

VICE CHAIR
MELISSA A. MELENDEZ

MEMBERS
TOM LACKEY
PATTY LÓPEZ
EVAN LOW
BILL QUIRK
MIGUEL SANTIAGO

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 19, 2016 and April 20, 2016
State Capitol, Room 126

<u>Item</u>	<u>Bill No. & Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
1.	AB 1571 (Lackey)	Mr. Billingsley	Vehicles: driving under the influence: alcohol abuse programs.
2.	AB 1671 (Gomez)	Ms. Uribe	Confidential communications: disclosure.
3.	AB 1708 (Gonzalez)	Mr. Caswell	Disorderly conduct: prostitution.
4.	AB 1745 (Hadley)	Mr. Billingsley	Public safety: funding.
5.	AB 1860 (Alejo)	Mr. Pagan	Local law enforcement: body-worn cameras: grant program.
6.	AB 1864 (Cooley)	Mr. Pagan	Inquests: sudden unexplained death in childhood.
7.	AB 1872 (Gray)	Mr. Pagan	Public safety.
8.	AB 1940 (Cooper)	Mr. Pagan	Peace officers: body-worn cameras: policies and procedures.
9.	AB 1951 (Salas)	Mr. Pagan	Crimes: animal cruelty.
10.	AB 1998 (Campos)	Mr. Dean	Juveniles: data collection.



- | | | |
|------------------------------|-----------------|--|
| 11. AB 2052 (Williams) | Mr. Pagan | Sentencing: animal abuse and cruelty. |
| 12. AB 2083 (Chu) | Mr. Dean | Interagency child death review. |
| 13. AB 2114 (Eduardo Garcia) | Mr. Dean | Prisoners: support services. |
| 14. AB 2188 (Grove) | Mr. Billingsley | Criminal procedure: arrests. |
| 15. AB 2195 (Bonilla) | Mr. Pagan | Crimes: felony murder: data. |
| 16. AB 2199 (Campos) | Mr. Caswell | Sexual offenses against minors: persons in a position of authority. |
| 17. AB 2202 (Baker) | Mr. Billingsley | Human trafficking: vertical prosecution program. |
| 18. AB 2510 (Linder) | Mr. Caswell | Firearms: license to carry concealed: uniform license. |
| 19. AB 2513 (Williams) | Ms. Uribe | Human trafficking: aggravating factors. |
| 20. AB 2569 (Melendez) | Mr. Caswell | Registered sex offenders. |
| 21. AB 2590 (Weber) | Mr. Billingsley | Sentencing: restorative justice. |
| 22. AB 2607 (Ting) | Ms. Uribe | Firearm restraining orders. |
| 23. AB 2626 (Jones-Sawyer) | Mr. Dean | Commission on Peace Officer Standards and Training: procedural justice training. |
| 24. AB 2655 (Weber) | Mr. Billingsley | Bail: jurisdiction. |
| 25. AB 2666 (Baker) | Mr. Caswell | Firearms: felons in possession. |

- | | | |
|-------------------------|-----------------|--|
| 26. AB 2687 (Achadjian) | Mr. Billingsley | Vehicles: passenger for hire:
driving under the influence. |
| 27. AB 2709 (Quirk) | Mr. Dean | Crimes: balloons. |
| 28. AB 2740 (Low) | Mr. Caswell | Driving under the influence:
Tetrahydrocannabinol
standard. |
| 29. AB 2765 (Weber) | Mr. Pagan | Proposition 47: sentence
reduction. |
| 30. AB 2772 (Chang) | Ms. Uribe | Drug treatment programs. |
| 31. AB 2777 (Nazarian) | Ms. Uribe | Transportation network
company: criminal history. |
| 32. AB 2803 (Salas) | Ms. Uribe | Inmates: unlawful
communications. |
| 33. AB 2805 (Olsen) | Mr. Caswell | Cargo theft: prevention
program. |
| 34. AB 2811 (Chávez) | Mr. Caswell | Vehicles: nuisance
abatement. |
| 35. AB 2820 (Chiu) | Mr. Billingsley | Crimes: price gouging:
states of emergency. |
| 36. AB 2830 (Salas) | Mr. Billingsley | Public Safety Officers
Procedural Bill of Rights
Act: additional officers
subject to act. |
| 37. AB 2839 (Thurmond) | Mr. Dean | Criminal penalties:
nonpayment of fines. |
| 38. AB 2854 (Cooper) | Ms. Uribe | Theft: firearms. |
| 39. AJR 31 (Hernández) | Mr. Dean | PULLED BY AUTHOR |

RECONSIDERATION VOTE ONLY

<u>Item</u>	<u>Bill No. & Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
40.	AB 1718 (Kim)	Mr. Caswell	Elder abuse.
41.	AB 1772 (Beth Gaines)	Mr. Pagan	Disorderly conduct.
42.	AB 2169 (Travis Allen)	Mr. Dean	Drug paraphernalia retailers.
43.	AB 2229 (Grove)	Mr. Caswell	Firearms.
44.	AB 2340 (Gallagher)	Mr. Caswell	Gun-free school zone.
45.	AB 2477 (Patterson)	Ms. Uribe	Victim restitution: jurisdiction.
46.	AB 2478 (Melendez)	Mr. Caswell	Firearms: violations.
47.	AB 2481 (Lackey)	Ms. Uribe	PULLED BY AUTHOR
48.	AB 2508 (Mathis)	Mr. Pagan	Firearms: unsafe handguns.
49.	AB 2606 (Grove)	Ms. Uribe	Crimes against children, elders, dependent adults, and persons with disabilities.

PENDING FILE NOTICE WAIVER

<u>Item</u>	<u>Bill No. & Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
50.	AB 2380 (Alejo)	Ms. Uribe	Informal caregivers: background checks.

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 19, 2016
Counsel: David Billingsley

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

AB 1571 (Lackey) – As Amended March 28, 2016
As Proposed to be Amended in Committee

SUMMARY: Requires the court to consider a blood alcohol concentration (BAC) of .08 or more, in combination with the presence of specified drugs, excluding marijuana and drugs prescribed by a physician, as an aggravating factor that may justify enhancing the terms and conditions of probation, for first time driving under the influence (DUI) offenders. Specifically, **this bill:**

- 1) Requires the court to consider a BAC of 0.08 percent or more, in combination with the presence of a Schedule I or II controlled substance, as defined the United States Code, except marijuana, as specified, or a controlled substance prescribed by a licensed physician or dentist, as an aggravating factor in sentencing for first time DUI offenders.
- 2) Specifies that the mandatory consideration of such an aggravating factor, may justify enhancing the terms and conditions of probation with regards to participation in specified DUI programs.
- 3) Requires that enrollment in an approved DUI program for first offenders take place within 30 days of conviction.
- 4) Allows the court to grant an extension of no longer than 30 days upon the request of the program provider.
- 5) Allows an extension to be requested or granted by telephone or by other electronic means.
- 6) Requires a court to refer a person with a second or subsequent DUI conviction to a program, as specified, as a condition of probation.
- 7) Requires the clerk of the court to also indicate the duration of the treatment program ordered on court referral and tracking documents.

EXISTING LAW:

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

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

- 12) Provides that the court, in granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those terms and conditions as it shall determine. (Pen. Code, § 1203.1.)
- 13) States that the court may impose and require any or all of the terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done and for the rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail, as specified. (Pen. Code, § 1203.1, subd. (j).)

FISCAL EFFECT: Unknown

COMMENTS:

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

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

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

- 2) **The Effect of Drugs On an Individual's Ability to Drive is Not Well Understood:** Research has established that there is a close relationship between BAC level and impairment. Some effects are detectable at very low BACs (e.g., .02 grams per deciliter, or g/dL) and as BAC rises, the types and severity of impairment increase. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, pp. 2-3.)

The behavioral effects of other drugs are not as well understood compared to the behavioral effects of alcohol. Certain generalizations can be made: high doses generally have a larger

effect than small doses; well-learned tasks are less affected than novel tasks; and certain variables, such as prior exposure to a drug, can either reduce or accentuate expected effects, depending on circumstances. However, the ability to predict an individual's performance at a specific dosage of drugs other than alcohol is limited. Most psychoactive drugs are chemically complex molecules whose absorption, action, and elimination from the body are difficult to predict. Further, there are considerable differences between individuals with regard to the rates with which these processes occur. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, pp. 2-3.)

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

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

- 3) **Requiring Consideration of an Aggravating Factor in Situations Where There is Not Necessarily a Corresponding Increase in the Seriousness of the Criminal Behavior:** Generally, under California criminal law, an individual only faces increased penalties for conduct that made the nature of the crime more serious. When evaluating the seriousness of a DUI, the most common measure is the impairment level of the driver. The higher the impairment of the driver, the bigger danger the driver represents to the public. As discussed above, the presence of a controlled substance in an individual's blood does not necessarily reflect a corresponding impairment in the individual's ability to drive. This bill requires the court to consider specified drug consumption as an aggravating factor in sentencing even if there was no corresponding impairment in the individual's ability to drive.
- 4) **Existing Judicial Discretion:** Courts have the power under existing law to increase punishments in situations when the combined use of alcohol and drugs warrant such an increase. Courts have broad general discretion to fashion and impose additional probation conditions that are particularized to the defendant. (*People v. Smith* (2007) 152, Cal.App.4th 1245, 1249.) Courts may impose any "reasonable conditions" necessary to secure justice,

make amends to society and individuals injured by the defendant's unlawful conduct, and assist the "reformation and rehabilitation of the probationer." (Pen. Code, § 1203.1.) A condition of probation is valid if it is reasonably related to the offense and aimed at deterring such misconduct in the future. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

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

- 5) **Requiring an Individual to Enroll in DUI Education Program Specified Time from Conviction May Create Additional Work for Courts:** This bill requires that enrollment in a DUI education program for a first time DUI offender, take place within 30 days of the conviction (possibly extended to 60 days). That requirement may create additional workload for the courts.

Under existing law, DMV suspends an individual's driver's license for six months upon conviction of a first DUI (Veh. Code, § 13352.). In order to get full license privileges back, the individual must complete the DUI education program. If the individual wants to get a restricted license, allowing them to drive to work during the suspension period, the person must be enrolled in the DUI education program. Existing law provides incentives and penalties to enter and complete the program in order to drive. In addition, the DUI education program is a condition of probation. So failure to enroll and complete the program exposes the individual to additional sanctions by the court. Arguably, those are sufficient incentives for an individual to enroll and complete the DUI program.

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

This bill contains a provision that would allow the court to extend the 30 day deadline to 60 days and allows requests to be made by a treatment provider through electronic or telephonic means. The procedure to extend the deadline is not consistent with the standard judicial process.

Generally, when a court makes decisions and issues orders, the case on which the action is being taken is on calendar, the parties, or their legal representatives are present, and the hearing is open to the public. This framework is in place to ensure that parties have notice and an opportunity to be heard. It also ensures that one party is not communicating with the judge about the case outside presence of the other party. The framework ensures that the judicial process is conducted in an open and public forum.

This bill would be a significant departure from the normal judicial process by having a 3rd party (program provider) communicate informally to obtain an extension. Is it anticipated that the program provider will be calling up the judge responsible for the case to ask permission to extend? Are the parties required to be notified? If the timeframe is extended,

who is responsible for notifying the defendant? It is not clear that this bill provides a workable procedure to extend the deadline to enroll in the DUI program.

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

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

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

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

“Second, drug testing, like many other forensic disciplines, is highly technical and imperfect. There are a host of problems with drug testing techniques and analyses, including: the substantial risk of false positive test results; false negative test results; specimen contamination; and chain of custody, storage, and re-testing issues. As the toxicological literature makes clear, “a number of routinely prescribed medications have been associated with triggering false-positive results.” In the context of marijuana, for example, research demonstrates that drug tests may return false positives for THC. Studies have found that false positive THC tests results have been associated with the passive ingestion (i.e. second-hand) of marijuana smoke. Similarly, other studies have demonstrated that heavy marijuana users who abstain from marijuana use for at least a week have returned positive THC tests. In

addition, the use of some pharmaceutical drugs, like Marinol and Sativex, typically returns positive THC test results. It, therefore, does not make sense to increase a person's sentence or terms and conditions of parole based on test results that are unreliable and often incorrect.

"Finally, the March 28, 2016 amendments to AB 1571 inappropriately tie California penalties to federal laws, made by the U.S. Congress, despite inconsistencies between California and federal laws. The bill now cross-references federal code sections that define marijuana and other drugs as Schedule I and Schedule II substances. Yet, because our state legislature has not always concurred with the conclusions of the U.S. Congress, the California code definitions for Schedule I and Schedule II substances do not mirror the definitions in the federal code. Furthermore, through direct democracy ballot measures, or future legislation, the differences may become even more pronounced."

8) Prior Legislation:

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of DUI Treatment Programs (Sponsor)
A Better Citizen Foundation
Alcohol Drug Council
Alcohol Justice
California Association of Code Enforcement Officers
California Association of Highway Patrolmen
California College and University Police Chiefs Association
California Police Chiefs Association
California Peace Officers Association
California Narcotic Officers' Association
Fresno County Hispanic Commission on Alcohol & Drug Abuse Services
Foundation for Advancing Alcohol Responsibility
Health Net
Lifesafers of Northern California
Janus of Santa Cruz
Los Angeles County Professional Peace Officers Association
Los Angeles Deputy Sheriffs
Los Angeles Police Protective League

Riverside Sheriffs Association
Safety Center
We Save Lives
Zona Seca

16 private individuals

Opposition

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

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

Amended Mock-up for 2015-2016 AB-1571 (Lackey (A), Cooley (A))

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

Mock-up based on Version Number 97 - Amended Assembly 3/28/16
Submitted by: David Billingsley, Assembly Public Safety

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

SECTION 1. Section 11837 of the Health and Safety Code is amended to read:

11837. (a) Pursuant to the provisions of law relating to suspension of a person's privilege to operate a motor vehicle upon conviction for driving while under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and any drug, as set forth in paragraph (3) of subdivision (a) of Section 13352 of the Vehicle Code, the Department of Motor Vehicles shall restrict the driving privilege pursuant to Section 13352.5 of the Vehicle Code, if the person convicted of that offense participates for at least 18 months in a driving-under-the-influence program that is licensed pursuant to this chapter.

(b) In determining whether to refer a person, who is ordered to participate in a program pursuant to Section 668 of the Harbors and Navigation Code, in a licensed alcohol and other drug education and counseling services program pursuant to Section 23538 of the Vehicle Code, or, pursuant to Section 23542, 23548, 23552, 23556, 23562, or 23568 of the Vehicle Code, in a licensed 18-month or 30-month program, the court may consider any relevant information about the person made available pursuant to a presentence investigation, that is permitted but not required under Section 23655 of the Vehicle Code, or other screening procedure. That information shall not be furnished, however, by any person who also provides services in a privately operated, licensed program or who has any direct interest in a privately operated, licensed program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in a licensed 18-month or 30-month program pursuant to this chapter. When preparing a presentence report for the court, the probation department may consider the suitability of placing the defendant in a treatment program that includes the administration of nonscheduled nonaddicting medications to ameliorate an alcohol or controlled substance problem. If the probation department recommends that this type of program is a suitable option for the defendant, the defendant who would like the court to consider this option shall obtain from his or her physician a prescription for the medication, and a finding that the treatment is medically suitable for the defendant, prior to consideration of this alternative by the court.

(c) (1) The court shall, as a condition of probation pursuant to Section 23538 or 23556 of the Vehicle Code, refer a first 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 ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions described in this chapter.

(2) Notwithstanding any other provision of law, in granting probation to a first offender described in this subdivision whose concentration of alcohol in the person's blood was 0.20 percent or more, by weight, or who refused to take a chemical test, the court shall order the person 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, including those education, group counseling, and individual interview sessions described in this chapter.

(d) (1) The State Department of Health Care Services may specify in regulations the activities required to be provided in the treatment of participants receiving nine months of licensed program services under Section 23538 or 23556 of the Vehicle Code.

(2) Any program licensed pursuant to this chapter may provide treatment services to participants receiving at least six months of licensed program services under Section 23538 or 23556 of the Vehicle Code.

(e) The court shall, subject to Section 11837.2, and as a condition of probation, refer a person with a second or subsequent violation to a licensed program, even if the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. An 18-month program described in Section 23542 or 23562 of the Vehicle Code or a 30-month program described in Section 23548, 23552, or 23568 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in this chapter, if there is no increase in the costs of the program to the convicted person.

(f) The clerk of the court shall indicate the duration of the program in which the judge has ordered the person to participate in the abstract of the record of the court and on the court referral and tracking documents forwarded to the department.

SEC. 2. Section 23538 of the Vehicle Code is amended to read:

23538. (a) (1) If the court grants probation to a person punished under Section 23536, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person pay a fine of at least three hundred ninety dollars (\$390), but not more than one thousand dollars (\$1,000). The court may also impose, as a condition of probation, that the person be confined in a county jail for at least 48 hours, but not more than six months.

(2) The person's privilege to operate a motor vehicle shall be suspended by the department under paragraph (1) of subdivision (a) of Section 13352 or Section 13352.1. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(3) Whenever, when considering the circumstances taken as a whole, the court determines that the person punished under this section would present a traffic safety or public safety risk if authorized to operate a motor vehicle during the period of suspension imposed under paragraph (1) of subdivision (a) of Section 13352 or Section 13352.1, the court may disallow the issuance of a restricted driver's license required under Section 13352.4.

(b) In any county where the board of supervisors has approved, and the State Department of Health Care Services has licensed, a program or programs described in Section 11837.3 of the Health and Safety Code, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete a driving-under-the-influence program, licensed pursuant to Section 11836 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court. For the purposes of this subdivision, enrollment in an approved program shall take place within 30 days of conviction and participation in, and completion of, the program shall be subsequent to the date of the current violation. Credit may not be given for any program activities completed prior to the date of the current violation. If a person is unable to enroll in a program within 30 days of conviction, the court may grant that person an extension of no longer than 30 days upon the request of the program provider. Extensions may be requested or granted by telephone or by other electronic means.

(1) The court shall refer a first 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, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(2) The court shall refer a first 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, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(3) The court shall consider, for first time offenders, a blood-alcohol concentration of 0.08 percent or more, by weight, in combination with the presence of a Schedule I or II controlled substance, as defined in Section 812 of Chapter 13 of Title 21 of the United States Code, except marijuana, as defined in Section 802(16) of Title 21 of the United States Code, or a controlled substance prescribed by a licensed physician or dentist, as an aggravating factor that may justify enhancing the terms and conditions of probation with regards to referrals and participation in licensed programs and program activities described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(4) 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 driving-under-the-influence program of the length required under this code that is licensed pursuant to

David Billingsley
Assembly Public Safety

04/14/2016

Page 3 of 4

Section 11836 of the Health and Safety Code has been received in the department's headquarters.

(c) (1) The court shall revoke the person's probation pursuant to Section 23602, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b).

(2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements and court referral and tracking documents with the department and with the State Department of Health Care Services. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (A) failure to enroll in, or failure to successfully complete, the program, or (B) successful completion of the program as ordered.

SEC. 3. 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 19, 2016
Counsel: Sandy Uribe

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

AB 1671 (Gomez) – As Amended April 12, 2016
As Proposed to be Amended in Committee

SUMMARY: Makes it a crime to intentionally disclose, distribute, or attempt to disclose or distribute, in any manner, and for any purpose, the contents of a confidential communication after illegally obtaining it. Specifically, **this bill:**

- 1) Provides that a person who illegally records a confidential communication and then intentionally discloses or attempts to disclose, or distributes or attempts to distribute, its contents in any manner, in any form, including but not limited to Internet Web sites and social media, is guilty of a crime.
- 2) Provides that a person who employs or directs another person to unlawfully record a confidential communication, or to use or disclose that communication shall also face criminal liability.
- 3) Punishes the disclosure or publishing of illegally recorded confidential communications, or the aiding and abetting thereof, as follows:
 - a) For a first offense, the punishment is a fine not exceeding \$2,500 per violation, or imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment; and
 - b) For a second or subsequent conviction, the punishment is a fine not exceeding \$10,000 per violation, by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.
- 4) Defines "social media" as "an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messaging, email, online services or accounts, or Internet Web site profiles or locations."
- 5) Clarifies that the fines for the crimes of illegal recording of a confidential communication and the use or disclosure of illegally recorded confidential communications apply per violation.

EXISTING LAW:

- 1) Makes it a crime to intentionally and without the consent of all parties to a confidential communication eavesdrop or record that confidential communication. (Pen. Code, § 632, subd. (a).)

- 2) Punishes eavesdropping or recording confidential communications as a fine of up to \$2,500, or imprisonment in the county jail for up to one year, or as a felony with imprisonment in county jail under Realignment, or both. A subsequent conviction can result in a fine of up to \$10,000 and imprisonment in the state prison. (Pen. Code, § 632, subd. (a).)
- 3) Defines "confidential communication" as "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 in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded." (Pen. Code, § 632, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 1671 updates the law to account for the harm created by broad dissemination over the internet. It aligns the law on unauthorized recording of confidential communications with the law on misappropriation of trade secrets. And it aligns California law with the law of other states that prohibit interception and disclosure of confidential wire, oral, or electronic communications."
- 2) **First Amendment Issues:** The First Amendment gives the free press the protection it must have to fulfill its essential role in democracy. (*New York Times Co. v. United States* (1971) 403 U.S. 713, 717.) Accordingly, "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." (*Nebraska Press Assn. v. Stuart* (1976) 427 U.S. 539, 559.) "The damage can be particularly great when the prior restraint falls upon the communication of news and commentary on current events." (*Ibid.*)

In *Bartnicki v. Vopper* (2001) 532 U.S. 514, the United States Supreme Court held that the First Amendment provides protection to speech that discloses the contents of an illegally intercepted communication by parties who did not participate in the illegal interception.

In *Bartnicki*, an unknown person illegally recorded a phone call between two union leaders about a teachers' strike. Some journalists obtained the recording and then published the contents of the conversation. The labor leaders sued the journalists under federal and state eavesdropping statutes. (*Id.* at pp. 518-519.) The Supreme Court relieved the journalists of liability. The Court noted that the parties who made the disclosure to the public were not involved in the illegal interception. Additionally, the media defendants lawfully obtained the tapes even though they knew the information was itself illegally intercepted. (*Id.* at pp. 524-525.) The Court also emphasized that the defendants published truthful information about a matter of public importance. (*Id.* at p. 525.) The Court concluded, "a stranger's illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern." (*Id.* at p. 535.)

This bill imposes criminal liability on a person who employs or directs another to unlawfully record a confidential communication, or on the subsequent distribution of that unlawful recording. Does this leave the media vulnerable to prosecution for distributing or reporting

on the illegally recorded communication? Should there be an explicit exception for the media and for whistleblowers?

- 3) **Double Punishment:** Penal Code section 654 provides "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." The purpose of the statute "is to ensure that a defendant's punishment is commensurate with his culpability and that he is not punished more than once for what is essentially one criminal act." (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1252.)

Although on its face section 654 precludes multiple punishments for a single act or omission, case law also applies it to an indivisible course of conduct. (*People v. Deloza* (1998) 18 Cal.4th 585, 591.) "Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one." (*Neal v. State of California* (1960) 55 Cal.2d 11, 19.) (*People v. Kwok, supra*, 63 Cal.App.4th at p. 1253.) "Whether the acts of which a defendant has been convicted constitute an indivisible course of conduct is a question of fact for the trial court." (*Id.* at pp. 1252–1253.)

This bill criminalizes the distribution of an illegally recorded confidential communication by the person who made the illegal recording. Arguably, much of the time, the intent and objective of a person who records a confidential communication would be to distribute that recording to others. Nevertheless, there can be cases in which there was no intent to disclose or when that intent was formed at a later place in time such that it there was a divisible course of conduct.

This bill, as proposed to be amended, does not require multiple punishment for the act of illegally recording and for the illegal distribution stemming from that act. However, in the appropriate case, depending on the facts and circumstances, the defendant might be punished for both offenses.

- 4) **Argument in Support:** According to *Planned Parenthood*, the sponsor of this bill, "This bill will amend California's invasion of privacy law (Penal Code §§630-638.53), which currently prohibits the distribution or disclosure of illegal taped conversations.

"This bill grew out of our unfortunate experience last summer when the Center for Medical Progress published on the internet a series of video recordings it had made surreptitiously at confidential conferences or in private conversations with medical providers. These recordings were manipulated heavily to create a narrative entirely different than the full tapes revealed. They suggested Planned Parenthood had broken the law, although a federal judge and two dozen state investigations have concluded that Planned Parenthood broke no law.

"Planned Parenthood has been targeted unjustly as a result of these illegal, heavily edited videotapes, when then served as a catalyst for a malicious smear campaign. Because California's invasion of privacy law only prohibits the taping, but not the distribution or disclosure, CMP was able to publish manipulated snippets of the tapes on the internet and widely disseminate them to legislatures and the press. The harm from these disclosures, as

we all experienced, was cataclysmic. Medical providers received death threats, health centers experienced nine times the number of security threats than the previous year, and the resulting vitriol culminated in a shooting in Colorado that left three dead.

"The bill is modeled after similar statutes in other states that extend penalties to use and disclosure as well as taping without consent. In addition, it follows the way penalties work for misappropriation of trade secrets, another statutory scheme that penalizes unauthorized disclosure of confidential information. This bill would strengthen the existing law and align California's law with other states. It would create further deterrents to protect the privacy rights of California citizens and allow those damaged by the disclosures greater recourse for the harm caused."

5) Arguments in Opposition:

- a) According to the *California Newspaper Publishers Association*, "Laws that restrict speech based on content must be narrowly tailored to serve a compelling government interest. As proposed, AB 1671 is a content-based regulation that is overbroad, vague, and would have a chilling effect on the First Amendment and newsgathering activity.

"Consider this example: A whistleblower unlawfully records a conversation documenting a wealthy developer bribing a government official. The whistleblower discloses that information to a reporter who regularly covers the affected public agency. The reporter then emails the recording to her editor and the newsroom lawyer to see if they should report on the recording. It's a matter of high public concern, and the newspaper posts the video online with a story reporting the facts.

"Under current law, there is one violation of law—the unlawful recording. Under the new criminal law proposed by AB 1671, the reporter, editor, lawyer, and newspaper publisher could all be prosecuted for 'permitting' or 'causing to be done' the distribution of this recording that depicts a matter of high public concern.

"Most troubling, this proposal contains no intent requirement. The reporter would be liable for a violation of proposed § 632 .01 whether or not she knows the recording was illegally made. This strict liability standard would have egregious results, which exemplifies the overbroad nature of this proposal.

"The Supreme Court squarely addressed this scenario in *Bartnicki v. Vopper*, which involved the repeated disclosure of an illegally intercepted conversation by a newspaper that did not participate in the act of unlawful interception. The Court overturned a Pennsylvania statute that criminalized the distribution of an illegally recorded conversation as an unconstitutional restraint on speech, noting that the 'naked prohibition against disclosures' can be 'fairly characterized as a regulation of pure speech.'

"Furthermore, this law would unfairly disadvantage a California journalist from reporting on issues within the state that other media across the country is permitted to cover, and which may have been viewed by millions of people. This constitutes an unlawful prior restraint and is patently unconstitutional.

"AB 1671 seeks to criminalize the exchange of information. It exposes the media and

individuals alike to criminal penalties for simply pushing the send button on an email. And it ties the hands of California journalists whose job is to report on issues of public concern.

"Newspapers are not in the business of conspiring with others to commit crimes, but they are in the business of reporting facts. As framed, this bill would substantially impair a newspaper's ability to report facts, and overwhelmingly chill readers' ability to understand the basics about newsworthy events that occur in their communities."

- b) According to the *Animal Legal Defense Fund* (ALDF), "For nearly four decades ALDF has worked within the legal system to protect the lives and advance the interests of animals. ALDF accomplishes this work by strengthening anticruelty provisions and assisting prosecutors in their enforcement, bringing civil litigation to enforce civil laws and regulations that govern the humane treatment of animals and protect the environment and the public health, and by submitting regulatory filings or otherwise working with local, state, and federal agencies to ensure the proper protection of animals, the environment, and the public health.

"To accomplish these goals, ALDF—like many similarly situated nonprofits—both conducts and relies upon undercover investigations. Such investigations are frequently the only way the public can ascertain the true nature of business practices that exploit animals, pollute the environment, and threaten the public health. We use the information obtained during undercover investigations to file lawsuits, to petition government agencies to bring enforcement actions or to improve their regulations, to seek criminal prosecutions, and otherwise to generate important public discourse on matters of great public concern. So important is our ability to obtain and to utilize such information that ALDF has filed no fewer than three federal lawsuits against states that have sought to criminalize the collecting and/or use of information about agricultural practices. Indeed, we have already won one such lawsuit, against the State of Idaho, on the basis that their 'Ag-Gag' law violates the First Amendment and violates the equal protection clause of the Fourteenth Amendment.

"As a result of the public good that these undercover investigations accomplish, ALDF opposes A.B. 1671, which would create new liability not only for this organization but for many similarly situated public interest organizations and journalists. The chilling effect on journalism and public discourse will be substantial and almost certainly in violation of the First Amendment's specific protection for speech and activity in preparation of speech."

REGISTERED SUPPORT / OPPOSITION:

Support

Planned Parenthood Affiliates of California (Sponsor)
 California Women's Law Center
 Community Action Fund, Planned Parenthood Orange & San Bernardino Co.
 Planned Parenthood Action Fund of the Pacific Southwest
 Planned Parent Action Fund of Santa Barbara, Venture & San Luis Obispo Co.
 Planned Parenthood Advocacy Project Los Angeles Co.

Planned Parenthood Advocates Pasadena & San Gabriel Valley
Planned Parenthood Mar Monte
Planned Parenthood Northern California Action Fund

Opposition

Animal Legal Defense Fund
California Broadcasters Association
California Newspaper Publishers Association
Electronic Frontier Foundation
Motion Picture Association of America, Inc.
The Media Coalition

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

Amendments Mock-up for 2015-2016 AB-1671 (Gomez (A))

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

**Mock-up based on Version Number 97 - Amended Assembly 4/12/16
Submitted by: Sandy Uribe, Assembly Public Safety Committee**

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

SECTION 1. Section 632 of the Penal Code is amended to read:

632. (a) A person who, intentionally and without the consent of all parties to a confidential communication, uses an electronic amplifying or recording device to eavesdrop upon or record 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 ~~pursuant to subdivision (b).~~

~~(b) A violation of subdivision (a) shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500) per violation, or imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000) per violation, by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.~~

~~(e)~~ **(b)** For the purposes of this section, "person" means an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state, or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording the communication.

~~(d)~~ **(c)** For the purposes of this section, "confidential communication" means 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 in any legislative, judicial, executive, or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

~~(e)~~ (d) Except as proof in an action or prosecution for violation of this section, evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section is not admissible in any judicial, administrative, legislative, or other proceeding.

~~(f)~~ (e) This section does not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees, or agents thereof, if the acts otherwise prohibited by this section are for the purpose of construction, maintenance, conduct, or operation of the services and facilities of the public utility, (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

~~(g)~~ (f) This section does not apply to the use of hearing aids and similar devices, by persons afflicted with impaired hearing, for the purpose of overcoming the impairment to permit the hearing of sounds ordinarily audible to the human ear.

SEC. 2. Section 632.01 is added to the Penal Code, to read:

632.01. (a) A person who violates subdivision (a) of Section 632, ~~in addition to any punishment under that section,~~ shall be punished pursuant to subdivision (c) if the person intentionally discloses or attempts to disclose, or distributes or attempts to distribute, in any manner, in any forum, including, but not limited to, Internet Web sites and social media, or for any purpose, the contents of the confidential communication obtained by that person in violation of subdivision (a) of Section 632. For purposes of this subdivision, "social media" means an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

(b) A person who ~~aids, abets, employs, or conspires with a person or persons~~ **employs or directs another** to unlawfully ~~do, permit, or cause to be done~~ **commit** any act described in subdivision (a) of this section or subdivision (a) of Section 632, shall be punished pursuant to subdivision (c).

(c) A violation of subdivision (a) or (b) shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500) per violation, or imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000) per violation, by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: April 19, 2016
Counsel: Gabriel Caswell

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

AB 1708 (Gonzalez) – As Amended April 13, 2016

SUMMARY: Imposes mandatory minimum 72 hours in jail for persons convicted of purchasing commercial sex, imposes a one-year sentence enhancement for specified human trafficking offenses, and recasts the crime of prostitution as specified. Specifically, **this bill:**

- 1) Defines and divides the crime of prostitution into three separate forms:
 - a) The defendant agreed to receive compensation, received compensation, or solicited compensation in exchange for a lewd act;
 - b) The defendant provided compensation, agreed to provide compensation, or solicited an adult to accept compensation in exchange for a lewd act; and
 - c) The defendant provided compensation, or agreed to provide compensation, to a minor in exchange for a lewd act, regardless of which party made the initial solicitation.
- 2) Clarifies that a manifestation of acceptance of an offer or solicitation to engage in an act of prostitution shall not constitute a violation unless some act, in addition to the manifestation of acceptance, is done within this state in furtherance of the commission of the act of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in that act. As used in this subdivision, “prostitution” includes any lewd act between persons for money or other consideration.
- 3) Specifies that purchasers of commercial sex is punishable as follows:
 - a) A mandatory minimum 72 hours in county jail;
 - b) Up to 6 months in the county jail; and
 - c) A fine not exceeding \$1,000, which shall be deposited in the treasury of the county in which the offense occurred and used by the county to fund services for victims of human trafficking.
- 4) Clarifies that solicitation of a minor can be solicitation of a person posing as a minor if the person engaged in the solicitation had the specific intent to solicit a minor.
- 5) Increases mandatory minimum jail time for solicitation of a minor from two days to 72 hours.
- 6) Specifies that the fine for solicitation of a minor shall be deposited in the treasury of the county in which the offense occurred and used by the county to fund services for victims of human trafficking.

- 7) Removes judicial discretion on imposition of the 72 hour mandatory minimum jail time imposed for solicitation of adults and solicitation of minors.
 - a) States that a person is not 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 three days in a county jail.
 - b) Provides that in all cases in which probation is granted, the court shall require as a condition of probation that the person be confined in a county jail for at least three days.
 - c) States that the court shall not absolve a person from the obligation of spending at least 72 hours in confinement in a county jail.
- 8) Provides that persons who are convicted of human trafficking of a minor or abduction of a minor for purposes of prostitution within 1,000 feet of a school shall be subject to a one-year state prison enhancement.

EXISTING LAW:

- 1) 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).)
- 2) 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).)
- 3) 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).)
- 4) 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 three, six or eight years. (Pen. Code, §§ 286, subd. (c)(1), 288a, subd. (c)(1), 289, subd. (j).)
- 5) 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 three, six or eight years. Where the offense involves force or coercion, the prison term is five, eight or 10 years. (Pen. Code, § 288, subd. (b).)
 - 6) 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).)
 - 7) 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,
 - 8) 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).)
 - 9) 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).)

- 10) 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).)
- 11) 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).)
- 12) 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).)
- 13) 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).)
- 14) 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).)
- 15) Requires the California Department of Justice (DOJ) to collect data from law enforcement agencies about “the amount and types of offenses known to the public authorities.” (Pen. Code, §§ 13000 and 13002.) DOJ must:
 - a) Prepare and distribute forms and electronic means for reporting crime data.
 - b) Recommend the form and content of records to “ensure the correct reporting of data...” and instruct agencies in the collecting, keeping and reporting of crime data.
 - c) Process, interpret and analyze crime data.
- 16) Requires law enforcement agencies, as specified, district attorneys, the Department of Correction and other entities to do the following: (Pen. Code, § 13020.)
 - a) Install and maintain records for reporting statistical data.
 - b) Report data to DOJ “in the manner [DOJ] prescribes.”
- 17) Provides that any person who deprives or violates the personal liberty of any other with the intent to obtain forced labor or services is guilty of human trafficking and shall be punished in state prison for 5, 8, or 12 years and a fine of not more than \$500,000. (Pen. Code, § 236.1, subd. (a).)
- 18) States that any person who deprives or violates the personal liberty of any other with the intent to effect or maintain a violation of specified offenses related to sexual conduct,

obscene matter or extortion, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14 or 20 years and a fine of not more than \$500,000. (Pen. Code, § 236.1, subd. (b).)

19) Specifies the following penalties for any person who causes, induces, or persuades, or attempts to cause, induce, persuade, a person who is minor at the time of commission of the offense to engage in a commercial sex act, as provided:

- a) Five, 8, or 12 years and a fine of not more than \$500,000; or,
- b) Fifteen years to life and a fine of not more than \$500,000 when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Pen. Code, § 236.1, subd. (c).)

20) Provides that any person who takes away any other person under the age of 18 years from the father, mother, or guardian, or other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison and a fine not exceeding \$2,000. (Pen. Code, § 267.)

FISCAL EFFECT:

COMMENTS:

1) **Author's Statement:** According to the author, "Traditionally, law enforcement has tackled prostitution by arresting the women and girls on the street, while "pimps" and "johns" have been the least likely offenders in the commercial sex trade to face jail time. This neglects the fact that many of these criminalized "prostitutes" are actually victims of sex trafficking, punishing the victim with possible jail time and making it more difficult to go back to school or find work, while leaving their exploiters without any incentive to stop their profitable trafficking.

"In San Diego County, a recent joint study by researchers at University of San Diego and Point Loma Nazarene University found that 42% of first-time prostitution arrests are in fact cases involving sex trafficking, and that the average age of entry into child commercial sexual exploitation was 15 years old.

"Recently, strides have been made to recognize these sex trafficking victims as such, particularly in the case of children. However, a strong demand for the industry still exists, contributing to more and more vulnerable youth being exploited. Evidence of this can be seen as recently as the Super Bowl, in which hundreds were arrested for attempting to purchase sex^[1].

"There is currently no comprehensive statewide solution to combat commercial sexual exploitation of children and to assist those children. We are having the necessary conversations about the appropriate services these victims need- from mental health services, to job training, to stable housing. However, we also have to recognize that in order to stop

^[1]http://www.cookcountysheriff.org/press_page/press_SuperbowlSexTraffickngSting_02_9_2016.html

this exploitation from happening in the first place, we need to combat the demand for commercial sex which incentivizes trafficking to happen.

"Commercial sex trafficking remains a lucrative business for many, with a high demand leading to more and more youth being exploited. Furthermore, traffickers continue to prey on children at or near their schools to recruit them and traffic them to purchasers, making these spaces that should be a safe place for youth dangerous with few consequences to themselves.

"AB 1708 would help tackle the problem of commercial sexual exploitation by taking a hard stance against those contributing to the demand for sex trafficking and those making schools an unsafe place for children by trafficking at or near them. We need to make sure that the negative consequences fall on the true criminals, not the victims."

- 2) **This Bill Seeks to Focus Prosecution Efforts on The Demand Side of Prostitution:** This bill separates prostitution into separately defined and charged offenses, different procedures, penalties and other outcomes and goals can easily be amended into the law. Additionally, the bill imposes mandatory minimum jail sentences on individuals who are convicted of buying or attempting to buy commercial sex in the form of prostitution.
- 3) **Removal of Judicial Discretion in the Sentencing of Prostitution Offenders by Mandating 72 Hours in County Jail and a Mandatory Minimum Fine:** Specifically, this bill mandates that upon a conviction of prostitution, "a person is not 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 three days in a county jail. In all cases in which probation is granted, the court shall require as a condition of probation that the person be confined in a county jail for at least three days. The court shall not absolve a person...from the obligation of spending at least 72 hours in confinement in a county jail."

From a policy standpoint, there are no mandatory minimum jail sentences for a variety of offenses that are far more serious than misdemeanor prostitution. For instance, there is no mandatory jail sentence for first time domestic violence offenses, or a wide range of violent felony offenses. This bill takes the discretion from a judge to craft an appropriate remedy in a misdemeanor case. Judges are in the best position to make decisions based on the particular facts and circumstances of a case. Imposing mandatory jail time on a person convicted of prostitution can result in the loss of employment and create problems for the offender that may lead to further criminal acts. Courts have found success in fashioning other remedies that have kept offenders employed, outside of county jails at the public expense, and freed up jail space for more dangerous offenders.

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

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

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

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

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

- c) **Courts General Power to Impose Conditions of Probation:** Courts have broad general discretion to fashion and impose additional probation conditions that are particularized to the defendant. (*People v. Smith* (2007) 152, Cal.App.4th 1245, 1249.) Courts may impose any "reasonable conditions" necessary to secure justice, make amends to society and individuals injured by the defendant's unlawful conduct, and assist the "reformation and rehabilitation of the probationer." (Pen. Code, § 1203.1.) A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)
- d) **Mandatory Fine is Subject to Penalty Assessments:** The amount spelled out in statute as a fine for violating a criminal offense are base figures, as these amounts are subject to statutorily-imposed penalty assessments, such as fees and surcharges. This bill seeks to impose a mandatory minimum fine of \$1,000 with no judicial discretion to depart from this financial penalty, the following penalty assessments would be imposed pursuant to the Government and Penal codes:

Base Fine:	\$1,000.00
Penal Code § 1464 assessment (\$10 for every \$10):	\$1,000.00
Penal Code § 1465.7 assessment (20% surcharge):	\$200.00
Penal Code § 1465.8 assessment (\$40 per criminal offense):	\$40.00
Government Code § 70372 assessment (\$5 for every \$10):	\$500.00
Government Code § 70373 assessment (\$30 for felony or misdemeanor offense):	\$30.00
Government Code § 76000 assessment (\$7 for every \$10):	\$700.00
Government Code § 76000.5 assessment (\$2 for every \$10):	\$200.00
Government Code § 76104.6 assessment (\$1 for every \$10):	\$100.00
Government Code § 76104.7 assessment (\$4 for every \$10):	\$400.00
Fine with Assessments:	\$4,170.00*

*In addition to the assessments detailed in the chart, the defendant could be subject to pay "actual administrative costs" related to his or her arrest and booking (Gov. Code, § 29550 et seq.) and victim restitution for damages imposed by the court.

- e) **Abnormally High Criminal Penalties and Assessments in California:** In a January 2016 report, the LAO found that California has abnormally high criminal penalties and assessments.¹ According to the report, "[c]urrently, comprehensive information is not available on the criminal fine and fee levels of other states. However, in order to compare California's fine and fee levels to the rest of the nation, we surveyed other states. Specifically, we surveyed one large jurisdiction in each of 33 states (including many states similar to California) for the fines and fees associated with two offenses: a stop sign violation and speeding at 20 miles per hour over the limit. We found that California's fines and fees associated with these common traffic offenses are relatively high. For example, the total fines and fees for a stop sign violation in California is \$238, which was higher than 28 of the [33] surveyed states (about 85 percent). The total in other surveyed states ranged from \$58 to \$277, and averaged \$157. The total fines and fees for speeding at 20 miles per hour over the limit in California was \$367, which was higher than all of the states we surveyed. The total in other surveyed states ranges from \$73 to \$350, and averaged \$203.

¹ Improving California's Criminal Fine and Fee System. <http://www.lao.ca.gov/Publications/Report/3322>

The LAO made a number of recommendations to improve the state's fine and fee system. "First, we recommend that the Legislature reevaluate the overall structure of the fine and fee system to ensure the system is consistent with its goals. As part of this process, the Legislature will want to determine the specific goals of the system, whether ability to pay should be incorporated into the system, what should be the consequences for failing to pay, and whether fines and fees should be regularly adjusted. Second, we recommend increasing legislative control over the use of criminal fine and fee revenue to ensure that its uses are in line with legislative priorities by (1) requiring that most criminal fine and fee revenue be deposited in the state General Fund, (2) consolidating most fines and fees into a single, statewide charge, (3) evaluating the existing programs supported by fine and fee revenues, and (4) mitigating the impacts of potential changes to the fine and fee system on local governments."

- 4) **Sexual Acts with Minors Regardless of the Payment of Compensation Constitutes a Sex Crime:** This bill would separately define prostitution in which the person who provides, agreed to provide, sexual services is a minor. Sexual conduct with a minor constitutes a felony in most instances, regardless of whether anything of value was offered or exchanged for the sexual acts. If the minor involved in commercial sex of was under the age of 14, the defendant has committed the felony of lewd conduct, with a prison term of three, six or eight years, or five, eight or 10 years if coercion is involved (Pen. Code § 288, subs. (a) & (b).) Soliciting an act of prostitution from a minor under the age of 14 could likely be prosecuted as attempted lewd conduct. The prison or jail term for an attempt is generally one-half the punishment for the completed crime. Where the defendant solicited or employed a minor who was 14 or 15 years old, and the defendant was at least 10 years older than the minor, the defendant has committed an alternate felony-misdemeanor.

Any defined sex act – sodomy, sexual penetration, oral copulation or sexual intercourse – with a minor is a crime. The penalties depend on the relative ages of the defendant and the minor and whether the crime involved some form of force, coercion or improper advantage. A defendant charged with a prostitution-related offense involving a minor could also be charged and convicted of a sex crime in the same case. Generally, because the defined sex crime and the sexual commerce offense would involve a single transaction or act, the defendant could only be punished for one offense – the offense carrying the greatest penalty. (Pen. Code § 654.)

- 5) **Accurate and Full Data Collection on Individually Defined Forms of Prosecution:** One of the purposes of this bill is to collect data to determine how many adults are arrested for and convicted of paying for sexual acts, how many adults are arrested for and convicted of selling sexual acts and how many adults are arrested for and convicted of paying for sexual services from minors. The bill divides the prosecution statute – Penal Code Section 647, subdivision (b) - into three paragraphs reflecting each form of the crime. In order for the data to be valuable and accurate, reporting agencies will need to specifically note the paragraph under which a defendant was arrested and convicted. Representatives from DOJ explained: "The way [crime reports] appears in the system is entirely dependent on the law enforcement agency or court that enters the offense into the system. One agency may enter PC 647(b)(2) while another may only enter PC 647(b)."

Prosecutors will likely record the specific paragraph under which the defendant is convicted - PC 647 (b)(2) for example. However, police officers and sheriff's deputies might not

specifically record the paragraph of arrest unless instructed to do so. Further, it may not be apparent to officers and deputies what specific form of prostitution would be charged by the prosecutor in any particular case. That could cause some confusion and inaccuracy in the data.

Another impediment to full and accurate data collection is the fact that sex with a minor is a crime. If a minor and an adult are involved in a prostitution incident, numerous outcomes involving sex crimes and prostitution could occur. For example, the police could arrest both parties for prostitution, but the prosecutor could charge the adult with a sex crime, or prostitution, or both. The prosecutor could charge the minor with no crime, or file a prostitution charge. The adult could be initially charged with a sex crime but plead guilty to a prostitution offense, perhaps if the minor appeared to be an adult. In sum, it may be difficult to determine the extent of prostitution involving minors from arrest and conviction data. If committee members approve the bill, they may wish to inquire as to whether DOJ should be directed to instruct agencies on the reporting of prostitution offenses. Committee members may also wish to inquire whether it could be assured that prostitution involving minors could be accurately reported and tracked.

6) 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. 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. Prostitution, by definition, does not require any 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 and should not be treated the same. Furthermore, not every person who solicits a prostitute is engaged in the crime of human trafficking. Categorizing all "johns" as human traffickers, or all pimps and panderers as human traffickers, is unproductive in setting criminal justice policy. Distinctions between these crimes must be maintained so that proper resources can be allocated to combat and deal with the crimes based on their relative severity. 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 has a 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 266a); compelling a person to live in an illicit relationship (Pen. Code 266b); placing or leaving one's wife in a house of prostitution (Pen. Code 266g); loitering for prostitution (Pen. Code 653.22 subd. (a)); pimping (Pen. Code 266h); or, pandering (Pen. Code 266i). 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) **Proposition 35 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%

- 7) **Current Penalties for Human Trafficking:** In 2012, California voters enacted Proposition 35, which modified many provisions of California's already tough human trafficking laws. Specifically, Proposition 35 expanded the definition of human trafficking and increased criminal penalties and fines for human trafficking offenses. The proposition specified that the fines collected are to be used for victim services and law enforcement. In criminal trials, the proposition 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 also lowered the evidentiary requirements for showing of force in cases of minors. (See Proposition 35 voter guide available at Secretary of State's website, <http://www.voterguide.sos.ca.gov/past/2012/general/propositions/35/analysis.htm>) (as of Apr. 22, 2015.)

The current penalties for human trafficking are very severe. Human trafficking for the purpose of obtaining forced labor or services is punishable by imprisonment in state prison for up to 12 years. If the offense involves human trafficking for the purpose of specified sexual conduct, obscene matter or extortion, the punishment proscribed is up to 20 years imprisonment in state prison. If the offense involves causing a minor to engage in a commercial sex act, the penalty imposed may be 15-years to life. (Pen. Code, § 236.1.) The court may also impose up to a \$1.5 million fine on a person convicted of human trafficking. (Pen. Code §§ 236.1 and 236.4.)

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

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

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

- 137.5% of design bed capacity by February 28, 2016.

In its most recent status report to the court (February 2015), 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).

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

Moreover, there are still approximately 10,500 prisoners being housed in out of state and in private prisons. (See latest CDCR monthly population report, as of March 31, 2015: http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TPOP1A/TPOP1Ad1503.pdf.)

This bill creates a new enhancement of one year when the defendant is convicted of a human trafficking offense, where the offense was committed against a minor, or convicted of abducting a minor for the purpose of prostitution, where the offense was committed on the grounds of, or within 1,000 feet of a school. Although the state is currently in compliance with the court-ordered population cap, creating new enhancements that increase the length of time that an inmate must serve in prison will reverse the progress made in reducing the state prison population. This is contrary to the court's order for a durable solution to prison overcrowding.

- 9) **Argument in Support:** According to the *Alameda County District Attorney's Office*, "In order to fully combat the problem of commercial sex trafficking, it is important to combat the demand for these services, and recognize that purchasers of sex are driving this exploitative and dangerous industry of slavery. This bill would require a person who sought to procure or did procure sexual services to spend at least 3 days in jail in addition to paying a minimum fine of \$1,000 to fund victim services. This bill would also add an additional one year in state prison to a felony conviction of trafficking if the victim was a minor and the activities took place near a school.

"As long as there is demand, there will be an exploiter to fill it. Unfortunately it is at the expense of the life, well-being and psychological impact of the child. Individuals who purchase human beings for sex fuel the market the traffickers supply with victims. Until we eliminate the demand, the sex exploitation of our society's most vulnerable girls, women and men, and boys, will continue."

- 10) **Argument in Opposition:** According to the *American Civil Liberties Union*, "We believe that the new sentencing enhancement proposed is unnecessary in light of existing penalties, and that the mandatory 72 hours of confinement for solicitation unnecessarily infringes on

judicial discretion. In addition, we believe it is inappropriate to expand the punishment for the offense of soliciting a minor to include soliciting someone 'posing as a minor.'

"AB 1708 makes six changes to California's criminal laws as follows:

- 1) Divides the offense of prostitution into two separate sections, one for the person receiving compensation and one for the person offering compensation.
- 2) Imposes a mandatory 72 hour period of confinement on any individual convicted of offering to provide compensation for an act of prostitution, removing the judge's discretion to allow a person to serve this sentence through community service, work furlough or another non-custodial form of punishment.
- 3) Expands the punishment for soliciting an act of prostitution with a minor to include a person 'posing as a minor.'
- 4) Adds a new sentencing enhancement for committing the crime of human trafficking "against a minor" on the grounds of or within 1,000 feet of a school.

"First, imposing a mandatory 72 hour period of incarceration for the offense of solicitation unnecessarily reduces judicial discretion in sentencing. Current law provides for a mandatory two day jail sentence for soliciting an act of prostitution if the person solicited was a minor. (Pen. Code sec. 647(m)(1).) Current law also provides that the judge 'may, in unusual cases, when the interests of justice are best served, reduce or eliminate the mandatory two days of imprisonment.' (Pen. Code sec. 647(m)(2).)

"AB 1708 would eliminate this narrow safety-valve of judicial discretion, would increase the mandatory jail period from 48 to 72 hours, and would apply the mandatory jail period to all solicitation offenses, including offenses where the person solicited was an adult. We believe these increases in criminal sanctions will not reduce the instances of human trafficking but will exacerbate jail overcrowding and prevent judges from imposing appropriate sentences based on the unique facts of the case before them. Current law sufficiently punishes offenders while also preserving judicial discretion in unusual cases, when the interests of justice would best be served by not imposing the jail sentence. This is a very restricted but wise safeguard that allows judge to exercise their discretion when the specific circumstances of the case call for another approach. Mandating jail time, without any judicial discretion to pursue alternatives, for low-level, nonviolent conduct that involves no actual sexual activity is counter-productive to the goals of rehabilitation and limits the ability to use scarce jail space for serious offenders.

"Second, punishing a person for soliciting a minor for an act of prostitution, when the person solicited was not actually a minor but instead a person 'posing as a minor,' would significantly expand the punishment provided under current law. Current law doubles the maximum possible punishment for solicitation 'if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense.' (Pen. Code sec. 647(b)(m).) This double punishment takes into account the harm caused to the minor who was solicited.

"AB 1708 would apply this longer maximum punishment 'if the person who was solicited was a person posing as a minor and the person engaged in the solicitation had specific intent to solicit a minor.' This appears intended to facilitate undercover sting operations in which law enforcement

pose as minors, typically in online forums. But in these circumstances, no minor has actually been harmed. The additional punishment is thus unwarranted.

"Third and finally, we believe AB 1708's new proposed sentencing enhancement for human trafficking committed "against a minor" on the grounds of or within 1,000 feet of a school is unnecessary and counter-productive. Research has shown that more severe sentences do not actually enhance public safety.² Studies have concluded that the severity of punishment does not generally have an increased effect on deterrence.³ 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.⁴

"California law already provides significant punishments for human trafficking involving a minor. Under existing Penal Code section 236.1, the lowest penalty possible for human trafficking is five years in state prison. (Pen. Code sec. 2361.(a).) The highest penalty is life imprisonment. (Pen. Code sec. 236.1(c)(2).) These punishments can be further enhanced by a myriad of existing sentence enhancements.

"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."⁵ 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."⁶

"While protecting minors from victimization is an extremely important objective, we believe that lengthening sentences for the offenses referenced in this bill and decreasing judicial discretion in sentencing will not accomplish that goal. For these reasons, we must oppose AB 1708 unless amended. Please do not hesitate to contact us should you have any questions."

11) **Related Legislation:**

- a) AB 1051 (Maienschein), of this legislative session, changed the definition of "pattern of criminal gang activity" to add the crime of human trafficking and creates a new one-year state prison enhancement for specified crimes committed against a minor on the grounds of, or within 1,000 feet of a school. AB 1051 was held in the Senate Appropriations Committee.
- b) SB 420 (Huff), recasts the prostitution section using the exact same language as this bill, dividing buyers, sellers, and buyers of sexual services from minors. SB 420 was held for interim study by this committee.

² 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>

³ *Id.*

⁴ *Id.*

⁵ Scott Shafer, Prosecutors Cry Foul Over Jerry Brown's Ballot Measure, KQED, Feb. 12, 2016, available at <http://www2.kqed.org/news/2016/02/12/prosecutors-cry-foul-over-jerry-browns-ballot-measure>

⁶ 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>

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
California District Attorneys Association
County of San Diego
Peace Officers Research Association of California
San Diego District Attorney's Office
State Coalition of Probation Organizations

Opposition

American Civil Liberties Union
California Public Defenders Association
California State Sheriffs' Association

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

Date of Hearing: April 19, 2016
Counsel: David Billingsley

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

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

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

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

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

EXISTING LAW:

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

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

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Law enforcement officers put their lives on the line to protect our communities; AB 1745 is the first step to protect them and our community from the budget stress we and the recent U.S. DOJ decision have placed upon them."
- 2) **Supplemental Law Enforcement Services Account (SLESA):** Assembly Bill 3229 (Lockyer), Chapter 134, Statutes of 1996, established the Citizen's Option for Public Safety (COPS) Program. Compliant cities are allocated a proportionate share of COPS funds by the State, for the exclusive purpose of funding supplemental law enforcement services. Proportionate shares are based on population estimates determined by the California Department of Finance.
- 3) **Federal DOJ has Resumed the Equitable Sharing Program:** In December of 2015, The Federal Department of Justice (DOJ) announced that it was suspending its equitable sharing program. Equitable sharing was a program in which local law enforcement agencies received money from the federal forfeiture actions of property seized from individuals. The program sent a portion of the money (up to 80%) from forfeitures directly to local law enforcement agencies that had been involved in the seizure. The author had estimated that the suspension of equitable sharing would result in approximately \$85 million in lost revenue for California law enforcement agencies, based on 2014 receipts. However, DOJ has recently announced that it is resuming the equitable sharing program.

On March 28, 2016, Peter Carr, a spokesman for the Federal DOJ stated, "In the months since we made the difficult decision to defer equitable sharing payments because of the \$1.2 billion rescinded from the Asset Forfeiture Fund, the financial solvency of the fund has improved to the point where it is no longer necessary to continue deferring equitable sharing payments."

To the extent that the loss of equitable sharing funds was the basis for requesting an \$85 million appropriation to be used for local law enforcement, there is no longer a concern about that potential loss of revenue.

- 4) **Law Enforcement Primarily Funded at the Local Level:** Police protection constitutes less than 1% of direct expenditures by the state but accounts for 6.6% and 14.1%, at the county and city levels, respectively. Local police protection is funded by property, business, and sales taxes; federal and state grants; local fees and fines; and voter-approved increases in general and special sales taxes. For example, voters recently approved a three-quarter cent sales tax increase in the city of Stockton, with most of that money going toward hiring 120 police officers over the next three years. In 2010, California law enforcement agencies spent \$15.6 billion for police protection, slightly more than the \$14.8 billion the state and the counties spent on corrections. PPIC (2013), Policing in California (http://www.ppic.org/main/publication_show.asp?i=1081)
- 5) **Investing in Law Enforcement:** A review of academic research by the Chief Justice Earl Warren Institute on Law and Policy led to a conclusion that channeling resources to law enforcement as opposed to corrections was an effective allocation of resources. (Fact Sheet: Police, Prisons, and Public Safety in California, April, 2013, The Chief Justice Earl Warren Law Institute on Law and Social Policy, University of California, Berkeley School of Law.)

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

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

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

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

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

- 7) **Argument in Opposition:** According to *Legal Services for Prisoners with Children*, “While we understand the seriousness of gang violence, drug addiction, and the importance of safe neighborhoods and schools being addressed by this bill; we believe that this bill would waste valuable resources that could be better spent. Law enforcement has a significant amount of power and resources. Given California’s strapped budget, this costly measure is unjustified and unwarranted. We at LSPC believe that if the Legislature seeks to fund a program designed for the welfare of communities, the resources proposed should be used to implement programs for the most vulnerable. There would be less crime if there were more resources for these underserved communities; AB 1745 is not going to do this. Instead, it is asking to allocate \$85,000,000 to “front-line law enforcement services” that will continue criminalizing underserved communities and imprisoning them. Rather than pass this bill, the Legislature should direct its time and budget towards school support, teacher training, juvenile diversion, mental health services, shelters, and community support.”

8) **Prior Legislation:**

- a) SB 144 (Cannella), of the 2012-2013 Legislative Session, would have appropriated \$819,857,000 from the General Fund to the Realignment Reinvestment Fund. SB 144 was held in the Senate Committee on Budget and Fiscal Review.

- b) SB 1023 (Budget Committee), Chapter 43, Statutes of 2012, removed the reporting requirement to the State Controller for Supplemental Law Enforcement Oversight Committees.
- c) AB 3229 (Brulte), Chapter 134, Statutes of 1996, established the Citizen's Option for Public Safety (COPS) Program.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Peace Officers Association
City of Palos Verdes Estates
City of Rolling Hills Estates
City of Torrance
Law Center to Prevent Gun Violence

Opposition

Legal Services for Prisoners with Children

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

Date of Hearing: April 19, 2016
Counsel: David Billingsley

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

AB 1860 (Alejo) – As Amended March 17, 2016

SUMMARY: Requires the Board of State and Community Corrections (BSCC) to develop a grant program to make funds available to local law enforcement entities to purchase body-worn cameras and related data storage and equipment, and to hire personnel necessary to operate a local body-worn camera program. Specifically, **this bill:**

- 1) Requires BSCC to develop a grant program to make funds available to local law enforcement entities to purchase body-worn cameras and related data storage and equipment, and to hire personnel necessary to operate a local body-worn camera program.
- 2) Deletes the transfer requirement for the Driver Training Penalty Assessment Fund and instead require a transfer to the Body-worn Camera Fund.
- 3) Creates the Body-worn Camera Fund, that would continuously appropriate funds to the board for those purposes.

EXISTING LAW:

- 1) States that there shall be levied a state penalty in the amount of ten dollars (\$10) for every ten dollars (\$10), or part of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses, including all offenses, except parking offenses as specified. (Pen. Code, § 1464, subd. (a)(1).)
- 2) Specifies that after a determination by the court of the amount due, the clerk of the court shall collect the penalty and transmit it to the county treasury. A specified portion shall be deposited in the appropriate county fund and 70 percent of the balance shall then be transmitted to the State Treasury, to be deposited in the State Penalty Fund, which is hereby created, and 30 percent to remain on deposit in the county general fund. (Pen. Code, § 1464, subd. (e).)
- 3) The moneys so deposited in the State Penalty Fund shall be distributed as follows:
 - a) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.33 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month, except that the total amount shall not be less than the state penalty levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. These moneys shall be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game; (Pen. Code, § 1464, subd. (f)(1).)

- b) Once a month there shall be transferred into the Restitution Fund an amount equal to 32.02 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month; (Pen. Code, § 1464, subd. (f)(2).)
 - c) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 23.99 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month; (Pen. Code, § 1464, subd. (f)(3).)
 - d) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 25.70 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month; (Pen. Code, § 1464, subd. (f)(4).)
 - e) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 7.88 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month. Money in the Corrections Training Fund is not continuously appropriated and shall be appropriated in the Budget Act; (Pen. Code, § 1464, subd. (f)(5).)
 - f) Once a month there shall be transferred into the Local Public Prosecutors and Public Defenders Training Fund established pursuant to Section 11503 an amount equal to 0.78 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month. The amount so transferred shall not exceed the sum of eight hundred fifty thousand dollars (\$850,000) in any fiscal year. The remainder in excess of eight hundred fifty thousand dollars (\$850,000) shall be transferred to the Restitution Fund; (Pen. Code, § 1464, subd. (f)(6).)
 - g) Once a month there shall be transferred into the Victim-Witness Assistance Fund an amount equal to 8.64 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month; and (Pen. Code, § 1464, subd. (f)(7).)
 - h) Once a month there shall be transferred into the Traumatic Brain Injury Fund an amount equal to 0.66 percent of the state penalty funds deposited into the State Penalty Fund during the preceding month. (Pen. Code, § 1464, subd. (f)(8).)
- 4) When establishing policies and procedures for the implementation and operation of a body-worn camera system, law enforcement agencies, departments, or entities shall consider the following best practices regarding the downloading and storage of body-worn camera data:
- a) Designate the person responsible for downloading the recorded data from the body-worn camera. (Pen. Code, § 832.18, subd. (b)(1).)
 - b) Establish when data should be downloaded to ensure the data is entered into the system in a timely manner, the cameras are properly maintained and ready for the next use, and for purposes of tagging and categorizing the data. (Pen. Code, § 832.18, subd. (b)(2).)
 - c) Establish specific measures to prevent data tampering, deleting, and copying, including prohibiting the unauthorized use, duplication, or distribution of body-worn camera data. (Pen. Code, § 832.18, subd. (b)(3).)

- d) Categorize and tag body-worn camera video at the time the data is downloaded and classified according to the type of event or incident captured in the data. (Pen. Code, § 832.18, subd. (b)(4).)
 - e) Specifically state the length of time that recorded data is to be stored. (Pen. Code, § 832.18, subd. (b)(5).)
 - f) States that nonevidentiary data including video and audio recorded by a body-worn camera should be retained for a minimum of 60 days, after which it may be erased, destroyed, or recycled, except in specified circumstances. (Pen. Code, § 832.18, subd. (b)(5)(A).)
 - g) States that evidentiary data including video and audio recorded by a body-worn camera under this section should be retained for a minimum of two years under any of the following circumstances, as specified. (Pen. Code, § 832.18, subd. (b)(5)(B).)
- 5) Appropriates annually from the Driver Training Penalty Assessment Fund to the General Fund in the State Treasury and from the General Fund to the California Energy Extension Service of the Office of Planning and Research a sum as necessary to establish and maintain a unit for driver instruction within the State Department of Education as specified. (Ed. Code, § 41304, subd. (a).)
- 6) Appropriates from the Driver Training Penalty Assessment Fund to the General Fund, then to the State School Fund each fiscal year, the sum the Superintendent of Public Instruction certifies as necessary to reimburse on a quarterly basis for each current fiscal year school districts, county superintendents of schools, the Department of the Youth Authority, and the State Department of Education for the actual cost of instructing pupils in the operation of motor vehicles. (Ed. Code, § 41304, subd. (b).)
- 7) Directs that monies, as specified, shall also be appropriated from the Driver Training Penalty Assessment Fund the sum the Superintendent of Public Instruction shall certify as necessary to reimburse on a quarterly basis for each current fiscal year school districts, county superintendents of schools, the Department of the Youth Authority, and the State Department of Education for the actual cost of replacing vehicles and simulators used exclusively in the laboratory phase of driver education programs, but the amount shall not exceed three-fourths of that part of the actual cost of instructing pupils in the laboratory phase of driver education which is: (1) in excess of ninety-seven dollars (\$97) per pupil instructed, and (2) expended by the district, the county superintendent of schools, the Department of the Youth Authority, and the State Department of Education in replacing the vehicles and simulators. Reimbursement for vehicles shall be computed for only that portion of the total mileage used exclusively in the laboratory phase of driver education programs. (Ed. Code, § 41304, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Having video of police officers' interactions with the public will help create accountability. Body cameras will help us address problems of misconduct, absolve officers who've been wrongly accused and help the public understand

things from a public safety perspective. There are other benefits of police wearing body cameras that don't get talked about as much, these include providing evidence in domestic violence cases and enhanced evidence collection at accident scenes.”

- 2) **Federal Justice Department Grants for Body-Worn Cameras:** On September 21, 2015, as part of President Obama's commitment to building trust and transparency between law enforcement and the communities they serve, Attorney General Loretta E. Lynch announced that the Justice Department has awarded grants totaling more than \$23.2 million to 73 local and tribal agencies in 32 states to expand the use of body-worn cameras and explore their impact. The body-worn camera pilot program announced in May 2015 includes \$19.3 million to purchase body-worn cameras, \$2 million for training and technical assistance and \$1.9 million to examine the impact of their use. The grants, awarded by the department's Office of Justice Programs (OJP), build on President Obama's proposal to purchase 50,000 body-worn cameras for law enforcement agencies within three years.
(<https://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law>)

“This vital pilot program is designed to assist local jurisdictions that are interested in exploring and expanding the use of body-worn cameras in order to enhance transparency, accountability and credibility,” said Attorney General Lynch. “The impact of body-worn cameras touches on a range of outcomes that build upon efforts to mend the fabric of trust, respect and common purpose that all communities need to thrive.”

(<https://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law>)

The grants, which require a 50/50 in-kind or cash match, can be used to purchase equipment and require that applicants establish a strong implementation plan and a robust training policy before purchasing cameras. Each agency awarded a grant is responsible for developing a plan for long-term storage, including the cost of storing data.

In addition to funds to help purchase body-worn cameras and train officers in their use, grants under the Bureau of Justice Assistance's (BJA's) Smart Policing Initiative will support police departments in Miami, Milwaukee and Phoenix as they examine the impact of body-worn cameras on citizen complaints, internal investigations, privacy, community relationships and cost effectiveness. Each of these three departments will partner with a research institution to gain insight on the merits of deploying body-worn camera programs.
(<https://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law>)

- 3) **Driver Training Penalty Assessment Fund:** This bill plans to use funds from the Driver Training Penalty Assessment Fund and send those funds to the newly created, Body-worn Camera Fund. The Driver Training Penalty Assessment was set up to provide funds in accordance with Education Code section 41304. Education Code Section 41304 lists the fund priorities as follows.:
- a) Establish and maintain a unit for driver instruction within the State Department of Education;
 - b) Reimburse actual cost of instructing pupils in the operation of motor vehicles;

- c) Reimburse actual cost of replacing vehicles and simulators used extensively in the laboratory phase of driver education programs; and
 - d) Transfer to other funds pursuant to Control Section 24.10 (b) of the annual Budget Act.
- 4) **Budget Act and Budget Bill Expenditures Already has Claims on the Driver Training Penalty Assessment Fund:**

As part of the budget process, money from the Driver Training Penalty Assessment Fund has been allocated to pay for other policy objectives.

Control Section 24.10 of the 2015-16 Budget Act and AB 103 (Budget Bill) transferred funds from the Driver Training Penalty Assessment Fund as follows:

- a) To the Schoolbus Driver Instructor Training in the Department of Education \$1,737,000
- b) To the Corrections Training Fund, \$9,800,000
- c) To the Peace Officers' Training Fund, \$14,000,000
- d) To the Victim Witness Assistance Fund, \$4,121,000

The 2016-17 Budget projections are:

- a) To the Schoolbus Driver Instructor Training in the Department of Education \$1,763,000
- b) To the Corrections Training Fund, \$9,800,000
- c) To the Peace Officers' Training Fund, \$11,000,000
- d) To the Victim Witness Assistance Fund, \$4,121,000
- e) To the Traumatic Brain Injury Fund, \$360,000

- 5) **Argument in Support:** According to *The League of California Cities*, "This measure will require the Board of State and Community Corrections (BSCC) to develop a grant program to fund the acquisition for local law enforcement personnel of body cameras and related data storage and equipment. This measure also creates a special fund, entitled the Body-worn Camera Fund, from which monies will be continuously appropriated for use by the BSCC in operating the grant program.

"Monies from the Driver Penalty Assessment Fund will be used to fund this program. This measure is progressive in nature in that it avoids both any direct impact on the State General Fund, as well as any mandate on local agencies, which will be free to apply to the BSCC on a voluntary basis for funds to acquire body cameras.

"AB 1860 seeks to take advantage of a three-year federal allocation of \$263 million that will be available in the form of matching funds to state and local governments that purchase body cameras."

- 6) **Argument in Opposition:** According to *The Electronic Frontier Foundation*, "EFF believes police body-worn cameras may be useful in protecting civil liberties, but only if they are adopted with robust community input and used in line with a policy that ensures the cameras promote transparency and accountability of police action.

"We therefore urge that, before authorizing a funding mechanism to expand their availability to law enforcement agencies, you amend your bill to require that potential grantees obtain robust community input prior to submitting funding or other acquisition requests or applications. Furthermore, we urge you to amend your bill to require that potential grantees

adopt policies that address the many constitutional and other concerns associated with the use of body-worn cameras, including appropriate limits on data collection, data retention, and dissemination to other agencies.

“First, police body-worn cameras monitor and record parts of an officer’s field of vision. As a result, they frequently capture the activities of civilians who are not suspected of any involvement in a criminal act, effectively placing the public at large under new forms of potentially constant visual surveillance. Indiscriminate surveillance has always raised serious Fourth Amendment issues as well as privacy issues under Art. I., § 1 of the California Constitution.

“Second, the rationale for encouraging law enforcement use of body-worn cameras is to make police behavior more accountable to the public. Such accountability requires at least the limited disclosure of footage from body-worn cameras, for which the proposed measure includes no provision. EFF believes that civilians must have appropriate access to such footage.

“Conversely, to the extent local laws and regulations allow them to do so, police officers may be able to edit or suppress footage of incidents revealing potential abuses—or, alternatively, not to record those incidents in the first instance. Any legislation or program enabling such surveillance must address these transparency and accountability concerns about body-worn cameras, or run the risk of creating a solution worse than the problem it was enacted to address.

“Finally, rules governing the disclosure of footage from police body-worn cameras are not only problematic when unspecified, but also raise profound privacy concerns for individuals depicted in body camera footage, including victims and witnesses of crime. Reasonable witnesses may refrain from sharing their observations with police officers if such concerns are not addressed.

“These are difficult issues, to be sure. But the state already requires government policies for surveillance technologies like automated license-plate recognition systems and Stingrays (SB 34, SB 741). Moreover, if the state funds acquisition or use of police body-worn cameras, it should not and cannot disclaim responsibility for their use.

“In sum, police body-worn cameras present serious issues that must be addressed prior to the creation of any grant program, including concerns regarding their constitutionality, their efficacy, the standards governing the disclosure of body camera footage, the privacy of Californians who appear in videos, and public safety. As currently written, AB 1860 does not address these critical interests at all, let alone strike a defensible balance among them.”

7) Related Legislation:

- a) AB 1957 (Quirk), would 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. AB 1957 is awaiting hearing in the Assembly Judiciary Committee.

- b) AB 1940 (Cooper), would exempt body-worn camera recordings that depict the use of force resulting in serious injury or death from public disclosure pursuant to the act unless a judicial determination is made, after the adjudication of any civil or criminal proceeding related to the use of force incident, that the interest in public disclosure outweighs the need to protect the individual right to privacy. AB 1940 is awaiting hearing in this committee.
- c) AB 65 (Alejo), would have required BSCC to develop a grant program to make funds available to local law enforcement entities to purchase body-worn cameras and related data storage and equipment, and to hire personnel necessary to operate a local body-worn camera program. AB 65 would have created the Body-worn Camera Fund, that would continuously appropriate funds to the board for those purposes. AB 65 was held in the Assembly Appropriations Committee.
- d) AB 66 (Weber), would state the intent of the Legislature to enact legislation to require local police departments that utilize police body-worn cameras to follow specified procedures. AB 66 was held in the Assembly Appropriations Committee.
- e) SB 175 (Huff), would require 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 would require the policy to be developed in collaboration with nonsupervisory officers and to include certain provisions, including, among others, the duration, time, and place when body-worn cameras shall be worn and operational. SB 175 is on the Assembly Inactive File.

8) Prior Legislation:

- a) 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, including, among other things, prohibiting the unauthorized use, duplication, or distribution of the data, and establishing storage periods for evidentiary and nonevidentiary data, as defined.
- b) AB 790 (Karnette), of the 2007-2008 Legislative Session, would have redirected 4% of funds from the Driver Training Penalty Assessment Fund and allocated that money to the Department of Justice to be used to support the California Witness Protection Program. AB 790 was held in the Assembly Appropriations Committee Suspense File.
- c) SB 1761 (Poochigian), of the 2005-2006 Legislative Session, would have changed the percentage of money that is deposited into each of the funds in the State Penalty Fund, and would have created the Child Advocacy Center Fund, into which 4.97% of state penalty funds in the State Penalty Fund would be deposited monthly. SB 1761 was held in the Senate Appropriations Committee Suspense File.
- d) AB 204 (Lowenthal), of the 2001-2002 Legislative Session, would have required all funds transferred to the Driver Penalty Assessment Fund, which would otherwise be transferred to the General Fund, be appropriated on an annual basis to the State Department of Education for the purposes of providing driver training instruction in the public schools. AB 204 was held in the held in the Assembly Appropriations Committee Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

California Peace Officers' Association
League of California Cities
Peace Officers Research Association of California

Opposition

Electronic Frontier Foundation

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

Date of Hearing: April 19, 2016
Chief Counsel: Gregory Pagan

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

AB 1864 (Cooley) – As Amended March 17, 2016

SUMMARY: Defines "sudden unexplained death in childhood" (SUDC), and requires a coroner to notify the parents or responsible adult of a child that comes within the definition of the importance of taking tissue samples. Specifically, **this bill:**

- 1) Defines "sudden unexplained death in childhood" as the sudden death of a child one year of age or older but under 18 years of age that is unexplained by the history of the child and where a thorough post mortem exam fails to demonstrate adequate cause for the death.
- 2) Requires the coroner to notify the parents or responsible adult of a child that comes within the SUDC definition of the importance of taking tissue samples.
- 3) States that a coroner shall not be liable for damages in a civil action for any act or omission in compliance with the above provision.

EXISTING LAW:

- 1) Requires a coroner to investigate the circumstances, manner, and cause of specified types of deaths, including violent, sudden, or unusual deaths; unattended deaths; and deaths where the deceased has not been attended to by a physician within 20 days before the death occurred. Affords the coroner with the discretion to determine the extent of the inquiry into a death occurring under natural circumstances, and allows the coroner to authorize a physician to sign the certificate of death if the physician has sufficient knowledge to reasonably state the cause of a death occurring under natural circumstances. (Gov. Code, § 27491.)
- 2) Provides that a coroner shall within 24 hours, or as soon as feasible thereafter, where the suspected cause of death is sudden infant death syndrome, take possession of the body, and make or cause to be made a postmortem examination or autopsy thereon, and the detailed medical findings resulting from an examination of the body or autopsy by an examining physician must either be reduced to writing, or permanently preserved, as specified. (Gov. Code, § 27491.4, subd. (a).)
- 3) Defines "sudden infant death syndrome" to mean the sudden death of an infant that is unexpected by the history of the infant and where a thorough postmortem fails to demonstrate an adequate cause of death. (Gov. Code, § 27491.49, subd. (a).)
- 4) Requires that an autopsy conducted where it is suspected that the cause of death is sudden infant death syndrome be conducted pursuant to a standardized protocol developed by the State Department of Public Health. The protocol shall be developed and approved by

July 1, 1990. (Gov. Code, § 27491.41 (d).)

- 5) Requires that all coroners, throughout the state, follow the established protocol when conducting autopsies where the suspected cause of death is sudden infant death syndrome, and requires a coroner to state on the certificate of death that sudden infant death syndrome was the cause of death when the findings are consistent with the definition of sudden infant death syndrome. (Gov. Code, § 27491.41 (e).)
- 6) Requires a coroner to perform or arrange for an autopsy on a decedent upon a written request of the surviving spouse, or in certain circumstances, a child, parent, or other legal next-of-kin; and requires the cost of the autopsy to be borne by the person requesting the autopsy. (Gov. Code § 27520.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Though emergency personnel and law enforcement are required to be provided training to handle cases involving Sudden Infant Death Syndrome, they do not receive training on the handling of cases where the suspected cause of death is Sudden Unexpected Death in Childhood. As a result, parents whose children die under these circumstances are often left with little or no information on how to process the death of their children or how to address further investigation.
- 2) **Prior Legislation:** AB 2029 (Cooley) of the 2013-2014 Legislative Session was identical to this bill in that it required a coroner to advise the parents of a child who has died of SUDC of the importance of taking tissue samples. AB 2029 was vetoed by the Governor.

In his veto message, the Governor stated, "The bill would add a statutory definition of 'sudden unexplained death in childhood' and require coroners to notify parents or responsible parties about the importance of taking tissue samples when such an unexplained death occurs.

"Rather than creating a state mandate at this juncture, we should rely on coroners to use their best professional judgment to provide appropriate and relevant information to next of kin for this difficult circumstance."

REGISTERED SUPPORT / OPPOSITION:

Support

Sudden Unexplained Death in Childhood Foundation
Five Private Individuals

Opposition

None

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

Date of Hearing: April 19, 2016
Chief Counsel: Gregory Pagan

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

AB 1872 (Gray) – As Amended April 4, 2016

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

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

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

EXISTING LAW:

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

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

FISCAL EFFECT: Unknown

COMMENTS:

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

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

- 2) **Argument in Support:** The *Merced County Law Enforcement Chief's Association* states, "The Merced County Sheriff's Office and local police departments continue to have difficulty in filling deputy sheriff and police officer vacancies. This legislation is necessary to relieve

significant staffing issues. The following are examples of how this legislation will benefit the Merced County Sheriff's Office:

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

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

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

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

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

- 3) **Argument in Opposition:** According to the *Peace Officers Research Association of California*, "For over a decade, PORAC has worked with the California State Sheriff's Association to ensure that any bill introduce creating a new category of peace officers is done so with full agreement between the sheriff and the sheriff's deputies. There is no agreement in Merced County and although they are in talks, PORAC opposes the precedent that this bill will set moving forward, without an agreement".
- 4) **Prior Legislation:**
 - a) SB 1254(La Malfa), Chapter 66, Statutes of 2012, added Trinity and Yuba Counties to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially related to custodial assignments are peace officers whose authority extends to any place in the state while engaged in the duties of his or her respective employment .
 - b) AB 1695(Bell), Chapter 575, Statutes of 2010, allowed the duties of custodial officers employed by the Santa Clara County Department of Corrections to be performed at other health care facilities in Santa Clara County, in addition to their duties performed at the Santa Clara Valley Medical Center.

- c) AB 2215 (Berryhill), Chapter 15, Statutes of 2008, added Calaveras, Lake, Mariposa, and San Benito Counties to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially related to custodial assignments are peace officers whose authority extends to any place in the state while engaged in the duties of his or her respective employment .
- d) AB 151 (Berryhill), Chapter 84, Statutes of 2007, added Glenn, Lassen, and Stanislaus to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially related to custodial assignments are peace officers whose authority extends to any place in the state while engaged in the duties of his or her respective employment .

REGISTERED SUPPORT / OPPOSITION:

Support

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

Opposition

Merced County Deputy Sheriff's Association
Peace Officer Research Association of California

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

Date of Hearing: April 19, 2016
Chief Counsel: Gregory Pagan

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

AB 1940 (Cooper) – As Amended April 14, 2016

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

Date of Hearing: April 19, 2016
Chief Counsel: Gregory Pagan

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

AB 1951 (Salas) – As Amended April 13, 2016

SUMMARY: Requires a court upon conviction of a person for committing specified crimes relating to animal abuse to order a psychiatric examination, and requires psychiatric counseling as a condition of probation for any person granted probation for these offenses. Specifically, **this bill:**

- 1) Requires any person convicted of dog fighting, assaulting a police dog or horse in a manner likely to cause injury, or intentionally causing injury or death to any guide dog or service dog to undergo mandatory psychiatric counseling as a condition of any grant of probation.
- 2) States that any person convicted of animal abuse, transporting an animal in a cruel or inhumane manner, cockfighting, fastening an animal to a device in order to be chased by dogs, possessing a bird or animal with the intent they engage in fighting, abandoning an animal, or failing to care for an animal shall be required, prior to sentencing, to submit to a psychiatric or psychological examination and the court shall consider the results of the examination in determining the sentence.
- 3) Provides that any person that intentionally causes injury to or the death of any guide, signal or service dog, as defined, while the dog is in the discharge of its duties, is guilty of a felony punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine not to exceed \$20,000, or by both a fine and imprisonment.

EXISTING LAW:

- 1) Provides that every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd, (a).)
- 2) States that when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit

for labor is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (b).)

- 3) Specifies that a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, is a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (c).)
- 4) Provides that any person that does any of the following is guilty of a felony and is punishable by imprisonment in a county jail for 16 months, 2 or 3 years, or by a fine not to exceed \$50,000, or by both imprisonment and a fine:
 - a) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog;
 - b) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other; and,
 - c) Permits any of the above acts to be done on any premises under his or her control, or aid or abets that act. (Pen. Code, § 597.5, subd. (a).)
- 5) States that any person that intentionally causes injury to or the death of any guide, signal or service dog, as defined, while the dog is in the discharge of its duties, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not exceeding 10,000, or by both a fine and imprisonment. (Pen. Code § 600.2.)
- 6) Provides that any person who maliciously strikes, beats, kicks, stabs, shoots, or throws, hurls, or projects any rock or object at any horse being used by a peace officer, or any dog being supervised by a peace officer in the performance of his or her duties is a public offense. If the injury inflicted is a serious injury, as specified, the person shall be punished as a felony by imprisonment in a county jail for 16 months, two or three years, and as a misdemeanor by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding two thousand dollars, or by both a fine and imprisonment. If the injury inflicted is not a serious injury, the person shall be punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars, or by both a fine and imprisonment. (Pen. Code, § 600, subd. (a).)
- 7) Requires that if a defendant is granted probation for a conviction of animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. The counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering

custody. This does not apply to cases involving police dogs or horses as described in Section 600. (Pen. Code, § 597, subd. (h).)

- 8) Provides that any person who causes any animal, not including a dog, to fight with another animal, or permits the same to be done on any property under his or her control, or aids or abets the fighting of any animal is guilty of a misdemeanor, punishable by up to one year in the county jail or by a fine not to exceed \$10,000, or both imprisonment and a fine. (Pen. Code § 597b, subd. (a).)
- 9) Provides that any person who causes a cock to fight with another cock, or permits the same to be done on any property under his or her control, and any person who aid or abets the fighting of any cock or is present as a spectator is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$10,000, or by both imprisonment and a fine. (Pen. Code, § 597b, subd. (b).)
- 10) Provides that any person who owns, possesses, keeps or trains any bird or other animal with the intent that that it be used an exhibition of fighting is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed \$10,000, or by both imprisonment and a fine. (Penal Code Section 597j.)
- 11) States that it is misdemeanor for any person to tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing such animal to be pursued by a dog or dogs and the offense is punishable by up to one year in a county jail, by a fine not to exceed \$2,500, or by both imprisonment and a fine. (Pen. Code, § 597h.)
- 12) Directs that any person who owns, possesses, or trains any bird or animal with the intent that the cock or other bird shall be engaged in an exhibition of fighting by his or her vendee or any other person is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceed one year, by a fine not to exceed \$10,000; or by both imprisonment and a fine. (Pen. Code, § 597j.),
- 13) States that ever person who willfully abandons any animal is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment (Penal Code Section 597s.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2052 mandates psychological evaluations for individuals convicted of animal cruelty or facilitating animal fights. When a criminal defendant is found guilty, a psychological evaluation may be needed as part of the court's pre-sentence investigation to assist in determining the specific type or length of sentence, or to identify the most suitable facility where the sentence should be served. Appropriate sentencing determinations often hinge on the court's solid understanding of the psychological functioning of a defendant. When there is compelling evidence of chronic or severe psychological disturbance the court must also identify that individual's need for mental health treatment. In other instances, a psychological evaluation may be needed to assess the potential for future acts of violence or criminal conduct and hopefully end the

cycle of violence and reduce recidivism.

2) Prior Legislation:

- a) AB 794 (Linder), Chapter 201, Statutes of 2015, expanded criminal acts against law enforcement animals to include animals used by volunteers acting under the direct supervision of a peace officer.
- b) AB 2281 (Nava) of the 2007-2008 Legislative Session made it a felony punishable by 16 months, 2 or 3 years in the state prison for any person convicted of being knowingly present as a spectator at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs with the intent to be present at that exhibition. AB 2281 was held on the Appropriations Committee suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Alpha Canine Sanctuary
Independent Living Center of Kern County
KC ALIVE
Kern County Commission on Aging
Kern County Network for Children
The Cat House on the Kings
Three Private Citizens
Women's Center-High Desert Inc.

Opposition

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

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

Date of Hearing: April 19, 2016
Consultant: Matt Dean

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

AB 1998 (Campos) – As Amended April 5, 2016

SUMMARY: Requires the Board of State and Community Corrections (BSCC) to prepare guidelines for counties on how to disaggregate juvenile justice caseload, performance and outcome data by race and ethnicity.

EXISTING LAW:

- 1) Requires the State Commission on Juvenile Justice to develop a Juvenile Justice Operational Master Plan and to make available, for implementation by all of the counties of the state, a number of strategies, including “Juvenile justice universal data collection elements, which shall be common to all counties.” (Welf. & Inst. Code, § 1960.5, subd. (a).)
- 2) Requires each county in the state, as a condition of receiving an allocation from the Youthful Offender Block Grant fund described in Section 1951 to, by October 1 of each year, submit an annual report to the Corrections Standards Authority on its utilization of the block grant funds in the preceding fiscal year and requires the report to be in a format specified by the authority that includes all of the following:
 - a) A description of the programs, placements, services, and strategies supported by block grant funds in the preceding fiscal year, and an accounting of all of the county’s expenditures of block grant funds for the preceding fiscal year; and
 - b) Performance outcomes for the programs, placements, services, and strategies supported by block grant funds in the preceding fiscal year, including, at a minimum, the following: the number of youth served including their characteristics as to offense, age, gender, race, and ethnicity. (Welf. & Inst. Code, § 1961, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author’s Statement:** According to the author, “Latino communities, especially Latino youth, are increasingly singled out by the criminal justice system. The extent of this problem is not well known because of our state’s flawed data collection system, which does not consistently separate ethnicity from race. With many Latinos being classified as white or African American, it is currently impossible to determine the full scope of the unequal treatment of Latinos at key decision points in the juvenile justice system.

“Gathering accurate race and ethnicity data from youth involved in the juvenile justice system allows for better understanding of trends, policy effects, and inequities by legislators,

the public, and state or federal agencies.

“AB 1998 will ensure that Latinos are counted as Latinos by their race and ethnicity in the Juveniles Justice System. It would do this by directing the Board of State and Community Corrections to prepare guidelines for counties on how to disaggregate caseload and data by race and ethnicity. In doing this, AB 1998 will enable policy-makers and social justice advocates to take adequate actions to address the issue of Latino over incarceration in California.”

- 2) **Background:** In 2007, the Legislature passed and the governor signed the Budget bill on Corrections, SB 81, which required the State Commission on Juvenile Justice to develop a Juvenile Justice Operational Master Plan and to make available, for implementation by all of the counties of the state, a number of strategies, including “Juvenile justice universal data collection elements, which shall be common to all counties.” (WIC Section 1960.5 (a).) The 2009 Juvenile Justice Operational Master Plan provides that the “minimum person identifiers needed” to be collected by juvenile courts should include “race/ethnicity” data that is the “same as US census data.” As of the date of the 2009 report, courts collect race and ethnicity data” but not in a manner consistent with the US census. According to the Commission, “It should be possible to construct a crosswalk between JCPSS, CHS, and census categories.”
(http://www.cdcr.ca.gov/reports_research/docs/JJOMP_Final_Report.pdf >.)

Each county in the state is required, as a condition of receiving an allocation from the Youthful Offender Block Grant fund described in Section 1951 shall, by October 1 of each year, submit an annual report to the Corrections Standards Authority on its utilization of the block grant funds in the preceding fiscal year. The report shall be in a format specified by the authority and shall include all of the following:

(1) A description of the programs, placements, services, and strategies supported by block grant funds in the preceding fiscal year, and an accounting of all of the county’s expenditures of block grant funds for the preceding fiscal year.

(2) Performance outcomes for the programs, placements, services, and strategies supported by block grant funds in the preceding fiscal year, including, at a minimum, the following:

(A) The number of youth served including their characteristics as to *offense, age, gender, race, and ethnicity*. (WIC Section 1961 (c).)

BSCC prepares an annual “Youthful Offender Block Grant” report to the Legislature. The report includes data for Hispanic/Latino youth in county detention. In the 2015 report, BSCC did not provide comprehensive data about all youth in detention, but analyzed a sample of youth and found that approximately 54% of the sample study were Hispanic or Latino (See page 18 of the report).

(<http://www.bscc.ca.gov/downloads/YOBG%20Report%20Final%204.2.2015%20mr-r.pdf> >)

- 3) **Conforming California's Definitions with Federal Definitions:** The author acknowledges that these requirements are in existing law, but asserts that compliance with these requirements is inadequate.

“The federal Juvenile Justice and Delinquency Prevention Act requires States to report and address “disproportionate minority contact.” Presently, the California Department of Juvenile Justice publishes semi-annual reports of race and ethnicity representation through the Juvenile Research Branch. However, the race categories (white, Hispanic, African American, Asian, Native American, Filipino, Pacific Islander, and other) currently gathered do not meet minimum federal standards for race reporting as established by either the federal 1997 Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity or the 2007 U.S. Department of Education guidance.

“As such, data from California are not compatible with reported data from other states, and federal analysis cannot research potential improvements from the Californian system. Pennsylvania, for instance, presents a model case for recoding data in a standardized format to improve accuracy and compatibility.”

The author asserts that inadequate data collection is singularly harmful to Latino youth. According to the author,

“Latino communities, especially Latino youth, are increasingly singled out by the criminal justice system. The extent of this problem is not well known because of our state's flawed data collection system, which does not consistently separate ethnicity from race throughout the justice system. With many Latinos being classified as white or African American, it is currently impossible to determine the full scope of the unequal treatment of Latinos at key decision points in the juvenile justice system.

“Gathering race and ethnicity data from youth involved in the juvenile justice system allows better understanding of trends, policy effects, and inequities by legislators, the public, and state or federal agencies.

“Additionally, this bill expands the number of data collection points. Currently, data is only reported for juveniles in juvenile detention facilities by both the Juvenile Detention Profile Survey and the Characteristics of the Department of Juvenile Justice Population report. Under this bill, data collection would occur in juvenile courts and county probation departments in addition to detention facilities. AB 1998 would ensure proper data retrieval by collecting ethnicity and race statistics separately. This will maintain that Latinos are counted as Latinos, and enable policy-makers and social justice advocates to take appropriate actions to address the issue of Latino youth incarceration in California.

“The complete degree of Latino mistreatment is unknown due to the lack of comprehensive information resulting from inadequate data gathering practices. Currently, most localities fail to separate race and ethnicity categories when surveying youth. For example, most questionnaires do not allow a youth to identify his race (physical characteristic) as black and his ethnicity (cultural factor) as Hispanic. They are forced to choose one or the other. Because of this, many Latino youth are classifying themselves based on race (black, white, other) resulting in underreporting of Latinos in the justice system. “

- 4) **Argument in Support:** According to *NOXTIN: Equal Justice for All*, “Latino communities, especially Latino youth, bear an increasing brunt in volume of youth confined in the state of California. The extent of this problem is not well known because of our state’s flawed data collection system, which does not consistently disaggregate ethnicity (like Latino, Hispanic) from race (such as white, black, or other) throughout the entire justice system. As a result, Latinos are not counted uniformly across the various institutions that make up the juvenile justice system, and are classified as white or black, resulting in Latino underrepresentation in reporting of justice system data.

“The failure to collect disaggregate data on Latinos inflates the incarceration rate of non-Hispanic white youth, *further masking the inequity and disproportionality* of all youth of color in confinement. The status quo makes it impossible to oversee the full magnitude of the unequal or disparate treatment of Latino youth, or to develop comprehensive and effective policies to remedy the discrepancy particularly in the places where data shows the greatest disproportionality and/or disparity. Implementing comprehensive and accurate data collection is the first of many steps to implement proven effective and time tested detention reform models that will end the over-reliance of incarceration, save money, make critical systems improvements, increase public safety and as research has shown, increase better life outcomes for youth, their families and ultimately our communities.”

- 5) **Related Legislation:** SB 1031 (Hancock) would require BSCC, on or before July 1, 2019, to establish a Juvenile Justice Information System to develop and maintain statewide statistical information, as specified. The bill would additionally, on January 1, 2020, remove the require that the Department of Justice collect information regarding the juvenile justice system. The bill would appropriate an unspecified sum from the General Fund to the BSCC for the purpose of funding the development of a design structure and implementation plan for the Juvenile Justice Information System. This bill is set for hearing in the Senate Committee on Public Safety on April 19, 2016.

6) **Prior Legislation:**

- a) AB 1468 (Assembly Committee on Budget), Chapter 26, Statutes of 2014, established the Juvenile Justice Data Working Group (JJDWG) within BSCC and stated: “[t]he purpose of the working group is to recommend options for coordinating and modernizing the juvenile justice data systems and reports that are developed and maintained by state and county agencies.”
- b) AB 1050 (Dickinson), Chapter 270, Statutes of 2013, required BSCC, in consultation with certain individuals, including a county supervisor or county administrative officer, a county sheriff, and the Secretary of the Department of Corrections and Rehabilitation, to develop definitions of specified key terms in order to facilitate consistency in local data collection, evaluation, and implementation of evidence-based programs.

REGISTERED SUPPORT / OPPOSITION:

Support

Center on Juvenile and Criminal Justice
National Association of Social Workers, California Chapter
NOXTIN: Equal Justice for All
Pacific Juvenile Defender Center

Opposition

None

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

Date of Hearing: April 19, 2016
Chief Counsel: Gregory Pagan

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

AB 2052 (Williams) – As Amended April 13, 2016

SUMMARY: Requires a person convicted of two or more violations of animal cruelty, dog fighting, transporting an animal in a cruel or inhuman manner, or cockfighting to be sentenced to consecutive terms of imprisonment.

EXISTING LAW:

- 1) Provides that every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (a).)
- 2) States that when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (b).)
- 3) Specifies that a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, is a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (c).)
- 4) Provides that any person that does any of the following is guilty of a felony and is punishable by imprisonment in a county jail for 16 months, two or three years, or by a fine not to exceed \$50,000, or by both imprisonment and a fine:

- a) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog;
 - b) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other; and,
 - c) Permits any of the above acts to be done on any premises under his or her control, or aid or abets that act. (Pen. Code, § 597.5, subd. (a).)
- 5) States that any person that intentionally causes injury to or the death of any guide, signal or service dog, as defined, while the dog is in the discharge of its duties, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not exceeding 10,000, or by both a fine and imprisonment. (Pen. Code § 600.2.)
- 6) Provides that any person who maliciously strikes, beats, kicks, stabs, shoots, or throws, hurls, or projects any rock or object at any horse being used by a peace officer, or any dog being supervised by a peace officer in the performance of his or her duties is a public offense. If the injury inflicted is a serious injury, as specified, the person shall be punished as a felony by imprisonment in a county jail for 16 months, two or three years, and as a misdemeanor by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding two thousand dollars, or by both a fine and imprisonment. If the injury inflicted is not a serious injury, the person shall be punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars, or by both a fine and imprisonment. (Pen. Code, § 600, subd. (a).)
- 7) Requires that if a defendant is granted probation for a conviction of animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. The counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This does not apply to cases involving police dogs or horses as described in Section 600. (Pen. Code, § 597, subd. (h).)
- 8) Provides that any person who causes any animal, not including a dog, to fight with another animal, or permits the same to be done on any property under his or her control, or aids or abets the fighting of any animal is guilty of a misdemeanor, punishable by up to one year in the county jail or by a fine not to exceed \$10,000, or both imprisonment and a fine. (Pen. Code § 597b, subd. (a).)
- 9) Provides that any person who causes a cock to fight with another cock, or permits the same to be done on any property under his or her control, and any person who aid or abets the fighting of any cock or is present as a spectator is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$10,000, or by both imprisonment and a fine. (Pen. Code, § 597b, subd. (b).)

- 10) Provides that any person who owns, possesses, keeps or trains any bird or other animal with the intent that that it be used an exhibition of fighting is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed \$10,000, or by both imprisonment and a fine. (Penal Code Section 597j.)
- 11) States that it is misdemeanor for any person to tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing such animal to be pursued by a dog or dogs and the offense is punishable by up to one year in a county jail, by a fine not to exceed \$2,500, or by both imprisonment and a fine. (Pen. Code, § 597h.)
- 12) Directs that any person who owns, possesses, or trains any bird or animal with the intent that the cock or other bird shall be engaged in an exhibition of fighting by his or her vendee or any other person is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceed one year, by a fine not to exceed \$10,000; or by both imprisonment and a fine. (Pen. Code, § 597j.),
- 13) States that ever person who willfully abandons any animal is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment (Penal Code Section 597s.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "This bill was sparked by a shocking case of animal cruelty and domestic violence in Santa Barbara where a 19-year old foreign exchange student strangled his girlfriend and beat, burned and raped her five-month old puppy. The community was outraged that the suspect only received one year in jail and six months of probation when the maximum sentence allowed under state law is seven and a half years. This sentence also included domestic violence and other mental health treatment.

"AB 2052 will ensure that animal cruelty cases are appropriately sentenced. Far too many times we hear cases where repeat animal abusers get slaps on the wrist and continue to hurt animals. This bill would require a person who sentenced for two or more current convictions for animal abuse offenses to be sentenced to consecutive terms. Consecutive sentencing reflects the violent nature of these actions that all too often spill over from violence to animals to violent actions towards other humans including loved ones."

- 2) **Limits Court's Discretion:** When a person is convicted of two or more crimes whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same judge or by different judges, the second or other subsequent judgment upon which sentence is ordered to be executed shall direct whether the terms of imprisonment or any them to which he or she is sentenced shall run concurrently or consecutively (Penal Code Section 669). This bill contradicts this section by limiting the court's discretion to impose either concurrent or consecutive sentence in order to achieve a just and appropriate sentence.

By limiting the court's discretion, this bill could lead to wildly disproportionate sentences. For example, Penal Code Section 597 (b) (animal neglect) makes it a felony punishable by 16 months, two, or three years in a county jail, or a misdemeanor punishable by up to one year in county jail to fail to provide an animal with "proper food, drink, or shelter, or protection from the weather". A person could fail to properly care for twenty cats and be charged and convicted of twenty counts of animal abuse and neglect. This bill, by requiring that each conviction be sentenced consecutively, would result in a minimum sentence of twenty years in a county jail, and that would be if the crimes were charged as a misdemeanor. Is it a good policy to limit the court's discretion in these types of cases?

- 3) **Double Punishment for the Same Act.** An act or omission that is punishable in different way by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished by more than one provision (Penal Code Section 654). An example, where this provision would be applicable, is if a person convicted under the general animal abuse statute (Penal Code Section 597 subd. a) was, also, convicted of the more specific statute prohibiting dog fighting (Penal Code Section 597.5) for fighting a dog. Penal Code Section 654 prohibits sentencing for more than one of these provisions because it would be an unconstitutional double punishment for the same act (dog fighting) made punishable by different code sections. This bill requires that these crimes be sentenced consecutively which, in this instance, would be an unconstitutional double punishment.
- 4) **Argument in Opposition:** According to the *American Civil Liberties Union*, " Penal Code section 654 states in relevant part:

(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.

"The courts have held "[t]he purpose of the statute is 'to prevent multiple punishment for a single act or omission, even though that act or omission violates more than one statute and thus constitutes more than one crime.'" (*People v. Davey* (2005) 133 Cal.App.4th 384, 389.) In addition, Penal Code section 654 "has long been interpreted also to preclude multiple punishment for more than one violation of a single Penal Code section, if the violations all arise out of a single criminal act." (*Ibid.*) Thus, in *Neal v. State of California* (1960) 55 Cal.2d 11, 19, the California Supreme Court held that section 654 precluded consecutive sentence for arson committed for the purpose of killing people in the building. And in *Wilkoff v. Superior Court* (1985) 38 Cal.3d 345, 349, the Court held that section 654 bars multiple convictions for driving under the influence based on one incident, even if driver causes injury to several people.

"In addition, the U.S. Constitution also protects against double punishment for the same criminal conduct. "The Fifth Amendment guarantee against double jeopardy protects not only against a second trial for the same offense, but also 'against multiple punishments for the same offense.'" (*Whalen v. U.S.* (1980) 445 U.S. 684, 688 [quoting *North Carolina v. Pearce* (1969) 395 U.S. 711, 717.]

“AB 2052 is contrary to the basic due process protections provided by the Fifth Amendment and Penal Code section 654 by mandating consecutive sentences for the same course of conduct.

“Judges already have discretion to impose consecutive sentences in appropriate cases when it does conflict with due process. Specifically, “multiple crimes that arise from a single course of criminal conduct may be punished separately, notwithstanding section 654, if the acts constituting the various crimes serve separate criminal objectives.” (*People v. Davey*, 133 Cal.App.4th at 390.) Similarly, there is an exception to the bar on multiple punishments “for acts of violence against a person with multiple victims.” (*Ibid.*). Under these exceptions, the courts currently have jurisdiction to impose concurrent sentences when warranted and consistent with due process. By mandating consecutive sentences even when these exceptions do not apply, AB 2052 will lead to sentencing errors, additional litigation and ultimately reversals of sentences found to be barred by Penal Code section 654 and unconstitutional under the Due Process Clause of the Fifth Amendment.”

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice

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

Date of Hearing: April 19, 2016

Consultant: Matt Dean

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

AB 2083 (Chu) – As Introduced February 17, 2016

SUMMARY: Allows agencies, at the request of an interagency child death review team, to disclose otherwise confidential information. Specifically, **this bill:**

- 1) Allows, but does not require, agencies to disclose, orally or in writing, otherwise confidential information to an interagency child death review team, but does not require those agencies to disclose any requested confidential information. This information may include the following:
 - a) Medical information, as provided;
 - b) Mental health information, as provided;
 - c) Information from child abuse reports and investigations, except the identity of the person making the report which shall not be disclosed;
 - d) State summary criminal history information, as defined;
 - e) Criminal offender record information, as defined;
 - f) Local summary criminal history information, as defined;
 - g) Information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct; and
 - h) Records of in-home supportive services, unless disclosure is prohibited by federal law.
- 2) States that agencies and individuals receiving these requests may rely on the request to release the information sought in the request.

EXISTING LAW:

- 1) Allows counties to establish interagency child death review teams to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases, but does not require counties to establish child death review teams. (Pen. Code, § 11174.32.)
- 2) States that interagency child death teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and non-offending family

- members receive the appropriate services in cases where a child has expired. (Pen. Code, § 11174.32(a).)
- 3) States that each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse or neglect, in the determination of whether child abuse or neglect contributed to death or whether child abuse or neglect had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse or neglect, including the designation of the cause and mode of death. (Pen. Code, § 11174.32(b).)
 - 4) States that in developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including, but not limited to, the following:
 - a) Experts in the field of forensic pathology;
 - b) Pediatricians with expertise in child abuse;
 - c) Coroners and medical examiners;
 - d) Criminologists;
 - e) District attorneys;
 - f) Child protective services staff;
 - g) Law enforcement personnel;
 - h) Representatives of local agencies which are involved with child abuse or neglect reporting;
 - i) County health department staff who deals with children's health issues; and
 - j) Local professional associations of persons described in paragraphs (1) to (9), inclusive. (Pen. Code, § 11174.32(c).)
 - 5) Clarifies that records exempt from disclosure to third parties pursuant to state or federal law shall remain exempt from disclosure when they are in the possession of a child death review team. (Pen. Code, § 11174.32(d).)
 - 6) Requires each child death review team to make available to the public findings, conclusions and recommendations of the team, including aggregate statistical data on the incidences and causes of child deaths. The team is required to withhold the child's last name unless certain exceptions apply. (Pen. Code, § 11174.32(e).)
 - 7) Defines "local summary criminal history information" as "the master record of information compiled by any local criminal justice agency pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person." (Pen. Code, § 13300, subd. (a)(1).)

- 8) States that "local summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency. (Pen. Code, § 13300, subd. (a)(2).)
- 9) Requires a local criminal justice agency to furnish local summary criminal history information to any of the following when needed in the course of their duties: the courts, peace officers, district attorneys, prosecuting city attorneys, probation and parole officers, public defender or attorney of record in a criminal case or in a case involving a certificate of rehabilitation, any city or county district office when needed in fulfilling employment, certification or licensing duties, the subject of the local summary criminal history information; managing or supervising correction officers of a county jail, local child support agencies, county child welfare agencies, humane officers, and other expressly authorized by statute, as specified. (Pen. Code, § 13300, subd. (b).)
- 10) Permits a local criminal justice agency to furnish local summary criminal history information to the following, upon a showing of compelling need, to other specified entities, including a public utility which operates a nuclear energy facility, a peace officer from another country, public officers other than peace officers of the United States, a public utility when access is needed to assist in employing person who will be entering private residences. (Pen. Code, § 13300, subd. (c).)
- 11) States that it is not a violation to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed. (Pen. Code, §§ 13300, subd. (h), and 13305.)
- 12) States that an employee of a local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor. (Pen. Code, § 13302.)
- 13) Punishes as a misdemeanor any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information. (Pen. Code, § 13303.)
- 14) Requires the DOJ to furnish state summary criminal history information to specified entities, 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, specified restrictions listed in the Labor Code are followed. (Pen. Code, § 11105, subd. (b).)
- 15) Allows the DOJ to furnish state summary criminal history information to specified entities and, when specifically authorized, federal-level criminal history information, upon a showing of a compelling need, 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, specified restrictions listed in the Labor Code are followed. (Pen. Code, § 11105, subd. (c).)
- 16) Allows DOJ to charge a fee to reimburse department costs, and a surcharge to fund system maintenance and improvements, 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. Allows, notwithstanding any other law, any person or entity required to pay a fee to DOJ for information received under this provision to charge the applicant a fee sufficient to reimburse the person or entity for this expense. (Pen. Code, § 11105, subd. (e).)

- 17) Authorizes, notwithstanding any other law, a human resource agency or an employer to request from DOJ records of all convictions or any arrest pending adjudication involving the offenses specified of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. Requires DOJ to furnish the information to the requesting employer and also send a copy of the information to the applicant. (Pen. Code, § 11105.3, subd. (a).)
- 18) Punishes as a misdemeanor any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information. (Pen. Code, § 11142.)
- 19) Prohibits a provider of health care, health care service plan, or contractor from disclosing medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided. (Civ. Code, § 56.10, subd. (a).)
- 20) Requires a provider of health care, health care service plan, or contractor to disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan if the disclosure is compelled by any of the following:
 - a) By a court pursuant to an order of that court;
 - b) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority;
 - c) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency;
 - d) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code;
 - e) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or another provision authorizing discovery in a proceeding before an arbitrator or arbitration panel;
 - f) By a search warrant lawfully issued to a governmental law enforcement agency;
 - g) By the patient or the patient's representative;
 - h) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating

deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or upon notification of, or investigation of, imminent deaths that may involve organ or tissue donation pursuant to Section 7151.15 of the Health and Safety Code, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation or who is the prospective donor and shall be disclosed to the coroner without delay upon request, or

- i) When otherwise specifically required by law. (Civ. Code, § 56.10, subd. (b).)
- 21) Allows a provider of health care, health care service plan, or contractor to disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan to authorized individuals or entities for research, billing, treatment and other purposes, as specified. (Civ. Code, § 56.10, subd. (c).)
- 22) Limits the disclosure of mental health information, as specified. (Welf. & Inst. Code, § 5328.)
- 23) Limits the disclosure of information from child abuse reports and investigations, as specified. (Pen. Code, § 11167.5.)
- 24) Limits the disclosure of information pertaining to reports by health practitioners of persons suffering from physical injuries inflicted by means of a firearm or of persons suffering physical injury where the injury is a result of assaultive or abusive conduct. (Pen. Code, § 11163.2.)
- 25) Limits the disclosure of records of in-home supportive services, as specified. (Welf. & Inst. Code, § 10850.)
- 26) States that a Health Insurance Portability and Accountability Act of 1996 (HIPPA) covered entity may use or disclose health information as follows:
 - a) To the individual for treatment, payment or health care operations;
 - b) Incident to a use or disclosure otherwise permitted if it is the minimum necessary to accomplish the purpose of the use or disclosure;
 - c) Pursuant to an authorization or agreement by the individual;
 - d) Under circumstances set out in the rule for which neither authorization nor agreement is required. (42 U.S.C. §§ 201 et seq.; 45 C.F.R. §§ 164 et seq.)
- 27) Holds that HIPPA regulations preempt any contrary provision of state law unless the state law provides greater privacy protection for an individual whose health information is protected. (42 U.S.C. §§ 201 et seq.; 45 C.F.R. §§ 160 et seq.; See *In re Estate of Broderick* (2005) 125 P.3d 564.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Interagency child death review teams have been used successfully to ensure that incidents of child abuse or neglect are recognized and other siblings and non-offending family members receive the appropriate services in cases involving the death of a child. Actions by child death review teams may include identification of emerging trends and safety concerns in other types of child deaths in order to inform and address needs for prevention efforts. Disclosures of this information, which in some instances is prohibited by current law, would help improve the child death review team's investigation and detection of child abuse and neglect as well as help identify trends to reduce the incidents of child death."
- 2) **Background on Child Death Review Teams:** The primary purpose of child death review teams is to prevent future child deaths. At the county level, these teams produce educational materials so that the more common causes of child death can be prevented. For example, according to the author, in Sacramento "The Sacramento County Child Death Review Team, which reviews the deaths of every child that dies in Sacramento County, has used the report's findings in order to create public awareness campaigns. The recommendations have translated to the *Shaken Baby Syndrome Prevention Campaign*, the *Infant Safe Sleep Campaign*, and the *Drowning Prevention Campaign* to reduce preventable deaths." However, each county's experience is different. This is where statewide child death review can help prevent counties from duplicating efforts.

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

- 3) **Argument in Support:** According to the *Santa Clara Board of Supervisors*, "As you are aware, counties are authorized in statute to form a Child Death Review Team (CDRT). The statute suggests that membership may include, but is not limited to, the coroner, district attorney, child protective services, and law enforcement. The Santa Clara County CDRT is a multidisciplinary team comprised of representatives from a number of County agencies as well as community organizations. Through a process of interagency collaboration and discussion, it reviews the circumstances surrounding instances of unexpected child death

within the County that are reported to the Medical Examiner/Coroner's Office. The purpose of the reviews is to discover ways to improve children's lives, and to prevent serious childhood injury and deaths in the future. The CDRT may identify emerging trends and safety problems to help increase public awareness of risks to children in the community.

"A CDRT review may include discussion of medical information for the purposes of identifying and reviewing instances of child abuse and neglect, which is permitted under the Health Insurance Portability and Accountability Act (HIPPA). State law, however, provides greater protection to public mental health services and prevents staff from the County's Behavioral Health Department from disclosing information contained in mental health records. While California's other death review statutes related to elder death review teams and domestic violence review teams allow mental health information to be shared, the corresponding child death review statute is silent on this topic.

"AB 2083 would revise the authorizing statute for CDRTs to mirror the language in the elder death review team and domestic violence review team statutes to allow CDRTs to discuss mental health information when conducting their review of child abuse and neglect. The ability to discuss mental health information will allow for a complete review, which would help improve CDRT's investigations and help identify trends to reduce the incidents of child death."

- 4) **Argument in Opposition:** According to the *California Public Defenders Association*, "Existing law authorizes a county to establish an interagency child death review team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse or neglect cases. Existing law requires records that are exempt from disclosure to 3rd parties pursuant to state or federal law to remain exempt from disclosure when they are in the possession of a child death review team.

"This bill would authorize the voluntary disclosure of specified information, including mental health records, criminal history information, and child abuse reports, by an individual or agency to an interagency child death review team.

"We do not see the need for this legislation, and believe its implementation may raise additional challenges and legal issues.

"First and foremost, if indeed these records are a necessary part of an investigation into the death of child, then a court reviewing such a request would surely grant the release of the documents.

"Second, this bill provides no guidance to agencies who maintain privileged and confidential documents regarding when such documents should be released. Documents are confidential for a reason- generally because they contain sensitive personal information that could cause harm if released. Moreover, autopsy reports are a matter of public record. Thus, if privileged information was disclosed to a death review team and referenced in the autopsy report, the privileged information would become public record.

"Finally, there is currently a move towards trying to reduce contextual bias or the biasing of opinions based on information that is considered domain irrelevant from opinions of forensic

scientists including medical examiners. The privileged and otherwise confidential information is in many cases precisely the type of domain irrelevant information that should not be considered in making a determination regarding manner of death.”

- 5) **Related Legislation:** AB 1737 (McCarty) would require each county to establish an interagency child death review team. AB 1737 is pending in the Assembly Committee on Appropriations.
- 6) **Prior Legislation:**
 - a) SB 39 (Migden), Chapter 468, Statutes of 2007, required that juvenile case files that pertain to any child who died as the result of child abuse or neglect shall be released to the public, subject to certain limitations set forth in the bill. SB 39 adds specified attorneys to the persons allowed access to a juvenile case file.
 - b) AB 1668 (Bowen), Chapter 813, Statutes of 2006, provided that interagency child death review team records that are exempt from disclosure to third parties pursuant to state or federal law remain exempt from disclosure when they are in the possession of a child death review team; provides confidentiality provisions for child death review teams; and provided that each child death review team shall annually make available to the public findings, conclusions and recommendations of the team, including aggregate statistical data on the incidences and causes of child death.
 - c) SB 525 (Polanco), Chapter 1012, Statutes of 1999, added more state and private entities to the members of the California State Child Death Review Council, specified additional duties for the council and the Department of Justice in connection with gathering and tracking information regarding child deaths from abuse or neglect, and specified additional duties for the State Department of Health Services in connection with tracking child abuse information in specified state data systems.
 - d) AB 4585 (Polanco), Chapter 1580, Statutes of 1988, authorized counties to establish interagency child death teams and autopsy protocol.

REGISTERED SUPPORT / OPPOSITION:

Support

Santa Clara County Board of Supervisors (Sponsor)
County Health Executives Association of California

Opposition

California Public Defenders Association

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

Date of Hearing: April 19, 2016

Consultant: Matt Dean

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 2114 (Eduardo Garcia) – As Amended April 12, 2016

SUMMARY: Appropriates \$1.5 million for the purpose of creating reentry service pilot programs in Alameda, Riverside, Los Angeles, Monterey and Santa Clara counties.

Specifically, this bill:

- 1) Finds and declares all of the following:
 - a) Studies have consistently found that prisoners who maintain close contact with their family members while incarcerated have better post-release outcomes and lower recidivism rates. Despite this, corrections officials are often obstinate in supporting this communication with respect to written correspondence, visitation, and phone calls;
 - b) Revising visitation policies to facilitate visits by family members, investing in prison-based literacy programs and less restrictive mail policies, and reducing intrastate prison and jail phone rates would provide prisoners with greater opportunities to maintain close relationships with their families;
 - c) Research cites that positive fatherhood involvement improves life trajectory for a child. Also, fatherhood involvement in a child's life protects against risk factors that pose harm to children, such as problematic behavior, maternal depression, and family economic hardship. Fatherhood involvement is also associated with promoting children's social and language skills; and
 - d) Specific examples of culturally relevant approaches to parenting, fatherhood support, and young male mentorship include Cara y Corazón, El Joven Noble, and Circulo de Hombres, which have been chosen as the culturally based family strengthening interventions in other initiatives.
- 2) States that it is the intent of the Legislature to enact legislation that accomplishes all of the following:
 - a) Supports and creates culturally competent programs that increase opportunities for family friendly contact during and after imprisonment;
 - b) Funds and creates culturally competent programmatic support services and reentry strategies outside of imprisonment that support fatherhood involvement, family reunification, and family strengthening; and
 - c) Supports expanded funding for innovation on culturally relevant parenting, fatherhood support, and young male mentorship to decrease the risk of violence, suicide, and other traumas that children of prisoners who are under 17 years of age may be exposed to by

providing education, skills-based training, and early intervention and treatment referrals to parents, families, and children.

- 3) Appropriates the sum of one million five hundred thousand dollars (\$1,500,000) from the General Fund to the Department of Corrections and Rehabilitation (CDCR).
- 4) States that the funds appropriated shall be allocated to each of the following five counties in the event any of these counties elect to participate in a pilot program: Alameda, Riverside, Los Angeles, Monterey, and Santa Clara.
- 5) Requires these funds to be used to create pilot programs in each county which will provide reentry services and support to persons who are, or who are scheduled to be, released from a county jail. Each pilot program that receives funding pursuant to this section shall include all of the following components:
 - a) Support services for recipients who are parent;
 - b) A mentorship program that employs a culturally relevant, population-specific approach that has been employed by nonprofit organizations such as the National Compadres Network and the Brotherhood of Elders;
 - c) The establishment of a collaborative body of training and technical advisors;
 - d) The establishment of a Youth Advisory Council to help inform and guide program leaders;
 - e) Leadership opportunities, particularly for youth;
 - f) Services to address mental health issues, including mental health issues relating to sexual exploitation, racial and ethnic disparities, and trauma; and
 - g) An advisory committee in each county to oversee the establishment and implementation of the pilot program in the county.
- 6) States that a pilot program shall be eligible to receive funding pursuant to this section only if the service providers meet all of the following criteria:
 - a) Each provider has a proven track record of providing meaningful, culturally based programming, including the support of gender specific and gender fluid approaches;
 - b) Each provider offers services that support culturally based family strengthening, character development, and community mobilization; and
 - c) Each provider offers services both before and after the recipient's release from a county jail.
- 7) Requires counties that elect to participate in a pilot program to conduct a study and report to the Legislature on the effectiveness of the pilot program.

EXISTING LAW:

- 1) Grants and defines the authority of CDCR to operate pilot programs that affect inmates. (Pen. Code, § 5058.1.)
- 2) Gives preference to counties siting reentry centers and mental health day treatment and crisis care so that parolees with mental health and substance abuse needs can continue to receive services at the conclusion of their period of parole. (Gov. Code, § 15820.907, Pen. Code, § 3073.)
- 3) Creates CDCR authority for the oversight body for rehabilitation programs under their control. (Pen. Code, § 6140.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2114 seeks to address the social and systemic barriers that incarcerated and previously incarcerated men and woman face through facilitating healthy relationships with their families.

"Addressing the barriers faced by re-entry from prison not only supports the well-being of the individual and their families but also the strengthening of their communities."

- 2) **Background:** According to background submitted by the author, "As of March 2015, the California prison population stood at 112,300. Less than two thirds of California's adult male population is nonwhite or Latino (60 percent), but these groups make up three of every four men in prison: Latinos are 42 percent, Blacks are 29 percent, and other races are 6 percent. Among adult men in 2013, Blacks were incarcerated at a rate of 4,367 per 100,000, compared to 922 for Latinos, 488 for non-Latino whites, and 34 for Asians.

"About half of men in prison are fathers of minor children and 42 percent of fathers lived with their children at the time of their arrest.

"Incarceration of fathers destabilizes and harms their families in many ways. Two-thirds of incarcerated parents are nonviolent offenders; however, contact between them and their families is severely restricted and there are very few policies in place that protect and advocate for the rights of their children. Children with incarcerated parents are three times more likely to suffer from developmental or behavioral problems, along with mental health problems such as depression."

- 3) **Office of Offender Services:** To address and other issues facing inmates who are about to be released, CDCR has created many offender programs under the Office of Offender Services. These programs include Substance Abuse Services Coordination Agencies, for referral, placement and treatment for drug abuse with case managers; the Female Offender Treatment and Employment Program, which allows female parolees to live with their children in a community setting for up to 15 months; the Parolee Services Network, which connects CDCR to the Department of Healthcare Services; and Parolee Service Centers, which provide residency and support services to help parolees maintain employment. This

bill would create additional pilot programs to help parents in the criminal justice system connect with their children while they serve their commitments.

- 4) **Argument in Support:** According to *Youth Alliance*, “Youth Alliance supports the National Compadres Network’s effort to pass this bill because our organization’s purpose is in close alignment with the mission of NCN and the goals of the bill. NCN’s mission is to strengthen, rebalance, and/or redevelop the traditional “Compadre” extended family system by building on natural opportunity factors and on what is culturally considered healthy within an individual, family, community or culture. The mission of the Youth Alliance is to provide innovative services that strengthen and enrich youth and families. Our focus is in rural and semirural communities that are often struggling to create comprehensive and culturally relevant services. AB 2114 provides critical support to help transform lives and families by creating additional paths of hope and opportunity to a significantly underserved and highly impacted population.

“This bill will seek to address the social and systemic barriers that incarcerated and previously incarcerated fathers face through facilitating healthy relationships with their families. Addressing the barriers faced by re-entry from prison not only supports the well-being of fathers and their families but also the strengthening of their communities.

“Incarceration's impact on family life is made worse by the fact that facilities are often located far from cities, high phone costs, and disproportionate sentencing means that fathers and their families rarely see each other. Re-entering society also presents obstacles. With access to public housing and assistance restricted by law to non-felons, many struggle to find suitable living arrangements and financial support. Securing employment is also difficult for many returning fathers, who often have limited education and vocational skills, while facing significant legal and non-legal barriers to meaningful employment. All these factors contribute to the immense challenges facing formerly incarcerated fathers.”

- 5) **Prior Legislation:** AB 900 (Solorio), Chapter 7, Statutes of 2007, requires CDCR to develop and implement a plan to obtain additional rehabilitation and treatment services for prison inmates and parolees, an Inmate Treatment and Prison-to-Employment Plan, and creates the California Rehabilitation Oversight Board.

REGISTERED SUPPORT / OPPOSITION:

Support

National Compadres Network (Sponsor)
Boys & Girls Club of Coachella Valley
California Attorneys for Criminal Justice
California Catholic Conference, Inc.
California Partnership
California Public Defenders Association
Center on Juvenile and Criminal Justice
Coachella Valley Unified School District ASES Office
Community Asset Development Redefining Education
Health Career Connection, Inc.
Legal Services for Prisoners with Children

Mayor of Coachella Steven A. Hernández (or is it City of Coachella)

MILPA

Monterey Bay Central Labor Council, AFL-CIO

National Association of Social Workers

One Circle Foundation

Raices Cultura

Raimi + Associates

Riverside County Latino Commission

Soledad Enrichment Action

United Roots

Youth Alliance

YWCA - MC

Opposition

None

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

Date of Hearing: April 19, 2016
Counsel: David Billingsley

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

AB 2188 (Grove) – As Amended April 12, 2016

SUMMARY: Allows a peace officer to arrest a person without a warrant if the officer has probable cause to believe that the person has committed the misdemeanor offense of soliciting a minor for prostitution, even if the offense did not take place in the officer's presence.

EXISTING LAW:

- 1) States that a peace officer may arrest a person in obedience to a warrant, or without a warrant, may arrest a person whenever any of the following circumstances occur:
 - a) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence; (Pen. Code, § 836, subd. (a)(1).)
 - b) The person arrested has committed a felony, although not in the officer's presence.; or (Pen. Code, § 836, subd. (a)(2).)
 - c) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed. (Pen. Code, § 836, subd. (a)(3).)
- 2) Specifies that any time a peace officer is called out on a domestic violence call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest, unless the peace officer makes an arrest for specified domestic violence offenses. (Pen. Code, § 836, subd. (b).)
- 3) Provides that when a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued as specified, and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. (Pen. Code, § 836, subd. (c)(1).)
- 4) Specifies that in situations where mutual protective orders have been issued as specified, liability for arrest applies only to those persons who are reasonably believed to have been the dominant aggressor. (Pen. Code, § 836, subd. (c)(3).)
- 5) States that the dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the

- persons involved, and (D) whether either person involved acted in self-defense. (Pen. Code, § 836, subd. (c)(3).)
- 6) Provides that if a suspect commits an assault or battery upon a current or former spouse, fiancée, fiancée, a current or former cohabitant, a person with whom the suspect currently is having or has previously had an engagement or dating relationship, a person with whom the suspect has parented a child, or other specified individuals, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:
 - a) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed; and (Pen. Code, § 836, subd. (d)(1).)
 - b) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed. (Pen. Code, § 836, subd. (d)(2).)
 - 7) States that a peace officer may, without a warrant, arrest a person for a violation of carrying a concealed firearm when all of the following apply:
 - a) The officer has reasonable cause to believe that the person to be arrested has committed the violation of carrying a concealed firearm; (Pen. Code, § 836, subd. (e)(1).)
 - b) The violation of carrying a concealed firearm occurred within an airport, in an area to which access is controlled by the inspection of persons and property; and (Pen. Code, § 836, subd. (e)(2).)
 - c) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of carrying a concealed firearm. (Pen. Code, § 836, subd. (e)(3).)
 - 8) Provides that a private person may arrest another:
 - a) For a public offense committed or attempted in his presence; and (Pen. Code, § 837.)
 - b) When the person arrested has committed a felony, although not in his presence. (Pen. Code, § 837.)
 - c) When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it. (Pen. Code, § 837.)
 - 9) States that any person making an arrest may orally summon as many persons as he deems necessary to aid him therein. (Pen. Code, § 839.)
 - 10) Specifies that a private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him or her to a peace officer. (Pen. Code, § 847.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2188 would allow law enforcement the authority to arrest any adult when there is probable cause to believe they solicited sex from a minor. Currently, law enforcement officials can only arrest an adult for soliciting sex from a minor if they witness the solicitation. If police come upon a situation where there is probable cause to believe an adult has solicited a minor for sex, an officer can only issue a ticket, because this is a misdemeanor crime."
- 2) **Individuals Can Be Prosecuted for the Crime of Solicitation Whether or Not an Arrest is Made:** If there is sufficient evidence to establish that the crime of solicitation of a minor for prostitution has occurred, the adult responsible for the crime can be charged in court. Assuming sufficient evidence, the individual would be convicted in court and receive punishment appropriate to their criminal conduct. To the extent an arrest can provide a deterrent effect to individuals soliciting prostitutes, that deterrent effect can be achieved through prosecution and punishment through the court process. Needless to say, the process of arrest should not be used as punishment itself, or as a pretext to obtain further evidence. A court proceeding provides a full opportunity to present evidence and administer punishment in a forum that ensures due process.
- 3) **Citizen's Arrest:** An officer is only allowed to make an arrest for a misdemeanor offense that occurs in the officer's presence, with some very limited exceptions. However, officers can take custody of individuals that have been arrested by a citizen, even if the arrest does not take place in the officer's presence. Citizens are allowed to make arrests. (Pen. Code, § 837.) In order for a citizen to make an arrest for a misdemeanor, the crime must have been committed in the citizen's presence. If the citizen makes the arrest, law enforcement can then take custody of the arrestee. The Alameda County District Attorney's Office has published materials providing guidelines for police officers when taking custody of an individual placed under citizen's arrest.

"If the suspect is present when officers initially meet with the citizen, and if the citizen arrests him or has already done so, officers must 'receive' him, meaning they must take custody of him. The purpose of this requirement is to 'minimize the potential for violence when a private person restrains another by a citizen's arrest by requiring that a peace officer (who is better equipped by training and experience) accept custody of the person arrested from the person who made the arrest.'"

(<http://le.alcoda.org/publications/files/CITIZENSARREST.pdf>.)

The mechanism of citizen's arrest provides an avenue to apprehend a suspect that has committed a misdemeanor, even if the offense has not been committed in an officer's presence.

- 4) **Peace Officers are 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.

Those responsibilities are triggered whether or not an arrest is made of an individual suspected committing sexual exploitation.

- 5) **Argument in Support:** According to *The Bakersfield Police Department*, "Human Trafficking is a growing problem in Kern County and the City of Bakersfield is not immune. Kern County has three major state highways that dissect the County. This facilitates the smuggling and transport of human victims. Runaway juveniles are forced into prostitution by "Pimps", who lure the juveniles in with promises of money, clothes, and other material things they would not normally be able to afford. These pimps then force the juveniles to perform sex acts with strange men and women, and give them nothing in return. They often beat these juveniles into submission and prevent them, by means of force or fear, from leaving. These are the vulnerable victims that are sought out by men seeking sex with underage juveniles. The deterrent effect of this bill will be instrumental in dissuading not only "Johns" from pursuing these girls but "Pimps" from trafficking them.

"In 2013, the Bakersfield Police Department investigated the first known human trafficking case in Kern County, wherein a 15 year old female juvenile was kidnapped in Bakersfield and taken to Reno, Nevada. Once in Reno, she was forced to pose nude for photographs that were uploaded onto a prostitution website. The juvenile was forced to perform sex acts with at least 15 men before Officers were able to locate her. Officers were able to glean vital information from her regarding the prevalence of human trafficking in Bakersfield and Kern County. Again in 2013, a 14 year old female was lured out of a continuation school by an adult male who subsequently forced her into multiple sex acts with adult males who sought her out because of her young age. In both cases the traffickers were convicted and sentenced to multiple years in prison.

"Data was analyzed over a three year period (2013-2015) and the Bakersfield Police Department received 27 calls for service regarding Human Trafficking, which resulted in 19 arrests. In that same time period, 1,861 people were arrested for prostitution. Based on these numbers, it is clear that we have a problem.

"The Bakersfield Police Department is committed to impacting and eliminating sex trafficking in our city. It is our intent to expose the human trafficking problem. We will also focus efforts on educating the public on the severity of the problem in Kern County and ways that they can assist law enforcement in combating the problem. We will help the victims through the entire justice process and provide them the services necessary to return them to a normal life. It is our belief that there exists a need for stiffer penalties on offenders who solicit sex from girls who are minors as they are not legally allowed to give consent to participate in sex acts. This too would have a deterrent effect as it would be known that severe punishment will be handed down."

- 6) **Argument in Opposition:** According to *The American Civil Liberties Union of California*, “AB 2188 seeks to expand the power of an officer to arrest a person to include “if the officer has probable cause to believe that the person to be arrested has violated subdivision (m) of Section 647. . . .” Penal Code section 647(m), in turn, proscribes a higher punishment for the offense of soliciting a person to commit an act of prostitution if “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.”

“In order for an officer to arrest someone under the proposed language of AB 2221, the officer would have to have probable cause to believe that:

- 1) The suspected solicited an act of prostitution;
- 2) The person solicited was in fact a minor; and
- 3) The person solicited knew or reasonable should have known that the person solicited was a minor.

“It is difficult to imagine how an officer would have probable cause to believe all of these elements have been established unless a) the offense is committed in the officer’s presence or b) a witness informs the officer that he or she witnessed the behavior. In the latter case—when the offense was not committed in the officer’s presence—the civilian witness can effectuate a citizen’s arrest and the officer can assume custody. In addition, case law has made clear that “presence” does not require visual observation by the officer of the entire crime. Rather, presence includes detection of the crime through any senses, including hearing and includes observing sufficient circumstantial factors to establish that the crime was committed. AB 2221 thus appears unnecessary given the current power of law enforcement to effectuate an arrest.

“The letter of support from the Bakersfield Police Department further demonstrates this point. The Department states that between 2013 and 2015, they arrested 1,861 people for prostitution. The Department, by its own reporting, is quite effective at arresting people for prostitution.

“The ability to stop, arrest and search an individual is an enormous power that we give police. Lowering the threshold to allow an officer to arrest someone for a misdemeanor raises serious concerns about likely abuse of that power. An officer may be tempted to arrest someone as a pre-text, in order to question the suspect or conduct a search for additional evidence. Pre-text arrests are akin to stop-and-frisk programs and frequently associated with racial profiling and other abuses of power. A recent poll found that most voters in California believe that police discriminate against people of color. 71% of California voters believe police are most likely to discriminate against young black men. Similarly, voters view Latinos (58%) and young Latino men (61%) as groups that are more likely to be discriminated against. Making it easier for police to arrest people for low-level offenses will only make these problems worse.”

- 7) **Related Legislation:** AB 1276 (Santiago), would authorize, under specified conditions, a minor 17 years of age or younger to testify by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys if the testimony will involve the recitation of the facts of an alleged offense of human trafficking. SB 1276 is awaiting hearing in the Senate Public Safety

Committee.

- 8) **Prior Legislation:** SB 1091 (Pavley), Chapter 148, Statutes of 2012, expanded the list of cases in which a prosecuting witness may have support persons to include, among others, cases involving human trafficking, prostitution, child exploitation, and obscenity, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Bakersfield Police Department
California Police Chiefs Association

Opposition

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

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

Date of Hearing: April 19, 2016
Chief Counsel: Gregory Pagan

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

AB 2195 (Bonilla) – As Amended April 5, 2016

SUMMARY: Requires the Department of Justice (DOJ) in consultation with the California Department of Corrections and Rehabilitation (CDCR) to collected data on the number of persons convicted and sentenced for felony murder. Specifically, **this bill:**

- 1) Provides that on or before January 1, 2018, the DOJ in consultation with CDCR shall collect data on both of the following:
 - a) The number of persons currently convicted and sentenced for first degree felony murder; and,
 - b) The number of persons currently convicted and sentenced for second degree felony murder'
- 2) Requires the DOJ to disaggregate the felony murder data by county, and to update the data annually.
- 3) Requires the DOJ to post the felony murder data in a prominent place on the DOJ Internet Web site.

EXISTING LAW:

- 1) Provides that murder is the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187.)
- 2) Provides that malice aforethought may be express or implied. Malice aforethought is expressed when the perpetrator manifests a deliberate intention to take the life of another human. Malice aforethought is implied when there was "no considerable provocation" for the killing, or when the circumstances surrounding the killing show "an abandoned and malignant heart." (Pen. Code, § 188.)
- 3) Classifies murder according to degrees, either first degree or second degree. (Pen. Code, § 189.)
- 4) Provides that first-degree murder includes murders perpetrated by destructive device or explosive; knowing use of ammunition designed primarily to penetrate metal or armor; poison; lying in wait; torture; any kind of willful, deliberate, and premeditated killing; discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death; and any murder committed in the perpetration of, or

attempt to perpetrate:

- a) Arson;
 - b) Rape;
 - c) Carjacking;
 - d) Robbery;
 - e) Burglary;
 - f) Mayhem;
 - g) Kidnapping;
 - h) Train wrecking;
 - i) Sodomy;
 - j) Lewd or lascivious acts on a child under age 14;
 - k) Oral copulation; or,
 - l) Penetration of genital or anal openings with a foreign object. (Pen. Code, § 189.)
- 5) Provides that second-degree murders include all murders not enumerated as first degree. Pen. Code, § 189.)
 - 6) Provides that homicide that occurs as a direct causal result of the commission or attempted commission of a felony inherently dangerous to human life, other than a felony enumerated in Penal Code Section 189, constitutes at least second-degree murder. (People v. Patterson (1989) 49 Cal. 3d 615, 620.)
 - 7) Specifies that first-degree murder without "special circumstances" (Penal Code Section 190.2) is punishable in the state prison for a term of 25-years-to-life. (Penal Code Section 190.)
 - 8) Specifies that first-degree murder with "special circumstances" (Penal Code Section 190.2) is punishable by death, or in the state prison for life without the possibility of parole. (Pen. Code, § 190.)
 - 9) Limits imposition of the death penalty to those first-degree murder cases where the trial jury finds true at least one "special circumstance." Currently, the Penal Code lists 22 separate categories of "special circumstances":
 - a) The murder was intentional and carried out for financial gain;

- b) The defendant was convicted previously of first- or second-degree murder;
- c) The defendant, in the present proceeding, has been convicted of more than one offense of first- or second-degree murder;
- d) The murder was committed by means of a destructive device planted, hidden or concealed in any place, area, dwelling, building or structure;
- e) The murder was committed to avoid arrest or make an escape;
- f) The murder was committed by means of a destructive device that the defendant mailed or delivered, or attempted to mail or deliver;
- g) The victim was a peace officer who was intentionally killed while performing his/her duties and the defendant knew or should have known that; or the peace officer/former peace officer was intentionally killed in retaliation for performing his/her duties;
- h) The victim was a federal law enforcement officer who was intentionally killed [the same as Item (g) above];
- i) The victim was a firefighter who was intentionally killed while performing his/her duties;
- j) The victim was a witness to a crime and was intentionally killed to prevent his/her testimony, or killed in retaliation for testifying;
- k) The victim was a local, state or federal prosecutor murdered in retaliation for, or to prevent the performance of, official duties;
- l) The victim was a local, state, or federal judge murdered in retaliation for, or to prevent the performance of, official duties;
- m) The victim was an elected or appointed official of local, state or federal government murdered in retaliation for, or to prevent the performance of, official duties;
- n) The murder was especially heinous, atrocious, or cruel, "manifesting exceptional depravity." "Manifesting exceptional depravity" is defined "a conscienceless or pitiless crime that is unnecessarily torturous";
- o) The defendant intentionally killed the victim while lying in wait;
- p) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin;
- q) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or immediate flight after, committing or attempting to commit the following crimes: robbery; kidnapping; rape; sodomy; lewd or lascivious act on a child under age 14; oral copulation; burglary; arson; train wrecking; mayhem; rape by instrument; carjacking; torture; poison; the victim was a local, state or federal juror murdered in retaliation for, or to prevent the performance of his/her official

duties; and, the murder was perpetrated by discharging a firearm from a vehicle.

- r) The murder was intentional and involved the infliction of torture;
 - s) The defendant intentionally killed the victim by the administration of poison;
 - t) The victim was a juror and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's duties as a juror;
 - u) The murder was intentional and committed by discharging a firearm from a motor vehicle; or,
 - v) The defendant intentionally killed the victim while actively participating in a criminal street gang. (Pen. Code, § 190.2.)
- 10) Requires three separate findings at the trial in order to qualify for the death penalty: (a) guilty of first-degree murder, (b) a finding that at least one of the charged "special circumstances" is true, and (c) the jury's determination that death is appropriate rather than life in prison without the possibility of parole (LWOP). The first two findings occur when the jury deliberates at the close of the "guilt phase." (Penal Code Sections 190.1 and 190.4.) The penalty determination takes place during the "penalty phase" where the either the judge or jury considers factors in aggravation or mitigation. (Penal Code Section 190.3) If the jury fixes the penalty at death, the judge still retains the power to reject the jury's penalty verdict and impose LWOP. (Pen. Code, § 190.4(e).)
- 11) Provides that during the penalty phase of a death penalty trial, the prosecution and the defendant may present evidence relevant to aggravation, mitigation, and sentence. In determining the penalty to be imposed, the trier of fact may take into account any relevant enumerated factors. Such factors in aggravation or mitigation include:
- a) The circumstances of the crime and the existence of any special circumstances;
 - b) The presence or absence of threats or the actual use of force or violence;
 - c) Prior felony convictions;
 - d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance;
 - e) Whether or not the victim was a participant or consented to the homicidal act;
 - f) Whether or not the offense was committed under circumstances that the defendant believed to be a moral justification or extenuation of his or her conduct.
 - g) Whether or not the defendant acted under extreme duress or under the substantial domination of another person;
 - h) Whether or not at the time of the offense, the capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the law was impaired

as a result of mental disease, defect, or the effects of intoxication;

- i) The age of the defendant at the time of the crime;
- j) Whether or not the defendant was an accomplice and his or her participation in the offense was relatively minor; or,
- k) Any other circumstance that extenuates the gravity of the crime, though not a legal excuse for the crime. (Pen. Code, §190.3.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Over 40,000 people are serving life sentences in the California state prison system. It is both alarming and unacceptable that we do not know how many people are convicted under the felony murder rule, a law that can impose the harshest an ultimate sentence of death or life without the possibility of parole, for those whose crime may not be proportionate to their punishment.
- 2) **Data Not Readily Available:** This bill requires DOJ in consultation with CDCR to gather data on persons currently convicted and sentence to felony murder of the first or second degree. Murder is classified according to degrees, either first or second degree murder. Any killing in the perpetration of specified felonies is murder in the first degree (felony murder). Any death that that occurs as a direct causal result of the commission or attempted commission of a felony inherently dangerous to human life, other than a felony enumerated in Penal Code Section 189, constitutes second degree felony murder. Murder in the first degree is either, intentional and premeditated or felony murder, and murder in the second degree is either unpremeditated or as the result of the commission of an inherently dangerous felony.

The problem in collecting data on felony murder is that the abstract of judgement in murder cases only reflect conviction of murder in the first or second degree. It does not reflect the basis for the conviction. Felony murder is not a separate charge which can be easily tracked. A murder defendant is charged with murder in violation of Penal Code Section 187 and the degree is determined by the trier of fact at trial, or is admitted by the defendant when entering a plea. There isn't any way to determine from the abstract of judgment if a first or second degree murder conviction was premeditated, unpremeditated, or felony murder. This has been confirmed by both DOJ and CDCR.

The only exception, where the conviction would be broken down, is in murder cases where there is a special circumstance which makes the offense punishable by death or life without parole. In these cases, a felony murder special circumstance (Penal Code §190.2 (a) (17)) would be alleged in the charging document and reflected in the abstract of judgment if found to be true. These death penalty/LWOP cases, where data can be obtained, are only a portion of the overall murder cases.

It would appear that the only way to gather the data requested in this bill would be a case file inspection in the court in the jurisdiction where the conviction was obtained, and that might only be fruitful if there had been a jury trial and you could review the jury instructions to determine the theory upon which the conviction was based.

REGISTERED SUPPORT / OPPOSITION:

Support

A New PATH
A New Way of Life Re-Entry Project
American Civil Liberties Union
American Friends Service Committee
Anti-Recidivism Coalition
Asian Americans Advancing Justice-California
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Families Against Solitary Confinement
California Prison Focus
California Prison Moratorium Project
California Public Defenders Association
Community Works West
Courage Campaign
Drug Policy Alliance
Ella Baker Center for Human Rights
Fair Chance Project
Felony Murder Elimination Project
Friends Committee on Legislation
Justice Now
Legal Services for Prisoners with Children
Loyola Law School Alarcon Advocacy Center
Loyola Law School project for the Innocent
National Center for Youth Law
Northern California Innocence Project
Pacific Juvenile Defendant Center
Prison Law Office
Prison Policy Initiative
Rubicon Programs
Silicon Valley De-Bug
Time for Change Foundation
W. Haywood Burns Institute

Opposition

None

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

Date of Hearing: April 19, 2016
Counsel: Gabriel Caswell

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

AB 2199 (Campos) – As Amended April 7, 2016
As Proposed to be Amended in Committee

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 (when the adult is 21 years of age or older, and the minor is under 16 years of age)
 - 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: Unknown

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 (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* 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 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."

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>

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>

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association
Child Abuse Prevention Center
Crime Victims United of California

Opposition

American Civil Liberties Union
Legal Services for Prisoners with Children

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

WORKING COPY

BILL NUMBER: AB 2199 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 7, 2016
AMENDED IN ASSEMBLY MARCH 30, 2016

INTRODUCED BY Assembly Member Campos
(Coauthor: Assembly Member Lackey)

FEBRUARY 18, 2016

An act to amend Section 261.5 of, and to add Section 287 to, the Penal Code, relating to sexual offenses.

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

SECTION 1. Section 261.5 of the Penal Code is amended to read:

261.5. (a) 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 18 years of age and an "adult" is a person who is at least 18 years of age.

(b) 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.

(c) 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 pursuant to subdivision (h) of Section 1170.

(d) 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 pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e) Notwithstanding any other provision of this section, a person who is guilty of a felony pursuant to subdivision (d) who holds a position of authority over the minor with whom he or she has engaged in an act of unlawful sexual intercourse, shall be punished by an additional term of imprisonment in a county jail for two years.

(1) For purposes of this subdivision, a person is in a "position of authority" if he or she, 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 those aforementioned persons.

(2) For purposes of this subdivision, "undue influence" has the same meaning as that term is defined in Section 15610.70 of the Welfare and Institutions Code.

(f) (1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

***** WORKING COPY *****

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars (\$2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars (\$5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars (\$10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 2. Section 287 is added to the Penal Code, to read:

287. (a) A person who is guilty of a felony violation of paragraph (2) of subdivision (b) of Section 286, paragraph (1) of subdivision (c) of Section 288, paragraph (2) of subdivision (b) of Section 288a, or subdivision ~~(h)~~ (i) of Section 289, and who holds a position of authority over the minor victim, shall be punished by an additional term of imprisonment for two years.

(b) For purposes of this section, a person is in a "position of authority" if he or she, 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, youth leader, recreational director, athletic manager, coach, teacher, counselor, therapist, religious leader, doctor, employer, or employee of one of those aforementioned persons.

(c) For purposes of this section, "undue influence" has the same meaning as that term is defined in Section 15610.70 of the Welfare and Institutions Code.

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

Date of Hearing: April 19, 2016
Counsel: David Billingsley

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

AB 2202 (Baker) – As Introduced February 18, 2016

SUMMARY: Requires the Office of Emergency Services (CalOES) to allocate and award funds for the purposes of establishing the Human Trafficking Prevention Vertical Prosecution Program. Specifically, **this bill:**

- 1) Requires CalOES to allocate and award funds to up to 11 district attorney offices that employ a vertical prosecution methodology for the prosecution of human trafficking crimes.
- 2) Requires each county selected for funding meet all of the following minimum requirements:
 - (a) Employ a vertical prosecution methodology for human trafficking crimes;
 - (b) Require that a county selected for funding dedicate at least one-half of the time of one deputy district attorney and one-half of the time of one district attorney investigator solely to the investigation and prosecution of human trafficking crime;
 - (c) Provide Cal OES with annual data on the number of human trafficking cases filed by that county, the number of human trafficking convictions obtained, and the sentences imposed for those convicted of human trafficking in that county;
 - (d) Enter into an agreement, either by contract or by a memorandum of understanding, with an advocacy agency funded by CalOES that provides services, counseling, or both, to victims of human trafficking in order to ensure that victims and witnesses of human trafficking, as appropriate, receive services; and
 - (e) Funding received by district attorney offices pursuant to this program shall be used to supplement, and not supplant, existing financial resources.
- 3) Requires CalOES, on or before January 1, 2019, to submit to the Legislature and the Governor's Office a report that describes the counties that received funding pursuant to this program, the number of prosecutions for human trafficking cases filed by the counties receiving funding, the number of human trafficking convictions obtained by those counties, and the sentences imposed for human trafficking crimes in those counties.
- 4) Appropriates two million six hundred thousand dollars (\$2,600,000) from the General Fund to CalOES for the purpose of funding the Human Trafficking Prevention Vertical Prosecution Program
- 5) Sunsets the provisions of this bill on January 1, 2021.

EXISTING LAW:

- 1) Establishes the Office of Emergency Services (OES) by the Governor's Reorganization Plan No.2, operative July 1, 2013. (AB 1317 (Frazier), Chapter 352, Statutes of 2013.)
- 2) States that the Office of Emergency Services exists within the Governor's office. (Gov. Code, § 8585, subd. (a).)
- 3) States that the Office of Emergency Services shall be responsible for the state's emergency and disaster response services for natural, technological, or manmade disasters and emergencies, including responsibility for activities necessary to prevent, respond to, recover from, and mitigate the effects of emergencies and disasters to people and property. (Gov. Code, § 8585, subd. (e).)
- 4) Specifies that during a state of emergency or a local emergency, the secretary shall coordinate the emergency activities of all state agencies in connection with that emergency, and every state agency and officer shall cooperate with the secretary in rendering all possible assistance in carrying out the provisions of this chapter. (Gov. Code, § 8587, subd. (a).)
- 5) In addition to the powers designated in this section, the Governor may delegate any of the powers vested in him or her under this chapter to the secretary except the power to make, amend, and rescind orders and regulations, and the power to proclaim a state of emergency. (Gov. Code, § 8587, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Increasing funding to supplement current vertical prosecution programs in California will provide valuable resources to these programs and help further efforts to prosecute and convict human traffickers. Providing this support to vertical prosecution is one of the single most effective ways to get perpetrators behind bars for the crime of human trafficking."
- 2) **DOJ Report:** According to the California Department of Justice (DOJ), human trafficking is the world's fastest growing criminal enterprise and is an estimated \$32 billion-a-year global industry. In their 2012 report, "*The State of Human Trafficking in California*," DOJ states from mid-2010 to mid-2012, California's nine regional human trafficking task forces identified 1,277 victims, initiated 2,552 investigations, and arrested 1,798 individuals. The public perception is that human trafficking victims are from other countries, but data from California's task forces indicate that the vast majority are American—72% of human trafficking victims whose country of origin was identified were U.S. residents. The report also states that labor trafficking are under-reported and under-investigated as compared to sex trafficking—56% of victims who received services through California's task forces were identified as sex trafficking victims. Yet, data from other sources indicate that labor trafficking is 3.5 times as prevalent as sex trafficking worldwide.

The report also identifies ways to combat human trafficking; and opportunities in protecting

and assisting victims and bringing traffickers to justice. Specifically, the report states that a vertical prosecution model run outside routine vice operations can help law enforcement better protect victims and improve prosecutions.

- 3) **OCJP and CalOES:** The former Governor's Office of Criminal Justice Planning (OCJP) was established in 1968 to provide funding for criminal justice and victim assistance programs. OCJP was abolished in the 2003-2004 State Budget on December 31, 2003. All of the programs, with the exception of those in the Juvenile Justice Delinquency Prevention Branch (which transferred to the California Department of Corrections and Rehabilitation), were incorporated into CalOES. Many of these programs include criminal justice and victim service grant programs administered by CalOES. Programs include:
- a) **Violence Against Women Vertical Prosecution Program (VV Program)** - The VV Program is designed to improve the criminal justice system's response to violent crimes against women through a coordinated multidisciplinary response. This is achieved through the creation or enhancement of a specialized unit, which focuses on the vertical prosecution of the defendant and services for the victim(s);
 - b) **Unserved/Underserved Victim Advocacy and Outreach Program (UV Program)** - The primary purpose of the UV Program is to focus on service delivery to victims of violent crime within unserved/underserved and socially isolated populations. In addition, it is designed to promote awareness and to improve knowledge about accessing local services available to crime victims; and
 - c) **Human Trafficking Advocate Program (HA Program)** - The HA Program provides funding to 10 Victim/Witness Assistance Centers to provide additional support, such as, hiring additional staff, identifying additional human trafficking victims, and providing comprehensive services to victims of human trafficking.
- 4) **Federal Grant Money to Combat Human Trafficking:** On September 24, 2015, U.S. Attorney General Loretta Lynch announced \$44 million in grant money to combat human trafficking and support survivors. The grants will be administered by the Office of Justice Programs' Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Office of Victims of Crime and the National Institute of Justice. The grants are intended to fund efforts across the country to fight human trafficking, to provide services for survivors and to expand research going forward. More than \$22.7 million to support 16 anti-human trafficking task forces across the country. Within each task force location, the office of Justice Programs' Bureau of Justice Assistance, will make one award to a lead law enforcement agency and Office for Victims of Crime will make one to the lead victim service provider. The grantees will work collaboratively with other key members of the taskforce, including the U.S. Attorney's Office, local prosecutor's office, federal, state and local law enforcement agencies and community and system-based providers.
(<https://www.justice.gov/opa/pr/attorney-general-lynch-announces-44-million-grant-funding-combat-human-trafficking-and>)

Of that grant money \$1.5 million is directed to the Los Angeles County Area. \$750,000 goes to Los Angeles County and \$750,000 goes to Coalition Against Slavery and Trafficking. \$1.4 million goes to the Riverside County Area. \$900,000 to Riverside County and \$500,000

to Operations SafeHouse. (http://ojp.gov/newsroom/pdfs/HT_Full_Chart_V.3.pdf)

- 5) **Argument in Support:** According to *Nancy O'Malley, District Attorney of Alameda County*, "Human trafficking is a form of modern day slavery, one that involves the use of force, fraud, or coercion to recruit, harbor, transport, provide, or obtain a person for the purposes of labor or sexual exploitation. Vertical prosecution teams are the most effective in prosecuting human trafficking. Vertical prosecution units involve one or more attorneys who handle a specific type of case, here, from arraignment to conviction, as opposed to different attorneys handling different states of prosecution. This means district attorneys (DA's) are able to specialize in the uniquely challenging features of prosecuting human trafficking. It also means the victim, who is already facing a difficult and emotional process, does not have to develop a new relationship with a new prosecutor at each stage of the case. Vertical prosecution units also work closely with law enforcement during investigations. This is a method that is often employed in human trafficking cases because it allows the prosecution team to give valuable feedback on the key evidence that law enforcement should seek to collect, and facilitates the victims' sustained participation in cases that are otherwise already difficult to prosecute.

"Increasing funding to supplement current vertical prosecution programs in California will provide valuable resources to these programs and help further efforts to prosecute and convict human traffickers. Providing this support to vertical prosecution is one of the single most effective ways to get perpetrators behind bars for the crime of human trafficking."

6) **Related Legislation:**

- a) AB 1730 (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 1730 is pending hearing in the Assembly Appropriations Committee.
- b) AB 1731 (Atkins), creates the Statewide Interagency Human Trafficking Task Force to gather statewide data on human trafficking, to recommend interagency protocols and best practices for training and outreach to law enforcement, victim service providers, and other state and private sector employees likely to encounter sex trafficking, and to evaluate and implement approaches to increase public awareness about human trafficking. AB 1731 is pending hearing in the Assembly Appropriations Committee.

7) **Prior Legislation:**

- a) AB 1623 (Atkins), Chapter 85, Statutes of 2014, authorizes a local government or nonprofit organization to establish a family justice center to assist specified types of crime victims, including victims of human trafficking.
- b) SB 1279 (Pavley), Chapter 116, Statutes of 2010, established a pilot project in Los Angeles County to create, implement, and deliver standardized training curricula that would provide a protocol for law enforcement and social services to assess and recognize sexually exploited minors within the juvenile justice system.

- c) AB 499 (Swanson), Chapter 359, Statutes of 2008, established a pilot project in Alameda County to create, implement, and deliver standardized training curricula that would provide a protocol for law enforcement and social services to assess and recognize sexually exploited minors within the juvenile justice system.
- d) SB 180 (Kuehl), Chapter 239, Statutes of 2005, established the California Alliance to Combat Trafficking and Slavery Task Force and requires it to evaluate various programs available to victims of trafficking and various criminal statutes addressing human trafficking.
- 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**

California District Attorneys Association
County of San Bernardino
Nancy E. O'Malley, District Attorney of Alameda County

Opposition

None

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

Date of Hearing: April 19, 2016
Counsel: Gabriel Caswell

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

AB 2510 (Linder) – As Introduced February 19, 2016

SUMMARY: Requires the Attorney General to develop a license to carry a concealed firearm (CCW), with uniform information and criteria, that may be used as indicia of proof of licensure throughout the state. Specifically, **this bill:**

- 1) Requires the Attorney General to develop a uniform CCW license that may be used as indicia of proof of licensure throughout the state.
- 2) Requires the Attorney General to approve the use of licenses issued by local agencies if they contain specified information and a recent photograph of the applicant.
- 3) Requires the Attorney General to retain exemplars of approved licenses and maintain a list of agencies issuing local licenses.

EXISTING LAW:

- 1) Provides a county sheriff or municipal police chief may issue a license to carry a firearm capable of being concealed upon the person upon proof that:
 - a) The person applying is of good moral character (Penal Code § 12050, subd. (a)(1)(A));
 - b) Good cause exists for the issuance (Pen. Code § 12050, subd. (a)(1)(A));
 - c) The person applying meets the appropriate residency requirements (Pen. Code § 12050, subd. (a)(1)(D)); and,
 - d) The person has completed the appropriate training course (Pen. Code § 12050, subd. (E)).
- 2) Provides that the license may either:
 - a) Allow the person to carry a concealed firearm on his or her person (Pen. Code § 12050, subd. (a)(1)); or,
 - b) Allow the person to carry a loaded and exposed firearm in a county whose population is less than 200,000 persons according to the most recent federal decennial census. (Pen. Code § 12050, subd. (a)(1).)

- 3) Provides that a CCW license is valid for up to two years, three years for judicial officers, or four years in the case of a reserve or auxiliary peace officer. (Pen. Code § 12050, subd. (a)(2).)
- 4) Provides that a license may include any reasonable restrictions or conditions that the issuing authority deems warranted, which shall be listed on the license. (Pen. Code § 12050, subds. (b) and (c).)
- 5) Provides that the fingerprints of each applicant are taken and submitted to the Department of Justice. Provides criminal penalties for knowingly filing a false application for a concealed weapon license. (Pen. Code § 12051, subd. (b).)
- 6) Provides that a person may lawfully possess a loaded firearm in his or her place of business or residence. (Pen. Code § 12031, subd. (h)(l).)
- 7) Makes it generally unlawful to carry a concealed handgun or a loaded firearm in public and in vehicles. (Penal Code § 12025 and 12031.)
- 8) Specifies that applications for CCW licenses, applications for amendments to CCW licenses, amendments to CCW licenses, and CCW licenses under this article shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. (Pen. Code, § 26175, subd (a)(1).)
- 9) Provides that the Attorney General shall convene a committee composed of one representative of the California State Sheriffs' Association, one representative of the California Police Chiefs Association, and one representative of the Department of Justice to review, and as deemed appropriate, revise the standard application form for CCW licenses. The committee shall meet for this purpose if two of the committee's members deem that necessary. (Pen. Code, § 26175, subd (a)(2).)
- 10) States that the application shall include a section summarizing the statutory provisions of state law that result in the automatic denial of a license. (Pen. Code, § 26175, subd (b).)
- 11) Provides that the standard application form for CCW licenses shall require information from the applicant, including, but not limited to, the name, occupation, residence, and business address of the applicant, the applicant's age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. (Pen. Code, § 26175, subd (c).)
- 12) Specifies that applications for licenses shall be filed in writing and signed by the applicant. (Pen. Code, § 26175, subd (d).)
- 13) Provides that applications for amendments to CCW licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought and the reason for desiring the amendment. (Pen. Code, § 26175, subd (e).)
- 14) States that the forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application. (Pen. Code, § 26175, subd (f).)

- 15) Provides that an applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form, except to clarify or interpret information provided by the applicant on the standard application form. (Pen. Code, § 26175, subd (g).)
- 16) States that the standard application form is deemed to be a local form expressly exempt from the requirements of the Administrative Procedures Act. (Pen. Code, § 26175, subd (h).)
- 17) Provides that any CCW license issued upon the application shall set forth the licensee's name, occupation, residence and business address, the licensee's age, height, weight, color of eyes and hair, and the reason for desiring a license to carry the weapon, and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number, and the caliber. The license issued to the licensee may be laminated. (Pen. Code, § 26175, subd (i).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "as a practical matter, the current CCW license is not produced in a format that is easy to carry on one's person. In response, some sheriff offices currently provide a county identification card, which provides additional security features, and often includes a photograph of the licensee. This county-issued card cannot take the place of the standard DOJ CCW license, however, and licensees end up carrying both documents.

"It makes sense to carry one's CCW license on his or her person when armed. It also stands to reason that issuers of CCW licenses should be able to provide these documents in a more convenient way that improves public safety by allowing better identification of CCW holders. This bill simply authorizes county-issued CCW identifications to be carried in lieu of the standard DOJ form, as long as it contains all of the information currently required by law, as well as a photograph of the licensee."

- 2) **Requires Consistent Content, Yet not Identical:** This bill specifies that the Attorney General develop a uniform CCW license that may be used as indicia of proof of licensure throughout the state. The information on the license should be uniform and consistent. However, the bill does not require that the licenses themselves be identical in the same way that a California Driver's License is, other than the specified information and the photographs of the particular individuals. Opponents of the bill would like the information and appearance of the license to be more consistent in the manner of a California Driver's License. However, the proponents of the bill are concerned that by mandating such consistency, that the costs to certain jurisdictions to update their systems to meet those requirements would be prohibitive.

The bill additionally requires the Attorney General to approve the use of licenses issued by local agencies if they contain specified information and a recent photograph of the applicant. The opponents argue that this provision will further provide for inconsistencies appearing in licenses throughout the state. The proponents of the legislation are more concerned with requiring consistent content on the licenses, and providing a card that can be carried upon the

licensee easier than the paper permit. By not requiring the paper permit and permitting an identification card to be used as a CCW, proponents argue that public safety is enhanced because more people will have their license with them while they are carrying a concealed weapon.

- 3) **Argument in Support:** According to the *California State Sheriffs' Association*, "existing law, Pen. Code § 26175, generally governs the process for the issuance of licenses that permit persons to lawfully carry concealed firearms. The application and the licenses themselves must be uniform throughout the state. Any license issued must include the licensee's name, occupation, residence and business address, age, height, weight, color of eyes and hair, and the reason for desiring a license to carry the weapon. The license is also required to contain a description of the weapon or weapons authorized to be carried, including the name of the manufacturer, the serial number, and the caliber.

"As a practical matter, the current CCW license is not produced in a format that is easy to carry on one's person. In response, some sheriff offices currently provide a county identification card, which provides additional security features, and often includes a photograph of the licensee. This county-issued card cannot take the place of the standard DOJ CCW license, however, and licensees end up carrying both documents.

"It makes sense to carry one's CCW license on his or her person when armed. It also stands to reason that issuers of CCW licenses should be able to provide these documents in a more convenient way that improves public safety by allowing better identification of CCW holders. This bill simply authorizes county-issued CCW identification to be carried in lieu of the standard DOJ form, as long as it contains all of the information currently required by law, as well as a photograph of the licensee. Nothing in AB 2510 requires a permitting agency to do anything different than what they currently do – the bill merely provides an alternative avenue to ensure proper licensure and identification."

- 4) **Argument in Opposition:** According to the *Firearms Policy Coalition*, "On behalf of the members and supporters of Firearms Policy Coalition, I respectfully submit our opposition to Assembly Bill 2510 (Linder). However we would remove our opposition and even consider supporting AB 2510 if it were to be amended to create a modern and uniform license to carry.

"Licenses to carry in California, while still rare, have been increasing. These licenses are valid statewide. This increases the likelihood that the licensee will have law enforcement contact and want to inform the law enforcement officer of his or her license and whether or not that licensee is armed at the time of the interaction. The license should be recognizable as valid to the law enforcement officer during the contact.

"Currently, these licenses are required to be uniform throughout the state. An officer who encounters a permit from El Dorado County should be seeing the exact same permit as from Riverside County-- and it should be readily identifiable as such.

"However, it appears that some local authorities have been issuing their own local versions contrary to statute, putting their staff and licensees in harm's way. Given that there are nearly 500 issuing authorities, it is going to create chaos if these rogue licenses are not stopped. Unfortunately, AB 2510 only makes it worse.

"If all 500 issuing agencies were to make up their own permit, it would put our members and law enforcement in danger, not only in California--but in those states that honor our licenses as well.

"AB 2510 seeks to retroactively validate those unlawful and dangerous local permits by requiring the Department of Justice (DOJ) to ratify them, as well as encourage up to 500 new and distinct permits. We have raised these issues with the author and are still eager to continue the dialogue, but unless and until there is a uniform, statewide standard, we must oppose the measure.

"We feel that the solution is simple; if the state wishes to update and modernize the licenses (photo, security features, size, material, color, etc...) then it should construct a uniform, statewide policy and not force DOJ to just ratify whatever the local issuing authority prints or produces."

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association (Sponsor)
Association for Los Angeles Deputy Sheriffs
California District Attorneys Association
California Rifle and Pistol Association
Los Angeles Police Protective League
National Rifle Association of America
Riverside Sheriffs' Association

Opposition

California Association of Federal Firearms Licensees
Firearms Policy Coalition

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

Date of Hearing: April 19, 2016

Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 2513 (Williams) – As Introduced February 19, 2016

As Proposed to be Amended in Committee

SUMMARY: Allows the court to consider for purposes of determining the sentence on a human trafficking conviction that the defendant recruited or enticed the victim from a shelter or foster placement. Specifically, **this bill:**

- 1) States that the court may consider as an aggravating factor in sentencing on a human trafficking offense that the defendant recruited, enticed, or obtained the victim from a shelter or placement that is designed to serve runaway youth, foster children, homeless persons, or victims of human trafficking or domestic violence.
- 2) Prohibits the aggravating factor from being considered unless it is admitted by the defendant or found to be true by the trier of fact.
- 3) Makes technical, non-substantive, and conforming changes.

EXISTING LAW:

- 1) Provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. (Pen.Code, § 1170, subd. (b).)
- 2) Provides that when a sentencing enhancement specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. (Pen. Code, § 1170.1, subd. (d).)
- 3) Provides that sentencing choices requiring a statement of a reason include "[s]electing one of the three authorized prison terms referred to in section 1170(b) for either an offense or an enhancement." (Cal. Rules of Court, Rule 4.406(b)(4).)
- 4) Requires the sentencing judge to consider relevant criteria enumerated in the Rules of Court. (Pen. Code, § 1170, subd. (a)(3), Cal. Rules of Court, Rule 4.409.)
- 5) Provides that, in exercising discretion to select one of the three authorized prison terms referred to in section 1170, subdivision (b), "the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing." (Cal.

Rules of Court, Rule 4.420(b), Pen.Code, § 1170, subd. (b.)

- 6) Prohibits the sentencing court from using a fact charged and found as an enhancement as a reason for imposing the upper term unless the court exercises its discretion to strike the punishment for the enhancement. (Pen. Code, § 1170, subd. (b), Cal. Rules of Court, Rule 4.420(c).)
- 7) Prohibits the sentencing court from using a fact that is an element of the crime to impose a greater term. (Cal. Rules of Court, Rule 4.420(d).)
- 8) Enumerates circumstances in aggravation, relating both to the crime and to the defendant, as specified. (Cal. Rules of Court, Rule 4.421.)
- 9) Enumerates circumstances in mitigation, relating both to the crime and to the defendant, as specified. (Cal. Rules of Court, Rule 4.423.)
- 10) Provides that a person who deprives or violates the personal liberties of another with the intent to obtain forced labor or services is guilty of human trafficking and shall be punished by a state prison term of 5, 8, or 12 years. (Pen. Code, § 236.1, subd. (a).)
- 11) Provides that any person who deprives or violates the personal liberties 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 a state prison term of 8, 14, or 20 years. (Pen. Code, § 236.1, subd. (b).)
- 12) Provides that any person who causes or persuades, or attempts to cause or persuade, 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 and shall be punished by a state prison term of 5, 8, or 12 years, unless the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, in which case the punishment is 15 years to life in state prison. (Pen. Code § 236.1, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2513 amends Proposition 35, the Californians Against Sexual Exploitation (CASE) Act initiative, to specify that when sentencing a criminal defendant convicted of human trafficking, California judges have the discretion to consider as an aggravating factor the fact that the defendant recruited, enticed, or obtained the victim from a shelter or placement that is designed to serve runaway youth, foster children, homeless persons, or victims of human trafficking or domestic violence. It is our responsibility as a society to care for those who are defenseless and in need of community support. Discouraging offenders from preying on the easiest targets in our community is critical to protecting these individuals from trafficking. Empowering our judges is one way to discourage criminals from participating in acts of human trafficking."
- 2) **Sixth Amendment Implications:** This bill allows the court to consider and take into account as an aggravating factor for purposes of sentencing on a human trafficking

conviction that the defendant lured or obtained the victim in a shelter that houses runaways, the homeless, domestic violence or human trafficking victims, or from a foster placement.

The Sixth Amendment right to a jury applies to any factual finding, other than that of a prior conviction, necessary to warrant any sentence beyond the presumptive maximum. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *Blakely v. Washington* (2004) 524 U.S. 296, 301, 303-04.)

In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California's Determinate Sentencing Law (DSL) violated a defendant's right to trial by jury by placing sentence-elevating fact finding within the judge's province. (*Id.* at p. 274.) The DSL authorized the court to increase the defendant's sentence by finding facts not reflected in the jury verdict. Specifically, the trial judge could find factors in aggravation by a preponderance of evidence to increase the offender's sentence from the presumptive middle term to the upper term and, as such, was constitutionally flawed. The Court stated, "Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the sentence cannot withstand measurement against our Sixth Amendment precedent." (*Id.* at p. 293.)

Following *Cunningham*, the Legislature amended the DSL, specifically Penal Code sections 1170 and 1170.2, to make the choice of lower, middle, or upper prison term one within the sound discretion of the court. (See SB 40 (Romero) - Chapter 3, Statutes of 2007.) This approach was embraced by the California Supreme Court in *People v. Sandoval* (2007) 41 Cal.4th 825, 843-852. The new procedure removes the mandatory middle term and the requirement of weighing aggravation against mitigation before imposition of the upper term. Now, the sentencing court is permitted to impose any of the three terms in its discretion, and need only state reasons for the decision so that it will be subject to appellate review for abuse of discretion. (*Id.* at pp. 843, 847.)

Under this bill, the judge can increase the sentence based on the fact that the defendant enticed or took the human trafficking victim from a shelter or a placement. However, consistent with the holdings in *Apprendi*, *Blakely*, and *Cunningham*, *supra*, the factual finding must be admitted by the defendant, or found to be true by the trier of fact, before the court can consider it as an aggravating factor.

- 3) **Argument in Support:** According to the California State Sheriffs' Association, "It goes without saying that trafficking offenses committed against children are reprehensible and offenses that are facilitated by the fact that the minor is a foster child or homeless are especially pernicious. AB 2513 is a modest alteration to existing law that allows a court to appropriately recognize that evil that is inherent in the child trafficking crimes."
- 4) **Related Legislation:**
 - a) AB 1771 (O'Donnell) increases the punishment for supervising or aiding a prostitute from up to six months in the county jail to up to a year in the county jail, and adds additional circumstances that can be considered in determining whether someone is guilty of a violation of supervising or aiding a prostitute. AB 1771 is pending in the Assembly Appropriations Committee.

- b) SB 1202 (Leno) prohibits the court from imposing an upper term based upon aggravating facts unless those facts are presented to and found to be true by the trier of fact. SB 1202 is pending hearing in the Senate Public Safety Committee.

5) Prior Legislation:

- a) Proposition 35, of the November 2012 election, increased the punishment for human-trafficking offenses; imposed new fines to fund services for human-trafficking victims; changed how evidence can be used against human-trafficking victims; and, required additional law enforcement training on handling human-trafficking cases.
- b) SB 40 (Romero), Chapter 3, Statutes of 2007, amended California's DSL to eliminate the presumption for the middle term and to state that where a court may impose a lower, middle or upper term in sentencing a defendant, the choice of appropriate term shall be left to the discretion of the court.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California State Sheriffs' Association
Peace Officers Research Association of California

Opposition

Legal Services for Prisoners with Children

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

Amendments Mock-up for 2015-2016 AB-2513 (Williams (A))

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

**Mock-up based on Version Number 99 - Introduced 2/19/16
Submitted by: Sandy Uribe, Assembly Public Safety Committee**

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

SECTION 1. 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 of Title 22 of the United States Code.
- (h) The court may consider and take into account as an aggravating factor, for purposes of determining the sentence to be imposed, the fact that the defendant recruited, enticed, or obtained the victim from a shelter or placement that is designed to serve runaway youth, foster children, homeless persons, or victims of human trafficking or domestic violence. **However, the aggravating factor provided in this section shall not be considered unless it is admitted by the defendant, or found to be true by the trier of fact.**
- (i) For purposes of this chapter, the following definitions apply:
- (1) "Coercion" includes 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.
- (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) "Minor" means a person less than 18 years of age.

(8) "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.

(j) 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. 2. Section 236.7 of the Penal Code is amended to read:

236.7. (a) An interest in a vehicle, boat, airplane, money, negotiable instruments, securities, real property, or other thing of value that was put to substantial use for the purpose of facilitating the crime of human trafficking that involves a commercial sex act, as defined in paragraph (2) of subdivision (i) of Section 236.1, in which the victim was less than 18 years of age at the time of the commission of the crime, may be seized and ordered forfeited by the court upon the conviction of a person guilty of human trafficking that involves a commercial sex act in which the victim is an individual under 18 years of age, pursuant to Section 236.1.

(b) In any case in which a defendant is convicted of human trafficking pursuant to Section 236.1 and an allegation is found to be true that the victim was a person under 18 years of age and the crime involved a commercial sex act, as defined in paragraph (2) of subdivision (i) of Section 236.1, the following assets shall be subject to forfeiture upon proof of the provisions of subdivision (d) of Section 236.9:

(1) A property interest, whether tangible or intangible, acquired through human trafficking that involves a commercial sex act in which the victim was less than 18 years of age at the time of the commission of the crime.

(2) All proceeds from human trafficking that involves a commercial sex act where the victim was less than 18 years of age at the time of the commission of the crime, which property shall include all things of value that may have been received in exchange for the proceeds immediately derived from the act.

(c) If a prosecuting agency petitions for forfeiture of an interest under subdivision (a) or (b), the process prescribed in Sections 236.8 to 236.12, inclusive, shall apply, but no local or state prosecuting agency shall be required to petition for forfeiture in any case.

(d) Real property that is used as a family residence or for other lawful purposes, or that is owned by two or more persons, one of whom had no knowledge of its unlawful use, shall not be subject to forfeiture.

(e) An interest in a vehicle that may be lawfully driven with a class C, class M1, or class M2 license, as prescribed in Section 12804.9 of the Vehicle Code, may not be forfeited under this section if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the sole vehicle of this type available to the defendant's immediate family.

(f) Real property subject to forfeiture may not be seized, absent exigent circumstances, without notice to the interested parties and a hearing to determine that seizure is necessary to preserve the property pending the outcome of the proceedings. At the hearing, the prosecution shall bear the burden of establishing that probable cause exists for the forfeiture of the property and that seizure is necessary to preserve the property pending the outcome of the forfeiture proceedings. The court may issue a seizure order pursuant to this section if it finds that seizure is warranted or a pendente lite order pursuant to Section 236.10 if it finds that the status quo or value of the property can be preserved without seizure.

(g) For purposes of this section, no allegation or proof of a pattern of criminal profiteering activity is required.

SEC. 3. Section 236.8 of the Penal Code is amended to read:

236.8. (a) If the prosecuting agency, in conjunction with the criminal proceeding, files a petition of forfeiture with the superior court of the county in which the defendant has been charged with human trafficking that involves a commercial sex act, as defined in paragraph (2) of subdivision (i) of Section 236.1, where the victim was less than 18 years of age at the time of the commission of the crime, the prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds or instruments. The notice shall state that any interested party may file a verified claim with the superior court stating the amount of their claimed interest and an affirmation or denial of the prosecuting agency's allegation. If the notice cannot be given by registered mail or personal delivery, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property is located. If the property alleged to be subject to forfeiture is real property, the prosecuting agency shall, at the time of filing the petition of forfeiture, record a lis pendens with the county recorder in each county in which the real property is situated that specifically identifies the real property alleged to be subject to forfeiture. The judgment of forfeiture shall not affect the interest in real property of a third party that was acquired prior to the recording of the lis pendens.

(b) All notices shall set forth the time within which a claim of interest in the property seized is required to be filed pursuant to Section 236.9.

SEC. 4. Section 236.10 of the Penal Code is amended to read:

236.10. (a) Concurrent with or subsequent to the filing of the petition, the prosecuting agency may move the superior court for, and the superior court may issue, the following pendente lite orders to preserve the status quo of the property alleged in the petition:

(1) An injunction to restrain anyone from transferring, encumbering, hypothecating, or otherwise disposing of the property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that the property may be maintained and preserved. The court may order that a receiver appointed pursuant to this section be compensated for all reasonable expenditures made or incurred by him or her in connection with the possession, care, management, and operation of property or assets that are subject to the provisions of this section.

(b) A preliminary injunction may not be granted or receiver appointed without notice to the interested parties and a hearing to determine that an order is necessary to preserve the property, pending the outcome of the criminal proceedings, and that there is probable cause to believe that the property alleged in the forfeiture proceedings are proceeds, instruments, or property interests forfeitable under the provisions of Section 236.7. However, a temporary restraining order may issue pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure.

(c) Notwithstanding any other law, the court in granting these motions may order a surety bond or undertaking to preserve the property interests of the interested parties.

(d) The court shall, in making its orders, seek to protect the interests of those who may be involved in the same enterprise as the defendant, but who were not involved in human trafficking that involves a commercial sex act, as defined in paragraph (2) of subdivision (i) of Section 236.1, in which the victim was less than 18 years of age at the time of the commission of the crime.

SEC. 5. Section 236.11 of the Penal Code is amended to read:

236.11. (a) If the trier of fact at the forfeiture hearing finds that the alleged property, instruments, or proceeds are forfeitable pursuant to Section 236.7 and the defendant was engaged in human trafficking that involves a commercial sex act, as defined in paragraph (2) of subdivision (i) of Section 236.1, if the victim was less than 18 years of age at the time of the commission of the crime, the court shall declare that property or proceeds forfeited to the state or local governmental entity, subject to distribution as provided in Section 236.12. Property that is solely owned by a bona fide purchaser for value shall not be subject to forfeiture.

(b) If the trier of fact at the forfeiture hearing finds that the alleged property is forfeitable pursuant to Section 236.7 but does not find that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired that interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due to that person is less than the appraised value of the property, that person may pay to the state or the local governmental entity that initiated the forfeiture proceeding the amount of the registered owner's equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon payment, the state or local governmental entity shall relinquish all claims to the property. If the holder of the interest elects not to pay the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and the ownership certificate shall be forwarded. The appraised value shall be determined as of the date judgment is entered either by agreement between the legal owner and the governmental entity involved, or, if they cannot agree, by a court-appointed appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest.

(c) If the amount due to a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the Department of General Services or by the local governmental entity. The seller shall provide notice of the sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.

(d) Notwithstanding subdivision (c), a county may dispose of real property forfeited to the county pursuant to this chapter by the process prescribed in Section 25538.5 of the Government Code.