

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

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

AB 2569 (Melendez) – As Introduced February 19, 2016

SUMMARY: Eliminates the authorization for an offender who commits a specified sexual offense against a victim who is the child, stepchild, sibling, or grandchild of the offender (the "interfamilial exemption") from being eligible for exclusion from the Megan's Law Website. Specifically, **this bill:**

- 1) Eliminates the opportunity for an offender who has been convicted of the commission or attempted commission of felony sexual battery, misdemeanor child molestation, or other specified sexual offenses, to apply to the Department of Justice (DOJ) for exclusion from the Megan's Law Website.
- 2) Prevents an offender who has been convicted of the commission or attempted commission of an offense for which the offender is on probation at the time of his or her application or has successfully completed probation, from applying for exclusion from the Megan's Law Website if he or she submits a certified copy of an official court document, as specified, that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent, and the crime did not involve specified sexual offenses.

EXISTING LAW:

- 1) Provides that an offender may apply for an interfamilial exclusion if they were convicted of specified offenses, submit proper paperwork, and clearly demonstrate that they are the victim's parent, stepparent, sibling, or grandparent, and the offense did not involve oral copulation or sexual penetration, as specified. Clarifies that if subsequent to the application for interfamilial exclusion, the offender commits a violation of probation resulting in his or her incarceration in county jail or state prison, his or her exclusion, or application for exclusion, from the Megan's Law Website shall be terminated. Additionally requires that for the application to be granted, the offender must have a State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) showing a risk of re-offense of low to low-moderate. (Pen. Code § 290.46.)
- 2) Requires persons convicted of specified sex offenses to register for life, or reregister if the person has been previously registered, upon release from incarceration, placement, commitment, or release on probation. States that the registration shall consist of all of the following (Pen. Code, § 290.015, subd. (a).):
 - a) A statement signed in writing by the person, giving information as shall be required by DOJ and giving the name and address of the person's employer, and the address of the

- person's place of employment, if different from the employer's main address;
- b) Fingerprints and a current photograph taken by the registering official;
 - c) The license plate number of any vehicle owned by, regularly driven by or registered in the name of the registrant;
 - d) Notice to the person that he or she may have a duty to register in any other state where he or she may relocate; and,
 - e) Copies of adequate proof of residence, such as a California driver's license or identification card, recent rent or utility receipt or any other information that the registering official believes is reliable.
- 3) States every person who is required to register, as specified, who is living as a transient shall be required to register for the rest of his or her life as follows:
- a) He or she shall register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to Penal Code Section 290(b), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she shall register in the jurisdiction in which he or she is physically present on the fifth working day following release, as specified. Beginning on or before the 30th day following initial registration upon release, a transient shall reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient shall reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.
 - b) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with Penal Code Section 290(b). A person registered at a residence address in accordance with that provision who becomes transient shall have five working days within which to reregister as a transient in accordance with existing law.
 - c) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in existing law. A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the DOJ

annual update form, including the information.

- d) A transient shall, upon registration and re-registration, provide current information as required on the DOJ registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required re-registration. (Pen. Code, § 290.011, subds. (a) to (d).)
- 4) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony if the offense requiring registration was a felony or if the person has a prior conviction of failing to register. (Pen. Code, § 290.018, subds. (a)&(b).)
- 5) Provides that within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the DOJ. (Pen. Code § 290.015, subd. (b).)
- 6) States that a misdemeanor failure to register shall be punishable by imprisonment in a county jail not exceeding one year, and a felony failure to register shall be punishable in the state prison for 16 months, two or three years. (Pen. Code, § 290.018, subds. (a)&(b).)
- 7) Provides that the DOJ shall make available information concerning persons who are required to register as a sex offender to the public via an internet website. The DOJ shall update the website on an ongoing basis. Victim information shall be excluded from the website. (Pen. Code § 290.46.) The information provided on the website is dependent upon what offenses the person has been convicted of, but generally includes identifying information and a photograph of the registrant.
- 8) Generally prevents the use of the information on the Web Site from being used in relation to the following areas: (Pen. Code, § 290.46, subd. (1)(2).)
 - a) Health insurance;
 - b) Insurance;
 - c) Loans;
 - d) Credit;
 - e) Employment;
 - f) Education, scholarships, or fellowships;
 - g) Housing or accommodations; and
 - h) Benefits, privileges, or services provided by any business establishment.

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "As statistics show, the most common sex crimes committed against children are committed by a family member, someone the child knows and trusts. Since 2011, over 1000 sex offenders have been excluded from the Megan's Law website with nearly half of those exclusions being from the family member exemption. The intent of Megan's Law is to provide the public with the information on the whereabouts of sex offenders so communities may protect themselves and their children. If the intent of Megan's Law is to protect the public against sex offenders, yet we are allowing the exclusion of people who are committing sex crimes against their own kin; then the intent of Megan's Law is not being met under the current law. We cannot continue to keep sexual predators and pedophiles hidden from the public. It heavily contradicts the main purpose of Megan's Law: to keep families safe."
- 2) **Sex Offender Registration and the Megan's Law Website:** According to a 2014 report by the California Sex Offender Management Board¹, the intent of registration was to assist law enforcement in tracking and monitoring sex offenders since they were viewed as the group most likely to commit another sex offense. It was thought that having their names and addresses known to law enforcement and with the expansion of community notification also available to the public would dissuade them from committing a new offense, enable members of the public to exercise caution around them, enable law enforcement to monitor them and, if necessary, solve new sex offense cases more readily. Although research suggests that use of a registry may help law enforcement solve sex crimes against children involving strangers more quickly, United States DOJ statistics tell us that most crimes against children (about 93%) are committed not by a stranger but by a person known to the child and his or her family, usually an acquaintance or family member.

Since 1947, earlier by far than any other state, California has required "universal lifetime" registration for persons convicted of most sex crimes. (Pen. Code, § 290.) Though every other state has instituted some form of registration since then, California is among only four states which require lifetime registration for every convicted sex offender, no matter the nature of the crime or the level of risk for reoffending. Almost all other states use some version of a "tiering" or "level" system which: 1. recognizes that not all sex offenders are the same, 2. provides meaningful distinctions between different types of offenders and 3. requires registration at varying levels and for various periods of time. There are nearly 100,000 registrants today in California, a number accumulated over the past 66 years since the Registry was created in 1947. In 2004 California began to provide pictures and other identifying information on the Megan's Law website for about 80% of registrants. (www.meganslaw.ca.gov)

There are about 98,000 registered sex offenders on California's registry. About 76,000 live in California communities and the other 22,000 are currently in custody. Of these offenders, 80% are posted on the state's Megan's Law web site with their full address or ZIP Code and other information, depending upon the offense they committed. About 20% are not posted or

¹ <http://www.cce.csus.edu/portal/admin/handouts/Tiering%20Background%20Paper%20FINAL%20FINAL%2004-2-14.pdf>

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

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

- The sexual recidivism rate of identified sex offenders is lower than the recidivism rate of individuals who have committed any other type of crime except for murder.
- Not all sex offenders are at equal risk to reoffend. Low risk offenders reoffend at low rates, high risk offenders at much higher rates.
- It is possible to use well-researched actuarial risk assessment instruments to assign offenders to groups according to risk level. (i.e. Low, Medium, High.)
- Risk of a new sex offense drops each year the offender remains offense-free in the community. Eventually, for many offenders, the risk becomes so low as to be meaningless and the identification of these individuals through a registry becomes unhelpful due to the sheer numbers on the registry. Research has identified differing time frames of decreased risk for the various categories of offenders (i.e. low, medium, high).
- Research on both general and sexual offenders has consistently indicated that focusing on higher risk offenders delivers the greatest return on efforts to reduce reoffending.

Completing a properly designed and delivered specialized sex offender treatment program delivered within the context of effective supervision reduces recidivism risk even further. In California, all registered sex offenders on parole or probation are now required by state law

to enter and complete such a program.

- 3) **The Current Sex Offender Registration System and Megan's Law Website has Become too Unwieldy to be Effective for Law Enforcement:** Again, according to California's Sex Offender Management Board, there are a number of problems with the current system as a result of adding too many low-risk sex offenders. California's system of lifetime registration for all convicted sex offenders has created a registry that is very large and that includes many individuals who do not necessarily pose a risk to the community. The consequences of these realities are that the registry has, in some ways, become counterproductive to improving public safety. When everyone is viewed as posing a significant risk, the ability for law enforcement and the community to differentiate between who is truly high risk and more likely to reoffend becomes impossible. There needs to be a way for all persons to distinguish between sex offenders who require increased monitoring, attention and resources and those who are unlikely to reoffend.

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

- Innocent families and children of offenders (including victims of intra-familial sexual abuse) also bear the consequences of lifetime registration since they can often be identified by the public. Adverse consequences also arise for employers, landlords, neighbors and others.
 - There has been a proliferation of residence restrictions and exclusion zones for registered sex offenders in many jurisdictions in California. Violation of these can lead to criminal charges. The obstacles posed by registration status prevent many individuals from obtaining housing or employment and becoming functioning, contributing, tax-paying members of society.
 - There is reason to believe that registration policies, especially lifetime registration, keep some victims, particularly family members of the offender, from disclosing the abuse because they wish to avoid the stigma that will impact their family and their own lives for a very long time.
 - The presence nearby of one or more registered sex offenders can drive down property values in a neighborhood and make houses difficult to sell. If the current registration system was effective in the ways intended, these might be considered part of the price to pay for the greater good. But, since the current registry does not attain its intended purposes, many of these unintended consequences are without justification.
- 4) **AB 1323 (Vargas) Created the Interfamilial Exemption from the Megan's Law Website to Protect Victims of Sex Offenses from Public Disclosure:** AB 1323 (Vargas), Chapter 722 of the Statutes of 2005 was a cleanup bill which was passed the year after Megan's Law which was instituted in California as AB 488 (Para), Chapter 745 of the Statutes of 2004. According to background information supplied by the author of AB 1323 (Vargas), as well as information provided by the California Department of Justice at the time, the interfamilial exemption was provided to protect the identity of minor victims of interfamilial molestation. The publishing of the perpetrator's name, offense, address, and photograph on the Megan's

Law website would also provide information to the community that a reasonable person would piece together and disclose the fact that a minor was in fact a victim of molestation. At the time, the bill was supported by the California State Sheriff's Association, the California Probation Parole and Correctional Association, California District Attorneys Association, and the San Bernardino County Sheriff.

The bill proponents argue that offenders can relocate and reside with another family and might perpetrate the same crime on an unknowing victim. Additionally, they argue that parents of a friend of the minor victim are unable to check the Megan's Law website to determine if their children are at risk when they go and spend time at the house of a potential offender. Opponents state that while some family members may want to see the abuser posted online, many do not. Most family members who offend against another family member maintain some type of relationship with the victim and family and may even reunify. Posting the name of the offender online can disclose the victim's identity and/or cause continuing embarrassment to the victim and whole family—not just the abuser. The law was already amended as a part of Chelsea's law, by the Department of Justice, to provide that DOJ can only exclude offenders who are low and low-moderate risk, but must post moderate-high risk and high risk offenders.

Interfamilial exempted offenders are registered as sex offenders, however their identities are not posted on the Megan's Law website. As a result, law enforcement has the mandated requirements for monitoring the offenders without the public disclosure of their identity. As stated previously, the reason for the non-disclosure of the offender's identity is to protect the identity of the victim.

- 5) **Only Low to Low-Moderate Risk Offenders may be Granted an Interfamilial Exemption:** California passed Chelsea's Law in 2010 in the form of AB 1844 (Fletcher), Chapter 219, Statutes of 2010. As a part of Chelsea's law the state adopted the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO). SARATSO utilizes evidence-based practices to measure the risk of re-offense of a particular offender. Chelsea's Law imposed the following additional requirement on persons applying for an interfamilial exclusion from the Megan's Law website:

"No person shall be excluded pursuant to this subdivision unless the offender has submitted to the department documentation sufficient for the department to determine that he or she has a SARATSO risk level of low or moderate-low." (Pen. Code § 290.46, subd. (e)(4).)

The term SARATSO refers to evidence-based, state authorized risk assessment tools used for evaluating sex offenders. State law established the SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee, to consider the selection of the risk assessment tools for California. Research shows that the most accurate way of predicting whether a sex offender will reoffend is by utilizing a validated risk assessment instrument.

A collaborative approach to sex offender management, known as the Containment Model, is used in California. Communication and collaboration among the supervising officer, treatment provider, and polygraph examiner are the heart of this model, which relies on ongoing communication about risk.

In September 2013 the SARATSO Committee selected a new dynamic risk tool, the Stable-2007/Acute-2007. Certified treatment providers must continue to use the previous dynamic instrument, the SRA-FVL, until being trained by a SARATSO-approved trainer in 2013-2014 on the Stable-2007/Acute-2007.

- 6) **Suggested Amendment:** The committee has suggested an amendment that would balance a potential middle-ground between the public's right to know and a victim's right to not be "outed" as a victim of molestation. The committee has suggested that rather than eliminating the interfamilial exemption completely, that:

Pen. Code § 290.46 require that the Department of Justice Office of Victim Assistance must speak to the victim prior to the granting of an exemption to determine if the granting of the exemption is in the best interest of the victim.

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

Because California is the most populated state in the Union and has had lifetime registration for its convicted sex offenders since 1947, California has more registered sex offenders than any other state with about 88,000 identified sex offenders (per DOJ, August 2007).

Currently, the California Department of Corrections and Rehabilitation (CDCR) supervises about 10,000 of those 88,000 sex offenders, of which about 3,200 have been designated as "high-risk sex offenders". (CDCR Housing Summit, March 2007). Additionally, there are about 22,500 adult sex offenders serving time in one of 32 state prisons operated by CDCR (California Sex Offender Management Task Force Report, July 2007).

According to the Sex Offender Management Board, "Innocent families and children of offenders (including victims of intra-familial sexual abuse) also bear the consequences of lifetime registration since they can often be identified by the public. Adverse consequences also arise for employers, landlords, neighbors and others." California Sex Offender Management Board (2014). A Better Path to Community Safety. Available at: (<http://www.casomb.org/docs/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf>).

- 8) **Argument in Support:** According to *United Advocates for Children and Families*, "AB 2569 is aimed at addressing a critical component missing in Megan's Law. Our statewide Parent Partner Coalition supports AB 2569. Some of our members have first-hand experience with a relative sexually abusing our children. It compounds the hurt and trauma when that person is excluded from registering as a sex offender and may go on to hurt other family members. Many family members are to shamed or afraid to let other family members know what happened. According to the 'National Center for Victims of Crime' (<http://www.victimsofcrime.org>), "People who sexually abuse children usually know the victims before making sexual contact; Abusers can be anyone, even someone the victim used

to look up to, like, or trust, such as a neighbor, babysitter, friend, or member of the family or household.

"About 90% of children who are victims of abuse know their abuser. Only 10% of sexually abused children are abused by a stranger. Approximately 30% of children who are sexually abused are abused by family members. (<http://www.d21.org/>).

"Familial abuse effects the whole family for a longer time because the abuser is often still around the family and victim and becomes the 'secret' in the family. This causes discord and suspicion within the family and extended family and the victim is traumatized over and over again. We will continue to support AB 2569."

- 9) **Argument in Opposition:** According to *American Civil Liberties Union*, "AB 2569, is a bill that seeks to eliminate the authority for the Department of Justice to exclude a person on the sex offender registry from disclosure of their information on the internet if the person is a parent, stepparent, sibling or grandparent of the victim, and specific criteria have been met. While it may seem counter-intuitive, the purpose of this provision is to protect the privacy and welfare of victims, particularly minor victims, and it should not be eliminated.

"Under current law, a person who is required to register as a sex offender may petition the Department of Justice to exclude their personal information from posting on the internet if all of the following conditions are met:

- 1) The person is the parent, stepparent, sibling or grandparent of the victim;
- 2) The person has completed probation or is on probation, meaning that he or she was not sentenced to state prison;
- 3) The offense did not involve oral copulation or penetration of the genitals; and
- 4) The person has submitted "documentation sufficient for the department to determine that he or she has a SARATSO risk level of low or moderate-low." (Pen. Code sec. 290.46(e)(2)(D) and Pen. Code sec. 290.46(e)(4).)

"AB 2569 seeks to eliminate these provisions, thereby forcing the public posting on the internet of offenders who meet these criteria.

"The purpose of this exemption is to protect the privacy and welfare of the victim, particularly minor victims, in these cases. When the offender is a close family member – specifically a parent, stepparent, sibling or grandparent – public disclosure of information about the offender may result in the disclosure of the identity of the victim. It is important to note the very narrow set of offenders to whom this exemption applies: those who have been granted probation, and thus not sentenced to state prison; who have committed offenses involving only touching, not oral copulation or penetration; and who have a low or moderate-low risk level. Together, these criteria limit this posting exemption to the most low-level of offenses between very close family members. In these circumstances, it is highly likely that the offender and victim continue to have a relationship. They may in fact live in the same home, or the victim may regularly visit the home of the offender.

"In these situations, exempting the offender's information from public posting on the internet is necessary to protect the privacy and welfare of the victim. If people know that your sibling, parent or grandparent has been convicted of a sex offense, you will likely face uncomfortable

questions from friends, acquaintances and even strangers.² Worse yet, you could become the target of harassment for having a close family member on the sex offender list and/or may be impacted by harassment aimed at your family member, particularly if you live in the same home. These problems already exist even with the current exemption. A recent report of the California Sex Offender Management Board states:

- "Innocent families and children of offenders (including victims of intra-familial sexual abuse) also bear the consequences of lifetime registration since they can often be identified by the public. Adverse consequences also arise for employers, landlords, neighbors and others. . . .
- "There is reason to believe that registration policies, especially lifetime registration, keep some victims, particularly family members of the offender, from disclosing the abuse because they wish to avoid the stigma that will impact their family and their own lives for a very long time.³

"Eliminating the existing exemption will make these problems worse.

"The current exemption is narrowly tailored to a very limited class of offenders who have committed the lowest level of offense, who are at low risk of reoffending, and who have been deemed appropriate for a grant of probation. If a person does not meet all of these criteria, then their information will be disclosed. The current exemption thus appropriately balances the need for public safety with the need to protect the privacy and welfare of the victim. For these reasons, we must oppose AB 2569."

10) Prior Legislation:

- a) AB 1844 (Fletcher), Chapter 219, Statutes of 2010, known as Chelsea's Law, specified that the only people eligible for an interfamilial exemption are those who can provide evidence that they are low risk or low-moderate risk on a SARATSO risk assessment.
- b) AB 1323 (Vargas), Chapter 722 of the Statutes of 2005 was a cleanup bill which was passed the year after Megan's Law which created the interfamilial exemption for the protection of public disclosure of victims who suffered molestation by immediately family members.
- c) AB 488 (Para), Chapter 745 of the Statutes of 2004, created the Megan's Law website.

² Levenson, J. S., & Tewksbury, R. (2009). Collateral damage: Family members of registered sex offenders. *American Journal of Criminal Justice*. Available at:

<http://ilvoices.com/media/ea99d28960ec776bfff84beffffe415.pdf>

³ California Sex Offender Management Board (2014). A Better Path to Community Safety. Available at: <http://www.casomb.org/docs/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf>

REGISTERED SUPPORT / OPPOSITION:

Support

California Alliance of Child and Family Services
California Protective Parents Association
City of Hemet
City of Murrieta
Crime Victims United of California
Incest Survivors Speakers Bureau of California
National Organization for Women of California
Stand! For Families Free of Violence
United Advocates for Children and Families

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
California Civil Liberties Advocacy
California Public Defenders Association
California Reform Sex Offender Laws
Legal Services for Prisoners with Children

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

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

AB 2590 (Weber) – As Amended April 12, 2016

SUMMARY: Finds and declares that the purpose of sentencing is public safety achieved through accountability, rehabilitation, and restorative justice. Specifically, **this bill:**

- 1) Finds and declares that the purpose of sentencing is public safety achieved through accountability, rehabilitation and restorative justice.
- 2) Finds that programs should be available for inmates, including but not limited to, educational programs that are designed to prepare all offenders for successful reentry into the community.
- 3) Encourages the development of policies and programs designed to educate and rehabilitate all offenders.
- 4) Encourages the Department of Corrections and Rehabilitation to allow all inmates the opportunity to enroll in programs that promote successful return to the community.
- 5) Replaces the word “punishment” with the word “sentence” in the statute that the bill amends.
- 6) Deletes the sunset language of the statute that would have made the statute in-operative on January 1, 2017, and indefinitely extends the authority granting the court discretion in determining the sentence.

EXISTING LAW:

- 1) Finds and declares that the purpose of imprisonment for crime is punishment. (Pen. Code 1170, subd. (a)(1).)
- 2) Finds and declares that this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. (Pen. Code 1170, subd. (a)(1).)
- 3) Finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion. (Pen. Code 1170, subd. (a)(1).)
- 4) Specifies that in any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison or a county jail term under Realignment, the court shall sentence the defendant to one of the terms of

imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence. (Pen. Code 1170, subd. (a)(3).)

- 5) States 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).)
- 6) Specifies that in determining the appropriate term, the court may consider the record in the case, the probation officer's report, other reports, including reports received, as specified, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. (Pen. Code 1170, subd. (b).)
- 7) States that the court shall select the term which, in the court's discretion, best serves the interests of justice. (Pen. Code 1170, subd. (b).)
- 8) Provides that the statute authorizing discretion of courts to sentence to different terms remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date. (Pen. Code, § 1170, subdivision (i).)
- 9) Finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. (Pen. Code, § 1202.7.)
- 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, “AB 2590 (Weber), the Restorative Justice Act, which is a modest but important step to move California’s criminal laws away from a system that relies solely upon incarceration and punishment. While current law assumes that punishment (i.e., prison) is the only legitimate response to crime, AB 2590 recognizes that alternatives to incarceration, including restorative justice solutions, may sometimes be appropriate. Restorative justice provides an opportunity for the offender to accept responsibility, acknowledge the harm, make agreements to repair the damages as much as possible and clarify future intentions. This is similar to mediation, but has a broad purpose, to address the needs of the victim as well as repair the damaged relationship. Restorative justice agreements include the development of a circle of support and accountability to increase the likelihood that all agreements are completed.”
- 2) **The Criminal Justice System Has Increased the Use of Custodial Alternatives in Recent Years:** In the wake of prison overcrowding and Criminal Justice Realignment, there has been a focus at every level of the criminal justice system on alternatives to custody and evidence based practices to reduce recidivism. To that end, criminal courts are incorporating more sentencing options that do not involve custody. Frequently, such sentencing approaches attempt to address the underlying issues connected to the defendant’s criminal behavior.

County alternative custody programs can now include newly realigned offenders—non-serious, non-violent, non-sexual (1170h) felons who previously were eligible for prison but now serve all or part of their sentences in county jail. Counties now have the option of placing these 1170h offenders in work release programs, home detention, or electronic monitoring programs at any point during their sentences. Offenders serving local sentences have been eligible for placement in alternative custody programs for years. (Public Policy Institute California, April 2015.) At the State level, the Governor’s recent budgets have included money for programs to reduce recidivism. Those programs include community reentry programs and expanded substance abuse treatment for inmates in state prison. (<http://www.lao.ca.gov/reports/2014/budget/three-judge-panel/three-judge-panel-022814.aspx>)

- 3) **Under Existing Sentencing Law, Judges Have Discretion to Impose Probation Conditions For Rehabilitative Purposes:** Probation is the suspension of the imposition or execution of a sentence and the conditional release of a defendant into the community under the direction of a probation officer. “Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation.” *People v. Carbajal* (1995) 10 Cal.4th 1114,1120.

The primary considerations in granting probation are: (1) Public safety; (2) the nature of the offense; (3) the interests of justice; (4) the victim’s loss; and (5) the defendant’s needs. (Pen. Code, § 1202.7.) Courts have broad general discretion to fashion and impose additional

probation conditions that are particularized to the defendants. *People v. Smith* (2007) 152. Cal.App.4th 1245, 1249. Courts may impose any “reasonable” conditions necessary to secure justice and assist the rehabilitation of the probationer. Such conditions can include any variety of custodial alternatives, or programs for rehabilitation, such as counseling or substance abuse treatment.

- 4) **Restorative Justice:** This bill would find and declare that the purpose of sentencing is public safety achieved through accountability, rehabilitation, and restorative justice. “Restorative justice” is a concept which gives priority to repairing the harm done to victims and communities, and offender accountability is defined in terms of assuming responsibility and taking action to repair harm. Within that general framework, programs involving restorative justice can encompass a wide variety of approaches.

In 2013, The New York Times published an article which examined restorative justice programs in the United States.

“**Most modern justice** systems focus on a crime, a lawbreaker and a punishment. But a concept called “restorative justice” considers harm done and strives for agreement from all concerned — the victims, the offender and the community — on making amends. And it allows victims, who often feel shut out of the prosecutorial process, a way to be heard and participate. In this country, restorative justice takes a number of forms, but perhaps the most prominent is restorative-justice diversion. There are not many of these programs — a few exist on the margins of the justice system in communities like Baltimore, Minneapolis and Oakland, Calif. — but, according to a University of Pennsylvania study in 2007, they have been effective at reducing recidivism. Typically, a facilitator meets separately with the accused and the victim, and if both are willing to meet face to face without animosity and the offender is deemed willing and able to complete restitution, then the case shifts out of the adversarial legal system and into a parallel restorative-justice process. All parties — the offender, victim, facilitator and law enforcement — come together in a forum sometimes called a restorative-community conference. Each person speaks, one at a time and without interruption, about the crime and its effects, and the participants come to a consensus about how to repair the harm done.”
http://www.nytimes.com/2013/01/06/magazine/can-forgiveness-play-a-role-in-criminal-justice.html?_r=0

- 5) **Argument in Support:** According to *The California Public Defenders Association* “Existing law provides legislative findings and declarations that the purpose of imprisonment for crime is punishment, and that this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. Existing law further provides that, notwithstanding those provisions, the Legislature finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. Existing law provides other legislative findings and declarations relating to the development of policies and programs.

“This bill would instead provide legislative findings and declarations that the purpose of sentencing is public safety achieved through restorative justice and that this purpose is best served by taking into account the science of brain development and maturity and the effects

of violence on individuals in disadvantaged neighborhoods, among other specified factors. This bill would provide other legislative findings and declarations, as specified.

“CPDA believes that this bill provides guidance into the proper factors to be used in sentencing, and takes into account the growing body of research that outlines factors that lead to criminal behavior. It is also a practical bill that takes into account the fact that the vast majority of persons who are imprisoned will be released back into the community, and that educational, vocational, rehabilitative, treatment, and other programs should be made available to all inmates, in order to fully prepare them for successful reentry into the community.”

- 6) **Argument in Opposition:** According to *The California District Attorneys Association*, “California’s current sentencing laws exist to ensure that terms of imprisonment reflect the seriousness of the offense and the offender’s criminal history, and to promote uniformity in sentencing such that similar conduct results in similar punishment. AB 2590 turns that notion on its head, suggesting courts should instead consider a variety of factors that attempt to explain away someone’s criminal behavior and absolve them of full accountability if they happen to have come from a less fortunate background.

“AB 2590 would then, after taking these factors into account, encourage courts to sentence these individuals to ‘community-based punishment’ which includes a variety of alternatives to incarceration. Given the right judge, a convicted defendant could avoid jail time altogether for almost any offense. From a public safety standpoint, this is the most troubling aspect of the bill.

“The language in AB 2590 authorizing a court to sentence a convicted defendant to ‘community-based punishment’ provides no exceptions for individuals convicted of serious or violent felonies, sex offenses, or any other criminal acts. Regardless of whether one believes that allowing a court to essentially make up sentences on a case by case basis is a good idea (we happen to think it is not), it defies any public safety interest to extend such latitude to sentences of individuals whose criminal conduct indicates a threat to the community.”

7) **Prior Legislation:**

- a) SB 463 (Pavley), Chapter 508, Statutes of 2013, extended to January 1, 2017, the provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interests of justice.
- b) AB 1849 (Carter), Legislative Session of 2011-2012, would have authorized the juvenile court of a county to adopt a restorative justice program to address the needs of minors, victims, and the community. AB 1849 was held in the Assembly Appropriations Committee.
- c) AB 446 (Carter), Legislative Session of 2011-2012, would have authorized a county to adopt a restorative justice program to address the needs of minors, victims, and the community. AB 446 was vetoed by the governor.

REGISTERED SUPPORT / OPPOSITION:

Support

PICO California (Sponsor)
Industrial Areas Foundation (Co-sponsor)
A New Path
California Attorneys for Criminal Justice
California Catholic Conference
California Industrial Areas Foundation
California Public Defenders Association
Diocese of San Bernardino
Felony Murder Elimination Project
Friends Committee on Legislation of California
Legal Services for Prisoners with Children
Mennonite Central Committee
National Association of Social Workers, California Chapter
National Council of Jewish Women
Pacific Southwest Mennonite Conference
Placer People of Faith Together
Sacramento Area Congregations Together
Sacramento Loaves and Fishes
Southeast Asia Resource Action Center

2 private individuals

Opposition

California District Attorneys

Analysis Prepared by: David Billingsley / 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 2607 (Ting) – As Amended March 17, 2016

SUMMARY: Expands the individuals who are eligible to petition for a gun violence restraining order (GVRO). Specifically, **this bill:**

- 1) Allows an employer, a coworker, a mental health worker who has seen a person as a patient in the prior six months, an employee of a secondary or postsecondary school that a person has attended in the last six months, to file a petition requesting that the court issue an ex parte GVRO enjoining the subject of the petition from having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.
- 2) Allows an employer, a coworker, a mental health worker who has seen a person as a patient in the prior six months, an employee of a secondary or postsecondary school that a person has attended in the last six months, to file a petition requesting that the court issue a GVRO after notice and a hearing enjoining a person from having in his or her custody or control, owning, purchasing, or receiving a firearm or ammunition.
- 3) Allows an employer, a coworker, a mental health worker who has seen a person as a patient in the prior six months, an employee of a secondary or postsecondary school that a person has attended in the last six months, to request a renewal of a GVRO at any time within the three months before the expiration of such an order.

EXISTING LAW:

- 1) Defines a "gun violence restraining order" as "an order, in writing, signed by the court, prohibiting and enjoining a named person from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition." (Pen. Code, § 18100.)
- 2) Requires the court to notify the Department of Justice (DOJ) when a GVRO is issued, renewed, dissolved, or terminated. (Pen. Code, § 18115.)
- 3) Prohibits a person that is subject to a GVRO from having in his or her custody any firearms or ammunition while the order is in effect. (Pen. Code, § 18120, subd. (a).)
- 4) Requires the court to order the restrained person to surrender all firearms and ammunition in his or her control. (Pen. Code, § 18120, subd. (b)(1).)
- 5) Allows law enforcement to seek a temporary GVRO if the officer asserts, and the court finds, that there is reasonable cause to believe the following:

- a) The subject of the petition poses an immediate and present danger of causing injury to himself or another by possessing a firearm; and,
 - b) The emergency GVRO is necessary to prevent personal injury to the subject of the order or another because less restrictive alternatives have been tried and been ineffective or have been determined to be inadequate under the circumstances. (Pen. Code, § 18125.)
- 6) Allows an immediate family member or law enforcement officer to file a petition requesting that the court issue an ex parte GVRO enjoining a person from having in his or her custody or control, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18150, subd. (a)(1).)
 - 7) Defines "immediate family member" as specified. (Pen. Code, 18150, subd. (a)(2).)
 - 8) Allows a court to issue an ex parte GVRO if an affidavit, made in writing and signed by the petitioner under oath, or an oral statement, and any additional information provided to the court on a showing of good cause that the subject of the petition poses a significant risk of personal injury to himself, herself, or another by having under his or her custody and control, owning, purchasing, possessing, or receiving a firearm as determined by balancing specified factors. (Pen. Code, §§ 18150, subd. (b) & 18155.)
 - 9) Requires a law enforcement officer to serve the ex parte GVRO on the restrained person, if the restrained person can reasonably be located. When serving a gun violence restraining order, the law enforcement officer shall inform the restrained person that he or she is entitled to a hearing and provide the restrained person with a form to request a hearing. (Pen. Code, § 18160.)
 - 10) Allows the restrained person who owns a firearm or ammunition that is in the custody of a law enforcement agency pursuant to this subdivision, if the firearm is an otherwise legal firearm, and the restrained person otherwise has right to title of the firearm, to sell or transfer title of the firearm to a licensed dealer. (Pen. Code, § 18120, subd. (c)(2).)
 - 11) Entitles the restrained person to a hearing to determine the validity of the order within 21 days after the date on the order. (Pen. Code, § 18165.)
 - 12) Allows an immediate family member or law enforcement officer to file a petition requesting that the court issue a GVRO after notice and a hearing enjoining a person from having in his or her custody or control, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18170.)
 - 13) States that at the hearing, the petitioner has the burden of proof, which is to establish by clear and convincing evidence that the person poses a significant danger of causing personal injury to himself, herself, or another by having under his or her custody and control, owning, purchasing, possessing, or receiving a firearm. (Pen. Code, § 18175, subd. (b).)
 - 14) Allows a restrained person to file one written request for a hearing to terminate the order. (Pen. Code, 18185.)
 - 15) Allows a request for renewal of a GVRO. (Pen. Code, § 18190.)

- 16) States that every person who files a petition for an ex parte gun violence restraining order or a gun violence restraining order issued after notice and a hearing, knowing the information in the petition to be false or with the intent to harass, is guilty of a misdemeanor. (Pen. Code, § 18200.)
- 17) States that every person who violates an ex parte gun violence restraining order or a gun violence restraining order issued after notice and a hearing, is guilty of a misdemeanor and shall be prohibited from having under his or her custody and control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition for a five-year period, to commence upon the expiration of the existing gun violence restraining order. (Pen. Code, 18205.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Family members, co-workers, employers, teachers, and mental health workers are the most likely to see early warning signs if someone is becoming a danger to themselves or others. In these circumstances, existing law enables family members and law enforcement to prevent gun-related tragedies before they happen by pursuing a gun violence restraining order (GVRO) in court. If granted by a court, a GVRO results in a temporary seizure of firearms possessed by the dangerous individual and a prohibition of their ability to purchase new firearms. AB 2607 logically expands who can petition a court for a GVRO by adding co-workers, employers, teachers, and mental health workers."
- 2) **Gun Violence Restraining Orders:** California's new GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. A GVRO will prohibit the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

The statutory scheme establishes three types of GVRO's: a temporary emergency GVRO, an ex parte GVRO, and a GVRO issued after notice and hearing. A law enforcement officer may seek a temporary emergency GVRO by submitting a written petition to or calling a judicial officer to request an order at any time of day or night. In contrast, an immediate family member or a law enforcement officer can petition for either an ex parte GVRO or a GVRO after notice and a hearing.

An ex parte GVRO is based on an affidavit filed by the petitioner which sets forth the facts establishing the grounds for the order. The court will determine whether good cause exists to issue the order. If, the court issues the order, it can remain in effect for 21 days. Within that time frame, the court must provide an opportunity for a hearing. At the hearing, the court can determine whether the firearms should be returned to the restrained person, or whether it should issue a more permanent order.

Finally, if the court issues a GVRO after notice and hearing has been provided to the person to be restrained, this more permanent order can last for up to one year.

When AB 1014 (Skinner), which created the GVRO statutory scheme was considered in the Senate Public Safety Committee, the bill would have allowed anyone to request a gun violence restraining order. The committee analysis noted that "Only those with a close relationship to the person to be restrained can request a domestic violence protective order." The Committee questioned whether anyone should be allowed to petition for a GVRO. AB 1014 was subsequently amended in the Senate Appropriations Committee to only permit law enforcement and immediate family members to petition for a GVRO.

This bill would expand the class of people who are able to petition for a GVRO to enjoin an individual for possessing or purchasing a firearm. It would allow an employer, a coworker, a mental health worker who has seen the person as a patient in the prior six months, and an employee of a secondary or postsecondary school that the person has attended in the last six months to seek such an order. While a mental health worker who has recently treated an individual should be in a position to know whether a person poses a danger to himself or others; employers, co-workers, and school personnel would not necessarily know this. It might depend on the work environment, the size of the place of employment, or the size of the school. Arguably these people do not necessarily have the kind of close relationship that the amendments to the original GVRO legislation sought to ensure.

- 3) **Argument in Support:** According to the *California Chapters of the Brady Campaign to End Gun Violence*, "Existing law allows law enforcement and immediate family members to petition the court to obtain a Gun Violence Restraining Order when a person is at risk of injury to self or others by having a firearm. The order would temporarily prohibit the purchase or possession of firearms while the order is in effect and would allow a warrant to be issued to seize firearms or ammunition from a person subject to the order. AB 2607 would also authorize an employer, a coworker, a mental health worker who has seen the person as a patient in the prior six months, or an employee of a secondary or postsecondary school that the person has attended in the last six months, to file a petition for a Gun Violence Restraining Order. Those who work or study with a person and have frequent interaction may see the early warning signs and be the first to know that the person is at severe risk of harming self or others with a firearm. These people need the ability to petition the court for a temporary firearm prohibition.

"The Gun Violence Restraining Order statute is modeled after California's domestic violence restraining order laws and ensures due process and a rigorous standard of proof. A noticed hearing before the court is required within 21 days. In fact, the law provides more protections than the state's domestic violence restraining order or mental health commitment laws. The person subject to the temporary order regains the ability to purchase or possess firearms when the order expires after one year (unless renewed) or is revoked by the court.

"As many California Brady members have personally experienced, heightened anger or hate, despondence, substance abuse, or a mental or emotional crises combined with access to firearms can be a deadly combination. The Gun Violence Restraining Order provides a way to prevent homicide, suicide, and mass shootings by removing firearms before a tragedy occurs."

- 4) **Argument in Opposition:** According to the *Firearm Policy Coalition*, "AB 2607 (Ting) seeks to expand a law (AB 1014, Skinner- 2014) that has only been in effect less than 100 days as of this writing. It seeks to add to the list of lay persons, acquaintances and strangers

authorized to file a 'gun violence restraining order' against a person in secret, without warning, without a professional opinion or evaluation and without any due process to include tens of thousands of people who are likely total strangers to the accused.

"While the damage done to civil rights is not yet known as the law is so new, AB 2607 seeks to add 'an employer, a coworker, a mental health worker who has seen the person as a patient in the prior six months, an employee of a secondary or postsecondary school that the person has attended in the last six months.' This means, depending on where one works or studies, online or in person, potentially tens of thousands of people can secretly file a petition to take their firearms in a surprise raid by law enforcement.

"While this may sound like a cold-war era memoir of living behind the iron curtain, it isn't. This is California, year 2016 and AB 2607 is revealing in its complete lack of regard for the civil rights of California's law-abiding, gun-owning residents."

- 5) **Prior Legislation:** AB 1014 (Skinner), Chapter 872, Statutes of 2014, authorizes, beginning January 1, 2016, a law enforcement officer or immediate family member of a person, to seek, and a court to issue, a GVRO, as specified, prohibiting a person from having in his/her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chapters of the Brady Campaign to End Gun Violence
Coalition Against Gun Violence
Law Center to Prevent Gun Violence
San Francisco County District Attorney
Women Against Gun Violence

Opposition

American Civil Liberties Union of California
California Public Defenders Association
California Sportsman's Lobby
Gun Owners of California
Firearms Policy Coalition
National Rifle Association
Outdoor Sportsmen's Coalition of California
Safari Club International

Analysis Prepared by: Sandy Uribe / 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 2626 (Jones-Sawyer) – As Introduced February 19, 2016

As Proposed to be Amended in Committee

SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST) to, commencing June 2017, develop and disseminate training on procedural justice and implicit bias, as defined; and to incorporate procedural justice and implicit bias training into POST's basic training by no later than June 1, 2018. Specifically, **this bill:**

- 1) Finds and declares all of the following:
 - a) The relationship between law enforcement and the communities they are sworn to protect must be grounded in trust in order to ensure safety and protection for all;
 - b) Despite the ongoing challenges to fostering strong relationships of trust between law enforcement and communities, the practice of principled policing, specifically procedural justice and implicit bias, is one strategy shown to improve police-community relationships;
 - c) It is in the interest of California's communities and the thousands of men and women who are sworn to serve and protect the public that the State of California support evidence-based strategies to improve the relationship of trust between law enforcement and communities; and
 - d) Understanding and implementing the practice of principled policing, specifically procedural justice and implicit bias, offers an opportunity for law enforcement and communities to collaboratively build trust and improve safety for all.
- 2) Requires POST to develop and disseminate training on principled policing, specifically procedural justice and implicit bias, for all peace officers as provided.
- 3) Defines "procedural justice" as "an approach to policing based on giving people the opportunity to tell their side of the story, remaining neutral in decision-making and behavior, treating people with respect, and explaining actions in a way that communicates caring for people's concerns so as to demonstrate trustworthiness."
- 4) Defines "implicit bias" as "thoughts and feelings about social groups that can influence people's perceptions, decisions, and actions without awareness."
- 5) Requires the POST course or courses of instruction on principled policing to stress procedural justice as a strategy for improving the relationship of trust between law enforcement and communities, and how implicit bias can be a barrier to procedural justice.
- 6) Requires the POST course on principled policing to include:

- a) Adequate instruction on procedural justice and implicit bias in order to foster mutual respect and cooperation between law enforcement and communities;
 - b) An evidence-based curriculum developed in consultation with appropriate groups and individuals who have expertise in procedural justice or implicit bias, including, but not limited to:
 - i) law enforcement agencies that have demonstrated experience in procedural justice or implicit bias training;
 - ii) university professors who specialize in addressing and reducing racial and identity bias towards individuals and groups; and
 - iii) community organizations or members who specialize in civil or human rights and criminal justice; and
 - c) Consideration of each of, including but not limited to, the following subjects:
 - i) Procedural justice as a strategy for improving the relationship of trust between law enforcement agencies and the communities they are sworn to serve;
 - ii) Implicit bias as a barrier to procedural justice;
 - iii) Historical and generational effects of policing; and
 - iv) The interactive nature of policing goals, procedural justice, and implicit bias.
- 7) Requires POST to certify and make training available to train peace officers to be able to effectively teach the course of training on principled policing. The course shall be structured so that experts on procedural justice and implicit bias train law enforcement agencies to be able to effectively teach the concepts, principles and research behind procedural justice and implicit bias to colleagues within their departments.
 - 8) Encourages law enforcement agencies to send at least one police executive or manager, one training officer and one community member to the POST course on principled policing.
 - 9) States that, upon completion of the training course, peace officers from participating law enforcement agencies shall be qualified by POST to conduct the course on principled policing for colleagues in their respective agencies.
 - 10) Requires POST to offer the course on principled policing and the qualifying training on a quarterly basis in regional training centers across the state commencing in June 2017.
 - 11) Requires POST, no later than June 1, 2018, to:
 - a) Evaluate its current course of basic training;
 - b) Promulgate a plan to incorporate the concepts of principled policing into its course of basic training; and
 - c) Require each peace officer, as provided, to complete a refresher course no less frequently than every five years.

EXISTING LAW:

- 1) Requires all peace officers to complete an introductory course of training prescribed by POST, demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)
- 2) Establishes the Commission on Peace Officer Training and Standards. (Pen. Code, § 13500.)
- 3) Empowers POST to develop and implement programs to increase the effectiveness of law enforcement. (Pen. Code, § 13503.)
- 4) Authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental and moral fitness and training that shall govern the recruitment of any peace officers in California. (Pen. Code, § 13510, subd. (a).)
- 5) Requires POST to conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability and adopt standards supported by this research. (Pen. Code, § 13510, subd. (b).)
- 6) Requires POST to establish a certification program for peace officers, which shall be considered professional certificates. (Pen. Code, § 13510.1, subd. (a).)
- 7) Requires that the course of basic training for law enforcement officers include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. (Pen. Code, § 13519.4, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Increasing trust between law enforcement and the communities they serve is a crucial component to maintaining public safety. Studies show that training peace officers on procedural justice and implicit bias has a direct and measurably positive effect on police-community relations.

"Late in 2015, the Department of Justice hosted two trainings on Principled Policing— now POST certified – attended by more than 50 police chiefs and sheriffs from throughout the state.

"The Principled Policing curriculum—a day-long course taught by officers selected for leadership and street credibility—comprises six hour-long modules, blending material from daily police practice, research and anecdotes drawn from instructors' experience. These modules are organized to address officer skepticism and build buy-in early in the training day. The course is evolving, as implicit bias and function-specific material are incorporated into the curriculum.

"The Stanford research team developed a pre- and post-training participant evaluation survey that showed the course was very well-received. In fact, the survey indicated that law

enforcement officials who participated in the training reported increased sympathy toward community concerns and lauded the course for its usefulness. Participant responses also suggest that engaging in this course material increased the police leaders' confidence in change and, specifically, in their commitment to change in partnership with the community.

“Ultimately, it is believed that such a course that is facilitated across the state could play a role in decreasing police-community tensions and strengthening police-community trust.”

- 2) **Implicit Bias:** Implicit bias is an unconscious psychological bias against individuals in certain racial, gender or other legally protected groups. If an individual has an implicit bias against any group, this does not mean that they necessarily have an explicit prejudice against that group. In fact, there is no correlation between implicit bias and explicit prejudice. In fact, research has shown that even members of minority groups often have an implicit bias against the minority group of which they are a member. This demonstrates the pervasiveness of implicit bias. But regardless of the individuals who have an implicit or why, implicit bias has been shown to create significant negative impacts for members of protected minority groups in housing, employment and other areas. (Bagnestos, *Implicit Bias, “Science,” and Antidiscrimination Law* (2007) 1 Harv. L. & Pol’y Rev. 477.)

There are scientifically proven methods to combat implicit bias. A recent *Science* journal article discussed findings that “deep canvassing” by in-group individuals to out-group individuals showed the out-group individuals changing their attitudes toward the in-group and maintaining their new attitude three months later. (Broockman & Kalla, *Durably reducing transphobia: A field experiment on door-to-door canvassing* (Apr. 8, 2016) *Science*, at pp. 220-224.) This study comes after, in 2014, a study published by different authors with similar findings was retracted due to manipulated data sets. However, the recent study was conducted by the individuals who uncovered the manipulation. Their study found even stronger effects than the prior study, demonstrating its reliability.

- 3) **Potential Impacts of Implicit Bias on Policing:** Numerous studies have shown that minority groups are treated differently within society as a whole, and in the criminal justice system in particular. (See Bobo & Fox, *Race, Racism, and Discrimination: Bridging Problems, Methods, and Theory in Social Psychological Research* (Dec. 2003) *Social Science Quarterly*, at pp. 319-332; and Rice & White, *Race, Ethnicity and Policing: New and Essential Readings* (2010).) For example, a recent report in California showed that African Americans were disproportionately stopped and arrested by law enforcement despite no documented difference in driving behavior. (White, *Report: California traffic stops, arrests hit minorities harder*, *Sacramento Bee* (April 10, 2016) < <http://www.sacbee.com/news/politics-government/capitol-alert/article71054277.html>>.) The strong scientific evidence of implicit bias and its potential to negatively impact protected minority groups shows how training peace officers in a way that reduces or eliminates any unconscious implicit bias those officers may have could assist law enforcement and communities to collaboratively build trust and improve safety for everyone involved.
- 4) **Current POST Training:** POST was created by the legislature in 1959 to set minimum selection and training standards for California law enforcement. According to the POST Web site, the Regular Basic Course Training includes 42 separate topics, ranging from juvenile law and procedure to search and seizure. [POST, *Regular Basic Course Training Specifications*; <<http://post.ca.gov/regular-basic-course-training->

[specifications.aspx>.](#)] These topics are taught during a minimum of 664 hours of training. [POST, *Regular Basic Course, Course Formats*, available at: <http://post.ca.gov/regular-basic-course.aspx.>>]

- a) POST currently provides specific training on racial profiling and cultural diversity in connection with the mandate of Penal Code section 13519.4. According to POST that curriculum consists of the following:
 - i) **Racial Profiling Training**
 - ii) **Part I – Initial* - 5 Hours**
 - (1) Why Are We Here?
 - (2) Racial Profiling Defined
 - (3) Legal Considerations
 - (4) History of Civil Rights
 - (5) Impact of Racial Profiling
 - (6) Community Considerations
 - (7) Ethical Considerations
 - iii) **Part II – Refresher** - 2 Hours**
 - (1) Review of Applicable Initial Training
 - (2) Update on Changes in Law and Practices
 - iv) *Included in Basic Course after January 1, 2004.
 - v) **To be completed every five years after initial training
- b) POST also provided a list of classes within their curriculum related to the constitutional legality of enforcement actions and impartial policing:
 - i) Leadership, Professionalism and Ethics
 - ii) Policing the Community (Fair and impartial enforcement)
 - iii) Introduction to Criminal Law
 - iv) Laws of Arrest
 - v) Search and Seizure
 - vi) Gang Awareness
- 5) **Argument in Support:** According to the *California Attorney General Kamala Harris* “Studies show that training peace officers on procedural justice and implicit bias has a direct and positive effect on police-community relations. In recognition of this fact, Attorney General Harris partnered with Stanford SPARQ (Social Psychology Answers to Real-world Questions), the Empower Initiative, the Oakland and Stockton Police Departments, and the community organization California Partnership for Safer Communities to create the first of its kind Principled Policing course for law enforcement officials throughout California. Over 50 law enforcement executives from 28 departments participated in one-day trainings. The training was highly successful, with participants praising the course for the role it could play in *decreasing* police-community tensions and *increasing* police-community trust.

“AB 2626 would require POST to develop and offer principled policing training, specifically procedural justice and implicit bias, for peace officers and develop and offer a course to train peace officers to teach the principled policing course to other officers within their departments. By making this cutting-edge course more widely available. AB 2626 will make a valuable contribution toward cultivating relationships of trust and respect between law enforcement and the communities they serve.”

6) Prior Legislation:

- a) AB 1118 (Bonta), of the 2015-16 Legislative Session, would have established the Procedural Justice Task Force, which would be administered by POST. The task force would provide for grant funding, to be awarded to local law enforcement departments for the purpose of implementing and enhancing procedural justice training and would have required the task force to manage these programs, monitor their implementation, and serve in an advisory capacity to sites leading implementation. AB 1118 failed passage in the Assembly Committee on Appropriations.
- b) AB 953 (Weber), Chapter 466, Statutes of 2015, requires, beginning July 1, 2016, the Attorney General to establish the Racial and Identity Profiling Advisory Board (RIPA) to eliminate racial and identity profiling and improve diversity and racial and identity sensitivity in law enforcement.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorney General Kamala Harris (Sponsor)
 American Civil Liberties Union
 American Federation of State, County and Municipal Employees, AFL-CIO
 California Attorneys for Criminal Justice
 California Partnership for Safe Communities
 California Police Chiefs Association
 California Public Defenders Association
 Empower Initiative
 Indio Police Department
 Los Angeles County Professional Peace Officers Association
 Oakland Police Department
 Richmond Police Department
 Stockton Police Department

Opposition

None

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

Amended Mock-up for 2015-2016 AB-2626 (Jones-Sawyer (A) , Bonta (A))

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

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

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

- (a) The relationship between law enforcement and the communities they are sworn to protect must be grounded in trust in order to ensure safety and protection for all.**
- (b) Despite the ongoing challenges to fostering strong relationships of trust between law enforcement and communities, the practice of principled policing, specifically procedural justice and implicit bias, is one strategy shown to improve police-community relationships.**
- (c) It is in the interest of California's communities and the thousands of men and women who are sworn to serve and protect the public that the State of California support evidence-based strategies to improve the relationship of trust between law enforcement and communities.**
- (d) Understanding and implementing the practice of principled policing, specifically procedural justice and implicit bias, offers an opportunity for law enforcement and communities to collaboratively build trust and improve safety for all.**

~~SECTION 1~~**SEC 2.** Section 13519.45 is added to the Penal Code, to read:

13519.45. (a) (1) The commission shall develop and disseminate ~~guidelines and training~~ on principled policing, specifically procedural justice and implicit bias, for all peace officers described in subdivision (a) of Section 13510.

(2) "Procedural justice" means ~~the procedures used by police officers where citizens are treated fairly and with proper respect as human beings.~~ **an approach to policing based on giving people the opportunity to tell their side of the story, remaining neutral in decision-making and behavior, treating people with respect, and explaining actions in a way that communicates caring for people's concerns so as to demonstrate trustworthiness.**

(3) “Implicit bias” means thoughts or feelings about people of which one is unaware and can influence one’s own and others’ actions. **social groups that can influence people’s perceptions, decisions, and actions without awareness.**

(4) The course or courses of instruction ~~and the guidelines~~ shall stress procedural justice as a strategy for improving the relationship of trust between law enforcement and communities and how implicit bias can be a barrier to procedural justice.

(b) The course of ~~basic~~ training for peace officers shall include adequate instruction on procedural justice and implicit bias in order to foster mutual respect and cooperation between law enforcement and communities. The curriculum shall be evidence-based and shall be developed in consultation with appropriate groups and individuals who have expertise in procedural justice or implicit bias, including, but not limited to, law enforcement agencies that have demonstrated experience in procedural justice or implicit bias training, university professors who specialize in addressing and reducing racial and identity bias towards individuals and groups, and community organizations or members who specialize in civil or human rights and criminal justice. The course of instruction shall include, but not be limited to, consideration of each of the following subjects:

(1) Procedural justice as a strategy for improving the relationship of trust between law enforcement agencies and the communities they are sworn to serve.

(2) Implicit bias as a barrier to procedural justice.

(3) Historical and generational effects of policing.

(4) Interactive nature of policing goals, procedural justice, and implicit bias.

(c) The commission shall also ~~develop and disseminate guidelines and training~~ **certify and make training available** to train peace officers to be able to effectively teach the course of ~~basic~~ training on principled policing. The training course shall be structured so that experts on procedural justice and implicit bias train ~~small groups from~~ law enforcement agencies to be able to effectively teach the concepts, principles, and research behind procedural justice and implicit bias to colleagues within their departments. Participating law enforcement agencies ~~shall~~ **are encouraged to** send at least one police executive **or manager** and one training officer to the training course. Law enforcement agencies are encouraged to attend the training course with at least one community member. Upon completion of the training course, peace officers from participating law enforcement agencies shall be ~~certified~~ **qualified** by the commission to conduct the course of ~~basic training~~ on principled policing for colleagues in their respective agencies.

(d) The commission shall offer the course of ~~basic training~~ on principled policing and the training ~~course~~ on a ~~semiannual~~ **quarterly** basis in regional training centers across the state commencing in June 2017.

(e) No later than June 1, 2018, the commission shall evaluate its current course of basic training and promulgate a plan to incorporate the concepts of principled policing, as set forth in this section, into its course of basic training and shall require each peace officer described in subdivision (a) of Section 13510 to complete a refresher course no less frequent than every five years.

~~SEC. 2~~*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: David Billingsley

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

AB 2655 (Weber) – As Amended March 17, 2016

SUMMARY: Authorizes an extension of the court's jurisdiction to declare a forfeiture and authority to release bail for not more than 90 days if the arraignment is properly continued to allow the prosecutor time to file the complaint and the defendant requests the extension in writing or in open court.

EXISTING LAW:

- 1) Requires a court in open court declare forfeited the undertaking of bail or the money or property deposited as bail if, without sufficient excuse, a defendant fails to appear for any of the following: arraignment, trial, judgment, any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required, and to surrender himself or herself in execution of the judgment after appeal. (Pen. Code, § 1305, subd. (a).)
- 2) States that the court shall not have jurisdiction to declare a forfeiture and the bail shall be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment. (Pen. Code, § 1305, subd. (a).)
- 3) Specifies that if the amount of the bond or money or property deposited exceeds four hundred dollars (\$400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. (Pen. Code, § 1305, subd. (b).)
- 4) Provides that the surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:
 - a) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture. (Pen. Code, § 1305, subd. (b)(1).)
 - b) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond. (Pen. Code, § 1305, subd. (b)(2).)
 - c) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on the bond. (Pen. Code, § 1305, subd. (b)(3).)
- 5) States that if the defendant appears either voluntarily or in custody after surrender or arrest in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if the notice is required, the court shall, on its own motion at the time the defendant first appears in court on the case in which the forfeiture was entered, direct the order of

- forfeiture to be vacated and the bond exonerated. (Pen. Code, § 1305, subd. (c)(1).)
- 6) Provides that if, outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180 day period, the court shall vacate the forfeiture and exonerate the bail. (Pen. Code, § 1305, subd. (c)(3).)
 - 7) States that instead of exonerating the bond, the court may order the bail reinstated and the defendant released on the same bond if both of the following conditions are met:
 - a) The bail is given prior notice of the reinstatement; and (Pen. Code, § 1305, subd. (c)(4)(A).)
 - b) The bail has not surrendered the defendant. (Pen. Code, § 1305, subd. (c)(4)(B).)
 - 8) Specifies that in the case of a permanent disability, the court shall direct the order of forfeiture to be vacated and the bail or money or property deposited as bail exonerated if, within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice, if notice is required, it is made apparent to the satisfaction of the court that specified conditions are met. (Pen. Code, § 1305, subd. (d).)
 - 9) States that bail permits a defendant to be released from custody by posting bond, which is a promise to pay the bond amount unless the defendant meets the conditions, which is generally to make all of their court appearances. (Pen. Code, § 1269.)
 - 10) States that defendants forfeit their bail when they abscond, i.e. when the defendant fails to appear for their court hearing without a valid excuse. (Pen. Code, § 1275, 1305.)
 - 11) Allows the bail surety agents may contest bail forfeiture by filing a motion to vacate the forfeiture of bail. (Pen. Code, § 1305.)
 - 12) Provides that if an action against a defendant who has been admitted to bail is dismissed, the bail shall not be exonerated until a period of 15 days has elapsed since the entry of the order of dismissal. (Pen. Code, § 1303.)
 - 13) States that if, within 15 days from dismissal, the defendant is arrested and charged with a public offense arising out of the same act or omission upon which the action or proceeding was based, the bail shall be applied to the public offense. (Pen. Code, § 1303.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "This legislation addresses an appeal by a California court to change an undesirable outcome based on strict statutory language. This bill will extend the amount of time a prosecuting agency has to file a criminal complaint, from 15 days to 90 days, to ensure that a defendant is not required to post multiple bonds at no fault of their own.

“AB 2655 will provide flexibility to courts and district attorneys in accommodating any

delays in filing a criminal complaint. Before the *People vs. Indiana Lumbermen's Insurance case*, the common practice of the court was to continue the arraignment, retain jurisdiction of the defendant's bond, and provide more time for the district attorney to file a criminal complaint. By making this clarification, state resources will be saved by not having a court re-issue a warrant, law enforcement re-arrest a defendant, and a jail re-booking a defendant following the strict 15 day period in the statute."

- 2) **Bail:** Bail is a security given to the court to guarantee a defendant's future attendance at court proceedings. The amount of bail required is typically set according to the local bail schedule that lists common offenses and a suggested amount. These bail schedules are set by county judges. At arraignment, the magistrate will review the case and set bail in an amount he or she deems sufficient to ensure the defendant's appearance. While the usual practice is to adhere to scheduled bail, either the prosecution or the defense may argue for a departure from the bail schedule based on aggravating and mitigating factors, danger to the public, and ties to the community.

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

Most individuals that post bail go through a bail bondsman. The individual pays the bail bondsman a premium and the bail bondsman posts the full amount of the bail. The premium is generally 10% of the bond. The premium is the payment from the individual to the bail bondsman for posting the full amount of the bail. The premium is non-refundable. When the court exonerates the bail, the bail money is returned to the bail bondsman whom posted the bail. If a criminal complaint is filed, the bail is exonerated when the case is over, or the defendant is taken into custody. In either of those cases, the bail is no longer needed to secure the defendant's appearance. The bail is also exonerated if no criminal complaint is filed within 15 days from the date of the arraignment. The arraignment is the initial court appearance. A defendant that is arrested and bails out immediately is normally given an arraignment date of the next business day to appear in court.

- 3) **Requiring Exoneration of Bail Bond after 15 Days if No Complaint is Filed Results In Individuals Paying Premiums for Two Bail Bonds:** The office of the district attorney is not required to file criminal charges immediately, or even within a time frame of 30 or 60 days. Criminal charges must be filed before the applicable statute of limitations period.

There are a variety of reasons a district attorney's office might not file a charge immediately. Sometimes there is a need for additional investigation to determine if there is sufficient evidence to file charges. In cases involving drugs, there might be a delay to wait on lab results. Sometimes charges are not filed immediately because there has not been an opportunity for a district attorney responsible for charging crimes to review the police report or other evidence.

When bail has been posted on behalf of an individual, a delay in the filing of criminal

charges can result in the bail being released (exonerated) by the court. Current law requires the court to exonerate bail if no complaint has been filed within 15 days of the arraignment. If the district attorney's office files charges after the bail has been exonerated, the individual can be required to post bail a second time. This is particularly problematic when an individual has posted bail through a bail bondsman. In those situations, even though bail has been exonerated, the individual does not get back the premium he or she paid to the bail bondsman. If the individual is required to post a second bail, it results in substantial expense. If the individual does not have the money to pay a second premium to a bail bondsman, the defendant will be taken into custody, even though they had already posted bail once before.

This bill allows an extension of 90 days before being required to exonerate bail if no complaint is filed. Such an extension would require the arraignment to be continued and a request to be made the defendant in writing or in open court. That extension allows for situations where the district attorney's office has not completed their investigation, or there has been some other delay in making a decision about whether to file criminal charges.

- 4) **Argument in Support:** According to *The California Attorneys for Criminal Justice*, "Under Penal Code section 1305, the defendant's bail must be released if no criminal complaint is filed within 15 days of the first scheduled arraignment. Unfortunately, the statute contained no provision for extending the 15-day period. As a result, whenever the District Attorney is delayed in filing a criminal complaint, a defendant may be forced to pay for a second bail.

"In the *People v. Indiana Lumbermen's Insurance* (2010) 190 Cal.App. 4th, 823, the insurance company argued that the trial court had no jurisdiction to forfeit the bond because a complaint was not filed within 15 days of the original date set for a criminal defendant's arraignment, as provided for in §1305(a). The court concluded that the trial court lost jurisdiction to order forfeiture of the bond.

"Before this decision, the courts regularly continued an arraignment without forfeiting the bond until the DA determined whether or not to file charges. By taking away a court's jurisdiction to declare a forfeiture after the 15 day time window, *Lumbermen's* changed that practice in a significant way.

"Due to this change, we have faced circumstances where our clients have been forced to post a bond twice, once when initially arrested, and after the DA's decision to file formal charges beyond the statutory 15-day deadline. This is an unjust result because it forces the defendant to post bond twice due to no fault of the defendant. This ambiguity in this section handcuffs the court without allowing discretion, limiting what commonly occurred what commonly occurred commonly in practice.

"In addition, by not allowing this continuance, this rigidity costs taxpayers of this state substantial amounts of money used on wasted law enforcement, jail and court hours to re-arrest and re-book the defendant. The court in *Lumberman's* did not find the outcome satisfying:

"[w]e do not consider this to be a satisfying outcome. We agree with county counsel that it makes more sense, in terms of public policy, to permit a court to continue the arraignment to give the prosecuting agency more time to decide whether to file charges while still retaining jurisdiction to order forfeiture of the bond if the defendant fails to

appear at the subsequent arraignment. However, if that was the Legislature's intent, it has failed to say so. The statute contains no provision for extending the 15-day period within which the prosecuting agency is required to file the complaint. We may not read into the statute a provision that is clearly not encompassed within the statutory language ... The Legislature may amend the statute if it finds that the current language does not comport with its intentions. *Id* at 830.

“We are acting upon the court’s recommendation in amending the statute to avoid this dissatisfying and unjust result.

5) **Related Legislation:** AB 1854 (Bloom), requires the district attorney, county counsel, or applicable prosecuting agency to recover attorney’s fees out of the forfeited bail moneys. AB 1854 is awaiting referral in the Senate Rules Committee.

6) **Prior Legislation:**

- a) AB 1082 (Linder) of the 2015-2016 Legislative Session, would have extended from 10 to 12 days the notice of motion a surety must give the court prior to requesting an extension of the 180 day period in which the surety must return an offender to court in order to avoid a permanent forfeiture of bail. AB 1082 was referred Assembly Public Safety Committee, but was never heard.
- b) AB 1118 (Hagman), of the 2013-2014 Legislative Session, would have required the Judicial Council, on or before January 1, 2015, to prepare, adopt and annually revise a statewide bail schedule for all bailable felony, misdemeanor, and infraction offenses except Vehicle Code infractions. AB 1118 failed passage in the Senate Public Safety Committee.
- c) AB 805 (Jones-Sawyer), Chapter 17, Statutes of 2013, provides that in setting bail, a judge or magistrate may consider factors such as the report prepared by investigative staff for the purpose of recommending whether a defendant should be released on his/her own recognizance.
- d) AB 723 (Quirk), of the 2013-2014 Legislative Session, would have allowed a person on post-release community supervision who has a revocation petition filed against him or her to file an application for bail with the superior court. AB 723 was held on the Senate Appropriations Committee Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice (Sponsor)
American Civil Liberties Union of California
California Department of Insurance
California Public Defenders Association
Ella Baker Center for Human Rights
Legal Services for Prisoners with Children

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 2666 (Baker) – As Amended March 17, 2016

SUMMARY: Increases the punishment for a second or subsequent violation of felon in possession of a firearm from 16 months, two, or three years in state prison to four, five, or six years in state prison.

EXISTING LAW:

- 1) Requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to Department of Justice (DOJ) to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm (Pen. Code §, subds. 28160-28220); and
- 2) Requires that, upon receipt of the purchaser's information, DOJ shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is prohibited from purchasing a firearm. (Pen. Code § 28220.)
- 3) Provides that it shall be unlawful for the following people to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce: (18 USC § 922(g).)
 - a) Who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
 - b) Who is a fugitive from justice;
 - c) Who is an unlawful user of or addicted to any controlled substance, as defined;
 - d) Who has been adjudicated as a mental defective or who has been committed to a mental institution;
 - e) Who, being "an alien" —
 - i) is illegally or unlawfully in the United States; or
 - ii) except as specified, has been admitted to the United States under a non-immigrant visa, as defined;

- f) Who has been discharged from the Armed Forces under dishonorable conditions;
 - g) Who, having been a citizen of the United States, has renounced his citizenship;
 - h) Who is subject to a court order that —
 - i) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 - ii) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - (1) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
 - (2) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
 - i) Who has been convicted in any court of a misdemeanor crime of domestic violence
- 4) Provides that certain people are prohibited from owning or possessing a firearm. This includes (Pen. Code §§ 29800; 23515; 29805.):
- a) Anyone convicted of a felony;
 - b) Anyone addicted to a narcotic drug;
 - c) Any juvenile convicted of a violent crime with a gun and tried in adult court;
 - d) Any person convicted of a federal crime that would be a felony in California and sentenced to more than 30 days in prison, or a fine of more than \$1,000;
 - e) Anyone convicted of certain violent misdemeanors, e.g., assault with a firearm; inflicting corporal injury on a spouse or significant other; brandishing a firearm in the presence of a police officer; and
 - f) Provides that a violation of these provisions is a felony.
- 5) Specifies a ten year ban for anyone convicted of numerous misdemeanors involving violence or threats of violence. (Pen. Code § 29805.)
- 6) Provides that a violation of these provisions of the ten year firearm ban may be sentenced to a year in the county jail or up to 3 years in state prison, as specified. (Pen. Code § 29805.)

- 7) Provides that persons who are bound by a temporary restraining order or injunction or a protective order issued under the Family Code or the Welfare and Institutions Code, may be prohibited from firearms ownership for the duration of that court order. (Pen. Code § 29825.)
- 8) Specifies that the Attorney General maintains an online database known as the Armed Prohibited Persons File (“APPS”). The purpose of APPS is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. The information contained in APPS is only be available to specified entities through the California Law Enforcement Telecommunications System, for the purpose of determining if persons are armed and prohibited from possessing firearms. (Pen. Code § 30000.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "A felon who is found to be illegally in possession of a firearm is precisely the individual on whom we should be focusing our limited law enforcement and public safety efforts. We need to get guns out of their hands. Yet California law only slaps their hands when these felons are found to illegally possess a firearm."
- 2) **Prohibited Persons:** California has several laws that prohibit certain persons from purchasing firearms. All felony convictions lead to a lifetime prohibition, while specified misdemeanors will result in a 10-year prohibition. A person may be prohibited due to a protective order or as a condition of probation. Another prohibition is based on the mental health of the individual. If a person communicates to his or her psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for six months, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat. (Welf. & Inst. Code, § 8100 (b) (1).] If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103(f).] For the provisions prohibiting a person from owning or possessing a firearm based on a serious threat of violence or based on admittance into a facility as a threat to self or others, the person has the right to request a hearing whereby the person could restore his or her right to own or possess a firearm if a court determines that the person is likely to use firearms or other deadly weapons in a safe and lawful manner. [WELF. & INST. CODE, § §8100(b) (1) and 8103(f).]

DOJ developed the Armed Prohibited Persons System (APPS), an automated system for tracking handgun and assault weapon owners in California who may pose a threat to public safety. (Penal Code Section 30000 et seq.) APPS collects information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. DOJ receives automatic notifications from state and federal criminal history systems to determine if there is a match

in the APPS for a current California gun owner. DOJ also receives information from courts, local law enforcement and state hospitals as well as public and private mental hospitals to determine whether someone is in a prohibited status. When a match is found, DOJ has the authority to investigate the person's status and confiscate any firearms or weapons in the person's possession. Local law enforcement may also request from DOJ the status of an individual, or may request a list of prohibited persons within their jurisdiction, and conduct an investigation of those persons.

According to DOJ, about 50% of the persons on APPS are prohibited due to criminal history; about 30% due to mental health status, and about 20% due to active restraining orders.

- 3) **Overview of Current Law:** California for many years has required registration of handguns at point of transfer of ownership. In addition, persons who move into the state with handguns have to register the same and licensed collectors who acquire guns outside the state have to register them as well. There is also a voluntary system of firearms that has been in code for over 20 years and is now reflected in Penal Code Section 28000. The exact dates as to when these requirements have applied to the following categories are subject to question, but they appear to be as follows:
- a) California residents who acquired a handgun from an in-state source and the transfer took place in California after September 30, 1953 by virtue of the enactment of then Penal Code Section 12072 which was added by virtue of the enactment of the Dangerous and Deadly Weapons Control Law. In 1953, statutes went into effect at an earlier timer than is the case today.
 - b) An individual, who acquired a handgun outside of state, was not a California resident at the time of acquisition and brought the guns here after January 1, 1998 as new California residents.
 - c) An individual who acquired a handgun as a California residents in mail order or other transactions from an out-of-state after November 8, 1967. In 1967, AB 1324 (Biddle), Ch. 1282/1967 required anyone who was not state licensed as a dealer who acquired a handgun from an out-of-state source had to register the gun with DOJ. This was former Penal Code Section 12079 and it was repealed in 1988 as obsolete in a Department of Justice sponsored bill on the basis federal law and subsequent legal developments covered it.
 - d) Since October 22, 1968 anyone who acquires a firearm from an out-of-state source after that date must have that transaction brokered through an in-state federally licensed [and in California state licensed as well] firearms dealer with the transaction being subject to state requirements. In California this would include the waiting period, background checks, gun registration etc. That federal requirement under various proposals would make that a California state law requirement as well as is now the case in Maryland and Oregon.

Because of confusion over dates and for other reasons, the Department of Justice has taken the position that it will accept for registration and place in the centralized registry using the "voluntary system" codified in Section 28000 of the Penal Code the ownership of a firearm

where the person is not within a prohibited status, the gun is not reported lost or stolen, and the person is at least 18 years of age.

However, in the normal run-of-the mill transaction where someone goes into a dealership, fills out paperwork, goes through the waiting period-background check system, save in very few situations, DOJ is not notified that a person who applied to acquire a firearm and was cleared to take possession of that firearm took possession of that firearm. In most transactions, the process works so that the dealer pre-registers the gun in the recipient's name. Only if the gun is not picked up is DOJ to be notified. It is not uncommon to have handguns to be pre-registered to multiple persons or other registration issues that prevent guns from otherwise being properly registered. This issue is magnified by the huge spikes in DROS transactions and will be even more problematical come January 1, 2014 when registration applies to all gun transactions.

After the waiting period has expired and the background check is completed, current law requires the dealer to record on the DROS form the date and time of delivery of the firearm to the gun recipient. They are also required to provide the recipient of the gun his DROS form if requested though the timing is unclear – See SB 41 discussion below.

The DROS form prepared by the DOJ and used by licensed dealers in California, as modified October 2003, does contain at the top under "Transaction Information" a line for both "Delivery Date" and "Time" of that delivery, which reflects the changes made by SB 824 (Scott), Ch. 502/2003. Dealers must keep that form and make it available for inspection by law enforcement officials; however, there is some debate about whether that information must be submitted to DOJ as a matter of course.

Prior to SB 824 Legislative Counsel issued an opinion that DOJ could require dealers to write the delivery date on DROS register and also make other changes to the DROS form. Dealers are also currently required to provide a copy of the DROS form when the buyer takes possession of the firearm if the buyer asks for it. Lastly, existing law allows persons to check with DOJ to determine whether DOJ lists them as the owner of any firearm. The language of Penal Code § 28000 also is opaque enough so that a person who receives a gun from a dealer just to protect himself or herself can register the gun in his or own name if the registration is not properly done.

However, DOJ could not compel dealers to submit the information on delivery to DOJ. DOJ could only enter that information into its Automated Firearms System (AFS) if DOJ obtains the delivery information by physically inspecting the registry kept by dealers. Given this now applies to rifles and shotguns as of January 1, 2014.

- 4) **On-Going Concerns for Prison Overcrowding:** On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:
- 143% of design bed capacity by June 30, 2014;
 - 141.5% of design bed capacity by February 28, 2015; and,
 - 137.5% of design bed capacity by February 28, 2016.

In February of last year the administration reported that as of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design

bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

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

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

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

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

- 5) **Argument in Support:** According to *California State Sheriffs' Association*, "Assembly Bill 2666 provides that subsequent convictions for being a felon in possession of a firearm shall be punished by imprisonment for a term of four, five, or six years.

"Existing law provides that a felon in possession of a firearm is guilty of a felony punishable by imprisonment for a term of 16 months, or two or three years. However, current law does not provide for increased penalties for subsequent offenses.

"Gun possession by felons is a concern for the general public. A convicted felon has already proven a disregard for society's laws, which is why he or she is prohibited from possessing guns. AB 2666 provides a necessary enhancement to deter individuals from reoffending."

- 6) **Argument in Opposition:** According to the *California Public Defenders Association*, "Existing law provides that any person convicted of a felony under the laws of the United States, the State of California, or any other state or country, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony. Existing law prescribes the punishment for that felony as imprisonment for a term of 16 months, or 2 or 3-years in the state prison.

"This bill would provide that the punishment for subsequent convictions of that felony would be imprisonment for a term of 4, 5, or 6 years in the state prison. By creating a new crime, this bill would impose a state-mandated local program. The bill would also make additional technical, no substantive changes.

"Over the past several years, Criminal Justice Realignment (AB 109) and Proposition 47 have been passed in order to reduce state prison population. Proposition 47 was passed by

59.6 percent of California voters less than 2 years ago. The voters have spoken on this issue. At this point, the effects on crime of Proposition 47 are unknown.

"In addition, Proposition 47 and AB 109 have helped to reduce prison population, as ordered by the United States Supreme Court. Our Governor and our Legislature have worked very hard to reduce the constitutionally impermissible overcrowding in California prisons, this bill would undo some of that hard work by increasing prison population."

7) Prior Legislation:

- a) SB 755 (Wolk), of the 2013-2014 Legislative Session, would have added specified offenses to the list of misdemeanors that result in a 10-year prohibition on firearms and ammunition possession, and adds certain misdemeanors related to substance abuse for which a violation of two or more within a three-year period will result in a 10-year prohibition on firearms possession. SB 755 was vetoed by the Governor.
- b) SB 819 (Leno), Chapter 743, Statutes of 2011, provided that the Department of Justice may use dealer record of sale funds for costs associated with its firearms-related regulatory and enforcement activities regarding the possession as well as the sale, purchase, loan, or transfer of firearms, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association
Crime Victims United
Gun Owners of California

Opposition

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

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 2687 (Achadjian) – As Introduced February 19, 2016
As Proposed to be Amended in Committee

SUMMARY: Conforms prohibitions and punishments for drivers that have passengers for hire when they commit specified offenses related to Driving Under the Influence (DUI) to ensure consistent treatment with commercial drivers. Specifically, **this bill:**

- 1) Makes it unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a motor vehicle when a passenger for hire, is a passenger in the vehicle at the time of the offense.
- 2) Specifies that it is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a motor vehicle, as specified, and concurrently do any act or neglect any duty that proximately causes bodily injury to another person other than the driver.
- 3) Defines “passenger for hire” as “a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any other person having an interest in the vehicle.”

EXISTING LAW:

- 1) It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle. (Veh. Code, § 23152, subd. (a).)
- 2) It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. (Veh. Code, § 23152, subd. (b).)
- 3) In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving. (Veh. Code, § 23152, subd. (b).)
- 4) It is unlawful for a person who is addicted to the use of any drug to drive a vehicle. (Veh. Code, § 23152, subd. (c).)
- 5) It is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210. (Veh. Code, § 23152, subd. (d).)

- 6) In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving. (Veh. Code, § 23152, subd. (d).)
- 7) It is unlawful for a person who is under the influence of any drug to drive a vehicle. (Veh. Code, § 23152, subd. (e).)
- 8) It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle. (Veh. Code, § 23152, subd. (f).)
- 9) If any person is convicted of a violation of Vehicle Code Section 23152, and a minor under 14 years of age was a passenger in the vehicle at the time of the offense, the court shall impose the following penalties in addition to any other penalty prescribed:
 - a) If the person is convicted of a violation of Section 23152 punishable under Section 23536, the punishment shall be enhanced by an imprisonment of 48 continuous hours in the county jail, whether or not probation is granted, no part of which shall be stayed. (Veh. Code, § 23572, subd. (a)(1).);
 - b) If a person is convicted of a violation of Section 23152 punishable under Section 23540, the punishment shall be enhanced by an imprisonment of 10 days in the county jail, whether or not probation is granted, no part of which may be stayed. (Veh. Code, § 23572, subd. (a)(2).)
 - c) If a person is convicted of a violation of Section 23152 punishable under Section 23546, the punishment shall be enhanced by an imprisonment of 30 days in the county jail, whether or not probation is granted, no part of which may be stayed. (Veh. Code, § 23572, subd. (a)(3).)
 - d) If a person is convicted of a violation of Section 23152 which is punished as a misdemeanor under Section 23550, the punishment shall be enhanced by an imprisonment of 90 days in the county jail, whether or not probation is granted, no part of which may be stayed. (Veh. Code, § 23572, subd. (a)(4).)
- 10) Defines "commercial motor vehicle" as "any vehicle or combination of vehicles that requires a class A or class B license, or a class C license with an endorsement issued for the following vehicles:
 - a) A double trailer; (Veh. Code, § 15278, subd. (a)(1).)
 - b) A passenger transportation vehicle, which includes, but is not limited to, a bus, farm labor vehicle, or general public paratransit vehicle when designed, used, or maintained to carry more than 10 persons including the driver; (Veh. Code, § 15278, subd. (a)(2).)
 - c) A schoolbus. (Veh. Code, § 15278, subd. (a)(3).)

- d) A tank vehicle; and (Veh. Code, § 15278, subd. (a)(4).)
 - e) A vehicle carrying hazardous materials, as defined, that is required to display placards pursuant to Section 27903, unless the driver is exempt from the endorsement requirement as specified.
- 11) Defines "charter party carriers of passengers" as "every person engaged in the transportation of person by motor vehicle for compensation, as specified, over any public highway in the state." (Pub. Utilities Code, § 5360.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "When the San Luis Obispo County District Attorney's office was prosecuting a case involving two passenger for hire drivers, they found that the Blood Alcohol Content (BAC) level for passenger for hire vehicles was inconsistent with other commercial vehicles. Existing law states that the BAC level for commercial vehicles, which includes public transportation such as buses, is .04 while current law for drivers of passenger for hire vehicles is .08. This legislation would hold the drivers of passenger for hire vehicles to the strictest standard and ensure passenger and pedestrian safety."

2) **DMV License Classes:**

DMV issues three classes of licenses: A, B, and C. An individual needs a specific class of license in order to legally drive certain vehicles, or tow trailers of a certain weight. Class A licenses allow an individual to drive the largest and heaviest vehicle/trailers. A non-commercial class C license is the standard license that most people have.

Commercial Class A license allows a person to drive any legal combination of vehicles and any vehicles covered under Classes B and C. A Commercial Class A License allows individual to drive 18 wheel tractor trailers.

Commercial Class B license allows a person to drive a single vehicle with gross vehicle weight rating of more than 26,000 lbs., a three axle vehicle weighing over 6,000 lbs, a bus with endorsement, and any vehicle covered under Class C.

Commercial Class C License: Allows a person to drive a vehicle carrying hazardous material which require placards.

Basic Class C License allows a person to drive a 2 axle vehicle with a gross vehicle weight rating of 26,000 lbs. or less, a 3 axle vehicle weighing 6,000lbs. or less, a housecar less than 40 feet, a single vehicle with a gross vehicle weight rating of 10,000 lbs. or less.

3) **Commercial Vehicles:**

Current law defines "commercial motor vehicle" as "any vehicle or combination of vehicles that requires a class A or class B license, or a class C license with an endorsement issued for

the following vehicles:

- a) A passenger transportation vehicle, which includes, but is not limited to, a bus, farm labor vehicle, or general public paratransit vehicle when designed, used, or maintained to carry more than 10 persons including the driver; (Veh. Code, § 15278, subd. (a)(2).)
 - b) A double trailer; (Veh. Code, § 15278, subd. (a)(1).)
 - c) A schoolbus; (Veh. Code, § 15278, subd. (a)(3).)
 - d) A tank vehicle; or (Veh. Code, § 15278, subd. (a)(4).)
 - e) A vehicle carrying hazardous materials, as defined, that is required to display placards pursuant to Section 27903, unless the driver is exempt from the endorsement requirement as specified.
- 4) **Under Current Law, Taxi Drivers and Ride Sharing Drivers Have Different Alcohol Standards than a Drivers of Commercial Vehicles:** Under current law individuals driving “commercial vehicles” are prohibited from driving such a vehicle with .04 or more Blood Alcohol Content (BAC), at the time of driving. Generally, individuals are prohibited from driving if they have .08 or more BAC. Taxi drivers and drivers for ride sharing services (Uber, Lyft) are governed by the .08 limit. That limit applies whether or not there are passengers in their vehicles.

Under current law commercial vehicles include a vehicle that can carry more than 10 people. This encompasses bus drivers and individuals driving larger shuttles. One of the reasons the law imposes lower alcohol limits for drivers of commercial vehicles is that commercial vehicles are much larger vehicles with a greater potential to cause injury and death in the event of a collision. That particular concern is not present with taxi drivers and ride sharing drivers, who are operating standard size vehicles.

However, commercial vehicles do include passenger transportation vehicle when designed, used, or maintained to carry more than 10 persons including the driver. (Veh. Code, § 15278, subd. (a)(2). Such vehicles encompasses shuttles and larger vans used in manners that would be consistent with the definition in this bill of “passenger for hire.” A lower limit for driver’s of commercial vehicles is also consistent with the increased regulations that are placed on commercial driver’s generally.

Taxi drivers and drivers for hire, such as Uber, are providing a commercial service to the public. The government applies different legal standards and regulatory frameworks to commercial service providers of all varieties. Such regulations are in place to ensure public trust and provide consumer protections. A lower limit for drivers of passengers for hire is consistent with those regulatory goals.

- 5) **Proposed Amendments:** The amendments proposed to be taken in Committee delete language requiring the court to impose an additional and consecutive term of 60 days in county jail, when a person is convicted of having 0.04 percent or more of alcohol in his or her blood and driving a motor vehicle with a passenger for hire.

- 6) **Argument in Support:** According to *The California District Attorneys Association*, “Currently, Vehicle Code section 23152(d) places the legal blood alcohol limit at 0.04 percent for commercial motor vehicle drivers. Neither taxis, nor private vehicles engaged in the commercial transport of passengers, are considered commercial vehicles, and operators are not required to have a commercial driver’s license. Thus, despite engaging in the business of transporting passengers, these drivers are not held to any higher standard of behavior.

“These quasi-commercial drivers present an increased risk to public safety when driving under the influence of alcohol or drugs while carrying passengers for hire. Were they to be involved in a traffic collision, it is likely that their passengers would suffer injury in addition to any injuries inflicted upon pedestrians or occupants of other involved vehicles. This behavior also violates their passengers’ trust that they will be able to get their passengers safely from point A to point B, despite the frequency with which we encourage the use of these alternatives to drinking and driving.”

- 7) **Argument in Opposition:** According to The California Public Defenders Association, “This bill would expand this subdivision to include not only commercial drivers, but any one who carries passengers for hire, such as taxi drivers, or Uber or Lyft drivers, even though the hazard to the public is the same as for any other passenger vehicle. Therefore, the original rationale for the lower BA threshold of this subdivision is not justified.

“Moreover, the definition of ‘passenger for hire’ is very loose and vague; namely, that it is ‘a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly....’ As phrased this *could* include a carpool, or friends that go ‘barhopping’ and buy the food or drinks for the driver of the vehicle, or even a woman on a date who expects ‘consideration’ for *driving* the other person during the date.

“If the driver is actually impaired (s)he can be convicted of 23152(a); but if (s)he isn’t impaired, all this bill does is make it easier to convict unimpaired drivers, even when they pose no hazard, but just happen to have a .04 BA.

“If the driver causes an accident and possibly injures someone (s)he can be convicted of reckless driving or vehicular manslaughter, and causing the accident can itself be considered evidence of impairment for DUI purposes.

“There are already available ways to prohibit the evil contemplated by this bill, and all this bill does is make it easier to convict the unimpaired.”

8) **Prior Legislation:**

- a) SB 871 (Burton), Chapter 298, Statutes of 2001, permits any person who suffers injury that is proximately caused by the driver of a commercial motor vehicle to recover treble damages from the driver’s employer where it is shown that the driver of a commercial motor vehicle was under the influence of alcohol or a controlled substance at the time that the injury was caused and that the driver’s employer willfully failed, as defined, at the time of the injury to comply with specified federal law requirements.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
California Council on Alcohol Problems.
California State Sheriffs' Association
Peace Officers Research Association of California

Opposition

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

Amended Mock-up for 2015-2016 AB-2687 (Achadjian (A) , Chang (A) , Low (A))

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

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

SECTION 1. Section 23152 of the Vehicle Code is amended to read:

23152. (a) It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.

(b) It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this article and Section 34501.16, percent, by weight, of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for a person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a narcotic treatment program approved pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code.

(d) (1) It is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210, or to drive a motor vehicle when a passenger for hire is a passenger in the vehicle at the time of the offense. A passenger for hire means a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any other person having an interest in the vehicle.

(2) In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle

if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(e) It is unlawful for a person who is under the influence of any drug to drive a vehicle.

(f) It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle.

SEC. 2. Section 23153 of the Vehicle Code is amended to read:

23153. (a) It is unlawful for a person, while under the influence of any alcoholic beverage to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(b) It is unlawful for a person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after driving.

(c) In proving the person neglected any duty imposed by law in driving the vehicle, it is not necessary to prove that any specific section of this code was violated.

(d) (1) It is unlawful for a person, while having 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210, or to drive a motor vehicle when a passenger for hire is a passenger in the vehicle at the time of the offense, and concurrently to do any act forbidden by law or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver. A passenger for hire means a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any other person having an interest in the vehicle.

(2) In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of performance of a chemical test within three hours after driving.

(e) It is unlawful for a person, while under the influence of any drug, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the

vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(f) It is unlawful for a person, while under the combined influence of any alcoholic beverage and drug, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.

(g) This section shall become operative on January 1, 2014.

SEC. 3. Section 23572 of the Vehicle Code is amended to read:

23572. (a) If any person is convicted of a violation of Section 23152 and a minor under 14 years of age was a passenger in the vehicle at the time of the offense, the court shall impose the following penalties in addition to any other penalty prescribed:

(1) If the person is convicted of a violation of Section 23152 punishable under Section 23536, the punishment shall be enhanced by an imprisonment of 48 continuous hours in the county jail, whether or not probation is granted, no part of which shall be stayed.

(2) If a person is convicted of a violation of Section 23152 punishable under Section 23540, the punishment shall be enhanced by an imprisonment of 10 days in the county jail, whether or not probation is granted, no part of which may be stayed.

(3) If a person is convicted of a violation of Section 23152 punishable under Section 23546, the punishment shall be enhanced by an imprisonment of 30 days in the county jail, whether or not probation is granted, no part of which may be stayed.

(4) If a person is convicted of a violation of Section 23152 which is punished as a misdemeanor under Section 23550, the punishment shall be enhanced by an imprisonment of 90 days in the county jail, whether or not probation is granted, no part of which may be stayed.

(b) The driving of a vehicle in which a minor under 14 years of age was a passenger shall be pled and proven.

(c) No punishment enhancement shall be imposed pursuant to this section if the person is also convicted of a violation of Section 273a of the Penal Code arising out of the same facts and incident.

~~(d) If any person is convicted of a violation of Section 23152 or 23153, and a passenger for hire was a passenger in the vehicle at the time of the offense, the court shall impose an additional and consecutive term of 60 days in the county jail, whether or not probation is granted, and no part of that term shall be stayed. A passenger for hire means a passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any other person having an interest in the vehicle.~~

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

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

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

AB 2709 (Quirk) – As Amended April 14, 2016

SUMMARY: Increases the punishments for selling, distributing or releasing balloons made of or attached to electrically conductive material. Specifically, **this bill:**

- 1) Sunsets existing provisions of law regarding electrically conductive balloon sales, distribution and release on January 1, 2018, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.
- 2) Prohibits selling or distributing balloons made of, or attached to, electrically conductive material.
- 3) Prohibits releasing balloons made of, or attached to, electrically conductive material.
- 4) Punishes selling or distributing balloons made of, or attached to, electrically conductive material as follows:
 - a) A first offense is punished as an infraction punishable by a fine of up to \$250; and
 - b) A second subsequent offense is punishable as a misdemeanor.
- 5) Punishes releasing balloons made of, or attached to, electrically conductive material as an infraction with a fine of up to \$250.
- 6) States that these prohibitions do not apply to manned hot air balloons, or to balloons used in governmental or scientific research projects.

EXISTING LAW:

- 1) Prohibits any person from selling or distributing any balloon made of electrically conductive material and filled with a gas lighter than air without:
 - a) Affixing an object of sufficient weight to the balloon or its appurtenance to counter the lift capability of the balloon,
 - b) Affixing a statement on the balloon, or ensuring that a statement is so affixed, that warns the consumer about the risk if the balloon comes in contact with electrical power lines, and
 - c) A printed identification of the manufacturer of the balloon. (Pen. Code, § 653.1, subd. (a).)

- 2) Prohibits any person from selling or distributing any balloon filled with a gas lighter than air that is attached to an electrically conductive string, tether, streamer, or other electrically conductive appurtenance. (Pen. Code, § 653.1, subd. (b).)
- 3) Prohibits any person from selling or distributing any balloon that is constructed of electrically conductive material and filled with a gas lighter than air and that is attached to another balloon constructed of electrically conductive material and filled with a gas lighter than air. (Pen. Code, § 653.1, subd. (c).)
- 4) Prohibits any person or group from releasing balloons made of electrically conductive material and filled with a gas lighter than air, outdoors as part of a public or civic event, promotional activity, or product advertisement. (Pen. Code, § 653.1, subd. (d).)
- 5) Punishes a violation of the above prohibited conduct as an infraction with a fine of not more than \$100, unless the person has twice been convicted of any of the above. A third or subsequent conviction is a misdemeanor. (Pen. Code, § 653.1, subd. (e).)
- 6) States that these prohibitions do not apply to manned hot air balloons, or to balloons used in governmental or scientific research projects. (Pen. Code, § 653.1, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "As each of us who has experienced power outages knows, loss of electricity means a halt and disruption to almost every kind of activity we engage in every day. Business operations and manufacturing can be halted, traffic signals and street lights can stop working, lights and computers at home can turn off and can even be damaged.

"Metallic balloons can cause power outages and cause a significant portion of preventable power outages. These shiny metallic balloons are made of electrically conductive material, and can cause significant damage to power lines and equipment when they come into close proximity to power lines and cause an electric arc. Costs to repair damaged equipment from just a single metallic balloon cost thousands of dollars. And the loss of power due to metallic balloons represents a significant cost to California's economy on the order of tens of millions of dollars. Even though balloons are currently required to have weights attached, the ongoing number of power outages due to metallic balloons is evidence that these requirements are not sufficient for addressing the problem. There are beautiful alternative balloons made of other materials that do not conduct electricity and do not put power lines at risk. While not all power outages can be avoided, power outages caused by metallic balloons can be prevented by prohibiting electrically conductive balloons from being sold in California, and phasing into currently available alternatives."

- 2) **Balloons and Power Outages:** Since 2011, there have been over 6,500 power outages in California caused by balloons made of or attached to electrically conductive material. These metallic balloons, or metallic balloon strings, are one of two primary types of balloons available for regular consumers. One type of balloons are typically constructed of Mylar nylon and coated with a metallic finish. When these electrically conductive metallic balloons

come into contact with electrical lines, they can cause a bridge which often results in a power outage. If these balloons are not weighted and they are released, they can travel for many miles and end up tangling in power lines far away from where they were released. In an average year, PG&E will have 300 outages caused by metallic balloons –affecting nearly 165,000 homes. (< <http://www.sanluisobispo.com/news/weather/weather-watch/article58874343.html> >) Moreover, Mylar is not a biodegradable material, meaning these balloons often end up in nature preserves or the ocean where wildlife eat the Mylar, most often resulting in wildlife death. Latex balloons, on the other hand, are both biodegradable (because they are made of rubber) and not electrically conductive.

This bill would only ban the first type of balloons in an effort to reduce the negative effect these balloons have on power and wildlife. This bill, if passed, would not go into effect until January 1, 2018. At that time, it would increase the potential fine from not more than \$100 to not more than \$250. Additionally, the bill would require only one prior conviction, rather than the existing requirement for two prior convictions, for selling and distributing balloons made of or attached to electrically conductive material for a violation to be punishable as a misdemeanor.

- 3) **Argument in Support:** According to *Pacific Gas and Electric Company*, “PG&E conducts public service announcements during the months of February, May and June when there is an increase in the number of Mylar balloons sold throughout the state due to various holidays. These efforts are meant to raise public awareness of the electric outage risks associated with Mylar balloons should they come into contact with our transmission and/or distribution lines. However, even with these efforts we have witnessed a steady increase in the number of Mylar balloon-related outages over the last ten years. Most notably, in 2015 alone we experienced 370 outages, impacting over 198 thousand customers spanning a total of over 14 million minutes without power.

“Mylar balloon-related outages are not solely a reliability issue. When making contact with power lines, there is a risk of wildfire. For example, last year the Webb Fire in Butte County which burned 75 acres was caused by a Mylar balloon making contact with power lines.

“PG&E takes our responsibility to provide safe, reliable and affordable electric delivery services to our customers seriously. Mylar balloon-related outages are a public safety issue and can impact both our residential and non-residential customers. Our non-residential customers include public safety providers, businesses, schools, hospitals and military facilities. PG&E supports AB 2709 in an effort to reduce outages and avoid the unnecessary adverse impacts that follow electric system outages.”

- 4) **Argument in Opposition:** According to the *California Teamsters Public Affairs Council*, “Our members are employed by four of the largest suppliers of helium gas in California, whose use in balloons constitutes approximately 20% of the sales of helium in this state. Each balloon contains 30-40 cents of helium and about 60 million foil balloons are sold in this state annually. As such, the bill would eliminate the sales of \$15-\$20 million in sales by our employers and would, therefore, be harmful to our members’ jobs.

“There is only one alternative to foil balloons. This is a plastic balloon material that is held under patent by a Japanese company. As such, this bill would create a state mandated monopoly for one company. Plastic balloons are already nearly twice the price of foil

balloons. This is a recipe for some very expensive birthday parties, weddings and anniversaries.

“Under current law, balloons need to be weighed down and it is unlawful to release them. While there are some outages that are caused by foil balloons, most do not cause service disruptions and are a small number in comparison to outages caused by animals, trees, accidents and other causes. Public education is the key to dealing with this issue, not a ban on an entire product.”

- 5) **Prior Legislation:** SB 1499 (Scott), of the 2007-2008 Legislative Session, would have increased the fine for a violation of those provisions punished as an infraction. The bill would have further specified the type of weight that must be attached to the balloon and the specifications for the required warning, and would have required that the consumer be provided a separate warning notice, as specified. The bill would also have prohibited a manufacturer or distributor from sending or shipping these types of balloons to retailers without the shipment containing a notice describing the retailer’s responsibilities. SB 1499 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Municipal Utilities Association (Sponsor)
California Fire Chiefs Association
City of Glendale Water and Power Department
Fire Districts Association of California
Los Angeles Mayor Eric Garcetti
Pacific Gas and Electric Company
Southern California Edison
Southern California Public Power Authority

Opposition

California Grocers Association
California Teamsters Public Affairs Council
The Balloon Council

Analysis Prepared by: Matt Dean / 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 2740 (Low) – As Amended March 15, 2016

SUMMARY: Creates a per se standard for driving under the influence of marijuana. Specifically, **this bill:**

- 1) Provides that it is a crime for a person who has 5 ng/ml or more of delta 9-tetrahydrocannabinol in his or her blood to drive a vehicle.
- 2) Additionally makes it an offense for a person, while having 5 ng/ml or more of delta 9-tetrahydrocannabinol in his or her blood, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, when the act or neglect proximately causes bodily injury to a person other than the driver.
- 3) Establishes a rebuttable presumption for each of those offenses that the person had 5 ng/ml or more of delta 9-tetrahydrocannabinol in his or her blood at the time of driving the vehicle if the person had 5 ng/ml or more of delta 9-tetrahydrocannabinol in his or her blood at the time of the performance of a chemical test within two hours of the driving.
- 4) Requires corroborating evidence, as specified, in addition to a level of 5 ng/ml or more of delta 9-tetrahydrocannabinol in the driver's blood, for a conviction for either of those offenses.

EXISTING LAW:

- 1) Provides that it is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of alcoholic beverage and drugs, to drive a vehicle. (Veh. Code, § 23152 subd. (a).)
- 2) Provides that it is unlawful for any person who is addicted to the use of any drug to drive a vehicle. (Veh. Code, § 23152 subd. (c).)
- 3) States that the fact that any person charged with driving under the influence of any drug or under the combined influence of alcohol and any drug that he or she is, or has been, entitled to use under the laws of this state shall not constitute a defense against any violation of the driving under the influence laws. (Veh. Code, § 23630.)
- 4) States that it is unlawful for any person who has 0.08% or more by weight of alcohol in his or her blood to drive a vehicle. (Veh. Code, § 23152 subd. (b).)

- 5) Provides that it is unlawful for any person who is addicted to the use of any drug to drive a vehicle. (Veh. Code, § 23152 subd. (c).)
- 6) States legislative intent that a person be subject to enhanced mandatory minimum penalties for multiple offenses within a period of 10 years, regardless of whether the convictions are obtained in the same sequence as the offenses had been committed. (Veh. Code, § 23217.)
- 7) States that if a person is convicted of a first violation of driving under the influence of alcohol, or drugs, or the combined influence of alcohol and drugs, that person shall be punished by imprisonment in the county jail for not less than 96 hours, at least 48 hours of which shall be consecutive, nor more than six months, and by a fine of not less than \$390 nor more than \$1,000. (Veh. Code, § 23536 subd. (a).) Further states that the person's privilege to drive a motor vehicle shall be suspended. (Veh. Code, § 2356 subd. (c).)
- 8) Provides that if a person is convicted of driving under the influence of alcohol, or drugs, or the combined influence of alcohol and drugs, and the offense occurred within ten years of a separate violation of driving under the influence, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than \$390 nor more than \$1,000. States that the person's privilege to drive a motor vehicle shall be suspended. (Veh. Code, § 23540 subd. (a).)
- 9) Provides that if a person is convicted of a violation of driving under the influence of alcohol, or drugs, or the combined influence of alcohol and drugs, and the offense occurred within ten years of a separate violation of driving under the influence, that person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year, and the person's privilege to drive a motor vehicle shall be revoked. (Veh. Code, § 23546 subd. (a).)
- 10) Provides that in prosecution for driving under the influence (DUI), it is a rebuttable presumption that the person had 0.08% or more blood alcohol concentration (BAC) level at the time of driving the vehicle if his or her BAC level is 0.08% at a chemical test performed within three hours after the driving. (Veh. Code, § 23152.)
- 11) Provides that in a prosecution for DUI, it is a presumption affecting the burden of proof that if the person had 0.05%, by weight, of alcohol in his or her blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense. (Veh. Code, § 23610 subd. (a)(1).)
- 12) States that if there was, at that time, 0.05% or more but less than 0.08%, by weight, of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense. (Veh. Code, § 23610 subd. (a)(2).)
- 13) Provides that if there was at that time 0.08% or more, by weight, of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense. (Veh. Code, § 23610 subd. (a)(3).)

- 14) States that in any county where the board of supervisors has approved, and the Department of Alcohol and Drug Programs has licensed, a program or programs pursuant to law, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete a licensed driving-under-the-influence program, in the driver's county of residence or employment, as designated by the court. (Veh. Code, § 23538 subd. (b).)
- 15) Provides that the court shall refer a first offender whose blood-alcohol concentration was less than 0.20%, 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 by law. (Veh. Code § 23538 subd. (b)(1).)
- 16) States that the court shall refer a first offender whose blood-alcohol concentration was 0.20% or more, by weight, or who refused to take a chemical test, to participate for at least six months or longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described by law. (Veh. Code, § 23538 subd. (b)(2).)
- 17) States that the court shall order a person to participate in an alcohol and drug problem assessment program pursuant to law, inclusive, and the related regulations of the State Department of Alcohol and Drug Programs, if the person was convicted of a violation of a DUI, as specified, that occurred within 10 years of a separate DUI, as specified, that resulted in a conviction. (Veh. Code, § 23646 subd. (b)(1).)
- 18) Provides that a court may order a person convicted of a DUI, as specified, to attend an alcohol and drug problem assessment program pursuant to this article. (Veh. Code, § 23646 subd. (b)(2).)
- 19) States that a preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle under the influence of alcohol is a field sobriety test and may be used by an officer as a further investigative tool. (Veh. Code, § 23612, subd. (h).)
- 20) Specifies that if the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required if arrested for driving a vehicle under the influence of alcohol or drugs, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test. (Veh. Code, § 23612, subd. (i).)
- 21) States that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for an offense allegedly committed in violation driving under the influence of drugs or alcohol. If a blood or breath test, or both, are

- unavailable, then the person shall give urine. (Veh. Code, § 23612, subd. (a)(1)(A).)
- 22) Provides that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood for the purpose of determining the drug content of his or her blood, if lawfully arrested driving under the influence of drugs or drugs and alcohol. If a blood test is unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test. (Veh. Code, § 23612, subd. (a)(1)(B).)
- 23) States that the testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of specified driving under the influence offenses. (Veh. Code, § 23612, subd. (a)(1)(C).)
- 24) Specifies that the person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation driving under the influence or driving under the influence causing injury, and (i) the suspension of the person's privilege to operate a motor vehicle for a period of one year, (ii) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within 10 years of a separate violation of specified offenses, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to the Department of Motor Vehicles (DMV) administrative action for driving under the influence of alcohol for an offense that occurred on a separate occasion, or (iii) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within 10 years of a two or more separate violations of specified offenses, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant DMV administrative action for driving under the influence of alcohol for an offense that occurred on a separate occasion, or if there is any combination of those convictions, administrative suspensions, or revocations. (Veh. Code, § 23612, subd. (a)(1)(D).)
- 25) States that if the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then the individual shall provide urine. (Veh. Code, § 23612, subd. (a)(2)(A).)
- 26) Provides that if the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood or breath, and the officer shall advise the person that he or she has that choice. (Veh. Code, § 23612, subd. (a)(2)(B).)
- 27) States that a person who chooses to submit to a breath test may also be requested to submit to a blood test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief and that clear indication are based. The officer shall advise the person that he or she is

required to submit to an additional test. The person shall submit to and complete a blood test. If the person arrested is incapable of completing the blood test, the person shall submit to and complete a urine test. (Veh. Code, § 23612, subd. (a)(2)(c).)

- 28) Requires that the officer advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law. (Veh. Code, § 23612, subd. (4).)
- 29) Specifies that a person lawfully arrested for an offense allegedly committed while the person was driving a motor vehicle under the influence, may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed. (Veh. Code, § 23612, subd. (d)(1).)
- 30) States that if a blood or breath test is not available, the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test. (Veh. Code, § 23612, subd. (d)(2).)
- 31) Provides that if the person, who has been arrested for specified violations of driving a motor vehicle under the influence of alcohol or drugs, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. (Veh. Code, § 23612, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "With the recent enactment of new laws formalizing the distribution of medical marijuana, and the anticipated voter initiative legalizing recreational use of marijuana, we are going to see a dramatic increase in the number of persons driving under the influence of marijuana, which will drastically impact public safety. The state must be prepared to address these developments. Every day there are more and more people driving on the road after using marijuana. In 2012, the California Office of Traffic Safety (OTS) released a study of weekend nighttime drivers that found more California drivers tested positive for marijuana than alcohol. AB 2740 prepares the state for new regulations and protects public safety by creating a per se prohibition on driving while having a specified amount of THC in the blood that is similar in intent and effect to making it unlawful to drive with a blood alcohol level of .08% or higher."
- 2) **Toxicologists Cannot Produce an Accurate Per Se Drug Impairment Standard:** Opponents' most persuasive arguments are that per se limits do not indicate that a driver is actually under the influence at the time they are operating a vehicle. *If a defendant is to be*

punished for driving under the influence, they should actually be under the influence at the time of they were operating a motor vehicle. Otherwise, drivers are merely being convicted of driving under the influence for having ingested a substance (legally or illegally) at some point prior to driving.

According to a 2011 National Highway Transportation and Safety Administration, Drug Recognition Expert Training Manual, "Toxicology has some important limitations. One limitation is that, with the exception of alcohol, *toxicology cannot produce 'per se' proof of drug impairment. That is, the chemist can't analyze the blood or urine and come up with a number that 'proves' the person was or wasn't impaired.*" (emphasis added). Additionally, The National Highway Transportation Safety Administration also noted in a 2015 report that "specific drug concentration levels cannot be reliably equated with a specific degree of driver impairment."¹ As the bill relates to the presence of THC (marijuana) in the system of a driver, "It is difficult to establish a relationship between a person's THC blood or plasma concentration and performance impairing effects. It is inadvisable to try and predict effects based on blood THC concentrations alone, and currently impossible to predict specific effects based on THC-COOH concentrations²."

The presence of drugs in the system of a driver is helpful when evaluating whether or not a person is driving under the influence. However, that evidence is far from conclusive. Under current law evidence of drug use can be used to argue that a driver was under the influence at the time they drove a vehicle. This bill would state that a person is in fact guilty if they have the proscribed amounts in their system at the time they were driving, with any subjective determination made by the officer that there was some "corroborating evidence" that the alleged offender was driving under the influence. The science appears conflicted on this issue and it is not clear that a driver would necessarily be impaired at these levels.

- 3) **The "Corroborating Evidence" Standard in this Bill is a Pretext to Convict a Person for Driving Under the Influence Based Solely on a Per Se Standard, Regardless of their Actual Level of Impairment at the Time they were Driving:** The bill provides a vague and illusory "corroborating evidence" provision. The provision reads as follows:

"A person may not be convicted of the offense described in this subdivision based solely on the blood test described in paragraph (2). Corroborating evidence independent of the blood test that the person's physical or mental ability to drive a vehicle has been impaired is required for conviction, and may include, but is not limited to, mental or physical signs of impairment, poor performance on one or more field sobriety tests, unsafe or inattentive driving, incriminating statements by the person, or testimony of other witnesses about the person's driving or sobriety."

However, this standard is merely a pretext to convict defendants solely on the basis of being at or above the per se limit. Failing to signal when making a right hand turn could be "corroborating" evidence under this standard. Additionally, the corroborating evidence need not rise to a level of actually *proving* anything. It's merely a threshold showing to allow the evidence that the person had 5 nanograms of delta 9-tetrahydrocannabinol in his or her blood

¹ National Highway Transportation Safety Administration, *Roadside Survey of Alcohol and Drug Use by Drivers* (February 2015).

² <http://www.nhtsa.gov/People/injury/research/job185drugs/cannabis.htm>

at the time of the performance of a chemical test within two hours of the driving. If that threshold standard is met, then the accused may be convicted of driving under the influence based on the per se chemical test, regardless of whether he or she was *actually* under the influence at the time he or she was operating a motor vehicle.

Generally, corroborating evidence is evaluated by a finder of fact, a jury, with the entire body of evidence, to determine whether or not an offender is guilty or not guilty of a crime. Corroborating evidence of guilt, whether circumstantial or direct evidence, is viewed as to whether it proves a defendant guilty "beyond a reasonable doubt" amongst all of the evidence in a particular case. This bill would apply this illusory "corroborating evidence" standard as a mere formality to open an evidentiary door, and allow a criminal defendant to be convicted of a crime solely on the evidence that he or she had 5 nanograms of delta 9-tetrahydrocannabinol in his or her blood at the time of the performance of a chemical test within 2 hours of the driving.

The corroborating evidence provision of this bill would not require the arresting officer to actually make a determination as to whether the driver is actually under the influence. If that were the case, then the existing law should remain intact and this bill is unnecessary. The officer should take the time to make an objective determination, based on his or her observations, as to whether an alleged offender is *actually* under the influence at the time he or she is driving. The entire body of evidence should be presented to the jury, including any chemical tests. A jury should not be told that the person driving is under the influence of marijuana simply because they had 5 nanograms of THC in their system at the time of a chemical test. This legislation makes that determination solely on whether the person had 5 nanograms of delta 9-tetrahydrocannabinol in his or her blood at the time of the performance of a chemical test within two hours of the driving.

4) 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.

- 5) **Conflicting Evidence on Per Se Standards for Driving Under the Influence of Drugs:** Under existing law, if a person's driving is impaired by being under the influence of a drug, he or she can be arrested and charged under Vehicle Code Section 23152(a). A preliminary alcohol screening test is not determinative of blood alcohol content, but is a field sobriety test which may be used as a further investigative tool in order to establish reasonable cause to believe a person was driving a vehicle while under the influence of alcohol. (See Vehicle Code § 23612 subd. (h).) If the officer decides to use the preliminary alcohol screening test, the officer shall advise the person that he or she is being asked to take the test to assist the officer in determining if he or she is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a chemical analysis of his or her blood, breath, or urine is not satisfied by the person submitting to a preliminary alcohol screening test. (Veh. Code § 23612 subd. (i).)

If the preliminary alcohol screening test indicates that there is no alcohol present, this may be an indicator of driving under the influence of drugs, taken together with other factors which provided the peace officer with the reasonable cause to stop the driver, such as erratic driving, failure of other field sobriety tests, etc. Existing law provides that a person who chose a breath test may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of a drug, or under the combined influence of alcohol and a drug, and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. (Vehicle Code § 23612 subd. (a)(2)(C).) That section also requires the officer to state in his or her report the facts upon which that belief and clear indication are based.

Although existing law provides the opportunity to obtain a blood or urine test that will reveal if the person is under the influence of drugs or under the combined influence of alcohol or drugs, the bill's sponsor has stated that law enforcement experiences significant difficulty obtaining filings or prosecutions in cases in which the driver had detectable amounts of drugs in his or her system, but did not have the requisite 0.08% blood alcohol concentration in

conjunction with the drugs.

This bill seeks to change the standards for determining whether a driver was under the influence at the time he or she was pulled over by law enforcement. The new standards would be per se amount of delta 9-tetrahydrocannabinol. This means that if a driver was operating a motor vehicle with the specified amount of delta 9-tetrahydrocannabinol in their system they would be automatically determined as driving under the influence, so long as there were any subjective corroborating evidence such as not following a traffic law.

Previous bills on this issue have sought to ban the presence of any measurable amount of any of these substances in the system of a driver at the time they are pulled over by law enforcement. Proponents of this legislation argue that these amounts are congruent with acceptable standards of impairment while operating a motor vehicle. Opponents argue that these amounts are not indicative of impairment and may represent residual amounts of narcotics in the system of drivers. The opponents object on the basis that these amounts may indicate that the person used the specified substance, but that the per se amounts do not indicate that a person was under the influence. Proponents counter that it is too difficult to convict a person of drugged driving if law enforcement has to prove that the defendant is under the influence based on observations (including observed driving), field sobriety tests, and chemical tests. They would prefer that the chemical tests stand alone, and that a conviction should result if a specified drug is present at a specified level in the system of the driver.

6) **The Time it Takes for a Drug to Be Eliminated from the System:** According to a report issued by the United Nations Office on Drugs and Crime:

Drugs vary by their elimination half-lives, which is the time required for the blood levels to decline by 50%. The half-life of a drug is heavily influenced by a variety of factors, including the individual's age, sex, physical condition and clinical status. A compromised liver and the concurrent presence of another disease or drug have the potential of enhancing the toxic effects of the drug by slowing down the elimination process. Under different clinical conditions, however, the process may be speeded up. Therefore, great variation may be found in the half-lives of the same drug.

Approximately six half-lives are required to eliminate 99% of any drug. Because the half-life of cocaine is relatively short, averaging one hour, only six hours are needed for the elimination of 99% of the drug. Cocaine metabolites have a longer half-life and can be detected for a considerably longer period of time through urine drug assays. Compared with cocaine, phenobarbital has a much longer half-life (80 to 120 hours), so that at least 480 hours, or 20 days, are required to eliminate 99% of the drug. Since there is much variation in the half-lives of different drugs and the absolute amount of drug present can be very small, it is crucial that the appropriate body fluid for analysis is selected for testing.

Elimination of ethanol [alcohol] follows a different pattern. Its levels decline almost linearly over time. The average elimination rate is between 15 mg/100 ml and 20 mg/100 ml (0.015-0.02 per cent) per hour, although rates of between 10 mg/100 ml and 30 mg/100 ml (0.01-0.03 per cent) per hour have also been

observed. In the alcoholic patient, the elimination rate is generally higher. In forensic calculations, a rate of 15 mg/100 ml (0.015%) per hour is usually used. (http://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1993-01-01_2_page005.html)

- 7) **Standard of Proof:** "For a defendant to be guilty of driving while under the influence of drugs in violation of Vehicle Code Section 23152(a), 'the drug(s) must have so far affected the nervous system, the brain, or the muscles of the individual as to impair to an appreciable degree the ability to operate a motor vehicle in a manner like that of an ordinarily prudent and cautious person in full possession of his or her faculties,'" citing *People v. Enriquez*, 42 Cal. App. 4th at p. 665; *Gilbert v. Municipal Court*, 73 Cal. App. 3d at p. 727. "Driving while under the influence of drugs involves a greater degree of impairment of an individual's faculties, and in that respect is not similar to merely being under the influence of drugs." [*People v. Canty*, 32 Cal. 4th 1266 (2004).]

This bill, in establishing a "per se" standard that would presume a person was under the influence if he or she had a specified amount of a drug, in his or her system, would effectively abolish the standard of proof set forth in the above-cited cases. Is it reasonable to presume that a person is in violation of the law prohibiting driving under the influence of drugs if the drugs have not "impaired to an appreciable degree the ability to operate a motor vehicle in a manner like that of an ordinarily prudent and cautious person in full possession of his or her faculties?" (*Canty, supra.*)

- 8) **No Exceptions for Prescription Medications:** This bill fails to include any exception for the ingestion of prescription medications. Opponents of this legislation have indicated that people who use marijuana medicinally and at heavier levels can have much higher THC levels than the proscribed nanograms in the bill and that they are not under the influence. Additionally, findings suggest that higher blood THC levels, such as those likely to be found in frequent users like medical marijuana patients, do not necessarily correlate with functional impairment.³ These measurements are the residual effects of medicinal use. The author should consider an exception to the per se requirements for holders of prescriptions. Those drivers could still be convicted of driving under the influence under the current system of enforcement, based on a totality of the circumstances (officer's observations, observed driving, field sobriety tests, and chemical tests).
- 9) **Argument in Support:** According to *the Kern County District Attorney*, "The prevalence of persons driving under the influence of marijuana endangers the public, and if California voters approve the anticipated initiative to legalize the recreational use of marijuana, the problem will be exacerbated. Here in Kern County, we see drivers impaired by delta-9 THC frequently. Unfortunately, one such driver ran a red light and killed a retired patrol officer, and is not facing trial for second degree murder.

"AB 2740 is a necessary and commonsense amendment to California law by establishing a per se limit for driving under the influence of marijuana. A National Highway Traffic Safety Administration study of persons driving under the influence in the year 2013-2014 revealed a

³ B.R. Nordstrom & C.L. Hart, *Assessing Cognitive Functioning in Cannabis Users: Cannabis Use History an Important Consideration*, 31 *Neuropsychopharmacology* 2798-2799 (2006).

significant increase in the percentage of the weekend nighttime drivers driving with illegal drugs in their system. "The drug showing the greatest increase from 2007 to 2013/14 was marijuana (THC). The percentage of THC-positive drivers increased from 8.6 percent in 2007 to 12.6 percent in 2013/14, a proportional increase of 47%." In 2012, the California Office of Traffic Safety (OTS) released a study of weekend nighttime drivers that found more California drivers tested positive for marijuana (7.4 percent) than alcohol (7.3 percent).

"AB 2740 would help address some of the problems that arise in proving (and deterring persons from) driving under the influence of marijuana by creating a per se prohibition on driving while having a specified amount of THC in the blood that is similar in intent and effect to the provision of Vehicle Code section 21352(b) making it unlawful to drive with a blood alcohol level greater than 0.08 percent."

- 10) **Argument in Opposition:** According to *Consortium Management Group (CMG)*, "CMG recognizes that it is responsible policy to try to keep impaired drivers off the road and expects that at some point, the science of marijuana will be sophisticated enough to provide a defensible measurement of impairment. Unfortunately, that time is not now.

"There are three overarching challenges that must be met before an appropriate policy can be crafted.

"First, 5 ng/ml of THC does not measure impairment. Unlike blood alcohol levels, which have decades of research validating their correlation to intoxication, there are few studies seeking to validate a similar correlation between THC and impaired driving and the results of those studies are inconclusive. Even the National Highway Traffic Safety Administration admits that not enough is known about cannabis, especially what levels of intoxication or impairment is conclusive.

"Second, there is currently no practical way to test for the THC level of a driver when he or she is pulled over by law enforcement. Unlike a breathalyzer that accurately measures blood alcohol content, testing for THC must be conducted by a blood test that cannot be administered roadside. The test must be done in a clinical setting by a medical professional, and the results often are not known for up to a week.

"Third, unlike alcohol, THC is known to remain in the body for up to 4 weeks following ingestion of cannabis. In some cases, the presence of THC can continue to exceed 5 ng/ml for a day or more, long after the psychoactive effects of the THC have worn off. When THC can be detected in the blood for days or weeks and when the psychoactive effects that might cause impairment wear off in 6-8 hours after ingestion, the current technology and the knowledge base about THC and its effect on driving are not adequate to begin establishing a DUI measurement for cannabis. It is likely that under AB 2740, a number of drivers would be charged with a cannabis DUI based on the presence of THC, even though they were not impaired while they were driving.

"We anticipate that the technology and the knowledge base will catch up and at that time, developing a legitimate DUI policy for cannabis would be appropriate."

11) **Related Legislation:** AB 1571 (Lackey) requires the court to consider a blood alcohol concentration (BAC) of .08 or more, in combination with the presence of specified drugs, as an aggravating factor that may justify enhancing the terms and conditions of probation, for first time driving under the influence (DUI) offenders. AB 1571 is before this committee today.

12) **Prior Legislation:**

- a) AB 1356, Lackey, of the 2015-2016 Legislative Session, would have allowed the use of an oral fluids screening test to determine the presence or concentration of drugs, to assist the officer in making a determination that a person was driving under the influence of drugs. AB 1356 failed passage in Assembly Public Safety.
- b) AB 2500 (Frazier), of the 2013-2014 Legislative Session, would have made it unlawful for a person to drive a motor vehicle if his or her blood contained specified amount of various designated controlled substances. As originally introduced, the bill would have made it unlawful to drive with any “detectable” amount of various designated controlled substances, including delta-9-tetrahydrocannabinol of marijuana. It was modified to incorporate specified measurable amounts – with the amounts varying depending on the substance. The designated amount triggering criminal punishment for delta-9-tetrahydrocannabinol was of 2 nanograms, or more, per milliliter of whole blood. AB 2500 failed passage in the Assembly Public Safety Committee.
- c) SB 289 (Correa), of the 2013-2014 Legislative Session, would have created a zero tolerance for drugged driving per se standard. SB 289 failed passage in Senate Public Safety Committee.
- d) AB 2552 (Torres), Chapter 753, Statutes of 2012, was originally a zero tolerance for drugged driving per se standard bill but was amended in the Assembly to modify the penal code to allow the tracking of charges for drugged driving as distinguished from driving under the influence of alcohol.
- e) AB 1215 (Benoit), of the 2007-2008 Legislative Session, created a zero tolerance for drugged driving per se standard. AB 1215 failed passage in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
Kern County District Attorney's Office
Santa Clara County District Attorney's Office

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
Consortium Management Group
Drug Policy Alliance

Analysis Prepared by: Gabriel Caswell / 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 2765 (Weber) – As Introduced February 19, 2016

SUMMARY: Removes the three year time limitation in which a person currently convicted of a felony, who would have been convicted of a misdemeanor if Proposition 47 were in effect, may petition the court to have the sentenced reduced in accordance with the Act.

EXISTING LAW:

- 1) States that a person currently serving a sentence for conviction of a felony, who would have been guilty of a misdemeanor had Proposition 47 been effect at the time of the offense may petition for a recall of sentence before the trial court that entered the conviction in his or her case to request resentencing, as specified. (Pen. Code, § 1170.18, subd. (a).)
- 2) Provides that upon receiving the petition for recall and resentencing, the court shall determine whether the petitioner meets specified criteria. If the petitioner satisfies the criteria, the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor. Requires the court to deny resentencing if the petitioner has a prior disqualifying conviction, is required to register as a sex offender under section, or if the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. (Pen. Code, § 1170.18, subd. (b).)
- 3) Authorizes a court to deny a petition for a recall of sentence, if the court in the exercise of its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to the public safety. In exercising its discretion, the court may consider all of the following:
 - a) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes;
 - b) The petitioner's disciplinary record and record of rehabilitation while incarcerated; and,
 - c) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.(Pen Code, § 1170.18, subd. (b)(1)-(3).)
- 4) Defines "unreasonable risk of danger to the public safety" to mean an unreasonable risk the petitioner will commit a new "violent" felony, as specified. (Pen. Code, § 1170.18, subd. (b).)

- 5) Provides that a person that is currently serving a sentence for conviction of a felony and who is resentenced shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of the resentencing order, releases the person from parole.
- 6) Allows a person who has completed his or her sentence for a conviction of a felony who would have been guilty of a misdemeanor under the provisions of Proposition 47 if it would have in effect at the time of the offense, to apply to have the felony conviction designated as a misdemeanor. (Pen. Code, § 1170.18, subd. (f).)
- 7) States that any petition filed for recall and resentencing shall be filed within three years after the effective date of Proposition 47, or at later date upon a showing of good cause. (Pen. Code, § 1170.18, subd. (j).)
- 8) Provides that any felony conviction that is recalled and resentenced or designated as a misdemeanor shall be considered a misdemeanor for all purposes, except for the right to own or possess firearms. (Pen. Code, § 1170.18, subd. (k).)
- 9) Provides that when the trial court reduces an offense from a felony to a misdemeanor, it is "a misdemeanor for all purposes." (Pen. Code, § 17, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "California voters passed the Safe Neighborhoods and Schools Act of 2014, otherwise known as Proposition 47 by over 60% on November 4, 2014. Proposition 47 reduced the criminal penalties for five non-violent, low-level property offenses and minor drug possession from felonies to misdemeanors. One provision of the measure allowed an individual who was either currently serving or who had completed his or her sentence for a Prop 47 offense and was not otherwise excluded on account of having other, violent offenses on their record, to have their sentence or record reduced to a misdemeanor. This provision called for this relief to sunset three years from the date the measure passed, on November 4, 2017.

"Some have estimated that nearly one million Californians are eligible for some type of Prop 47 relief. A felony record, even for a very old offense, serves as a barrier to self-sufficiency for the formerly incarcerated. People are routinely denied employment, housing and other rights because of their felon status. For non-violent offenders, the inability to obtain self-sufficiency contributes to higher rates of recidivism, incarceration and poverty in our communities.

"Law enforcement officials and courts that are working diligently to comply with the law have been inundated with petitions from individuals seeking relief. The influx of petitions has forced many agency offices scrambling to comply with the voter mandate while fulfilling other regularly assigned tasks. The imposition of the three-year deadline for filing has created a sense of urgency among eligible petitioners that can be reduced by removing the existing time limit.

"In passing Proposition 47, voters called for change. To deny an eligible individual a form of relief that could help make them a contributing and self-sufficient member of our community while simultaneously imposing immense pressure on law enforcement to work within the parameters of the law would create inequitable results for many. The proper solution for all involved is to remove the time limit and ensure that law enforcement agencies and petitioners alike have adequate time to complete the process of record changing envisioned by Prop 47.

- 2) **Argument in Support:** According to the *Office of the San Diego County District Attorney*, "Proposition 47, approved by voters in 2014, require defendants to file a "petition to recall" their felony sentences by November 5, 2017. This seemingly arbitrary deadline now gives eligible defendants a slim window to file for relief. Apparently the proposition drafters simply underestimated the number of defendants who may be eligible to file for relief. Now that we have a clearer picture of how many people this deadline may affect, we believe the deadline undermines the intent of the proposition. AB 2765 will alleviate this burden.

Our office has done an outstanding job of working with the San Diego County Office of the Public Defender to process as many petitions as we possible could since Prop 47 went into effect two years ago. To date, we have processed over 25,000 Prop 47 petitions. However, we believe there is the potential for up to 150,000 more requests to come in *before* the November 5, 2017 deadline. This deadline will create an unnecessary burden on eligible defendants to meet that deadline, and a needless "tsunami" of paperwork for prosecutors, public defenders and the court.

AB 2677 is a practical, legislative proposal that will correct an unintended consequence of specific language approved by California voters. This minor legislative change certainly aligns with the intent of the proposition, and therefore is in furtherance of the public's will. In this regard, we respectfully urge your **AYE VOTE** on AB 2765."

REGISTERED SUPPORT / OPPOSITION:

Support

Californians for Safety and Justice (Co-sponsor)
 Conference of California Bar Associations (Co-sponsor)
 Office of the San Diego County District Attorney (Co-sponsor)
 Los Angeles County Board of Supervisors (Co-sponsor)
 California Attorneys for Criminal Justice
 California Calls
 California Police Chiefs Association
 California Public Defenders Association
 Community Coalition
 Santa Cruz County Board of Supervisors
 Urban Counties of California

Opposition

None

Analysis Prepared by: Gregory Pagan / 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 2772 (Chang) – As Introduced February 19, 2016

SUMMARY: Requires a defendant ordered to complete treatment at an alcohol or drug recovery facility to obtain treatment at one that is licensed by the State Department of Health Care Services (DHCS) and which complies with local laws. Specifically, **this bill:**

- 1) States that, notwithstanding any other law, a person seeking treatment at an alcoholism and drug abuse recovery or treatment facility, as a result of a criminal court order, must seek treatment from a recovery or treatment facility that meets both of the following requirements:
 - a) The facility must be licensed by the DHCS, as specified, and listed on the department's Website; and,
 - b) The facility is in compliance with the local laws of where it is located.

EXISTING STATE LAW:

- 1) Declares that it is the policy of this state that each county and city shall permit and encourage the development of sufficient numbers and types of alcoholism or drug abuse recovery or treatment facilities as are commensurate with local need. (Health & Saf. Code, § 11834.01.)
- 2) Establishes the Department of Health Care Services (DHCS) as the sole licensing authority for adult alcoholism or drug abuse recovery or treatment facilities. Permits new licenses to be issued for a period of two years, and requires DHCS to conduct onsite program visits for compliance at least once during the two year licensing period. (Health & Saf. Code, § 11834.01.)
- 3) Defines "alcoholism or drug abuse recovery or treatment facility" as any premise, place, or building that provides 24-hour residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services. (Health & Saf. Code, § 11834.02.)
- 4) Establishes requirements for application to DHCS for licensure of a facility, requires DHCS to terminate licensure if these requirements are not met, and authorizes DHCS to deny applicants that do not demonstrate an ability to comply with specified requirements. (Health & Saf. Code, §§ 11834.03, 11834.09.)
- 5) Requires, if an applicant intends to provide incidental medical services, such as obtaining medical histories, monitoring health status, testing associated with detoxification from alcohol or drugs, and overseeing patient self-administered medications, evidence of a valid

license of a physician and surgeon who will provide or oversee those services, and any other information deemed appropriate by DHCS, as specified. (Health & Saf. Code, § 11834.026.)

- 6) Authorizes DHCS to assess civil penalties on facilities that provide alcoholism or drug abuse recovery, treatment, or detoxification services without a license. (Health & Saf. Code, § 11834.15.)
- 7) States that whether or not unrelated persons are living together, an alcoholism or drug abuse recovery or treatment facility that serves six or fewer persons shall be considered a residential use of property. (Health & Saf. Code, § 11834.23, subd. (a).)
- 8) States that for the purpose of all local ordinances, an alcoholism or drug abuse recovery or treatment facility that serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or persons with mental health disorders, foster care home, guest home, rest home, community residence, or other similar term that implies that the alcoholism or drug abuse recovery or treatment home is a business run for profit or differs in any other way from a single-family residence. (Health & Saf. Code, § 11834.23, subd. (b).)
- 9) Prohibits a conditional use permit, zoning variance, or other zoning clearance from being required of a residential facility which serves six or fewer persons that is not required of a family dwelling of the same type in the same zone. (Health & Saf. Code, § 11834.23, subd. (e).)
- 10) Prohibits, under the California Fair Employment and Housing Act (FEHA), discrimination against any person in any housing accommodation on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability. (Gov. Code, 12955, subd. (a).)
- 11) Specifies that discriminatory land use regulations, zoning laws, and restrictive covenants are unlawful acts. (Gov. Code, 12955, subd. (l).)

EXISTING FEDERAL LAW:

- 1) Protects people with disabilities from housing discrimination. (42 USC § 3604, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2772 is intended to ensure the highest level of care for a vulnerable population while providing support to high functioning residential treatment facilities. Defendants who are court appointed to seek Alcohol and Other Drug (AOD) treatment by the State should be receiving treatment at State licensed facilities. These facilities offer a standardized, state approved, level of care and are made eligible for more funding because of their certification and licensing. According to studies and expert panelist on substance abuse treatment, individuals providing treatment to parole and probationary populations should meet minimum standards by recognized accrediting authorities. This has been proven to reduce recidivism and increase rehabilitation rates. When

the State is using tax-payer dollars to help rehabilitate defendants there should be clear goals for the providers and the patients seeking treatment. Clear objectives help to ensure patients are receiving the best quality care to guarantee more successful outcomes. Furthermore, treatment facilities that are licensed and certified make data collection more accessible, which will allow the State to more easily identify what treatment is having the largest and most effective impact. Lastly, according to the California Research Bureau, the need for oversight relating to residential treatment would protect and benefit both the residents and the communities they are located. The issues of sober living homes are not unique to a specific county, its residents or those who are seeking treatment - these issues are felt statewide."

- 2) **Department of Health Care Services (DHCS):** The DHCS "has sole authority to license facilities providing 24-hour residential nonmedical services to eligible adults who are recovering from problems related to alcohol or other drug misuse or abuse. Licensure is required when at least one of the following services is provided: detoxification, group sessions, individual sessions, educational sessions, or alcoholism or drug abuse recovery or treatment planning. Additionally, facilities may be subject to other types of permits, clearances, business taxes or local fees that may be required by the cities or counties in which the facilities are located." (See DHCS Website: <http://www.dhcs.ca.gov/provgovpart/Pages/FacilityLicensing.aspx>.)
- 3) **Sober Living Homes:** Sober Living Homes are alcohol and drug free residences which allow the residents to live in a supportive environment with other people facing addiction issues. Sober living homes operate on the concept that by surrounding oneself with individuals who are experiencing the same self-help learning process, recovering from one's addiction is much easier. Although residents generally receive services from a licensed recovery or treatment program, sober living homes are cooperative living arrangements. Residents may participate in Twelve-Step meetings or other educational meetings to help maintain their sobriety and pursue other activities, including employment. Sober living homes are not required (or eligible) to be licensed, and are not subject to DHCS oversight and regulatory requirements. Residents of sober living homes must comply with state landlord/tenant and eviction laws and all local ordinances that apply to other similar residences.
- 4) **Existing Need for Treatment Options:** Federal data on drug abuse patterns and trends, expanded efforts in the Affordable Care Act, and a state overhaul of how alcohol and drug treatment services are administered are all indicators that state need for treatment facilities has not been met, and therefore local needs have most likely not been met either.

Limiting the number of resource beds when there are currently not enough beds does not seem prudent.

- 5) **Impact on Criminal Defendants:** Criminal defendants may be required to participate in drug and alcohol treatment programs as a condition of a deferred entry of a judgment, or of probation. This bill would have the effect of prohibiting judges from ordering a defendant to a facility which serves six or fewer people, which limits what types of treatments are available for individuals who need them. A judge should have the discretion to order out-patient treatment if that is the appropriate placement.

Moreover, requiring a court-ordered referral be to a licensed residential program would eliminate referrals to less costly treatment options, which would negatively impact indigent

defendants.

- 6) **Land Use Regulations:** FEHA makes it unlawful to engage in various discriminatory practices on the sale and rental of housing based on race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability. It also prohibits discriminatory land use regulations, zoning laws, and restrictive covenants that would similarly be discriminatory against the above categories. FEHA also specifies that groups of persons with disabilities living together in a single dwelling unit are considered a family.

According to federal law, substance use disorders (addiction) are recognized as impairments that can and do, for many individuals, substantially limit the individual's major life activities. For this reason, many courts, including courts in California, have found that individuals experiencing or who are in recovery from these conditions are individuals with a disability protected by federal and California laws.

- 7) **Argument in Support:** According to the *Orange County Sheriff's Department*, "While residential treatment facilities can serve an important role in rehabilitating individuals who struggle with drug or alcohol dependency, these facilities can often present significant challenges to the neighborhoods where they are located. Unfortunately, some of these facilities do not follow industry best practices or participate in certification process. Such facilities hinder the quality of life in neighborhoods, endanger public safety and ultimately do not succeed in helping those they purport to save. AB 2772 would help in addressing this problem by creating additional incentives for facilities to operate in a manner that is respectful to both their neighborhoods and residents."
- 8) **Argument in Opposition:** According to the *Western Center on Law and Poverty*, "The Legislature has long promoted the development of small licensed recovery homes for 6 or less persons by limiting the ability of local governments to regulate such uses (see Health and Safety Code Sections 11834.20 -.25) These single family homes have the same Fair Housing Act protections that all single family homes enjoy – that is - any regulation affecting single family homes must affect all single family homes, not just sober living homes.

"AB 2772 proposes to allow local governments to create local requirements for sober living facilities that house persons ordered by courts to participate in drug or alcohol recovery programs. This language will undermine the Legislature's protections for recovery homes and exposes the true intent of the bill. Under AB 2772 a local government could adopt stringent requirements on such homes that would have the effect of closing them. While these ordinances could be challenged in court there are more than 500 local governments and there is no ability by the state or by advocates to ensure that violations do not happen. It can be certain that they will be tried because that is the intent of the local governments who seek this power.

"It is not in the interest of the state of California to allow local governments to erect barriers to housing for those with special needs. The state has a serious shortage of specialized housing that serves those with barriers - many of whom are coming from state institutions of care. Successful re-integration into the community is crucial to helping those with special needs make a transition to a productive life and it is crucial for the state to have the person succeed to reduce the burden on taxpayers.

"As we have noted before, federal and state fair housing law bar discrimination in residential housing. In particular, they bar government from enacting barriers that impact only certain populations but not all members of the public. Households of six or under, notwithstanding their relation to each other, are provided the same fair housing protections. But for fair housing protections, many local governments would succumb to the pressure of well-organized community groups and deny residential housing for people with special needs. Providers are frequently confronted by opposition because the persons being served are perceived as a danger due to their mental or physical disabilities, HIV/AIDS, being homeless or ex-offenders. AB 2772 promotes the success of such opposition by granting local governments new powers to harass and restrict them. ...

"AB 2772 will encourage local governments to create additional barriers that may have the effect of reducing the number of facilities within their jurisdiction. Once one community reduces the number of facilities, there will be tremendous political pressure on neighboring jurisdictions to enact similar bans to avoid over-concentration of facilities in one community."

9) Related Legislation:

- a) AB 1915 (Santiago) would establish the Residential Treatment Facility Expansion Fund for the purpose of making grants or loans to residential treatment centers that are expanding services or to substance use disorder treatment service facilities that are expanding to provide residential treatment services. This bill is pending in the Assembly Health Committee.
- b) AB 2403 (Bloom) would require DHCS to issue a single license to a residential or integral alcoholism or drug abuse recovery or treatment facility when specified criteria are met and establishes a definition for integral facilities. This bill is pending in the Assembly Health Committee.
- c) AB 2255 (Melendez) defines "drug and alcohol free residences" and requires certification for these residences, as specified. AB 2255 is pending in the Assembly Health Committee.
- d) SB 1101 (Wieckowski) would establish new licensing requirements for alcohol and drug counselors and would transfer responsibilities pertaining to alcohol and drug counselor certification and the approval and regulation of certifying organizations from DHCS to the Department of Public Health. This bill is pending in the Senate Health Committee.
- e) SB 1283 (Bates) would require DHCS to licensee and regulate adult recovery maintenance facilities and would establish licensure fees for that purpose. This bill is pending in the Senate Health Committee.

10) Prior Legislation:

- a) AB 724 (Benoit), of the 2007-2008 Legislative Session, would have allowed a city, county, or city and county to exercise its police power to regulate, without restriction, the use and occupancy of a single-family residence location in a single-family residential zone, if the residence does not meet the definition of: 1) a licensed community care

facility; 2) a licensed alcoholism or drug abuse recovery or treatment facility; 3) a facility operating under a valid license issued by another state or by federal agency for residential programs intended to be operated in a single-family home; or, 4) a sober living home. AB 724 was held in the Senate Health Committee.

- b) SB 992 (Wiggins) of the 2007-2008 Legislative Session, would have required ADP to license adult recovery maintenance facilities, which provide a more structured environment for recovery from substance abuse than a sober living home. SB 992 was vetoed.
- c) AB 3007 (Emmerson) of the 2005-2006 Legislative Session, would have required ADP to deny an application for a new adult alcoholism or drug abuse recovery or treatment facility license if ADP determines that the location is in proximity to an existing facility that would result in over concentration of these facilities in one neighborhood. AB 3007 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Cities—Orange County
California Narcotics Officers' Association
California Women's Leadership Association
City of Fountain Valley
City of Huntington Beach
City of Mission Viejo
City of South El Monte
Orange County Association of Realtors
Orange County Sheriff's Department

Opposition

American Civil Liberties Union
California Consortium of Addiction Programs and Professionals
California Public Defenders Association
California Society of Addiction Medicine
Cliffside Malibu
Legal Services for Prisoners with Children
Promises Treatment Centers
Western Center on Law and Poverty
1 Method Center

Analysis Prepared by: Sandy Uribe / 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 2777 (Nazarian) – As Amended April 14, 2016

SUMMARY: Allows, but does not require, a "transportation network company" (TNC) to ask the Department of Justice (DOJ) to provide summary criminal history information for its employees and contractors. Specifically, **this bill:**

- 1) Requires the DOJ to provide to a TNC, upon request, the following information for a person employed, retained, contracted, or otherwise compensated to perform services coordinated by that company:
 - a) State summary criminal history information as specified, and,
 - b) Subsequent arrest notification services, as specified.
- 2) Requires the DOJ to charge a TNC a fee that sufficiently covers the cost of processing such a request.
- 3) Defines a "TNC" as it is already defined in the Public Utilities Code.

EXISTING LAW:

- 1) 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).)
- 2) 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).)
- 3) 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.)
- 4) States that, notwithstanding any other law, the DOJ may require the submission of fingerprints for the purpose of conducting criminal history information checks that are authorized by law. (Pen. Code, § 11105, subd. (i).)
 - 5) States that, notwithstanding any other law, whenever state summary criminal history information is initially furnished as the result of an application by an agency, organization, or individual or by an authorized transportation company, as specified, and the information is to be used for employment, licensing, or certification purposes, then DOJ shall disseminate the following information:
 - a) Every conviction rendered against the applicant, except a conviction for which relief has been granted pursuant to Section 1203.49;
 - b) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial; and,
 - c) Sex offender registration status of the applicant. (Pen. Code, § 11105, subd. (p).)
 - 6) 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 specified offenses 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).)
 - 7) Allows, notwithstanding any other law, a contract or proprietary security organization to request criminal history information concerning its prospective employees, as specified. (Pen. Code, § 11105.4.)
 - 8) 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.)
 - 9) Prohibits an employer, whether a public agency or private individual or corporation, to ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program. (Labor Code, § 432.7, subd. (a).)
 - 10) Provides that the California Public Utilities Commission (PUC) may fix rates and establish rules for the transportation of passengers and property by transportation companies, prohibit

discrimination, and award reparation for the exaction of unreasonable, excessive, or discriminatory charges. (Article XII, §4 of the California Constitution)

- 11) Establishes the PUC's authority to regulate, require license or permit to operate, require insurance and workers compensation, take appropriate enforcement action and other provisions related to passenger stage corporations and transportation charter-party carriers. (Pub. Util. Code, §§ 1031 et seq and 5351).
- 12) Defines a "transportation network company" as "an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle." (Pub. Util. Code, § 5431.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "TNCs provide prearranged transportation services for compensation using online-enabled application or platform (such as smart phone apps) to connect passengers with drivers using their personal vehicles. Unfortunately, high-profile incidents have arisen, involving drivers accused of assaulting, kidnapping, raping, harassing and stealing from customers. These incidents point to the need to allow TNCs to request a DOJ background check. By allowing TNC to access DOJ criminal history databases, AB 2777 gives TNCs another tool in its toolbox to uncover criminal history not discovered through traditional methods, prevent fraud and enhance its goal of providing safe and reliable service."
- 2) **Background:** Different types of transportation companies (e.g., TNCs, limousines, taxi cabs) are regulated differently. Rates, routes, service areas, insurance requirements, vehicle inspections, and driver requirements vary. An example of different rules for similar competitors is the requirement for background checks. Some local governments, including the City of Los Angeles, require extensive background checks using fingerprints and the United States Department of Justice database for taxis. The PUC requires TNCs to perform criminal background checks on their drivers, but does not require fingerprints or the use of the DOJ database. (The PUC is currently considering whether to require fingerprints.) And those rules do not require any background checks on other charter-party carriers, such as limousines.
- 3) **Summary Criminal History Information:** State summary criminal history information is the master record of information compiled by the DOJ pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, arrests, dispositions, and similar data. (Pen. Code, § 11105, subd. (a).) State summary criminal history information commonly is referred to by the acronym "RAP sheet," which is short for Record of Arrests and Prosecutions.

The disclosure of criminal history information is closely guarded. "The language of Penal Code section 13300 et seq., demonstrates that the Legislature intended nondisclosure of criminal offender record information to be the general rule." (*Westbrook v. County of Los*

Angeles (1994) 27 Cal.App.4th 157, 164.) While some individuals and entities are entitled to receive the information if it is needed in the course of their duties, others can obtain that information only upon a showing of a compelling need and subject to Labor Code provisions which regulates inquiries by employers into an employee's arrest record. (*Id.* at pp. 162-163.) Some examples of employers authorized to receive state summary criminal history information from DOJ include banks, private security, school contract employees.

This bill would require DOJ to give to TNC companies the state summary criminal history information upon the company's request. However, as drafted, DOJ is likely unable to comply because there is no language in the bill requiring the prospective employee's or contractor's fingerprints to be submitted. Should the bill be amended to include the following:

"A transportation network company may submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all persons intended for employment, employed, retained, contracted, or otherwise compensated to perform or coordinate services, as defined by Section 5431 of the Public Utilities Code, for the purposes of obtaining information as to the existence and content of a record of state convictions and state arrests and also information as to the existence and content of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal."

4) Arguments in Support:

- a) According to the *Greater California Livery Association* (GCLA), "The safety of California's traveling public is the responsibility and primary goal of GCLA members in the provision of service to their clients; the achievement of this goal includes assuring our passengers of the integrity, conduct, and competence of our drivers and the safety of our vehicles. Our members accomplish this through criminal background checks, driver training, drug and alcohol testing, knowledge of driver infractions and rigid safety requirements and inspections. It is not unreasonable to expect all providers of public transportation services to provide and guarantee adherence to the goal of providing safe, reliable transportation service. Assembly Bill 2777 is a step toward achieving that goal."
- b) According to the *California Labor Federation*, "In April of this year, Uber agreed to pay \$10 million to settle allegations by California prosecutors that it misled passengers about the quality of its driver background checks. A 2015 report by researchers at City University of New York recommended biometric fingerprint background checks for all for-hire drivers, including TNCs, and that the public should not rely on private companies 'self-regulating.'"

5) Related Legislation:

- a) AB 1289 (Cooper) was substantially amended in the Senate to require a transportation network company to conduct comprehensive criminal background checks for each participating driver that include local, state, and federal law enforcement records. The bill would prohibit a transportation network company from contracting with, employing, or continuing to retain a driver if he or she has specified convictions. AB 1289 is pending in

the Senate Energy, Utilities and Communications Committee.

- b) AB 1857 (Rodriguez) requires law enforcement to inform clinical staff of an acute care hospital whether a person transported to the hospital has a violent criminal history, as indicated by local summary criminal history information, and may pose a danger to staff. The hearing on this bill, which is pending in this Committee, was canceled at the request of author.
- c) SB 1035 (Hueso), requires, among other things, the PUC to study several driver background check protocols, including the United States Department of Justice background check, and to adopt any that would enhance public safety by capturing records of any criminal offense. SB 1035 is scheduled to be heard by the Senate Transportation and Housing Committee on April 19, 2016.

6) Prior Legislation:

- a) AB 1422 (Cooper), Chapter 791, Statutes of 2015, requires transportation network companies to participate in the Department of Motor Vehicles Employer Pull Notice System to regularly check the driving records of a participating driver.
- b) AB 2404 (Eggman), Chapter 472, Statutes of 2014, requires the DOJ to disseminate an applicant's sex offender registration status whenever DOJ furnishes state or federal summary criminal history information to specified entities as a result of an employment, licensing, or certification application.
- c) AB 2343 (Torres), Chapter 256, Statutes of 2012, required that when state or federal summary criminal history information is furnished to an agency, organization or individual, a copy of the information be provided to the person about whom the information relates if there is an adverse employment, licensing, or certification decision.
- d) AB 1628 (Beall), of the 2011-12 Legislative Session, among other provisions, would have required a private entity doing business in the state that rents, leases, or uses public property and has an employee, member, agent, licensee, or representative who will access the property and who has duties involving close interaction with children on a regular basis to perform an enhanced background check, as specified, on the employee, member, agent, licensee, or representative. AB 1628 failed passage in the Committee on Appropriations.

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation
Greater California Livery Association

Opposition

None

Analysis Prepared by: Sandy Uribe / 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 2803 (Salas) – As Introduced February 19, 2016

SUMMARY: Makes it a felony to possess, manufacture, or distribute a "kite" in prison or jail containing instructions to harm or kill another. Specifically, **this bill:**

- 1) States that any person who knowingly possesses, manufactures, or distributes in any specified custodial setting, any writing, item, material, or electronic communication with knowledge that the communication contains an overt or disguised request or instructions to cause harm, great bodily injury, or death to another person is guilty of a felony.
- 2) Punishes this conduct by imprisonment in a county jail for two, three, or four years under Realignment, or by two, three, or four years in state prison if the defendant committed the crime while a prisoner in a state facility.

EXISTING LAW:

- 1) Provides that any person who, without the permission of the warden or officer in charge, communicates with any prisoner, or brings or takes from the institution a letter, writing, literature, or reading material is guilty of a misdemeanor. (Pen. Code, § 4570.)
- 2) States that an attempt to commit a crime consists of a specific intent to commit the crime and a direct (but ineffective) act toward committing that crime. (Pen. Code, § 21a.)
- 3) Punishes the crime of attempt as follows:
 - a) If the crime attempted is punishable by imprisonment in the state prison, or by imprisonment in the county jail under Realignment, the person shall be punished by imprisonment in the state prison or in a county jail, respectively, for one-half the term of imprisonment prescribed upon a conviction of the offense attempted;
 - b) If the crime attempted is one in which the maximum sentence is life imprisonment or death, the person shall be punished by imprisonment in the state prison for five, seven, or nine years;
 - c) If the crime attempted is punishable by imprisonment in a county jail, the person shall be punished by imprisonment in a county jail for up to one-half the term of imprisonment prescribed upon a conviction of the offense attempted;
 - d) If the crime attempted is willful, deliberate, and premeditated murder, the person that shall be punished by imprisonment in the state prison for life with the possibility of

parole; and,

- e) If the attempted murder is against a peace officer, a custodial officer, a custody assistant, or a nonsworn uniformed employee of a sheriff's department whose job entails the care or control of inmates in a detention facility, and the person who commits the offense knows or reasonably should know that the victim is a custodial officer, custody assistant, or nonsworn uniformed employee of a sheriff's department engaged in the performance of his or her duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life with the possibility of parole. (Pen. Code, § 664.)
- 4) States that conspiracy occurs when two or more persons conspire to commit any crime, and one person commits an overt act in furtherance of the agreement. (Pen. Code, § 182.)
 - 5) Punishes the offense of conspiracy as follows:
 - a) Conspiracy to commit any felony (except specified felonies) is punished with same penalties that are imposed in connection with that felony;
 - b) Conspiracy to commit two or more different felonies, all of which are part of the same conspiracy, faces the same penalties as the felony which has the most severe sentence; and,
 - c) Conspiracy to commit murder is punished as first degree murder. (Pen. Code, § 182.)
 - 6) States that a person who solicits another to commit or join in the commission of murder with the intent that the crime be committed, shall be punished for three, six, or nine years in state prison. (Pen. Code, § 653f, subd. (b).)
 - 7) States that a person who solicits another to commit or join in the commission of specified crimes, including assault with a deadly weapon or by means of force likely to produce great bodily injury, shall be punished by as a misdemeanor, or as a felony under Realignment. (Pen. Code, § 653f, subd. (a).)
 - 8) Provides that any person who willfully threatens to commit a crime which result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by electronic communication, is to be taken as a threat, even if there is no intent of actually carrying it out, which on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate process of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison. (Pen. Code, § 422.)
 - 9) States that if a person is convicted of one or more felonies committed while the person is confined in state prison, ... and the law either requires the term to be served consecutively, or the court imposes consecutive terms, then the term of imprisonment for all the convictions that the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. (Pen. Code, § 1107.1, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Kites are commonly used to pass messages and tell other inmates what to do. Kites might also include population counts of members on a specific yard in a certain prison, information about which prisons are lax on security measures, details about rival gangs, and orders to commit a crime.

"While kites are often confiscated, authorities cannot take action until a gang member carries out the order. Prosecutors can sometimes pursue a preemptive conspiracy charge, but they cannot tie the conspiracy to the author. Most convictions fall on the foot soldiers of gangs and not the leaders.

"Strengthening penalties for kites with dangerous messages will help law enforcement identify gang leaders by disrupting the lines of communication between inmates and the outside world."

- 2) **CDCR Policies on Kites:** CDCR has informed this Committee that possession of kites can vary in range from serious threats to murder or injure someone, to less harmful communications. Thus, the way they are handled can vary from administrative to serious rules violations. Likewise, the disposition may also vary.

Serious rules violations according to the CCR Title 15 section 3323 A-F, are either felonies or misdemeanors. For serious rules violations, if found guilty, the inmate may lose credits (up to 360 days for murder, for example), be subject to a SHU term, to loss of privileges, etc.

Specifically, as to the kites at issue in this bill, those containing communications to cause bodily harm or death to another, CDCR policy includes the following:

If an inmate is found distributing or in possession of a kite containing instructions to murder another, this inmate would be charged with the following: A Division "A-1" offense warranting credit forfeiture of 181–360 days; and murder, attempted murder, and solicitation of murder. Solicitation of murder shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. This is a felony under the regulations (if found guilty) and would also be referred to the district attorney for consideration of prosecution.

If an inmate has or distributes a kite containing instructions to perform battery with a weapon to cause serious injury, the inmate would be charged with A Division "A-1" offense warranting credit forfeiture of 181–360 days. The inmate could also be charged with battery causing serious injury; assault or battery with a deadly weapon or caustic substance; solicitation to commit one of these offenses, as well as behavior or activities that promotes, furthers, or assists a security threat group (STG), or demonstrates a nexus to the STG. Again, this would be a felony under the regulations (if found guilty), and would also be referred to the district attorney for consideration of prosecution.

If an inmate is found in possession of or distributing a kite containing instructions to perform battery without serious injury on a non-prisoner he or she would be charged with a Division "B" Offense which would result in credit forfeiture of 121–150 days. Other charges would

include battery on a peace officer not involving the use of a weapon; assault on a peace officer by any means likely to cause great bodily injury, battery on a non-prisoner, threatening to kill or cause serious bodily injury to a public official, their immediate family, their staff, or their staff's immediate family, conspiracy to commit any one of these offenses, or solicitation to commit any one of these offenses. This conduct is a felony (if found guilty) and would be referred to the district attorney for consideration of prosecution.

Finally, if an inmate has or distributes a kite containing instructions to perform battery without serious injury without a weapon on a prisoner this would be considered a division "D" offense under the regulations with potential credit forfeiture of 61–90 days. The inmate could also face charges of assault or battery on a prisoner with no serious injury, conspiracy to commit any division "D" offense, acting in a STG leadership role displaying behavior to organize and control other offenders, and conduct that promotes, furthers, or assists a STG or demonstrates a nexus to the STG. Administratively, this conduct is a misdemeanor (if found guilty). Most likely the conduct would not be referred to the district attorney, depending on the local agreement.

As noted by the fact that most conduct contemplated by the bill is referred to the local district attorney's office, the conduct this bill wishes to prohibit is already illegal. The inmate could be charged with attempt, conspiracy, or solicitation to commit the underlying offense described in the kite.

- 3) **Recent Governor Veto Messages:** Last year the Governor vetoed a number of bills which would have re-characterized conduct that was already criminal into a more specific crime. The Governor's veto message said:

"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."

Similarly, this bill seeks to proscribe conduct that is already illegal. Depending on the facts and circumstances of the possession or distribution of the kite, a person or persons could be charged with conspiracy or attempt to commit the murder, battery, or assault, described in the bill. Additionally, if the intended target of the crime somehow came to possess the note, and reasonably sustained feared, a criminal threat could be charged.

- 4) **Argument in Support:** According to the *California State Sheriff's Association*, "Current law provides that the distribution of a kite is a misdemeanor offense. However, current law fails to acknowledge the versatile uses of kites, especially among gang members. While it is important that all kite communication be penalized there should be heightened penalties for kites that incite violence. Kites are often used by gangs to authorize a hit on an individual or to stage a riot. This malicious communication is harmful to the general population and

should be thwarted with the appropriate penalties."

- 5) **Argument in Opposition:** According to *Legal Services for Prisoners with Children*, "The behavior this bill is trying to correct is already covered under a number of different crimes: conspiracy (California Penal Code § 182) and threat (Cal Pen § 422). Under the current conspiracy crime, a person can be convicted if he conspires with at least one additional person to commit any crime, and the punishment is the same as that crime which he conspired to commit. The crime of threat covers any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person. In almost all cases imaginable, this would overlap with the proposed new crime. California does not need new, repetitive crimes."
- 6) **Related Legislation:** AB 1877 (Linder) makes the first conviction of indecent exposure occurring in a prison or jail punishable as a felony in state prison.

REGISTERED SUPPORT / OPPOSITION:

Support

Association for Los Angeles Deputy Sheriffs
California Police Chiefs Association
California State Sheriffs' Association
Los Angeles Police Protective League
Peace Officers Research Association of California
Riverside Sheriffs' Association

Opposition

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

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

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

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

AB 2805 (Olsen) – As Amended March 17, 2016

SUMMARY: Allows specified counties to enter into an agreement to form the California Agriculture Cargo Theft Crime Prevention Program, which would be administered by the county sheriff's department of each participating county under a joint powers agreement (JPA). Specifically, **this bill:**

- 1) Permits the counties of Butte, Colusa, Fresno, Glenn, Kern, Kings, Los Angeles, Madera, Merced, Sacramento, San Benito, San Joaquin, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba to enter into an agreement to form the California Agriculture Cargo Theft Crime Prevention Program.
- 2) Requires the California Agriculture Cargo Theft Crime Prevention Program to be jointly administered by the county sheriff's department of each participating county under a joint powers agreement.
- 3) Requires the parties to the agreement to form a task force known as the California Agriculture Cargo Theft Crime Prevention Task Force.
- 4) Requires the task force to be an interactive team working together to develop crime prevention, problem solving, and crime control techniques, to encourage timely reporting of crimes, and to evaluate the results of these activities.
- 5) Permits the task force to operate from a joint facility in order to facilitate investigative coordination.
- 6) Allows the task force to develop a uniform procedure for all participating counties to collect data on agricultural cargo theft crimes.

EXISTING LAW:

- 1) Creates the Motor Carriers Safety Improvement Fund to cover the costs for the Department of the California Highway Patrol to deter commercial motor vehicle cargo, as specified. (Pen. Code, § 14170.)
- 2) Creates the Cargo Theft Interdiction Program to combat the ever increasing cargo theft problem. (Pen. Code, § 14170.)
- 3) Creates the Rural Crime Prevention Program to enhance crime prevention efforts by establishing programs to strengthen law enforcement agencies in rural areas to detect and monitor agricultural and rural based crimes. (Pen. Code, § 14170.)

- 4) Allows for the formation of a JPA for the purpose of two or more public agencies, by agreement, to jointly exercise any power common to the contracting parties. (Pen. Code, § 14170.)
- 5) Provides that grand theft is theft committed in any of the following cases: (Pen. Code, § 487, subd. (h).)
 - a) When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950).
 - b) Grand theft is committed in any of the following cases:
 - i) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding two hundred fifty dollars (\$250).
 - ii) For the purposes of establishing that the value of domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops under this paragraph exceeds two hundred fifty dollars (\$250), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops of the same variety and weight exceeded two hundred fifty dollars (\$250) in wholesale value.
 - iii) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding two hundred fifty dollars (\$250).
 - iv) Where the money, labor, or real or personal property is taken by a servant, agent, or employee from his or her principal or employer and aggregates nine hundred fifty dollars (\$950) or more in any 12 consecutive month period.
 - v) When the property is taken from the person of another.
 - vi) When the property taken is any of the following:
 - (1) An automobile.
 - (2) A firearm.

FISCAL EFFECT:**COMMENTS:** Unknown

- 1) **Author's Statement:** According to the author, "California has seen an increase in incidents of cargo theft in recent years. According to CargoNet, California experienced 158 cargo theft incidents in 2015, costing businesses over \$18.7 million – more than any other state. These massive losses are spread across all sectors of our economy including agriculture, retail, and technology. Organized crime has been responsible for many of these thefts, and the scope of

crime suggests international actors are at play. However, local law enforcement agencies have been unable to adequately respond due to a lack of resources and the inability to coordinate statewide. By bringing together law enforcement and business, this bill will protect the integrity of our economy and prevent future cargo thefts."

- 2) **Cargo Theft:** California has seen an increase in incidents of agricultural cargo theft in recent years. According to CargoNet, California experienced 158 cargo theft incidents in 2015, costing businesses over \$18.7 million. Between 2012 and 2015 food and beverage cargos accounted for roughly 28% of cargo theft in California. These losses are spread across all sectors of our economy including agriculture, retail, and technology.

Organized crime has been responsible for many of these thefts, and law enforcement officials believe organized criminal enterprises might be diverting some of the nut cargo to the export market. However, local law enforcement agencies have been unable to adequately respond due to a lack of resources and the inability to coordinate statewide. According to the author, California needs a proactive solution that will aid law enforcement, protect businesses, and deter future theft.

According to supporters, the tree nut industry has reported 30 separate incidents of cargo theft in the last six months. Millions of dollars in almonds, walnuts, cashews and pistachios have been stolen via thieves, posing as legitimate truck drivers, creating fraudulent paperwork and picking up cargo. The industry has responded by fingerprinting truckers who come in to pick up loads and sometimes photographing big rig drivers. Processors also are checking truck vehicle identification numbers and calling to verify information. Others are adopting high-tech solutions, such as radio-frequency identification tags to track cargo loads. Supporters say a proactive statewide task force on cargo theft will help lower the number of thefts.

To address this issue, AB 2805 will create the California Agriculture Cargo Theft Crime Prevention. Participating counties will create a task force comprising of members from each county office of the district attorney, sheriff, agricultural commissioner, and interested property owner groups or associations. The task force will be modeled after the Rural Crime Prevention Task Force. At this time there is no proposed funding for AB 2805.

- 3) **Argument in Support:** According to the *Pacific Merchant Shipping Association*, "AB 2805 provides for a comprehensive, cross jurisdictional approach to addressing the problem of cargo theft of agricultural commodities, many of which are destined for export from California's public ports. Because of the nature of cargo moving throughout the state, this bill addresses some of the impediments facing law enforcement by providing for better coordination and cooperation between various jurisdictions."

REGISTERED SUPPORT / OPPOSITION:

Support

Agricultural Council of California
California Farm Bureau Federation
California State Sheriffs' Association
Pacific Merchant Shipping Association

Western Agricultural Processors

Opposition

None

Analysis Prepared by: Gabriel Caswell / 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 2811 (Chávez) – As Amended March 15, 2016

SUMMARY: Removes the prior conviction requirement for the impoundment of a vehicle upon an arrest for a prostitution related arrest if the police officer has probable cause to believe that the victim is a minor or a victim of human trafficking as specified.

EXISTING LAW:

- 1) Permits local jurisdictions to adopt local ordinances permitting impoundment of vehicles for violations of prostitution, pimping, and pandering offenses in the same manner with the same procedural protections as provided in this bill. (Veh. Code § 22659.5.)
- 2) States notwithstanding any other provision of law and except as provided in this provision, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a California highway by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous misdemeanor conviction for driving on a suspended or revoked license. (Veh. Code § 14607.6, subd. (a).)
- 3) Prohibits a peace officer from impounding a vehicle, as specified, if the license of the driver expired within the preceding 30 days and the driver would otherwise have been properly licensed. (Veh. Code § 14607.6, subd. (c)(2).)
- 4) Provides that a peace officer may exercise discretion in a situation where the driver without a valid license is an employee driving a vehicle registered to the employer in the course of employment. A peace officer may also exercise discretion in a situation where the driver without a valid license is the employee of a bona fide business establishment or is a person otherwise controlled by such an establishment and it reasonably appears that an owner of the vehicle, or an agent of the owner, relinquished possession of the vehicle to the business establishment solely for servicing or parking of the vehicle or other reasonably similar situations, and where the vehicle was not to be driven except as directly necessary to accomplish that business purpose. In this event, if the vehicle can be returned to or be retrieved by the business establishment or registered owner, the peace officer may release and not impound the vehicle. (Veh. Code § 14607.6, subd. (c)(3).)
- 5) Provides a registered or legal owner of record at the time of impoundment may request a hearing to determine the validity of the impoundment, as specified. (Veh. Code § 14607.6, subd. (c)(4).)
- 6) States if the driver of a vehicle impounded, as specified, was not a registered owner of the vehicle at the time of impoundment, or if the driver of the vehicle was a registered owner of the vehicle at the time of impoundment but the driver does not have a previous conviction for

driving on a suspended or revoked license, the vehicle shall be released pursuant to the Vehicle Code and is not subject to forfeiture. (Veh. Code § 14607.6, subd. (c)(5).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "We need to equip cities and counties with the ability to fight against the sexual exploitation of our children. If a city or county sees the need to impound vehicles as a deterrent and effective tool to reduce the sexual exploitation of its minor, they should be able to do so."
- 2) **Vehicle Code Section 22659.5 Currently Authorizes the Similar Procedures with Local Approval, when the Offender has a Prior Offense:** Existing law authorizes local jurisdictions to adopt ordinances declaring vehicles used in the commission of prostitution to be impounded as a public nuisance. Vehicle Code Section 22659.5 was enacted in 1993 and allowed a local government to impound a vehicle after a conviction for prostitution, as specified, for up to 48 hours. AB 1332 (Gotch), Chapter 485, Statutes of 1993, declared legislative intent as follows:

"The Legislature hereby finds and declares that under the Red Light Abatement Law every building or place used for, among other unlawful purposes, prostitution is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered. It is recognized that in many instances vehicles are used in the commission of acts of prostitution and that if these vehicles were subject to the same procedures currently applicable to buildings and places, the commission of prostitution in vehicles would be vastly curtailed. The Legislature, therefore, intends to enact a five-year pilot program in order to ascertain whether declaring motor vehicles a public nuisance when used in the commission of acts of prostitution would have a substantial effect upon the reduction of prostitution in neighborhoods, thereby serving the local business owners and citizens of our urban communities."

In 2009, the pilot program was extended to be a statewide program which permitted the same provisions and procedures in this bill to be adopted by local ordinance through passage of AB 14 (Fuentes), Chapter 210, Statutes of 2009.

This bill would remove the prior conviction requirement for the impoundment of a vehicle upon an arrest for a prostitution related arrest if the police officer has probable cause to believe that the victim is a minor or a victim of human trafficking as specified.

- 3) **Reason for Inclusion of Prior Offenses:** The underlying legislation, as passed by AB 14 (Fuentes), Chapter 210, Statutes of 2009 specified that impoundment may occur upon the arrest of an offender when there is a prior related conviction. The reason for the inclusion of the prior *conviction* is that the statute authorizes a 30-day impoundment upon the arrest of an alleged offender. The interested parties negotiated this provision because an arrest is not proof of wrongdoing. In fact, the alleged offender is innocent until proven guilty. However, the interested parties felt that persons arrested for prostitution or dumping related offenses when the alleged offender had a prior conviction of the same offense made a much stronger case that they were in fact a nuisance engaged in prostitution or dumping offenses.

This bill would eliminate the requirement of a prior. First, this elimination does not meet the specifications that the person is engaged in the alleged offense repeatedly, and thus a public nuisance. Second, the impoundment of the alleged offender's vehicle is based solely on the arrest of the officer and not the conviction of the offender in a court of law. The impoundment of the vehicle upon the arrest without a prior could result in a person engaging in lawful activity, the sufferance of an impound, and the alleged offender not being adjudicated guilty or not guilty prior to the 30-day impoundment running. The inclusion of the prior offense makes it far more likely that the alleged offender is actually engaged in illegal activity giving rise to the impoundment.

- 4) **O'Connell vs. City of Stockton:** In July of 2007, the California Supreme Court ruled that Vehicle Code Section 22659.5 pre-empted local ordinances on the subject of vehicle impoundment and forfeiture for specified crimes. (*O'Connell vs. City of Stockton* (2007) 41 Cal.4th 1061, 1068.) The Stockton ordinance at issue, the "Seizure and Forfeiture of Nuisance Vehicles", authorized impoundment and/or forfeiture "of any vehicle used to solicit an act of prostitution, or to acquire or attempt to acquire any controlled substance if found by a preponderance of evidence." (*O'Connell* at 1069.) Local ordinances that "duplicate, contradict or enter into an area totally occupied" by general state law are unconstitutional and preempted by the general state law. (*Sherwin Williams Co. vs. City of Los Angeles* (1993) 4 Cal.4th 893, 897.)

First, the Court found the Uniform Controlled Substances Act (UCSA) impliedly occupied the entire field of drug sentencing and penalties including forfeiture of a vehicle. The UCSA requires forfeiture of a vehicle only upon proof beyond a reasonable doubt of the vehicle's use to facilitate certain serious drug crimes. (Health and Saf. Code § 11469; *O'Connell* at 1081.) Second, the Court held that Vehicle Code Section 22659.5(a) expressly pre-empted the provision related to vehicle forfeiture for solicitation. As noted above, the Vehicle Code provision does not authorize forfeiture and only allows for impoundment after conviction for a period of 48 hours. (Veh. Code § 22659.5, subd. (b).) Moreover, Vehicle Code Section 21 prohibits local governments from enacting ordinances on matters included by the Vehicle Code unless otherwise specified. Hence, because state law occupies the entire field of drug sentencing and penalties and specified Vehicle Code sections expressly speak to the issue of vehicle impoundment for prostitution, conflicting local ordinances are pre-empted and unconstitutional. (Calif. Const., Article XI, § 7.)

The California Supreme Court asked the parties involved in this case to brief issues regarding federal and state constitutional guarantees of substantive and procedural due process for pre-conviction impoundment and forfeiture. Ultimately, however, because the Court ruled the Stockton ordinance was pre-empted by state law, the Court did not resolve the issues of due process. (*O'Connell* at 1068, fn. 1.) It is important to note the issue of due process still remains and may be litigated in the future.

- 5) **Argument in Support:** According to *The City of Oakland*, "On behalf of the City of Oakland we are writing as the sponsor of AB 2811 (Chavez) Vehicles: Nuisance Abatement.

"The City of Oakland has been an active leader in the Bay Area region and State when it comes to addressing the commercial sexual exploitation of children. We were one of the first cities to work with the young victims to help offer counselling services, help clear their

criminal records, and actively enforce existing laws to punish the johns involved in this insidious practice.

"However, the problem persists. To my dismay, Oakland has a thriving underage sex market, and is the epicenter of a trafficking triangle between San Francisco and Contra Costa counties. 46% of all prosecuted human trafficking cases in California came from the Alameda District Attorney's office. In addition, 80% of reported human trafficking cases in California occurred in the Bay Area, Los Angeles and San Diego. These are three areas that experience the most human trafficking in the US.

"The numbers of children that are forced into sex trafficking each year is shocking. Rape, abuse, isolation, emotional, physical, and psychological trauma are just some conditions these young victims face. While we recognize that putting an end to human trafficking is a multifaceted effort we believe that greater enforcement efforts are not only required, but desperately needed. AB 2811 is a crucial piece of legislation that will provide another tool to cities, should they pass a local ordinance, which will allow them to impound the cars of johns who try to purchase sex from minors.

"As opposed to more traditional means of reprimanding these individuals, AB 2811 will provide a forceful deterrent that will prevent 'johns' from seeking to purchase sex in the future, while at the same time signaling to the public at large that this will not be tolerated."

- 6) **Argument in Opposition:** According to the *American Civil Liberties Union*, "AB 2811 is a bill that would remove the requirement that a person have a previous conviction for a specified crime before that person's car can be impounded as a nuisance following a subsequent arrest for the same crime. We believe this bill may raise due process concerns and we strongly caution against removing the prior conviction requirement from the existing statute.

"Under current law, a person's car can be impounded following an arrest for certain prostitution-related offenses or illegal dumping offenses, if the car is alleged to have been used in the commission or attempted commission of the crime for which the person was arrested, and, more importantly, if the person has been convicted of the same offense within the three preceding years.

"The existing statute already raises constitutional concerns, as it permits a city or county to deprive a person of his or her property based only on an arrest and without an opportunity for the person to be heard prior to the initial deprivation. A mere arrest is not proof that a person has actually committed a crime or that a person's vehicle is a nuisance, and any undertaking by the government to take a person's property in this context should, with few exceptions, be preceded by the ability of the owner of the property to be heard prior to the actual seizure or taking, and should likewise be preceded by a conviction.

"The existing statute helps to assuage some of the above concerns by adding a requirement that before a person's car can be impounded, the person must, within the immediately preceding three years, have been convicted of the same crime for which he or she is currently being arrested. While certain types of prostitution-related activities may create a nuisance, for instance if a person repeatedly returns to a community to solicit prostitution or to pander, it has been argued that a person who attempts to engage in such an activity on just one occasion only marginally contributes to a general nuisance, given that the single act will not

likely adversely affect the community in a significant manner. Yet even the requirement of a prior conviction, does not cure all of the concerns with the lack of a current conviction, as even evidence of a prior conviction does not prove that a person is guilty of a current crime.

"While this bill attempts to address people who commit crimes against minors or victims of human trafficking, it simultaneously makes it easier to deprive a minor or a victim of human trafficking from their own vehicles. AB 2811 permits impoundment following an arrest for the crime of prostitution, in addition to the crime of soliciting prostitution or pandering. Thus, if the person engaging in the act of prostitution is a minor or a victim of human trafficking, that person could likewise be deprived of a vehicle. Depriving a minor or a victim of human trafficking, or any person engaged in prostitution for that matter, from his or her vehicle could have profound negative consequences, particularly if such a person is trying to get away from an abuser. Getting rid of the prior conviction requirement would only make impoundment easier and could result in a person with no conviction history losing access to his or her only means of transportation, which could not only prevent the person from leaving an abuser, as described above, but could also prevent the person from taking his or her children to school or doctors' appointments, attending classes or treatment, or going to a lawful place of employment.

"In the face of all of these existing concerns, getting rid of the requirement of a prior conviction, even if an alleged victim is a minor or a victim of human trafficking, will only create new problems without a commensurate benefit. For these reasons, we must oppose AB 2811."

- 7) **Related Legislation:** AB 2147 (Eggman), specifies that vehicle impoundment programs which are related to solicitation of prostitution offenses, currently authorized under existing state law, do not need to be authorized by a local ordinance. AB 2147 is on third reading on the Assembly Floor.
- 8) **Prior Legislation:**
 - a) AB 14 (Fuentes), Chapter 210, Statutes of 2009, authorized cities or counties to adopt local ordinances declaring a motor vehicle to be a public nuisance subject to impoundment for not more than 30 days upon a valid arrest of a person who uses the vehicle in the commission or attempted commission of specified prostitution crimes or illegal commercial dumping and has one prior conviction for either of those crimes.
 - b) AB 1724 (Jones), of the 2007-08 Legislative Session, would have authorized a city, county, or a city and county to adopt an ordinance declaring, under specified conditions, a motor vehicle used in the commission or the attempted commission of an act that constitute the illegal dumping of commercial quantities of waste matter upon a public or private highway or road a public nuisance subject to seizure and 30-day impoundment. AB 1724 was vetoed.
 - c) AB 1145 (Huff), of the 2007-08 Legislative Session, would have authorized vehicle seizure and forfeiture when the owner of the vehicle uses it in connection with the commission of a crime of vandalism, as specified. AB 1145 failed passage in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Oakland
Commercial Sexual Exploitation of Children

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice

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 2820 (Chiu) – As Amended March 15, 2016

SUMMARY: Revises the definition of state of emergency and local emergency for purposes of criminal price gouging. Specifies that criminal price gouging includes rental of any housing with an initial lease of up to one year for purposes of criminal price gouging. Includes the transportation of persons and towing services in the criminal price gouging during a declared emergency. Specifically, **this bill:**

- 1) Revises the definition of a state of emergency to mean a natural or manmade disaster or emergency caused by conditions such as, but not limited to, air pollution, earthquake, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, for which a state of emergency has been declared by the President of the United States or the Governor of California.
- 2) Revises the definition a local emergency to mean a natural or manmade disaster or emergency caused by conditions such as, but not limited to, air pollution, earthquake, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, for which a local emergency has been declared by an official, board, or governing body vested with authority to make such a declaration in any city, county, or city and county in California.
- 3) Applies the definitions above, throughout the criminal price gouging statute.
- 4) Includes the transportation of persons and towing services in the crime of price gouging during a declared emergency.
- 5) Specifies that criminal price gouging during a declared emergency includes any rental housing with an initial lease term of up to one year.

EXISTING LAW:

- 1) Finds that during emergencies and major disasters, including, but not limited to, earthquakes, fires, floods, or civil disturbances, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. (Pen. Code, § 396, subd. (a).)
- 2) States that it is the intent of the Legislature in to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers. (Pen. Code, § 396, subd. (a).)

- 3) Provides that upon the declaration of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster by the executive officer of any county, city, or city and county, and for a period of 30 days following that declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation of emergency. (Pen. Code, § 396, subd. (b).)
- 4) States that upon the declaration of a state of emergency resulting from an earthquake, flood, fire, riot, or storm declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, or storm by the executive officer of any county, city, or city and county, and for a period of 180 days following that declaration, it is unlawful for a contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation of emergency. (Pen. Code, § 396, subd. (c).)
- 5) Specifies that upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or other natural disaster declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or other natural disaster by the executive officer of any county, city, or city and county, and for a period of 30 days following that proclamation or declaration, it is unlawful for an owner or operator of a hotel or motel to increase the hotel or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent. (Pen. Code, § 396, subd. (d).)
- 6) Specifies that, a greater price increase for the goods and services, mentioned above, is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed by specified circumstances. (Pen. Code, § 396, subd. (a)-(c).)
- 7) Provides that time frame prohibiting specified price increases may be extended for additional 30-day periods by a local legislative body or the California Legislature, if deemed necessary to protect the lives, property, or welfare of the citizens. (Pen. Code, § 396, subd. (e).)
- 8) States that the conduct described above is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment. (Pen. Code, § 396 subd. (f).)
- 9) Specifies that the conduct described above shall constitute an unlawful business practice and an act of unfair competition. (Pen. Code, § 396 subd. (g).)

- 10) Defines "State of emergency" as "a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a state of emergency has been declared by the President of the United States or the Governor of California." (Pen. Code, § 396, subd. (g)(1).)
- 11) Defines "Local emergency" as "a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a local emergency has been declared by the executive officer or governing body of any city or county in California." (Pen. Code, § 396, subd. (g)(2).)
- 12) Defines "Housing" as "any rental housing leased on a month-to-month term" for purposes of criminal price gouging. (Pen. Code, § 396, subd. (g)(2).)
- 13) States that except as specified, in all leases of lands from week to week, month to month, or other period less than a month, the landlord may, upon giving notice in writing to the tenant, in the appropriate manner, change the terms of the lease to take effect, as to tenancies for less than one month, upon the expiration of a period at least as long as the term of the hiring itself, and, as to tenancies from month to month, to take effect at the expiration of not less than 30 days, but if that change takes effect within a rental term, the rent accruing from the first day of the term to the date of that change shall be computed at the rental rate obtained immediately prior to that change. (Civil Code, § 827, subd. (a).)
- 14) Specifies that the notice, when served upon the tenant, shall in and of itself operate and be effectual to create and establish, as a part of the lease, the terms, rents, and conditions specified in the notice, if the tenant shall continue to hold the premises after the notice takes effect.
- 15) States that all leases of a residential dwelling, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may increase the rent provided in the lease or rental agreement, upon giving written notice to the tenant, as follows, by either of the following procedures:
 - a) By delivering a copy to the tenant personally; or (Civil Code, § 827, subd. (b)(1)(A).)
 - b) By serving a copy by mail under the procedures as specified. (Civil Code, § 827, subd. (b)(1)(B).)
- 16) States that for an increase in rent greater than 10%, the minimum notice period required pursuant to that paragraph shall be increased by an additional 30 days, but does not apply to an increase in rent caused by a change in a tenant's income or family composition as determined by a recertification required by statute or regulation. (Civil Code, § 827, subd. (b)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Following the devastating Aliso Canyon gas leak, unscrupulous individuals took advantage of a tragic loophole in current law and raised

the prices of housing and services. AB 2820 updates current law to ensure that whether the disaster prompting the declaration of a state of emergency is natural or manmade, familiar or totally unprecedented, consumers across the state will be protected from excessive price increases. Disaster victims should not be victimized twice.”

- 2) **Aliso Canyon Disaster:** In October of 2015, a large leak was discovered at the Aliso Canyon natural gas storage facility. The methane leak forced more than 4,600 households into temporary housing and took 112 days to plug. Los Angeles Board of Supervisors declared a state of emergency in December, 2015. Governor Brown declared a state of emergency in January of 2016.

A news story by KPCC in January, 2016, discussed the extent to which rental prices increased after the leak was discovered.

KPCC quoted, Allen Brodetsky, president of Boutique Realty in Tarzana, who stated “Where rental prices would normally go between \$3,000 and \$4,000, now landlords are asking six, seven, eight, nine thousand dollars— double, triple the rent of what it should be.” (<http://www.scpr.org/news/2016/01/07/56700/fears-of-price-gouging-as-porter-ranch-families-lo/>)

Brodetsky also said that “The rental market around Porter Ranch has gotten so hot, that some homesellers, including a neighbor of his, have taken their houses off the market and turn them into short-term rentals.” (<http://www.scpr.org/news/2016/01/07/56700/fears-of-price-gouging-as-porter-ranch-families-lo/>)

To the extent that the rent increases described above, were for month to month leases and the leases were entered into after the declaration of a state of emergency, the conduct would be prohibited under the current price gouging law.

However, there was concern that existing law was not providing sufficient protection to individuals and families displaced by the Aliso Canyon disaster when landlords were demanding a year lease in conjunction with the high monthly rental prices. Current law does not cover rental contracts entered during a declared emergency, if the rental contracts were for any period longer than month to month. This bill expands the scope of the leases that would be covered under criminal price gouging to include leases with an initial term of up to one year.

- 3) **Revised Definition of State of Emergency and Local Emergency:** This bill clarifies the definition of State of Emergency and Local Emergency. This bill applies the definitions consistently within the existing statute prohibiting price gouging during a declared emergency. The existing statute prohibits raising prices above a specified amount, for a variety of goods and services, once an emergency has been declared. The existing statute has different definitions of what constitutes a triggering emergency depending on the type of goods or services being sold. For example, the prohibition against increasing hotel or motel prices more than 10% does not apply if the emergency is a result of a manmade disaster. In contrast, the prohibition on price increases for goods such as food, medical supplies, housing, or gasoline includes both natural and manmade disasters. This bill provides a consistent definition of emergency throughout the statute, including both natural and manmade

disasters.

- 4) **Argument in Support:** According to *The Consumer Attorneys of California*, “AB 2820 will prevent prices for short-term housing units and towing services from being raised more than 10% without justification when a state of emergency has been declared. AB 2820 further provides that all consumer price gouging protections in current law apply during a state of emergency whether the disaster was natural or manmade.

“The need for this bill is highlighted by the aftermath of the Aliso Canyon gas leak. Following the devastating leak, unscrupulous individuals took advantage of a traffic loophole in current law and raised the prices of short-term rentals. Landlords in nearby Woodland Hills and Northridge jacked up rents after the gas leak was discovered. Rental prices in the area were typically between \$3,000 and \$4,000 per month, during the gas leak, landlords were commonly asking for \$6000 to \$9000 per month – double or triple the amount of normal rents. Current law protects those with month-to-month leases, but does not apply if the initial lease is longer than 30 days. It also does not apply to hotel and motel operators if the disaster is man-made rather than natural, leaving families vulnerable to exploitation.

“During some disasters residents have had no choice but to abandon their vehicles as they fled to safety. Towing companies have taken advantage of the crisis by charging exorbitant rates. AB 2820 will specifically prohibit towing service providers from raising rates more than 10% when a state of emergency is declared.”

5) **Prior Legislation:**

- a) AB 457 (Nunez), Legislative Session of 2005-2006, would have authorized the Governor to proclaim an abnormal market disruption, as defined. AB 457 died in the Senate.
- b) SB 1363 (Ducheny), Chapter 492, Statutes of 2004, prohibits the owner or operator of a hotel or motel from increasing its regular advertised rates by more than 10% for 30 days following a proclamation or declaration of emergency, except as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Attorneys of California

Opposition

None

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 2830 (Salas) – As Amended March 17, 2016

SUMMARY: Includes correctional officers who are employed by a city or county in facilities that have arranged to house inmates in the custody of the California Department of Corrections and Rehabilitation and juveniles in the custody of the Division of Juvenile Justice, within the Peace Officer Bill of Rights. (POBOR)

EXISTING LAW:

- 1) States that for purposes of the (POBR), the term "public safety officer" means peace officers listed in specified sections of the Penal Code. (Gov. Code, § 3301.)
- 2) Finds and declares that the rights and protections provided to peace officers under POBR constitute a matter of statewide concern. (Gov. Code, § 3301.)
- 3) Finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations between public safety employees and their employers. (Gov. Code, § 3301.)
- 4) States that in order to assure that stable relations are continued throughout the state, and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined, wherever situated within the State of California. (Gov. Code, § 3301.)
- 5) Specifies that any deputy sheriff of the County of Los Angeles, and any deputy sheriff of the Counties of 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 the state 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 his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency, is covered by POBR. (Pen. Code, § 830.1, subd. (c), Gov. Code, § 3301.)
- 6) Specifies that a correctional officer is a peace officer, employed by a city, county, or city and county that operates a facility, as specified, who has the authority and responsibility for maintaining custody of state prison inmates or juvenile inmates, and who performs tasks

related to the operation of a detention facility used for the detention of persons who have violated parole or are awaiting parole back into the community. (Pen. Code, § 830.55, subd. (a)(1).)

- 7) Specifies that a correctional officer employed by a city or county who has the authority and responsibility for maintaining custody of inmates sentenced to or housed in a facility which provides housing for inmates sentenced to a county jail in community correctional facilities created to house specified state prison inmates is also a peace officer. (Pen. Code, § 830.55, subd. (a)(2).)
- 8) States that upon agreement with the sheriff or director of the county department of corrections, a board of supervisors may enter into a contract with other public agencies to provide housing for inmates sentenced to a county jail. (Pen. Code, § 4115.55.)
- 9) States that the Secretary of the Department of Corrections and Rehabilitation may enter into an agreement with a city, county, or city and county to permit transfer of prisoners in the custody a jail or other adult correctional facility of the city, county, or city and county, if the sheriff or corresponding official having jurisdiction over the facility has consented thereto. (Pen. Code, § 2910, subd. (a).)
- 10) Specifies that the Director of Corrections may enter into a long-term agreement not to exceed 20 years with a city, county, or city and county to place parole violators and other state inmates in a facility which is specially designed and built for the incarceration of parole violators and specified state prison inmates. (Pen. Code, § 2910.5.)
- 11) Provides that the Director of the Youth Authority may enter into an agreement with a city, county, or city and county, to permit transfer of wards in the custody of the Director of the Youth Authority to an appropriate facility of the city, county, or city and county, if the official having jurisdiction over the facility has consented. The agreement shall provide for contributions to the city, county, or city and county toward payment of costs incurred with reference to the transferred wards. (Welf. & Inst. Code, § 1753.3.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2803 will end the disparity that currently exists within Section 3301. This bill will provide community correctional officers the same protections other correctional officers currently have. The intent of Section 3301 is to improve all phases of law enforcement by maintaining stable employee-employer relations within law enforcement communities throughout the state. AB 2803 will help provide needed due process."

"In 2012, an emergency legislative act was signed into law, by Governor Jerry Brown, which created a new classification of Correction Officer for the newly created 'Modified Community Correctional Facilities.' The facilities were created to deal with the prisoner overcrowding in our State Correctional Facilities. The legislative act is now Penal Code 830.55, which defines this community correctional officer classification and the scope of peace officer status that they maintain.

"When the law was passed, community corrections officers were not included within the Peace Officers Bill of Rights (POBR)."

- 2) **Peace Officers Bill of Rights (POBR):** POBR provides peace officers with procedural protections relating to investigation and interrogations of peace officers, self-incrimination, privacy, polygraph exams, searches, personnel files, and administrative appeals. When the Legislature enacted POBR in 1976 it found and declared "that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern." The statute this bill seeks to amend (Gov. Code, § 3307.5.) was incorporated into POBR in 1999.

- 3) **POBR Covers Specified Peace Officers:** POBR covers a wide variety of peace officers.

The list of peace officers currently covered includes:

Police officers and deputy sheriffs. (Pen. Code, § 830.1.)
 Specified deputy sheriffs that exclusively handle inmate custody. (Pen. Code, § 830.1.)
 California Highway Patrol Officers (Pen. Code, § 830.2.)
 Specified community college and school district police. (Pen. Code, § 830.32.)
 BART Police, harbor or port police, transit police. (Pen. Code, § 830.33.)
 Municipal utility district and county water district security officers. (Pen. Code, § 830.34.)
 Welfare fraud or child support investigator or inspector, as specified (Pen. Code, § 830.35.)
 Sargeant at Arms of each house of the Legislature. (Pen. Code, § 830.36.)
 Members of an Arson Investigating Unit. (Pen. Code, § 830.37.)
 Officers of a state hospital under the jurisdiction of the State Department of State Hospitals. (Pen. Code, § 830.38.)
 Parole Officers, probation officers, and correctional officers for the California Department of Corrections and Rehabilitation (CDCR). (Pen. Code, § 830.5.)
 (This list is not exhaustive)

Deputy sheriffs, in specified counties, employed to perform duties exclusively related to custodial assignments involving the custody, care, supervision, security, movement, and transportation of inmates are covered by POBR. (Pen. Code, § 830.1, subd. (c), Gov. Code, § 3301.) Those deputy sheriffs have similar duties and responsibilities to the peace officers described in this bill.

The peace officers specified in this bill also have responsibilities that are purely custodial in nature. The individuals that they are responsible for supervising are specified adult and juvenile inmates of the state correctional system. These individuals are either adults under the authority of the California Department of Corrections and Rehabilitation or juveniles under the authority of the Division of Juvenile Justice. The state has contracted with certain cities and counties for those jurisdictions provide facilities for custodial supervision of the specified adult and juvenile inmates. Given the similarity to the responsibilities of deputy sheriffs in certain counties that are purely custodial officers, it would not be inconsistent to cover the custodial peace officers specified in this bill under POBR.

- 4) **Argument in Support:** According to The California Labor Federation, "In 2011, to address prisoner overcrowding in state correctional facilities Governor Brown signed the Public Safety Realignment (Realignment). Under Realignment, community correctional facilities

(CCFs) were given the authority to contract with county jails to house low-level offender. The position of CCF correctional officers was then created for enforcing rules and keeping order within jails, supervising activities of inmates, and inspecting facilities to ensure that they meet security and safety standards.

“CCF correctional officers must satisfactorily complete the same training as state employed correctional officers and the scope of their responsibilities and peace officer powers are equal to that of State correctional officers. However, state correctional officers are protected under the Public Safety officers Procedural Bill of Rights Act and CCF correctional officers are not.

“AB 2830 will add CCF correctional officers to the Public Safety Officers Procedural Bill of Rights Act to ensure that CCF correctional officers have the same rights and protections as their equal counterpart, State employed correctional officers.”

- 5) **Argument in Opposition:** According to *The California Public Defenders Association*, “This bill would include correctional officers who are employed by a city, county, or city and county in facilities with specific types of inmates, that include, among others, parole violators and wards in the custody of the Director of the Youth and Adult Correctional Agency or Division of Juvenile Justice within the application of the act, thereby creating a state-mandated local program by imposing new duties on local agencies to follow the requirements of the act with respect to these persons.

“This bill would apply to all correctional officers who are employed by a city or county. This is by virtue of the fact that under the Realignment Law (AB 109) parole violators, with some exceptions, are housed in local jails.

“The news recently has been rife with examples of misconduct by correction officers. In some cases, criminal charges have been brought against correctional officers for the death of inmate(s) (Santa Clara County). In another case, there have been allegations that correctional officers have staged fights between inmates. (San Francisco County).”

- 6) **Related Legislation:** AB 1872 (Gray), would include deputy sheriffs in the County of Merced within the definition of peace officers that includes peace officers who are employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities. AB 1872 is set for hearing in the Assembly Public Safety Committee on April 19, 2016.

7) **Prior Legislation:**

- a) AB 398 (Fox), of the Legislative Session of 2013-2014, would have included coroners and deputy coroners within the application of POBR. AB 398 was held in the Assembly Appropriations Committee.
- b) SB 522 (Chesbro), of the Legislative Session of 2001-2002, would have included within POBR, public officers who are custodial officers employed by a law enforcement agency of a city or county, other than Santa Clara County, who have the authority and responsibility for maintaining the custody of prisoners and who perform tasks related to the operation of a local detention facility. SB 522 was held in the Senate Appropriations

Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation
Communications Workers of America, District 9 AFL-CIO

Opposition

California Public Defenders Association

Analysis Prepared by: David Billingsley / 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 2839 (Thurmond) – As Amended April 13, 2016

SUMMARY: Clarifies that when a criminal defendant is ordered imprisoned for non-payment of a non-restitution criminal fine, that only the base fine is used when determining the term of imprisonment. Specifically, **this bill:**

- 1) Prohibits the term of imprisonment for nonpayment of a fine from exceeding one day for each \$125 of the base fine or the term for which the defendant may be sentenced.
- 2) Specifies that all days that a defendant is in custody shall be credited upon the defendant's term of imprisonment or credited proportionally to any criminal base fine, excluding restitution or restitution orders, at a rate of not less than \$125 per day.
- 3) States that any fees and assessments imposed on the base fine shall be reduced proportionally to the reduction of the base fine awarded as a result of custody credits.

EXISTING LAW:

- 1) Authorizes the court to incarcerate a defendant until an imposed criminal fine is satisfied, but limits such imprisonment to the maximum term permitted for the particular offense of conviction. (Pen. Code, § 1205, subd. (a).)
- 2) Requires that the time of imprisonment for failure to pay a fine be calculated as no more than one day for every \$125 of the fine. (Pen. Code, § 1205, subd. (a).)
- 3) States that this provision applies to any violation of any of the codes or statutes of the state which are punishable by a fine or by a fine and imprisonment, but that it does not apply to restitution fines or restitution orders. (Pen. Code, § 1205, subds. (c) & (f).)
- 4) Provides that all days spent in custody by the defendant must first be applied to the term of imprisonment and then to any fine including, but not limited to, base fines at the rate of not less than \$125 per day, or more, in the discretion of the trial court. (Pen. Code, § 2900.5, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Last year, the Legislature unanimously approved AB1375 to help address the excesses of the 'debt trap' faced by many defendant facing small fines in criminal court. The bill called for an inflationary adjustment from \$30 to \$125 per day to the rate at which jail time offset assessed fines that the prisoner could not

pay. The purpose of the bill was to reduce the time spent in jail by indigent defendants unable to pay small fines.

“Unfortunately, in response, some courts have now changed their method of calculating the fines against which the jail time is offset. Where before the offset was applied to the base fine, with penalties and assessments disregarded or reduced, these courts now are applying the credit only after penalties and assessments have been added. The net result in these courts is that indigent defendants now end up facing more jail time for the same minor fine, rather than less.

“AB 2839 will address this issue by specifying that the credit for jail time is to be applied to the base fine, not to the fine enhanced by penalties and assessments.”

- 2) **Penal Code Section 1205:** Pen. Code, § 1205 gives the court power to enforce payment of fine in a criminal case by imprisonment. However, imprisonment pending payment of a fine is unconstitutional as applied to a convicted indigent defendant if the failure to pay is due to indigence and not to willfulness. (*In re Antazo* (1970) 3 Cal.3d 100, 103-104.)

Pen. Code, § 1205 is also used by defendants as a vehicle to request that the trial court exercise its discretion to convert fines to jail time. However, the statute cannot be used to pay off restitution fines or victim restitution orders. (Pen. Code, § 1205, subd. (f).)

- 3) **Criminal Fine Increases:** Criminal fines and penalties have climbed steadily in recent decades. Government entities tasked with collecting these fines have realized diminishing returns from collection efforts. The *San Francisco Daily Journal* noted, "California courts and counties collect nearly \$2 billion in fines and fees every year. Nevertheless, the state still has a more than \$10.2 billion balance of uncollected debt from prior years, according to the most recent date from 2012." (See Jones & Sugarman, *State Judges Bemoan Fee Collection Process*, *San Francisco Daily Journal*, (January 5, 2015).) "Felons convicted to prison time usually can't pay their debts at all. The annual growth in delinquent debt partly reflects a supply of money that doesn't exist to be collected." (*Ibid.*) In the same article, the Presiding Judge of San Bernardino County was quoted as saying "the whole concept is getting blood out of a turnip." (*Ibid.*) Considering that so many fines remain to be collected, it seems unlikely that the reduction in collectable fines this bill would create would actually impact revenues for the State of California. Moreover, because some defendants choose to convert their fines to time in custody, by requiring custody credits be applied to the base fine, those defendants who choose to serve time in lieu of paying fines would be able to serve less time in custody to satisfy payment of the criminal fines in their judgment. It is unclear whether this would reduce prison and jail populations, but it is possible this would reduce those populations.
- 4) **Purpose of Amendments:** The amendments to this bill clarify that fees and assessments are to be imposed on the base fine as reduced by custody credits. Currently, courts impose fees and assessments automatically in proportion to the base fine. Existing law states that when incarcerated individuals receive credit toward their criminal fines –excluding restitution fines and orders–, those individuals receive not less than \$125 per day in custody. This bill would apply those custody credits to the base fine, rather than the total of the base fine with added fees and assessments. Because fees and assessments are calculated proportionally to the base

fine, these amendments would reduce the total of the fines imposed on defendants by reducing the base fine.

- 5) **Argument in Support:** According to the *Conference of California Bar Associations*, “AB 2839 is follow-up legislation to AB 1375 (Thurmond) of 2015, reaffirming that bill’s intent and invalidating its mis-implementation by at least one court. AB 1375, which was approved unanimously by both houses, amended Penal Code §§1205 and §2900.5 to increase the minimum credit for incarceration towards paying off a criminal fine from \$30.00 per day to \$125.00 per day. The intent of the bill was to make it easier for poor defendants to satisfy the burden of paying off ever-increasing fines by converting those fines to jail time at a more reasonable rate, and to ease jail overcrowding by enabling these poor defendants to satisfy their debt and get out more quickly. The bill also was intended to reduce costs, since counties end up paying the costs of incarceration for these poor defendants.

“For forty years, California courts have calculated jail time against the base fine, with penalties and assessments reduced proportionately. Unfortunately, in response to the change made by AB 1375, some courts have changed their method of calculating the fines against which the jail time is applied, applying the credit only after penalties and assessments have been added. In these courts, indigent defendants now face more jail time for the same minor fine than they did before AB 1375, despite the legislation’s clear intent. This also increases jail overcrowding for minor offenses, and costs counties more money in incarceration costs.

“AB 2839 would restore the “normal” calculation method in place for the forty years before the passage of AB 1375, thereby ensuring that the Legislature’s intent in enacting the bill is given effect, jail overcrowding is reduced, and local costs are kept low.”

6) **Prior Legislation:**

- a) AB 1375 (Thurmond), Chapter 209, Statutes of 2015, increased the rates to be applied, when a criminal defendant is ordered imprisoned for non-payment of a non-restitution criminal fine, from a credit of not less than \$30 to not less than \$125 per day for each day served pursuant to a judgment for non-payment of a criminal fine.
- b) AB 1819 (Robert Pacheco), Chapter 62, Statutes of 2002, authorized any county or court that implements a comprehensive program to identify and collect delinquent fines and forfeitures, with or without a warrant having been issued against the alleged violator, if the base fines and forfeitures are delinquent.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union
Conference of California Bar Associations

Opposition

None

Analysis Prepared by: Matt Dean / 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 2854 (Cooper) – As Amended April 13, 2016

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

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

EXISTING LAW:

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "An unintended consequence of Proposition 47 made the theft, or known illegal transfer of a firearm, with the monetary value of under \$950 a misdemeanor. Handguns, shotguns, rifles and AR-15 types of weapons are easy to find for sale for under the \$950 at most retail gun stores. When these guns are stolen they are often sold or traded at below market value on the street. Many times these stolen guns are found to have been used in other crimes such as robberies and shootings. AB 2854 will serve as a deterrent and apply the proper criminal consequences to those who steal and transfer any type of firearm."
- 2) **Proposition 47:** Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. Specifically, the initiative reduced the penalties for possession for personal use of most illegal drugs to misdemeanors. The initiative also reduced the penalties for theft, shoplifting, receiving stolen property, writing bad checks, and check forgery valued at \$950 or less from felonies to misdemeanors. However, the measure limited the reduced penalties to offenders who do not have prior convictions for serious or violent felonies and who are not required to registered sex offenders. (See Legislative Analyst's Office analysis of Proposition 47 <<http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>>.)
- 3) **Proposition 47 As it Relates to the Theft of a Gun:** Proposition 47 added Penal Code section 490.2 which provides a new definition for grand theft: "*Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor*"

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

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

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

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

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

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

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

For example, if a firearm is stolen from a home, the defendant could be charged with residential burglary, which is a felony and a strike. (See Pen. Code, §§ 460, 461, and 1192.7,

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

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

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

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

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

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

initiative process is not improperly annulled by a legislative body. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473.)

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

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

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

This bill, upon its approval by the Legislature, calls for a special election to approve its provisions.

- 6) **Legislative Deadlines for Placing a Measure on the Ballot:** This bill calls for a statewide special election to be held on November 8, 2016, for voter approval of the provisions of this bill. Additionally, this bill requires the special election to be consolidated with the statewide general election to be held on that date and requires the special election to be held and conducted in all respects as if there were only one election, and only one form of ballot shall be used.

Current law requires every constitutional amendment, bond measure, or other legislative measure submitted to the people by the Legislature to appear on the ballot of the first statewide election occurring at least 131 days after the adoption of the proposal by the Legislature. The statutory deadline to place a measure on the ballot for the November 8, 2016 statewide election is June 30, 2016. The bill, however, waives specified Elections Code provisions as to ensure it can be placed on the November ballot.

- 7) **Argument in Support:** According to the *California State Sheriffs' Association*, "Proposition 47 reduced the penalty for stealing a firearm to a misdemeanor punishable by up to six months in the county jail and/or a fine of up to \$1,000, unless the firearm is valued at more than \$950 or the defendant has at least one of a list of certain prior offenses.

"Whether because of a drafting error or an intentional change, Prop 47 drastically reduces the penalty for the serious act of stealing a firearm. We can be quite confident that stealing a gun is done to facilitate other nefarious acts, not to bolster one's firearm collection. The Legislature should remedy this significant devaluing of the criminality at issue here.

"We have debated and will undoubtedly continue to discuss the merits of Proposition 47. That said, it is our hope that, regardless of where one stands on the notions underlying Prop 47, the Legislature will recognize the inherent danger in drastically reducing the penalty for stealing a gun, particularly in the context of the Legislature's work in ensuring that persons

who should not be armed do not have access to firearms."

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

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

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

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

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

9) **Related Legislation:**

- a) AB 1869 (Melendez) is substantially identical to this bill. AB 1869 is pending in the Assembly Appropriations Committee.
- b) AB 2369 (Patterson) authorizes the prosecutor to charge a defendant with a felony if the person has been convicted twice or more in a 12-month period of the crimes reduced to a misdemeanor by Proposition 47. AB 2369 also makes it a felony when stolen items include a firearm. AB 2369 failed passage in this Committee.

10) Prior Legislation:

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

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Retailers Association
California Sportsman's Lobby
California State Sheriffs' Association
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition of California
Peace Officers Research Association of California
Safari Club International

Opposition

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

Analysis Prepared by: Sandy Uribe / 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

AJR 31 (Roger Hernández) – As Amended March 30, 2016

PULLED BY AUTHOR