the following definitions apply:

(1) “Coercion” includes a scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; the abuse or threatened abuse of the legal process; debt bondage; or providing and facilitating the possession of a controlled substance to a person with the intent to impair the person’s judgment.

(2) “Commercial sex act” means sexual conduct on account of which anything of value is given or received by a person.

(3) “Deprivation or violation of the personal liberty of another” includes substantial and sustained restriction of another’s liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.

(4) “Duress” includes a direct or implied threat of force, violence, danger, hardship, or retribution sufficient to cause a reasonable person to acquiesce in or perform an act which he or she would otherwise not have submitted to or performed; a direct or implied threat to destroy, conceal, remove, confiscate, or possess an actual or purported passport or immigration document of the victim; or knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or immigration document of the victim.

(5) “Forced labor or services” means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person.

(6) “Great bodily injury” means a significant or substantial physical injury.

(7) “Human trafficking victim” means a person who is a victim of any of the acts described in subdivisions (a), (b) or (c).

(8) “Minor” means a person less than 18 years of age.

(9) “Serious harm” includes any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or commercial sexual acts in order to avoid incurring that harm.

~~(10) “Nonviolent crime” means any crime or offense other than murder, attempted murder, voluntary manslaughter, mayhem, kidnapping, rape, robbery, arson, carjacking, or any other violent felony as defined in subdivision (c) of Section 667.5.~~

(i) The total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be factors to consider in determining the presence of “deprivation or violation of the personal liberty of another,” “duress,” and “coercion” as described in this section.

SEC. 4. Section 236.21 is added to the Penal Code, to read:

236.21. (a) (1) A peace officer coming in contact with a person described in Section 236.2 shall make best efforts to determine whether the person meets either of the following criteria: is a minor who is a human trafficking victim as defined in paragraph (7) of subdivision (h) of Section 236.1 and if necessary, may seek the assistance of human trafficking experts within or affiliated with the law enforcement agency, and Non-Governmental Organizations with specialized training and experience in human trafficking, to make such determination.

~~(A) A minor who has engaged in a commercial sex act or is suspected or charged with committing a crime constituting a commercial sex act, including a violation of subdivision (b) of Section 647 or Section 653.22.~~

~~(B) A minor who is a human trafficking victim.~~

(2) If the peace officer determines that the person is a minor who is a human trafficking victim as defined in paragraph (7) of subdivision (h) of Section 236.1 pursuant to subparagraph (B) of paragraph (1), and the officer has probable cause to believe that the minor has also committed other crimes as a direct result of being a human trafficking victim, the peace officer shall make a record of those determinations and provide the district attorney of the county with such record for independent evaluation. This subsection does not apply if the peace officer has probable cause to believe the minor committed a crime that was not directly related to being a human trafficking victim. ~~the peace officer shall additionally determine whether any non-violent crime the person is suspected of or charged with was committed as a direct result of being a human trafficking victim. The peace officer shall make a record of the determinations made pursuant to this subdivision.~~

(b) Unless the minor is otherwise arrested, Immediately upon making either of the determinations specified in subdivision (a)(1), the peace officer shall report suspected abuse or neglect of that minor to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code in accordance with Section 11166, shall consult with the child welfare worker regarding safe placement for the minor which will separate the minor from the trafficker and from being trafficked, and shall transport the minor to that placement. The minor may be adjudged to be a dependent subject to the jurisdiction of the juvenile court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code. The minor may be taken into temporary protective custody pursuant to subdivision (a) of Section 305 of the Welfare and Institutions Code upon a reasonable belief that the conditions of subdivision (a) of Section 305 are met, including that custody is necessary to protect the minor from a person found or suspected to have committed any of the acts described in subdivisions (a), (b), or (c) of Section 236.1.

~~(e) If the peace officer makes either of the determinations specified in subdivision (a), he or she shall not arrest the minor for the suspected crime, and the law enforcement agency having jurisdiction over the offense shall seal and subsequently destroy its records of any arrest previously made for the offense pursuant to subdivision (a) of Section 851.8 and take the other actions required by that section, as if a determination of factual innocence had been made and concurred in by the prosecuting attorney upon petition by the minor pursuant to subdivision (a) of Section 851.8.~~

SEC. 5. Section 236.22 is added to the Penal Code, to read:

236.22. ~~(a) Upon a determination made pursuant to Section 236.21 that a minor has engaged in a commercial sex act, the minor is immune from prosecution as a juvenile or an adult for any crime based on that act, including prosecution for violations of subdivision (b) of Section 647 or Section 653.22.~~

~~(b) Upon a determination made pursuant to Section 236.21 that a minor suspected of, or charged with, a non-violent crime was a human trafficking victim at the time of the offense and the crime was a direct result of being a human trafficking victim, the minor is immune from prosecution as a juvenile or an adult for that crime.~~

~~(c) A minor determined to be immune from prosecution for a crime pursuant to subdivision (a) or (b) shall not be subject to the jurisdiction of the juvenile court pursuant to subdivision (a) or (b) of Section 601 of the Welfare and Institutions Code for the conduct that led to the minor being suspected of or charged with that crime.~~

~~(d) A minor found to be immune from prosecution for a crime pursuant to subdivision (a) or (b) may be adjudged to be a dependent subject to the jurisdiction of the juvenile court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code and may be taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and Institutions Code upon a reasonable belief that the conditions of subdivision (a) of Section 305 are met, including that custody is necessary to protect the minor from a person found or suspected to have committed any of the acts described in subdivisions (a), (b) or (c), of Section 236.1.~~

~~(e) If a minor found to be immune from prosecution for a crime pursuant to subdivision (a) or (b) was arrested for that crime, any law enforcement agency or court having jurisdiction over the offense shall seal and subsequently destroy records relating to that offense pursuant to subdivision (a) of Section 851.8, and take the other actions required by that section, as if a determination of factual innocence had been made and concurred in by the prosecuting attorney upon petition by the minor pursuant to subdivision (a) of Section 851.8.~~

~~(f) This section shall become operative on June 30, 2017 and applies to offenses committed on or after that date.~~

~~SEC. 6. Section 647 of the Penal Code is amended to read:~~

~~647. Except as provided in paragraph (2) of subdivision (b) and subdivision (1), every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:~~

~~(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.~~

~~(b) (1) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.~~

~~(2) Notwithstanding paragraph (1), commencing June 30, 2017, an arrest shall not be made and punishment shall not be imposed for a violation of paragraph (1) on a person under 18 years of age who exchanges, or attempts or offers to exchange, sex acts in return for money or other consideration. Instead, the person may be subject to the jurisdiction of the juvenile court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code. A peace officer who detains a minor for a violation of this subdivision shall report suspected abuse or neglect of the minor to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code in accordance with Section 11166.~~

~~(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.~~

~~(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.~~

~~(e) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.~~

~~(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.~~

~~(g) When a person has violated subdivision (f), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. A person who has been placed in civil protective custody shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:~~

~~(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.~~

~~(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f).~~

~~(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.~~

~~(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.~~

~~(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.~~

~~(j) (1) Any person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, camcorder, or mobile phone, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision shall not apply to those areas of a private business used to count currency or other negotiable instruments.~~

~~(2) Any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.~~

~~(3) (A) Any person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person.~~

~~(B) Neither of the following is a defense to the crime specified in this paragraph:~~

~~(i) The defendant was a cohabitant, landlord, tenant, cotenant, employer, employee, or business partner or associate of the victim, or an agent of any of these.~~

~~(ii) The victim was not in a state of full or partial undress.~~

~~(4) (A) Any person who intentionally distributes the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.~~

~~(B) A person intentionally distributes an image described in subparagraph (A) when he or she personally distributes the image, or arranges, specifically requests, or intentionally causes another person to distribute that image.~~

~~(C) As used in this paragraph, "intimate body part" means any portion of the genitals, the anus and in the case of a female, also includes any portion of the breasts below the top of the areola; that is either uncovered or clearly visible through clothing.~~

~~(D) It shall not be a violation of this paragraph to distribute an image described in subparagraph (A) if any of the following applies:~~

~~(i) The distribution is made in the course of reporting an unlawful activity.~~

~~(ii) The distribution is made in compliance with a subpoena or other court order for use in a legal proceeding.~~

~~(iii) The distribution is made in the course of a lawful public proceeding.~~

~~(5) This subdivision shall not preclude punishment under any section of law providing for greater punishment.~~

~~(k) In any accusatory pleading charging a violation of subdivision (b), if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading. If the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 45 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 45 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 45 days in confinement in a county jail.~~

~~In any accusatory pleading charging a violation of subdivision (b), if the defendant has been previously convicted two or more times of a violation of that subdivision, each of these previous convictions shall be charged in the accusatory pleading. If two or more of these previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 90 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.~~

~~In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within 1,000 feet of a private residence and with the use of a vehicle. In lieu of the suspension, the court may order a person's privilege to operate a motor vehicle restricted, for not more than six months, to necessary travel to and from the person's place of employment or education. If driving a motor vehicle is necessary to perform the duties of the person's employment, the court may also allow the person to drive in that person's scope of employment.~~

~~(1) A second or subsequent violation of subdivision (j) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.~~

~~(2) If the victim of a violation of subdivision (j) was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.~~

~~(m) (1) If a crime is committed in violation of subdivision (b) and the person who was solicited was a minor at the time of the offense, and if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense, the violation is punishable by~~

imprisonment in a county jail for not less than two days and not more than one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment.

~~(2) The court may, in unusual cases, when the interests of justice are best served, reduce or eliminate the mandatory two days of imprisonment in a county jail required by this subdivision. If the court reduces or eliminates the mandatory two days' imprisonment, the court shall specify the reason on the record.~~

~~SEC. 7. Section 653.22 of the Penal Code is amended to read:~~

~~653.22. (a) (1) Except as specified in paragraph (2), it is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances that openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.~~

~~(2) Notwithstanding paragraph (1), commencing June 30, 2017, an arrest shall not be made and punishment may not be imposed for a violation of paragraph (1) on a person under 18 years of age who exchanges, or attempts or offers to exchange, sex acts in return for money or other consideration. Instead, the person may be subject to the jurisdiction of the juvenile court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code. A peace officer who detains a minor for a violation of this section shall report suspected abuse or neglect of the minor to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code in accordance with Section 11166.~~

~~(b) Among the circumstances that may be considered in determining whether a person loiters with the intent to commit prostitution are that the person:~~

~~(1) Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passersby, indicative of soliciting for prostitution.~~

~~(2) Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or engages or attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution.~~

~~(3) Has been convicted of violating this section, subdivision (a) or (b) of Section 647, or any other offense relating to or involving prostitution, within five years of the arrest under this section.~~

~~(4) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution.~~

~~(5) Has engaged, within six months prior to the arrest under this section, in any behavior described in this subdivision, with the exception of paragraph (3), or in any other behavior indicative of prostitution activity.~~

~~(c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no one circumstance or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.~~

SEC. 8. Section 13519.14 of the Penal Code is amended to read:

13519.14. (a) The commission shall implement by January 1, 2007, a course or courses of instruction for the training of law enforcement officers in California in the handling of human trafficking complaints and also shall develop guidelines for law enforcement response to human trafficking. The course or courses of instruction and the guidelines shall stress the dynamics and manifestations of human trafficking, identifying and communicating with victims, providing documentation that satisfy the Law Enforcement Agency (LEA) endorsement required by federal law, collaboration with federal law enforcement officials, therapeutically appropriate investigative techniques, the availability of civil and immigration remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include human trafficking experts with experience in the delivery of direct services to victims of human trafficking. Completion of the course may be satisfied by telecommunication, video training tape, or other instruction.

(b) As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, as defined by subdivision (a) of Section 830.2.

(c) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of human trafficking.

(d) The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways human trafficking training may be included as a part of ongoing programs.

(e) Every law enforcement officer who is assigned field or investigative duties shall complete a minimum of two hours of training in a course or courses of instruction pertaining to the handling of human trafficking complaints as described in subdivision (a) by July 1, 2014, or within six months of being assigned to that position, whichever is later.

(f) The commission shall update the training implemented pursuant to this section by July 1, 2018, to include specific instruction on law enforcement responsibilities to determine the status of children as victims of human trafficking pursuant to Sections 236.21, 236.22, 647 and 653.22.

SEC. 9. Section 300 of the Welfare and Institutions Code is amended to read:

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300. A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.

(b) (1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. A child shall not be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(2) The Legislature finds and declares that a child who is a human trafficking victim, as defined in paragraph (7) of subdivision (h) of Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as child trafficking victims or commercially sexually exploited children.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. A child shall not be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child shall not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (g) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that this section not disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, this section is not intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control. The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.

As used in this section, "guardian" means the legal guardian of the child.

SEC. 10. Chapter 4 (commencing with Section 2200) is added to Division 2.5 of the Welfare and Institutions Code, to read:

CHAPTER 4. State Plan to Serve and Protect Child Trafficking Victims

2200. This chapter shall be known, and may be cited, as the State Plan to Serve and Protect Child Trafficking Victims.

2201. (a) The purpose of this chapter is to establish the framework for a coordinated effort and plan to serve and protect all children who are human trafficking victims. In the implementation of the continuum of care reform, pursuant to Chapter 773 of the Statutes of 2015, the State Department of Social Services shall ensure the necessary care, support, social service needs, and treatment of child trafficking victims in the child welfare system.

(b) The California Health and Human Services Agency shall, no later than January 30, 2017, convene an interagency workgroup, in accordance with Section 2202 for the purposes specified in subdivision (a), in consultation with the California Child Welfare Council established pursuant to Section 16540, and to continue the work currently being done under the council's direction.

(c) For purposes of this chapter, “child trafficking victim” has the meaning set forth in paragraph (2) of subdivision (b) of Section 300.

2202. (a) The interagency workgroup shall be comprised of representatives from the State Department of Health Care Services, the Children and Family Services Division of the State Department of Social Services, the Department of Corrections and Rehabilitation, Division of Juvenile Justice, and the State Department of Education, and shall include a broad spectrum of stakeholders who are responsible for addressing the needs of this population, including, but not limited to, local government agencies, human trafficking service providers, the County Behavioral Directors Association of California, county probation officers, the County Welfare Directors Association of California, district attorneys, public defenders, youth advocates, juvenile court representatives, and human trafficking survivors.

(b) The workgroup shall conduct a thorough review of existing programs and services for child trafficking victims to identify areas of need. The workgroup shall develop strategies and recommendations for policies, interagency response protocols, and services that will ensure that child trafficking victims have access to the services and support needed for their safety and recovery.

(c) The workgroup shall develop a comprehensive state plan to serve and protect sexually exploited and trafficked minors, including recommendations and a timeline for implementation. The plan shall include, at a minimum, all of the following:

(1) A multiagency-coordinated child trafficking response protocol and guidelines for local implementation that address prevention, identification, screening, assessment, immediate and safe shelter, and clear lines of ongoing responsibility to ensure that child trafficking victims have access to the necessary continuum of treatment options, as determined by the workgroup.

(2) Whether new specialized services and programs are needed to ensure that child trafficking victims have access to safe and appropriate services, the identification of funding sources, and a timeline for the creation of those services and programs.

(3) The identification of training needs for child welfare staff, law enforcement, and probation staff regarding child trafficking response protocols, and a plan and timeline to implement necessary training.

(4) The development of data collection and sharing protocols among agencies.

(d) In developing the plan, the workgroup shall consider both of the following:

(1) Existing laws and practices in other states and jurisdictions that have developed response protocols and policies to respond to sexual exploitation of minors and child trafficking and the outcomes and unintended consequences of those protocols and policies.

(2) The adequacy of existing response protocols and services, including identification, screening, assessment, immediate and safe shelter, and the range of treatment options for child trafficking victims.

(e) The workgroup, in collaboration with the California Child Welfare Council, shall submit the plan, including implementation recommendations and a timeline, to the Legislature, Judicial Council, and the Governor no later than January 30, 2018.

(f) Reports submitted to the Legislature pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 11. Chapter 5 (commencing with Section 2300) is added to Division 2.5 of the Welfare and Institutions Code, to read:

CHAPTER 5. Development of Specialized Facilities and Assessment Tools to Protect Child Trafficking Victims

2300. (a) In the implementation of the continuum of care reform, pursuant to Chapter 773 of the Statutes of 2015, the State Department of Social Services shall ensure the necessary care, support, social service needs, and treatment of child trafficking victims in the child welfare system. It shall establish, *after* ~~in~~ consultation with county welfare departments, *the interagency workgroup established pursuant to Section 2202*, and other stakeholders as appropriate, a working group to develop recommendations for the board, care, and supervision of child trafficking victims as defined in paragraph (2) of subdivision (b) of Section 300 who are in need of a placement in facilities that will protect them from traffickers and provide needed specialized support and services. The plan shall address placement options that promote a continuum of care based on the best interests of the youth, including placements that provide immediate crisis care and assessment in facilities in which victims are protected from their traffickers, long-term placements in family-based settings, *specialized boarding schools*, and specialized congregate care placements that support independent living with services that promote successful transition to adulthood. The recommendations shall be included in the recommendations submitted pursuant to Section 11461.2.

(b) In developing its recommendations, the department shall identify strategies to do all of the following:

(1) Recruit and train family-based foster care providers specifically to serve this population and considerations for their need for safety when caring for this population.

(2) Support family finding and engagement activities for child trafficking victims as defined in paragraph (2) of subdivision (b) of Section 300 and for children who are at risk of becoming victims.

(3) Support training and education for at-risk foster youth in out-of-home placements to reduce the likelihood of human trafficking as specified in subdivisions (a), (b), and (c), of Section 236.1 of the Penal Code.

(4) Support drop-in centers to provide crisis intervention and support to trafficked or commercially exploited minors and to re-engage them in the child welfare system.

(5) Provide for an exemption process for human trafficking victims to be employed in foster care facilities if the crime was committed under threat from their trafficker.

2301. (a) The State Department of Social Services, with input from county child welfare agencies, probation departments, the interagency workgroup established pursuant to Section 2202, and other stakeholders as appropriate, shall identify, develop, and disseminate screening tools for use by county child welfare and probation staff to identify children who are or are at risk of becoming child trafficking victims as defined by paragraph (2) of subdivision (b) of Section 300. No later than December 31, 2017, the department shall provide counties with guidance on the use of the screening tools, including when youth are referred to or placed into care, as appropriate for children who are at risk and in the foster care system.

(b) The State Department of Social Services and the State Department of Health Care Services, in consultation with county child welfare and county mental health representatives and other stakeholders as appropriate, shall identify tools and best practices to screen, assess and serve child trafficking victims. The department shall develop curriculum and provide training to local multi-disciplinary teams as defined in paragraph (2) of subdivision (c) of Section 2303 no later than December 31, 2017, for assessing, identifying, and jointly serving this population.

2302. (a) The State Department of Social Services, in consultation with the County Welfare Directors Association, and the interagency workgroup established pursuant to Section 2202, shall ensure that the Child Welfare Services Case Management System is capable of collecting data concerning child trafficking victims as defined in paragraph (2) of subdivision (c) of Section 300, including children who are referred to the child abuse hotline, as well as children currently served by child welfare and probation departments and who subsequently are identified as child trafficking victims.

(b) The department shall complete the requirements of subdivision (a) no later than December 1, 2017, including the dissemination of any necessary instructions on data entry to county child welfare staff.

2303. (a) (1) Each county shall develop an interagency protocol to be utilized in serving child trafficking victims as defined in paragraph (2) of subdivision (b) of Section 300. Each county's protocol shall be adopted by the board of supervisors not later than June 30, 2017. The protocols shall identify the roles and responsibilities of county-based agencies and other local service providers in responding to and supporting a coordinated community response to serve victims of trafficking or commercial sexual exploitation. At minimum, the protocol shall identify the roles

and responsibilities of the following county administrators in their oversight and administration of services to victims:

- (A) The district attorney.
- (B) Behavioral health.
- (C) Child welfare.
- (D) Probation.
- (E) Public health.
- (F) Substance use disorder services.
- (G) The Sheriff and local police departments.
- (H) The County Superintendent of Schools.
- (I) The presiding juvenile court judge.
- (J) The public defender.**

(2) The county interagency protocol shall be developed by a team led by a representative appointed by the director of the county human services department and shall include representatives appointed by the director of each of the agencies listed in paragraph (1).

(3) The county shall ensure input into the development of local protocols from local service providers specializing in services to victims of rape and sexual assault, runaways and homeless youth, youth advocates, survivors of trafficking, and others as deemed appropriate.

(b) At a minimum, the interagency protocol shall address the provision of services to child trafficking victims, including but not limited to, all of the following:

(1) Identifying at least one representative from each county agency noted in subdivision (a) to serve as a point of contact with specialized training on serving victims of trafficking or commercial sexual exploitation.

(2) The use of a multidisciplinary collaborative team approach to provide coordinated case management, service planning, and services to minors. A multidisciplinary team serving a minor pursuant to this section shall include, but not be limited to, appropriate staff from the county child welfare, probation, mental health, substance use disorder, and public health departments. As warranted, the multidisciplinary team may also include representatives from local law enforcement, prosecutors, and defense attorneys, attorneys representing children, federal law

enforcement, school-based personnel, and community-based providers, as determined by local protocols.

(c) The protocol shall describe how the county will adhere to the following principles in serving this population:

(1) View trafficked minors or commercial sexually exploited youth as victims, not criminals, avoiding arrest and detention whenever possible.

(2) Provide youth with “victim-centered” and trauma-informed care and services.

(3) Make youth safety a key concern.

(4) Treat victims with respect and take into account their cultural and linguistic needs.

(5) Support continuous quality improvement based on available data, research, and experience to improve system response and better outcomes for child victims of trafficking or commercial exploitation.

(6) Involve human trafficking victims in the providing of supportive services.

(7) Provide recommendations and updates to the State Plan to Serve and Protect Child Trafficking Victims, as described in Chapter 4 (commencing with Section 2200) of Division 2.5.

SEC. 12. Section 16206 of the Welfare and Institutions Code is amended to read:

16206. (a) The purpose of the program is to develop and implement statewide coordinated training programs designed specifically to meet the needs of county child protective services social workers assigned emergency response, family maintenance, family reunification, permanent placement, and adoption responsibilities. It is the intent of the Legislature that the program include training for other agencies under contract with county welfare departments to provide child welfare services. In addition, the program shall provide training programs for persons defined as a mandated reporter pursuant to the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code). The program shall provide the services required in this section to the extent possible within the total allocation. If allocations are insufficient, the department, in consultation with the grantee or grantees and the Child Welfare Training Advisory Board, shall prioritize the efforts of the program, giving primary attention to the most urgently needed services. County child protective services social workers assigned emergency response responsibilities shall receive first priority for training pursuant to this section.

(b) The training program shall provide practice-relevant training for mandated child abuse reporters and all members of the child welfare delivery system that will address critical issues affecting the well-being of children, and shall develop curriculum materials and training

resources for use in meeting staff development needs of mandated child abuse reporters and child welfare personnel in public and private agency settings.

(c) The training provided pursuant to this section shall include all of the following:

(1) Crisis intervention.

(2) Investigative techniques.

(3) Rules of evidence.

(4) Indicators of abuse and neglect.

(5) Assessment criteria, including the application of guidelines for assessment of relatives for placement according to the criteria described in Section 361.3.

(6) Intervention strategies.

(7) Legal requirements of child protection, including requirements of child abuse reporting laws.

(8) Case management.

(9) Use of community resources.

(10) Information regarding the dynamics and effects of domestic violence upon families and children, including indicators and dynamics of teen dating violence.

(11) Post-traumatic stress disorder and the causes, symptoms, and treatment of post-traumatic stress disorder in children.

(12) The importance of maintaining relationships with individuals who are important to a child in out-of-home placement, including methods to identify those individuals, consistent with the child's best interests, including, but not limited to, asking the child about individuals who are important, and ways to maintain and support those relationships.

(13) Instruction on cultural competency and sensitivity and related best practices for providing adequate care to child trafficking victims.

(14) The legal duties of a child protective services social worker, in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment.

(15) The information described in subdivision (d) of Section 16501.4.

(d) The training provided pursuant to this section may also include any or all of the following:

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(1) Child development and parenting.

(2) Intake, interviewing, and initial assessment.

(3) Casework and treatment.

(4) Medical aspects of child abuse and neglect.

(e) The training program in each county shall assess the program's performance at least annually and forward it to the State Department of Social Services for an evaluation. The assessment shall include, at a minimum, all of the following:

(1) Workforce data, including education, qualifications, and demographics.

(2) The number of persons trained.

(3) The type of training provided.

(4) The degree to which the training is perceived by participants as useful in practice.

(5) Any additional information or data deemed necessary by the department for reporting, oversight, and monitoring purposes.

(f) The training program shall provide practice-relevant training to county child protective services social workers who screen referrals for child abuse or neglect and for all workers assigned to provide emergency response, family maintenance, family reunification, and permanent placement services. The training shall be developed in consultation with the Child Welfare Training Advisory Board and domestic violence victims' advocates and other public and private agencies that provide programs for victims of domestic violence or programs of intervention for perpetrators.

SEC. 13. Section 16540 of the Welfare and Institutions Code is amended to read:

16540. The California Child Welfare Council is hereby established, which shall serve as an advisory body responsible for improving the collaboration and processes of the multiple agencies and the courts that serve the children and youth in the child welfare and foster care systems. The council shall monitor and report the extent to which child welfare and foster care programs and the courts are responsive to the needs of children in their joint care. The council shall issue advisory reports whenever it deems appropriate, but in any event, no less frequently than annually, to the Governor, the Legislature, the Judicial Council, and the public. A report of the Child Welfare Council shall, at a minimum, include recommendations for all of the following:

(a) Ensuring that all state child welfare, foster care, and judicial funding and services for children, youth, and families is, to the greatest extent possible, coordinated to eliminate

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fragmentation and duplication of services provided to children or families who would benefit from integrated multiagency services.

(b) Increasing the quality, appropriateness, and effectiveness of program services and judicial processes delivered to children, youth, and families who would benefit from integrated multiagency services to achieve better outcomes for these children, youth, and families.

(c) Promoting consistent program and judicial excellence across counties to the greatest extent possible while recognizing the demographic, geographic, and financial differences among the counties.

(d) Increasing collaboration and coordination between county agencies, state agencies, federal agencies, and the courts.

(e) Ensuring that all state Title IV-E plans, program improvement plans, and court improvement plans demonstrate effective collaboration between public agencies and the courts.

(f) Assisting the Secretary of California Health and Human Services and the chief justice in formulating policies for the effective administration of the child welfare and foster care programs and judicial processes.

(g) Modifying program practices and court processes, rate structures, and other system changes needed to promote and support relative caregivers, family foster parents, therapeutic placements, and other placements for children who cannot remain in the family home.

(h) Developing data- and information-sharing agreements and protocols for the exchange of aggregate data across program and court systems that are providing services to children and families in the child welfare system. These data-sharing agreements shall allow child welfare agencies and the courts to access data concerning the health, mental health, special education, and educational status and progress of children served by county child welfare systems subject to state and federal confidentiality laws and regulations. They shall be developed in tandem with the establishment of judicial case management systems as well as additional or enhanced performance measures described in subdivision (b) of Section 16544.

(i) Developing systematic methods for obtaining policy recommendations from foster youth about the effectiveness and quality of program services and judicial processes, and ensuring that the interests of foster youth are adequately addressed in all policy development.

(j) Implementing legislative enactments in the child welfare and foster care programs and the courts, and reporting to the Legislature on the timeliness and consistency of the implementation.

(k) Monitoring the adequacy of resources necessary for the implementation of existing programs and court processes, and the prioritization of program and judicial responsibilities.

(l) Strengthening and increasing the independence and authority of the foster care ombudsperson.

(m) Coordinating available services for former foster youth and improving outreach efforts to those youth and their families.

(n) Providing recommendations and updates to the State Plan to Serve and Protect Child Trafficking Victims, as described in Chapter 4 (commencing with Section 2200) of Division 2.5.

SEC. 14. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Date of Hearing: April 12, 2016

Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1761 (Weber) – As Amended March 28, 2016

As Proposed to be Amended in Committee

SUMMARY: Creates a human trafficking affirmative defense applicable to non-violent, non-serious, non-trafficking crimes. Specifically, **this bill:**

- 1) States that, in addition to any other affirmative defense, it is a defense to a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and of reasonable fear of harm.
- 2) States that this affirmative defense does not apply to a serious felony, a violent felony, or the offense of human trafficking, as specified.
- 3) Establishes the standard of proof for the human trafficking affirmative defense as the preponderance of evidence standard.
- 4) States that certifying records from federal, state, tribal, or local court or government certifying agencies for documents such as U or T visas, may be presented to establish the affirmative defense.
- 5) Provides that the human trafficking affirmative defense can be asserted at any time before entry of plea or before the end of a trial. The defense can also be determined at the preliminary hearing.
- 6) Entitles a person who successfully raises the human trafficking affirmative defense to the following relief:
 - a) Sealing of all court records in the case;
 - b) Release from all penalties and disabilities resulting from the charge, and all actions that led to the charge shall be deemed not to have occurred; and
 - c) Permission to attest in all circumstances that he or she has never been arrested for, or charged with the subject crime, including in financial aid, housing, employment, and loan applications.
- 7) States that, in any juvenile delinquency proceeding, if the court finds that the alleged offense was committed as a direct result of being a victim of human trafficking then it shall dismiss the case and automatically seal the case records.

- 8) States that the person may not be thereafter charged with perjury or otherwise giving a false statement based on the above relief.
- 9) States that in a juvenile delinquency proceeding, if the court finds that the offense charged in the proceedings was committed as a direct result of the minor being a victim of human trafficking, and the affirmative defense was established by a preponderance of the evidence, then the court shall dismiss the proceedings and order automatic record sealing.
- 10) Provides that in a criminal action expert testimony is admissible by either the prosecution or defense regarding the effects of human trafficking on its victims, including, but not limited to the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of human trafficking victims.
- 11) States that the requisite foundation for the introduction of this expert testimony will be established if the proponent of the evidence shows its relevance and the proper qualifications of the expert witness.

EXISTING LAW:

- 1) Guarantees a defendant a meaningful opportunity to present a defense. (U.S. Const., VI Amend., Cal. Const. art. I, §. 15.)
- 2) Provides that all persons are capable of committing crimes except those belonging to specified classes, including person who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused. (Pen. Code, § 26.)
- 3) States that all relevant evidence is admissible unless it is made inadmissible by some statutory or constitutional provision. (Cal. Const., art. I, § 28(f)(2), Evid. Code, § 351.)
- 4) Provides that the court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evid. Code, § 352.)
- 5) States that a person is qualified to testify as an expert if he or she has special knowledge, skill, experience, training, or education sufficient for the court to deem the person qualified on a subject about which he or she is asked to express an opinion. (Evid. Code, § 720.)
- 6) Limits expert testimony to a subject that is sufficiently beyond common experience that the opinion of that expert would assist the trier of fact to understand the evidence or determine a fact in issue. (Evid. Code, § 801, subd. (a).)
- 7) Authorizes expert testimony in criminal cases by either the prosecution or defense regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a defendant to prove the occurrence of the act or acts of abuse which form the basis of a criminal charge. (Evid. Code, § 1107, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Too often our survivors of human trafficking are forced to commit crimes under threat (directly and indirectly) from their traffickers. The trauma of being a victim of human trafficking is untold. In addition to sexual, emotional, and physical abuse, human trafficking victims are arrested and convicted for crimes they were forced to take part in by their traffickers. For too long, we have compounded this trauma by arresting and charging victims of human trafficking for crimes they committed directly related to their time spent as a trafficking victim. These victims are charged with crimes, while their traffickers are shielded. This bill seeks to remedy this situation and create avenues for victims to be identified and the traffickers prosecuted."
- 2) **Affirmative Defense:** A victim of trafficking who is charged with a crime may be able to raise the defense of duress. Duress is said to excuse criminal conduct where the actor was under an unlawful threat of imminent death or serious bodily injury, which threat caused the actor to engage in conduct violating the literal terms of the criminal law. 'if there was a reasonable, legal alternative to violating the law, 'a chance both to refuse to do the criminal act and also to avoid the threatened harm,' the defenses will fail.' (*People v. Heath* (1989) 207 Cal.App.3d 892, 899-900, citations omitted.) "Persons (unless the crime is punishable with death) who commits the act or made the omission charged under threats or menace suffices to show that they had reasonable cause to and did believe their lives would be endangered if they refused" are not guilty of the crime. (Pen. Code, § 26.) A court has a duty to give a duress instruction on its own motion if it is supported by substantial evidence and is not inconsistent with the defense theory. (*People v. Wilson* (2005) 36 Cal.4th 309, 331.)

The defendant acted under duress if, because of threat or menace, he or she believed that his or her or someone else's life would be in immediate danger if he or she refused a demand or request to commit the crime. The demand or request may have been expressed or implied. The defendant's belief must have been reasonable. When deciding whether the defendant's belief was reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in the same position as the defendant would have believed. CALCRIM 3402.

Duress applies if the defendant has been threatened with imminent great bodily harm. (See *People v. Otis* (1959) 174 Cal.App.2d 119, 124; *United States v. Bailey* (1980) 444 U.S. 394, 409.) Also, although this is not reflected in the instruction, duress probably applies if the instigator threatens harm to another person. (See *Heath, supra*, at p. 898, discussing *People v. Pena* (1983) 149 Cal.App.3d Supp. 14, 21-25 [a necessity defense due to threats to a third party].)

The sponsors of this bill believe the duress defense is inadequate for trafficking victims because a victim may not be able to show his or her life was in immediate danger. Accordingly, this bill creates a separate human trafficking affirmative defense.

Under the newly created defense, the person will be required to show by a preponderance of the evidence, that he or she was coerced to commit the crime as a direct result of being a

victim of trafficking at the time of the crime, and of reasonable fear of harm. The coercion requirement will prevent a trafficking victim from raising the defense when he or she commits a crime for personal gain, as opposed to at the behest of his or her trafficker. In addition, the requirement that the person be a victim of trafficking at the time of the offense, will preclude a trafficking survivor from using the defense years later to escape liability for criminal conduct because he or she was a victim in the past.

It should be noted that this defense will not apply to all crimes. A trafficking victim cannot raise the defense when charged with a serious felony as described in Penal Code section 1192.7, subdivision (c), a violent felony listed in Penal Code section 667.5, subdivision (c), or with regard to a charge of human trafficking. The latter crime is excluded from application so that a victim of trafficking does not escape liability for becoming a recruiter for his or her trafficker.

- 3) **Expert Testimony:** Evidence Code section 1107 generally makes admissible in a criminal action expert testimony regarding "intimate partner battering and its effects, including the physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence" As explained by the California Supreme Court:

Battered women's syndrome "has been defined as 'a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives.' (State v. Kelly (1984) 97 N.J. 178, 193 [478 A.2d 364, 371]; see also People v. Aris (1989) 215 Cal.App.3d 1178, 1194 [264 Cal. Rptr. 167] ["a pattern of psychological symptoms that develop after somebody has lived in a battering relationship"]; Note, Battered Women Who Kill Their Abusers (1993) 106 Harv.L.Rev. 1574, 1578 ['a "pattern of responses and perceptions presumed to be characteristic of women who have been subjected to continuous physical abuse by their mate[s] " '].)" (*People v. Romero* (1994) 8 Cal.4th 728, 735, fn. 1; see also *People v. Humphrey* (1996) 13 Cal.4th 1073, 1083-84.)

This bill applies the same principles to expert testimony regarding the effects of human trafficking to its victims.

- 4) **Argument in Support:** According to the *Coalition to Abolish Slavery and Trafficking* (CAST), the sponsor of this bill, "1761 creates important protections for trafficking survivors to deal with the unique nature of the trafficking crime. In CAST's experience as a service provider working with hundreds of trafficking survivors in California, an affirmative defense will create an additional pathway for trafficking victims to be identified as the victims they are so that the real perpetrators can be prosecuted. It also ensures that the complexities of trafficking crimes can be appropriately described to judges and juries...."

"Usually a leader in creative approaches to protect trafficking victims, California is far behind other states in offering an affirmative defense for trafficking victims. So, far 34 states have passed this legislation to better protect trafficking victims. It is costly not just to the victims, but also to the state of California to convict trafficking victims for crimes their traffickers force them to commit. These funds could be better spent prosecuting traffickers.

"AB 1761 creates an affirmative defense against a charge of a non-violent crime that was

committed as a direct result of being a human trafficking victim. ... As a special protection for minor sex trafficking victims, AB 1761 requires the court to dismiss any charges arising from a commercial sex trafficking act against a person who was under 18 years of age, whether or not the defendant asserts the affirmative defense. Finally, AB 1761 grants trafficking victims who prevail on the affirmative defense the right to have all records in the case sealed and ensures they do not suffer long-term consequences from their arrest.

"In recognition of the complex dynamics of trafficking crimes, AB 1761 also creates a presumption that expert testimony is admissible by either the prosecution or the defense regarding the effects of human trafficking on human trafficking victims."

5) Arguments in Opposition:

- a) The *California District Attorneys Association* writes, "[w]e do not need a new rule of evidence to allow parties to call an expert witness to educate the trier of fact on issues relating to human trafficking. California law has long provided that 'any person who has special knowledge, skill or experience in any occupation, trade or craft may be qualified as an expert in his field.' (*People v. King* (1968) 266 Cal.App.2d 437, 445.) California courts allow experts to help explain a wide variety of human behaviors and to explain why people respond in strange ways to traumatic events such as rape trauma, child abuse accommodation syndrome, post-traumatic stress, gang culture, domestic violence, and battered women's syndrome, just to name a few."
- b) The *California State Sheriffs' Association* states, "Duress is an existing defense and prosecutors often decline to pursue criminal charges against the persons contemplated by this bill, especially when it can help bring human traffickers to justice. As such, this bill represents an unnecessary tilting of the playing field by effectively absolving certain persons of criminal liability."

6) Related Legislation:

- a) AB 1675 (Stone) would provide that a minor who commits the crimes of solicitation, prostitution, or loitering with the intent to commit prostitution, is subject to the jurisdiction of the juvenile dependency court rather than delinquency court. AB 1675 is pending in the Assembly Judiciary Committee.
- b) AB 1760 (Santiago) would direct a peace officer who determines that a minor is a victim of human trafficking to report such abuse, consult with a child welfare worker about a safe placement for the minor, and transport the minor to such placement, unless the minor is otherwise arrested.. AB 1760 will be heard in this Committee today.
- c) AB 1762 (Campos) would allow a person convicted of a nonviolent crime while he or she was human trafficking victim to apply to vacate the conviction at any time after it was entered. AB 1762 is pending in the Assembly Appropriations Committee.

7) Prior Legislation:

- a) AB 1585 (Alejo), Chapter 708, Statutes of 2014, provides that a defendant who has been convicted of solicitation or prostitution, as specified, may petition the court to set aside

the conviction, and allows the court to set it aside if the defendant can show that the conviction was the result of his/her status as a victim of human trafficking.

- b) AB 694 (Bloom), Chapter 126, Statutes of 2013, clarified that evidence that a victim of human trafficking has engaged in a commercial sex act cannot be used to prosecute that victim for the commercial sex act.
- c) SB 327 (Yee), of the 2013-2014 Legislative Session, would have allowed a writ of habeas corpus to be prosecuted when competent and substantial expert testimony relating to human trafficking was not presented at trial for a crime in which the defendant was a victim of human trafficking. SB 327 was held on the Assembly Appropriations Committee Suspense File.
- d) AB 785 (Eaves), Chapter 812, Statutes of 1991, made expert testimony regarding battered women's syndrome admissible in court under specified conditions.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition to Abolish Slavery and Trafficking (Co-sponsor)
National Council of Jewish Women- California (Co-sponsor)
Act for Women and Girls
American Academy of Pediatrics
American Association of University Women, Long Beach
American Civil Liberties Union
California Council of Churches Impact
California Partnership to End Domestic Violence
California Public Defenders Association
California Women's Law Center
Clergy and Laity United for Economic Justice
Coalition to Abolish Slavery and Trafficking Survivor Advisory Council
Housing California
Jewish Public Affairs Committee of California
Junior Leagues of California
Legal Services for Prisoners with Children
Los Angeles Alliance for a New Economy
Opening Doors
Religious Action Center of Reform Judaism

Opposition

Alameda County District Attorney
California District Attorneys Association
California State Sheriffs' Association
Sacramento County District Attorney

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

Amendments Mock-up for 2015-2016 AB-1761 (Weber (A))

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

Mock-up based on Version Number 98 - Amended Assembly 3/28/16
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 1107.5 is added to the Evidence Code, to read:

1107.5. (a) In a criminal action, expert testimony is admissible by either the prosecution or the defense regarding the effects of human trafficking on human trafficking victims, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of human trafficking victims.

(b) The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. ~~Expert opinion testimony on the effects of human trafficking on victims shall not be considered a new scientific technique whose reliability is unproven.~~

(c) For purposes of this section, "human trafficking victim" is defined in Section 236.1 of the Penal Code.

(d) This section is intended as a rule of evidence only and no substantive change affecting the Penal Code is intended.

SEC. 2. Section 236.1 of the Penal Code is amended to read:

~~**236.1.** (a) A 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).~~

~~(b) A person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 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 five hundred thousand dollars (\$500,000).~~

~~(c) A 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 Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking. A violation of this subdivision is punishable by imprisonment in the state prison as follows:~~

~~(1) Five, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).~~

~~(2) Fifteen years to life and a fine of not more than five hundred thousand dollars (\$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.~~

~~(d) In determining whether a minor was caused, induced, or persuaded to engage in a commercial sex act, the totality of the circumstances, including the age of the victim, his or her relationship to the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be considered.~~

~~(e) Consent by a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.~~

~~(f) Mistake of fact as to the age of a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.~~

~~(g) The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in Section 7102(9) of Title 22 of the United States Code.~~

~~(h) For purposes of this chapter, the following definitions apply:~~

~~(1) "Coercion" includes a scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; the abuse or threatened abuse of the legal process; debt bondage; or providing and facilitating the possession of a controlled substance to a person with the intent to impair the person's judgment.~~

~~(2) "Commercial sex act" means sexual conduct on account of which anything of value is given or received by any person.~~

~~(3) "Deprivation or violation of the personal liberty of another" includes substantial and sustained restriction of another's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.~~

~~(4) "Duress" includes a direct or implied threat of force, violence, danger, hardship, or retribution sufficient to cause a reasonable person to acquiesce in or perform an act which he or she would otherwise not have submitted to or performed; a direct or implied threat to destroy, conceal, remove, confiscate, or possess any actual or purported passport or immigration document of the victim; or knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim.~~

~~(5) "Forced labor or services" means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person.~~

~~(6) "Great bodily injury" means a significant or substantial physical injury.~~

~~(7) "Human trafficking victim" means a person who is a victim of the acts described in subdivisions (a), (b), or (c).~~

~~(8) "Minor" means a person less than 18 years of age.~~

~~(9) "Serious harm" includes any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or commercial sexual acts in order to avoid incurring that harm.~~

~~(10) "Nonviolent crime" means any crime or offense other than murder, attempted murder, voluntary manslaughter, mayhem, kidnaping, rape, robbery, arson, carjacking, or any other violent felony as defined in subdivision (c) of Section 667.5.~~

~~(i) The total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be factors to consider in determining the presence of "deprivation or violation of the personal liberty of another," "duress," and "coercion" as described in this section.~~

~~SEC. 3.~~ SEC. 2. Section 236.23 is added to the Penal Code, to read:

236.23. (a) ~~It~~ In addition to any other affirmative defense, it is a defense to a charge of a nonviolent crime that the defendant or minor committed person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and of reasonable fear of harm, except that this defense does not apply to a serious felony described in subdivision (c) of Section 1192.7, a violent felony described in subdivision (c) of Section 667.5, or an offense in Section 236.1.

(b) A defendant asserting the affirmative defense specified in subdivision (a) has the burden of establishing the affirmative defense by a preponderance of the evidence.

~~(c) A person charged with a crime constituting or arising from a commercial sex act, including violation of subdivision (b) of Section 647 or Section 653.22, who was under 18 years of age at the time of the offense shall be conclusively presumed to have committed the offense as a direct result of being a victim of human trafficking.~~

~~(d) The court shall independently determine whether the conditions set forth in subdivision (e) are met and, if so, find that the affirmative defense applies to the charge and to dismiss it, whether or not the defendant asserts the affirmative defense.~~

(e) Certified records of a federal, state, tribal, or local court or governmental agency documenting the person's status as a victim of human trafficking at the time of the offense, including identification of a victim of human trafficking by a peace officer pursuant to Section 236.2 and certified records of approval notices or enforcement certifications generated from federal immigration proceedings, ~~create a rebuttable presumption that an offense was committed by the defendant as a direct result of being a human trafficking victim~~ **may be presented to establish an affirmative defense.**

(f) The affirmative defense may be asserted at any time before the entry of a plea of guilty or nolo contendere or admission to the truth of the charges and before the conclusion of any trial for the offense. If asserted before the preliminary hearing held in a case, the affirmative defense shall, upon request by the defendant, be determined at the preliminary hearing.

(g) If the defendant prevails on the affirmative defense provided under subdivision (a) ~~or if the court dismisses charges under subdivision (e)~~, the defendant is entitled to all of the following relief:

(1) The court shall order that all records in the case be sealed pursuant to Section 851.86 and shall grant the relief provided in subdivision (b) of Section 851.8.

(2) The ~~victim~~ **person** shall be released from all penalties and disabilities resulting from the charge, and all actions and proceedings by law enforcement personnel, courts, or other government employees that led to the charge shall be deemed not to have occurred.

(3) (A) The ~~human trafficking victim~~ **person** may in all circumstances state that he or she has never been arrested for, or charged with, the crime that is the subject of the charge or conviction, including without limitation in response to questions on employment, housing, financial aid, or loan applications.

(B) The ~~human trafficking victim~~ **person** may not be denied rights or benefits, including, without limitation, employment, housing, financial aid, welfare, or a loan or other financial accommodation, based on the arrest or charge or the ~~human trafficking victim's~~ **person's** failure or refusal to disclose the existence of or information concerning those events.

(C) The ~~human trafficking victim~~ **person** may not be thereafter charged or convicted of perjury or otherwise of giving a false statement by reason of having failed to disclose or acknowledge the existence of the charge, or any arrest, indictment, trial, or other proceedings related thereto.

(h) If, in any proceeding pursuant to Section 602 of the Welfare and Institutions Code, the juvenile court finds that the offense on which the proceeding is based was committed as a direct result of the minor being a human trafficking victim, **and the affirmative defense specified in subdivision (a) is established by a preponderance of the evidence**, the court shall dismiss the proceeding and order the relief prescribed in Section 786 of the Welfare and Institutions Code.

SEC. 4. Section 11105 of the Penal Code is amended to read:

~~11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.~~

~~(2) As used in this section:~~

~~(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.~~

~~(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.~~

~~(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:~~

~~(1) The courts of the state.~~

~~(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (c) of Section 830.2, subdivision (a) of Section 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and (b) of Section 830.5.~~

~~(3) District attorneys of the state.~~

~~(4) Prosecuting city attorneys of any city within the state.~~

~~(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.~~

~~(6) Probation officers of the state.~~

~~(7) Parole officers of the state.~~

~~(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.~~

~~(9) A public defender or attorney of record when representing a person in a criminal case, or a parole, mandatory supervision pursuant to paragraph (5) of subdivision (h) of Section 1170, or postrelease community supervision revocation or revocation extension proceeding, and, if authorized, access by statutory or decisional law.~~

~~(10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.~~

~~(11) Any city or county, city and county, district, or any officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.~~

~~(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).~~

~~(13) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history~~

~~information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.~~

~~(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.~~

~~(15) Any managing or supervising correctional officer of a county jail or other county correctional facility.~~

~~(16) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of humane officers.~~

~~(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.~~

~~(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.~~

~~(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving criminal record offender information pursuant to this section.~~

~~(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall~~

~~apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.~~

~~(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.~~

~~(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.~~

~~(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.~~

~~(24) A humane officer pursuant to Section 14502 of the Corporations Code for the purposes of performing his or her duties.~~

~~(25) A public agency described in subdivision (b) of Section 15975 of the Government Code, for the purpose of oversight and enforcement policies with respect to its contracted providers.~~

~~(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:~~

~~(1) Any public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.~~

~~(2) To a peace officer of the state other than those included in subdivision (b).~~

~~(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.~~

~~(4) To a peace officer of another country.~~

~~(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.~~

~~(6) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.~~

~~(7) The courts of the United States, other states, or territories or possessions of the United States.~~

~~(8) Peace officers of the United States, other states, or territories or possessions of the United States.~~

~~(9) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.~~

~~(10) (A) (i) Any public utility, as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment, may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.~~

~~(ii) If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.~~

~~(iii) Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.~~

~~(iv) A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.~~

~~(v) This section shall not be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.~~

~~(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.~~

~~(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.~~

~~(D) (i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.~~

~~(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.~~

~~(11) To any campus of the California State University or the University of California, or any four year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.~~

~~(12) To any foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.~~

~~(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.~~

~~(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 26190, and former Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred~~

~~pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.~~

~~(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.~~

~~(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.~~

~~(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.~~

~~(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.~~

~~(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.~~

~~(k) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.~~

~~(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:~~

~~(A) Every conviction rendered against the applicant.~~

~~(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.~~

~~(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided, however, that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.~~

~~(D) Every successful diversion.~~

~~(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.~~

~~(F) Sex offender registration status of the applicant.~~

~~(1) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101, and the information is to be used for criminal justice employment, licensing, or certification purposes.~~

~~(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:~~

~~(A) Every conviction rendered against the applicant.~~

~~(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.~~

~~(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.~~

~~(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.~~

~~(E) Sex offender registration status of the applicant.~~

~~(m) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.~~

~~(2) Notwithstanding any other provision of law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:~~

~~(A) Every conviction of an offense rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.~~

~~(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.~~

~~(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.~~

~~(D) Sex offender registration status of the applicant.~~

~~(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.~~

~~(n) (1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:~~

~~(A) Paragraph (10) of subdivision (c), when the information is to be used by a cable corporation.~~

~~(B) Section 11105.3 or 11105.4.~~

~~(C) Section 15660 of the Welfare and Institutions Code.~~

~~(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.~~

~~(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:~~

~~(A) Every conviction, except a conviction for which relief has been granted pursuant to Section 1203.49, rendered against the applicant for a violation or attempted violation of any offense~~

~~specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.~~

~~(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.~~

~~(C) Sex offender registration status of the applicant.~~

~~(o) (1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 379 or 550 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.~~

~~(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:~~

~~(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 550 of the Financial Code, except a conviction for which relief has been granted pursuant to Section 1203.49.~~

~~(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.~~

~~(p) (1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.~~

~~(2) Notwithstanding any other law, whenever state summary criminal history information is initially furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:~~

~~(A) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49.~~

~~(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.~~

~~(C) Sex offender registration status of the applicant.~~

~~(q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent notification pursuant to Section 11105.2.~~

~~(r) This section does not require the Department of Justice to cease compliance with any other statutory notification requirements.~~

~~(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.~~

~~(t) Whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual defined in subdivisions (k) to (p), inclusive, and the information is to be used for employment, licensing, or certification purposes, the authorized agency, organization, or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant.~~

~~(u) State summary criminal history information compiled by the Attorney General and disseminated pursuant to this section shall exclude any charge or conviction for which relief has been granted pursuant to Section 236.23.~~

Date of Hearing: April 12, 2016
Chief Counsel: Gregory Pagan

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

AB 1772 (Beth Gaines) – As Introduced February 3, 2016

SUMMARY: Increases the penalties for various forms of "peeping" secret videotaping or secretly photographing a person in which that person has a reasonable expectation of privacy from a misdemeanor to an alternate felony/misdemeanor. Specifically, **this bill:**

- 1) Provides that it is an alternate felony/misdemeanor punishable, as a misdemeanor, by up to six months in a county jail, by a fine not to exceed \$1,000, or both, and punishable, as a felony, by 16 months, 2, or 3 years in a county jail, by a fine not to exceed \$2,000, or both, for any person while loitering, wandering or prowling on the private property of another, at any time, to peek in the door or window of any inhabited dwelling or structure, without visible or lawful business with the owner or occupant.
- 2) Makes it an alternate felony/misdemeanor punishable, as a misdemeanor, by up to six months in a county jail, by a fine not to exceed \$1,000, or both, and punishable, as a felony, by 16 months, 2, or 3 years in a county jail, by a fine not to exceed \$2,000, or both, for any person to look through a hole, or otherwise use an instrumentality, such as binoculars, a camera, or camcorder, to view the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of the person or people inside.
- 3) Provides that it is an alternate felony/misdemeanor punishable, as a misdemeanor, by up to six months in a county jail, by a fine not to exceed \$1,000, or both, and punishable, as a felony, by 16 months, 2, or 3 years in a county jail, by a fine not to exceed \$2,000, or both, for any person to use a device to secretly videotape or record another person under or through his or her clothing, for the purpose of viewing that person's body or undergarments without consent and under circumstances in which that person has a reasonable expectation of privacy, if the perpetrator commits the act with a prurient intent.
- 4) Makes it an alternate felony/misdemeanor punishable, as a misdemeanor, by up to six months in a county jail, by a fine not to exceed \$1,000, or both, and punishable, as a felony, by 16 months, 2, or 3 years in a county jail, by a fine not to exceed \$2,000, or both, for any person who uses a concealed instrumentality to secretly videotape or record another person who is in a state of full or partial undress, for the purpose of viewing that person's body or undergarments without consent while that person is in a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that individual.

- 5) Makes a second or subsequent offense of invasion of privacy with the naked eye or with the use of an instrumentality punishable as a misdemeanor by up to one year in a county jail, by a fine not to exceed \$2,000, or both, and as felony by 3, 5, or 7 years in a county jail, by a fine not to exceed \$5,000, or both.
- 6) Provides that if the victim of a "peeping" offense was a minor at the time of the offense, then the crime is punishable as a misdemeanor by up to one year in a county jail, by a fine not to exceed \$2,000, or both, and as felony by 3, 5, or 7 years in a county jail, by a fine not to exceed \$5,000, or both.
- 7) States that any person convicted of secretly videotaping or photographing a person in a state of full or partial undress is punishable as a misdemeanor by one up to one year in jail, a fine of up to \$5,000, or both, and as felony by 3, 5, or 7 years in a county jail, by a fine not to exceed \$5,000, or both.

EXISTING LAW:

- 1) Provides that it is a misdemeanor punishable by up to six months in a county jail, by a fine not to exceed \$1,000 or both, for any person while loitering, wandering or prowling on the private property of another, at any time, to peek in the door or window of any inhabited dwelling or structure, without visible or lawful business with the owner or occupant. (Pen Code, § 647, subd. (a).)
- 2) Makes it a misdemeanor punishable by up to six months in a county jail, by a fine not to exceed \$1,000 or both, for any person to look through a hole, or otherwise use an instrumentality, such as binoculars, a camera, or camcorder, to view the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of the person or people inside. (Pen. Code, § 647, subd. (j)(1).)
- 3) Makes it a misdemeanor punishable by up to six months in a county jail, by a fine not to exceed \$1,000 or both, for any person to use a device to secretly videotape or record another person under or through his or her clothing, for the purpose of viewing that person's body or undergarments without consent and under circumstances in which that person has a reasonable expectation of privacy, if the perpetrator commits the act with a prurient intent. (Pen. Code, § 647, subd. (j)(2).)
- 4) Makes it a misdemeanor punishable by up to six months in a county jail, by a fine not to exceed \$1,000 or both, for any person who uses a concealed instrumentality to secretly videotape or record another person who is in a state of full or partial undress, for the purpose of viewing that person's body or undergarments without consent while that person is in a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that individual. (Pen. Code, § 647, subd. (j)(3).)

- 5) Makes a second or subsequent offense of invasion of privacy with the naked eye or with the use of an instrumentality is punishable by one up to one year in jail, a fine of up to \$2,000, or both. (Pen. Code, § 647, subd. (1)(1).)
- 6) Provides that if the victim of a "peeping" offense was a minor at the time of the offense, then the crime is punishable by one up to one year in jail, a fine of up to \$2,000, or both. (Pen. Code, § 647, subd. (1)(2).)
- 7) States that any person convicted of secretly videotaping or photographing a person in a state of full or partial undress is punishable by one up to one year in jail, a fine of up to \$5,000, or both. (Pen. Code, § 647.7, subd. (c).)
- 8) Provides that if a defendant is convicted of peeking in the door or window of any inhabited dwelling or structure or of looking into, viewing, or filming another person in a changing room, bathroom or the interior of any area in which the occupant has a reasonable expectation of privacy, the court may require counseling as a condition of probation. (Pen. Code, §647.7, subd. (a).]
- 9) Defines a felony as a "crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170." (Pen. Code, §17, subd. (a).)
- 10) States that the place of imprisonment for a felony offense is state prison, unless it is county-jail eligible under Penal Code section 1170, subdivision (h). (Pen. Code, §18, subd. (a).)
- 11) Provides that, except in cases where a different punishment is prescribed by law, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding \$1,000, or by both. (Pen. Code, §19.)
- 12) Prohibits a term of more than one year in the county jail except for executed felony sentences under Penal Code section 1170, subdivision (h). (Pen. Code § 19.2.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, " Existing law provides for persons, who are convicted of "peeping tom" offenses, to be punished as a misdemeanor offense. These offenses include the video recording of a person in a state of full or partial undress, loitering/looking through a window that isn't theirs for purposes of invading someone's privacy, and intentionally distributing images of intimate body parts.

Because the punishment of a misdemeanor is currently limited to a maximum of six months in jail and/or a \$1,000 fine, these offenders often escape proper and necessary punishment for violating someone's right to privacy, as District Attorneys are often pleading defendants down to lesser punishments in order to not further clog the court system.

AB 1772 will give a District Attorney the discretion of seeking harsher penalties for peeping activities. The maximum penalties would be doubled from existing law and also provide for a felony option if the District Attorney feels it's necessary to seek it."

- 2) **Argument in Support:** None Submitted
- 3) **Argument in Opposition:** According to the *California Public Defenders Association*, "AB 1772 would change what has always been non-violent misdemeanor "disorderly conduct" into a felony crime and impose severe penalties on non-violent behavior. Existing law establishes the offense of disorderly conduct to include, among other acts, specified invasions of privacy and the act of, while loitering, prowling, or wandering upon the private property of another, at any time, peeking in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant. Except as specified, existing law makes those offenses punishable by imprisonment in a county jail not exceeding 6 months, by a fine not exceeding \$1,000, or by both that fine and imprisonment. AB1772 would *instead* provide that those offenses could now be punishable by imprisonment in a county jail for not more than 6 months, by a fine of \$1,000, or by both that fine and imprisonment, *or* punishable by imprisonment in a county jail for 16 months, or 2 or 3 years, by a fine of \$2,000, or by both that fine and imprisonment.

"Additionally, although existing law makes a second or subsequent violation of the invasion of privacy provisions described above punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment, AB 1772 would expand that punishment to include an additional punishment of imprisonment in a county jail for 3, 5, or 7 years, by a fine not exceeding \$5,000, or by both that fine and imprisonment. The bill would authorize the same punishments if the victim of one of those invasions of privacy was a minor at the time of the offense.

"Finally, existing law provides that every person who, having been convicted of violating the peeping or invasion of privacy provisions described above, who subsequently uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person, regardless of whether it is a first, second, or subsequent violation of that specific invasion of privacy provision, shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$5,000, or by both that fine and imprisonment. This bill would provide that those violations are punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$5,000, or by both that fine and imprisonment, or punishable by imprisonment in a county jail for 3, 5, or 7 years, by a fine not exceeding \$10,000, or by both that fine and imprisonment.

“Making disorderly conduct, which has always been a misdemeanor, and in this case the specific act of peeking into someone’s private property, a felony and potentially tripling the punishments for initial and subsequent violations would be bad public policy, and provide a punishment that is far from commensurate with the crime.”

4) Prior Legislation:

- a) AB 1512 (Donnelly) of the 2012 Legislative Session made the crime of invasion of privacy with the naked eye or with the use of an instrumentality, otherwise known as "peeping," a felony punishable in the state prison. AB 1512 failed passage in the Assembly Public Safety Committee.
- b) AB 2523 (Garcia) of the 2004 Legislative Session increased the penalty from a misdemeanor to an alternate misdemeanor/felony for a first offense of secret videotaping or recording a person under the age of 18. Made a second or subsequent conviction a felony. AB 2523 failed passage in the Assembly Public Safety Committee.
- c) AB 2640 (Cox) of the 2004 Legislative Session created a new felony of loitering, prowling, or wandering upon the private property of another at any time without visible or lawful business with the owner or occupant. AB 2640 failed passage in Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association

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 12, 2016
Chief Counsel: Gregory Pagan

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

AB 1909 (Lopez) – As Amended March 28, 2016
As Proposed to be Amended in Committee

SUMMARY: Expands existing provisions of law that make it a felony for a peace officer to willfully and intentionally tamper with evidence to include a prosecutor who willfully and intentionally withholds exculpatory evidence. Specifically, this bill:

- 1) Provides that a prosecuting attorney who knowingly, willfully, and intentionally wrongfully alters, modifies, or withholds any physical matter, digital image, video recording, or relevant exculpatory material or information that is required to be disclosed, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry is guilty of a felony.
- 2) Makes the felony offense of a prosecuting attorney who willfully and intentionally withholds exculpatory evidence punishable by 16 months, 2, or 3 years in a county jail.

EXISTING LAW:

- 1) Makes it a misdemeanor for a person to knowingly, willfully, and intentionally alter, modify, plant, place, manufacture, conceal, or move any physical matter, with specific intent that the action will result in a person being charged with a crime, or with the specific intent that the physical matter be will be wrongfully produced as genuine or true upon any trial, proceeding or inquiry. (Pen. Code, § 141, subd. (a).)
- 2) Makes it a felony for a peace officer to knowingly, willfully, and intentionally alter, modify, plant, place, manufacture, conceal, or move any physical matter, with specific intent that the action will result in a person being charged with a crime, or with the specific intent that the physical matter be will be wrongfully produced as genuine or true upon any trial, proceeding or inquiry. (Pen. Code, § 141, subd. (b).)
- 3) Requires the prosecuting attorney to disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:
 - a) The names and addresses of persons the prosecutor intends to call as witnesses at trial;
 - b) Statements of all defendants;

- c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged;
 - d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial;
 - e) Any exculpatory evidence; and
 - f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial. (Pen. Code, § 1054.1.)
- 4) Requires the defendant and his or her attorney to disclose to the prosecuting attorney:
- a) The names and addresses of persons, other than the defendant, he or she intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons, or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial; and,
 - b) Any real evidence which the defendant intends to offer in evidence at the trial. (Pen. Code, § 1054.3 subd. (a).)
- 5) States, before a party may seek court enforcement of any of the required disclosures, the party shall make an informal request of opposing counsel for the desired materials and information. If within 15 days the opposing counsel fails to provide the materials and information requested, the party may seek a court order. Upon a showing that a party has not complied with the disclosure requirements and upon a showing that the moving party complied with the informal discovery procedure provided in this subdivision, a court may make any order necessary to enforce the provisions of this chapter, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order. Further, the court may advise the jury of any failure or refusal to disclose and of any untimely disclosure. (Pen. Code, § 1054.5, subd. (b).)
- 6) Allows a court to prohibit the testimony of a witness upon a finding that a party has failed to provide materials as required only if all other sanctions have been exhausted. The court shall not dismiss a charge unless required to do so by the Constitution of the United States. (Pen. Code, § 1054.5, subd. (c).)
- 7) Provides that the required disclosures shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or

possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement. (Pen. Code, § 1054.7.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Prosecutorial misconduct is an epidemic in our nation. Bad-acting prosecutors tarnish the image of otherwise hard-working, justice-seeking, and law-abiding prosecutors. However, this small group of bad-acting prosecutors have a destructive impact on our criminal justice system. Not only do these bad-acting prosecutors put their conviction rate ahead of seeking justice, these bad actors often send innocent people to prison for a very long time. These bad actions forces the public to lose confidence in the system while costing the systems millions of dollars in costly appeals.

AB 1909 would provide much needed oversight, accountability, and criminal consequences for these bad actors. Currently, there are no criminal consequences for prosecutors who violates the rules and send innocent people to prison. The sanctions currently in place rarely, if ever, are used against these bad actors. These bad-acting prosecutors must be held accountable for their life-altering misdeeds. This measure would provide a much needed deterrent effect and hopefully lessen the number of wrongfully convicted.

- 2) **Background:** In a criminal trial, a defendant is presumed innocent and the prosecution has the burden to prove beyond a reasonable doubt that the defendant is guilty. In order to ensure a fair trial, the prosecuting attorney has a constitutional and statutory duty to disclose specified information to the defendant. The jury instructions on reasonable doubt states, "Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt. In deciding whether the People have proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the defendant[s] guilty beyond a reasonable doubt, (he/she/they) (is/are) entitled to an acquittal and you must find (him/her/them) not guilty." (CALCRIM No. 103.)

In the landmark case of *Brady v. Maryland* (1963) 373 U.S. 83, the Supreme Court held that a defendant has a constitutionally protected privilege to request and obtain from the prosecution evidence that is either material to the guilt of the defendant or relevant to the punishment to be imposed. The Supreme Court in a later case explained "[u]nder the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness. We have long interpreted this standard of fairness to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. To safeguard that right, the Court has developed 'what might loosely be called the area of constitutionally guaranteed access to evidence.' [Citing *United States v. Valenzuela-Bernal* (1982) 458 U.S. 858, 867.] Taken together, this group of constitutional privileges delivers exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system." [*California v. Trombetta* (1984) 467 U.S. 479, 485.]

Even in the absence of a specific request, the prosecution has a constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt about the defendant's guilt. [*United States v. Agurs* (1996) 427 U.S. 97,112.] Generally, a specific request is not necessary for parties to receive discovery, however, an informal discovery request must be made before a party can request formal court enforcement of discovery. (Pen. Code, § 1054.5, subd.(b).)

- 3) **Current Remedies:** The prosecuting attorney is required, both constitutionally and statutorily, to disclose specified information and materials to the defendant. In California, the defendant is also statutorily required to disclose specified information and materials to the prosecution. (Pen. Code, § 1054.3, subd.(a).) If either party intentionally fails to disclose the required evidence, the court may make any order necessary to enforce the disclosure requirements, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order. The court may also advise the jury of any failure or refusal to disclose and of any untimely disclosure. (Penal Code Section 1054.5(b).) Under existing law, courts have the discretion in determining the appropriate sanction that should be imposed because of the untimely disclosure of discoverable records and evidence.

According to a Yale Law Journal article, "[a] prosecutor's violation of the obligation to disclose favorable evidence accounts for more miscarriages of justice than any other type of malpractice, but is rarely sanctioned by courts, and almost never by disciplinary bodies." The very nature of *Brady* violations—that evidence was suppressed—means that defendants learn of violations in their cases only fortuitously, when the evidence surfaces through an alternate channel. Nevertheless, a recent empirical study of all 5760 capital convictions in the United States from 1973 to 1995 found that prosecutorial suppressions of evidence accounted for sixteen percent of reversals at the state post-conviction stage. And a study of 11,000 cases involving prosecutorial misconduct in the years since the *Brady* decision identified 381 homicide convictions that were vacated "because prosecutors hid evidence or allowed witnesses to lie." [Footnotes omitted; Dewar, *A Fair Trial Remedy for Brady Violations*, Yale Law Journal (2006) p. 1454.]

"When a prosecutor is inclined against disclosing a piece of arguably favorable evidence, few considerations weigh in favor of disclosure. Trial courts are reticent to grant motions to compel disclosure of alleged *Brady* evidence, examine government files, or hold prosecutors in contempt. Defendants only rarely unearth suppressions. And, even when they do, their convictions are rarely overturned because they face a tremendous burden on appeal: showing that the suppression raises a 'reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.' Finally, lawyers' professional associations do not frequently discipline prosecutors for even the most egregious *Brady* violations." (Footnotes omitted; *Id.* at p. 1456.)

The author of the article proposed "when suppressed favorable evidence comes to light during or shortly before a trial, the trial court should consider instructing the jury on *Brady* law and allowing the defendant to argue that the government's failure to disclose the evidence raises a reasonable doubt about the defendant's guilt. . . . [I]nstead of curing the *Brady* violation through reversal on appeal, the remedy corrects the trial itself. In contributing to a jury's decision to acquit, the remedy would provide more immediate relief

than a post-conviction reversal. Yet, because the remedy would not free or even grant a new trial to defendants of whose guilt the government has sufficient evidence, the remedy would not run afoul of those who decry the social costs of other 'punishments' for prosecutors, such as overturning convictions or dismissing charges. (Footnotes omitted; *Id.* at pp. 1456-1457.)

"The remedy would exist primarily for the benefit of defendants when the government's tardiness or failure to disclose favorable evidence permanently prejudiced the defense. Permanent prejudice might consist of the disintegration of tangible evidence or the death or disappearance of a witness or alternative suspect. In such cases, neither granting a continuance for further investigation nor the fact that the defendant may be able to make some use of the belatedly disclosed evidence is a sufficient remedy." (Footnotes omitted; *Id.* at p. 1458.)

- 4) **CALCRIM 306 Jury Instruction:** In addition to sanctions, untimely disclosure of required evidence is addressed in the CALCRIM 306 jury instruction, which reads in relevant part:

"Both the People and the defense must disclose to the other their evidence to the other before trial, within the time limits set by law. Failure to follow the rule may deny the other side the chance to produce all relevant evidence, to counter opposing evidence, or to receive a fair trial."

"An Attorney for the (People/Defense) failed to disclose [description of the evidence that was not disclosed] within the legal time period."

"In evaluating the weight and significance of that evidence, you may consider the effect, if any, of that late discovery."

Is this instruction sufficient to remedy possible prejudice as a result of late disclosure of required evidence rather than criminalizing this conduct?

- 5) **Argument in Support:** According to the *California Attorneys for Criminal Justice*, "" This bill would create criminal penalties for bad-acting prosecuting attorneys that knowingly and intentionally withhold exculpatory evidence from the defense in violation of their ethical, state and constitutional duties under *Brady v. Maryland*, 373 U.S. 83 (1963).

"Firstly, we would like to acknowledge that the large majority of prosecuting attorneys do their jobs well, with integrity and dignity. These prosecutors seek to find justice above all other matters. However, the small group of bad-actors spoil the reputation of prosecutors.

"CACJ has made it an organizational priority to highlight and address issues of prosecutorial misconduct. In 2014, prominent 9th Circuit Justice, Alex Kozinski, stated that prosecutorial misconduct is an epidemic in our criminal justice system. Nationwide, we've seen stories of innocent persons being sent to prison for decades because of a bad-acting prosecutor placing their self-interest and conviction rate ahead of seeking justice.

"This epidemic has created a much larger growing lack of confidence in our criminal justice system. According to the National Registry of Exonerations, a project of the University of Michigan Law School, there has been 1,700 exonerations nationwide since 1989. Forty five (45) percent of the exonerations found were as a result of official misconduct, which is

defined as police, prosecutors, or other governmental officials significantly abusing their authority or the judicial process in a manner that contributed to the exoneree's conviction. California has also experienced a number of *Brady* violation.

"In a report by the Veritas Initiative from the Santa Clara School of Law, a review on 10 years of prosecutorial misconduct occurring in California showed that California court repeatedly failed to take meaningful action when the court found that the prosecutorial misconduct was harmful.

"Current law, as passed last year in AB 1328, requires a court to notify the state bar of such a knowing and intentional Brady violation. However, besides this option, there are no criminal consequences for such intentional acts. When a prosecutor intentionally withholds exculpatory evidence, an unknowing and innocent defendant can be convicted, sentence, and incarceration for a long time. These bad-acting prosecutors rarely, if ever, face any actually consequences for their actions."

- 6) **Argument in Opposition:** According to the *California District Attorneys Association*, "This bill would create a new felony, applicable only to prosecuting attorneys who fail to meet their statutory and constitutional discovery obligations.

"Proposition 115 (1990) established Penal Code section 1054 and codified the principle of reciprocal discovery, under which both the prosecution and defense are obligated to turn over specified materials. When either side fails to comply with its statutory discovery obligations, PC 1054.5 provides the court with authority to grant a variety of remedies, depending on the circumstances. The court may order immediate disclosure of the material, initiate contempt proceedings, delay or prohibit testimony, grant a continuance, "or any other lawful order." Additionally, individual attorneys also face State Bar sanctions, including potential disbarment, for unethical conduct, and, in cases involving the intentional destruction or secreting of evidence, criminal sanctions under PC 141(a).

"Further, just last year, this Legislature passed AB 1328 (Chapter 467, Statutes of 2015), which requires a court to inform the State Bar when a prosecutor deliberately and intentionally withholds relevant or material exculpatory evidence or information in violation of law, and also allows for the disqualification of an individual prosecutor, or even an entire office, when this type of misconduct is found to exist.

"Now, before the ink is even dry on the Governor's signature of that bill, comes an outrageous attempt to criminalize prosecutors for conduct that falls well short of criminal.

"AB 1909 would make it a felony for a prosecutor to "knowingly, willfully, intentionally, and wrongfully" tamper with or withhold physical evidence, along with "relevant exculpatory material or information". In the context of criminal discovery, courts have held that "knowing" violations may include negligent or inadvertent conduct. Therefore, this bill may criminalize prosecutors who unintentionally turn over discovery once trial has commenced.

“As previously mentioned, AB 1909 creates a new felony applying only to the prosecution, which we believe violates Proposition 115 (1990). Since the language only makes it a felony for the *prosecutor* to engage in this type of conduct, while the defense attorney would only be subject to the misdemeanor in existing PC 141(a), adopting the measure would upset the constitutionally mandated balance of reciprocity and duality in both the requirements and penalties that are the cornerstones of criminal discovery in California.

“To the extent that discovery violations are committed by either the prosecution or the defense in a criminal matter, existing law already provides for a variety of remedies, including, in egregious cases, prosecution under PC 141(a). We believe that current sanctions are sufficient to police this type of misconduct.”

7) **Prior Legislation:**

- a) AB 256 (Jones-Sawyer), Chapter 463, Statutes of 2015, expanded the prohibition against knowingly, willfully, and intentionally tampering with evidence to include digital images and video recordings owned by another.
- b) AB 1328 (Weber), Chapter 467, Statutes of 2015, required the court to notify the State Bar if a prosecuting attorney has intentionally failed to disclose relevant exculpatory evidence, and authorized the court to disqualify the prosecuting attorney from the case, and the prosecuting attorney's office if other employees in the office knowingly participated in, or sanctioned the withholding of the exculpatory evidence.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
California Public Defenders Association

Opposition

California District Attorneys Association

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

Amendments Mock-up for 2015-2016 AB-1909 (Lopez (A))

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

Mock-up based on Version Number 98 - Amended Assembly 3/28/16
Submitted by: Greg Pagan, Assembly Public Safety Committee

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

SECTION 1. Section 141 of the Penal Code is amended to read:

141. (a) Except as provided in subdivision (b), a person who knowingly, willfully, intentionally, and wrongfully alters, modifies, plants, places, manufactures, conceals, or moves any physical matter, digital image, or video recording, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter will be wrongfully produced as genuine or true upon a trial, proceeding, or inquiry, is guilty of a misdemeanor.

(b) A peace officer who knowingly, willfully, intentionally, and wrongfully alters, modifies, plants, places, manufactures, conceals, or moves any physical matter, digital image, or video recording, with specific intent that the action will result in a person being charged with a crime or with the specific intent that the physical matter, digital image, or video recording will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by two, three, or five years in the state prison.

(c) A prosecuting attorney who knowingly, willfully, intentionally, and wrongfully alters, modifies, or withholds any physical matter, digital image, video recording, or relevant exculpatory material or information that is required to be disclosed, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for **16 months**, two, or three, ~~or five~~ years.

(d) This section does not preclude prosecution under both this section and any other law.

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 12, 2016
Counsel: Gabriel Caswell

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

AB 1912 (Achadjian) – As Amended March 15, 2016

SUMMARY: SUMMARY: Requires a person convicted of soliciting a minor, who the person knew or reasonably should have known, was both a minor and a victim of human trafficking to register as a sex offender for a period of five years after a first conviction, 10 years after a second conviction, and 20 years after a third or subsequent conviction.

EXISTING LAW:

- 1) Requires persons convicted of specified sex offenses to register for life, or reregister if the person has been previously registered, upon release from incarceration, placement, commitment, or release on probation. States that the registration shall consist of all of the following (Pen. Code, § 290.015, subd. (a).):
 - a) A statement signed in writing by the person, giving information as shall be required by DOJ and giving the name and address of the person's employer, and the address of the person's place of employment, if different from the employer's main address;
 - b) Fingerprints and a current photograph taken by the registering official;
 - c) The license plate number of any vehicle owned by, regularly driven by or registered in the name of the registrant;
 - d) Notice to the person that he or she may have a duty to register in any other state where he or she may relocate; and,
 - e) Copies of adequate proof of residence, such as a California driver's license or identification card, recent rent or utility receipt or any other information that the registering official believes is reliable.
- 2) States every person who is required to register, as specified, who is living as a transient shall be required to register for the rest of his or her life as follows:
 - a) He or she shall register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to Penal Code Section 290(b), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she shall register in the jurisdiction in which he or she is physically present on the fifth working day following release, as

specified. Beginning on or before the 30th day following initial registration upon release, a transient shall reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient shall reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

- b) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with Penal Code Section 290(b). A person registered at a residence address in accordance with that provision who becomes transient shall have five working days within which to reregister as a transient in accordance with existing law.
 - c) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in existing law. A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the DOJ annual update form, including the information.
 - d) A transient shall, upon registration and re-registration, provide current information as required on the DOJ registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required re-registration. (Pen. Code, § 290.011, subs. (a) to (d).)
- 3) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony if the offense requiring registration was a felony or if the person has a prior conviction of failing to register. (Pen. Code, § 290.018, subs. (a)&(b).)
 - 4) Provides that within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the DOJ. (Pen. Code § 290.015, subd. (b).)
 - 5) States that a misdemeanor failure to register shall be punishable by imprisonment in a county jail not exceeding one year, and a felony failure to register shall be punishable in the state prison for 16 months, two or three years. (Pen. Code, § 290.018, subs. (a)&(b).)
 - 6) Provides that the DOJ shall make available information concerning persons who are required to register as a sex offender to the public via an internet website. The DOJ shall update the website on an ongoing basis. Victim information shall be excluded from the website. (Pen. Code § 290.46.) The information provided on the website is dependent upon what offenses

the person has been convicted of, but generally includes identifying information and a photograph of the registrant.

- 7) Generally prevents the use of the information on the website from being used in relation to the following areas: (Pen. Code, § 290.46, subd. (1)(2).)
 - a) Health insurance;
 - b) Insurance;
 - c) Loans;
 - d) Credit;
 - e) Employment;
 - f) Education, scholarships, or fellowships;
 - g) Housing or accommodations; and
 - h) Benefits, privileges, or services provided by any business establishment.
- 8) Provides that any person who solicits, agrees to engage in, or engages in an act of prostitution is guilty of a misdemeanor. The crime does not occur unless the person specifically intends to engage in an act of prostitution and some act is done in furtherance of agreed upon act. Prostitution includes any lewd act between persons for money or other consideration. (Pen. Code, § 647, subd. (b).)
- 9) Provides that if the defendant agreed to engage in an act of prostitution, the person soliciting the act of prostitution need not specifically intend to engage in an act or prostitution. (Pen. Code § 647, subd. (b).)
- 10) Provides that where any person is convicted of a second prostitution offense, the person shall serve a sentence of at least 45 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation. (Pen. Code § 647, subd. (k).)
- 11) Provides that where any person is convicted for a third prostitution offense, the person shall serve a sentence of at least 90 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation. (Pen. Code § 647, subd. (k).)
- 12) Defines “unlawful sexual intercourse” as an act of sexual intercourse accomplished with a person under the age of 18 years, when no other aggravating elements – such as force or duress – are present. (Pen. Code § 261.5, subd. (a).)
- 13) Provides the following penalties for unlawful sexual intercourse:
 - a) Where the defendant is not more than three years older or three years younger than the minor, the offense is a misdemeanor;

- b) Where the defendant is more than three years older than the minor, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to \$1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up to \$10,000; or,
 - c) Where the defendant is at least 21 years of age and the minor is under the age of 16, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to \$1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up to \$10,000. (Pen. Code § 261.5, subd (b)-(d).)
- 14) Provides that in the absence of aggravating elements each crime of sodomy, oral copulation or penetration with a foreign or unknown object with a minor is punishable as follows:
- a) Where the defendant is over 21 and the minor under 16 years of age, the offense is a felony, with a prison term of 16 months, two years or three years.
 - b) In other cases sodomy with a minor is a wobbler, with a felony prison term of 16 months, two years or three years. (Pen. Code §§ 286, subd. (b), 288a, subd. (b), 289, subd. (h).)
- 15) Provides that where each crime of sodomy, oral copulation or penetration with a foreign or unknown object with a minor who is under 14 and the perpetrator is more than 10 years older than the minor, the offense is a felony, punishable by a prison term of 3, 6 or 8 years. (Pen. Code §§ 286, subd. (c)(1), 288a, subd. (c)(1), 289, subd. (j).)
- 16) Provides that any person who engages in lewd conduct – any sexually motivated touching or a defined sex act – with a child under the age of 14 is guilty of a felony, punishable by a prison term of 3, 6 or 8 years. Where the offense involves force or coercion, the prison term is 5, 8 or 10 years. (Pen. Code § 288, subd. (b).)
- 17) Provides that where any person who engages in lewd conduct with a child who is 14 or 15 years old, and the person is at least 10 years older than the child, the person is guilty of an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to \$1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up to \$10,000. (Pen. Code § 288, subd. (c)(1).)
- 18) Includes numerous crimes concerning sexual exploitation of minors for commercial purposes. These crimes include:
- a) Pimping: Deriving income from the earnings of a prostitute, deriving income from a place of prostitution, or receiving compensation for soliciting a prostitute. Where the victim is a minor under the age of 16, the crime is punishable by a prison term of three, six or eight years. (Pen. Code § 266h, subs. (a)-(b);
 - b) Pandering: Procuring another for prostitution, inducing another to become a prostitute, procuring another person to be placed in a house of prostitution, persuading a person to remain in a house of prostitution, procuring another for prostitution by fraud, duress or abuse of authority, and commercial exchange for procurement. (Pen. Code § 266i, subd. (a).);

- c) Procurement: Transporting or providing a child under 16 to another person for purposes of any lewd or lascivious act. The crime is punishable by a prison term of three, six, or eight years, and by a fine not to exceed \$15,000. (Pen. Code § 266j.)
 - d) Taking a minor from her or his parents or guardian for purposes of prostitution. This is a felony punishable by a prison term of 16 months, two years, or three years and a fine of up to \$2,000. (Pen. Code § 267.); and,
- 19) 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).)
- 20) Provides that where a defendant is convicted of taking a minor under the age 16 from his or her parents to provide to others for prostitution (Pen. Code § 267) or transporting or providing a child under the age of 16 for purposes of any lewd or lascivious act (Pen. Code § 266j), the court may impose an additional fine of up to \$20,000. (Pen. Code § 266k, subd. (b).)
- 21) Provides that where a defendant is convicted under the Penal Code of taking a minor (under the age of 18) from his or her parents for purposes of prostitution (Pen. Code § 267), or transporting or providing a child under the age of 16 for purposes of any lewd or lascivious act (266j), the court, if it decides to impose a specified additional fine, the fine must be no less than \$5,000, but no more than \$20,000. (Pen. Code § 266k, subd. (b).)

FISCAL EFFECT:

COMMENTS:

- 1) **Author's Statement:** According to the author, "California is one of the top four destinations in the United States for human trafficking and it is a \$32 billion a year global industry. In order to attempt to contain this industry and try to keep it from growing every year, we need to curb demand of prostitution with human trafficking victims. One way to do this is to require a limited term sex offender registration for those who are convicted of soliciting prostitution if they knew or reasonably should have known that the other participant was a minor and a victim of human trafficking. While the offenders will be on the sex offender registry and require monitoring for a set amount of time, they won't be on the registry forever and won't require the long-term monitoring expense of others on the registry. The tiered registration would require five years registration for the first conviction, 10 years registration for the second offense and 20 years registration for the third and subsequent offense."

- 2) **Heavy Penalties and Registration Requirements Already Exist for Persons who Engage in Sexual Acts with Minors:** Under current law, existing penalties which are almost too numerous to count exist for crimes involving various sexual acts with minors. From various crimes related to lewd and lascivious acts with a child to statutory rape, any individual who is an adult that engages in sexual contact with a minor is punished under California law. The penalties for these offenses almost universally include long prison sentences, and require sex registration.
- 3) **Known or Should Have Known:** This bill requires registration for a person convicted of soliciting a minor who the person knew, or reasonably should have known, was both a minor and a victim of human trafficking. The bill would cover persons who are targeting minors on purpose, but the provisions leave room for people who do not know that they are soliciting a minor with the "should have known" provision. Additionally, the bill specifies that the person must know or reasonably should know that the minor solicited is a victim of human trafficking. It is unclear how this element would be proven. Does this provision require a prosecutor to plead and prove that the victim is actually a victim of another, separate individual who is a human trafficker? Would the prosecutor have to show, beyond a reasonable doubt, that the separate offender is guilty of human trafficking (Pen. Code § 236.1), and that the minor was indeed their victim?
- 4) **The Current Sex Offender Registration System and Megan's Law Website has Become too Unwieldy to be Effective for Law Enforcement:** Again, according to California's Sex Offender Management Board, there are a number of problems with the current system as a result of adding too many low-risk sex offenders. California's system of lifetime registration for all convicted sex offenders has created a registry that is very large and that includes many individuals who do not necessarily pose a risk to the community. The consequences of these realities are that the registry has, in some ways, become counterproductive to improving public safety. When everyone is viewed as posing a significant risk, the ability for law enforcement and the community to differentiate between who is truly high risk and more likely to reoffend becomes impossible. There needs to be a way for all persons to distinguish between sex offenders who require increased monitoring, attention and resources and those who are unlikely to reoffend.

There are many unintended consequences and indirect costs associated with sex offender registration.

- Innocent families and children of offenders (including victims of intra-familial sexual abuse) also bear the consequences of lifetime registration since they can often be identified by the public. Adverse consequences also arise for employers, landlords, neighbors and others.
- There has been a proliferation of residence restrictions and exclusion zones for registered sex offenders in many jurisdictions in California. Violation of these can lead to criminal charges. The obstacles posed by registration status prevent many individuals from obtaining housing or employment and becoming functioning, contributing, tax-paying members of society.
- There is reason to believe that registration policies, especially lifetime registration, keep some victims, particularly family members of the offender,

from disclosing the abuse because they wish to avoid the stigma that will impact their family and their own lives for a very long time.

The presence nearby of one or more registered sex offenders can drive down property values in a neighborhood and make houses difficult to sell. If the current registration system was effective in the ways intended, these might be considered part of the price to pay for the greater good. But, since the current registry does not attain its intended purposes, many of these unintended consequences are without justification.

- 5) **California's Sex Offender Management Board's Background:** On September 20, 2006, Governor Arnold Schwarzenegger signed Assembly Bill 1015, which created the California Sex Offender Management Board. AB 1015 had been introduced by Assembly Members Judy Chu and Todd Spitzer and passed the California Legislature with nearly unanimous bipartisan support.

Because California is the most populated state in the Union and has had lifetime registration for its convicted sex offenders since 1947, California has more registered sex offenders than any other state with about 88,000 identified sex offenders (per DOJ, August 2007). Currently, the California Department of Corrections and Rehabilitation (CDCR) supervises about 10,000 of those 88,000 sex offenders, of which about 3,200 have been designated as "high-risk sex offenders". (CDCR Housing Summit, March 2007). Additionally, there are about 22,500 adult sex offenders serving time in one of 32 state prisons operated by CDCR (California Sex Offender Management Task Force Report, July 2007).

While it is commonly believed that most sexual assaults are committed by strangers, the research suggests that the overwhelming majority of sex offenders victimize people known to them; approximately 90% of child victims know their offenders, as do 80% of adult victims [per Kilpatrick, D.G., Edmunds, C.N., & Seymour, A.K. Rape in America: A Report to the Nation (1992). Arlington, VA: National Victim Center.]

- 6) **Sex Offender Registration and the Megan's Law Website:** According to a 2014 report by the California Sex Offender Management Board¹, the intent of registration was to assist law enforcement in tracking and monitoring sex offenders since they were viewed as the group most likely to commit another sex offense. It was thought that having their names and addresses known to law enforcement and with the expansion of community notification also available to the public would dissuade them from committing a new offense, enable members of the public to exercise caution around them, enable law enforcement to monitor them and, if necessary, solve new sex offense cases more readily. Although research suggests that use of a registry may help law enforcement solve sex crimes against children involving strangers more quickly, United States DOJ statistics tell us that most crimes against children (about 93%) are committed not by a stranger but by a person known to the child and his or her family, usually an acquaintance or family member.

Since 1947, earlier by far than any other state, California has required "universal lifetime" registration for persons convicted of most sex crimes. (Pen. Code, § 290.) Though every

¹ <http://www.cce.csus.edu/portal/admin/handouts/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf>

other state has instituted some form of registration since then, California is among only four states which require lifetime registration for every convicted sex offender, no matter the nature of the crime or the level of risk for reoffending. Almost all other states use some version of a “tiering” or “level” system which: 1. recognizes that not all sex offenders are the same, 2. provides meaningful distinctions between different types of offenders and 3. requires registration at varying levels and for various periods of time. There are nearly 100,000 registrants today in California, a number accumulated over the past 66 years since the Registry was created in 1947. In 2004 California began to provide pictures and other identifying information on the Megan’s Law website for about 80% of registrants. (www.meganslaw.ca.gov)

There are about 98,000 registered sex offenders on California’s registry. About 76,000 live in California communities and the other 22,000 are currently in custody. Of these offenders, 80% are posted on the state’s Megan’s Law web site with their full address or ZIP Code and other information, depending upon the offense they committed. About 20% are not posted or are excluded from posting on the web site by law, again depending on the conviction offense. Posting on the web site does not take into account years in the community without reoffending, the offender’s risk level for committing a new sexual or violent crime, or successful completion of treatment. About one-third of registered offenders are considered “moderate to high risk” while the remaining two-thirds are “moderate to low risk” or “low risk.” Local police departments and sheriff’s offices are charged with managing the registration process. Registered sex offenders must re-register annually on their birthdays as well as every time they have a change of address. Transient sex offenders re-register every 30 days and sexually violent predators every 90 days. Registration information collected by law enforcement is sent to the California Department of Justice (DOJ) and stored in the California Sex and Arson Registry. If an offender’s information is posted online and he fails to register or re-register on time, he will be shown as “in violation” on the Megan’s Law web site. When proof is provided by local law enforcement to DOJ of a registrant’s death, he or she is removed from the registry. Every ten years since the Registry was first established has been marked by a dramatic increase in the number of registrants.

As noted above, the original goal of registration was to assist law enforcement in tracking and monitoring sex offenders. Over time, registration was expanded to include community notification and also began to encompass a wider variety of crimes and behaviors. Due to these changes, research has focused on exploring the changes in sex 4 CASOMB “Tiering Background Paper” offender registration laws and this has resulted in a constantly growing body of research that has altered the perspective on sex offender registration. This research has made it clear that:

- The sexual recidivism rate of identified sex offenders is lower than the recidivism rate of individuals who have committed any other type of crime except for murder.
- Not all sex offenders are at equal risk to reoffend. Low risk offenders reoffend at low rates, high risk offenders at much higher rates.
- It is possible to use well-researched actuarial risk assessment instruments to assign offenders to groups according to risk level. (i.e. Low, Medium, High.)

- Risk of a new sex offense drops each year the offender remains offense-free in the community. Eventually, for many offenders, the risk becomes so low as to be meaningless and the identification of these individuals through a registry becomes unhelpful due to the sheer numbers on the registry. Research has identified differing time frames of decreased risk for the various categories of offenders (i.e. low, medium, high).
- Research on both general and sexual offenders has consistently indicated that focusing on higher risk offenders delivers the greatest return on efforts to reduce reoffending.
- Completing a properly designed and delivered specialized sex offender treatment program delivered within the context of effective supervision reduces recidivism risk even further. In California, all registered sex offenders on parole or probation are now required by state law to enter and complete such a program.

This bill would add more low-risk sex (misdemeanor) offenders to the registry, making the monitoring of the existing high-risk sex offenders even more difficult than it already is.

7) Prostitution and Human Trafficking, Though Related, are not Always the Same Thing:

A growing number of policy discussions are equating prostitution offenses with human trafficking offenses. There is no doubt that the crimes are related, however, they are not the same crime. A number of proposals seek to treat all prostitution offenses more severely because of the grave threat and nature of human trafficking. Human trafficking is a very serious crime, involving forced servitude, with very serious penalties. Most prostitution offenses between a person who is soliciting a prostitute and the prostitute themselves are misdemeanor crimes. Some of these offenses are related to human trafficking, but many are not. Additionally, pimps and panderers generally are treated more severely by the law, with much more serious consequences than the prostitute or the "john." Unlike the crimes of pimping and pandering, human trafficking is a crime that generally involves some form of force or coercion.

California has existing strict laws for the treatment of pimps and panderers, as well as human traffickers. However, those crimes are not the same criminal offenses. Furthermore, not every person who solicits a prostitute is engaged in the crime of human trafficking. Blurring the lines between the less severe crimes related to prostitution, and the more severe crimes related to human trafficking, weakens the severity of human trafficking offenses. For instance, this committee has approved bills to add human trafficking to the list of serious felonies. However, if we continue to expand the definition of human trafficking to include more minor prostitution-related offenses the committee would have to re-evaluate in the future whether it would still consider human trafficking a serious felony.

According to the Polaris Project, "Human trafficking is a form of modern-day slavery where people profit from the control and exploitation of others. As defined under U.S. federal law, victims of human trafficking include children involved in the sex trade, adults age 18 or over who are coerced or deceived into commercial sex acts, and anyone forced into different forms of 'labor or services,' such as domestic workers held in a home, or farm-workers forced to labor against their will. The factors that each of these situations have in common are elements of force, fraud, or coercion that are used to control

people." (<<http://www.polarisproject.org/human-trafficking/overview>>.)

Pimping under California law means receiving compensation from the solicitation of a known prostitute. (Pen. Code, § 266h.) Whereas pandering means procuring another person for the purpose of prostitution by intentionally encouraging or persuading that person to become or continue being a prostitute. (Pen. Code, § 266i.) Oftentimes, pimps use mental, emotional, and physical abuse to keep their prostitutes generating money. Consequently, there has been a paradigm shift where pimping and pandering is now viewed as possible human trafficking.

This new approach has been criticized by some because it blurs the line between human trafficking and prostitution. Sex workers say it discounts their ability to willingly work in the sex industry. (See *Nevada Movement Draws the Line on Human Trafficking* by Tom Ragan, Las Vegas Review Journal, May 26, 2013, <<http://www.reviewjournal.com/news/las-vegas/nevada-movement-draws-line-human-trafficking>>.)

- a) **Prostitution Generally:** The basic crime of prostitution is a misdemeanor offense. (Pen. Code § 647(b).) Prostitution can be generally defined as "soliciting or agreeing to engage in a lewd act between persons for money or other consideration." Lewd acts include touching the genitals, buttocks, or female breast of either the prostitute or customer with some part of the other person's body for the purpose of sexual arousal or gratification of either person.

To implicate a person for prostitution themselves, the prosecutor must prove that the defendant "solicited" or "agreed" to "engage" in prostitution. A person agrees to engage in prostitution when the person accepts an offer to commit prostitution with specific intent to accept the offer, whether or not the offerer has the same intent.

For the crime of "soliciting a prostitute" the prosecutors must prove that the defendant requested that another person engage in an act of prostitution, and that the defendant intended to engage in an act of prostitution with the other person, and the other person received the communication containing the request. The defendant must do something more than just agree to engage in prostitution. The defendant must do some act in furtherance of the agreement to be convicted. Words alone may be sufficient to prove the act in furtherance of the agreement to commit prostitution

Violation of Pen. Code § 647(b) is a misdemeanor. For a first offense conviction of prostitution the defendant faces up to 180 days in jail. If a defendant has one prior conviction of prostitution he or she must receive a county jail sentence of not less than 45 days. If the defendant has two or more prior convictions, the minimum sentence is 90 days in the county jail.

In addition to the punishment described above, if the defendant is conviction of prostitution, he or she faces fines, probation, possible professional licensing restrictions or revocations, possible immigration consequences, possible asset forfeiture, and possible driving license restrictions.

Closely associated crimes to prostitution include: abduction of a minor for prostitution (Pen. Code § 267); seduction for prostitution (Pen. Code § 266); keeping a house of

prostitution (Pen. Code § 315); leasing a house for prostitution (Pen. Code § 318); sending a minor to a house of prostitution (Pen. Code 273e); taking a person against that person's will for prostitution (Pen. Code § 266 (a)); compelling a person to live in an illicit relationship (Pen. Code § 266 (b)); placing or leaving one's wife in a house of prostitution (Pen. Code § 266 (g)); loitering for prostitution (Pen. Code § 653.22 subd. (a)); pimping (Pen. Code § 266 (h)); or, pandering (Pen. Code § 266 (i)). Most of these crimes are punished much more severely than the underlying prostitution offense, particularly the crimes of pimping, pandering, and procurement.

- b) **Human Trafficking Generally:** Human trafficking involves the recruitment, transportation or sale of people for forced labor. Through violence, threats and coercion, victims are forced to work in, among other things, the sex trade, domestic labor, factories, hotels and agriculture. According to the January 2005 United States Department of State's Human Smuggling and Trafficking Center report, "Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking", there is an estimated 600,000 to 800,000 men, women and children trafficked across international borders each year. Of these, approximately 80% are women and girls and up to 50% are minors. A recent report by the Human Rights Center at the University of California, Berkeley cited 57 cases of forced labor in California between 1998 and 2003, with over 500 victims. The report, "Freedom Denied", notes most of the victims in California were from Thailand, Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees. [University of California, Berkeley Human Rights Center, "Freedom Denied: Forced Labor in California" (February, 2005).] According to the author:

"While the clandestine nature of human trafficking makes it enormously difficult to accurately track how many people are affected, the United States government estimates that about 17,000 to 20,000 women, men and children are trafficked into the United States each year, meaning there may be as many as 100,000 to 200,000 people in the United States working as modern slaves in homes, sweatshops, brothels, agricultural fields, construction projects and restaurants."

In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's already tough human trafficking laws. The proposition increased criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to \$1,500,000. Additionally, the proposition specified that the fines collected are to be used for victim services and law enforcement. Proposition 35 requires persons convicted of trafficking to register as sex offenders. Proposition 35 prohibits evidence that victim engaged in sexual conduct from being used against victims in court proceedings. Additionally, the proposition lowered the evidential requirements for showing of force in cases of minors.

- i) **Trafficking Victims Protection Act of 2000 (22 USC Sections 7101 *et seq.*):** In October 2000, the Trafficking Victims Protection Act of 2000 (TVPA) was enacted and is comprehensive, addressing the various ways of combating trafficking, including prevention, protection and prosecution. The prevention measures include the authorization of educational and public awareness programs. Protection and assistance for victims of trafficking include making housing, educational, health-care, job training and other federally funded social service programs available to assist

victims in rebuilding their lives. Finally, the TVPA provides law enforcement with tools to strengthen the prosecution and punishment of traffickers, making human trafficking a federal crime.

- ii) **Recent Update to Human Trafficking Laws:** In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's already tough human trafficking laws. Specifically, Proposition 35 increased criminal penalties for human trafficking offenses, including prison sentences up to 15-years-to-life and fines up to \$1.5 million. The proposition specified that the fines collected are to be used for victim services and law enforcement. In criminal trials, the proposition prohibits the use of evidence that a person was involved in criminal sexual conduct (such as prostitution) to prosecute that person for that crime if the conduct was a result of being a victim of human trafficking, and makes evidence of sexual conduct by a victim of human trafficking inadmissible for the purposes of attacking the victim's credibility or character in court. The proposition lowered the evidentiary requirements for showing of force in cases of minors.

Proposition 35 also requires persons convicted of human trafficking to register as sex offenders and expanded registration requirements by requiring registered sex offenders to provide the names of their internet providers and identifiers, such as e-mail addresses, user names, and screen names, to local police or sheriff's departments. After passage of Proposition 35, plaintiffs American Civil Liberties Union and Electronic Frontier Foundation filed a law suit claiming that these provisions unconstitutionally restricts the First Amendment rights of registered sex offenders in the states. A United States District Court judge granted a preliminary injunction prohibiting the implementation or enforcement of Proposition 35's provisions that require registered sex offenders to provide certain information concerning their Internet use to law enforcement. (*Doe v. Harris* (N.D. Cal., Jan. 11, 2013, No. C12-5713) 2013 LEXIS 5428.)

- iii) **California Attorney General's Report on Human Trafficking:** The California Attorney General's Human Trafficking in California 2012 report stated that human trafficking investigations and prosecutions have become more comprehensive and organized. There are nine human trafficking task forces in California, composed of local, state and federal law enforcement and prosecutors.

Data on human trafficking has improved, although the data still does not reflect the actual extent and range of human trafficking. Data from 2010 through 2012 collected by the California task forces are set out in the following chart:

California Human Trafficking Task Forces Data 2010-2012

Investigations	2,552
Victims Identified	1,277
Arrests Made	1,798

Trafficking by Category

Sex Trafficking	56%
Labor Trafficking	23%
Unclassified or Insufficient Information	21%

- 8) **Argument in Support:** According to *The San Luis Obispo District Attorney*, "This bill targets a small, but extremely harmful, universe of sex buyers who prey upon children who have been forced into sexual slavery. It will go far in reducing the demand for trafficked children by using sex offender registration as a deterrent. According to a 2015 study entitled "*Comparing Sex Buyers With Men Who Do Not Buy Sex: New Data on Prostitution and Trafficking*", published in the Journal *Interpersonal Violence*, "Both SB [sex buyers] (91%) and NSB [non sex buyers] (88%) agreed that the most effective deterrent to buying sex would be to list sex buyers on a sex offender registry."
- 9) **Argument in Opposition:** According to *The American Civil Liberties Union of California*, "We respectfully oppose AB 1912 which seeks to add to California's sex offender registry the crime of soliciting a minor to engage in prostitution if the offender knew or should have known the person solicited was a minor. Adding additional low-level offenses in which no sexual activity occurred to the list of offenses requiring registration will only further impede the effectiveness of Californian's registry law."

"AB 1912 would require that a person convicted of soliciting a prostitute, in violation of Penal Code section 647(b), in cases where the convicted person knew or should have known that the person solicited was a minor, to register as a sex offender. The bill provides that the duty to register would last for five years for a first offense, ten years for a second offense, and twenty years for a third or subsequent offense. The bill further requires posting this information online.

"Effectively, AB 1912 seeks to equate the crime of soliciting a minor to engage in prostitution with the crime of actually having sex with a minor. This is inappropriate. There is a wide gap between those crimes in terms of the harm caused and the likely risk posed by the person convicted. This is especially true given that the crime of soliciting a minor applies to someone who did not know that the person solicited was a minor but 'should have known.' A person who solicits an individual that he or she 'should have known' is a minor may well stop the encounter upon learning that the individual solicited is in fact a minor. Simply put, individuals who *actually* engage in sex with a minor should face higher penalties than those who do not, and pose a greater risk to the community.

"AB 1912 will also make it more difficult to effectively manage true sex offenders. California already requires a vast number of people to register as sex offenders for life, imposing residency and other restrictions. California's Sex Offender Management Board (CASOMB) has strongly criticized the vast scope of the current registration system:

"Under the current system, many local registering agencies are challenged just keeping up with registration paperwork. It takes an hour or more to process each registrant, the

majority of whom are low risk offenders. As a result, law enforcement cannot monitor higher risk offenders more intensively in the community due to the sheer numbers now in the registry. Some of the consequences of lengthy and unnecessary registration requirements actually destabilize the lives of registrants and those – such as families – whose lives are often substantially impacted. Such consequences are thought to raise levels of known risk factors while providing no discernible benefit in terms of community safety.

"CASOMB has become convinced that California policy makers need to rethink the registration laws and the time has come, after nearly 70 years of use, to make some major changes in the state's registration system.²

"Adding an additional low-level offense without any actual sexual activity to the already vast list of offenses requiring registration will only further clog the system and impede effective management of high risk offenders.

"Moreover, AB 1912 is unnecessary. Courts already have the discretion to order anyone who commits any offense to register as a sex offender under Penal Code section 290.006."

10) Related Legislation:

- a) AB 733 (Chavez), would have required sex offender registration, placement on the Megan's Law Website, and mandates a minimum \$3,000 fine (\$12,370 with penalties and assessments) for solicitation of a minor. AB 733 failed passage in this committee.
- b) AB 201 (Brough), would have eliminated the state preemption which prohibits a local agency from enacting local ordinances that restrict a sex offender from residing or being present in specific locations, and authorize local agencies to enact ordinances that are more restrictive than state law. AB 201 failed passage in this committee.

11) Prior Legislation:

- a) AB 90 (Swanson) , Chapter 457, Statutes of 2011, included, within the definition of criminal profiteering activity, any crime in which the perpetrator induces, encourages, or persuades, or causes through force, fear, coercion, deceit, violence, duress, menace, or threat of unlawful injury to the victim or to another person, a person under 18 years of age to engage in a commercial sex act, and specifies that the proceeds shall be deposited in a Victim-Witness Fund, as specified.
- b) AB 17 (Swanson), Chapter 211, Statutes of 2010, added abduction or procurement for prostitution to the criminal profiteering asset forfeiture law; provided that the court may impose a fine of up to \$20,000, in addition to any other fines and penalties, where the defendant has been convicted of abduction of a minor for purposes of prostitution or procurement of a minor under the age of 16 for lewd conduct; and provided that 50 percent of the additional fine shall be deposited in the Victim-Witness Assistance Fund

² California's Sex Offender Management Board Year End Report 2014 (February 2015), at pp. 12-13; available at http://www.cce.csus.edu/portal/admin/handouts/CASOMB_End_of_Year_Report_to_Legislature_2014.pdf.

for purposes of grants to community-based organizations that serve minor victims of human trafficking.

- c) AB 22 (Lieber), Chapter 240, Statutes of 2005, created the California Trafficking Victims Protection Act, which established civil and criminal penalties for human trafficking and allowed for forfeiture of assets derived from human trafficking. In addition, the Act required law enforcement agencies to provide Law Enforcement Agency Endorsement to trafficking victims, providing trafficking victims with protection from deportation and created the Human Trafficking Task Force.

REGISTERED SUPPORT / OPPOSITION:

Support

San Luis Obispo District Attorney's Office (Sponsor)
California District Attorneys Association

1 private individual

Opposition

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

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

Date of Hearing: April 12, 2016
Chief Counsel: Gregory Pagan

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

AB 1940 (Cooper) – As Amended March 17, 2016
As Proposed to be Amended in Committee

SUMMARY: Requires law enforcement agencies that employ peace officers to develop body-worn camera policies and that these policies are subject to collective bargaining. Specifically, **this bill:**

- 1) Requires a law enforcement agency, department, or entity that employs peace officers uses body-worn cameras for those officers, the agency, department, or entity shall develop a policy relating to the use of body-worn cameras, and requires that any policy be developed in accordance with state and local collective bargaining procedures.
- 2) States that the policy shall allow a peace officer to review his or her body-worn camera video and audio recordings before he or she makes a report, is ordered to give an internal affairs statement, or before any criminal or civil proceeding, and an officer is not required to review his or her body-worn camera video and audio recordings before making a report, giving an internal affairs statement, or before any civil or criminal proceeding.
- 3) Provides that in developing the policy, law enforcement agencies, departments, or entities are encouraged to include the following in the policy:
 - a) The time, place, circumstances, and duration in which the body-worn camera shall be operational.
 - b) Which peace officers shall wear the body-worn camera and when they shall wear it.
 - c) Prohibitions against the use of body-worn camera equipment and footage in specified circumstances, such as when the peace officer is off-duty.
 - d) The type of training and length of training required for body-worn camera usage.
 - e) Public notification of field use of body-worn cameras, including the circumstances in which citizens are to be notified that they are being recorded.
 - f) The manner in which to document a citizen's refusal from being recorded under certain circumstances.
 - g) The use of body-worn camera video and audio recordings in internal affairs cases.
 - h) The use of body-worn camera video and audio recordings in criminal and civil case preparation and testimony.

- i) The transfer and use of body-worn camera video and audio recordings to other law enforcement agencies, including establishing what constitutes a need-to-know basis and what constitutes a right-to-know basis.
 - j) The policy may be available to all peace officers in a written form.
 - k) The policy may be available to the public for viewing.
- 4) Defines "body-worn camera" to mean a device attached to the uniform or body of a peace officer that records video, audio, or both, in a digital or analog format.
 - 5) Defines "peace officer" to mean any person designated as a peace officer pursuant to existing law.

EXISTING LAW:

- 1) Provides that it is a an alternate felony/misdemeanor for any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable by a fine not exceeding \$2,500, or by imprisonment in the county jail not exceeding one year, or by imprisonment in the county jail for 16 months, or two or three years, or by both a fine and imprisonment. (Pen. Code, § 631.)
- 2) States that every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding \$2,500, or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. (Pen. Code, § 632, subd. (a).)
- 3) Defines "confidential communication" to include any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or any legislative, judicial, executive or administrative proceeding open to the public, or in any circumstance that the parties may reasonably expect that the communication may be overheard or recorded. (Pen. Code, § 632, subd. (c).)
- 4) Provides that nothing in the sections prohibiting eavesdropping or wiretapping prohibits specified law enforcement officers or their assistants or deputies acting within the scope of

his or her authority, from overhearing or recording any communication that they could lawfully overhear or record. (Pen. Code, § 633.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "There is currently no law requiring law enforcement agencies that use body worn cameras (BWC) to develop policies and procedures around their use. AB 1940 will ensure that the acquisition and deployment of BWC equipment is codified for each agency and may be available for administrative review, legal proceedings and public and peace officer review. AB 1940 will ensure that law enforcement management and labor work in concert to develop BWC policy so that mission of the department is met as well as the working conditions of the employee.

"AB 1940 will also set a statewide policy that peace officers can access BWC footage prior to writing reports, preparing for criminal or civil court testimony and preparing for orders to appear in internal affairs investigations. This access ensures accuracy in memory recall and serves the best interest of public and law enforcement relations and the judicial processes.

"The discussion of the release of BWC data to the public vs. individual privacy, as well as the preservation evidence, and how those issues interface with the California Public Records Act must be addressed. AB 1940 strikes a balance that is consistent with current law that exempts most evidence from public view, but allows for its release by a third party, judicial determination."

- 2) **Background:** A recent report released by U.S. Department of Justice's Office of Community Oriented Policing Services and the Police Executive Research Forum studied the use of body-worn cameras by police agencies. This research included a survey of 250 police agencies, interviews with more than 40 police executives, a review of 20 existing body-camera policies, and a national conference at which more than 200 police chiefs, sheriffs, federal justice representatives, and other experts shared their knowledge of and experiences with body-worn cameras. The report shows that body-worn cameras can help agencies demonstrate transparency and address the community's questions about controversial events. Among other reported benefits are that the presence of a body-worn camera have helped strengthen officer professionalism and helped to de-escalate contentious situations, and when questions do arise following an event or encounter, police having a video record helps lead to a quicker resolution. (Miller and Toliver, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, Police Executive Research Forum (Nov. 2014).)

The report recommends that each agency develop its own comprehensive written policy to govern body-worn camera usage, that includes the following:

- a) Basic camera usage, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;
- b) The designated staff member(s) responsible for ensuring cameras are charged and in proper working order, for reporting and documenting problems with cameras, and for

- reissuing working cameras to avert malfunction claims if critical footage is not captured;
- c) Recording protocols, including when to activate the camera, when to turn it off, and the types of circumstances in which recording is required, allowed, or prohibited;
 - d) The process for downloading recorded data from the camera, including who is responsible for downloading, when data must be downloaded, where data will be stored, and how to safeguard against data tampering or deletion;
 - e) The method for documenting chain of custody;
 - f) The length of time recorded data will be retained by the agency in various circumstances;
 - g) The process and policies for accessing and reviewing recorded data, including the persons authorized to access data and the circumstances in which recorded data can be reviewed;
 - h) Policies for releasing recorded data to the public, including protocols regarding redactions and responding to public disclosure requests; and,
 - i) Policies requiring that any contracts with a third-party vendor for cloud storage explicitly state that the videos are owned by the police agency and that its use and access are governed by agency policy.

(*Id.* at pp. 37-38.)

This bill seeks to implement some of these recommendations, by requiring any agency that uses body-worn cameras to have a policy specifying: the duration, time, and place that body-worn cameras must be worn and operational; the length of time video collected by officers will be stored by the department or agency; the procedures for, and limitations on, public access to recordings taken by body-worn cameras, provided that those procedures and limitations are in accordance with state law that governs public access to records; and the process for accessing and reviewing recorded data, including, but not limited to, the persons authorized to access data and the circumstances in which recorded data may be reviewed.

The report also highlighted the need for training on the use of body-worn cameras and the applicable procedures and policies. (*Id.* at pp. 47-48) This bill states that the policy developed by each agency must include the training that will be provided on the use of body-worn cameras. Lastly, the bill requires that each officer who has to wear a body-worn camera must be provided with a copy of the policies.

- 3) **Review of Body-Camera Footage:** This bill would require a law enforcement agency that uses body cameras to develop a body-worn camera policy through the collective bargaining process. The bill specifies that the body worn camera policy shall allow a peace officer to view body-camera footage prior to making an incident report or giving an internal affairs statement. The proponents of the bill contend that allowing an officer to view then body-camera footage prior to making a report will insure that the report is accurate and complete. The opponents believe that by allowing a peace officer to review the body-camera footage prior to making a report, the peace officer will tailor or conform the report to reflect only

what can be observed in the footage. Should peace officers be allowed to view body-camera audio and video recordings prior to making a report?

- 4) **Argument in Support:** According to the *Peace Officers Research Association of California*, "AB 1940 would require a law enforcement agency, department, entity, if it employs peace officers and uses body-worn cameras for those officers, to develop a body-worn camera policy. This bill would require the policy to allow a peace officer to review his or her video and audio recordings before making a report, giving an internal affairs statement before any civil or criminal proceeding.

"PORAC supports the use of body-worn cameras when they are implemented and used responsibly. With the addition of a body-worn camera policy that would require an officer to view footage prior to making a statement, we believe that the reports and conclusions will be more detailed, relevant, and inherently more accurate. The other important aspect of this bill is that all of these policies and procedures are collectively bargained."

- 5) **Argument in Opposition:** According to the *American Civil Liberties Union*, "Under AB 1940, when an officer is involved in a serious use of force incident – or any other alleged misconduct of any type – he or she would be allowed to review BWC recordings of the incident before making any statement, report or testimony. Interestingly, this right would be extended only to officers, not to any person who is subject of the recording.

"For many good reasons, multiple law enforcement agencies have existing policies directly contrary to this rule. The Oakland Police Department, for instance, has a policy prohibiting officers from reviewing BWC video prior to making a statement in an investigation arising out of a Level 1 use of force (the most serious uses of forces, including shootings and weapon strikes to the head). Similarly, When the Los Angeles Sheriff's Department recently installed video cameras in its jails, the department, after careful consideration, adopted a policy that requires deputies in the jails to file reports of incidents before reviewing video, for many of the reasons we articulate below.

"In *Implementing Body-Worn Camera Program: Recommendation and Lessons Learned*, published by the Community Oriented Policing Services (COPS) division of the U.S. Department of Justice, a police executive explained as follows, "[i]n terms of the officer's statement, what matters is the officer's perspective at the time of the event, not what is in the video." See *id.* At 30 (COPS & PERF 2014) (emphasis added).

"At least three additional reasons support not allowing pre-statement and report reviewing of BWC recordings by officers. First, it inhibits intentionally false statements. If an officer is not sure what was captured by a BWC, he or she will likely feel pressure to tell the truth about an incident in order not to later be revealed untruthful by the video. However, if an officer is inclined to distort the truth to justify a shooting, showing the officer the BWC evidence before taking his or her statement allows the officer to misrepresent facts more effectively, and in ways that the BWC recording will not contradict – saying, for example, that something happened during moments the camera was blocked or footage was blurred.

“Second, even if an officer is truthful, not allowing him or her to review the BWC recordings before making a statement helps ensure that the officer’s initial recollection is not unintentionally tainted by reviewing the recording. For example, the Los Angeles County Office of Independent Review explains:

‘In our review of the available research, we found ample evidence that seeing additional information [other] than what was experienced (such as seeing the action from a different angle) can alter the memory of an event...The research we reviewed stressed the importance of ‘minimizing post-event misinformation.’ While what is shown on a video is not necessarily ‘misinformation,’ it can certainly be different information than that recalled.’

“BWC recordings are not necessarily more reliable than an officer’s memory. The value of BWC recordings can be affected by where and how they are worn, what movement they are subject to, from what perspective they record the image, and a variety of other factors. But it is essential that the officer’s initial version of events not be influenced by recorded images or sounds.

“Third, precluding pre-statement and report review of BWC recordings advances the public trust regarding the integrity of criminal investigations. We hope and expect that officers will not shade the truth in an investigation. But because showing officers the BWC recordings can be used unscrupulously, it undercuts the legitimacy of the investigation. One of the main purposes of body cameras is to build the public’s confidence in investigations into critical incidents.”

REGISTERED SUPPORT / OPPOSITION:

Peace Officers Research Association of California (Sponsor)
Los Angeles County Professional Peace Officers Association
Association for Los Angeles Deputy Sheriffs Association
Los Police Protective League
Los County Deputy Probation Officers Association, AFSCME, Local 685
Riverside Sheriffs Association
Fraternal Order of Police
Association of Orange County Deputy Sheriffs
California State Law Enforcement Association
Long Beach Police Officers association
Sacramento County Deputy Sheriffs' Association

Opposition

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

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

Amendments Mock-up for 2015-2016 AB-1940 (Cooper (A))

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

Mock-up based on Version Number 98 - Amended Assembly 3/17/16
Submitted by: Gregory Pagan, Assembly Public Safety Committee

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

SECTION 1. Section 6254.31 is added to the Government Code, to read:

~~6254.31. (a) A visual or audio recording made by a peace officer's body worn camera during the performance of his or her duties that depicts use of force resulting in serious injury or death is confidential and shall not be disclosed to any member of the public pursuant to this chapter unless it is determined that the interest in public disclosure outweighs the need to protect the individual right to privacy.~~

~~(b) This determination is subject to a judicial order that shall only occur after the adjudication of any civil or criminal proceeding related to the use of force incident involving the peace officer.~~

SEC. 2. 1 Section 832.19 is added to the Penal Code, to read:

832.19. (a) (1) If a law enforcement agency, department, or entity that employs peace officers uses body-worn cameras for those officers, the agency, department, or entity shall develop a policy relating to the use of body-worn cameras.

(2) The following definitions shall apply to this section:

(A) "Body-worn camera" means a device attached to the uniform or body of a peace officer that records video, audio, or both, in a digital or analog format.

(B) "Peace officer" means any person designated as a peace officer pursuant to this chapter.

(b) (1) The policy shall allow a peace officer to review his or her body-worn camera video and audio recordings before he or she makes a report, is ordered to give an internal affairs statement, or before any criminal or civil proceeding.

(2) A peace officer is not required to review his or her body-worn camera video and audio recordings before making a report, giving an internal affairs statement, or before any criminal or civil proceeding.

(c) The policy shall be developed in accordance with the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code) and the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code).

(d) In developing the policy, law enforcement agencies, departments, or entities are encouraged to include the following in the policy:

(1) The time, place, circumstances, and duration in which the body-worn camera shall be operational.

(2) Which peace officers shall wear the body-worn camera and when they shall wear it.

(3) Prohibitions against the use of body-worn camera equipment and footage in specified circumstances, such as when the peace officer is off-duty.

(4) The type of training and length of training required for body-worn camera usage.

(5) Public notification of field use of body-worn cameras, including the circumstances in which citizens are to be notified that they are being recorded.

(6) The manner in which to document a citizen's refusal from being recorded under certain circumstances.

(7) The use of body-worn camera video and audio recordings in internal affairs cases.

(8) The use of body-worn camera video and audio recordings in criminal and civil case preparation and testimony.

(9) The transfer and use of body-worn camera video and audio recordings to other law enforcement agencies, including establishing what constitutes a need-to-know basis and what constitutes a right-to-know basis.

(10) The policy may be available to all peace officers in a written form.

(11) The policy may be available to the public for viewing.

SEC. 3. The Legislature finds and declares that Section 1 of this act, which adds Section 6254.31 to the Government Code, imposes a limitation on the public's right of access to the meetings of

~~public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:~~

~~The need to protect individual privacy and the credibility and integrity of official ongoing investigations and those persons subject to those investigations from the public disclosure of video and audio recordings captured by a body-worn camera outweighs the interest in the public disclosure of that information.~~

~~**SEC. 4.** The Legislature finds and declares that Section 1 of this act, which adds Section 6254.31 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:~~

~~Protecting the privacy of a person whose image is captured by a peace officer's body-worn camera enhances public safety, the protection of individual rights, and the credibility and integrity of official ongoing investigations and those persons subject to those investigations, thereby furthering the purposes of Section 3 of Article I of the California Constitution.~~

~~**SEC. 5. 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 under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.~~

~~SECTION 1.~~

~~It is the intent of the Legislature to enact legislation to establish policies and procedures to address issues related to peace officers' use of body-worn cameras.~~

Date of Hearing: April 12, 2016
Counsel: Sandra Uribe

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

AB 1957 (Quirk) – As Amended April 6, 2016
As Proposed to be Amended in Committee

SUMMARY: Allows a local governing body to review body camera footage of an officer-involved incident resulting in death or great bodily injury the day after the incident occurs, and allows the public access to the footage 60 days after the commencement of an investigation. Specifically, **this bill:**

- 1) States that the local governing body may review, in a closed session, body camera footage depicting an officer-involved incident resulting in death or great bodily injury. This review will occur the before the end of the next business day following the incident.
- 2) Provides that, if there is an investigation that leads to a prosecution, the judge shall review the body camera footage and determine the release protocol, including, but not limited to, whether the footage is released, to whom, and if redaction is required.
- 3) Provides that a state or local law enforcement agency shall make available, upon a Public Records Act request, footage from a law enforcement body camera 60 days after the commencement of an investigation into a misconduct allegation based on use of force resulting in great bodily injury or death depicted in the footage.
- 4) Prohibits release of body camera footage that relates to domestic violence crimes, crimes including minors, or depicting statements of a witness at the scene of a crime.

EXISTING LAW:

- 1) Establishes the California Public Records Act and provides that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 6250 et seq.)
- 2) Defines "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." "Writing" means "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." (Gov. Code, § 6252.)

- 3) Makes public records open to inspection at all times during the office hours of the state or local agency. Every person has a right to inspect any public record, except as hereafter 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, subd. (a).)
- 4) Provides that, except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. (Gov. Code, § 6253, subd. (b).)
- 5) Requires the public agency, when a member of the public requests to inspect a public record or obtain a copy of a public record, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, to do all of the following, to the extent reasonable under the circumstances:
 - a) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
 - b) Describe the information technology and physical location in which the records exist; and
 - c) Provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 6253.1, subd. (a).)
- 6) States that the above provision does not apply when the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254, as specified. (Gov. Code, § 6253.1, subd. (d).)
- 7) States that, except as in other sections of the California Public Records Act, this chapter does not require the disclosure of specified records, which includes among other things: Records of complaints to, or investigations conducted by specified agencies, including any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 6254.)
- 8) Provides, notwithstanding any other law, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:
 - a) The full name and booking information of all persons arrested;
 - b) Calls for service logs and crime reports, subject to protections for protecting the confidentiality of victims; and,
 - c) The addresses of individuals arrested by the agency and victims of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly,

journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator. (Gov. Code, § 6254, subd. (f).)

- 9) Requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 6255.)
- 10) Authorizes any person to institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. (Gov. Code, § 6258.)
- 11) States that peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or any agency or department that employ these officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office. (Pen. Code, § 832.7, subd. (a).)
- 12) Provides, notwithstanding the above provision, a department of agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed. (Pen. Code, § 832.7, subd. (b).)
- 13) States that police "personnel records" include "complaints, or investigations of complaints, concerning an event or transaction in which the officer participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties." (Pen. Code, § 832.8.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Since 2012, there has been a national outcry of several incidents where law enforcement 'use of force' has been questioned in communities throughout the United States. These incidences, many leading to no indictment, have fractured the relationship between many communities and the law enforcement agencies sworn to protect them.

"Body worn cameras have many benefits. A 2013 University of Cambridge study found that when police wear body cameras, both police and respondents are less likely to use violence. The study indicated a drop in use of force by more than a 50 percent. Body cameras could thus make the streets safer for both officers and the general public. Body worn footage can improve the public's view of policing.

"California has an untiring commitment to fairness, civil rights, community policing, transparency, and justice; AB 1957 seeks to adopt the best practices for release of images

captured by the use of police body-worn cameras in this state."

- 2) **Body-Worn Cameras as Tool to Increase Transparency:** A recent report released by U.S. Department of Justice's Office of Community Oriented Policing Services and the Police Executive Research Forum studied the use of body-worn cameras by police agencies. This research included a survey of 250 police agencies, interviews with more than 40 police executives, a review of 20 existing body-camera policies, and a national conference at which more than 200 police chiefs, sheriffs, federal justice representatives, and other experts shared their knowledge of and experiences with body-worn cameras. The report shows that body-worn cameras can help agencies demonstrate transparency and address the community's questions about controversial events. Among other reported benefits are that the presence of a body-worn camera have helped strengthen officer professionalism and helped to de-escalate contentious situations, and when questions do arise following an event or encounter, police having a video record helps lead to a quicker resolution. (Miller and Toliver, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, Police Executive Research Forum (Nov. 2014).)
- 3) **California Public Records Act:** The purpose of the California Public Records Act is to prevent secrecy in government and to contribute significantly to the public understanding of government activities. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.) Thus, under the California Public Records Act, generally all public records are open to public inspection unless a statutory exception exists. But, even if a specific exception does not exist, an agency may refuse to disclose records if on balance, the interest of nondisclosure outweighs disclosure. "The specific exceptions of section 6254 should be viewed with the general philosophy of section 6255 in mind; that is, that records should be withheld from disclosure only where the public interest served by not making a record public outweighs the public interest served by the general policy of disclosure." (53 Ops.Cal.Atty.Gen. 136 (1970).)
 - a) *Police Investigatory Records:* Under the California Public Records Act, police investigatory records are exempt from disclosure. (Gov. Code, § 6254, subd. (f).) The California Supreme Court has expressly rejected this to mean that all information reasonably related to criminal activity is exempt. "Such a broad exemption . . . would effectively exclude the law enforcement function of state and local governments from any public scrutiny under the California Act, a result inconsistent with its fundamental purpose." (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 449.) Additionally, a record or document that contains some information that is exempt does not require the entire record to be exempt as long as the exempt material is reasonably segregable from the non-exempt material. (*Id.* at p. 453.)
 - b) *Police Personnel Records:* Under existing law, certain police personnel records are deemed confidential. (Pen. Code, §§ 832.5, 832.7, 832.8.) "Personnel records" are defined to include any file maintained under that individual's name by the officer's employing agency and containing records relating to any of the following, among other things, "employee advancement, appraisal, or discipline" and "complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties." (Pen. Code, § 832.8, subs. (d) and (e).)

- c) *Case Review*: In *Copley-Press, Inv. v. Superior Court* (2006) 39 Cal.4th 1272, a newspaper publisher requested disciplinary appeal records for a particular officer that had been terminated. The newspaper publisher, Copley-Press, argued for disclosure by stating, among other reasons, that the records maintained by the Commission conducting the disciplinary appeal were not protected because they are not personnel records. The Court rejected this view and stated that the records are "personnel records" and therefore are confidential. It did not matter that the Commission, rather than the actual law enforcement agency was in possession of the documents. The Court relied largely on the language of Penal Code section 832.7, subdivision (c), which permits a department or agency that employs peace officers to disclose certain data against officers, but only "if that information is in a form which does not identify the individuals involved." The Court reasoned that the information demonstrates that the statute is intended to protect, among other things, the identity of officers subject to complaints. (*Copley-Press, Inv. v. Superior Court, supra*, 39 Cal.4th at p. 1289.)

A more recent case distinguished itself from *Copley* and held that officers' names in this particular case must be disclosed. In *Long Beach Police Officers Association v. City of Long Beach* (2015) 59 Cal.4th 59, a police union sought to prevent disclosure of the names of Long Beach police officers involved in certain shootings while on-duty pursuant to exceptions in the California Public Records Act. The California Supreme Court, in reviewing the statutes that make police personnel records confidential (Pen. Code, §§ 832.7 and 832.8) stated that the information contained in the initial incident report of an on-duty shooting are typically not "personnel records" although it would result in an investigation by the employing agency and may lead to discipline. "Only the records *generated* in connection with that appraisal or discipline would come within the statutory definition of personal records. (Pen. Code, 832.8, subd. (d).) We do not read the phrase 'records relating to . . . employee . . . appraisal or discipline' so broadly to include every record that might be *considered* for purposes of an officer's appraisal or discipline, for a such a broad reading of the statute would sweep virtually all law enforcement records into the protected category of 'personnel records.'" (*Id.* at pp. 71-72.)

The Court also analyzed the investigatory records exception within the California Public Records Act (Gov. Code, § 6254, subd. (f)) to support its conclusion that not all records pertaining to an on-duty shooting is confidential. The Court noted that paragraphs (1) and (2) of subdivision (f) require the disclosure of the officer's name when a shooting occurs by the officer during an arrest, or in the course of responding to a complaint or request for assistance, or when the officer's name is recorded as a factual circumstance of the incident. "It thus appears that the Legislature draws a distinction between (1) records of factual information about an incident (which generally must be disclosed) and (2) records generated as part of an internal investigation of an officer in connection with the incident (which generally are confidential)." (*Long Beach Officers Association, supra*, 59 Cal.4th at p. 72.)

Likewise, the Court found that the exception against disclosure of personnel records if disclosure would constitute an unwarranted invasion of personal privacy, (Gov. Code, § 6254, subd. (c)), would in most instances weigh in favor of disclosure. "The public's substantial interest in the conduct of its peace officers outweighs, in most cases, the

officer's personal privacy interest." (*Long Beach Officers Association, supra*, 59 Cal.4th at p. 73.)

The Court distinguished its finding from *Copley, supra*, where the court held that an officer's identity was protected from disclosure as a "personnel record." In *Copley, supra*, disclosing the name of the officer in disciplinary appeal records would link the officer to confidential personnel matters involving disciplinary action. In this case, disclosing the names of officers involved in various shootings would not imply that those shootings resulted in disciplinary action against the officers, and it would not link those names to any confidential personnel matters or other protected information. (*Long Beach Officers Association, supra*, 59 Cal.4th at p. 73.)

Lastly, the Court considered the catchall exemption in the California Public Records Act that allows a public agency to withhold any public record if the agency shows that "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255.) The court concluded that vague safety concerns that apply to all officers involved in shootings are insufficient to tip the balance against disclosure. (*Long Beach Officers Association, supra*, 59 Cal.4th at p. 74.) Thus, the Court rejected the blanket rule sought by the union preventing disclosure of officer names every time an officer is involved in a shooting, and stated that that some circumstances may warrant the nondisclosure of names but the facts of this case did not warrant it. (*Id.* at p. 75.)

Police body camera footage would be considered a public record under the Public Records Act. This type of record can have multiple purposes. For example, body camera footage might be used for training purposes. But, when the video depicts police use of force resulting in great bodily injury or death, it will most likely be used for investigatory purposes.

This bill would create an exception to the investigative-records exemption of the Public Records Act. This bill would allow body camera footage depicting an officer-involved use of force involving great bodily injury or death which has resulted in an investigation of misconduct to be made available to the public under the California Public Records Act 60 days after the investigation commences.

This bill is consistent with the Supreme Court's interpretation of the Public Records Act. The California Supreme Court has found a policy favoring disclosure especially salient when the subject is law enforcement: In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers. (See *Long Beach Officers Association, supra*, 59 Cal.4th at p. 74, see also *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 297.) In *Commission on Peace Officer Standards, supra*, the Supreme Court noted:

Given the extraordinary authority with which they are entrusted, the need for transparency, accountability and public access to information is particularly acute when the information sought involves the conduct of police officers. In *Commission on Police Officer Standards*, the Supreme Court observed, "The public's legitimate interest in the identity and activities of peace officers is even greater than its interest in those of the average public servant. 'Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain

trust in its police department, the public must be kept fully informed of the activities of its peace officers.' [Citation.] 'It is indisputable that law enforcement is a primary function of local government and that the public has a far greater interest in the qualifications and conduct of law enforcement officers, even at, and perhaps especially at, an "on the street" level than in the qualifications and conduct of other comparably low-ranking government employees performing more proprietary functions. The abuse of a patrolman's office can have great potentiality for social harm' (*Commission on Police Officer Standards*, at pp. 297–298, fn. omitted.)

Release of body camera footage is precisely the kind of disclosure which will promote public scrutiny of, and accountability for, uses of force.

- 4) **Argument in Support:** According to the *California Public Defenders Association*, "The California Public Records Act requires that public records be open to inspection at all times during the office hours of a state or local agency and that every person has a right to inspect any public record, except as specifically provided. The act further requires that a reasonably segregable portion of a public record be available for inspection by any person requesting the public record after deletion of the portions that are exempted by law. Existing law exempts from the disclosure requirements records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, law enforcement agencies, including the Attorney General and state or local police agencies.

"This bill would by require a state or local law enforcement agency to make available, upon request, footage from a law enforcement body-worn camera 60 days after the commencement of an investigation into misconduct that uses or involves that footage.

"This bill promotes transparency in the actions of law enforcement by mandating the release of recordings that would tend to shed light on possible police misconduct. It can have the purposes of promoting public confidence in such actions, or disclose inappropriate behavior. Under either circumstance, the public has a right to view these recordings."

- 5) **Argument in Opposition:** According to the *California District Attorneys Association*, "Existing law, in Government Code, section 6254(f), provides an exception to the California Public Records Act that protects against disclosure of reports that 'would endanger the successful completion of the investigation or a related investigation.' This bill, rather arbitrarily, would override that CPRA exemption after just 60 days. In many cases, particularly those in which an officer is being investigated as a criminal suspect, such an investigation would still be ongoing after 60 days.

"AB 1957 provides no mechanism by which to delay the release of any footage related to the investigation, and, in fact, *requires* its release upon request. Under no circumstances are law enforcement agencies required to disclose evidence during the pendency of an investigation. Existing law sufficiently balances the public's desire to obtain this type of information with law enforcement agencies' need to preserve the integrity of the investigations. AB 1957 would undermine those efforts."

6) Related Legislation:

- a) AB 1940 (Cooper), in pertinent part, exempts from disclosure under the Public Records Act body-worn camera recordings that depict the use of force resulting in serious injury or death from public disclosure, except as specified. AB 1940 will be heard in this Committee today.
- b) AB 2533 (Santiago) entitles an officer to at least five-day's notice before an agency release an audio or video recording by that officer on the Internet. AB 2533 will be heard in this Committee today.
- c) AB 2611 (Low) exempts from disclosure under the Public Records Act any investigatory or security audio or video recording complied by state or local law enforcement. AB 2611 is pending in the Judiciary Committee.

7) Prior Legislation:

- a) AB 65 (Alejo), would have redirected funds from the Driver Training Penalty Assessment Fund and allocates that money to the Board of State and Community Corrections to be used to fund local law enforcement agencies to operate a body-worn camera program, as specified. AB 65 was held in the Assembly Appropriations Committee.
- b) AB 66 (Weber), would have established mandatory requirements and recommended guidelines for the use of body-worn cameras by peace officers and the handling of the resulting video and audio data. AB 66 was held in the Assembly Appropriations Committee.
- c) AB 69 (Rodriguez), Chapter 461, Statutes of 2015, requires law enforcement agencies to consider specified best practices when establishing policies and procedures for downloading and storing data from body-worn cameras.
- d) SB 175 (Huff) would have required each department or agency that employs peace officers and that elects to require those peace officers to wear body-worn cameras to develop a policy relating to the use of body-worn cameras. SB 175 was ordered to the inactive file.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Public Defenders Association
Legal Services for Prisoners with Children

Opposition

California Civil Liberties Advocacy
California District Attorneys Association
California Police Chiefs Association

California State Sheriffs' Association
Fraternal Order of Police

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

Amendments Mock-up for 2015-2016 AB-1957 (Quirk (A))

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

Mock-up based on Version Number 97 - Amended Assembly 4/6/16
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 6254.31 is added to the Government Code, to read:

6254.31. (a) Before the end of the business day following the date on which the incident occurs, the governing body of the law enforcement agency, in closed session, ~~shall~~ **may** review the footage from a body-worn camera when the officer is involved in an incident that results in great bodily ~~harm~~ **injury** or death.

(b) If, after reviewing the footage as required in subdivision (a), there is an investigation that leads to ~~an indictment~~ **a prosecution**, the judge shall review the body-worn camera footage and determine the release protocol, including, but not limited to, whether the footage is released, to whom, and if redaction is required.

(c) Except as provided in subdivision (d), notwithstanding Section 6254, a state or local law enforcement agency shall make available, upon request pursuant to this chapter, footage from a law enforcement body-worn camera 60 days after the commencement of an investigation into a misconduct ~~that uses or involves that footage~~ **allegation based on use of force resulting in great bodily injury or death depicted in the footage.**

(d) Footage of body-worn cameras that relates to crimes of domestic violence or crimes that include minors or that includes statements of a witness at the scene of a crime shall not be released for public viewing.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs because, in that regard, the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall

be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Date of Hearing: April 12, 2016
Counsel: David Billingsley

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

AB 1975 (Waldron) – As Amended March 17, 2016

SUMMARY: Requires a court to impose an alcohol dependence assessment, as specified, as a condition of probation for a person in an 18-month or 30-month driving-under-the-influence program, or for a first offender who had a specified blood alcohol level. Specifically, **this bill:**

- 1) Requires a court to impose an alcohol dependence assessment as a condition of probation for a person in an 18-month or 30-month driving-under-the-influence program, or for a first offender who had a blood alcohol content (BAC) of .16, or above.
- 2) States that the alcohol dependence assessment be based on the administration of the American Society for Addiction Medicine (ASAM) criteria.
- 3) Requires the entity administering the assessment to advise the person subject to the assessment of all of the following:
 - a) That the person should consult with his or her physician to discuss the results of the assessment, including any medically necessary services;
 - b) If the person's physician determines that substance use disorder treatment is medically necessary, that the person should be referred to a licensed residential or certified outpatient treatment program;
 - c) That there are medications approved by the Federal Drug Administration that can address alcohol dependence;
 - d) The goal of the assessment required by subdivision (g) is to assist persons participating in the program to recognize their chemical dependency and to assist them in their recovery.

EXISTING LAW:

- 1) Defines "Driving-Under-the-Influence Program" as "a firm, partnership, association, corporation, or local governmental agency, which has been recommended by the county board of supervisors and subsequently licensed by the Department, in accordance with this Chapter, to provide alcohol and other drug education and counseling services to specified individuals, including those convicted of a DUI." (Code of Regs, Title IX, § 9800, subd. (c).)
- 2) Requires within the first 60 days of participation, the DUI program to complete an assessment of each participant's alcohol or drug use. (Code of Regs, Title IX, § 9849, subd. (a).)

- 3) Specifies the assessment shall address patterns and history of alcohol and other drug use, addiction treatment history, gender, age, work status, family substance abuse history, legal history, and current health status. (Code of Regs, Title IX, § 9849, subd. (a).)
- 4) States that the alcohol and drug assessments shall be conducted by DUI program counselors who meet the specified qualifications. (Code of Regs, Title IX, § 9849, subd. (b).)
- 5) Requires the counselor conducting the assessment to discuss the results of the alcohol or drug assessment with the participant. (Code of Regs, Title IX, § 9849, subd. (c).)
- 6) Requires as part of the assessment, that the counselor recommend any ancillary services he/she thinks would be potentially beneficial to the participant. (Code of Regs, Title IX, § 9849, subd. (d).)
- 7) States that the counselor shall record the results of the participant's alcohol or drug assessment, the follow up discussion, and the recommendations for ancillary services in the participant's case record. (Code of Regs, Title IX, § 9849, subd. (d).)
- 8) Requires the participant and the counselor to sign and date the results of the assessment and follow up discussion. (Code of Regs, Title IX, § 9849, subd. (e).)
- 9) Specifies that if a person is convicted of a violation of Section DUI or DUI with injury, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight, or the refusal of the person to take a chemical test, as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation. (Veh. Code § 23578.)
- 10) States that the court shall impose as a condition of probation, upon conviction of a first DUI, that the driver shall complete a DUI program, licensed as specified, in the driver's county of residence or employment, as designated by the court. (Veh. Code § 23538, subd. (b).)
- 11) Requires the court to order a first DUI offender whose blood-alcohol concentration was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities. (Veh. Code § 23538, subd. (b)(1).)
- 12) Requires the court to order a first DUI offender whose blood-alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test, to participate for at least nine months or longer, as ordered by the court, in a licensed program that consists of at least 60 hours of program activities. (Veh. Code § 23538, subd. (b)(2).)
- 13) States that the court shall advise the person at the time of sentencing that the driving privilege shall not be restored until proof satisfactory to the department of successful completion of a DUI program of the length required under this code that is licensed, as specified, has been received in the department's headquarters. (Veh. Code § 23538, subd. (b)(3).)
- 14) Specifies that instead the specified DUI education, a court may impose, as a condition of probation, that the person complete a live in program dealing with substance abuse, if the

- person consents and has been accepted into that program. (Veh. Code, § 23598.)
- 15) Requires the court to refer a first time DUI offender whose concentration of alcohol in his or her blood was less than 0.20 percent, by weight, to participate for at least three months or longer, as a condition of probation, in a licensed program that consists of at least 30 hours of program activities. (Health & Saf. Code § 11837, subd. (c)(1).)
 - 16) States that the court shall require the person convicted of a second DUI to do either of the following:
 - a) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation, in a driving-under-the-influence program licensed, as specified, as designated by the court; or (Veh. Code, § 23542, subd. (b)(1).)
 - b) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed, as specified. (Veh. Code, § 23542, subd. (b)(2).)
 - 17) Requires the court to order a first time DUI offender whose concentration of alcohol in the person's blood was 0.20 percent or more, or the person refused to take a chemical test, to participate, for at least nine months or longer, as ordered by the court, in a licensed program that consists of at least 60 hours of program activities, as a condition of probation. Health & Saf. Code § 11837, subd. (c)(2).)
 - 18) States that each county alcohol program administrator or the administrator's designee shall develop, implement, operate, and administer an alcohol and drug problem assessment program pursuant to this article for each person described in subdivision (b). The alcohol and drug problem assessment program may include a referral and client tracking component. (Veh. Code, § 23646, subd. (a).)
 - 19) Requires the court to order a person to participate in an alcohol and drug problem assessment program, as specified, if the person was convicted of a violation of DUI or DUI with injury that occurred within 10 years of a separate conviction of DUI or DUI with injury. (Veh. Code, § 23646, subd. (b)(1).)
 - 20) Allows a court may order a person convicted of a violation of DUI or DUI with injury to attend an alcohol and drug problem assessment program. (Veh. Code, § 23646, subd. (b)(2).)
 - 21) Authorizes a court to order a person convicted of a first DUI or first DUI with injury, if the program assessment recommends additional treatment, to order the person to enroll, participate, and complete an enhanced treatment program. (Veh. Code, § 23646, subd. (b)(3)(B).)
 - 22) Requires the court order a person convicted of a violation of DUI or DUI with injury who has previously been convicted of a violation of DUI or DUI with injury that occurred more than 10 years ago, or has been previously convicted of a specified substance abuse violation, to attend and complete an alcohol and drug problem assessment. (Veh. Code, § 23646, subd. (b)(3)(A).)

- 23) States that the State Department of Health Care Services shall establish minimum specifications for alcohol and other drug problem assessments and reports. (Veh. Code, § 23646, subd. (c).)
- 24) Requires each county to prepare, or contract to be prepared, an alcohol and drug problem assessment report on each person required to get an assessment. (Veh. Code, § 23648, subd. (a).)
- 25) States that the assessment report shall include, if applicable, a recommendation for any additional treatment and the duration of the treatment and the assessment report shall be submitted to the court not more than 14 days after the date the assessment was conducted. (Veh. Code, § 23648, subd. (b).)
- 26) Specifies that within 30 days of the receipt of the report, the court shall order the person to complete the recommendations set forth in the report in satisfaction of the terms and conditions of probation.
- 27) States that if the court elects not to order the completion of the recommended plan, the court shall specify on the record its reason for not adopting these recommendations. (Veh. Code, § 23648, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The ASAM assessment is a widely used and nationally recognized set of guidelines to assess, place, and discharge persons with addiction and co-occurring conditions. Under the federally approved Drug Medi-Cal Organized Delivery System (DMC-ODS) waiver, counties will be required to use the ASAM tool with the Drug Medi-Cal population, a sign that the substance use disorder treatment system is evolving and moving toward a more evidence-based set of practices.

"This measure would incorporate for the DUI population most at risk to reoffend an evidence-based practice that would evaluate individuals' risks and needs. In consultation with the person's medical provider, this important information would lead to referrals to appropriate treatment for purposes of addressing underlying addiction issues and identifying appropriate courses of treatment."

- 2) **Existing Law Already Requires A Substance Abuse Assessment as Part of DUI Programs:** Title IX of California's Code of Regulations provides the requirements for DUI programs. As part of those requirements, Title IX mandates that DUI programs include an alcohol and/or drug assessment.

DUI programs are ordered by the courts as a condition of probation when an individual is convicted of a DUI. The DUI programs ordered for a conviction of a DUI offense range from a minimum of a 3 month program to a maximum of a 30 month program. An individual convicted of a first time DUI generally attends a 3 month program, allow with specified alcohol levels the first time DUI offender is required to attend a 9 month program. An individual that is convicted of a second (or more) DUI offense within a 10 year period is

ordered to participate in an 18 or 30 month DUI program.

These DUI programs are all required by Title IX to administer substance abuse assessments to the individuals in the program. Title IX specifies that the substance abuse assessments must include the following:

- a) Requires within the first 60 days of participation, the DUI program to complete an assessment of each participant's alcohol or drug use. (Code of Regs, Title IX, § 9849, subd. (a).)
- b) Specifies the assessment shall address patterns and history of alcohol and other drug use, addiction treatment history, gender, age, work status, family substance abuse history, legal history, and current health status. (Code of Regs, Title IX, § 9849, subd. (a).)
- c) States that the alcohol and drug assessments shall be conducted by DUI program counselors who meet the specified qualifications. (Code of Regs, Title IX, § 9849, subd. (b).)
- d) Requires the counselor conducting the assessment to discuss the results of the alcohol or drug assessment with the participant. (Code of Regs, Title IX, § 9849, subd. (c).)
- e) Requires as part of the assessment, that the counselor recommend any ancillary services he/she thinks would be potentially beneficial to the participant. (Code of Regs, Title IX, § 9849, subd. (d).)
- f) States that the counselor shall record the results of the participant's alcohol or drug assessment, the follow up discussion, and the recommendations for ancillary services in the participant's case record. (Code of Regs, Title IX, § 9849, subd. (d).)
- g) Requires the participant and the counselor to sign and date the results of the assessment and follow up discussion. (Code of Regs, Title IX, § 9849, subd. (e).)

In addition the assessment provided as part of the DUI Programs, there are also provisions in current law that authorize a court to order an alcohol assessment when a defendant has been convicted for a DUI and has additional specified circumstances. (Veh. Code, §§ 23646 and 23648.)

- 3) **Unclear Who Pays the Cost for the Assessment Required by This Bill:** Although this bill mandates that the assessment takes place when the defendant is placed on probation for specified DUI offenses, this bill does not indicate who is expected to pay for the assessment.

If the defendant is required to pay for the assessment, this bill does not make any allowance for economic hardship when a defendant does not have the means to pay the costs of the substance abuse assessment. Requiring the defendant to pay for the costs of an assessment regardless of their economic can result in a responsibility the individual simply does not have an ability to meet. The assessment model established by this bill might not be sustainable without a reliable source of funding to pay for the assessments.

- 4) **ASAM Assessment Criteria:** The American Society of Addiction Medicine (ASAM) Criteria are the most widely used guidelines for assessment, service planning, placement, continued stay and discharge of patients with addictive disorders. (<http://www.naadac.org/understandingthenewasamcriteria>)

ASAM's treatment criteria provide separate placement criteria for adolescents and adults to create comprehensive and individualized treatment plans. Adolescent and adult treatment plans are developed through a multidimensional patient assessment over five broad levels of treatment that are based on the degree of direct medical management provided, the structure, safety and security provided and the intensity of treatment services provided.

The multidimensional assessment is meant to address the patient's needs, obstacles and liabilities, as well as the patient's strengths, assets, resources and support structure. (<http://www.asam.org/quality-practice/guidelines-and-consensus-documents/the-asam-criteria/about>)

- 5) **Argument in Support:** According to *Alcohol Justice*, "Alcohol-impaired driving is a serious problem. According to the California Office of traffic Safety over a quarter of traffic fatalities involve alcohol-impaired driving. In 2014, nearly 900 deaths were reported as a result of alcohol-impaired driving in the state. In addition to the incredible emotional toll on families, the state estimates that the average alcohol-impaired fatality costs \$3.8 million, including \$1 million in monetary costs and \$2.8 million in quality of life losses.

"The National Highway Traffic Safety Administration reports that a majority of drinking drivers involved in crashes involving fatalities had a BAC of .15 or higher. Furthermore, the California Department of Motor Vehicle reported that over a quarter of all DUI arrests in California re of repeat offenders in 2014 and that the BAC level for these offenders was typically higher than that of first time offenders.

"AB 1975 would direct treatment and services to those most at risk of driving with high BAC levels; helping to reduce alcohol-impaired traffic fatalities. Along with the eventual lowering of the Blood Alcohol Limits to .05 BAC in California, this will be an important addition to reducing acute alcohol-related harm. We enthusiastically support its passage."

6) **Related Legislation:**

- a) AB 2367 (Cooley), would allow courts to order a defendant convicted of two or more DUIs within a 10 year period to attend a 24/7 sobriety program as a condition of probation. AB 2367 is awaiting hearing in the Assembly Appropriations Committee.
- b) SB 1046 (Hill), would require a person who has been convicted of DUI, as specified, to install an ignition interlock device on all vehicles that he or she owns or operates for a specified period of time; and would authorize a person, if all other requirements are satisfied, including the installation of an ignition interlock device, to apply for a restricted driver's license without completing a period of license suspension or revocation. SB 1046 is awaiting hearing in the Senate Appropriations Committee

- 7) **Prior Legislation:** SB 1694 (Torlakson), Chapter 550, Statutes of 2004, requires a court to order a person who has previously been convicted of either a DUI offense that occurred over

10 years ago or disorderly conduct based on being found in a public place under the influence of alcohol or drugs, and who is currently convicted of a DUI offense to attend and complete that program. Authorizes a court, if the program assessment recommends additional treatment, to order the person to enroll, participate, and complete an enhanced treatment program.

REGISTERED SUPPORT / OPPOSITION:

Support

Alcohol Justice

Opposition

None

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

Date of Hearing: April 12, 2016
Consultant: Matt Dean

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

AB 1999 (Achadjian) – As Amended March 15, 2016

SUMMARY: Requires the Department of Justice (DOJ) to both complete an initial review of a match in the Armed Prohibited Persons System (APPS) within seven days of the match being placed in the queue, and periodically reassess whether the department can complete reviews of APPS matches more efficiently. Specifically, **this bill:**

- 1) Requires DOJ to complete an initial review of a match in the daily queue of APPS within seven days of the match being placed in the queue.
- 2) Requires DOJ to periodically reassess whether the department can complete reviews of APPS matches within the daily queue more efficiently.
- 3) Defines the “Armed Prohibited Persons System” (APPS) as "an online database with the purpose of cross-referencing persons who have ownership or possession of a firearm as indicated by the Consolidated Firearms Information System and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm."
- 4) Defines “match” as "an entry into the Automated Criminal History System, or into any department automated information system, of the name and other information of an individual who may be prohibited from acquiring, owning, or possessing a firearm, matched with a corresponding record of ownership or possession of a firearm by that individual, as specified."

EXISTING LAW:

- 1) Provides for an automated system for tracking firearms and assault weapon owners who might fall into a prohibited status. The online database, which is currently known as the APPS, cross-references all handgun and assault weapon owners across the state against criminal history records to determine persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. (Pen. Code, § 30000, et seq.)
- 2) Prohibits persons who know or have reasonable cause to believe that the recipient is prohibited from having firearms and ammunition to supply or provide the same with firearms or ammunition. (Pen. Code, §§ 27500 and 30306; and Welf. & Inst. Code, § 8101.)
- 3) Provides that various categories of persons are prohibited from owning or possessing a firearm, including persons convicted of certain violent offenses, and persons who have been adjudicated as having a mental disorder, among others. (Pen. Code, §§ 29800 to 29825,

inclusive, 29900, 29905, 30305; and Welf. & Inst. Code, §§ 8100 and 8103.)

- 4) Establishes the Dealer's Record of Sale (DROS) Account, a special fund, which receives various firearm registration fees, and which may be used by the DOJ for firearms related regulatory activities, including enforcement activities related to possession. (Pen. Code, §§ 28225 and 28235.)
- 5) Establishes the Firearms Safety and Enforcement Special Fund (FSESF), a continuously appropriated fund, for use by the DOJ for specified purposes related to weapons and firearms regulation. Monies in the fund may be used for the following purposes:
 - a) Implementing and enforcing the provisions of the Firearm Safety Certificate program;
 - b) Implementing and enforcing various gun law enforcement programs; and,
 - c) Establishment, maintenance, and upgrading of equipment and services necessary for firearms dealers to comply with the DROS system. (Pen. Code, §28300.)
- 6) Requires the DOJ, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. Existing law prohibits the delivery of a firearm within 10 days of the application to purchase, or, after notice by the department, within 10 days of the submission to the department of any corrections to the application to purchase, or within 10 days of the submission to the department of a specified fee. (Pen. Code, §§ 28200 to 28250.)
- 7) Mandates those dealers notify DOJ that persons in applications actually took possession of their firearms. (Pen. Code, § 28255.)
- 8) Requires if a dealer cannot legally deliver a firearm to return the firearm to the transferor, seller, or person loaning the firearm. (Pen. Code, § 28050, subd. (d).)
- 9) Requires that in connection with any sale, loan or transfer of a firearm, a licensed dealer must provide the DOJ with specified personal information about the seller and purchaser as well as the name and address of the dealer. This personal information of buyer and seller required to be provided includes the name; address; phone number; date of birth; place of birth; occupation; eye color; hair color; height; weight; race; sex; citizenship status; and a driver's license number; California identification card number; or, military identification number. A copy of the DROS, containing the buyer and seller's personal information, must be provided to the buyer or seller upon request. (Pen. Code, §§ 28160, 28210, and 28215.)
- 10) Appropriates \$24,000,000 from the DROS Special Account to DOJ to address the backlog in APPS and the illegal possession of firearms by individuals in APPS. (Pen. Code, § 30015.)
- 11) Requires DOJ to report, until March 1, 2019, on the following APPS statistics:
 - a) The degree to which the backlog in APPS has been reduced or eliminated;
 - b) The number of agents hired for enforcement of APPS;

- c) The number of people cleared from APPS;
- d) The number of people added to APPS;
- e) The number of people in APPS before and after the relevant reporting period, including a breakdown of why each person in APPS is prohibited from possessing a firearm;
- f) The number of firearms recovered due to enforcement of APPS;
- g) The number of contacts made during the APPS enforcement efforts; and
- h) Information regarding task forces or collaboration with local law enforcement on reducing the APPS backlog. (Pen. Code, § 30015, subs. (b) and (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1999 fulfills the recommendations of the State Auditor in requiring the Department of Justice to review an initial match in the Armed Prohibited Persons daily queue within 7 days and periodically reassess whether the Department can complete those reviews more efficiently.

"This bill ensures the Department of Justice manages its priorities and reviews potentially armed prohibited persons accurately and promptly."

- 2) **Prohibited Persons:** California has several laws that prohibit certain persons from purchasing firearms. All felony convictions lead to a lifetime prohibition, while specified misdemeanors will result in a 10-year prohibition. A person may be prohibited due to a protective order or as a condition of probation. Another prohibition is based on the mental health of the individual. If a person communicates to his or her psychotherapist a serious threat of physical violence against a reasonably-identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for five years, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat. (Welf. & Inst. Code, § 8100, subd. (b)(1).) If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103, subd. (f).) For the provisions prohibiting a person from owning or possessing a firearm based on a serious threat of violence or based on admittance into a facility as a threat to self or others, the person has the right to request a hearing whereby the person could restore his or her right to own or possess a firearm if a court determines that the person is likely to use firearms or other deadly weapons in a safe and lawful manner. (Welf. & Inst. Code, §§ 8100, subd. (b)(1) and 8103, subd. (f).)

DOJ developed APPS for tracking handgun and assault weapon owners in California who may pose a threat to public safety. (Pen. Code, § 30000 et seq.) APPS collects information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. DOJ receives automatic notifications from state and federal criminal history systems to determine

if there is a match in the APPS for a current California gun owner. DOJ also receives information from courts, local law enforcement and state hospitals as well as public and private mental hospitals to determine whether someone is in a prohibited status. When a match is found, DOJ has the authority to investigate the person's status and confiscate any firearms or weapons in the person's possession. Local law enforcement also may request from DOJ the status of an individual, or may request a list of prohibited persons within their jurisdiction, and conduct an investigation of those persons. (Pen. Code, § 30010.) Since the development of APPS, California has added long-gun transactions to the list of registered firearms and has added restraining orders to the list of prohibiting events. (< <http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/sb-140-supp-budget-report.pdf> >)

These additional requirements have contributed to a backlog in processing APPS matches.

- 3) **Backlog of Match Review in APPS:** DOJ has two queues through which it processes matches between any potentially prohibited person and any registered firearm owner or applicant. Although steady progress has been made to reduce the backlog in APPS's two queues, currently there is an average backlog of 3,600 matches of potentially prohibited persons to firearm owners in the daily queue of APPS and a backlog of approximately 257,000 potentially prohibited person matches in the historical queue. The historical queue includes all matched prohibited persons not in the daily queue, which includes all potentially prohibited persons whose reviews were pending before DOJ implemented APPS in 2006. The daily queue receives information daily from courts and mental health providers regarding individuals who should be prohibited from owning a firearm, as specified, and automatically creates matches of anyone who is currently a firearm owner or who has applied to own a firearm. (< <https://www.bsa.ca.gov/pdfs/factsheets/2015-504.pdf> >)

To avoid instances of incorrect identification, DOJ conducts a manual review of any person who has been automatically matched in APPS. This avoids denying access or ownership of firearms to improperly matched individuals, i.e. makes sure that no one is mistakenly prohibited from owning or purchasing a firearm due to any clerical error or other incorrect identifier. This manual review is the initial review referred to in this bill. This bill would require this initial review to be completed by DOJ seven days after the automated match is generated in APPS, as recommended by the State Auditor after DOJ received an appropriation for this purpose.

In 2013, the Legislature appropriated \$24 million to DOJ to help clear the APPS backlogs. However, DOJ assigned APPS unit staff to handle firearm background checks, which have a statutory maximum time period during which background checks must be completed. APPS, on the other hand, has no such statutory deadline. In order to further reduce the backlog, the State Auditor has recommended DOJ be mandated to complete the aforementioned initial review of prohibited person matches in APPS daily queue within seven days. This bill would mandate the State Auditor's recommendation.

- 4) **Related Legislation:** SB 1332 (Mendoza), would require the Department of Justice to modify its registration form so that both spouses or both domestic partners may register as the owners of the firearm and would require the department to maintain both names on the firearm's registry. This bill passed as amended from the Senate Committee on Public Safety and was re-referred to the Committee on Appropriations on April 5, 2016.

5) Prior Legislation:

- a) SB 580 (Jackson), of the 2013-2014 Legislative Session, would have would appropriated the sum of \$5,000,000 from the FSESF to the DOJ to contract with local law enforcement agencies to reduce the backlog of individuals who are identified by APPS as illegally possessing firearms. This bill died in the Assembly Committee on Appropriations.
- b) SB 140 (Leno), Chapter 2, Statutes of 2013, appropriated \$24 million from the DROS Special Account to the DOJ for costs associated with regulatory and enforcement of illegal possession of firearms by prohibited persons.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

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

Date of Hearing: April 12, 2016
Counsel: David Billingsley

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

AB 2013 (Jones-Sawyer) – As Introduced February 16, 2016

SUMMARY: Establishes a five year pilot program in six counties, requiring the judge to make a finding of probable cause that a crime has been committed when an out of custody defendant is facing a misdemeanor charge, upon request by the defendant. Specifically, **this bill:**

- 1) Establishes a Pilot Program for five years in six counties to be selected by five-member committee.
- 2) Specifies the members of the committee will be selected as follows:
 - a) One member selected by the California Public Defenders Association.
 - b) One member selected by the California District Attorneys Association.
 - c) One member selected by the Judicial Council.
 - d) Two members selected by the Governor.
- 3) Specifies that the County of Los Angeles shall be included in the pilot project.
- 4) Specifies that the following arraignment procedures will apply in the pilot project counties:
 - a) When the defendant is out of custody at the time he or she appears before the magistrate for arraignment and the defendant has plead not guilty to a misdemeanor charge, the magistrate, on motion of counsel for the defendant or the defendant's own motion, shall determine whether there is probable cause to believe that the defendant committed a criminal offense.
 - b) The determination of probable cause shall be made immediately, unless the court grants a continuance for a good cause not to exceed three court days.
 - c) In determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference, or any other documents of similar reliability.
 - d) If the court determines that no probable cause exists, it shall dismiss the complaint and discharge the defendant.

- 5) Specifies that if the charge is dismissed, the prosecution may refile the complaint within 15 days of the dismissal.
- 6) States that a second dismissal based on lack of probable will bar any further prosecution for the same offense.
- 7) Requires the Department of Justice (DOJ) to provide information to the Assembly Committee on Budget, The Senate Committee on Budget and Fiscal Review, and the appropriate policy committees of the Legislature regarding implementation of the pilot program, including the number of instances that a prompt probable cause determination made to an out of custody defendant facing a misdemeanor charge resulted in the defendant's early dismissal.
- 8) Requires the report submitted by DOJ to comply with the Government Code, as specified.
- 9) States that the pilot program will become inoperative on July 1, 2022, and is repealed January 1, 2023, unless there are later enacted statutes which delete or extend the dates.

EXISTING LAW:

- 1) Requires that if the defendant is in custody at the time he or she appears before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant's own motion, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof. (Pen. Code, § 991, subd. (a).)
- 2) Requires the determination of probable cause to be made immediately unless the court grants a continuance for good cause not to exceed three court days. (Pen. Code, § 991, subd. (b).)
- 3) States that in determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference thereto, which, if based on information and belief, state the basis for such information, or any other documents of similar reliability. (Pen. Code, § 991, subd. (d).)
- 4) Provides that if, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall set the matter for trial. (Pen. Code, § 991, subd. (e).)
- 5) Requires the court dismiss the complaint and discharge the defendant if it determines that no probable cause exists. (Pen. Code, § 991, subd. (f).)
- 6) Allows the prosecution to refile the complaint within 15 days of the dismissal of a complaint pursuant to Penal Code section 991. (Pen. Code, § 991, subd. (g).)
- 7) States that a second dismissal pursuant to this section is a bar to any other prosecution for the same offense. (Pen. Code, § 991, subd. (h).)

- 8) Requires that when a defendant is arrested, he or she is to be taken before the magistrate without unnecessary delay, and, in any event, within 48 hour, excluding Sundays and holidays. (Pen. Code, § 825, subd. (a)(1).)
- 9) Prescribes that the 48 hour limitation for arraignment be extended when:
 - a) The 48 hours expire at a time when the court in which the magistrate is sitting is not in session, that time shall be extended to include the duration of the next court session on the judicial day immediately following. (Pen. Code, § 825, subd. (a)(2).)
 - b) The 48-hour period expires at a time when the court in which the magistrate is sitting is in session, the arraignment may take place at any time during that session. However, when the defendant's arrest occurs on a Wednesday after the conclusion of the day's court session, and if the Wednesday is not a court holiday, the defendant shall be taken before the magistrate not later than the following Friday, if the Friday is not a court holiday. (Pen. Code, § 825, subd. (a)(2).)
- 10) Allows after the arrest, any attorney at law entitled to practice in California, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay to the party aggrieved the sum of \$500, to be recovered by action in any court of competent jurisdiction. (Pen. Code, § 825, subd. (b).)
- 11) Requires the time specified in the notice to appear be at least 10 days after arrest when a person has been released by the officer after arrest and issued a citation. (Pen. Code, § 853.6(b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Current law is replete with various means to weed out weak, baseless, or insufficiently supported lawsuits, whether criminal or civil. Such means are designed to prevent unnecessary stress, oppression, and expense for civil and criminal defendants, and also to prevent unnecessary consumption of court time and resources. By identifying meritless cases at an early stage before complex and expensive proceedings, including a jury trial, such costs are prevented.

"Federal constitutional law requires a probable cause determination by an impartial magistrate within 48 hours of arrest for those in custody on criminal charges. The US Constitution, State Constitution, and statutory law require probable cause determination for accused felons, whether in custody or not, by way of a grand jury indictment or a felony preliminary hearing.

"After a felony preliminary hearing, a defendant can seek a review of the preliminary hearing judge's ruling by way of a Penal Code section 995 motion. If a misdemeanor defendant is in custody he or she can seek a probable cause determination from the judge presiding at his

arraignment by way of a Penal Code 991 motion. What is missing from this otherwise comprehensive scheme is any vehicle for measuring the merit of misdemeanor charges for a defendant who is not in custody. He or she is not entitled to an initial probable cause determination or a 991 motion because he is not in custody, and he is not entitled to a preliminary hearing or a 995 motion because he is not charged with a felony.

“Preparation for a misdemeanor trial requires investigation, subpoenaing of witnesses, extensive discovery of the opposing party’s evidence, and often the filing of legal motions and the analysis of physical evidence and the employment of expert witnesses.

“Like in-custody defendants, out of custody defendants charged with a misdemeanor also have a significant interest in not facing unsupported charges and having the specter of a trial looming over them for months. These individuals must take time from their work, school or other activities, facing the anxiety of being charged with a crime. In the face of such demands, some innocent defendants are forced to “take a deal” rather than risk losing a job or failing their school work. The time and expense required for this preparation could be obviated if there was a convenient means for washing out the weak and baseless cases at an early stage.

“In the wake of Proposition 47, it has been projected that misdemeanor trial courts statewide will be inundated with thousands and perhaps tens of thousands of what were formerly low level felonies. These courts and defendants will be without the means to weed out the weakest of those charges. Without additional authority to evaluate those cases, the courts may very well find themselves overwhelmed with pending misdemeanor trials.

“In addressing these concerns, and pursuant to the Governor’s recommendation, AB 2013 will establish a carefully crafted pilot that will provide such authority on a limited basis. Specifically, the bill will establish, by July 1, 2017, a 5-year pilot project in six counties that would require a judge to make a finding of probable cause in determining whether a crime has been committed when a defendant is out of custody and facing a misdemeanor charge.

“Though hundreds of thousands of misdemeanors are filed in this state each year and tens of thousands of misdemeanor defendants are in custody at arraignment, experience has shown, since PC § 991 was enacted in 1980, that only a small fraction of those defendants will bring a PC § 991 motion. When they do bring the motion, it normally takes the judge only a few minutes to read the documents, listen to arguments, and make his ruling. When defendants are not in custody, and their liberty is consequently not at stake, it is even less likely that they will bring a motion unless they legitimately believe there is insufficient probable cause to support the charges.

“The legal calculus dictates that far less time will be consumed by hearing a few additional PC § 991 motions for out-of-custody misdemeanants than will be saved from having to conduct meritless misdemeanor trials that could otherwise be identified and eliminated at an early stage. This bill will show how it can benefit the prosecution by allowing it more time to gather and present evidence to support its claim of probable cause, and screening out-of-custody misdemeanor cases before they potentially become an unnecessary burden on our trial courts.

“AB 2013 provides an inexpensive and streamlined mechanism in identifying meritless cases and should pay dividends for those selected counties in saved time, stress, and resources for all involved.”

- 2) **Legal Background:** In 1975, the United States Supreme Court decided, in *Gerstein v. Pugh* (1975) 420 U.S. 103, that the 5th amendment right to due process required that a person arrested without a warrant receive a “prompt” probable cause determination from an impartial magistrate. That same year, the California Supreme Court decided, in the case of *In re Walters* (1975) 15 Cal.3d 738, that *Gerstein* was binding on California and applied to misdemeanors as well as felonies. The U.S. Supreme Court refined its *Gerstein v. Pugh* decision by holding, in *County of Riverside v. McLaughlin* (1991) 500 U.S. 44, that “prompt” means within 48 hours, with no exception for weekends or holidays.

In 1980, after *Gerstein* and *Walters*, but before *McLaughlin*, this case law was codified as to misdemeanants in custody, in Penal Code section 991. Penal Code section 991 does not cover misdemeanants who are out of custody.

- 3) **Governor’s Veto Message:** AB 696 (Jones-Sawyer), of the 2015-2016 Legislative Session, was vetoed by the Governor. AB 696 would have required probable cause determination for out of custody misdemeanor defendants upon request by counsel.

The Governor’s veto message was as follows: “I understand the potential benefits to a defendant in having the court make this determination earlier in the process. However, the impact on the courts is unclear and could well be significant. I would welcome a small, carefully crafted pilot to assess the impact of this proposal.”

- 4) **Argument in Support:** According to *California Attorneys for Criminal Justice*, “Under California law, both felony-charged and misdemeanor-charged defendants who are *in custody*, receive a determination of probable cause within 48 hours of being arrested. However, misdemeanor defendants who are *out of custody* must wait at least 10 days and such determinations can take weeks or months.

“Like in-custody defendants, out of custody defendants charged with a misdemeanor also have a significant interest in not facing unsupported charges and having the specter of a trial looming over them for months. These individuals must take time off work, school or other activities, facing the anxiety of being charged with a crime. In the face of such demands, some innocent defendants are forced to “take a deal” rather than risk losing a job or failing their school work.

“AB 2013 would establish a 5-year pilot project in six counties that would require a court, on motion by the defendant or the defendant’s counsel. To make a finding of probable cause in determining whether a crime has been committed when the defendant is out of custody and facing a misdemeanor charge.

“As the number of misdemeanor cases increases with the passage of Proposition 47, and with judicial resources continuing to shrink, the court system has a vested interest in screening out-of-custody misdemeanor cases before they become an unnecessary burden on our trial courts.”

5) Prior Legislation:

- a) AB 696 (Jones-Sawyer), of the 2015-2016 Legislative Session, would have required probable cause determination for out of custody misdemeanor defendants upon request by counsel. AB 696 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
California Attorneys for Criminal Justice

Opposition

None

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

Date of Hearing: April 12, 2016
Chief Counsel: Gregory Pagan

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

AB 2165 (Bonta) – As Amended April 7, 2016

SUMMARY: Provides that any peace officer who has completed the Commission on Peace Officer Standards and Training (POST) course in the carrying and use of a firearm shall be exempt from the state prohibition relating to the sale or purchase of an unsafe handgun.

EXISTING LAW:

- 1) Requires commencing January 1, 2001, that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. [Penal Code Section 32000(a).]
 - a) Specifies that this section shall not apply to any of the following:
 - i) The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice (DOJ) to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this.
 - ii) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section.
 - iii) Firearms listed as curios or relics, as defined in federal law.
 - iv) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person. (Pen. Code, § 32000, subd. (b).)

- 2) Specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)
- 3) Defines "unsafe handgun" as any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified. (Pen. Code, § 31910.)
- 4) Requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Pen. Code, § 32010.)
- 5) Requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Pen. Code, § 32015, subd. (a).)
- 6) Provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code, § 32015, subd. (b)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2165 is a simple clarification allowing trained peace officers to continue to carry and use their existing firearms for use in the discharge of their official duties. Many of these officers have been issued these weapons by their departments over the past several years, but recent changes in interpretation by the Department of Justice has put these officers in limbo and created a risk of legal and financial liability. This has affected agencies up and down the state, from more specialized police departments that do not serve a particular municipality, to probation departments, and finally the Department of Alcoholic Beverage Control and the Department of Insurance. These categories of peace officers participate in mutual aid situations, task forces, sting operations and arrests—all high-risk situations require that these officers be properly armed. It is imperative that we provide the statutory basis for the parity between agencies that has existed since the creation of the roster."

- 2) **Argument in Support:** According to the *California Statewide Law Enforcement Association*: "In 2001, Penal Code §32000 created a list of non-exempt agencies who may purchase non-roster firearms for use in the discharge of their official duties. Certain trained peace officers and law enforcement personnel were left off of the list. These peace officers are often required to participate in mutual aid situations, task forces, sting operations and arrests. These high-risk situations require that these officers be properly warned.

"Recent enforcement of the gun roster by the Department of Justice would require thousands of law enforcement to forfeit their guns. This legislation is necessary because it will allow officers, who have gone through the appropriate training to carry and keep their 'non-roster' handguns, while on active duty. Not fixing this issue will create a serious risk of liability that is easily avoidable with the amendment to Penal Code §830.3. There is also a cost savings to the State of California because new handguns will not have to be purchased for many of these personnel. Lastly, this bill simply seeks parity with other peace officers and various law enforcement agencies".

- 3) **Argument in Opposition:** According the *California Chapter of the Brady Campaign to Prevent Gun Violence*, "California Brady Chapter members worked hard for many years to get the original Unsafe Handgun Act (SB 15) signed into law in 1999. Chapter members were instrumental in the enactment of additions to the Act in 2003 and 2007. This law is very personal to Brady members – chapter leaders have lost children whose lives might have been saved were the Act in effect.

"Under SB 15, no handgun may be manufactured, imported or transferred unless that handgun model has passed firing, safety, and drop tests and is certified for sale in California by the Department of Justice. Requirements for a chamber load indicator and a magazine disconnect, which will prevent accidental shootings, and micro-stamping feature, which will allow law enforcement to positively link used cartridge casings recovered at crime scenes to the crime gun, were later added to the Act.

"Certain categories of law enforcement are exempt from the Unsafe Handgun Act and AB 2165 would additionally exempt 'any other peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.' Thus any person who is considered a sworn 'peace officer' under California law, including certain employees of the State Department of Fish and Game, Parks and Recreation, Forestry and Fire Protections, and Alcoholic Beverage Control, if they are tasked with law enforcement roles, as well as welfare fraud and child support investigators, certain coroners, certain park rangers, and certain housing authority patrol officers, would be exempt. This results in an inappropriate and unacceptable broadening of exemptions that impedes realizing the safety benefits fo the newer requirements.

"Officers frequently take their service weapons home and, in some cases, fail to lock them securely. Firearms with prominent loaded chamber indicators and magazine disconnect safety devices, as required for new models und the Act, are safer than those without these safety features. There are many instances of even highly trained law enforcement officers being unaware that a round remains in the chamber of a pistol that lacks a loaded chamber of a pistol that lacks a loaded chamber indicator and unintentionally shooting someone. Unsafe gun designs help cause many unintentional firearm injuries and deaths.

“Under California law, exempt persons are allowed to purchase and later sell off-roster handguns to nonexempt persons via a private party transfer. AB 2165 would thereby place more off-roster handguns into the civilian market and undermine the purpose of the Act.”

REGISTERED SUPPORT / OPPOSITION:

Support

Peace Officers Research Association of California (Co-sponsor)
State Coalition of Probation Organizations (Co-sponsor)
California Statewide Law Enforcement Association (Co-sponsor)
California Department of Insurance
California Correctional Supervisors Association
Kern County Probation Officers Association
Chief Probation Officers of California
California Probation, Parole, and Correctional Association
Los Angeles County Professional Peace Officers Association
Los Angeles Probation Officers Union, AFSCME local 685
San Diego Police Officers Association
San Diego County probation Officers Association
Sacramento Police Officers Association
Sacramento County Probation Association
Madera Probation Peace Officers Association
Santa Clara County Probation Peace Officers' Association
San Joaquin County Probation Officer Association
Stanislaus County Deputy Probation Officers Association
Riverside Sheriffs' Association
Ventura County Professional Peace Officers Association
Fraternal Order of Police, N. California Probation Lodge 19

Opposition

Oakland/Alameda Chapter of the Brady Campaign to Prevent Gun Violence
California Chapter of the Brady Campaign to Prevent Gun Violence
Orange County Citizens for the Prevention of Gun Violence

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

Date of Hearing: April 12, 2016
Counsel: Sandra Uribe

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

AB 2177 (Maienschein) – As Amended March 17, 2016
As Proposed to be Amended in Committee

SUMMARY: Establishes the Victims of Crime Act Funding Advisory Committee to assist the Office of Emergency Services (OES) in distributing federal Victims of Crime Act (VOCA) funds. Specifically, **this bill:**

- 1) Establishes the Victims of Crime Act Funding Advisory Committee (advisory committee).
- 2) Requires OES to seek the recommendation of the advisory committee regarding the distribution of federal VOCA funds received by the state before making a distribution of any kind of those funds.
- 3) Provides that the advisory committee shall be comprised of the following 17 members:
 - a) One law enforcement representative to be appointed by the Governor;
 - b) Eight crime victims (four appointed by the Governor, and two each by the President Pro Tempore of the Senate and the Speaker of the Assembly); and,
 - c) Eight representatives from victims' services organizations (four appointed by the Governor, and two each by the President Pro Tempore of the Senate and the Speaker of the Assembly).
- 4) States that the initial terms of membership on the advisory committee is two years, and that members are eligible to be reappointed twice.
- 5) Requires the advisory committee to select a chairperson from its membership.
- 6) States that the members shall serve without compensation, except that members who are crime victims shall receive per diem.
- 7) Requires the advisory committee to meet twice a year, as specified.
- 8) Requires the advisory committee to comply with the Bagley-Keene Open Meeting Act.

EXISTING LAW:

- 1) Establishes the OES. (Gov. Code, § 8585, subd. (a)(1).)

- 2) Transferred the responsibilities of the now-defunct Office of Criminal Justice Planning to the OES. (Pen. Code, § 13820, subd. (a)(1).)
- 3) Authorizes OES to expend funds for local domestic violence programs, subject to availability. (Pen. Code, § 13823.3.)
- 4) Establishes a Comprehensive Statewide Domestic Violence Program administered by the OES in order to provide financial and technical assistance to local domestic violence service providers. (Pen. Code, § 13823.15, subd. (b).)
- 5) Requires OES to consult with an advisory council in implementing the program. (Pen. Code, § 13823.15, subd. (c).)
- 6) Establishes an appointed Domestic Violence Advisory Council consisting of "experts in the provision of either direct or intervention services to victims of domestic violence and their children." (Pen. Code § 13823.16, subd. (a).)
- 7) Includes in the council's membership: domestic-violence victims' advocates; battered-women service providers; representatives of women's organizations; law enforcement; at least one representative serving the lesbian, gay, bisexual, and transgender communities; and other groups involved with domestic violence. (Pen. Code § 13823.16, subd. (b).)
- 8) Requires the council and the OES to closely collaborate in developing funding priorities, framing the request for proposals, and soliciting proposals for domestic violence and sexual assault/rape crisis grant programs. (Pen. Code § 13823.16, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Facilitating public participation in the administration of governmental programs is important to fulfilling the important goal of government transparency. When the doors of government are open and accessible to all, the efficacy of the programs it administers better reflect the needs of everyday citizens who stand to benefit from their administration.

"The federal Victims of Crime Act (VOCA) funds administered by the Office of Emergency Services (OES) serve an exceedingly important purpose: they bring important and needed victims services to communities across the state where people have suffered trauma and loss as a result of crime. Last year the state of California was given over \$230 million for distribution to victim services programs across the state. Current OES management of the VOCA funds includes use of a steering committee made of organizational leaders that meet privately and advise OES on both the grant application process and which programs should receive grants. Missing from this process are two important things: the voice of the people impacted by crime and a public, transparent process with a venue for greater community input.

"Assembly Bill 2177 will create a VOCA Advisory Committee that will be comprised of not just service providers but also the very victims that VOCA funds are designed to serve. This

body will meet publicly to provide a venue for community and stakeholder feedback that features the voice of survivors of crime. Victims of crime report that one of the most important parts of the healing process is the opportunity to be heard, an opportunity that can only begin to be fully realized when there is a venue, process and body that is representative of the needs of crime victims themselves."

- 2) **OES:** "OES is primarily responsible for assuring the state's readiness to respond to and recover from natural and man-made emergencies. In addition, OES administers certain grant programs, including most of the state's victim grant programs.

"The OES received responsibility for these programs in 2004–05, which were previously under the jurisdiction of the Office of Criminal Justice Planning (OCJP). When OCJP was eliminated, most of its programs (including the various victim programs below) were transferred to OES even though OES did not have expertise in these program areas." (See *The 2015-16 Budget: Improving the State Programs for Crime Victims*, Legislative Analyst's Office, March 18, 2015, pp. 9-10, <<http://www.lao.ca.gov/reports/2015/budget/crime-victims/crime-victims-031815.pdf>.)

One of the grant programs administered by Cal OES is the federal VOCA Formula Grant Program. The VOCA grant program provides funding to states to support crime victim assistance programs to do the following: 1) respond to the emotional and physical needs of crime victims, 2) help primary and secondary victims of crime stabilize their lives after a victimization, 3) help victims to understand and participate in the criminal justice system, and 4) provide victims of crime with a measure of safety and security.

While OES receives federal VOCA funds yearly, in the Fiscal Year 2015 Budget, OES received a significantly increased award over recent annual awards. It was awarded \$232.732 million.

This bill creates an advisory committee to give input on how those funds should be disbursed.

- 3) **Federal Requirements:** Under the federal requirements, states must commit a certain percentage of the funding to domestic violence, child abuse, sexual assault, and underserved crime victims. The remaining funds can be used to support other crime victim assistance programs. VOCA assistance funds may be used only for direct services to crime victims. Services such as offender rehabilitation, criminal justice improvements, and crime prevention activities cannot be supported with VOCA assistance funds.

States competitively award VOCA funds to local community-based organizations that provide services directly to victims of crime. Each state has discretion to decide which organizations will receive funding based upon the VOCA victim assistance guidelines and the needs of crime victims within the state.

This bill would allow crime victims and victim's services providers to give input on how that discretionary spending should be awarded.

- 4) **Domestic Violence Advisory Council:** "The mission of the Domestic Violence Advisory Council (DVAC) is to collaborate with the California Governor's Office of Emergency

Services (Cal OES) to ensure the safety and security of all Domestic Violence victims through the development of policies, procedures and priorities which promote effective and accessible services for victims."

([http://www.calema.ca.gov/PublicSafetyandVictimServices/Pages/Domestic-Violence-Advisory-Council-\(DVAC\).aspx](http://www.calema.ca.gov/PublicSafetyandVictimServices/Pages/Domestic-Violence-Advisory-Council-(DVAC).aspx).)

DVAC is composed of not more than 13 voting members and two non-voting members. Seven of the voting members are appointed by the Governor, three by the Speaker of the Assembly, and three by the Senate Rules Committee. The two non-voting members are members of the Legislature. At least half of the council membership must consist of victims' advocates or domestic violence service providers. Legislative intent expresses that membership on the council reflect the ethnic, racial, cultural, and geographic diversity of the state, including people with disabilities. (Pen. Code § 13823.16, subd. (b).)

It is unclear whether the advisory council established in this bill would work in conjunction with the DVAC, or whether the advisory council would advise solely on other programs unrelated to domestic violence.

- 5) **Argument in Support:** According to *Californians for Safety and Justice*, the sponsor of this bill, "Under AB 2177, one-half of the VOCA Advisory Committee will be composed of survivors of crime – the same victims that VOCA funds are designed to assist. The Committee will hold public hearings and make recommendations to OES on the VOCA grant process, proposed grant awards and other issues facing survivors. ...

"OES is currently overseeing the distribution of more than \$230 million in funds that will provide critical services to victims of crime across California. Advised by a steering committee made up of organizational directors that does not conduct public meetings, OES's existing process lacks transparency, a meaningful opportunity for civic engagement and most importantly – the direct voice of crime survivors. AB 2177 will create a public platform for input from victims of crime and will make OES better informed on the needs and issues facing the very people VOCA funds serve."

- 6) **Related Legislation:** AB 1802 (Chavez) expands the membership of the Victims Compensation and Government Claims Board from three to five members to include a victims' rights advocate and a provider of victims' health services. AB 1802 is pending hearing in the Assembly Appropriations Committee.

7) **Prior Legislation:**

- a) AB 1547 (Gomez), Chapter 153, Statutes of 2014, eliminated the sunset date for the DVAC, allowing it to remain in effect indefinitely.
- b) SB 1895 (Escutia), Chapter 510, Statutes of 2002, established the DVAC and required the Office of Criminal Justice Planning to consult with the council in administering domestic violence grants and programs.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians for Safety and Justice (Sponsor)
California Catholic Conference

Opposition

None

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

Amendments Mock-up for 2015-2016 AB-2177 (Maienschein (A))

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

Mock-up based on Version Number 98 - Amended Assembly 3/17/16
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 13835.9 is added to the Penal Code, to read:

13835.9. (a) The Office of Emergency Services shall seek the recommendation of the Victims of Crime Act Funding Advisory Committee, established by this section, regarding the distribution of funds received by the state pursuant to the federal Victims of Crime Act, also known as VOCA, before ~~make~~ **making** a distribution, of any kind, of those funds.

(b) ~~(4)~~ The Victims of Crime Act Funding Advisory Committee is hereby established within the Office of Emergency Services and shall be composed of the following 17 members ~~who are appointed by, and serve at the pleasure of, the Governor:~~

~~(A)~~ **(1)** One member who represents law enforcement, **as appointed by the Governor.**

~~(B)~~ **(2)** Eight members who have been a victim of a crime. **The Governor shall appoint four of these members, and the President Pro Tempore of the Senate and the Speaker of the Assembly shall each appoint two.**

~~(C)~~ **(3)** Eight members who represent the interests of organizations that specialize in providing services to the victims of crime. **The Governor shall appoint four of these members, and the President Pro Tempore of the Senate and the Speaker of the Assembly shall each appoint two.**

(c)(1) **The initial terms of membership on the advisory committee shall be two years. Members are eligible to be reappointed twice after an initial term.**

(2) The committee shall elect a chairperson from its membership.

(3) The members shall serve without compensation, **except that members appointed pursuant to subdivision (b)(2) shall receive a per diem.**

(4) The advisory committee shall meet twice a year, one time to make a recommendation on the distribution of funds, and another to provide input on the efficacy of programs that have been funded.

(5) The committee shall comply with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

Date of Hearing: April 12, 2016
Counsel: Gabriel Caswell

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

AB 2199 (Campos) – As Amended April 7, 2016

SUMMARY: Specifies that persons who commit specified sex offenses involving minors shall be subject to an additional two-year sentence enhancement if the offender is a person in a "position of authority" over the victim, as specified. Specifically, **this bill:**

- 1) Defines an offender in a "position of authority" over a victim as "a person, by reason of that position, is able to exercise undue influence over a minor." A position of authority includes, but is not limited to, a stepparent, foster parent, partner of the parent, caretaker, youth leader, recreational director, athletic manager, coach, teacher, counselor, therapist, religious leader, doctor, employer, or employee of one of the aforementioned persons.
- 2) Provides that any person who is found guilty of felony statutory rape (when the adult is 21 years of age or older, and the minor is under 16 years of age) who holds a "position of authority" over the minor is subject to an additional term of two-years.
- 3) Provides that any person who is found guilty of the following acts who holds a "position of authority" over the victim is subject to an additional term of two-years in state prison if convicted of the felony offense in lieu of the alternate misdemeanor offense (when the offenses are alternate felony/misdemeanor "wobblers"):
 - a) Sexual penetration (with a person under the age of 18)
 - b) Sodomy (when the adult is 21 years of age or older, and the minor is under 16 years of age).
 - c) Lewd acts (with a 14-15 year old when the adult is 10 years older or more).
 - d) Oral copulation (when the adult is 21 years of age or older, and the minor is under 16 years of age).

EXISTING LAW:

- 1) Specifies that "unlawful sexual intercourse" is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age. (Pen. Code, § 261.5, subd. (a).)
 - a) Any person who engages in an act of unlawful sexual intercourse with a minor who is *not more than three years older or three years younger* than the perpetrator, is guilty of a misdemeanor. (Pen. Code, § 261.5, subd. (b), emphasis added.)

- b) Any person who engages in an act of unlawful sexual intercourse with a minor who is *more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony*, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment for 16 months, two, or three years in the county jail for a violation of the felony provision. (Pen. Code, § 261.5, subd. (c), emphasis added.)
- c) Any person *21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age* is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in county jail for two, three, or four years. (Pen. Code, § 261.5, subd. (d), emphasis added.)
- 2) Provides that any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes as provided, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code § 288, subd. (a).) Any person convicted shall be imprisoned in the state prison for life with the possibility of parole if the defendant personally inflicted bodily harm upon the victim. The penalty provided in this subdivision shall only apply if the fact that the defendant personally inflicted bodily harm upon the victim is pled and proved. As used in this subdivision, "bodily harm" means any substantial physical injury resulting from the use of force that is more than the force necessary to commit the offense. (Pen. Code § 288 subd. (i).)
- a) States that any person who commits these acts by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years. (Pen. Code § 288, subd. (b)(1).)
- b) Provides that any person who is a caretaker and commits these acts upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years. (Pen. Code § 288, subd. (b)(2).)
- c) Provides that any person who commits a lewd or lascivious act with the intent described, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child. (Pen. Code § 288, subd. (c)(1).)
- d) States that any person who is a caretaker and a lewd or lascivious act with the intent described upon a dependent person, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. (Pen. Code § 288, subd. (c)(2).)

FISCAL EFFECT:**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Statutory rape cases are often misconceived as a consensual relationship between an adult and a minor. The perpetrator often has great influence over his or victim; this is especially true when the offender is in a position of authority, particularly a coach or a teacher. And although the victims may deny harm, researchers argue that many of these youth often have delayed reactions and later come to realize the inherent power difference in the relationship. These situations can lead to negative effects for the victims. This includes an increased risk for unintended pregnancies, contraction of sexually transmitted infections, delinquency, and long-term psychological effects among adolescents.

"People in a position of authority know their victims ages as well as their vulnerability. Therefore, when perpetrators are in a position of authority, they should be punished accordingly. AB 2199 would assist in this effort by providing prosecutors the discretion of a sentence enhancement for adults charged with felony statutory rape."

- 2) **Existing Penalties for these Offenses:** Under existing law "unlawful sexual intercourse" (also known as "statutory rape") and lewd and lascivious acts are both punished on a scale depending on the conduct of the perpetrator, and the respective ages of the defendant and the victim of the crime.

The entire concept of making these non-forcible crimes illegal is that the minors involved do not have the capacity to consent to sexual acts. The purpose of these laws is to protect children from adults, who are by their age in a position of authority over the minors involved. The reason that these crimes are punished as severely as they are under existing law is that these offenders are taking advantage of minors who are too young to make the decision to engage in sexual acts. This bill seeks to add a sentence enhancement for persons in a position of authority, but the underlying legislation and the prescribed punishments as they currently exist were created for that very reason.

Additionally, there are a number of criminal offenses from forcible rape to simple sexual assault which carry a wide range of penalties from misdemeanor to life in state prison. For the specific sections this bill is seeking to add a sentence enhancement to, the following penalties apply:

- a) Non-forcible, unlawful sexual intercourse (between a defendant 21 years or older, and a victim under 16 years) is punishable as a misdemeanor (year in the county jail) or a felony carrying *two, three, or four years in county jail*. This bill would *add an additional two years in county jail* to any felony sentence if the defendant is in a position of authority over the victim.
- b) Sexual penetration (with a person under the age of 18) is punishable as a misdemeanor (year in the county jail) or a felony carrying *16 months, two, or three years in state prison*. This bill would add an additional *two years in state prison* to any felony sentence if the defendant is in a position of authority over the victim.

- c) Sodomy (when the adult is 21 years of age or older, and the minor is under 16 years of age) is punishable as a felony carrying **16 months, two, or three years in state prison**. This bill would add an additional **two years in state prison** to any felony sentence if the defendant is in a position of authority over the victim.
- d) Lewd acts (with a 14-15 year old when the adult is 10 years older or more) is punishable as a misdemeanor (year in the county jail) or a felony carrying **one, two, or three years in state prison**. This bill would add an additional **two years in state prison** to any felony sentence if the defendant is in a position of authority over the victim.
- e) Oral copulation (when the adult is 21 years of age or older, and the minor is under 16 years of age) is punishable as a felony carrying **16 months, two, or three years in state prison**. This bill would add an additional **two years in state prison** to any felony sentence if the defendant is in a position of authority over the victim.
- 3) **On-Going Concerns for Prison Overcrowding:** On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:
- 143% of design bed capacity by June 30, 2014;
 - 141.5% of design bed capacity by February 28, 2015; and,
 - 137.5% of design bed capacity by February 28, 2016.

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

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

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

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

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

This bill would add a two-year sentence enhancement to violations of Pen. Code § 288, which are served in state prison. These sentence enhancements are to be served after the underlying criminal penalties which range from three years in state prison, to ten years in state prison. Additionally, if the victim sustains bodily harm during the commission of the offense, than the defendant can already receive a life sentence.

- 4) **Criminal Penalty Increases:** Over the last few years, Governor Brown has vetoed bills that create new crimes or particularize otherwise prohibited conduct. This bill would go much farther, by actually creating sentence enhancements which are served after the time prescribed by the underlying offense. Additionally, depending on the offense, some of these enhancements are intended to be served in the county jail, and others in state prison. Both our jails and prisons are currently overcrowded.

Governor Brown said, in a blanket veto message sent October 3, 2015 which returned nine bills, "Each of these bills creates a new crime – usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.

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

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

- 5) **Argument in Support:** According to the *California Police Chiefs Association*, "AB 2199 would subject any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age to a sentence enhancement of 2 years, if the perpetrator holds a position of authority over the minor with whom he or she engaged in the act of unlawful sexual intercourse.

"By strengthening our laws to protect children from those who would use their influence and authority for exploitive purposes, our judicial system will now have an added tool to combat these crimes."

- 6) **Argument in Opposition:** According to *The American Civil Liberties Union*, "The American Civil Liberties Union of California regrets to inform you of our opposition to AB 2199, a bill that provides additional sentence enhancements for individuals convicted of certain crimes involving minors if the accused person was "in a position of authority" as defined. In light of existing law regulating such conduct, the changes proposed by AB 2199 appear unnecessary and counterproductive.

"While the intent of AB 2199 appears to be to provide greater protection for minors, research has shown that more severe sentences do not actually enhance public safety.¹ Studies have concluded that the severity of punishment does not generally have an increased effect on

¹ Valerie Wright, Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment (Sentencing Project 2010) available at <http://www.sentencingproject.org/doc/deterrence%20briefing%20.pdf>

deterrence.² Rather, researchers have found that certainty of punishment – that someone will be punished for a particular crime – has a greater deterrent effect than the severity of the punishment itself.³

"California law already provides significant punishments for the crimes listed in AB 2199. Under existing statutes, a person who is 21 years of age or older that has unlawful sexual intercourse with a person who is under age 16 can be punished with up to four years in custody. (Penal Code, §261.5(d).) If the conduct involves evidence of force, duress or coercion, then the offense is punished under other statutes with much lengthier sentences. Similarly, under existing law, a person who commits a lewd act on a minor under 14 years of age can be punished with up to eight years in state prison and more if duress, force or coercion are involved. (Penal Code, §288(a) and (b).) These punishments can be further enhanced by a myriad of existing sentence enhancements.

"Indeed, Governor Brown has criticized our state's criminal laws, particularly the number of sentencing enhancements, observing, "[t]here are now 400 separate enhancements that can add up to 25 years, each one of them, and now you have over 5,000 separate criminal provisions."⁴ As the Governor stated in his veto message of several bills last fall, "[t]his multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit."⁵

"Additionally, now is not the time for California to be adding longer prison sentences to crimes, particularly when it is not clear that these longer sentences will have any greater deterrent effect. Corrections spending remains high; the Governor's proposed 2016-17 provides \$11.2 billion for adult corrections and an additional \$1.2 billion for other parts of the state corrections system.⁶ Rather than enacting new, longer penalties, the Legislature should strive to simplify the state's complex Penal Code, unless longer sentences are truly necessary. While protecting minors from victimization is an extremely important objective, we believe that lengthening sentences for the offenses referenced in this bill will not accomplish that goal. For these reasons, we must oppose AB 2199."

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association
Child Abuse Prevention Center
Crime Victims United of California

² *Id.*

³ *Id.*

⁴ Scott Shafer, Prosecutors Cry Foul Over Jerry Brown's Ballot Measure, KQED, Feb. 12, 2016, *available at* <http://ww2.kqed.org/news/2016/02/12/prosecutors-cry-foul-over-jerry-browns-ballot-measure>

⁵ Patrick McGreevy, With Strong Message Against Creating New Crimes, Gov. Brown Vetoes Drone Bills, LA Times, Oct. 3, 2015, *available at* <http://www.latimes.com/politics/la-me-pc-gov-brown-vetoes-bills-restricting-hobbyist-drones-at-fires-schools-prisons-20151003-story.html>

⁶ Scott Graves, Corrections Spending Remains High Under Governor's Proposed Budget, Despite Big Drop in Correctional Populations (California Budget and Policy Center 2016) *available at* <http://calbudgetcenter.org/wp-content/uploads/Corrections-Spending-Remains-High-Under-the-Governor%E2%80%99s-Proposed-Budget-Despite-Big-Drop-in-Correctional-Populations.pdf>

Opposition

American Civil Liberties Union
Legal Services for Prisoners with Children

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