

Date of Hearing: April 19, 2016

Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

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

VOTE ONLY

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

EXISTING LAW:

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

imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950; or

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

FISCAL EFFECT: Unknown

COMMENTS:

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

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

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

"In 1983, the Legislature passed the state's first law focusing exclusively on those 65 years of age or older, requiring elder care custodians and other specified professionals to report instances of elder abuse. (Welf. & Inst. Code, § 9380- 9386, added by Stats. 1983, ch. 1273,

§ 2 and repealed by Stats. 1986, ch. 769, § 1.3, eff. Sept. 15, 1986.) That same year, Senate Bill No. 248, 1983-1984 Regular Session, was introduced at the request of the Santa Ana Police Department. An analysis of the bill prepared for the Senate Committee on the Judiciary indicates that the goal of the legislation was to aid in the prosecution of people who harm or neglect dependent adults. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 248 (1983-1984 Reg. Sess.) p. 2.) According to this document, law enforcement agencies receiving reports concerning suspected abuse or neglect of dependent adults were having difficulty finding Penal Code sections under which they could prosecute such cases. (*Ibid.*) The solution proposed by the bill was to establish the same criminal penalties for the abuse of a dependent adult as those found in sections 273a and 273d for child abuse. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 248.) When drafting the new legislation, the bill's author lifted the language of the child abuse statutes in its entirety, replacing the word 'child' with 'dependent adult' throughout (*internal citation omitted*).

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

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

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

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

This bill specifies that any defendant who is convicted of theft from an elder or dependent

adult, when the value of the property taken is more than \$950, shall serve that sentence in state prison rather than in the county jail. Thus, this bill creates a new exclusion for county-jail eligibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

7) **Prior Legislation:**

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Long-Term Care Ombudsman Association

Opposition

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

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

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

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

AB 1772 (Beth Gaines) – As Amended April 13, 2016
VOTE ONLY

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

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

- 5) Makes a second or subsequent offense of invasion of privacy with the naked eye or with the use of an instrumentality punishable as a misdemeanor by up to one year in a county jail, by a fine not to exceed \$2,000, or both, and as felony by 16 months, two, or three years in a county jail, by a fine not to exceed \$5,000, or both.
- 6) Provides that if the victim of a "peeping" offense was a minor at the time of the offense, then the crime is punishable as a misdemeanor by up to one year in a county jail, by a fine not to exceed \$2,000, or both, and as felony by 16 months, two, or three years in a county jail, by a fine not to exceed \$5,000, or both.
- 7) States that any person convicted of secretly videotaping or photographing a person in a state of full or partial undress is punishable as a misdemeanor by one up to one year in jail, a fine of up to \$5,000, or both, and as felony by 16 months, two, or three years in a county jail, by a fine not to exceed \$5,000, or both.

EXISTING LAW:

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

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

FISCAL EFFECT: Unknown

COMMENTS:

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

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

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

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

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

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

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

4) Prior Legislation:

- a) AB 1512 (Donnelly), of the 2012 Legislative Session would have made the crime of invasion of privacy with the naked eye or with the use of an instrumentality, otherwise known as "peeping," a felony punishable in the state prison. AB 1512 failed passage in the Assembly Public Safety Committee.
- b) AB 2523 (Garcia), of the 2003-2004 Legislative Session, would have increased the penalty from a misdemeanor to an alternate misdemeanor/felony for a first offense of secret videotaping or recording a person under the age of 18, and would have made a second or subsequent conviction a felony. AB 2523 failed passage in the Assembly Public Safety Committee.
- c) AB 2640 (Cox), of the 2003-2004 Legislative Session, would have created a new felony of loitering, prowling, or wandering upon the private property of another at any time without visible or lawful business with the owner or occupant. AB 2640 failed passage in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association

Opposition

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

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

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

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

AB 2169 (Travis Allen) – As Introduced February 17, 2016

VOTE ONLY

SUMMARY: Prohibits a person from maintaining or operating a place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away and deletes provisions of law authorizing these activities under certain conditions.

EXISTING LAW:

- 1) States that it is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking specified controlled substances, however, it is not unlawful until January 1, 2021, for a person to possess solely for personal use hypodermic needles or syringes if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription. (Health & Saf. Code, § 11364, subds. (a) and (c).)
- 2) Provides that, except as authorized by law, no person shall maintain or operate any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless such drug paraphernalia is completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of 18 years not accompanied by a parent or legal guardian are excluded. Each entrance to such a room or enclosure shall be signposted in reasonably visible and legible words to the effect that drug paraphernalia is kept, displayed or offered in such room or enclosure and that minors, unless accompanied by a parent or legal guardian, are excluded. (Health & Saf. Code, § 11364.5, subd. (a).)
- 3) States that, except as authorized by law, no owner, manager, proprietor or other person in charge of any room or enclosure, within any place of business, in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away shall permit or allow any person under the age of 18 years to enter, be in, remain in or visit such room or enclosure unless such minor person is accompanied by one of his or her parents or by his or her legal guardian. (Health & Saf. Code, § 11364.5, subd. (b).)
- 4) Prohibits, unless authorized by law, any person under the age of 18 years from entering, being in, remaining in or visiting any room or enclosure in any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless accompanied by one of his or her parents or by his or her legal guardian. (Health & Saf. Code, § 11364.5, subd. (c).)

- 5) Defines "drug paraphernalia" to mean "all equipment, products, and materials of any kind which are intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance." "Drug paraphernalia" includes, but is not limited to, all of the following:
- a) Kits intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
 - b) Kits intended for use or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
 - c) Isomerization devices intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;
 - d) Testing equipment intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
 - e) Scales and balances intended for use or designed for use in weighing or measuring controlled substances;
 - f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, intended for use or designed for use in cutting controlled substances;
 - g) Separation gins and sifters intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
 - h) Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in compounding controlled substances;
 - i) Capsules, balloons, envelopes, and other containers intended for use or designed for use in packaging small quantities of controlled substances;
 - j) Containers and other objects intended for use or designed for use in storing or concealing controlled substances;
 - k) Hypodermic syringes, needles, and other objects intended for use or designed for use in parenterally injecting controlled substances into the human body; and,
 - l) Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body. (Health & Saf. Code, § 11364.5, subd. (d).)
- 6) Allows a court, in determining whether an object is drug paraphernalia, to consider, in addition to all other logically relevant factors, the following:

- a) Statements by an owner or by anyone in control of the object concerning its use;
 - b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
 - c) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this section. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this section shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;
 - d) Instructions, oral or written, provided with the object concerning its use;
 - e) Descriptive materials, accompanying the object which explain or depict its use;
 - f) National and local advertising concerning its use;
 - g) The manner in which the object is displayed for sale;
 - h) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
 - i) The existence and scope of legitimate uses for the object in the community; and,
 - j) Expert testimony concerning its use. (Health & Saf. Code, § 11364.5, subd. (e).)
- 7) Contains an exemption for any pharmacist, physician, dentist, podiatrist, veterinarian or manufacturer, wholesaler, or retailer licensed by the California Board of Pharmacy who legally furnishes, prescribes, sells, or transfers hypodermic syringes, needles, and other objects designed for use or marketed for use in parenterally injecting controlled substances into the human body. (Health & Saf. Code, § 11364.5, subd. (f)(1)-(3).)
- 8) Provides that, except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided, is guilty of a misdemeanor. (Health & Saf. Code, § 11364.7, subd. (a).)
- 9) States that, except as authorized by law, any person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine is punishable as a

misdemeanor or a felony. (Health & Saf. Code, § 11364.7, subd. (b).)

- 10) Exempts medical marijuana patients from the prohibition against possession and cultivation of marijuana if used for personal medical purposes. (Health & Saf. Code, § 11362.5, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Federal and state laws never intended to allow illegal drug tools to be sold. California can no longer turn a blind eye to this illegal activity that allows our children to be taken advantage of and encourages them to use illegal drugs."
- 2) **Medical Marijuana Laws:** In 1996, voters passed Proposition 215, the Compassionate Use Act, which authorizes a patient or the patient's primary caregiver to possess marijuana or cultivate marijuana for the patient's medical use upon the written or oral recommendation of a physician. (Health and Saf. Code, § 11362.5.)

The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. The Act also ensures that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. (Health and Saf. Code, § 11362.5.)

In 2003, the Legislature clarified the Compassionate Use Act with SB 420 (Vasconcellos), Chapter 875, Statutes of 2003, known as the Medical Marijuana Program Act (MMPA). The MMPA offered a voluntary identification card which patients and caregivers could obtain that would additionally protect them from arrest. The MMPA also set limits on the amounts of marijuana to be legally grown and possessed, however, the California Supreme Court ruled in *People v. Kelly* (2010) 47 Cal.4th 1008, that the MMPA section limiting quantities of marijuana is unconstitutional because it amends a voter initiative.

The Compassionate Use Act protects caregivers and patients who possess or cultivate medical marijuana use, but, people who engage in these activities remain liable for federal arrest and prosecution, and those who operate dispensaries face frequent federal enforcement actions. The U.S. Supreme Court ruled in *Gonzales v. Raich* (2005) 545 U.S. 1, that the federal government can enforce marijuana prohibition despite state medical-marijuana laws. Thus, the CUA and the MMPA have no effect on federal enforceability of the federal Controlled Substances Act.

After several failed legislative attempts to regulate the medical marijuana industry, in 2015, the Legislature enacted the Medical Marijuana Regulation and Safety Act. (AB 243 (Wood), Chapter 688, Statutes of 2015, AB 266 (Bonta), Chapter 689, Statutes of 2015, and SB (McGuire), Chapter 719, Statutes of 2015.) The Act, among other things, requires licenses

for cannabis dispensaries and creates a new state agency to oversee the industry.

- 3) **2016 Ballot Initiatives:** This year, California voters will likely have the opportunity to vote on at least one ballot measure to legalize non-medical marijuana. Although multiple competing measures have been filed, the Adult Use of Marijuana Act is the most likely to qualify for the 2016 ballot. The Adult Use of Marijuana Act, if approved, would tax and regulate marijuana in a manner similar to alcohol while allowing adults, age 21 and older, to possess and cultivate marijuana as sanctioned by the measure without fear of prosecution. (*Pot Legalization Efforts Now Down to One Major Initiative*, L.A. Weekly (Jan. 5, 2016) <<http://www.laweekly.com/news/pot-legalization-efforts-now-down-to-one-major-initiative-6447387>> [as of January 6, 2016].)

If recreational use of marijuana is approved by the voters this year, possession, smoking, ingestion and cultivation will be legal activities. Additionally, these activities are already legal for patients who use marijuana for medicinal purposes. Considering that current law already restricts businesses from selling, displaying or transferring drug paraphernalia which includes items that assist in smoking or growing marijuana, would further restricting the availability of drug paraphernalia unnecessarily burden lawful activities?

- 4) **Argument in Support:** According to the *California Police Chiefs Association*, “Drug usage is a problem that continues to increase, mostly because of its availability to the general population. California shops that sell drug paraphernalia accommodate illicit drug users, making it easier for them to abuse various illegal drugs. The National Institute on Drug Abuse Cited in 2012, that in Los Angeles County alone, marijuana accounted for the highest percentage (27 percent) of drug treatment admissions. The usage of illegal drugs is not only harmful to one’s self, but also negatively impacts the state of California.

“Existing law prohibits a person from maintaining or operating any place of business in which drug paraphernalia is kept, displayed, or offered in any manner, sold, furnished, transferred, or given away. Too many localities and law enforcement entities are struggling to keep up with the abuses to this law, and this bill will help them immensely. AB 2169 will install a necessary standard to prohibit shops from selling illegal glass pipes and drug paraphernalia.”

- 5) **Argument in Opposition:** According to the *American Civil Liberties Union*, “Many of the items on the list of ‘drug paraphernalia’ have lawful uses, including for the consumption of medical marijuana. Completely banning retail sales of these items is excessive and unwarranted from a public health perspective.

“The Compassionate Use Act, approved by the voters in Proposition 215, specifically states that a ‘qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana’ and ‘may also maintain no more than six mature or 12 immature marijuana plants.’ Health & Safety Code § 11362.77. AB 2169 would ban retail sale of items legitimately used by qualified patients and their caregivers to grow and consume medical marijuana. It would also ban the sale of items that eliminate the negative health impacts of smoking marijuana, such as vaporizers. Making it more difficult for qualified patients to grow and consume medical marijuana is inconsistent with the will of the voters.

“Moreover, the voters will likely decide soon whether California should decriminalize

possession and consumption of small amounts of marijuana for recreational purposes. The Legislature should not now be completely prohibiting the sale of the items related to what may soon become a legitimate business in California.

“In addition, the proposed bill contradicts the advice of experts on how to prevent the harms of substance use. It is recognized that the availability of sterile syringes reduces the spread of HIV and hepatitis C. Previous state legislation has reduced or removed the legal barriers to accessing sterile syringes, in the interest of preventing transmission of HIV or viral hepatitis. In 2014 AB 1734 (Ting) passed and was signed into law by Governor Brown, allowing non-prescription pharmacy sales of syringes and personal possession of syringes in order to most effectively eliminate HIV and hepatitis C transmission among people who inject drugs. AB 2169 would move in the opposite direction and is contrary to the best practices for promoting public health.”

6) Prior Legislation:

- a) AB 261 (Travis Allen), of the 2015-16 Legislative Session, is identical to this bill. AB 261 died in Committee.
- b) AB 1811 (Ammiano), of the 2009-10 Legislative Session, would have revised the definition of "drug paraphernalia" to include those same objects when designed or marketed for use in the unlawful conducts of those acts, including the unlawful ingesting, inhaling, or other introduction of those controlled substances into the human body. AB 1811 failed passage on the Assembly Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

Action Network Family Resource Center
California Police Chiefs Association
California Narcotic Officers' Association
Central Valley Recovery Services, Inc.
Huntington Beach Police Chief
Palomar Health Communities Coalition Escondido
Partnership for a Positive Pomona
San Marcos Prevention Coalition
Santee Solutions Coalition
Take Back America Campaign
Wellness and Prevention Center
5 private individuals

Opposition

American Civil Liberties Union
Drug Policy Alliance

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 2229 (Grove) – As Amended March 17, 2016
VOTE ONLY

SUMMARY: Eliminates the 10-day waiting period for persons previously determined by the Department of Justice (DOJ) to not be prohibited from possessing a firearm and the person possesses a firearm, is authorized to carry a concealed firearm, or possesses a valid Certificate of Eligibility. Specifically, **this bill:**

- 1) Requires the DOJ to immediately release firearms to persons without waiting the mandated 10-days if the person is determined by the DOJ not to be prohibited from possessing, receiving, owning, or purchasing a firearm; and any of the following:
 - a) The person possesses a firearm as confirmed by the Automated Firearms System (AFS);
or
 - b) The person is authorized to carry a concealed firearm; or
 - c) The person possesses a valid Certificate of Eligibility and a firearm as confirmed by the AFS.

EXISTING LAW:

- 1) Provides that no firearm shall be delivered:
 - a) Within 10 days of the application to purchase, or, after notice by the Department of Justice (DOJ), within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the DOJ of any fee required, whichever is later;
 - b) Unless unloaded and securely wrapped or unloaded and in a locked container;
 - c) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of the person's identity and age to the dealer; and,
 - d) Whenever the dealer is notified by the Department of Justice that the person is prohibited by state or federal law from processing, owning, purchasing, or receiving a firearm. The dealer shall make available to the person in the prohibited class a prohibited notice and transfer form, provided by the department, stating that the person is prohibited from owning or possessing a firearm, and that the person may obtain from the department the

reason for the prohibition. (Pen. Code § 26815.)

- 2) Provides that the sale, loan or transfer of firearms in almost all cases must be processed by, or through, a state-licensed dealer or a local law enforcement agency with appropriate transfer forms being used, as specified. (Pen. Code § 27545.)
- 3) Allows persons who are not subject to reporting to report the acquisition, ownership, or disposal of firearms to DOJ. (Pen. Code § 28000.)
- 4) Requires that firearms information submitted to DOJ as to handguns in terms of who owns what handgun must be maintained within a centralized registry. (Pen. Code Section 11106) These reporting requirements will apply to all firearms as of January 1, 2014. (Pen. Code § 11106.)
- 5) Require the DOJ, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. Existing law prohibits the delivery of a firearm within 10 days of the application to purchase, or, after notice by the department, within 10 days of the submission to the department of any corrections to the application to purchase, or within 10 days of the submission to the department of a specified fee. (Pen. Code §§ 28200 to 28250.)
- 6) Requires if a dealer cannot legally deliver a firearm, existing law requires the dealer to return the firearm to the transferor, seller, or person loaning the firearm. (Pen. Code § 28050, subd. (d).)
- 7) Requires that in connection with any private party sale, loan or transfer of a firearm, a licensed dealer must provide the DOJ with specified personal information about the seller and purchaser as well as the name and address of the dealer. This personal information of buyer and seller required to be provided includes the name; address; phone number; date of birth; place of birth; occupation; eye color; hair color; height; weight; race; sex; citizenship status; and a driver's license number, California identification card number or military identification number. A copy of the Dealers Record of Sale (DROS), containing the buyer and seller's personal information, must be provided to the buyer or seller upon request. (Pen. Code §§ 28160, 28210, and 28215.)
- 8) Provides that various categories of persons are prohibited from owning or possessing a firearm, including persons convicted of certain violent offenses, and persons who have been adjudicated as having a mental disorder, among others. (Pen. Code Sections 29800 to 29825, inclusive, 29900, 29905, 30305 and WIC §§ 8100 and 8103.)
- 9) Prohibits persons who know or have reasonable cause to believe that the recipient is prohibited from having firearms and ammunition to supply or provide the same with firearms or ammunition. (Pen. Code § 27500 and 30306, and WIC § 8101.)
- 10) Provides that no person shall sell, lease, or transfer firearms unless he or she has been issued a state firearms dealer's license. A violation is a misdemeanor (punishable by up to one year in county jail). (Pen. Code § 12070.)

- 11) Provides for specified exemptions including commercial transactions among licensed wholesalers, importers, and manufacturers. (Pen. Code § 12070.)
- 12) Allows DOJ to charge the dealer for a number of costs such as a dealer record of sale (DROS). (Pen. Code § 12076.)
- 13) Exempts from the requirement (that sales, loans and transfers of firearms be conducted through a dealer or local law enforcement agency) transactions with authorized peace officers, certain operation of law transactions, and intra-familial firearms transactions. However, all these exempt transactions are subject to handgun registration as a condition of the exemption. (Pen. Code § 12078.)
- 14) Provides that, on request, DOJ will register transactions relating to handguns (indeed all firearms) in the Automated Firearm System (AFS) Unit for persons who are exempt from dealer processing, or are otherwise exempt by statute from reporting processes. (Pen. Code § 12078, subd. (l).)
- 15) Requires a person moving into California (with a handgun acquired outside of California) who did not receive the gun from a California licensed gun dealer, to register the gun with the DOJ by mailing a form. (Pen. Code § 12072, subd. (f)(2).)
- 16) Provides for the “Armed and Prohibited” (APS) program which identifies via registration records those persons who legally acquired and are the registered owner of any firearm in DOJ’s data base and subsequently become ineligible to possess firearms and creates a mechanism to disarm these persons. (Pen. Code § 12010 to 12012.)
- 17) Provides a county sheriff or municipal police chief may issue a license to carry a handgun capable of being concealed upon the person upon proof of all of the following.
 - a) The person applying is of good moral character (Pen. Code, §§ 26150, 26155, subd. (a) (1).);
 - b) Good cause exists for the issuance (Pen. Code, §§ 26150, 26155, subd. (a) (2).);
 - c) The person applying meets the appropriate residency requirements (Pen. Code, §§ 26150, 26155, subd. (a) (3).); and,
 - d) The person has completed the appropriate training course, as specified. (Pen. Code, §§ 26150, 26155, subd. (a) (4).)
- 18) States that a county sheriff or a chief of a municipal police department may issue a license to carry a concealed handgun in either of the following formats:
 - a) A license to carry a concealed handgun upon his or her person (Pen. Code, §§ 26150, 26155, subd. (b) (1).); or,
 - b) A license to carry a loaded and exposed handgun if the population of the county, or the county in which the city is located, is less than 200,000 persons according to the most

recent federal decennial census. (Pen. Code, §§ 26150, 26155, subd. (b) (2).

- 19) Provides that a chief of a municipal police department shall not be precluded from entering into an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses, or renewal of licenses, to carry a concealed handgun upon the person. (Pen. Code, § 26155, subd. (b) (3).)
- 20) Provides that a license to carry a concealed handgun is valid for up to two years, three years for judicial officers, or four years in the case of a reserve or auxiliary peace officer. (Pen. Code, § 26220.)
- 21) Provides that a license may include any reasonable restrictions or conditions that the issuing authority deems warranted, which shall be listed on the license. (Pen. Code, § 26200.)
- 22) Provides that the fingerprints of each applicant are taken and submitted to the Department of Justice. Provides criminal penalties for knowingly filing a false application for a concealed weapon license. (Pen. Code, §§ 26180, 26185.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2229 would amend the 10-day waiting period currently required for certain firearm purchases, by exempting three groups of firearm buyers from the state requirement."
- 2) **Silvester v. Harris (2014) 41 F. Supp. 3d 927:** Plaintiffs filed a federal suit in the Central District of California to challenge the 10-day waiting and contended that the 18 exemptions violate the Equal Protection Clause of the Fourteenth Amendment. The plaintiffs also contended that the 10-day waiting periods violated the Second Amendment. Specifically, Plaintiffs contend that the 10-day waiting periods violate the Second Amendment as applied to those who already lawfully possess a firearm as confirmed in the Automated Firearms System ("AFS"), to those who possess a valid Carry Concealed Weapon ("CCW") license, and to those who possess a valid Certificate of Eligibility ("COE"). In March 2014, the District Court conducted a bench trial in this matter. After considering the evidence and the arguments, the Court concludes that the 10-day waiting periods impermissibly violate the Second Amendment as applied to those persons who already lawfully possess a firearm as confirmed by the AFS, to those who possess a valid CCW license, and to those who possess both a valid COE and a firearm as confirmed by the AFS system, if the background check on these individuals is completed and approved prior to the expiration of 10 days. Because of the trial court's resolution of the Second Amendment issue, the court did not address the Fourteenth Amendment challenges. California Attorney General Kamala Harris has appealed this decision to the United States Court of Appeals for the Ninth Circuit. The matter is presently before them and they have not made a ruling on this matter.
- 3) **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 subd. (b)(1).) If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103 subd. (f).) For the provisions prohibiting a person from owning or possessing a firearm based on a serious threat of violence or based on admittance into a facility as a threat to self or others, the person has the right to request a hearing whereby the person could restore his or her right to own or possess a firearm if a court determines that the person is likely to use firearms or other deadly weapons in a safe and lawful manner. (Welf. & Inst. Code, §§ 8100, subd. (b)(1) and 8103, subd. (f).)

DOJ developed 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.

- 4) **Argument in Support:** According to *Firearms Policy Coalition*, "California has a mandatory 10-day waiting period prior to a person's taking possession of a lawfully-acquired firearm. The State's rationale and justification of this policy has traditionally been to chill 'impulse' firearm purchases (e.g., a 'cooling-off' period). More recently, the State has argued that it requires the waiting period in order to perform an 'adequate' background check.

"However, for those law-abiding persons already known to the state to possess firearms, including those persons licensed by a California sheriff or police chief to carry a handgun in public or who have a Certificate of Eligibility [to possess or acquire firearms] issued by the California Department of Justice ("DOJ") – both of which require the passage of a Live Scan background check and continuous criminal activity monitoring – the State's justifications (and all of its evidence) have failed to meet even deferential intermediate scrutiny.

"It is a fact that the DOJ 'auto-approves' at least 20% of all firearm purchases submitted through its Dealer's Record of Sale ("DROS") firearm acquisition, disposition, and registration system. Yet, these law-abiding people are made to wait the full 10 days before they take possession of their firearm.

"A person could (quite literally) walk into a California licensed dealer having a license to carry, wearing a concealed handgun, purchase a new firearm, pass the background check, and then irrationally be made to wait the full 10 days by DOJ simply because the State's regulatory scheme is as outdated as it is unconstitutional.

"In fact, The Calguns Foundation successfully litigated this very issue in the federal civil rights lawsuit *Silvester, et al. v. Attorney General Kamala Harris*, where, following years of litigation, full discovery, and a 3-day trial, District Court Judge Anthony Ishii (appointed to the bench by President Bill Clinton) ruled that the 10-day waiting period was nothing short of an unconstitutional infringement on the plaintiffs' Second Amendment right to keep and bear arms.

"AB 2229 is a common-sense measure that closely tracks the *Silvester* ruling and, put simply, conforms State statutes to the very minimum of constitutional standards. Even under AB 2229, all firearm purchasers will still need to pass the very same DOJ-administered background check and first-time purchasers would still need to wait 10-days before taking possession of a firearm."

- 5) **Argument in Opposition:** According to *The California Chapters of the Brady Campaign to Prevent Gun Violence*, "California law requires that whenever a person purchases a firearm, a complete background check must be performed and a ten day waiting period observed before the purchaser can take possession of the gun. The purpose of the ten day period is to allow sufficient time to perform the background check and to provide a "cooling" period to guard against impulsive acts of violence.

"Assembly Bill 2229 would provide that if a person is authorized to carry a concealed firearm, possesses a valid Certificate of Eligibility, or owns a firearm registered with the Department of Justice *and* is determined by the Department not to be prohibited from purchasing or possessing a firearm, then the Department must notify the dealer immediately so that the firearm may be released to the purchaser without waiting the full ten days.

"The requirement to observe a waiting period for subsequent firearm purchases was challenged in court by the Calguns Foundation, the Second Amendment Foundation and by several individuals. The plaintiffs did not challenge the waiting period for first time firearm purchases or the need to perform a complete background check for subsequent purchases.

"The Federal District Court in Fresno issued final judgement in this case (*Silvester v. Harris*) on August 25, 2014. The court found that the plaintiff's Second Amendments rights were being violated by the subsequent waiting period. Attorney General Harris timely appealed the trial court judgement and the case now resides in the 9th Circuit Court of Appeals, waiting for a ruling.

"In its opening brief on appeal, the Department of Justice pointed out that each year the Bureau of Firearms performs over a million background checks. Of these, only 20 percent are cleared immediately. The remainder require varying levels of analyst intervention. We have been told by staff at the Bureau that it commonly takes up to eight days to complete a background check. It is difficult to see how having to wait ten days versus eight days constitutes a "substantial burden" on the exercise of one's constitutional rights under the Second Amendment, as required in the *Chovan v. United States* two part test.

"We believe that there is a substantial likelihood that the 9th Circuit will reverse the lower court ruling in *Silvester v. Harris*. It would be both premature and inappropriate for the legislature to pass AB 2229 at this time while the case is still being litigated.

"Accordingly, we stand in opposition to AB 2229."

REGISTERED SUPPORT / OPPOSITION:

Support

Firearms Policy Coalition (Sponsor)
California Sportsman's Lobby
Gun Owners of California
Outdoor Sportsmen's Coalition of California
Safari Club International

Opposition

California Chapters of the Brady Campaign
California Civil Liberties Advocacy
Law Center to Prevent Gun Violence

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 2340 (Gallagher) – As Introduced February 18, 2016
VOTE ONLY

SUMMARY: Exempts persons holding valid licenses to carry a concealed firearm (CCW) who are also protected by a domestic violence protective order from both the school zone and the university prohibitions from possessing a firearm on a school zone campus.

EXISTING LAW:

- 1) Creates the Gun-Free School Zone Act of 1995. (Pen. Code, § 626.9 subd. (a).)
- 2) Defines a “school zone” to mean an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, or within a distance of 1,000 feet from the grounds of the public or private school. (Pen. Code, § 626.9, subd. (e).)
- 3) Provides that any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, unless it is with the written permission of the school district superintendent, or equivalent school authority, is punished as follows: (Pen. Code, § 626.9, subds. (f)-(i).)
 - a) Any person who possesses a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to imprisonment for two, three, or five years.
 - b) Any person who possesses a firearm within a distance of 1,000 feet from a public or private school providing instruction in kindergarten or grades 1 to 12, is subject to:
 - i) Imprisonment in a county jail for not more than one year or by imprisonment for two, three, or five years; or,
 - ii) Imprisonment for two, three, or five years, if any of the following circumstances apply:
 - (1) If the person previously has been convicted of any felony, or of any specified crime.
 - (2) If the person is within a class of persons prohibited from possessing or acquiring a firearm, as specified.

- (3) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony, as specified.
- c) Any person who, with reckless disregard for the safety of another, discharges, or attempts to discharge, a firearm in a school zone shall be punished by imprisonment for three, five, or seven years.
 - d) Every person convicted under this section for a misdemeanor violation who has been convicted previously of a misdemeanor offense, as specified, must be imprisoned in a county jail for not less than three months.
 - e) Every person convicted under this section of a felony violation who has been convicted previously of a misdemeanor offense as specified, if probation is granted or if the execution of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.
 - f) Every person convicted under this section for a felony violation who has been convicted previously of any felony, as specified, if probation is granted or if the execution or imposition of sentence is suspended, he or she must be imprisoned in a county jail for not less than three months.
 - g) Any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for two, three, or four years.
 - h) Any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, without the written permission of the university or college president, his or her designee, or equivalent university or college authority, must be punished by imprisonment for one, two, or three years.
- 4) States that the Gun-Free School Zone Act of 1995 does not apply to possession of a firearm under any of the following circumstances: (Pen. Code, § 626.9, subd. (c).)
- a) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.
 - b) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.
 - c) The lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.
 - d) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued

by a court against another person or persons who has or have been found to pose a threat to his or her life or safety, as specified.

- e) When the person is exempt from the prohibition against carrying a concealed firearm, as specified.
- 5) States that the Gun-Free School Zone Act of 1995 does not apply to: (Pen. Code, § 626.9, subd. (1).)
- a) A duly appointed peace officer;
 - b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California;
 - c) Any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer;
 - d) A member of the military forces of this state or of the United States who is engaged in the performance of his or her duties;
 - e) A person holding a valid license to carry a concealed firearm;
 - f) An armored vehicle guard, engaged in the performance of his or her duties, as specified;
 - g) A security guard authorized to carry a loaded firearm;
 - h) An honorably retired peace officer authorized to carry a concealed or loaded firearm; or,
 - i) An existing shooting range at a public or private school or university or college campus.
- 6) Specifies that unless it is with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under specified peace officer exceptions to concealed weapons prohibitions. Exempts the following persons: (Pen. Code, § 626.9, subd. (1).)
- a) A duly appointed peace officer as defined.
 - b) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California.
 - c) Any person summoned by any of these officers to assist in making an arrest or preserving the peace while that person is actually engaged in assisting the officer.
 - d) A member of the military forces of this state or of the United States who is engaged in the performance of that person's duties.

- e) A person holding a valid license to carry the firearm.
- f) An armored vehicle guard, who is engaged in the performance of that person's duties.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "victims of domestic should be able to protect themselves at all times. Preventing victims who possess a valid CCW permits from carrying firearms on school grounds will only make them more vulnerable to abuse and attacks."
- 2) **Persons with Concealed Carry Permits may Carry Weapons on School Grounds if Authorized by School Officials:** Under the existing code section for the Gun-Free School Zone Act, any person can possess a concealed weapon on school grounds provided that they have permission from school officials. The relevant code sections read as follows:

"[A]ny person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, *unless it is with the written permission of the school district superintendent, or equivalent school authority*, is punished..." (Pen. Code, § 626.9, subd (b).) (emphasis added.)

"Unless it is with the written permission of the school district superintendent, the superintendent's designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers in the scope of their duties." (Pen. Code, § 30310, subd. (a).) (emphasis added.)

The legislature has made a policy decision, that persons may carry firearms on school grounds with the written permission of school officials. The reason for this is to enhance public safety. Specifically, it is in the interests of public safety that school officials know that firearms are being carried on school grounds. Additionally, if a person has a domestic violence restraining order and the feel the need to carry a concealed weapon at work to defend themselves, school officials should know that danger is looming as well.

- 3) **Gun-Free School Zone Act of 1995:** Enacted by AB 645 (Allen), Chapter 1015, Statutes of 1994, the Gun-Free School Zone Act, hereafter referred to as the "Act," generally provides that any person who possesses, discharges, or attempts to discharge a firearm, in a place that the person knows, or reasonably should know, is a within a distance of 1,000 feet from the grounds of any public or private school, kindergarten or Grades 1 to 12, (a "school zone"), without written permission, may be found guilty of a felony or misdemeanor and is subject to a term in county jail or state prison.

The Act does not require that notices be posted regarding prohibited conduct under the Act; therefore, it is incumbent on the individual possessing the firearm to be knowledgeable of and adhere to the Act.

A "school zone" is defined as an area in, or on the grounds of, a public or private school providing instruction in kindergarten or Grades 1 to 12, inclusive, and within a distance of 1,000 feet from the grounds of the public or private school. The Act also provides specific definitions of a "loaded" firearm and a "locked container" for securing firearms.

- 4) **Argument in Support:** According to *Safari Club International*, "it is considered appropriate that persons possessing a permit to carry a concealed weapon (CCW) who are issued a protective order based on a threat of domestic violence be able to defend themselves if necessary while being in a school zone. They should be able to carry their concealed firearm wherever they go. Otherwise, they would be left defenseless if assaulted while within a school zone."
- 5) **Argument in Opposition:** According to *The California Chapters of the Brady Campaign to Prevent Gun Violence*, "In furtherance of our goal to reduce firearm violence in our communities, including on school grounds and college campuses, the California Brady Campaign Chapters are taking an oppose position to your bill, AB 2340:

"Legislation was enacted last year (SB 707) that prohibits persons holding a valid license to carry a concealed and loaded weapon (CCW) to bring the gun on the grounds of a K-12 school or on the campus of a university or college. Firearms, including concealed, loaded handguns, can still be allowed on school grounds or campuses with the written permission of school officials. AB 2340 would exempt CCW holders who are protected by a domestic violence protective order from the prohibition. Such person would also be exempt from the prohibition on carrying ammunition onto school grounds. The reasons for prohibiting CCW holders from carrying guns on school grounds and campuses have not changed since last year and apply to AB 2340.

"Under existing law, county sheriffs issue CCW permits and thereby determine who may carry a concealed, loaded gun on school grounds or campuses. Although there is a big variance in standards for issuing CCW permits among sheriffs, a permit is valid in any county in the state. Under AB 2340, a person who obtained a CWW permit in a rural county could be carrying a loaded gun on a campus in an urban setting. The Brady Campaign strongly believes that the discretion to allow hidden, loaded guns on a school grounds and college or university campuses must ultimately lie with school authorities, who bear the responsibility for the well-being and safety of their students.

"Moreover, it is very important for school authorities to know who has a loaded, hidden gun on campus. It has become standard practice for schools to prepare for a campus shooting incident. Active shooter drills are conducted and procedures are developed in collaboration with local law enforcement agencies. In a real school shooting, the presence of an armed person, who is unaware of the preparedness plan and whose intent may be unknown, adds unnecessary confusion and risk to the situation.

"The Violence Policy Center has documented homicides, suicides, accidental shootings and at least 29 mass shootings (since May 2007) committed by CCW license holders. Under existing law, they cannot carry their guns in many sensitive places. Similarly, those CCW permit holders who are also protected by a domestic violence protective order cannot carry their gun in many locations and schools should be no different.

"If a person feels threatened to the point where she or he feels the need to have a gun for a potential shootout, then that person should not be on school grounds or a college campus. Young children or older students could be killed in the crossfire. Safely using a firearm in such an emotionally charged or stressful situation would be difficult and would put many at great risk of being shot."

6) Prior Legislation:

- a) SB 707 (Wolk), Chapter 766, Statutes of 2015, specified that persons who possess a concealed weapons permit may not possess that firearm on school grounds as specified.
- b) AB 2609 (Lampert), Chapter 115, Statutes of 1998, clarified the Gun Free School Zone Act (Act) to forbid the bringing or possession of any firearm on the grounds of, or in any buildings owned or operated by a public or private university or college used for the purpose of student housing, teaching, research or administration, that are contiguous or are clearly marked university property. Exempts specified law enforcement and security personnel.
- c) AB 624 (Allen), Chapter 659, Statutes of 1995, passed the Gun-Free School Zone Act of 1995.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rifle and Pistol Association
California Sportsmen's Lobby, Inc.
Mono County Deputy Sheriff's Association
National Rifle Association of America
Outdoor Sportsmen's Coalition of California
Peace Officer Research Association of California
Safari Club International

1 Private Individual

Opposition

California Chapters of the Brady Campaign to Prevent Gun Violence
California Federation of Teachers
Law Center to Prevent Gun Violence

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

Date of Hearing: April 19, 2016

Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 2477 (Patterson) – As Introduced February 19, 2016

VOTE ONLY

SUMMARY: Overturns case law holding that a court lacks jurisdiction to modify a restitution order after the defendant's probation expires, thereby extending jurisdiction for restitution indefinitely. Specifically, **this bill:**

- 1) States legislative intent to abrogate the holdings in *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, and *People v. Waters* (2015) 241 Cal.App.4th 822.
- 2) Provides that the court retains jurisdiction to impose or modify restitution regardless of the type of sentence imposed or suspended and notwithstanding any other law.

EXISTING LAW:

- 1) Establishes the right of crime victims to receive restitution directly from the persons convicted of the crimes for losses they suffer. (Cal. Const. art I, § 28, subd. (b).)
- 2) Requires victim restitution from adult criminal defendants who have been sentenced by the court in every case in which a victim has suffered an economic loss as a result of the defendant's conduct. (Pen. Code, § 1202.4, subd. (f).)
- 3) Defines probation as "the suspension of the imposition or execution of a sentence and the order of conditional release in the community under the supervision of a probation officer." (Pen. Code, § 1203, subd. (a).)
- 4) Gives the court discretion in felony cases to grant probation for up to five years, or no longer than the prison term that can be imposed when the prison term exceeds five years. (Pen. Code, § 1203.1, subd. (a).)
- 5) Gives the court discretion in misdemeanor cases to generally grant probation for up to three years, or no longer than the consecutive sentence imposed if more than three years. (Pen. Code, § 1203a.)
- 6) Authorizes the extension of probation for five years in certain misdemeanor cases, such as driving under the influence. (Veh. Code, § 23600, subd. (b)(1).)
- 7) Requires a court which grants probation to make the payment of the victim restitution order a condition of probation. (Pen. Code, § 1202.4, subd. (m).)

- 8) Authorizes the court to revoke, modify, extend, or terminate its order of probation. (Pen. Code, §§ 1203.2 & 1203.3.)
- 9) Authorizes the court to modify the dollar amount of restitution at any time during the term of probation. (Pen. Code, § 1203.3, subd. (b)(5).)
- 10) Prohibits the court from modifying the restitution obligations due to the defendant's good conduct. (Pen. Code, § 1203.3, subd. (b)(4).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2477 is a measure which will clarify that the courts retain jurisdiction over a case for purposes of restitution even after the probationary period expires. By doing this we will uphold the Constitutional right of crime victims to receive the restitution that they deserve.

"In two recent state appellate court decisions, questions arose when it came to deciding whether or not the court had jurisdiction to impose restitution on a person who has committed a crime, after their probationary period has expired. This is problematic because the initial court hearing and restitution hearing are totally separate from one another. Often times restitution hearings can be delayed due to extraneous circumstances. Generally restitution is not granted at the initial hearing because the court still does not have the exact figure that must be paid because some costs may be ongoing or not yet determined, such as medical bills.

"AB 2477 clarifies that the court will retain jurisdiction over a case for purposes of restitution. This bill will ensure that victims receive the just restitution that they are owed and that they are provided with the correct amount to compensate their losses."

- 2) **Constitutionally Protected Right to Victim Restitution:** The right of a victim to restitution from the person convicted of a crime from which the victim suffers a loss as result of the criminal activity became a constitutional right when adopted by vote of the people in June 1982 as part of Proposition 8. Proposition 8 added article I, section 28, subdivision (b), to the California Constitution, and provided:

"It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

"Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section."

The Proposition was not self-executing, but rather directed the Legislature to adopt implementing legislation. (*People v. Vega-Hernández* (1986) 179 Cal.App.3d 1084.) In response, the Legislature enacted Penal Code sections 1202.4 and 1203.04 (repealed section

related to restitution as condition of probation). (*People v. Ortiz* (1997) 53 Cal.App.4th 791, 795, fn. 3.)

The constitutional provisions regarding restitution were amended by the voters again in 2008, when they approved Proposition 9, the Victims' Bill of Rights Act of 2008, also known as Marsy's Law. The amendments, among other things, make clear that a victim is entitled to restitution, expanded the definition of a victim to include a representative of a deceased victim, and gave that representative the ability to enforce a victim's right. (See *People v. Runyan* (2012) 54 Cal.4th 849, 858-859.)

- 3) **Restitution as a Condition of Probation:** When the court grants probation, payment of restitution must be made a condition of probation. (Pen. Code, 1202.4, subd. (m).)

The court has broader discretion to order restitution as a condition of probation than it does when a defendant is not granted probation. (*People v. Anderson* (2010) 50 Cal.4th 19, 26-27.) When ordering restitution as a condition of probation, the court is not restricted to directing payment to only those victims as defined in the restitution statute. Additionally, the court can order restitution as a condition of probation even when the losses are not necessarily caused by the conduct underlying the defendant's conviction. Rather than having a causal connection, the restitution condition must only be reasonably related to either the defendant's crime or to the goal of deterring future criminality. (*Ibid*; see also *People v. Carbajal* (1995) 10 Cal.4th 1114, 1121-1124.)

If part of a restitution order has not been paid after a defendant is no longer on probation, it remains enforceable by the victim as though it were a civil judgment. (Pen. Code, 1202.4, subd. (m).)

- 4) **Recent Case Law:** Two recent appellate court cases have held that a trial court acts in excess of its jurisdiction when it orders or modifies restitution after the expiration of a defendant's probationary period.¹

In *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, the Court of Appeal held that once probation expires, the judge cannot modify a restitution order. In *Hilton*, the defendant pled to driving under the influence and the court placed him on probation for three years. At a subsequent restitution hearing, the court ordered the defendant to pay \$3,000 restitution to the victim, which he did. (*Id.* at pp. 769-770.) The victim then sued the defendant civilly and won \$3.5 million. Probation then expired on the criminal case. One year and seven months after probation expired, the victim went back to court and requested that the court could order \$886,000 more in restitution, to pay for the costs of the civil suit as well as additional lost wages. The defendant objected based on lack of jurisdiction. (*Id.* at 770.) The Court of Appeal reversed the order, holding that once probation expires, the court loses jurisdiction to modify a restitution order and that any extension of probation was an act in excess of jurisdiction and void. (*Id.* at p. 772.) The court noted that termination of probation

¹ These cases are not contrary to the recent California Supreme Court case of *People v. Ford* (2015) 61 Cal.4th 282, which held that agreeing to a hearing on restitution outside the probationary period estops the defense from later challenging lack of jurisdiction.

occurs by operation of law at the end of the probationary period. (*Id.* at p. 773.) The court also held that the language of Penal Code section 1203.3, reflects legislative intent, consistent with pre-existing law on probation, that the trial court lacks jurisdiction to impose restitution once probation expires. (*Id.* at pp. 775-776.)

People v. Waters (2015) 241 Cal.App.4th 822, agreed with the holding in *Hilton*. In this case, the court sought to order restitution two years after the probationary period expired, even though the victim impact statement seeking \$20,000 was filed before the entry of the plea. (*Id.* at p. 825.) The court noted that Penal Code section 1202.4, subdivision (f) requires the trial court to order victim restitution unless the trial court finds compelling and extraordinary reasons for not doing so. Regarding jurisdiction, a trial court's power to modify a sentence usually expires 120 days after judgment. (See Pen. Code, § 1170, subd. (d).) (*Id.* at p. 827.) But there is an exception where victim restitution cannot be ascertained at the time of sentencing and the trial court retains jurisdiction to order restitution. (Pen. Code, § 1202.46.) However, section 1202.46 must be harmonized with the preexisting statutory scheme concerning probation, which limits a trial court's jurisdiction to modify probation to the term of probation (Pen. Code, § 1203.3, subs. (a), (b)(4).) (*Id.* at p. 830-831.) Therefore, the court concluded that the trial court lacked jurisdiction to order restitution after the expiration of the defendant's probationary period. (*Id.* at p. 831.)²

This bill seeks to overturn these cases.

- 5) **Argument in Support:** According to the *California District Attorneys Association*, the sponsor of this bill, "Current law (Penal Code 1202.46) provides that if a crime victim's economic losses cannot be determined at the time of sentencing, the court retains jurisdiction over a defendant for purposes of imposing or modifying restitution until the losses can be determined. Recently, in *Hilton v. Superior Court* (2014) 224 Cal.App.4th 47, the Fourth District Court of Appeal held that the court loses jurisdiction to modify or impose a restitution amount once probation expires. Common practice, prior to the *Hilton* decision, was that the court retained jurisdiction for the limited purpose of modifying or imposing a restitution order.

"While the law provides elsewhere (PC 1214(b) & (c); PC 1202.4(m)) that restitution orders survive the expiration of probation, parole, mandatory supervision, and post release community supervision, the holding in *Hilton* precludes a court from ordering or correcting the restitution amount.

"This is contrary to the California Constitution, which requires a restitution order in every case, regardless of sentence or disposition (Article I Section 28 subdivision (b)(13)). The Victims' Bill of Rights (Proposition 8 in June 1982) and Marsy's Law (Proposition 9 in November 2008) support a court's continuing jurisdiction to deal with victim restitution issues, and clearly provide that every case where a victim has suffered a loss must have a restitution order.

² It is unclear why in *People v. Waters*, *supra*, 241 Cal.App.4th 822, the People did not file an appeal claiming that a judgment lacking a victim restitution order was an unauthorized sentence. (See e.g. *People v. Rowland* (1997) 51 Cal.App.4th 1745 [when the court fails to issue a restitution award altogether, the sentence is invalid].)

"In the vast majority of cases, the victim restitution amount is finite, and the victim will not have to come back to court to get the amount increased because of ongoing expenses, such as additional medical bills or counseling fees. However, there are at least three scenarios in which the court needs to be able to deal with restitution issues post-supervision: (1) when it is discovered that victim restitution was overlooked; (2) when it is discovered that the original restitution amount was incorrect and needs to be reduced, increased, or eliminated; or (3) when victim restitution was contemplated by the parties, but the period of supervision expired before it could be ordered.

"The bottom line is that the law needs to be flexible enough to deal with victim restitution in all cases. We need to be able to set the victim restitution amount in the first place, whenever it becomes known, and we need to be able to correct the amount of victim restitution when it is discovered to be incorrect."

- 6) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice*, "The bill would infinitely expand a defendant's liability for restitution long after he or she completes her probationary term.

"Currently, the precedents hold that the trial court's jurisdiction ends upon the termination of a defendant's probationary term. This encourages a claimant to use due diligence in presenting a claim for restitution. It also provides an incentive for a defendant to satisfy the restitution order prior to the expiration of probation in order to prevent the probation term from being extended to satisfy the debt. It provides further incentive to a defendant to pay restitution early in his probationary term in support of a request for early termination of that term.

"The proposed legislation would not only be contrary to current case law; it would be contrary to the above-mentioned goals and incentives. By expressly providing that the trial court would have jurisdiction over a defendant for purposes of imposing or modifying restitution "at any time," the bill would exceed even the boundaries of civil liability statutes of limitation in many cases (particularly those involving personal injury). ...

"Defendants could be forced at attempting to defend against claims made decades after the successful completion of probation, and as stated in *Waters* at page 832, a defendant's estate could even be subjected to liability. The court in *Waters* goes on to state, '[w]hile we are sensitive to concerns about making crime victims whole, there must be some discernible limit to a trial court's power over a defendant after he or she completes a sentence.' (*Id.*)"

- 7) **Related Legislation:** AB 2295 (Baker) eliminates court discretion to order less than full restitution when there are compelling and extraordinary reasons not to do so. AB 2295 is pending hearing in this committee.
- 8) **Prior Legislation:** AB 2645 (Dababneh), Chapter 111, Statutes of 2014, requires a court transferring a probation or mandatory supervision case to another county to determine the amount of victim restitution before the transfer is made.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
California Police Chiefs Association
California Probation, Parole, and Correctional Association
California State Sheriffs' Association
Crime Victims United of California

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 2478 (Melendez) – As Amended April 6, 2016
VOTE ONLY

SUMMARY: Increases penalties for specified offenses involving straw purchasers of firearms. Specifically, **this bill:**

- 1) Specifies that knowingly selling, supplying, delivering, or giving possession or control of a firearm to any person who is a specified felon, certain misdemeanors, those subject to protective orders, those with prior convictions of those offenses shall be punished by two, three, or four years in state prison in lieu of county jail under existing law.
- 2) Increases the penalty for a person, corporation, or firearms dealer that violates selling, supplying, delivering, or giving possession or control of a firearm to anyone whom the person, corporation, or dealer has cause to believe is a prohibited person, from an alternate misdemeanor/felony servable in the county jail for either a year (misdemeanor) or 16 months, two, or three years (felony) to a straight felony punishable by two, three, or four years in state prison.
- 3) Increases the punishment for specified "straw purchase" firearms offenses from alternate misdemeanor/felony servable in county jail for either a year (misdemeanor) or 16 months, two, or three years (felony), to a straight felony punishable by 16 months, two, or three years in state prison.
- 4) Specifies that the sentence enhancement imposed if a person commits a straw sale or transfer to a specified prohibited person and the firearm transferred is used in the commission of a felony for which a conviction is obtained is punished by one, two, or three years in state prison, in lieu of county jail as imposed by existing law.
- 5) Appropriates \$2,200,000 to fund vertical prosecution units within the Department of Justice (DOJ) to prosecute straw purchasers of firearms.

EXISTING LAW:

- 1) States that no person, corporation, or firm shall knowingly sell, supply, deliver, or give possession or control of a firearm to any specified persons which include felons, certain misdemeanors, those subject to protective orders, those with prior convictions of those offenses. Provides that this offense is punishable by two, three, or four years, subject to realignment rules (i.e., the defendant would serve the sentence in county jail, not prison, unless the defendant was also convicted of a "serious" felony, a "violent" felony, or is required to register as a sex offender). (Pen. Code, § 27500, subd. (a).)

- 2) Provides that no person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to anyone whom the person, corporation, or dealer has cause to believe is within any of the classes prohibited as felons, certain misdemeanors, those subject to protective orders, those with prior convictions of those offenses, or certain persons prohibited from possessing firearms due to mental illness-related criteria. States that this offense is punishable as an alternative felony/misdemeanor (“wobbler”), punishable by imprisonment in county jail for up to one year, or 16 months, two, or three years, subject to realignment rules. (Pen. Code, § 27500, subd. (b).)
- 3) Provides that a “straw purchase” sale, i.e., a person, corporation, or dealer who sells, loans, or transfer a firearm to anyone whom the person, corporation, or dealer knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to anyone who is not the one actually being loaned the firearm, if the person, corporation, or dealer has knowledge that the firearm will be subsequently sold, loaned, or transferred to avoid the laws relating to transfers of firearms through dealers (background check, etc.). States that this offense is punishable as an alternative felony/misdemeanor (“wobbler”), punishable by imprisonment in county jail for up to one year, or 16 months, two, or three years, subject to realignment rules. (Pen. Code, § 27515.)
- 4) States that a “straw purchase” acquisition, i.e., a person, corporation, or dealer who acquires a firearm for the purpose of selling, loaning, or transferring the firearm, if the person, corporation, or dealer has intent to transfer the firearm to someone prohibited from possessing it due to the age of the recipient or to bypass laws on transfers (background check, waiting period, etc.). Provides that this offense is punishable as an alternative felony/misdemeanor (“wobbler”), punishable by imprisonment in county jail for up to one year, or 16 months, two, or three years, subject to realignment rules. (Pen. Code, § 27520.)
- 5) Provides for an additional, consecutive sentence that applies if a person commits a straw sale or transfer to a specified prohibited person and the firearm transferred is used in the commission of a felony for which a conviction is obtained. States that the punishment for this offense is one, two, or three years, subject to realignment rules. (Pen. Code § 27590, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Since 2005, nearly 200,000 aggravated assault firearm crimes were reported statewide. According to a study by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, stolen guns accounted for 10% to 15% of guns used in crimes while 39.6% of guns were bought legally by family members or friends and lent to the perpetrator.

"Straw-man purchase crimes are rarely prosecuted by the Department of Justice due to limited funding. Knowing this, many criminals prefer to attain firearms through this avenue.

"Thousands of violent crimes are committed each year because straw-man purchasers slip through state background checks and loan their guns to dangerous criminals. Although this

type of crime has caused hundreds of injuries and deaths, many perpetrators are only charged with a small fine, if at all."

- 2) **Penalty Increases and the Imposition of State Prison Sentences:** This bill increases and modifies penalties for several firearms violations related to "straw purchasers." For all of the offenses, the bill imposes state prison sentences, when the sentences under current law are served in county jail. Additionally, for some specified offenses the bill turns alternate misdemeanor/felony offenses (or "wobblers") into straight felony sentences and requires that those sentences are servable in state prison.

Current Law	Current Penalty	Proposed AB 2478 (Melendez) Penalty
<p>Penal Code § 27500(a): The crime of knowingly selling, supplying, delivering, or giving possession or control of a firearm to any person within any of the classes prohibited by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of the Penal Code (i.e., felons, certain misdemeanors, those subject to protective orders, those with prior convictions of those offenses)</p>	<p>2, 3, or 4 years, subject to realignment rules (i.e., the defendant would serve the sentence in county jail, not prison, unless the defendant was also convicted of a "serious" felony, a "violent" felony, or is required to register as a sex offender).</p>	<p>2, 3, or 4 years in state prison. (No realignment.)</p>
<p>Penal Code § 27500(b): The crimes in Penal Code § 27500(a) plus those prohibited due to Welfare and Institutions Code § 8100, § 8103 (certain legal status of persons prohibited from possessing firearms due to mental illness-related criteria)</p>	<p>An alternative felony/misdemeanor ("wobbler"), punishable by imprisonment in county jail for up to one year, or 16 months, 2, or 3 years, subject to realignment rules.</p>	<p>2, 3, or 4 years in state prison. (No realignment.) No misdemeanor option.</p>
<p>Penal Code § 27515: A "straw purchase" sale, i.e., a person, corporation, or dealer who sells, loans, or transfer a firearm to anyone whom the person, corporation, or dealer knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to anyone who is not the one actually being loaned the firearm, if the person, corporation, or dealer has knowledge that the firearm will be subsequently sold, loaned, or transferred to avoid the laws relating to transfers of firearms through dealers (background check, etc.).</p>	<p>An alternative felony/misdemeanor ("wobbler"), punishable by imprisonment in county jail for up to one year, or 16 months, 2, or 3 years, subject to realignment rules.</p>	<p>16 months, 2, or 3 years in state prison. (No realignment.) No misdemeanor option.</p>
<p>Penal Code § 27520: A "straw purchase" acquisition, i.e., a person, corporation, or dealer who acquires a firearm for the purpose of selling, loaning, or transferring the firearm, if the person, corporation, or dealer has intent to transfer the firearm to someone prohibited from possessing it due to the age of the recipient or to bypass laws on transfers (background check, waiting period, etc.)</p>	<p>An alternative felony/misdemeanor ("wobbler"), punishable by imprisonment in county jail for up to one year, or 16 months, 2, or 3 years, subject to realignment rules.</p>	<p>16 months, 2, or 3 years. (No realignment.) No misdemeanor option.</p>

<p>Penal Code § 27590(d) enhancement. An additional, consecutive sentence that applies if a person commits a straw sale or transfer to a prohibited person under Penal Code § 27590(b) (see description above) and the firearm transferred is used in the commission of a felony for which a conviction is obtained.</p>	<p>1, 2, or 3 years, subject to realignment rules.</p>	<p>1, 2, or 3 years imprisonment. (No realignment.)</p>
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3) **Effect on Criminal Justice Realignment:** Criminal justice realignment created two classifications of felonies: those punishable in county jail and those punishable in state prison. Realignment limited which felons can be sent to state prison, thus requiring that more felons serve their sentences in county jails. The law applies to qualified defendants who commit qualifying offenses and who were sentenced on or after October 1, 2011. Specifically, sentences to state prison are now mainly limited to registered sex offenders and individuals with a current or prior serious or violent offense. In addition to the serious, violent, registerable offenses eligible for state prison incarceration, there are approximately 70 felonies which have been specifically excluded from eligibility for local custody (i.e., the sentence for which must be served in state prison).

This bill specifies that a number of felony offenses that carried sentences which were servable in the county jail and mandates that they must be served in state prison. In addition, this bill eliminates a misdemeanor option for several wobbler offenses and makes them straight felony offenses.

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 difficult" and subject to "considerable uncertainty." (*Ibid.*) Nevertheless, creating a new exclusion for county jail sentences when the prison population is already expected to increase seems imprudent.

- 5) **Argument in Support:** According to the *California State Sheriffs' Association*, "Currently it is illegal to sell and/or deliver firearms to prohibited persons and a violation of the law is punishable as a felony carrying a county jail term. This bill enhances the punishment for those individuals that disregard the law and make the conscious decision to promote the dangerous and oftentimes deadly enterprise of firearm sales and distribution."
- 6) **Argument in Opposition:** According to *California Public Defenders Association*, "Existing law prohibits specified persons from owning, purchasing, receiving, or having in his or her possession, any firearm. Existing law prohibits a person, corporation, or firm from knowingly selling, supplying, delivering, or giving possession or control of a firearm to one of those prohibited persons, and makes a violation of that prohibition a felony punishable by imprisonment for 2, 3, or 4 years in the county jail.

"This bill would make that offense punishable by imprisonment for 2, 3, or 4 years in the state prison.

"Existing law prohibits a person, corporation, or firearms dealer from selling, supplying, delivering, or giving possession or control of a firearm to anyone whom the person, corporation, or dealer has cause to believe is a prohibited person, and makes a violation of that prohibition punishable as a felony or misdemeanor subject to imprisonment in the county jail or by a fine not to exceed \$1,000, or by both that fine and imprisonment. Under existing law, for each felony case, a court is required to hold, and a prosecutor is required to attend, a preliminary hearing.

"This bill would make that offense a felony punishable by imprisonment for 2, 3, or 4 years in the state prison. By imposing additional duties on local prosecutors by increasing the number of preliminary hearings, and by increasing the penalties of an existing crime, this bill would impose a state-mandated local program.

"Existing law prohibits a person, corporation, or dealer from selling, loaning, or transferring a firearm to anyone whom the person, corporation, or dealer knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to anyone who is not the one actually being loaned the firearm, if the person, corporation, or dealer has knowledge that the firearm is to be subsequently sold, loaned, or transferred to avoid provisions of law requiring firearms transfers to be conducted through a firearms dealer and other requirements pertaining to dealer transactions, or to avoid provisions establishing exemptions from those requirements, as specified. Existing law makes this offense punishable as a felony or misdemeanor subject to imprisonment in the county jail or by a fine not to exceed \$1,000, or by both that fine and imprisonment.

"This bill would make that offense a felony punishable by imprisonment for 16 months, or 2 or 3 years in the state prison. By imposing additional duties on local prosecutors, this bill would impose a state-mandated local program.

"Existing law prohibits a person, corporation, or firearms dealer from acquiring a firearm for the purpose of selling, loaning, or transferring the firearm if, for a dealer, he or she has the intent to transfer the firearm to a minor or to evade specified requirements on the transfer of firearms, or in the case of a person or corporation, the person or corporation intends to violate the requirement, or provisions of an exception to the requirement, that the transaction be conducted through a licensed firearms dealer. Existing law makes this offense punishable as a misdemeanor by imprisonment in the county jail not exceeding one year, or as a felony punishable by imprisonment in the county jail for 16 months, or 2 or 3 years, or by a fine not to exceed \$1,000, or by both that fine and imprisonment.

"This bill would make that offense punishable as a felony by imprisonment for 16 months, or 2 or 3 years in the state prison. By imposing additional duties on local prosecutors, this bill would impose a state-mandated local program.

"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, other than lowering jail and prison population, the effects on crime of Proposition 47 are unknown.

"In addition, as previously stated, Proposition 47 has 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 and/or local jail population."

- 7) **Prior Legislation:** AB 1084 (Melendez), of the 2013-2014 Legislative Session, increased the penalties for numerous offenses related to the illegal possession of firearms, and requires that many related sentences be served in the state prison rather than county jail under realignment. AB 1084 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

SFSCME, Local 685
Association for Los Angeles Deputy Sheriffs
California Sportsman's Lobby
California State Sheriffs' Association
Crossroads of the West
Gun Owners of California
Los Angeles County Probation Officers Union
Los Angeles Police Protective League
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Peace Officers Research Association of California (PORAC)

Riverside Sheriffs' Association
Safari Club International

Opposition

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

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

Date of Hearing: April 19, 2016
Counsel: Sandra Uribe

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

AB 2481 (Lackey) – As Introduced February 19, 2016
VOTE ONLY

PULLED BY AUTHOR

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

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

AB 2508 (Mathis) – As Amended April 6, 2016
VOTE ONLY

SUMMARY: Provides that a handgun model removed from the roster of not unsafe handguns for any reason other than failing handgun safety testing, including, but not limited to, a failure to pay the annual fee, may be reinstated on the roster, as specified. Specifically, **this bill:**

- 1) Provides that a handgun model removed from the roster of not unsafe handguns for any reason other than failing handgun safety testing, including, but not limited to, a failure to pay the annual fee, may be reinstated on the roster if all of the following conditions are met:
 - a) The manufacturer petitions the Attorney General (AG) for reinstatement of the handgun model;
 - b) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;
 - c) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,
 - d) The manufacturer pays the department for all of the reasonable costs related to the reinstatement testing of the handgun model, including the purchase price of the handguns, prior to reinstatement testing.
- 2) States that a handgun model reinstated pursuant to the above provisions shall only be required to meet the handgun safety definitional requirements in place at the time the handgun model was originally submitted for testing.
- 3) Provides that if the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;
- 4) States that a firearm shall be deemed to be not unsafe if another firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in dimension, barrel length, finish, coating, sights, magazine well opening, machining, contouring, or any other non-substantive mechanical or cosmetic feature, but is otherwise internally functionally identical to the listed firearm.
- 5) Provides that a firearm shall be deemed to meet the safety standards required in order to be listed on the roster of not unsafe handguns, if a manufacturer alters a listed firearm with one or more changes to the firearm's manufacturing process, materials, function, or components. This section does not exempt the firearm from the drop safety requirement for handguns or

the firing requirements for handguns.

EXISTING LAW:

- 1) Requires commencing January 1, 2001, that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code, § 32000, subd. (a).)
 - a) Specifies that this section shall not apply to any of the following:
 - i) The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice (DOJ) to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this.
 - ii) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section.
 - iii) Firearms listed as curios or relics, as defined in federal law.
 - iv) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person. (Pen. Code, § 32000, subd. (b).)
- 2) Specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)
- 3) Defines "unsafe handgun" as any pistol, revolver, or other firearm capable of being concealed upon the person, as specified, which lacks various safety mechanisms, as specified. (Pen. Code, § 31910.)
- 4) Requires any concealable firearm manufactured in California, imported for sale, kept for sale, or offered for sale to be tested within a reasonable period of time by an independent laboratory, certified by the state Department of Justice (DOJ), to determine whether it meets required safety standards, as specified. (Pen. Code, § 32010, subd. (a).)

- 5) Requires DOJ, on and after January 1, 2001, to compile, publish, and thereafter maintain a roster listing all of the pistols, revolvers, and other firearms capable of being concealed upon the person that have been tested by a certified testing laboratory, have been determined not to be unsafe handguns, and may be sold in this state, as specified. The roster shall list, for each firearm, the manufacturer, model number, and model name. (Pen. Code, § 32015, subd. (a).)
- 6) Provides that DOJ may charge every person in California who is licensed as a manufacturer of firearms, as specified, and any person in California who manufactures or causes to be manufactured, imports into California for sale, keeps for sale, or offers or exposes for sale any pistol, revolver, or other firearm capable of being concealed upon the person in California, an annual fee not exceeding the costs of preparing, publishing, and maintaining the roster of firearms determined not be unsafe, and the costs of research and development, report analysis, firearms storage, and other program infrastructure costs, as specified. (Pen. Code § 32015, subd. (b)(1).)
- 7) Provides that the Attorney General (AG) may annually test up to 5 percent of the handgun models listed on the roster that have been found to be not unsafe. (Pen. Code, § 30020, subd. (a).)
- 8) States that a handgun removed from the roster for failing the above retesting may be reinstated to the roster if all of the following are met:
 - a) The manufacturer petitions the AG for reinstatement of the handgun model;
 - b) The manufacturer pays the DOJ for all the costs related to the reinstatement testing of the handgun model, including purchase of the handgun, prior to reinstatement testing;
 - c) The reinstatement testing of the handguns shall be in accordance with specified retesting procedures;
 - d) The three handgun samples shall only be tested once. If the sample fails it may not be retested;
 - e) If the handgun model successfully passes testing for reinstatement, as specified, the AG shall reinstate the handgun model on the roster of not unsafe handguns;
 - f) Requires the handgun manufacturer to provide the AG with the complete testing history for the handgun model; and,
 - g) Allows the AG, at any time, to further retest any handgun model that has been reinstated to the roster. (Pen. Code, § 32025, subs. (a)-(g).)
- 9) Provides that a firearm may be deemed to be listed on the roster of not unsafe handguns if a firearm made by the same manufacturer is already listed and the unlisted firearm differs from the listed firearm in one or more of the following features:
 - a) Finish, including, but not limited to bluing, chrome plating or engraving;

- b) The material from which the grips are made;
 - c) The shape or texture of the grips, so long as the difference in grip shape or texture that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm.
 - d) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the firearm. (Pen Code, § 32030, subd. (a).)
- 10) States that any manufacturer seeking to have a firearm listed as being similar to a tested shall provide the DOJ with the following:
- a) The model designation of the listed firearm;
 - b) The model designation of each firearm that the manufacturer seeks to have listed on the roster of not unsafe handguns;
 - c) Requires a manufacturer to make a statement under oath that each unlisted firearm for which listing is sought differs from the listed firearm in only one or more specified ways, and is otherwise identical to the listed firearm. (Pen Code, § 32030, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2508 would give law-abiding residents the opportunity to acquire previously safety-tested and Department of Justice (DOJ) approved, quality handguns that were removed from California's Handgun Roster for reasons not related to whether or not such handguns were "unsafe". Additionally, it would allow manufacturers to make minor changes, such as a safety upgrades to firearms that are already on the roster."
- 2) **Not Unsafe Handgun Law:** SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun as, as defined, with specific exceptions. SB 15 defined an "unsafe handgun" as a handgun that does not have requisite safety features, does not meet specified firing requirements or does meet specified drop safety requirements.

SB 489 (Scott), Chapter 500, Statutes of 2003, added to the handgun safety requirements, effective January 1, 2007, all center-fire semiautomatic pistols not already found to be "safe" to have both a chamber load indicator and a magazine disconnect mechanism if the pistol has a detachable magazine in order to be added to the roster of approved "safe" firearms. All firearms that were not on the unsafe handgun roster prior to the effective date of this statute were grandfathered in.

AB 1471 (Feuer), Chapter 572, Statutes of 2007, added "microstamping" as a requirement for a firearm to be placed on the not unsafe handgun roster beginning January 1, 2010 provided that the DOJ certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by patent restrictions. The DOJ issued the required certification on May 17, 2013. As with chamber load indicators and magazine disconnect mechanisms, the "microstamping" requirement did not apply to firearms that were already on the roster.

This legislation makes two changes to the not unsafe handgun law. First, it would allow a firearm that was on the roster but was removed for a reason other than failing safety testing, for example, failure to pay the annual fee, to be added back the roster if it meets specified requirements. Secondly, a handgun model seeking reinstatement would only be required to meet the standards that were in place when the model was originally placed on the roster. For example, a handgun that was placed on the roster in 2002 and was removed in 2013 for a failure to pay the annual fee, could be added back to the roster without a chamber load indicator, magazine disconnect, and microstamping.

- 3) **Argument in Support:** According to the *Firearms Policy Coalition*, "As you know, the number of semi-automatic firearms available for sale in California is diminishing due to changes to the statutes governing the handgun roster put in place since its inception in 2000. Originally a consumer product safety testing system, over the years it has become, in practice, a total ban on new semi-automatic firearms. New models may not be submitted for testing and inclusion on the approved roster unless they have "microstamping" technology. Unfortunately, workable microstamping technology does not exist in the industry, nor does it appear that it will in the foreseeable future.

"In addition, the current statute can be interpreted to prohibit the upgrading or modification of already approved handguns- if a part or vendor in the supply chain needs to be changed or upgraded for quality or safety, the manufacturer cannot re-apply under the same testing conditions as it must then be treated as an entirely new model and tested with "microstamping", which as we stated previously- does not exist.

"Your measure, Assembly Bill 2508, clarifies that minor changes that do not change the internal functionality of the firearm will not prevent that firearm from being safety-tested in a state approved laboratory under the same requirements it was successfully submitted under originally.

"This is a win for public safety, the consumer and the manufacturer. It represents the spirit of the original enacting legislation, but clarifies those issues that prevent the consumer from having access to high quality products."

- 4) **Argument in Opposition:** According to the *California Chapters of the Brady Campaign to Prevent Gun Violence*, "Pursuant to the Unsafe Handgun Act (SB 15), which was enacted in 1999, California law established various requirements governing unsafe handguns. For example, existing law requires the Department of Justice to maintain a roster listing the handguns that have been tested have been determined not to be unsafe. Further, existing law allows a handgun model that has been included in the roster to be retested and allows the handgun model to be removed from the roster if it fails retesting.

“If a handgun model is removed from the roster for failing retesting, existing law allows reinstatement following a petition to the Attorney General for reinstatement and successful retesting. AB 2508, however, would allow a handgun model removed from the roster for any other reason to be reinstated to the roster upon a petition to the Attorney General. The bill further provides that a handgun model that is reinstated to the roster in this way must only meet the requirements for listing as of the date the handgun model was originally submitted for testing.

“Another provision of AB 2508 would revise the features in which the unlisted firearm may differ from the listed firearm and still be reinstated on the roster, provided that the unlisted firearm is otherwise internally functionally identical to the listed firearm. Finally, the bill would require a firearm to be deemed to satisfy the requirements of being listed on the roster if a manufacturer alters a listed firearm, and the changes are, in the opinion of the manufacturer, necessary to improve the safety or operation of the firearm.

“These provisions are objectionable because they are both too broad (an unlisted firearm can differ from the listed firearm in dimension, barrel length, finish, coating, grips, sights, magazine well opening, machining, contouring, or any other non-substantive mechanical or cosmetic feature) and subjective (in the opinion of the manufacturer is necessary to improve the safety or operation of the firearm). The reasonable solution is to submit the unlisted guns for testing as new models, which they essentially are.

“The California Brady Campaign strongly opposes AB 2508. If a firearm has been removed from the roster because of voluntary action by a firearm manufacturer, then the manufacturer should have to live by its decision and/or actions. A manufacturer may, of course, resubmit the firearm for retesting but it should be required to comply with all the requirements in place at the time of resubmittal. In practical terms, this means that the firearm should possess an approved chamber load indicator and be equipped with micro-stamping technology. It is clear that the underlying purpose of this bill is to circumvent these newer additions to the law.”

- 5) **Prior Legislation:** SB 916 (Correa), of the 2014-2015 Legislative Session, was substantially similar to this bill in that it allowed a firearm to be reinstated to the DOJ roster of "not unsafe handguns" if the handgun was removed from the roster for any reason other than failing handgun safety testing. SB 916 failed passage in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

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

Opposition

Michael Feuer, Los Angeles City Attorney
California Chapters of the Brady Campaign to Prevent Gun Violence
Law Center to Prevent Gun Violence

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 2606 (Grove) – As Introduced February 19, 2016

VOTE ONLY

SUMMARY: Requires law enforcement to send a copy of a report alleging specified crimes committed against elderly or developmentally disabled people to state licensing agencies. Specifically, **this bill:**

- 1) Requires a law enforcement agency that receives or makes a report of the commission of specified crimes by a person who holds a state professional or occupational credential, a license, or permit allowing the person to provide services to children, elders, dependent adults, or persons with disabilities, to provide a copy of that report to the state agency which issued the credential, license, or permit.
- 2) Applies these reporting requirements to the following crimes:
 - a) Sexual exploitation by a physician and surgeon, psychotherapist, or drug/alcohol abuse counselor, as specified in the Business and Professions Code;
 - b) Rape and other sex crimes;
 - c) Elder or dependent adult abuse, failure to report by mandated report, or interfering with a report;
 - d) A hate crime motivated by anti-disability bias;
 - e) Sexual abuse, as specified; and,
 - f) Child abuse, failure to report by mandated report, or interfering with a report.

EXISTING LAW:

- 1) Establishes the Elder Abuse and Dependent Adult Civil Protection Act. (Welf. and Inst. Code, § 15600 et seq.)
- 2) Enumerates categories of persons who are mandated reporters under the Act. (Welf. and Inst. Code, § 15630.)
- 3) Provides that failure to report specified conduct committed against an elder or dependent adult, or impeding or inhibiting such a report is a misdemeanor punishable by up to six months in jail, by a fine of up to \$1,000, or both. (Welf. and Inst. Code, § 15630, subd. (h).)

- 4) Provides that failure to report specified conduct committed against an elder or dependent adult resulting in serious bodily injury or death, or impeding or inhibiting such a report is a misdemeanor punishable by up to one year in jail, by a fine of up to \$5,000, or both. (Welf. and Inst. Code, § 15630, subd. (h).)
- 5) Establishes the Child Abuse Neglect Reporting Act (CANRA) for the purpose of protecting children from abuse and neglect. (Pen. Code, § 11164.)
- 6) Enumerates categories of persons who are mandated reporters under CANRA. (Pen. Code, § 11165.7, subd. (a).)
- 7) Provides that when two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report. (Pen. Code, § 11166, subd. (h).)
- 8) States that the reporting duties under CANRA are individual and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided they are not inconsistent with CANRA. (Pen. Code, § 11166, subd. (i)(1).)
- 9) Provides that any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of \$1,000 or by both that imprisonment and fine. (Pen. Code, § 11166, subd. (c).)
- 10) States that if a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a specified agency discovers the offense. (Pen. Code, § 11166, subd. (c).)
- 11) Provides that any supervisor or administrator who interferes or inhibits a mandated reporter from reporting suspected child abuse or neglect shall be punished by not more than six months in a county jail, by a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and a fine. (Pen. Code, § 11166.01, subd. (a).)
- 12) States that "sexual abuse" means "sexual assault or sexual exploitation." (Pen. Code, § 11165.1.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The developmentally disabled, elderly, and children are the most vulnerable members of our community and we have an obligation to help protect them. People with disabilities are subject to violent crimes – especially sexual

assault and abuse -- at much higher rates than the general population. Arrest and conviction rates are often very low. One reason is because mandated reporters often fail to report because of interference by supervisors and fear of retaliation. Many of these crimes are committed by caretakers. Those who are not arrested or convicted are simply fired and are legally free to go on to other jobs and continue their abuse because their licenses are not affected. Children and the elderly can be subject to the same kinds of assault and abuse. The bill addresses the problem by strengthening the law protecting mandated reporters from anyone who would impede their reports or retaliate against them for making the reports. Additionally, it requires law enforcement agencies to cross-report abuse, neglect, and sexual misconduct to the provider's state licensing agency."

- 2) **Practical Considerations:** The reporting requirement in this bill is triggered when a specified crime is alleged to have been committed by a person who holds a state professional or occupational credential, a license, or permit allowing the person to provide services to children, elders, dependent adults, or persons with disabilities. As drafted, this bill applies to an extremely broad range of professionals, including realtors, dentists, lawyers, contractors, cosmetologists, etc. Should this bill be limited to those persons who hold state licenses or permits to provide care for children, elders, dependent adults, or persons with disabilities?

Given the many licensing agencies implicated, will law enforcement agency or officer know where to file the required report? Moreover, will the receiving agency necessarily have a process in place for investigating this type of allegation?

It should be noted that as to reports received by law enforcement, there is no requirement that law enforcement conduct any sort of investigation before forwarding a copy of the report. A report may be uncorroborated or unfounded and yet law enforcement must still forward a copy of the report.

Additionally, this bill does not state, what if anything, the licensing agency is supposed to do with the report. It is possible that some agencies will conduct an investigation, but there is no requirement for action of any kind.

Nor are there any due process protections of any kind for the person who is the subject of the report. Might a person lose his or her license and livelihood based on an unsubstantiated report?

- 3) **Argument in Support:** According to the *Arc and United Cerebral Palsy California Collaboration*, the sponsor of this bill, "A large body of research shows that adults and children with disabilities are subject to violent crime—especially sexual assault and abuse—at much higher rates than the general population. Arrest and conviction rates are often very low, in some cases, because mandated reporters often fail to report because of interference by supervisors and fear of retaliation.

"Many of these crimes are committed by caretakers. Those who are not arrested or convicted are simply fired and are legally free to go on to other jobs and continue their abuse.

"Children and elders can be subject to the same kinds of assault and abuse. ...

"This bill attacks the problem in two ways:

"First, it strengthens the law protecting mandated reporters from anyone who would impeded their reports or retaliate against them for making the reports.

"Second, it requires law enforcement agencies to cross-report sex crimes and abuse, and also failure to report, to state licensing agencies. As under current law, the state agencies will investigate the reports and, if they substantiate them, take appropriate disciplinary action, up to and including license suspension or revocation – whether or not law enforcement agencies and prosecutors are able to arrest or convince (sic) them."

4) Arguments in Opposition:

- a) According to the *California Association of Psychiatric Technicians* (CAPT), "CAPT opposes this bill for several reasons, one of which is that, if passed, this bill would require law enforcement to transmit a report or abuse, neglect, or sexual misconduct without having first done an investigation to sustain the allegation. Many CAPT members work with a population of individuals that have severe mental illness. At the state mental hospitals, hundreds of false reports are made a year by patients that are incompetent to stand trial or not guilty by reason of insanity.

"The reporting to the licensing body of a health care worker without investigation or substantiation of the allegation would clog the licensing body's investigating case load, forcing investigators to investigate hundreds of false allegations a year."

- b) The *California State Sheriffs' Association* writes, "We appreciate your effort to ensure that licensing agencies are informed when alleged criminal acts take place. However, there are processes in place to achieve this goal. We are concerned that your measure is an unfunded mandate on law enforcement that could inadvertently require peace officers to disclose reports and unintentionally jeopardize investigations. If law enforcement becomes aware of an alleged offense, it has a protocol in place to investigate the matter and then file a report with the prosecutor if an arrest is made and there is probable cause to believe a crime has been committed.

"AB 2606 requires a notification of an alleged offense to a licensing agency that almost certainly receives subsequent arrest notification for persons who have been the subject of a background check. In other words, when a person who has undergone a background check for the purposes of a professional licensure is arrested, the Department of Justice generally provides a notification to the licensing agency of the arrest. By inserting law enforcement into this process, we may end up jeopardizing an investigation. While it is appropriate for a licensing agency to know when its licensees are accused of crime particularly when they relate to their profession, processes exist to accomplish this."

5) Related Legislation:

- a) AB 1272 (Grove) requires the court to make reasonable efforts to avoid scheduling a case involving a crime committed against a person with a developmental disability when the prosecutor has another trial set. AB 1272 is pending hearing in the Senate Public Safety Committee.

- b) AB 1821 (Maienschein) makes specified sex crimes committed against victims with mental disorders or physical or developmental disabilities qualifying crimes for the "One Strike Sex Law" and the vulnerable victim enhancement. AB 1821 is pending a hearing in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

The Arc & United Cerebral Palsy California Collaboration (Sponsor)
The Arc of Riverside County
Association of Regional Center Agencies
California Advocates for Nursing Home Reform
California Long-Term Care Ombudsman Association
California State Retirees
Disability Rights California
The Alliance

Opposition

California Association of Psychiatric Technicians
California Attorneys for Criminal Justice
California Public Defenders Association
California State Sheriffs' Association
Legal Services for Prisoners with Children

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 2380 (Alejo) – As Amended April 18, 2016

SUMMARY: Requires the court, at the arraignment of a defendant charged with a felony who is the sole custodial parent of a minor child, to provide specified information on options regarding the care of the child. Specifically, **this bill**:

- 1) Requires the court, at the arraignment of a defendant charged with a felony and who is the sole custodial parent of one or more minor children, to provide the following to the defendant:
 - a) The "guardianship pamphlet" prepared by the Judicial Council, as specified;
 - b) Information regarding a power of attorney for a minor child; and,
 - c) Information regarding trustline background examinations pertaining to childcare providers, as specified.

EXISTING LAW:

- 1) States that the arraignment consists of reading the accusatory pleading to the defendant, providing the defendant a copy of the accusatory pleading, and asking the defendant whether he or she pleads guilty or not guilty to the accusatory pleading. (Pen. Code, § 988.)
- 2) States that if the defendant appears at arraignment without counsel, the court shall inform defendant of the right to counsel being arraigned, and shall ask the defendant whether he or she desires the assistance of counsel. (Pen. Code, §§ 858, subd. (a) & 987, subd. (a).)
- 3) Requires the court to advise defendants at arraignment that there are special provisions of law applicable to those who have active duty or veteran status, and shall inform the defendant that if he or she is a member of the military or a veteran that he or she may request the Judicial Council form explaining those special rights. (Pen. Code, § 858, subd. (d).)
- 4) Requires, prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, the court to advise the defendant on the record about the potential immigration consequences of a plea. (Pen. Code, § 1016.5, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "I authored this legislation in response to the recent tragic killing of two young children and the brutal torture of their sister from East Salinas who had been placed in the custody of their aunt after their only living parent was sent to prison. Ensuring the health and safety of our children is one of the most essential roles of government. Our system failed these children. This bill requires the court, at the arraignment of a parent who is charged with a felony and who is the sole guardian of his or her child, to provide that parent with information on options regarding the provision of care for his or her child, in the parent's absence, including: ways in which to formalize the relationship with the person with whom he/she is entrusting the care of his/her child (such as appointing power of attorney), and the availability of services to research a potential caretaker's background."
- 2) **Care Options for Children of Incarcerated Parents:** Parental incarceration can be traumatic for children, and it can have damaging impacts on a child's education, health, and social relationships. For children who do not have another parent at home, being placed with a relative is often the most stable option, allowing a child to maintain relationships and, ideally, to live at or near his or her home and attend his or her regular school.

For a parent who is sentenced to prison and who is the sole guardian, options exist for formalizing the relationship between a chosen caregiver and a parent's child(ren). These can include more informal arrangements, such as completing a Caregiver's Authorization Affidavit, which is a two-page form that an authorized relative can sign which allows a qualified relative to enroll a child in school and agree to school-related medical care for the child. This option does not give a caregiver legal custody over a child. Another option is to grant Power of Attorney to a caregiver, which authorizes an individual to act as a caregiver for a child, and to make decisions regarding the child on behalf of parent. More formal options could also be sought, including legal guardianship, whereby the court may appoint an individual to have custody of a child indefinitely. Legal guardianship does not terminate a parent's rights, but suspends them. These, and other, options each come with various benefits and drawbacks, depending on the circumstances, and parents need to consider their family's particular needs and situation when deciding which, if any, option to pursue.

- 3) **Arraignment:** The arraignment is the defendant's first court appearance. At this time, the defendant is informed of the nature of the charges, is given a copy of the accusatory pleading, and also given an opportunity to enter a plea. (Pen. Code, § 988.) At this time judge or magistrate also advises the defendant of the right to counsel and the right to a court-appointed attorney, if he or she is indigent.
- 4) **TrustLine:** TrustLine, created by the California Legislature in the 1980s, is a registry of license-exempt child care providers who have cleared a criminal background check run by the Department of Social Services that includes a check of the Child Abuse Central Index (CACI) administered by the Attorney General and the California Department of Justice's California Criminal History System, and can involve a check of criminal history records at the Federal Bureau of Investigation. Child care providers listed on TrustLine do not have either of the following: disqualifying criminal convictions or substantiated reports of child abuse found on CACI.

Applicants for the registry must complete a form, submit fingerprints, and pay a one-time fee to DSS. Fees can vary, and start at approximately \$135. Parents are able to check if an individual is listed on the registry by calling a toll-free number.

- 5) **Prior Legislation:** AB 267 (Jones-Sawyer), of the 2015-2016 Legislative session, would have required the court at the time of entry of plea to advise the defendant that conviction of a felony results in various consequences. AB 267 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

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