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

AGENDA

9:00 a.m. – April 25, 2017
State Capitol, Room 126

Item	Bill No. & Author	Counsel/ Consultant	Summary
1.	AB 40 (Santiago)	Mr. Smith	CURES database: health information technology system. (Urgency)
2.	AB 186 (Eggman)	Mr. Billingsley	Controlled substances: safer drug consumption program.
3.	AB 330 (Cooley)	Ms. Uribe	Highway safety.
4.	AB 532 (Waldron)	Mr. Billingsley	Drug courts: drug and alcohol assistance.
5.	AB 660 (Rubio)	Ms. Uribe	Public agencies: unlawful interference.
6.	AB 811 (Gipson)	Mr. Smith	Juveniles: rights: computing technology.
7.	AB 812 (Chen)	Mr. Caswell	Auditors: investigators.
8.	AB 903 (Cunningham)	Mr. Caswell	California Marijuana Tax Fund: California Highway Patrol.
9.	AB 935 (Mark Stone)	Mr. Billingsley	Juvenile proceedings: competency.
10.	AB 955 (Jones-Sawyer)	Mr. Billingsley	PULLED BY COMMITTEE.

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11.	AB 1206 (Bocanegra)	Mr. Caswell	Vehicles: impoundment: pilot program.
12.	AB 1268 (Reyes)	Mr. Caswell	Domestic violence.
13.	AB 1308 (Mark Stone)	Ms. Anderson	Youth offender parole hearings.
14.	AB 1402 (Travis Allen)	Mr. Billingsley	Prostitution: minors.
15.	AB 1409 (Travis Allen)	Ms. Anderson	Gang databases.
16.	AB 1418 (O'Donnell)	Mr. Smith	City prosecutors.
17.	AB 1440 (Kalra)	Mr. Pagan	Peace officers.
18.	AB 1443 (Levine)	Mr. Pagan	Court records.
19.	AB 1542 (Dababneh)	Ms. Uribe	Violent felonies: video recording.
20.	AB 1554 (Fong)	Ms. Anderson	Crimes: commitments: prior convictions.
21.	AB 1570 (Travis Allen)	Mr. Caswell	Violent felonies.
22.	AB 1595 (Gallagher)	Ms. Uribe	Theft: burglary: natural or manmade disasters.

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Date of Hearing: April 25, 2017
Consultant: Adam Smith

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

AB 40 (Santiago) – As Amended April 19, 2016

SUMMARY: Requires the Department of Justice (DOJ) to make the electronic history of controlled substances prescribed to an individual by a health care practitioner available to the practitioner based on data from the Controlled Substance Utilization Review and Evaluation System (CURES). Specifically, **this bill**:

1) Specifies that the electronic history of controlled substances based on data from CURES Prescription Drug Monitoring Program (PDMP) be made available to the practitioner through either an Internet Web portal or an authorized health information technology system.

2) States that a health information technology system may establish an integration and submit queries to the CURES database on either a user-initiated basis or an automated basis if the system can certify the following:

   a) The system can establish it has been authorized to query the CURES database, as specified;

   b) The system will not use or disclose data received from the CURES database for any purpose other than delivering the data to an authorized health care practitioner or performing data processing activities needed to deliver data;

   c) The system authenticates the identity of any authorized health care practitioner initiating queries to the CURES database and, at the time of the query, submits data regarding the query to CURES, as specified; and

   d) The system meets applicable patient privacy and information security requirements of state and federal law.

3) Provides that the DOJ may, in its discretion, determine whether to establish direct system integration between one or more health information technology systems and the CURES database, or whether to develop a gateway system to which multiple health information technology systems can establish integration for purposes of accessing the CURES database.

4) Provides that the DOJ may require an entity that operates a health information technology system to enter into a memorandum of understanding or other agreement that sets forth terms and conditions with which the entity shall comply, including, but not limited to the following:

a) Paying a reasonable fee to cover the cost of establishing and maintaining integration with the CURES database;

b) Enforcement mechanisms for failure to comply with oversight or audit activities by the DOJ, up to and including termination of access to the CURES database; and

c) Any other term of condition that the DOJ may determine in its reasonable discretion is necessary.

5) States that an authorized health care practitioner, in order to prevent the inappropriate or illegal use of certain controlled substances, may use a health information technology system to initiate the referral of the history of controlled substances dispensed to an individual to other licensed health care practitioners, pharmacists, or both.

6) Defines "automated basis" as "using predefined criteria established or approved by a health care practitioner to trigger an automated query to the CURES database, which can be attributed to a specific health care practitioner by an audit trial in the health information technology system."

7) Defines "Department" as "the Department of Justice."

8) Defines "User-initiated basis" as "an authorized health care practitioner had taken an action to initiate the query to the CURES database, such as clicking a button, issuing a voice command, or taking some other action that can be attributed to a specific health care practitioner by an audit trail in the health information technology system."

9) Contains an urgency clause stating that immediate implementation is necessary in order for prescribing physicians to access the CURES database and prevent the abuse of prescription drugs.

EXISTING LAW:

1) Establishes the California Uniform Controlled Substances Act which regulates controlled substances. (Health & Saf. Code, § 11000 et seq.)

2) Defines controlled substances as any drug, precursor, or substance categorized in any of the five schedules based on their danger and potential for abuse. (Health & Saf. Code, §§ 11007; 11054-11058.)

3) Defines "practitioner" as "a physician, dentist, veterinarian, podiatrist, or pharmacist, registered nurse or physician assistant acting within the scope of an experimental health workforce projects authorized by the Office of Statewide Health Planning and Development, a certified nurse-midwife, a nurse practitioner, a physician assistant, or an optometrist licensed under the Optometry Practice Act." Includes in the definition of "practitioner" as "a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer, a controlled substance in the course of professional practice or research in this state." Also includes in the definition of "practitioner" a "scientific investigator, or other person licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a

controlled substance in the course of professional practice or research in this state." (Health & Saf. Code, § 11026.)

4) Defines "prescription" as "an oral order or electronic transmission prescription for a controlled substance given individually for the person(s) for whom prescribed, directly from the prescriber to the furnisher or indirectly by means of a written order of the prescriber." (Health & Saf. Code, §11027.)

5) Prohibits any person other than a physician, dentist, podiatrist, veterinarian, naturopathic doctor, pharmacist, certified nurse-midwife, nurse practitioner; a pharmacist or registered nurse or physician assistant acting within the scope of an experimental health workforce project authorized by the Office of Statewide Health Planning and Development (Health & Saf. Code, § 128125 et seq.); an optometrist licensed under the Optometry Practice Act, or an out-of-state prescriber acting in an emergency situation from writing or issuing a prescription for a controlled substance. (Health & Saf. Code, § 11150.)

6) Specifies that a prescription for a controlled substance shall only be issued for a legitimate medical purpose and establishes responsibility for proper prescribing on the prescribing practitioner. States that a violation shall result in imprisonment for up to one year or a fine of up to $20,000, or both. (Health & Saf. Code, § 11153.)

7) Requires special prescription forms for controlled substances to be obtained from security printers approved by DOJ, establishes certain criteria for features on the forms and requires controlled substance prescriptions to be made on the specified form. (Health & Saf. Code, §§ 11161.5, 11162.1, 11164.)

8) Establishes the CURES for electronic monitoring of Schedule II, III and IV controlled substance prescriptions. The CURES provides for the electronic transmission of Schedule II, III and IV controlled substance prescription information to the DOJ at the time prescriptions are dispensed. (Health & Saf. Code, § 11165.)

9) States that the purpose of CURES is to assist law enforcement and regulatory agencies in controlling diversion and abuse of Schedule II, III and IV controlled substances and for statistical analysis, education and research. (Health & Saf. Code, § 11165, subd. (a).)

10) Establishes privacy protections for patient data and specifies that CURES data can only be accessed by appropriate state, local and federal persons or public agencies for disciplinary, civil or criminal actions. Specifies that CURES data shall also only be provided, as determined by DOJ, to other agencies or entities for educating practitioners and others, in lieu of disciplinary, civil or criminal actions. Authorizes non-identifying CURES data to be provided to public and private entities for education, research, peer review and statistical analysis. (Health & Saf. Code, § 11165, subd. (c).)

11) Provides that pharmacies or clinics, in filling a prescription for a federally Scheduled II, III or IV drug, shall provide weekly information to DOJ including the patient's name, date of birth, the name, form, strength and quantity of the drug, and the pharmacy name, pharmacy number and the prescribing physician information. (Health & Saf. Code, § 11165, subd. (d).)

12) Provides that a licensed health care practitioner eligible to prescribe Schedule II, III or IV controlled substances, or a pharmacist, shall apply to participate in the CURES PDMP by

January 1, 2016. Authorizes DOJ to deny an application or suspend a subscriber for certain violations and falsifying information. Provides that the history of controlled substances dispensed to a patient based on CURES data that is received by a practitioner or pharmacist shall be considered medical information, subject to provisions of the Confidentiality of Medical Information Act. (Health & Saf. Code, § 11165.1.)

13) Authorizes the DOJ to conduct audits of the CURES PDMP system and its users and create a system for issuing citations for violations. (Health & Saf. Code, 1165.2, subd. (a) & (b).)

14) Requires a health care practitioner authorized to prescribe, order, administer, or furnish a controlled substance to consult the CURES database to review a patient's controlled substance history, as specified.

15) Requires health practitioners who prescribe or administer a controlled substance classified in Schedule II to make a record containing the name and address of the patient, date, and the character, name, strength, and quantity of the controlled substance prescribed, as well as the pathology and purpose for which the controlled substance was administered or prescribed. (Health & Saf. Code, § 11190, subd. (a) and (b).)

16) Requires prescribers who are authorized to dispense Schedule II, III or IV controlled substance in their office or place of practice to record and maintain information for three years for each such prescription that includes the patient's name, address, gender, and date of birth, prescriber's license and license number, federal controlled substance registration number, state medical license number, National Drug Code number of the controlled substance dispensed, quantity dispensed, diagnosis code, if available, and original date of dispensing. Requires that this information be provided to DOJ on a monthly basis. (Health & Saf. Code, § 11190, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Emergency departments (ED) and other health care settings across California use health information technology, such as health information exchanges and electronic medical records; software that draws upon patient information from multiple healthcare providers. This type of information is particularly helpful when patients come into the ED.

   "At many EDs, the emergency physician will receive a report on a patient's known information, including current care plans and recent imaging and tests, prior to seeing that patient. This information provides emergency physicians with a more complete picture of the patient's health history. What is currently lacking from this patient information that emergency physicians receive is the patient's prescription history from the Controlled Substances Utilization Review and Evaluation System (CURES).

   "AB 40 would allow health information technologies to integrate with and automatically query CURES on behalf of a registered provider. For emergency physicians, this means a summary of a patient's opioid prescription history would be given directly to them without needing to take time away from patient care to manually check CURES. AB 40 would also

benefit office based physicians by providing the same summary from CURES for patients scheduled to be seen in advance of their appointment.

"Allowing CURES to integrate with health information technologies will allow prescription information to be included in the same patient information that physicians already receive. This is an important step towards providing better care while combatting prescription opioid abuse."

2) **CURES Integration and Opioid Abuse**: According to recent reports regarding America's opioid epidemic, almost 2 million Americans abused or were dependent on prescription opioids in 2014. In 2015, more than 15,000 people died from overdoses involving prescription opioids. Today, nearly half of all U.S. opioid overdose deaths involve a prescription opioid and, due to the large population that abuses prescription opioids, over 1,000 people are treated in emergency departments for misusing prescription opioids every day. <https://www.cdc.gov/drugoverdose/opioids/prescribed.html> (as of April 14, 2017.)

   In order to address the prevalence of prescribed opioid abuses, the DOJ implemented and maintains the CURES PDMP searchable database so that practitioners have increased access to information regarding a patient's prescription history. However, because current law does not provide authority for the CURES PDMP to integrate with health information technology systems, health care practitioners face several additional burdens including, but not limited to, a delay in access to potentially vital information for rapid treatment, increased opportunities for patients to abuse practitioner services, and decreased peer-to-peer benefits between health information technology providers. During the process of decommissioning the original CURES database and transitioning to CURES 2.0, the current operating system, the DOJ expressed the need to address these concerns through integration. <https://www.cdph.ca.gov/programs/cclho/Documents/SMALL%2020140203%20PDMP%20A%20Powerful%20Tool.pdf> (as of April 14, 2017.)

   AB 40 will authorize the CURES PDMP database to integrate with health information technology services and authorize the DOJ to allow peer-to-peer direct integration between health information technologies. By doing so, AB 40 will provide practitioners with more immediate access to records that are instrumental to addressing the opioid abuse epidemic. Furthermore, AB 40 would ensure that health care information technology providers are submitting certain information regarding PDMP queries, which would deter abuse and inappropriate access to information in the CURES database.

3) **Argument in Support**: According to *The California American College of Emergency Physicians*, "AB 40 would allow health information technologies to integrate with and automatically query CURES on behalf of a registered provider. This means a summary of a patient's opioid prescription history would be given directly to the emergency physician without them needing to take time away from patient care to manually check the Controlled Substances Utilization Review and Evaluation System (CURES).

   "Emergency departments (ED) across California use health information technology, such as health information exchanges and electronic medical records; software that draws upon patient information from multiple healthcare providers. This type of information is particularly helpful when patients come into the ED.

"At many EDs, the emergency physician will receive a report on a patient's known information, including current care plans and recent imaging and tests, prior to seeing that patient. This information provides emergency physicians with a more complete picture of the patient's health history. What is currently lacking from this patient information is the patient's prescription history from CURES.

"Currently, only after the emergency physician sees the patient and considers whether opioids may be warranted will the emergency physician manually query the CURES database. Providing physicians with access to CURES information early on will not only reduce the time needed to manually obtain the information, but also better informs the emergency physician as they decide the best course of treatment for the patient.

"Allowing CURES to integrate with health information technologies will allow prescription information to be included in the same patient information that physicians already receive. This will help reduce stress on California's overcrowded EDs by allowing emergency physicians to more efficiently treat patients, ensuring all patients receive timely care."

4) **Related Legislation**: SB 641 (Lara), would prohibit the release of data obtained from CURES to a law enforcement agency except pursuant to a valid court order, as specified. SB 641 is set for hearing in Senate Public Safety on April 18th.

5) **Prior Legislation**:

   a) SB 482 (Lara), Chapter 708, Statutes of 2016, required prescribers to consult the Controlled Substances Utilization Review and Evaluation System (CURES) prior to prescribing a Schedule II or III drug to a patient for the first time and required a dispenser to consult the CURES system prior to dispensing a Schedule II or III drug to a patient for the first time.

   b) AB 679 (Allen), Chapter 778, Statutes of 2015, extended the date by which specified health care practitioners and pharmacists must register with the CURES PDMP by six months, from January 1, 2016 to July 1, 2016.

   c) SB 809 (DeSaulnier), Chapter 400, Statutes of 2013, made various changes to the funding and operations of the CURES PDMP, including the requirement that practitioners who prescribe Schedule II, III and IV controlled substances and pharmacists also enroll in and consult the CURES PDMP.

   d) SB 360 (DeSaulnier), Chapter 418, Statutes of 2011, updated CURES to reflect the new PDMP and authorizes DOJ to initiate administrative enforcement actions to prevent the misuse of confidential information collected through CURES.

REGISTERED SUPPORT / OPPOSITION:

Support

California American College of Emergency Physicians (Sponsor)
California Access Coalition

County Health Executives Association of California
Medical Board of California
Tenet Healthcare

Opposition

None

Analysis Prepared by: Adam Smith / PUB. S. /

Date of Hearing: April 25, 2017
Counsel: David Billingsley

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

AB 186 (Eggman) – As Amended March 23, 2017

SUMMARY: Authorizes the operation of supervised injection services programs for adults supervised by healthcare professionals or other trained staff where people who use drugs can safely consume drugs and get access to referrals to addiction treatment in specified counties. Specifically, **this bill**:

1) Allows the Counties, or cities within the Counties, of Alameda, Fresno, Humboldt, Los Angeles, Mendocino, San Francisco, San Joaquin, and Santa Cruz, to approve entities to establish and operate a safer drug consumption program, as specified, for persons 18 years of age or older.

2) States than in order for an entity to be approved to operate a safer drug consumption program pursuant to this section, the entity shall demonstrate that it will, at a minimum:

   a) Provide a space supervised by health care professionals or other trained staff where people who use drugs can consume preobtained drugs;

   b) Provide sterile consumption supplies, collect used hypodermic needles and syringes, and provide secure hypodermic needle and syringe disposal services;

   c) Answer questions on safe consumption practices;

   d) Administer first aid, if needed, monitor participants for potential overdose, and provide treatment as necessary to prevent fatal overdose;

   e) Provide access or referrals to addiction treatment services, medical services, and social services;

   f) Educate participants on the risks of contracting HIV and viral hepatitis;

   g) Provide overdose prevention education and access to or referrals to obtain naloxone;

   h) Educate participants regarding proper disposal of hypodermic needles and syringes;

   i) Provide reasonable security of the program site;

   j) Establish operating procedures for the program that are publicly noticed, including, but not limited to, standard hours of operation, a minimum number of personnel required to be on site during those hours of operations, an established maximum number of individuals that can be served at one time, and an established relationship with the nearest

emergency care facility, as well as eligibility criteria for program participants;

k) Train staff members to deliver services offered by the program;

l) Establish a good neighbor policy to address neighborhood concerns and complaints; and

m) Establish a policy for informing local government officials and neighbors about the approved entity's complaint procedures, and the contact number of the operator of the approved entity.

3) Requires an entity operating a safer drug consumption program under this section to provide an annual report to the approving city, county, or city and county at a date set by the city, county, or city and county which shall include:

a) The number of program participants;

b) Aggregate information regarding the characteristics of program participants;

c) The number of hypodermic needles and syringes distributed for use onsite;

d) The number of overdoses experienced and the number of overdoses reversed onsite; and

e) The number of individuals directly and formally referred to other services and the type of service.

4) States that a person or entity, including, but not limited to, property owners, managers, employees, volunteers, and clients or participants, shall not be arrested, charged, or prosecuted for possession of drugs for personal use, or being under the influence of drugs, including for attempt, aiding and abetting, or conspiracy to commit those crimes, or have his or her property subject to forfeiture, or otherwise be penalized solely for involvement in a safer drug consumption services program approved by a city, county, or a city and county.

5) Provides that provisions of this bill will sunset January 1, 2022.

EXISTING LAW:

1) Provides that the possession of cocaine, cocaine base, heroin, opium, and other specified controlled substances, unless the possession is with the prescription of a physician, dentist, podiatrist, or veterinarian, shall be punished by imprisonment in a county jail for not more than one year, except at specified. (Health and Saf. Code, § 11350(a).)

2) Makes the possession of methamphetamine and other specified controlled substances, unless the possession is with the prescription of a physician, dentist, podiatrist, or veterinarian, punishable by imprisonment in a county jail for a term not to exceed one year, except as specified. (Health and Saf. Code, § 11377(a).)

3) States that any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the

building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution can be punished by imprisonment in the county jail up to three years (Health & Saf. Code, § 11366.5, subd. (a).)

4) Specifies that any person who utilizes a building, room, space, or enclosure specifically designed to prevent law enforcement entry in order to sell, manufacture, or possess for sale any amount of drugs, as specified, shall be punished by imprisonment in the county jail for three, four, or five years. (Health & Saf. Code, § 11366.6.)

5) Provides that until January 1, 2021, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other blood borne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, the possession solely for personal use of hypodermic needles 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 shall not be criminalized. (Health & Saf. Code, § 11364, subd. (c).)

6) Specifies that notwithstanding any other provision of law and until January 1, 2021, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, a physician or pharmacist may, without a prescription or a permit, furnish hypodermic needles and syringes for human use to a person 18 years of age or older, and a person 18 years of age or older may, without a prescription or license, obtain hypodermic needles and syringes solely for personal use from a physician or pharmacist. (Business & Prof. Code, § 4145.5, subd. (b).)

7) Classifies controlled substances in five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054 to 11058.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Across the United States, heroin and opiate use and overdose is on the rise. Legislation in many states, including California, has improved access to sterile needles; broadened the use life-saving drug naloxone, which reverses the impact of opiate overdose; and continued the utilization of drug courts and drug diversion programs. However, with 125 Americans dying every day, and California hospitals treating one overdose every 45 minutes, we must continue to look for innovative strategies for addressing this epidemic.

"This bill would extend the harm reduction strategies we are already using in California, by enabling Local Health Jurisdictions to authorize programs to provide medical supervision to consumers of pre-obtained drugs, in order to save lives, connect individuals with vital services like detoxification and housing, and reduce public nuisance and potentially

hazardous litter. Research has shown these programs reduce overdose mortality, public injection, litter from drug use, and public nuisance all while increasing access to treatment, safe use behaviors, and entrance into detoxification services. In a single year the Canadian safe consumption facility made more than 2,000 referrals to community-based services: 37% were for addictions counseling, 12% for detoxification, 16% for community health centers, 4% for methadone maintenance therapy, and 3% for long-term recovery houses. The research shows no increase in the number of people who use drugs, drug trafficking and consumption crimes, or relapse rates. A simulation of the population of Vancouver suggests that their program has contributed to the prevention of 1191 HIV infections and 54 hepatitis C virus infections, and saved over 1300 years of life and $14 million."

2) **Supervised Injection Facilities and Drug Consumption Rooms:** This bill would authorize the operation of supervised injection services programs in specified counties. Supervised injection facilities and drug consumption rooms are professionally supervised healthcare facilities where drug users can consume drugs in safer conditions. One of their primary goals is to reduce morbidity and mortality by providing a safe environment for more hygienic drug use and by training clients in safer drug use. The drug consumption room seeks to attract hard-to-reach populations of drug users, especially marginalized groups and those who use drugs on the streets or in other risky and unhygienic conditions. At the same time, they seek to reduce drug use in public and improve public amenity in areas surrounding urban drug markets. A further aim is to promote access to social, health and drug treatment facilities. (http://www.drugwarfacts.org/cms/Safe_Injection#sthash.jb2AsCAE.dpbs)

3) **Increasing Opioid and Heroin Overdoses in California**: An August 17, 2015 article in the Sacramento Bee discussed the increase California hospitals have been seeing in opioid and heroin overdoses.

"California hospitals treated more than 11,500 patients suffering an opioid or heroin overdose in 2013, new state figures show. That's roughly one overdose every 45 minutes. It's also up more than 50 percent from 2006.

". . . Opioid overdoses resulting in ER visits and hospitalizations increased steadily nearly every year from 2006 to 2013, according to the Office of Statewide Health Planning and Development. Opioid deaths peaked in 2010 and have dropped slightly in following years, according to the California Department of Public Health. (http://www.sacbee.com/siteservices/databases/article31324532.htm)

About 4,500 Californians died following drug poisoning in 2014, up by 1,500, or 50 percent, from 2002. The age adjusted rate of drug overdose deaths rose almost 30 percent during the same period. Far more Californians die from drug poisoning each year than die in car accidents. (*Two Maps That Illustrate California's Growing Opioid Epidemic*, Sacramento Bee, January 22, 2016.) According to the CDC, "Opioids, primarily prescription pain relievers and heroin, are the main drugs associated with overdose deaths. In 2014, opioids were involved in 28,647 deaths, or 61 percent of all drug overdose deaths" nationwide. (*Id.*)

4) **Seattle Safe Injection Sites:** King County in the state of Washington has recently authorized two safe injection sites. One site will be located in Seattle and the other in the surrounding county. Both sites will be aimed primarily at homeless drug users, with a goal of providing them basic health services and ultimately drug treatment. Drug users will be

supervised at all times. If a person exhibits signs of an overdose, a health-care worker will administer Naloxone, a drug that reverses the effects of opioids. (www.washingtonpost.com/politics/awash-in-overdoses-seattle-creates-safe-sites-for-addicts-to-inject-illegal-drugs/2017/01/27/ddc58842-e415-11e6-ba11-63c4b4fb5a63_story.html?utm_term=.c0ebb767740f)

Worldwide, at least 90 facilities have been created to permit people to inject illegal drugs under medical supervision. The first opened in Berne, Switzerland, in 1986. France opened its first facility in October. A supervised injection site in Vancouver, B.C., is the only such site in North America. (*Id.*)

5) **California Allows Sale of Hypodermic Needles:** California has allowed the sale of hypodermic needles and syringes for a number of years. SB 1159 (Vasconcellos), Chapter 608, Statutes of 2004, established a five-year pilot program to allow California pharmacies, when authorized by a local government, to sell up to 10 syringes to adults without a prescription. Within several years there were hundreds of pharmacies, reaching a total of 650 by the suspension of the pilot. The pilot was suspended when statewide sales were authorized by SB 41 (Yee), Chapter 738, Statutes of 2011. SB 41 also required the Department of Public Health (DPH) to evaluate the results of the pilot project.

   In July 2010, DPH published an evaluation of the pilot. The report had a number of findings. Among the most relevant were that an increased number of intravenous drug users (IDUs) reported using pharmacies as a source of their syringes. The availability of these sterile syringes seemed to impact behavior. A significantly lower portion of IDUs reported sharing of syringes and there was no evidence of increased unsafe discard of used hypodermic needles or syringes was observed in the Disease Prevention Demonstration Projects (DPDP). DPH reported that the level of injection of illegal drugs decreased among publicly funded HIV testing clients. The report also found that drug related crime remained stable in the jurisdictions that authorized DPDPs. Nevertheless, DPH concluded that the program appeared to be having the desired effect of augmenting access to sterile syringes.

   There are a host of studies both domestically and internationally that provide evidence that provision of sterile hypodermic needles and syringes reduces HIV transmission. Public health experts, including the Centers for Disease Control and Prevention, have identified access to sterile syringes as one component of a comprehensive HIV prevention strategy designed to reduce HIV transmission among IDUs. In the last 10 years, a number of national organizations have endorsed deregulation to allow IDUs to purchase and possess syringes and needles without a prescription, including the American Medical Association, the American Pharmaceutical Association, the NABP, the National Alliance of State and Territorial AIDS Directors, and the Association of State and Territorial Health Officials.

6) **If This Bill Becomes Law, the Conduct Allowed would Still be Criminal Under Federal Law:** State authorization does not nullify federal drug laws. As a result state authorization for drug consumption rooms would not prevent them from being shut down by federal law enforcement agencies. Likewise, state authorization does not provide immunity from federal criminal proceedings, if federal law enforcement was inclined to pursue them.

   21 U.S.C. 844 and 21 U.S.C. 856 are two federal laws which prohibit behavior related to activity at a drug consumption room.

21 U.S.C. 844 prohibits possession of drugs.

21 U.S.C 856 prohibits:

(a) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or **using any controlled substance;**

(b) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or **using a controlled substance**.

Those sections would criminalize the behavior of both the clients using the facilities and the owners or operators of the facilities.

California already has existing law which is in conflict with federal drug law. California authorized medical marijuana in 1996 when Prop 215 was passed. Prop 215 was, and continues to be, in conflict with federal drug law.

7) **Argument in Support**: According to *Drug Policy Alliance,* "Supervised consumption services (SCS), or safer injection facilities, such as those that could be established under this bill, have been shown to reduce health and safety problems associated with drug use1, including public drug use, discarded syringes, HIV and hepatitis infections4, and overdose deaths5. People who used such a program in Canada were more likely to enter treatment and more likely to stop using drugs. SCS are sites where individuals are able to use illicit drugs in a clinical setting, with expert supervision and sterile supplies. Over 100 exist around the world in ten countries, including Canada. DPA has long championed SCS as an evidence-based, effective response to the harms of drug use.

"AB 186 provides narrow exemptions to certain controlled substance laws for programs permitted by localities. It would allow the operation and utilization of live-saving public health and medical intervention programs intended to reduce death, disease, or injury related to the use and administration of controlled substances. SCS are a common-sense next step to address drug-related harm beyond sterile syringe access, which has been supported by the California legislature since 1999. The bill as currently amended provides that only specified jurisdictions could pilot these programs. It includes a 4-year sunset, which will provide an opportunity to demonstrate that these programs will succeed in a California context, proving that they are cost-effective interventions to save lives and reduce public disorder."

8) **Argument in Opposition**: According to the *Association for Los Angeles Deputy Sheriffs*, "AB 186 would exempt employees at supervised injection sites (SIS) from criminal sanctions. We believe that the impact of this measure will be to permit the virtual unregulated operation of these sites. We are particularly concerned that these locations appear to be based on the notion that drug use is inevitable and that there is no requirement for employees to meaningfully assist or encourage SIS visitors to secure treatment or seek some other type of ameliorative intervention. Instead, the reference to the securing addiction treatment lacks requisite intervention vigor. We are also concerned that SIS are all too frequently located in

fragile communities that are already replete with social, quality of life and public safety problems."

9) **Prior Legislation**:

a) AB 2495 (Eggman), would have decriminalized conduct connected to use and operation of an adult public health or medical intervention facility that is permitted by state or local health departments and intended to reduce death, disability, or injury due to the use of controlled substances. SB 294 was heard for testimony and returned to the desk.

b) SB 41 (Yee), Chapter 738, Statutes of 2011, authorized a county or city to authorize a licensed pharmacist to sell or furnish 10 or fewer hypodermic needles or syringes to a person 18 or older for human use without a prescription.

c) SB 1159 (Vasconcellos), Chapter 608, Statutes of 2004, established a five-year pilot program to allow California pharmacies, when authorized by a local government, to sell up to 10 syringes to adults without a prescription.

REGISTERED SUPPORT / OPPOSITION:

Support

Drug Policy Alliance (Sponsor)
Harm Reduction Coalition (Sponsor)
Project Inform (Sponsor)
Aegis Treatment Centers
AIDS Community Research Consortium
American Civil Liberties Union of California
A New Path
California Association of Alcohol and Drug Program Executives
California Consortium of Addiction Programs and Professionals
California Hepatitis Alliance
California Opioid Maintenance Providers
California Public Defenders Association
California Society of Addiction Medicine
Center for Living and Learning
Coalition on Homelessness, San Francisco
Dataway
District Attorney, City and County of San Francisco
Equality California
Friends Committee on Legislation of California
Gender Health Center
HIV Education Prevention Project of Alameda County
Homeless Health Care Los Angeles
Homeless Youth Alliance
Humboldt Area Center for Harm Reduction
Law Enforcement Action Partnership
Los Angeles LGBT Center
Los Angeles Overdose Taskforce

Los Angeles Regional Rentry Partnership
National Association of Social Workers
National Viral Hepatitis Roundtable
Orange County Needle Exchange Program
Positive Women's Network
St. Anthony Foundation
St. Francis Foundation
San Francisco AIDS Foundation
Tarzana Treatment Centers
The Glide Foundation
The Gubbio Project

Opposition

Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California District Attorneys Association
California Narcotic Officers' Association
California Police Chiefs Association
California State Sheriffs' Association
International Faith Based Coalition
Los Angeles County Professional Peace officers Association
Los Angeles Police Protective League
Riverside Sheriffs Association

Analysis Prepared by: David Billingsley / PUB. S. /

Date of Hearing: April 25, 2017
Counsel: Sandra Uribe

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

AB 330 (Cooley) – As Amended April 19, 2017

SUMMARY: Authorizes the court to order a person convicted of driving under the influence (DUI) and sentenced to probation to participate in a "24/7 Sobriety program." Specifically, **this bill**:

1) Contains legislative findings and declarations about repeat alcohol consumption and DUI's, repeat DUI offenders, and a sobriety pilot program in South Dakota.

2) Allows the court to order a person convicted of a violation of DUI or DUI with injury to enroll, participate in, and successfully complete, a qualified "24/7 Sobriety" program as a condition of probation, if the program is available and deemed appropriate, and if the person has one or more prior convictions for a violation of DUI or DUI with injury within a 10 year period.

3) States that a "24/7 Sobriety program" requires a person in the program to abstain from alcohol or controlled substances for a designated period of time, and requires the person to be subject to frequent testing by specified methods.

4) Requires a "24/7 Sobriety program" to be evidence-based, which means that the program must satisfy at least two of the following requirements:

   a) Evaluation research shows that the program produces the expected positive results;

   b) The results can be attributed to the program itself, rather than to other extraneous factors or events;

   c) The evaluation is peer reviewed by experts in the field; and,

   d) The program is endorsed by a federal agency or respected research organization and included in its list of effective programs.

5) States that persons ordered into a "24/7 Sobriety program" may also be required to participate in other DUI programs, including participation in an ignition interlock device (IID) program.

6) Provides that each defendant shall pay the program costs commensurate with his or her ability to pay.

7) Limits length of participation in the program to no more than 180 days, unless the defendant tests positive for alcohol or an unauthorized controlled substance, or fails to appear for a test.

8) Sunsets these provisions on January 1, 2022.

EXISTING LAW:

1) Prohibits a person who is under the influence of any alcoholic beverage to drive a vehicle. (Veh. Code, § 23152, subd. (a).)

2) Prohibits a person who has 0.08 % or more, by weight, of alcohol in his or her blood to drive a vehicle. (Veh. Code, § 23152, subd. (b).)

3) Prohibits any person, while under the influence of any alcoholic beverage to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, and consequently proximately causing bodily injury to any person other than the driver. (Veh. Code, § 23153, subd. (a).)

4) Prohibits any person, while having 0.08% or more, by weight, of alcohol in his or her blood to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, and consequently proximately causing bodily injury to any person other than the driver. (Veh. Code, § 23153, subd. (b).)

5) Prohibits any person on probation for a DUI offense, while having 0.01% or more, by weight, of alcohol in his or her blood to drive a vehicle. (Veh. Code, § 23154, subd. (a).)

6) Subjects a person convicted of a first DUI without injury to the following penalties:

   a) If the sentence does not include probation: incarceration for 96 hours to six months in jail; a fine ranging from $390 up to $1,000; and suspension or revocation of driving privileges, as specified. (Veh. Code, § 23536.)

   b) If the sentence includes probation: 48 hours to six months in jail; a fine ranging from $390 up to $1,000; suspension or revocation of driving privileges, as specified, and completion of a DUI treatment program, as specified. (Veh. Code, § 23538.)

7) Subjects a person who is convicted of a second DUI without injury, within 10 years of a prior DUI offense to the following penalties:

   a) If the sentence does not include probation: incarceration for at least 90 days and up to one year in jail; a fine ranging between $390 to $1,000; and, suspension of driving privileges, as specified. (Veh. Code, § 23540.)

   b) If the sentence includes probation: incarceration of at least 10 days and up to one year in jail; a fine ranging from $390 to $1,000; completion of a DUI program; and, suspension of driving privileges, as specified. (Veh. Code, § 23542.)

8) Subjects a person who is convicted of a third DUI without injury within 10 years of a prior specified offense of the following penalties:

   a) If the sentence does not include probation: incarceration for at least 120 days and up to one year in jail; a fine ranging from $390 to $1,000; and, suspension of driving privileges, as specified. The person shall also be designated a habitual traffic offender; or (Veh. Code, § 23546.)

   b) If the sentence includes probation: incarceration for at least 120 days and up to one year in jail; a fine ranging from $390 to $1,000; completion of a DUI program, as specified, and, suspension of driving privileges, as specified. (Veh. Code, § 23548.)

9) Subjects a person who is convicted of a fourth or subsequent DUI without injury within 10 years of a prior specified offense of the following penalties: imprisonment in county jail pursuant to realignment, or for 180 days to 1 year in jail; a fine ranging from $390 to $1,000 fine; suspension of driving privileges; and, designation as a habitual traffic offender. (Veh. Code, 23550.)

10) Subjects a person who is convicted of a first DUI with injury to the following penalties:

   a) If the sentence does not include probation: 16 months, two or three years in state prison or 90 days to or year in county jail; a fine ranging from $390 to $1,000; and, suspension of driving privileges, as specified; or (Veh. Code, § 23554.)

   b) If the sentence includes probation: incarceration of between five days to one year in jail; a fine ranging from $390 to $1,000; completion of a DUI program, as specified, and suspension of driving privileges, as specified. (Veh. Code, § 23556.)

11) Subjects a person who is convicted of a DUI with injury within 10 years of a prior DUI conviction to the following penalties:

   a) If the sentence does not include probation: 16 months, two or three years in state prison, or 120 days to one year in county jail; a fine ranging from $390 to $5,000; and, suspension of driving privileges, as specified; or (Veh. Code, § 23560.)

   b) If the sentence includes probation:

      i) Confinement in the county jail for at least 120 days; payment of a fine ranging from $390 to $5,000; and suspension of driving privileges, as specified. (Veh. Code, § 23562, subd. (a)); or,

      ii) Confinement in the county jail for at least 30 days but not more than one year; payment of a fine ranging from $390 to $1,000; suspension of driving privileges, as specified; and completion of a DUI program, as specified. (Veh. Code, § 23562, subd. (b).)

12) Subjects a person who is convicted of a DUI with injury within 10 years of two or more DUI convictions to the following penalties:

a) If the sentence does not include probation: two, three, or four years in state prison; payment of a fine ranging from $1,015 to $5,000; and suspension of driving privileges, as specified; or (Veh. Code, § 23566.)

b) If the sentence includes probation: confinement in the county jail for at least one year; payment of a fine ranging from $390 to $5,000; suspension of driving privileges, as specified; and, completion of a DUI program, as specified. (Veh. Code, § 23568.)

13) Allows a person convicted of a DUI to obtain a restricted license upon proof of enrollment or completion of a program, proof of financial responsibility, and payment of fees; however, the court may disallow the restricted license. (Veh. Code, § 13352.)

14) Requires a person convicted of DUI, as specified, to install an IID on his or her vehicles for a specified time period in order to receive a restricted driver's license or to reinstate his or her driving privileges. (Veh. Code, § 23573.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In California, forty percent of all traffic-related fatalities involve alcohol - this is higher than the rate nationwide. Critically, nearly one-third of those convicted for driving under the influence (DUI) re-offend.

"In an effort to add to the toolkit of options available to judges, AB 330 authorizes a court to order a person convicted of multiple DUIs to successfully complete a qualified '24/7 Sobriety' monitoring program.

"24/7 Sobriety programs require individuals to abstain from alcohol for normally 90-180 days and are subject to frequent testing. If they test positive for alcohol use, there are swift, certain and modest sanctions-typically a day or two in jail.

"24/7 Sobriety began as a pilot program in South Dakota in 2005 and required those convicted of alcohol-related offenses to take twice-a-day breathalyzer tests or wear a continuous alcohol monitoring bracelet. After a five-county pilot project, the program grew to include more jurisdictions and offenses. By the end of 2013, studies found that the total number of repeat driving under the influence arrests in counties operating the program fell by twelve percent, and the total number of arrests for domestic violence dropped by nine percent. Subsequently, 24/7 sobriety programs have been implemented in several additional states. In addition, in 2016 Congress approved federal grant money for startup and administrative costs of a 24/7 program."

2) **Court's Authority to Impose Probation Conditions**: When granting probation, the trial court has broad discretion to impose conditions which will promote rehabilitation and protect the public. (*People v. Patillo* (1992) 4 Cal.App.4th 1576, 1579.) The court "may impose and require … other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, … and generally and specifically for the reformation and rehabilitation of the probationer …." (Pen. Code, § 1203.1.)

A condition of probation is not invalid unless it: "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality …." (*People v. Lent* (1975) 15 Cal.3d 481, 486.) A provision which "forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality." (*Ibid.*)

Whether an alcohol-use condition of probation is an abuse of the trial court's discretion is determined by the particular facts of each case. (*People v. Patillo*, *supra*, 4 Cal.App.4th at p. 1582.)

In DUI cases, an alcohol-abstention condition of probation is reasonably related to the crime for the defendant is convicted. Therefore, a "24/7 Sobriety Program" for a DUI offender would not be an abuse of discretion.

3) **Other DUI Conditions**: Last year the Legislature passed, and the Governor signed, SB 1046 (Hill), Chapter 783, requiring DUI offenders to install an IID for a specified period of time in order to have their license reinstated. IID's are a technique used to deter future driving under the influence. An IID is "a device which prevents a vehicle from starting if the driver has been drinking. The device works like a breathalyzer, measuring the alcohol in a person's system. If the amount of alcohol on the driver's breath exceeds a pre-programmed level, then the interlock temporarily locks the vehicle's ignition." (https://www.lifesafer.com/devices/what-is-an-interlock/)

   This bill addresses the same problem, deterring driving under the influence, from a different approach, namely complete alcohol abstention via a "24/7 Sobriety Program." Additionally, this bill provides that the court may require a defendant to participate in other DUI programs, including participation in the IID program.

   Do the cumulative conditions imposed on repeat drunk-driving offenders offer added benefits? In light of the fact that repeat DUI offenders are now required to install IID devices on their vehicles in order to have their driving privileges reinstated, is this bill necessary?

4) **Argument in Support**: According to *Alcohol Monitoring Systems*, a co-sponsor of this bill, "These programs have proven to be a successful strategy in addressing alcohol-related criminal behavior. Other states who have utilized the 24/7 Sobriety strategy have reported reductions in both DUI and domestic violence offenses. For example, a peer-reviewed RAND study, which was published in the *American Journal of Public Health*, reported a 12% reduction of repeat DUI offenses in South Dakota as a result of its 24/7 Sobriety Program.

   "We are particularly pleased that Assembly Bill 330 leaves discretion to the court in determining which type of 24/7 modality is best suited for each individual defendant who is before them. This assures that the 24/7 strategy will be the best possible in each individual case."

5) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice*, "This measure impose[s] expensive, job-killing restrictions on people of DUI with one prior

conviction. For example, the cost of breath-testing alone can run $2 each. Continuous alcohol monitors can run $50 to $100 for set-up, plus $10-$12 per day. (See https://www.scramsystems .com/images/uploads/general/media-pdf/media-kits/scram-mediakit-camFAQ.pdf.)

"Despite having no way to determine whether it is even minimally effective at reducing recidivism for alcohol-related crimes, it will definitely cause substantial harm. South Dakota passed similar legislation and statistics do not directly translate to a state like California because of the statistics of small numbers. (See http://suryaofvulcan.livejournal.com/100196.html.) The entire population of South Dakota is about two-thirds of the population of Fresno County, so you can imagine how much smaller the number of people convicted of DUI, and how much smaller still the number of people using South Dakota's 24/7 program is. It would not take many individuals to make a large statistical change.

"Under current law, DUI offenders, especially repeat offenders, must successfully complete comprehensive alcohol-dependence rehabilitation programs before they can regain their driver licenses. Failure to attend and complete these programs is a violation of probation, which can lead to re-incarceration.

"However, current law recognizes the value to the community, as well as probationers, of maintaining or obtaining employment. It is beyond controversy that steady work is a major component of successful rehabilitation from chemical dependence, including alcohol dependence. None of the restrictions currently employed act to prevent someone from working. AB 330 would.

"Thus, AB 330 ignores and undermines this principle. Working people would be forced to travel, twice each day, to a designated testing facility. South Dakota's experiment with this program has made it impossible for people working in nontraditional jobs to stay employed. It is particularly hard on agricultural workers, who must travel away from population centers during the day to work. In California, this hurts not just workers, but the farmers who depend on them to harvest crops.

"Moreover, AB 330 would permit—and in South Dakota's experience, the program encourages—blanket imposition of these restrictions without regard to their necessity or efficacy. It would allow a judge to impose them, not just on someone with three prior convictions and an obvious alcohol problem, but on someone with one conviction nine years ago, a clean record otherwise, a good job, and dependents. California has recently recognized that such blanket restrictions are unnecessary, counterproductive, and expensive.

"AB 330 fails to provide any certification process to insure that program providers are ethical, or that the program produces any positive results. It would allow a 'respected research organization,' not further defined, to 'endorse' a program and then operate it. Such self-dealing, combined with lax oversight, risks fraud and abuse....

"AB 330 makes no provision for any meaningful evaluation of whether 24/7 Sobriety actually works in California. Such an evaluation would be difficult if not impossible to make. If it were to be undertaken, it would need to compare 24/7 Sobriety's dubious benefits and substantial costs to those of existing programs which actually treat the underlying causes of

alcoholism. CACJ is firmly convinced that the existing programs serve California far better than 24/7 Sobriety would."

6) **Related Legislation**:

a) AB 6 (Lackey) requires, to the extent funding is provided, the California Highway Patrol Commissioner to appoint a drugged driving task force to develop recommendations for best practices, protocols, proposed legislation, and other policies to address the issue of driving under the influence of drugs, including prescription drugs. AB 6 is pending a vote on the Assembly Floor.

b) AB 702 (Lackey) modifies California law as it relates to refusal to submit to a chemical test due to suspicion of DUI to comply with the Supreme Court's ruling in *Birchfield v. North Dakota* (2016) 136 S.Ct. 2160. AB 702 is pending in the Assembly Appropriations Committee.

c) SB 67 (Bates) provides that a felony DUI remains a felony for the purpose of a prior conviction even if the court subsequently reduces the felony to a misdemeanor for other purposes. SB 67 is pending hearing in the Senate Public Safety Committee.

d) SB 611 (Hill) contains technical corrections to properly implement California's statewide DUI ignition interlock pilot program. SB 611 is pending in the Senate Appropriations Committee.

7) **Prior Legislation**:

a) AB 2367 (Cooley), of the 2015-2016 Legislative Session, was substantially similar to this bill. AB 2367 was held on the Assembly Appropriations suspense file.

b) SB 1046 (Hill), Chapter 783, of the 2015-2016 Legislative Session, requires, under a pilot program, DUI offenders to install an IID for a specified period of time in order to have their license reinstated.

REGISTERED SUPPORT / OPPOSITION:

Support

Alcohol Justice (Co-Sponsor)
Alcohol Monitoring Systems (Co-Sponsor)
California Association of Code Enforcement Officers
California Narcotic Officers Association
Los Angeles County Professional Peace Officers Association

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association

Analysis Prepared by: Sandy Uribe / PUB. S. /

Date of Hearing: April 25, 2017
Counsel: David Billingsley

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

AB 532 (Waldron) – As Amended April 19, 2017
As Proposed to be Amended in Committee

SUMMARY: Allows documentary evidence to be introduced in specified mental health commitment proceedings. **Specifically, this bill**: Allows documentary evidence including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals (SDSH) to be introduced in order to establish the commission of an underlying offense and the details of that offense, as follows:

1) In a hearing to challenge a determination by the Board of Parole Hearings (BPH) that an inmate is a mentally disordered offender (MDO);

2) In a hearing to continue treatment of an MDO;

3) In a commitment proceeding for an individual found to be mentally incompetent to stand trial;

4) In a hearing for the commitment of an individual to the SDSH as a sexually violent predator (SVP);

5) In a hearing to determine whether a person applying for restoration of sanity, after being found not guilty by reasons of insanity (NGI), would be a danger to the health and safety of others due to mental defect, disease, or disorder; or,

6) In a hearing to extend the commitment of a person found NGI.

EXISTING LAW:

1) Prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. (Pen. Code, § 1367, subd. (a).)

2) Defines "mental incompetency" as when an individual who, as a result of mental disorder or developmental disability, is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. (Pen. Code, § 1367, subd. (a).)

3) Provides competency proceedings for defendants accused of felonies, misdemeanors, or both. (Pen. Code, §§ 1367.1, 1368, 1368.1.) Mandates a court or jury trial on the issue of mental competence. (Pen. Code, § 1369.)

4) Requires, if the defendant is found mentally incompetent, the trial or judgment to be suspended until the person becomes mentally competent. (Pen. Code, § 1370, subd. (a)(1)(B).)

5) Provides the court with three placement options: [1] a state hospital; [2] a public or private treatment facility; or [3] outpatient treatment. Before choosing, the court must obtain a written evaluation from the community program director, and hear whether the defendant lacks the capacity to make decisions about the administration of antipsychotic medication. (Pen. Code, § 1370, subd. (a).)

6) States that an order for involuntary medication may be made only if, among other things, the court hears and finds that the defendant is a danger to self or others, or that a defendant charged with a serious crime is likely to be rendered competent by the medication. (Pen. Code, §§ 1370, subd. (a)(2)(B)(i)-(ii), 1370.01, subd. (a)(2)(B)(ii)-(iii).) An order for involuntary medication is valid for no more than one year and must be reviewed after six months. (Pen. Code, § 1370, subd. (a)(7).)

7) Provides that if a defendant charged with a registerable sex offense was previously found incompetent to stand trial for a registerable sex offense, or is currently the subject of incompetency proceedings arising out of a registerable sex offense, after the opportunity for a hearing, he or she must be committed to a state hospital unless the court finds that an alternative placement would provide more appropriate treatment. (Pen. Code, § 1370, subd. (a)(1)(B)(ii).)

8) Provides that if a defendant is charged with a registerable sex offense and has been denied bail, as specified, he or she must be committed to a state hospital unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment. (Pen. Code, § 1370, subd. (a)(1)(B)(iii).)

9) Requires, in felony cases, that the defendant be returned to court for mandatory competency hearings at 18-month intervals. (Pen. Code, § 1370, subd. (b)(4).) Both parties have the right to a jury trial. (Pen. Code, § 1369.)

10) Provides for the initiation civil commitment proceedings – conservatorship – when restoration to competency is unlikely or the maximum period of confinement has expired. (Pen. Code, §§ 1370(c)(2), 1370.1(c)(2); Welf. & Inst. Code, §§ 5000 et seq.)

11) Provides that if a defendant is found NGI, he or she will be committed to the SDSH unless it is determined that since the time of the offense, the defendant has recovered his or her sanity. (Pen. Code, § 1026, subds. (a) & (b).)

12) Provides a two-step procedure for processing an application for release on the ground that that the defendant has regained his or her sanity:

    a) First, the defendant will be placed in an appropriate conditional release program for one year if, at a hearing, it is demonstrated that he or she will not "be a danger to the health and safety of others, due to mental defect, disease, or disorder, while under supervision and treatment in the community"; and,

b) Second, typically after one year, the court holds a trial to determine whether the defendant's sanity has been restored – i.e., whether "the applicant is no longer a danger to the health and safety of others due to mental defect, disease, or disorder." (Pen. Code, § 1026.2, subd. (e).)

13) Provides that at the end of the defendant's maximum term of confinement, the district attorney may petition to extend the defendant's commitment another two years. (Pen. Code, § 1026.5, subd. (b)(1), (2) & (8).) This requires a new jury trial where the prosecution must prove that the defendant "by reason of mental disease, defect, or disorder represents a substantial danger of physical harm to others." (Pen. Code, § 1026.5, subd. (b)(1), (4) & (8).) "The person shall be entitled to the rights guaranteed under the federal and State Constitutions for criminal proceedings. All proceedings shall be in accordance with applicable constitutional guarantees. (Pen. Code, § 1026.5, subd. (b)(7).)

14) Provides for the civil commitment of defendants known as sexually violent predators (SVP). (Welf. & Inst. Code, §§ 6600-6609.3.)

15) Defines a sexually violent predator (SVP) as a person who has been convicted of a specified sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior. A sexually violent offense includes specified sexual acts committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this provision and result in a conviction or a finding of not guilty by reason of insanity. (Welf. & Inst. Code, §§ 6600, 6600.1.)

16) Allows proof of the existence and qualifying nature of an alleged sexually violent predator's qualifying prior convictions to be established by documentary evidence: "The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by [SDSH]." (Welf. & Inst. Code § 6600, subd. (a)(3).)

17) Provides for administrative screening and evaluations prior to the expiration of the defendant's prison term where CDCR believes the prisoner may be a sexually violent predator. (Pen. Code, § 6601.)

18) Allows the district attorney to file a petition for commitment of the defendant as an SVP if SDSH determines the person is an SVP and the district attorney agrees with the recommendation. (Pen. Code, § 6601.)

19) Requires a hearing be conducted at which the superior court must determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release. (Welf. & Inst. Code, § 6602.)

20) Requires, where probable cause is found, a trial be conducted to determine whether the person is, by reason of a diagnosed mental disorder, a danger to the health and safety of

others in that the person is likely to engage in acts of sexual violence upon his or her release from the jurisdiction of CDCR or other secure facility. (Welf. & Inst. Code, § 6602.)

21) Provides that upon a finding the person is an SVP, the person will be committed to the SDSH for an indeterminate term with the right to a current examination once a year. (Welf. & Inst. Code, §§ 6604, 6604.9.)

22) Provides a process for obtaining conditional or unconditional release, a process that may be repeated annually if unsuccessful. (Welf. & Inst. Code, §§ 6604.9, 6605, 6607, 6608.)

23) Allows a person found to be an SVP to petition for conditional release one year after confinement. The issue as a conditional release hearing is whether the person would be a danger to the health and safety of others in that it is likely that he or she will engage in sexual violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. (Welf. & Inst. Code, § 6608, subds. (a), (d) & (e).)

24) Provides that parolees and former prisoners who have been convicted of a specified felony related to a severe mental disorder and continue to pose a danger to society (MDO) may be involuntarily committed. (Pen. Code, § 2960 et seq.)

25) Requires, as a condition of parole, a prisoner who has a severe mental disorder that is not in remission and who meets specified criteria to be treated by SDSH and provided the necessary treatment. In order for that commitment to occur, requires, among other criteria, that the severe mental disorder be one of the causes of, or an aggravating factor in, the commission of the crime, as defined, for which the prisoner was sentenced to prison. Requires the prisoner to have been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release. Establishes procedures for the evaluation of a prisoner under these provisions by specified health practitioners of the SDSH and the CDCR. (Pen. Code, § 2962.)

26) Allows the existence or qualifying violent nature of an alleged MDO's crime of commitment to prison to be shown by documentary evidence. "The details underlying the commission of the offense that led to the conviction, including the use of force or violence, causing serious bodily injury, or the threat to use force or violence likely to produce substantial physical harm, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the [SDSH]." (Pen. Code, § 2962, subd. (f).)

27) Allows the prisoner to challenge the MDO determination both administratively (at a hearing before the board) and judicially (via a superior court jury trial). (Pen. Code, § 2966.) During the jury trial, "[t]he court may, upon stipulation of both parties, receive in evidence the affidavit or declaration of any psychiatrist, psychologist, or other professional person who was involved in the certification and hearing process, or any professional person involved in the evaluation or treatment of the petitioner during the certification process." (Pen. Code, § 2966, subd. (b).)

28) Allows the district attorney to file a petition in the superior court seeking a one-year extension of the MDO commitment, subject to the same procedural and substantive rules of the original commitment trial. (Pen. Code § 2970.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Recent case law has called into question the ability of doctors and other expert witnesses to use documentary evidence when assessing the mental health of individuals who have been civilly committed in lieu of criminal convictions. This makes it difficult to meaningfully consider whether an individual presents a risk to the public upon release.

   "AB 1554 would standardize the various mental health hearings, making them all civil in nature and allowing the use of documentary evidence to prove the issues involved, rather than requiring live testimony from witnesses and victims, in many cases years after the incident occurred."

2) **California Mental Commitment Regimens**: There are three principal categories of California mental health commitments – "not guilty by reason of insanity (NGI), the Mentally Disordered Offender (MDO) law, and the Sexually Violent Predators (SVP) Act. All of these are nominally 'civil' commitment regimens, which nonetheless spring out of the criminal justice system." (O'Connell, *California Mental Health Commitment Regimens*, First District Appellate Project (Jan. 2006) at p. 1.) The law also provides for competency proceedings dealing with a defendant's mental status during the pendency of a criminal case. These competency proceedings are also civil in nature. (*Baqleh v. Superior Court* (2002) 100 Cal.App.4th 478,490-491.)

3) **Hearsay Evidence Under the Guise of Explaining an Expert's Opinion**

   Hearsay is a statement made out of court that is offered to prove a fact at a trial or hearing. Subject to exceptions under the law, hearsay is inadmissible. (Evid. Code, § 1200.) One of the principal reasons for the hearsay rule is to exclude declarations where the veracity of the declarant cannot be tested by cross-examination. (Evid. Code, § 1200, Law Revision Comments (1965).)

   Historically, hearsay information could be communicated to the court or jury in mental health commitment hearings and trials under the guise of explaining the basis for the expert's opinion. (Evid. Code § 801(b), 802; see *O'Connell, supra*, at p. 2.) Until recently, California courts were bound to adhere to the legal fiction that such evidence is not offered for its truth, but only to reveal the basis for the expert's opinions. (*People v. Gardeley* (1996) 14 Cal.4th 605, 617-618, disapproved in *People v. Sanchez* (2016) 63 Cal.4th 665, 686, fn. 13 (*Sanchez*); *People v. Thomas* (2005) 130 Cal.App.4th 1202, 1210; *People v. Valadez* (2013) 220 Cal.App.4th 16, 30; *People v. Sisneros* (2009) 174 Cal.App.4th 142, 153–154, and cases cited therein; see also *People v. Hill* (2011) 191 Cal.App.4th 1104, 1129–1131 [criticizing *Gardeley* but following it]; *People v. Miller* (2014) 231 Cal.App.4th 1301, 1310 ["trial courts have long instructed juries that out-of-court statements related by experts as basis evidence may not be considered for the truth of the matter stated but only for the purpose of evaluation the expert's opinion"].) In *Sanchez*, our state Supreme Court recognized that juries must necessarily consider expert basis testimony for its truth in order to evaluate the expert's opinion, "and confrontation problems cannot be avoided by giving a limiting instruction that

such testimony should not be considered for its truth." (*People v. Sanchez, supra,* 63 Cal.4th at p. 684.)

The California Supreme Court's decision in *Sanchez* attempted to clarify the permissible scope of basis testimony by an expert: "When an expert relies on hearsay to provide case-specific facts, considers the statements as true, and relates them to the jury as a reliable basis for the expert's opinion, it cannot logically be asserted that the hearsay content is not offered for its truth. In such a case, 'the validity of [the expert's] opinion ultimately turn[s] on the truth'… of the hearsay statement." (*Id.* at pp. 682-683, quoting *Williams v. Illinois* (2012) 567 U.S. 50 [183 L. Ed. 2d 89, 132 S.Ct. 2221, 2258] (conc. opn. of Thomas, J.).) Thus, if an expert testifies to case-specific out-of-court statements to explain the bases for his opinion, like any other hearsay evidence, it must be properly admitted through an applicable hearsay exception or through an appropriate witness. (*People v. Sanchez, supra*, 63 Cal.4th at p. 684, fn. omitted.)

"If the case is one in which a prosecution expert seeks to relate testimonial hearsay, there is a confrontation clause violation unless (1) there is a showing of unavailability and (2) the defendant had a prior opportunity for cross-examination, or forfeited that right by wrongdoing." (*People v. Sanchez, supra*, 63 Cal.4th at p. 686.) "Testimonial statements are those made primarily to memorialize facts relating to past criminal activity, which could be used like trial testimony." (*Id.* at p. 689.)

4) Hearsay Exceptions to Allow Documentary Evidence to be Admitted in SVP and MDO Proceedings

Both SVP and MDO law contain unique hearsay exceptions to allow admission of documentary evidence to prove the existence and nature of an alleged qualifying conviction.

AB 3130 (Boland) Chapter 462, Statutes of 1996, amended the SVP law (Welf. & Inst. Code, § 6600 et seq) to permit the existence and details of predicate sexual offenses to be proven by documentary evidence. (Welf. & Inst. Code, § 6600, subd. (a)(3).) SB 1295 (Nielsen) Chapter 430, Statutes of 2016, amended MDO law to permit the existence, nature, and details of predicate offenses to be proved by documentary evidence. (Pen. Code, § 2962, subd. (f).) The documentary evidence may include, but is not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the SDSH. (Pen. Code, §§ 6600, subd. (a)(3) [SVP], 2962, subd. (f) [MDO]; see *People v. Otto* (2001) 26 Cal.4th 200, 207–208 (*Otto*).)

This bill seeks to create a broader hearsay exception for the admission of similar documentary evidence in various types of mental health commitment trials and hearings. While AB 3130 and SB 1295 allowed documentary evidence to prove a predicate *prior* conviction in SVP and MDO commitment proceedings (Welf. & Inst. Code, § 6600, subds. (a)(1)-(3); Pen. Code, § 2972, subds. (b), (e) & (f)), this bill seeks to permit admission of documentary evidence in order to establish the *commission* of an underlying offense and the details of that offense in various SVP, MDO, NGI, and competency hearings and trials. The broad scope of AB 1554 includes hearsay stemming from unproven allegations.

5) Constitutional Considerations -- Confrontation and Due Process Rights in Mental Health Commitment and Competency Proceedings

"The confrontation clause of the Sixth Amendment to the federal Constitution, made applicable to the states through the Fourteenth Amendment, provides that '[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.' The right of confrontation includes the right of cross-examination." (*People v. Fletcher* (1996) 13 Cal.4th 451, 455; *Pointer v. Texas* (1965) 380 U.S. 400, 403-407 [13 L.Ed.2d 923, 85 S.Ct. 1065].) In *Crawford v. Washington* (2004) 541 U.S. 36 [124 S.Ct. 1354], the United States Supreme Court held that the confrontation clause bars the admission of out-of-court testimonial hearsay statements except when "the declarant is unavailable ..." and the defendant "had a prior opportunity to cross-examine" the declarant. (*Id.* at p. 59.)

Due to the nominally civil character of an involuntary mental hospitalization, courts have held there is not a right to confrontation under the state and federal confrontation clause. (See e.g., *People v. Otto*, *supra*, 26 Cal.4th at p. 214; *People v. Angulo* (2005) 129 Cal.App.4th 1349, 1367.) Recent developments in the law call these authorities into question. NGI law specifically provides defendants in commitment extension hearings the rights constitutionally enjoyed by criminal defendants. (Pen. Code, § 1026.5, subd. (b)(7).) One of the constitutional rights enjoyed by criminal defendants is the right to confront and cross examine witnesses under the Sixth Amendment. To the extent that SVPs, MDOs, and defendants subject to competency trials and hearings are found to be similarly situated to NGIs, they would arguably be entitled to the same Sixth Amendment right to confrontation under equal protection analysis. (See *People v. Curlee* (2015) 237 Cal.App.4th 709, 720 [recognized SVPs have the same Fifth Amendment right not to testify against themselves as NGIs, applying equal protection analysis].)

Sixth Amendment aside, defendants in these civil proceedings nonetheless have a due process right of confrontation rooted in fundamental principles of fairness and decency. (See *People v. Otto, supra*, 26 Cal.4th at p. 209 [setting forth the due process test in the context of SVP proceedings].) In *Otto*, the California Supreme Court addressed a constitutional challenge to the admission of hearsay statements in a probation report in the context of the SVP hearsay exception. The Court noted that numerous factors could be considered in evaluating the reliability of hearsay statements in a presentence report. These factors include "the context in which the statements appear. The presentence report is written by a court officer regarding a crime to which the defendant either pled or was found guilty. Transcripts from any preliminary hearing or trial held regarding the predicate conviction are also pertinent, as well as any indicia the defendant challenged the accuracy of the hearsay statements at the underlying criminal proceeding. Relevant factors further include the circumstances surrounding the making of the statement, if known, such as spontaneity and consistent repetition, the mental state of the declarant, use of terminology unexpected of a child of a similar age, lack of motive to fabricate, and whether the hearsay statement was corroborated." (*People v. Otto, supra*, 26 Cal.4th at p. 211.)

The Court concluded that victim statements included in probation reports possessed sufficient indicia of reliability to satisfy due process, where the defendant had been convicted of the qualifying offense to which the victim statements related. As the Court noted, this factor will nearly always be present in an SVP proceeding because the SVP law requires conviction of a predicate offense. (*People v. Otto, supra*, 26 Cal.4th at pp. 210-213.)

Similarly, MDO law requires conviction of a predicate offense. (Pen. Code, § 2962, subds. (b) & (e).)

Under current SVP and MDO law, the documentary exceptions to the hearsay rule apply only to the existence and details of *prior* convictions. They do not apply where the prosecution seeks to introduce hearsay regarding charges which did *not* result in conviction. This bill would expand the documentary hearsay exception to include evidence of the alleged commission of an underlying offense and the details of that offense. Arguably, this type of hearsay evidence does not have the same indicia of reliability to satisfy due process, as in *Otto*.

Hearsay exceptions reflect situations in which the evidence is reliable and trustworthy. (See also *People v. Cudjo* (1993) 6 Cal.4th 585 [focus of exceptions to hearsay rule is on reliability of out-of-court declaration; thus, hearsay exceptions generally reflect situations in which circumstances affording some assurance of trustworthiness compensate for absence of oath, cross-examination, and jury observation]; see also, *In re Michael G.* (1993) 19 Cal.App.4th 1674 [reasoning behind exceptions to the hearsay rule is that experience has shown that there are situations where it is impossible or impractical to present actual witness, yet proffered necessary evidence is inherently trustworthy under the circumstances].) The broad provisions of AB 1554 will permit the admission of unreliable hearsay.

The broad provisions of this bill also arguably turn these mental health commitment proceedings into a "mere" paper review, as opposed to a full evidentiary trial or hearing, which may also implicate due process principles. (See *In re Parker* (1998) 60 Cal.App.4th 1453.)

6) **Practical Considerations:** With regard to a hearing to extend the commitment of an individual found NGI, the statute specifically provides: "The person shall be entitled to the rights guaranteed under the federal and State Constitutions for criminal proceedings. All proceedings shall be in accordance with applicable constitutional guarantees." (Pen. Code, § 1026.5, subd. (b)(7).) That would include a Sixth Amendment confrontation right that otherwise has been found not to apply to these nominally civil mental health proceedings. The language of the bill to introduce documentary evidence under this section is inconsistent with the language of the statute providing a Sixth Amendment right to confrontation.

   It is also questionable whether the language of this bill belongs in Penal Code section 969b, which is a section having to do with pleading and prima facie evidence of alleged prior convictions. As discussed *ante*, this bill involves proof of the commission, not necessarily conviction, of an offense.

7) **Argument in Support:** According to the *San Diego County District Attorney*, "Recent case law has called into question the ability of doctors and other expert witnesses to use documentary evidence when assessing the mental health of individuals who have been civilly committed in lieu of criminal convictions. This makes it difficult to meaningfully consider whether an individual presents a risk to the public upon release. AB 1554 would explicitly authorize the use of documentary evidence to prove the issues involved, rather than requiring live testimony from witnesses and victims, in many cases years after the incident occurred."

8) **Argument in Opposition**: According to the *California Public Defender's Association*, "In its current form, Penal Code section 969, codified in Chapter 2 (Rules of Pleading) of Title 5 of Part 2 (Criminal Procedure) of the Penal Code, provides:

> "In charging the fact of a previous conviction of felony, or of an attempt to commit an offense which, if perpetrated, would have been a felony, or of theft, it is sufficient to state, "That the defendant, before the commission of the offense charged herein, was in (giving the title of the court in which the conviction was had) convicted of a felony (or attempt, etc., or of theft)." If more than one previous conviction is charged, the date of the judgment upon each conviction may be stated, and all known previous convictions, whether in this State or elsewhere, must be charged. (Pen. Code, § 969.)

"AB 1554 proposes to amend section 969 to add a new and entirely unrelated subdivision that has nothing to do with the rules of pleading; rather, the proposed amendment deals with the use of various records containing documentary hearsay in various types of *noncriminal* proceedings, such as parole proceedings governing mentally disordered prisoners (Pen. Code, § 2962, 2966, 2972, and 2970), pre-trial civil commitment proceedings pertaining to individual who are incompetent to stand trial by virtue of a mental condition, post-conviction civil proceedings to commit individuals alleged to be Sexually Violent Predators (Welf. & Inst., § 1026.2), and post-conviction conditional release proceedings for individuals adjudicated not guilty by reason of insanity (Pen. Code, § 1026.2), to establish the details of any prior criminal offense allegedly committed by the person who is the subject of the proceeding. From a purely organizational perspective, this type of language does not belong in the California Penal Code, and it certainly doesn't belong in the section governing the Rules of Pleading or in section 969, which is a rule of criminal procedure.

"More important, though, the proposed amendment of AB 1554 shouldn't be included in *any* statute, because it conflicts with well-settled principles of due process and their application to cases involving involuntary civil commitment.

"In some civil commitment proceedings, such as those codified in Penal Code section 2962 (Mentally Disordered Offender Act) and those codified in Welfare and Institutions Code section 6600 (Sexually Violent Predator Act), the facts underlying the offense of which the proposed committee was convicted may be relevant to whether the person meets the statutory criteria for civil commitment. For instance, in a proceeding to commit a person as a Mentally Disordered Offender, it must be proved that the person was sentenced to prison for a conviction of a qualifying offense, some of which are described in terms of the underlying conduct; i.e., a crime in which the person "used force or violence, or caused serious bodily injury". And in a proceeding to commit a person as a Sexually Violent Predator, it must be proved that the person has sustained conviction for a "sexually violent offense," which includes crimes committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or by threatening to retaliate in the future against the victim or any other person, or involving a minor younger than fourteen. In such proceedings, the government often proves the nature of the underlying offense through the admission of documentary records, including a probation officer's summary of the facts of the offense. In fact, the Sexually Violent Predator Act specifically provides for the use of documentary evidence to prove the conduct underlying the pertinent offense. (Welf. & Inst., § 6600, subd. (a)(3).)

"However, to assure due process to those made subject to such proceedings, only *reliable* information contained in such documents may be used. Not all hearsay statements in such documents are reliable enough to be considered by a trier of fact, particularly where a person's liberty is at stake. Courts understand that, in evaluating the reliability of hearsay statements, including presentence reports,[1] they may consider numerous factors, including the context in which the statements appear. Paramount to the question of reliability of information relayed in such a report, is the information's source. For instance, where the statement of the offense is a summary of a reporter's transcript of sworn witness testimony obtained in the context of an adversarial judicial proceeding, it is more likely to be reliable than where the statement is a probation officer's summary of a police officer's summary of statements of witnesses which, in themselves, are summaries taken from handwritten notes. Relevant factors also include the circumstances surrounding the making of the statement, if known, such as spontaneity and consistent repetition, the mental state of the declarant, lack of motive to fabricate, and whether the hearsay statements are corroborated. (*People v. Otto* (2001) 26 Cal.4th 200, 211 [reliable documentary hearsay may be used in SVP proceedings to prove facts underlying offense without violating due process]; *People v. Nelson* (2012) 209 Cal.App.4th 698, 713 and *People v. Stevens* (2012) 62 Cal.4th 325, 339 [same rule with regard to MDO proceedings].) This standard is not only constitutionally mandated, it is highly workable.

"AB 1554 jeopardizes important due process protection which *must* be afforded for civil commitment proceedings in California to be constitutionally valid."

9) **Prior Legislation**:

a) SB 1295 (Nielsen) Chapter 430, Statutes of 2016, amended MDO law to permit the existence, nature, and details of predicate offenses to be proved by documentary evidence.

b) AB 3130 (Boland) Chapter 462, Statutes of 1996, amended the SVP law to permit the existence and details of predicate sexual offenses to be proven by documentary evidence.

REGISTERED SUPPORT / OPPOSITION:

Support

San Diego County District Attorney

Opposition

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

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[1] "A presentence report is written by a court officer regarding a crime to which the defendant either pled or was found guilty."

Analysis Prepared by: David Billingsley / PUB. S. /

Amended Mock-up for 2017-2018 AB-532 (Waldron (A))

Mock-up based on Version Number 98 - Amended Assembly 4/19/17
Submitted by: David Billingsley, Assembly Public Safety Committee

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

SECTION 1. Section 11875 is added to the Health and Safety Code, in Article 1(formerly commencing with Section 11860) of Chapter 1 of Part 3 of Division 10.5, to read:

11875. (a) A court may develop a program to offer mental health and addiction treatment services to women who are charged ***in a complaint that only consists of misdemeanor offenses or on probation for a misdemeanor offense or offenses.*** ~~with a misdemeanor offense or have a prior misdemeanor conviction.~~ ***This subdivision does not apply to women who are charged with a felony or are under supervision for any felony conviction.***

(b) "Mental health and addiction treatment services" means evidence-based treatment and recovery wraparound support services, including, but not limited to:

(1) Mental health and substance abuse treatment, including, but not limited to:

(A) Addiction counseling.

(B) Inpatient detoxification.

(C) Case management.

(D) Daily living skills.

(E) Medication assisted treatment or any other federally approved medication.

(2) Vocational services.

(3) Housing assistance.

(4) Community support services.

(5) Care coordination.

(6) Transportation assistance.

(7) Mental health and substance abuse assessments.

(c) (1) On or before January 1, 2020, the Judicial Council shall send a report to the Legislature on the operation of programs pursuant to this section.

(2) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(d) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

Date of Hearing: April 25, 2017
Counsel: Sandra Uribe

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

AB 660 (Rubio) – As Amended April 19, 2017
As Proposed to be Amended in Committee

SUMMARY: Expands the crime of trespass on the property of a public agency. Specifically, **this bill**: Provides that any person who intentionally interferes with any lawful business carried on by the employees of a public agency open to the public by knowingly making a material misrepresentation of the law to those persons there to transact business with the public agency is guilty of a misdemeanor.

EXISTING LAW:

1) Includes numerous provisions defining various forms of criminal trespass and trespass penalties. The crime definitions and penalties typically turn on whether any damage has been done to the property and whether the trespasser refuses a valid request to leave the property. (Pen. Code, §§ 602-607.)

2) Makes it a misdemeanor to enter onto another's property to interfere with business. (Pen. Code, § 602, subd. (k).)

3) Makes it a misdemeanor to enter and occupy real property or structures of any kind without the owner's consent. (Pen. Code, § 602, subd. (m).)

4) Makes it a misdemeanor to refuse to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public after being asked to leave by someone employed there. (Pen. Code, § 602, subd. (q).)

5) Provides that any person who intentionally interferes with any lawful business carried on by the employees of a public agency open to the public, by obstructing or intimidating those attempting to carry on business, or those persons there to transact business with the agency, and who refuses to leave the property upon request is guilty of a misdemeanor punishable by imprisonment in the county jail for up to 90 days, or by a fine of up to $400, or both. (Pen. Code, § 602.1, subd. (b).)

6) Includes the following exceptions to the trespassing law on obstructing public agencies or customers:

   a) A person who is conducting lawful union activities;

   b) A person who is on the premises and engaging in activities protected by the California or United States Constitution. (Pen. Code, § 602.1, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In various counties across the state, California residents have filed complaints about the soliciting that occurs at County Clerk's offices by persons acting as state employees or claiming to be members of newspaper agencies. Not all of these solicitors are illegitimate, however the illegitimate solicitors not only give a bad name to legitimate small business owners but they deter those who need to file paperwork. This is extremely problematic considering unknowing citizens can easily fall victim to solicitors falsely representing themselves. My bill will protect the rights of members of the public to freely and without undue interference exercise their Constitutional right to petition government, access governmental offices and functions at the County Clerk's office."

2) **Necessity for this Bill**: According to the background information provided by the author, there have been complaints at some County Clerk offices regarding aggressive solicitors harassing individuals there to conduct business.

   For example, In San Bernardino County, more than a dozen complaints were filed between 2014 and 2015 regarding solicitors outside the Hall of Records posing as county employees, arguing with citizens and following them into the building to enlist their business in filing fictitious business names and articles of incorporation. As a result San Bernardino County adopted a local ordinance prohibiting people from soliciting business on county property. That ordinance was subsequently ruled unconstitutional, but then revised. (See J. Nelson, *San Bernardino County Revises 'Unconstitutional' Solicitor Ordinance*, July 2, 2016, The Sun < http://www.sbsun.com/government-and-politics/20160517/judge-deems-san-bernardino-county-solicitation-ordinance-unconstitutional.>)

   This bill expands the trespass law on obstructing customers at public agencies by including within its scope the making of material misrepresentations of law to customers there transact business with the public agency.

3) **Argument in Support**: According to the California Newspaper Publishers Association, "AB 660 would help to address a problem arising at several county clerks' offices where individuals offering to 'assist' those who are required to file a fictitious business name (FBN) statement with the County Clerk's office have exhibited threatening behavior toward the potential filers.

   "In Los Angeles County, these solicitors engage in confrontational and aggressive tactics to secure business from members of the public who go to county offices to file FBN's or conduct any other business with the county. In some instances, several solicitors have actually run toward and competed for business as members of the public were getting out of their vehicles in the parking lot.

   "Other solicitors have also misled some filers by telling them that the law requires a filer to use an agent to file the FBN for them.

   "Current law allows an office manager or a supervisor of the public agency, or a peace

officer to request that a person leave the premises of the public agency if that person intentionally interferes with any lawful business carried on by the employees of a public agency open to the public, or obstructs or intimidates those attempting to carry on business, or those persons there to transact business with the public agency.

"AB 660 would add to this list of prohibited behavior anyone who makes a material misrepresentation of the law to those persons there to transact business with the public agency.

"No person who goes to a government agency to petition government or transact business should ever have to experience harassment or intimidation. AB 660 would help put an end to this type of deplorable conduct."

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials (Co-Sponsor)
California Newspaper Publishers Association (Co-Sponsor)

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. /

Amended Mock-up for 2017-2018 AB-660 (Rubio (A))

Mock-up based on Version Number 97 - Amended Assembly 4/19/17
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 602.1 of the Penal Code is amended to read:

602.1. (a) Any person who intentionally interferes with any lawful business or occupation carried on by the owner or agent of a business establishment open to the public, by obstructing or intimidating those attempting to carry on business, or their customers, and who refuses to leave the premises of the business establishment after being requested to leave by the owner or the owner's agent, or by a peace officer acting at the request of the owner or owner's agent, is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to 90 days, or by a fine of up to four hundred dollars ($400), or by both that imprisonment and fine.

(b) Any person who intentionally interferes with any lawful business carried on by the employees of a public agency open to the public, by **knowingly** making a material misrepresentation of the law to those persons there to transact business with the public agency, or by obstructing or intimidating those attempting to carry on business, or those persons there to transact business with the public agency, and who refuses to leave the premises of the public agency after being requested to leave by the office manager or a supervisor of the public agency, or by a peace officer acting at the request of the office manager or a supervisor of the public agency, is guilty of a misdemeanor, punishable by imprisonment in a county jail for up to 90 days, or by a fine of up to four hundred dollars ($400), or by both that imprisonment and fine.

(c) This section shall not apply to any of the following persons:

(1) Any person engaged in lawful labor union activities that are permitted to be carried out on the property by state or federal law.

(2) Any person on the premises who is engaging in activities protected by the California Constitution or the United States Constitution.

(d) Nothing in this section shall be deemed to supersede the application of any other law.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: April 25, 2017
Consultant: Adam Smith

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

AB 811 (Gipson) – As Introduced February 15, 2017
As Proposed to be Amended in Committee

SUMMARY: Grants individuals in foster care, as well as youth confined, detained or committed to certain juvenile facilities, the right to reasonable access to computer technology and the Internet. Specifically, **this bill**:

1) Provides that all youth confined in a facility of the Division of Juvenile Facilities shall have reasonable access to computer technology and the Internet for the purposes of education and maintaining contact with family and supportive adults.

2) Requires that minors detained in or committed to a juvenile hall, juvenile ranch, camp, or forestry camp, be provided with reasonable access to computer technology and the Internet for the purposes of education and maintaining relationships with supportive adults.

3) States that the Chief Probation Officer or his/her designee are not prohibited from adopting policies for making individualized determinations to limit or deny reasonable access to juveniles for safety reasons.

4) Provides that all minors and nonminors in foster care shall have reasonable access to computer technology and the Internet in accordance with the "Reasonable and Prudent Parent Standard."

EXISTING LAW:

1) Establishes the Youth Bill of Rights, which provides that all youth confined in a facility of the Division of Juvenile Facilities have all of the following rights:

   a) To live in a safe, healthy, and clean environment conducive to treatment and rehabilitation and where they are treated with dignity and respect;

   b) To be free from physical, sexual, emotional, or other abuse, or corporal punishment;

   c) To receive adequate and healthy food and water, sufficient personal hygiene items, and clothing that is adequate and clean;

   d) To receive adequate and appropriate medical, dental, vision, and mental health services;

   e) To refuse the administration of psychotropic and other medications consistent with applicable law or unless immediately necessary for the preservation of life or the

prevention of serious bodily harm;

f) To not be searched for the purpose of harassment or humiliation or as a form of discipline or punishment;

g) To maintain frequent and continuing contact with parents, guardians, siblings, children, and extended family members, through visits, telephone calls, and mail;

h) To make and receive confidential telephone calls, send and receive confidential mail, and have confidential visits with attorneys and their authorized representatives, ombudspersons and other advocates, holders of public office, state and federal court personnel, and legal service organizations;

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

j) To have regular opportunity for age-appropriate physical exercise and recreation, including time spent outdoors;

k) To contact attorneys, ombudspersons and other advocates, and representatives of state or local agencies, regarding conditions of confinement or violations of rights, and to be free from retaliation for making these contacts or complaints;

l) To participate in religious services and activities of their choice;

m) To not be deprived of any of the following as a disciplinary measure: food, contact with parents, guardians, or attorneys, sleep, exercise, education, bedding, access to religious services, a daily shower, a drinking fountain, a toilet, medical services, reading material, or the right to send and receive mail;

n) To receive a quality education that complies with state law, to attend age-appropriate school classes and vocational training, and to continue to receive educational services while on disciplinary or medical status;

o) To attend all court hearings pertaining to them;

p) To have counsel and a prompt probable cause hearing when detained on probation or parole violations; and

q) To make at least two free telephone calls within an hour after initially being placed in a facility of the Division of Juvenile Facilities following an arrest. (Welf. & Inst. Code, § 224.71.)

2) Provides the following definitions regarding the Youth Bill of Rights:

a) "Committed" means placed in a facility of the Division of Juvenile Facilities pursuant to a court order, independent of, or in connection with, other sentencing alternatives;

b) "Detained" means held in secure confinement in a juvenile facility of the Division of Juvenile Facilities;

c) "Extended family member" means any adult related to the youth by blood, adoption, or marriage, and any adult who has an established familial or mentoring relationship with the youth, including, but not limited to, godparents, clergy, teachers, neighbors, and family friends;

d) "Facility of the Division of Juvenile Facilities" means a place of confinement that is operated by, or contracted for, the Department of Corrections and Rehabilitation, for the purpose of the detention or commitment of youth who are taken into custody, as specified, and who are adjudged to be a ward of the court; and

e) "Youth" means any person detained in a facility of the Division of Juvenile Facilities. (Welf. & Inst. Code, § 224.70.)

3) Provides that it is the policy of the state that all minors and nonminors in foster care shall have the following rights:

a) To live in a safe, healthy, and comfortable home where he or she is treated with respect;

b) To be free from physical, sexual, emotional, or other abuse, or corporal punishment;

c) To receive adequate and healthy food, adequate clothing, and, for youth in group homes, an allowance;

d) To receive medical, dental, vision, and mental health services;

e) To be free of the administration of medication or chemical substances, unless authorized by a physician;

f) To contact family members, unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and probation officers;

g) To visit and contact brothers and sisters, unless prohibited by court order;

h) To contact the Community Care Licensing Division of the State Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints;

i) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order;

j) To attend religious services and activities of his or her choice;

k) To maintain an emancipation bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan;

l) To not be locked in a room, building, or facility premises, unless placed in a community treatment facility;

m) To attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level, with minimal disruptions to school attendance and educational stability;

n) To work and develop job skills at an age-appropriate level, consistent with state law;

o) To have social contacts with people outside of the foster care system, including teachers, church members, mentors, and friends;

p) To attend Independent Living Program classes and activities if he or she meets age requirements;

q) To attend court hearings and speak to the judge;

r) To have storage space for private use;

s) To be involved in the development of his or her own case plan and plan for permanent placement;

t) To review his or her own case plan and plan for permanent placement, if he or she is 12 years of age or older and in a permanent placement, and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan;

u) To be free from unreasonable searches of personal belongings;

v) To the confidentiality of all juvenile court records consistent with existing law;

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

x) To be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court or child welfare records;

y) To have caregivers and child welfare personnel who have received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care;

z) At 16 years of age or older, to have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for

vocational and postsecondary educational programs, and information regarding financial aid for postsecondary education; and

aa) To have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections at 12 years of age or older. (Welf. & Inst. Code, § 16001.9.)

4) Provides that every child adjudged a dependent child of the juvenile court shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities and that a child's designated caretaker must use the reasonable and prudent parent standard in giving permission to participate. (Welf. & Inst. Code, § 362.05, subd. (a).)

5) Defines "reasonable and prudent parent" or "reasonable and prudent parent standard" as "the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities." (Welf. & Inst. Code, § 362.05, subd. (c)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Assembly Bill (AB) 811 seeks to allow foster and juvenile justice involved youth in out-of-home placements reasonable access to computer technology and the Internet, to facilitate the education and communication that are key to their health, long-term success, and to reduce recidivism."

2) **Internet Access and Foster Youth Normalcy**: In providing services to youth in foster programs, the state has explicitly stated the intent to maximize healthy family communications and provide for normal childhood experiences. (Welf. & Inst. Code, § 16000, subd. (a).) As internet-based social platforms and computer technology have become the most commonly used means of maintaining communications amongst youth and their extended communities, providing access to internet is an essential element of creating normalcy for youth in foster care. Several reports have found that healthy communication and relationships, including those maintained through internet-based social platforms, can boost the self-esteem and overall positivity of youth in foster care, which is likely to provide long-term benefits.<http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1016&context=lincy_publications> (as of April 18, 2017).

   Internet access not only provides benefits for maintaining normalcy regarding relationships, but also for normalcy in education. Students without access to internet face a considerable disadvantage compared to their counterparts because they lack access to important internet-based resources, such as research databases, educational forums, and online class supplements. In a study conducted by the University of Nevada, researchers found that access to internet and computer technology had a significant positive impact on student

performance and the development of important educational skills. The technological skills that were developed during the study are also skills that are highly marketable in the work force since technology is integrated into the vast majority of occupations in some form or another. <http://www.cacollegepathways.org/wp-content/uploads/2015/09/1_Laptop_FCC_Evaluation_Report.pdf> (as of April 18, 2017)

AB 811 would help individuals maintain important relationships while simultaneously developing valuable educational and occupational skills by ensuring access to computer technology and internet for youth in foster care.

3) **Internet Access and Juvenile Security**: According to a U.S. Department of Justice and Department of Education joint report titled "Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings," the incarceration of juveniles imposes significant burdens, such as disruption of education and isolation from a supportive community, which may drastically increase the likelihood for juveniles to reoffend. As a solution to this disruption and its natural consequences, the report notes the importance of integrating computer technology and Internet-based educational and social resources while simultaneously acknowledging the security concerns related to Internet access and the juvenile population. Although the report acknowledges that Internet-based educational resources cannot act as a standalone source of education, access to these resources remains instrumental to removing educational inequities for detained juveniles. Similarly, Internet and computer-based communication, while insufficient on its own, may help prepare juveniles to integrate back into their communities upon release in order to balance the need for access to computer technology and Internet-based resources with security concerns, the report suggests that "secure-care schools can employ firewalls, filters, special programming, and other methods to restrict student access to educationally relevant sites only. The facility, through the leadership of the agency (or agencies) operating a juvenile justice facility, and school program can establish (1) policies, procedures, and practices that keep students on the desired programs and content; (2) classroom procedures for monitoring students' online behavior; and (3) appropriate responses to the misuse of technology." <2.ed.gov/policy/gen/guid/correctional-education/guiding-principles.pdf> (as of April 18, 2017)

   AB 811 would guarantee that individuals committed to juvenile facilities have access to Internet and computer technology while limiting that access to educational purposes and maintaining contact with family and supportive adults. Furthermore, the access only needs to be "reasonable" which allows for facilities to use discretion in determining the extent to which juveniles may access this technology. Under this framework, AB 811 addresses unintended educational and social harms associated with juvenile incarceration while balancing risks unique to the population.

4) **Argument in Support**: According to *TeenForce*, "Technology affects every facet of life today and is particularly crucial for learning and communication. Without reasonable access to computers and the Internet, youth in out-of-home placements cannot access online school assignments and materials, conduct online research, and engage in normal day-to-day communications with family and friends. They risk falling behind academically and becoming isolated from their communities and supportive connections.

"With minimal resources and appropriate supervision, youth in out-of-home placements can access the technology they need to maintain their academic progress and the relationships that are vital to their wellbeing and success.

"Existing law gives foster youth and juvenile justice involved youth certain specified rights including the right to contact with family members and the right to education. This bill ensures that these youth have the access to technology and the Internet that they need to avail themselves of these important rights.

"AB 811 will amend sections 224.71 and 16001.9 of the Welfare and Institutions Code and add sections 851.1 and 889.1 so that foster youth and juvenile justice involved youth in out-of-home placements can use technology as a way to complete school assignments, gain vital career skills, and stay connected to the family members and friends who support their wellbeing and long-term success."

5) **Argument in Opposition**: According to *the Chief Probation Officers of California (CPOC)*, "While CPOC appreciates your intent to provide juveniles with access to computer technology for educational purposes and maintaining contact with family members, as currently drafted, there are security and safety concerns that the bill fails to address as well as ambiguity as to what constitutes, and who determines, 'reasonable access.'

"It is important in setting up access to computers and the internet that firewalls and monitoring systems are in place. Additionally, due to safety and security issues, it is imperative that probation departments retain the ability to make determinations to limit or restrict access based on the circumstances to protect the youth in the facility. As currently drafted, this bill does not expressly provide probation departments with the ability to make determinations of appropriate internet access or appropriate restrictions. It is important probation retain the ability to make these determinations in the interest of the safety and security of youth and staff in our facilities."

6) **Prior Legislation**:

   a) SB 1250 (Yee), Chapter 522, Statutes of 2008, established the Family Communications and Youth Rehabilitation Act of 2008, which included rights to communicate with family via telephone and mail.

   b) SB 518 (Migden), Chapter 649, Statutes of 2007, established the Youth Bill of Rights for individuals confined in a facility of the Division of Juvenile Facilities.

   c) AB 899 (Liu), Chapter 683, Statutes of 2001, outlined the rights of foster youth and required that social workers make these rights known to foster youth.

REGISTERED SUPPORT / OPPOSITION:

Support

Youth Law Center (Sponsor)

California Public Defenders Association
Center on Juvenile and Criminal Justice
Children Now
Common Sense Kids Action
iFoster
John Burton Advocates for Youth
Legal Services for Children
National Association of Social Workers – California Chapter
TeenForce
Youth Justice Coalition

Opposition

Chief Probation Officers of California (CPOC)

Analysis Prepared by: Adam Smith / PUB. S. / (916) 319-3744

Amended Mock-up for 2017-2018 AB-811 (Gipson (A))

Mock-up based on Version Number 99 - Introduced 2/15/17
Submitted by: Adam Smith, Assembly Public Safety

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

SECTION 1. Section 224.71 of the Welfare and Institutions Code is amended to read:

224.71. It is the policy of the state that all youth confined in a facility of the Division of Juvenile Facilities have all of the following rights:

(a) To live in a safe, healthy, and clean environment conducive to treatment and rehabilitation and where they are treated with dignity and respect.

(b) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.

(c) To receive adequate and healthy food and water, sufficient personal hygiene items, and clothing that is adequate and clean.

(d) To receive adequate and appropriate medical, dental, vision, and mental health services.

(e) To refuse the administration of psychotropic and other medications consistent with applicable law or unless immediately necessary for the preservation of life or the prevention of serious bodily harm.

(f) To not be searched for the purpose of harassment or humiliation or as a form of discipline or punishment.

(g) To maintain frequent and continuing contact with parents, guardians, siblings, children, and extended family members, through visits, telephone calls, and mail.

(h) To make and receive confidential telephone calls, send and receive confidential mail, and have confidential visits with attorneys and their authorized representatives, ombudspersons and other advocates, holders of public office, state and federal court personnel, and legal service organizations.

(i) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or

perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.

(j) To have regular opportunity for age-appropriate physical exercise and recreation, including time spent outdoors.

(k) To contact attorneys, ombudspersons and other advocates, and representatives of state or local agencies, regarding conditions of confinement or violations of rights, and to be free from retaliation for making these contacts or complaints.

(l) To participate in religious services and activities of their choice.

(m) To not be deprived of any of the following as a disciplinary measure: food, contact with parents, guardians, or attorneys, sleep, exercise, education, bedding, access to religious services, a daily shower, a drinking fountain, a toilet, medical services, reading material, or the right to send and receive mail.

(n) To receive a quality education that complies with state law, to attend age-appropriate school classes and vocational training, and to continue to receive educational services while on disciplinary or medical status.

(o) To attend all court hearings pertaining to them.

(p) To have counsel and a prompt probable cause hearing when detained on probation or parole violations.

(q) To make at least two free telephone calls within an hour after initially being placed in a facility of the Division of Juvenile Facilities following an arrest.

(r) To have reasonable access to computer technology and the Internet for the purposes of education and maintaining contact with family and supportive adults.

SEC. 2. Section 851.1 is added to the Welfare and Institutions Code, to read:

851.1. Minors detained in or committed to a juvenile hall shall be provided with reasonable access to computer technology and the Internet for the purposes of education and maintaining relationships with family and supportive adults. **Nothing in this section prohibits the Chief Probation Officer or his/her designee from adopting policies for making individualized determinations to limit or deny reasonable access for safety reasons.**

SEC. 3. Section 889.1 is added to the Welfare and Institutions Code, to read:

889.1. Minors detained in or committed to a juvenile ranch, camp, or forestry camp shall be provided with reasonable access to computer technology and the Internet for the purposes of education and maintaining contact with family and supportive adults. **Nothing in this section**

prohibits the Chief Probation Officer or his/her designee from adopting policies for making individualized determinations to limit or deny reasonable access for safety reasons.

SEC. 4. Section 16001.9 of the Welfare and Institutions Code is amended to read:

16001.9. (a) It is the policy of the state that all minors and nonminors in foster care have the following rights:

(1) To live in a safe, healthy, and comfortable home where he or she is treated with respect.

(2) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.

(3) To receive adequate and healthy food, adequate clothing, and, for youth in group homes, an allowance.

(4) To receive medical, dental, vision, and mental health services.

(5) To be free of the administration of medication or chemical substances, unless authorized by a physician.

(6) To contact family members, unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and probation officers.

(7) To visit and contact brothers and sisters, unless prohibited by court order.

(8) To contact the Community Care Licensing Division of the State Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

(9) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.

(10) To attend religious services and activities of his or her choice.

(11) To maintain an emancipation bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

(12) To not be locked in a room, building, or facility premises, unless placed in a community treatment facility.

(13) To attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level, with minimal disruptions to school attendance and educational stability.

(14) To work and develop job skills at an age-appropriate level, consistent with state law.

(15) To have social contacts with people outside of the foster care system, including teachers, church members, mentors, and friends.

(16) To attend Independent Living Program classes and activities if he or she meets age requirements.

(17) To attend court hearings and speak to the judge.

(18) To have storage space for private use.

(19) To be involved in the development of his or her own case plan and plan for permanent placement.

(20) To review his or her own case plan and plan for permanent placement, if he or she is 12 years of age or older and in a permanent placement, and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.

(21) To be free from unreasonable searches of personal belongings.

(22) To the confidentiality of all juvenile court records consistent with existing law.

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

(24) To be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court or child welfare records.

(25) To have caregivers and child welfare personnel who have received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care.

(26) At 16 years of age or older, to have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, and information regarding financial aid for postsecondary education.

(27) To have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections at 12 years of age or older.

(28) To have reasonable access to computer technology and the Internet, **in accordance with the "Reasonable and Prudent Parent Standard" specified in Welfare and Institutions Code sections 362.05 and 727.**

(b) This section does not require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

(c) The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (26) of subdivision (a).

SEC. 5. To the extent that this act has an overall effect of increasing certain costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.

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

Date of Hearing: April 25, 2017
Counsel: Gabriel Caswell

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

AB 812 (Chen) – As Amended April 4, 2017

SUMMARY: Permits investigators of an auditor-controller or a director of finance to inspect and copy juvenile files when conducting an investigation within the scope of their duties if it is reasonably believed that the information contained in the juvenile case file may be relevant to an investigation of waste, fraud, or abuse.

EXISTING LAW:

1) Provides that the following persons (who are not peace officers) may exercise the power to serve warrants, as specified, during the course and within the scope of their employment, if they receive a course of an investigation in the course of their duties, as specified: (Pen. Code, § 830.13, subd.(a).)

   a) Persons employed as investigators of an auditor-controller or director of finance of any county or persons employed by a city and county who conduct investigations under the supervision of the controller of the city and county, who are regularly employed and paid in that capacity, provided that the primary duty of these persons shall be to engage in investigations related to the theft of funds or the misappropriation of funds or resources, or investigations related to the duties of the auditor-controller or finance director as set forth; or (Pen. Code, § 830.13, subd. (a)(1).)

   b) Persons employed by the Department of Justice (DOJ) as investigative auditors, provided that the primary duty of these persons shall be to investigate financial crimes. Investigative auditors shall only serve warrants for the production of documentary evidence held by financial institutions, Internet service providers, telecommunications companies, and third parties who are not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which the warrant is requested. (Pen. Code, § 830.13, subd.(a)(2).)

2) Provides that the investigators and auditors referenced above shall be subject to the following provisions and limitations:

   a) Provides that notwithstanding any other provision of law, persons designated as investigators pursuant to these provisions shall not carry firearms; (Pen. Code, § 830.13, subd. (b).)

   b) Specifies that these auditors and investigators shall be included as "peace officers of the state" for the limited purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace specified officers of

the state; and (Pen. Code, § 830.13, subd.(c).)

c) Permits limited powers to serve warrants for investigative reasons. (Pen. Code, § 830.13, subd.(d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 812 would help to expedite investigations of alleged fraud and misconduct by county employees or contractors by authorizing county auditor investigators access to the juvenile case files of children in foster care or probation, within the scope of their investigation."

2) **Current Law Permits Judges to Review Requests and Control the Release of Highly Confidential Information About Juveniles to Investigators**: Under current law, auditor-investigators and all other investigating parties must petition a juvenile court judge or magistrate for the release of information from a juvenile case file. Juvenile court files are confidential for a reason. Information contained in a juvenile's dependency or delinquency case file is personal information about a juvenile. Particularly in the case of a juvenile dependency case file, the juvenile is in the system through no fault of their own. The information contained in these files can be personal information related to physical, emotional or sexual abuse, medical information, mental health information, or any number of highly personal areas. In dependency matters, the juvenile court is acting as the de facto parent for many of these children. In the place of the parent, the court receives reports from a variety of sources, including doctors, mental health professionals, social workers, schools, law enforcement if the child has been abused/neglected/a crime victim, and more. The reports and related items in the file contain the very most intimate and sensitive information about not only the youth but the youth's parents, siblings, half-siblings and perhaps others with whom the youth has a relationship.

   The current system allows courts to review the information in the case file for relevant information prior to the disclosure to an investigator. Inquiries must go through the court in a petition process that includes notice being given to the youth, parents, and others, and not just a notice but an opportunity for those parties who are entitled to respond, object, or otherwise to be heard by the court. The court then has the ability to grant the request in full, or more importantly and as is often the case, place limitations on the request. These limitations may include redaction of some information if it is not needed by the requester, such as information about others named in the file, personally identifying information (such as a social security number), limiting information to a specified period of time, requirements on what the requestor does with the data when done.

3) **History of Permitting Investigators for Auditor-Controllers to Conduct Investigations Utilizing Search Warrants and Subpoenas:** AB 433 (Hertzberg), Chapter 170, Statutes of 1997 first authorized investigators of county auditor-controller offices to serve search warrants and subpoenas, obtain summary criminal history information, or obtain other financial records to prevent loss of public funds. The bill was originally brought by the Los Angeles County Board of Supervisors. At the time they argued that at the time, "only peace officers and specifically designated employees of State agencies have the authority to serve

search warrants and to obtain financial, criminal, motor vehicle and other information during investigations. Assembly Bill 433 authorized investigators of county auditor-controller offices to receive information from financial institutions during fraud investigations and to serve warrants or receive criminal information during investigations of theft of funds or misappropriation of funds. Unlawful disclosure of any investigative information would be punished as a misdemeanor." Proponents of AB 443 further argued that auditor-controller investigators generally work on matters involving theft or embezzlement of county funds. The change brought by AB 433 permitted access by auditor-controller investigators without having to go through their local law enforcement and district attorney.

SB 1164 (Scott), Chapter 81, Statutes of 2008 added DOJ investigative auditors to the list of persons who, although not peace officers, are authorized to serve search warrants and receive state summary criminal history information. The stated need for this expansion to DOJ investigative auditors was in order to expedite elder financial abuse and Medi-Cal fraud investigations. The provisions of SB 1164 gave investigative auditors the ability to serve search warrants on financial institutions and other entities for the production of documentary evidence.

4) **Expansion of the Authority of County Auditor-Controller or Director of Finance to Inspect Juvenile Case Files**: This bill expands the powers of a county auditor-controller to investigate juvenile case files. The expanded powers will allow auditor-controllers to access, inspect, and copy a juvenile case file, or portions thereof, in the same manner as court personnel, parties to juvenile proceedings, and other specified persons. The access is limited to the conduction of an investigation within the scope of the auditor-controller's duties, and when it is reasonably believed that information contained in the juvenile case file may be relevant to an investigation of waste, fraud, or abuse. Additionally, prior notice must be given to the director of the county child welfare agency and the county probation department. Juvenile case file information obtained may only be disclosed in a limited investigative manner or to the appointing authority of the county child welfare agency or the county probation department for the purposes of taking corrective or disciplinary action, or to the district attorney.

5) **Argument in Support**: According to *The County of Los Angeles,* "Current law, Penal Code 380.13 and Government Code 53087.6, authorizes certified investigators of county auditor-controllers ("auditor investigators") to conduct investigations of alleged waste, fraud or abuse by county employees or contractors for all county programs and departments, including the theft, misuse, and the unlawful distribution of child welfare case information. These auditor investigators also investigate theft of government funds paid to provide care and services to dependent children and their families, fraudulent claims for services and care, and the misuse of dependent children's personal information, including, but not limited to, identity theft, tax, and insurance fraud.

"Investigating the theft, misuse and/or unlawful distribution of children's case information requires auditor investigators to inspect and to copy juvenile case files. Welfare and Institutions Code Section 827, which was enacted prior to Penal Code Section 830.13, restricts the access to juvenile case files to limited persons, such as the district attorney or special investigators with the Department of Social Services. For all other persons not specified, such as the general public and the media, as well as county auditor investigators, they are required to publicly petition the juvenile court for access to children's case files…

"The personal identifying information of children in foster care is susceptible to loss, theft and to the misuse by the various entities and individuals that have access to it. An August 2011 California Office of Privacy Protection Report recommended investigations to reduce the potential fraudulent activity. The report states that after reviewing the records of 2,110 foster children in Los Angeles County, 104 children had 247 separate accounts, with an average account balance of $1,811, and the largest being a home loan of over $200,000.

"A mechanism for promptly investigating and resolving fraud allegations is critical to limiting the duration of the fraud, and the total loss, as well as maintaining the confidentiality and integrity of pending investigations. Investigating the misuse of child welfare case information conducted by investigators is a critical component to further strengthening the protection of the State's most vulnerable children. However, the time it takes to initiate an authorized investigation for vulnerable children in the County's care exposes the child to financial abuse, the potential dissemination and misuse of their personal data, and impairs the County's ability to gather evidence through a confidential investigation. Additionally, providing notice of the request increases the possibility that the investigation may be compromised, and that individuals involved in related misconduct might have the opportunity to destroy evidence or to engage in additional improprieties."

6) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 812 would compromise the privacy and confidentiality rights of system-involved youth by allowing employees of the county auditor-controller or finance departments to access confidential juvenile court records. In enacting subdivision (b) of Welfare and Institutions Code section 827, the Legislature 'reaffirmed its belief that juvenile court records, in general, should be confidential.' Also, the 'strong public policy of confidentiality of juvenile proceedings and records has long been recognized' by the courts.' (In re Keisha T. (1995) 38 Cal.App.4th 220, 231.) Current policy encourages candor in the courts by system-involved youth and families, and protects youth from social stigma associated with being a dependent or ward of the court. Importantly, courts are often called on to make decisions regarding a youth's medical care, educational issues, placement, psychotropic medication and therapy. The policy of confidentiality ensures that those orders and reasons underlying them remain private.

"As indicated, the confidentiality of juvenile court records is codified in Welfare and Institutions Code section 827. Even law enforcements access to these records is limited, and access is only available to those 'officers who are actively participating in criminal or juvenile proceedings involving the minor.' (Welf. & Inst. Code, § 827, subd. (a)(1)(E).) AB 812 seeks to provide employees of county controllers, auditors and departments of finance access to juvenile court records when it is reasonable to believe the records contain evidence of fraud, waste and abuse. The bill would provide the same right of access to the records as social workers, who are charged with ensuring the welfare of the children before the court. The narrow scope of the information sought by auditors should not allow a right of access to the entire file.

"For example, if an auditor is looking for evidence in an individual child's file that a group home has been overbilling the county, there is no reason to allow that employee access to those portions of the file that discuss the circumstances that brought the child into the system, the child's social history, familial history, mental health issues, medical issues and

educational history. Under such circumstances, the auditor should file a petition under existing law requesting the court grant access only to the relevant portions of the file. The statute provides the court with authority to permit persons to petition the court for access to juvenile court records. (Welf. & Inst. Code, § 827, subd. (a)(1)(P); Cal. Rules of Court, rule 5.552.) This balancing allows the court 'to safeguard the privacy of minors in order to protect their best interests and to control access to juvenile case files.' (In re Gina S. (2005) 13 Cal.App.4th 1074, 1084, Cal. Rules of Court, rule 5.552(e)(4) & (5).) It recognizes that the analysis needs to be conducted on a case by case basis so that the juvenile court can exercise its 'sensitivity and expertise to make decisions about access to juvenile court records.' (J.E v. Superior Court (2014) 223 Cal.App.4th 1329, 1337.) Allowing juvenile information to be disseminated en masse to auditors is irreconcilable with the court's obligation to protect the confidentiality of system-involved children and to only allow limited access to those records on a particularized showing of need in individual cases."

7) **Prior Legislation**: AB 433 (Hertzberg), Chapter 170, Statutes of 1997 first authorized investigators of county auditor-controller offices to serve search warrants and subpoenas, obtain summary criminal history information, or obtain other financial records to prevent loss of public funds.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Los Angeles (Sponsor)

Opposition

California Public Defenders Association

Analysis Prepared by: Gabriel Caswell / PUB. S. /

Date of Hearing: April 25, 2017
Counsel: Gabriel Caswell

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

AB 903 (Cunningham) – As Amended April 19, 2017

SUMMARY: Amends the Adult Use of Marijuana Act to require that the California Highway Patrol (CHP) use its annual appropriation of $3 million from the California Marijuana Tax Fund to fund the CHP to appropriate funds to study and adopt protocols to determine marijuana impairment. Specifically, **this bill**:

1) Specifies that the CHP may spend their annual three million dollar ($3,000,000) grant to fund themselves to coordinate with research organizations within the state to:

   a) Establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including impairment by the use of marijuana and marijuana products.

   b) Study the viability of standards for marijuana impairment.

   c) Establish and adopt protocols setting forth best practices to assist law enforcement agencies.

2) Allows the hiring of personnel to establish the protocols specified.

EXISTING LAW

1) Provides that beginning with fiscal year 2017-2018 the Department of Finance shall estimate revenues to be received from the marijuana excise taxes and provide those estimates to the Controller no later than June 15 of each year. The Controller shall use these estimates when disbursing funds. Before any funds are disbursed the Controller shall disburse from the fund to the appropriate account, without regard to fiscal year, the reimbursements and costs associated with the collection of the fund, as specified. (Rev. & Tax. Code, § 34019, subd. (a).)

2) Provides that the Controller shall next disburse the sum of two million dollars ($2,000,000) annually to the University of California San Diego Center for Medicinal Cannabis Research to further the objectives of the center including the enhanced understanding of the efficacy and adverse effects of marijuana as a pharmacological agent. (Rev. & Tax. Code, § 34019, subd. (e).)

3) Provides that the Controller shall disburse the sum of three million dollars ($3,000,000) annually to the Department of the California Highway Patrol beginning fiscal year 2018-2019 until fiscal year 2022-2023 to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products, and to establish and adopt protocols setting forth best practices to assist

law enforcement agencies. The department may hire personnel to establish the protocols specified in this subdivision. In addition, the department may make grants to public and private research institutions for the purpose of developing technology for determining when a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products. (Rev. & Tax. Code, § 34019, subd. (c).)

4) Provides that the Controller shall disburse the sum of ten million dollars ($10,000,000) to a public university or universities in California annually beginning with fiscal year 2018-2019 until fiscal year 2028-2029 to research and evaluate the implementation and effect of the Control, Regulate and Tax Adult Use of Marijuana Act, and shall, if appropriate, make recommendations to the Legislature and Governor regarding possible amendments to the Control, Regulate and Tax Adult Use of Marijuana Act. The research funded pursuant to this subdivision shall include but not necessarily be limited to: (Rev. & Tax. Code, § 34019, subd. (b).)

   a) Impacts on public health, including health costs associated with marijuana use, as well as whether marijuana use is associated with an increase or decrease in use of alcohol or other drugs;

   b) The impact of treatment for maladaptive marijuana use and the effectiveness of different treatment programs;

   c) Public safety issues related to marijuana use, including studying the effectiveness of the packaging and labeling requirements and advertising and marketing restrictions contained in the act at preventing underage access to and use of marijuana and marijuana products, and studying the health-related effects among users of varying potency levels of marijuana and marijuana products;

   d) Marijuana use rates, maladaptive use rates for adults and youth, and diagnosis rates of marijuana-related substance use disorders;

   e) Marijuana market prices, illicit market prices, tax structures and rates, including an evaluation of how to best tax marijuana based on potency, and the structure and function of licensed marijuana businesses;

   f) Whether additional protections are needed to prevent unlawful monopolies or anti-competitive behavior from occurring in the nonmedical marijuana industry and, if so, recommendations as to the most effective measures for preventing such behavior;

   g) The economic impacts in the private and public sectors, including, but not necessarily limited to, job creation, workplace safety, revenues, taxes generated for state and local budgets, and criminal justice impacts, including, but not necessarily limited to, impacts on law enforcement and public resources, short and long term consequences of involvement in the criminal justice system, and state and local government agency administrative costs and revenue;

   h) Whether the regulatory agencies tasked with implementing and enforcing the Control, Regulate and Tax Adult Use of Marijuana Act are doing so consistent with the purposes

of the act, and whether different agencies might do so more effectively;

i) Environmental issues related to marijuana production and the criminal prohibition of marijuana production;

j) The geographic location, structure, and function of licensed marijuana businesses, and demographic data, including race, ethnicity, and gender, of license holders; and

k) The outcomes achieved by the changes in criminal penalties made under the Control, Regulate and Tax Adult Use of Marijuana Act for marijuana-related offenses, and the outcomes of the juvenile justice system, in particular, probation-based treatments and the frequency of upcharging illegal possession of marijuana or marijuana products to a more serious offense.

5) States that the Controller shall disburse the sum of ten million dollars ($10,000,000) beginning fiscal year 2018-2019 and increasing ten million dollars ($10,000,000) each fiscal year thereafter until fiscal year 2022-2023, at which time the disbursement shall be fifty million dollars ($50,000,000) each year thereafter, to the Governor's Office of Business and Economic Development, in consultation with the Labor and Workforce Development Agency and the State Department of Social Services, to administer a community reinvestments grants program to local health departments and at least 50 percent to qualified community-based nonprofit organizations to support job placement, mental health treatment, substance use disorder treatment, system navigation services, legal services to address barriers to reentry, and linkages to medical care for communities disproportionately affected by past federal and state drug policies. The office shall solicit input from community-based job skills, job placement, and legal service providers with relevant expertise as to the administration of the grants program. In addition, the office shall periodically evaluate the programs it is funding to determine the effectiveness of the programs, shall not spend more than 4 percent for administrative costs related to implementation, evaluation and oversight of the programs, and shall award grants annually, beginning no later than January 1, 2020. (Rev. & Tax. Code, § 34019, subd. (d).)

6) Provides that by July 15 of each fiscal year beginning in fiscal year 2018-2019, the Controller shall, after distributing the above funds, disburse additional funds as specified. (Rev. & Tax. Code, § 34019, subd. (f).)

7) Provides that it is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of alcoholic beverage and drugs, to drive a vehicle. (Veh. Code, § 23152 subd. (a).)

8) Provides that it is unlawful for any person who is addicted to the use of any drug to drive a vehicle. (Veh. Code, § 23152 subd. (c).)

9) States that the fact that any person charged with driving under the influence of any drug or under the combined influence of alcohol and any drug that he or she is, or has been, entitled to use under the laws of this state shall not constitute a defense against any violation of the driving under the influence laws. (Veh. Code, § 23630.)

10) States that it is unlawful for any person who has 0.08% or more by weight of alcohol in his or her blood to drive a vehicle. (Veh. Code, § 23152 subd. (b).)

11) Provides that it is unlawful for any person who is addicted to the use of any drug to drive a vehicle. (Veh. Code, § 23152 subd. (c).)

12) States legislative intent that a person be subject to enhanced mandatory minimum penalties for multiple offenses within a period of 10 years, regardless of whether the convictions are obtained in the same sequence as the offenses had been committed. (Veh. Code, § 23217.)

13) States that if a person is convicted of a first violation of driving under the influence of alcohol, or drugs, or the combined influence of alcohol and drugs, that person shall be punished by imprisonment in the county jail for not less than 96 hours, at least 48 hours of which shall be consecutive, nor more than six months, and by a fine of not less than $390 nor more than $1,000. (Veh. Code, § 23536 subd. (a).) Further states that the person's privilege to drive a motor vehicle shall be suspended. (Veh. Code, § 2356 subd. (c).)

14) Provides that if a person is convicted of driving under the influence of alcohol, or drugs, or the combined influence of alcohol and drugs, and the offense occurred within ten years of a separate violation of driving under the influence, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than $390 nor more than $1,000. States that the person's privilege to drive a motor vehicle shall be suspended. (Veh. Code, § 23540 subd. (a).)

15) Provides that if a person is convicted of a violation of driving under the influence of alcohol, or drugs, or the combined influence of alcohol and drugs, and the offense occurred within ten years of a separate violation of driving under the influence, that person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year, and the person's privilege to drive a motor vehicle shall be revoked. (Veh. Code , § 23546 subd. (a).)

16) Provides that in prosecution for driving under the influence (DUI), it is a rebuttable presumption that the person had 0.08% or more blood alcohol concentration (BAC) level at the time of driving the vehicle if his or her BAC level is 0.08% at a chemical test performed within three hours after the driving. (Veh. Code, § 23152.)

17) Provides that in a prosecution for DUI, it is a presumption affecting the burden of proof that if the person had 0.05%, by weight, of alcohol in his or her blood, it shall be presumed that the person was not under the influence of an alcoholic beverage at the time of the alleged offense. (Veh. Code, § 23610 subd. (a)(1).)

18) States that if there was, at that time, 0.05% or more but less than 0.08%, by weight, of alcohol in the person's blood, it shall be presumed that the person was not under the influence of an alcoholic beverage, but the fact may be considered with other competent evidence in determining whether the person was under the influence of an alcoholic beverage at the time of the alleged offense. (Veh. Code, § 23610 subd. (a)(2).)

19) Provides that if there was at that time 0.08% or more, by weight, of alcohol in the person's blood, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense. (Veh. Code, § 23610 subd. (a)(3).)

20) States that in any county where the board of supervisors has approved, and the Department of Alcohol and Drug Programs has licensed, a program or programs pursuant to law, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete a licensed driving-under-the-influence program, in the driver's county of residence or employment, as designated by the court. (Veh. Code, § 23538 subd. (b).)

21) Provides that the court shall refer a first offender whose blood-alcohol concentration was less than 0.20%, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions described by law. (Veh. Code § 23538 subd. (b)(1).)

22) States that the court shall refer a first offender whose blood-alcohol concentration was 0.20% or more, by weight, or who refused to take a chemical test, to participate for at least six months or longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described by law. (Veh. Code, § 23538 subd. (b)(2).)

23) States that the court shall order a person to participate in an alcohol and drug problem assessment program pursuant to law, inclusive, and the related regulations of the State Department of Alcohol and Drug Programs, if the person was convicted of a violation of a DUI, as specified, that occurred within 10 years of a separate DUI, as specified, that resulted in a conviction. (Veh. Code, § 23646 subd. (b)(1).)

24) Provides that a court may order a person convicted of a DUI, as specified, to attend an alcohol and drug problem assessment program pursuant to this article. (Veh. Code, § 23646 subd. (b)(2).)

25) States that a preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle under the influence of alcohol is a field sobriety test and may be used by an officer as a further investigative tool. (Veh. Code, § 23612, subd. (h).)

26) Specifies that if the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required if arrested for driving a vehicle under the influence of alcohol or drugs, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test. (Veh. Code, § 23612, subd. (i).)

27) States that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for an offense allegedly committed in

violation driving under the influence of drugs or alcohol. If a blood or breath test, or both, are unavailable, then the person shall give urine. (Veh. Code, § 23612, subd. (a)(1)(A).)

28) Provides that a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood for the purpose of determining the drug content of his or her blood, if lawfully arrested driving under the influence of drugs or drugs and alcohol. If a blood test is unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test. (Veh. Code, § 23612, subd. (a)(1)(B).)

29) States that the testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of specified driving under the influence offenses. (Veh. Code, § 23612, subd. (a)(1)(C).)

30) Specifies that the person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation driving under the influence or driving under the influence causing injury, and (i) the suspension of the person's privilege to operate a motor vehicle for a period of one year, (ii) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within 10 years of a separate violation of specified offenses, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to the Department of Motor Vehicles (DMV) administrative action for driving under the influence of alcohol for an offense that occurred on a separate occasion, or (iii) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within 10 years of a two or more separate violations of specified offenses, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant DMV administrative action for driving under the influence of alcohol for an offense that occurred on a separate occasion, or if there is any combination of those convictions, administrative suspensions, or revocations. (Veh. Code, § 23612, subd. (a)(1)(D).)

31) States that if the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then the individual shall provide urine. (Veh. Code, § 23612, subd. (a)(2)(A).)

32) Provides that if the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood or breath, and the officer shall advise the person that he or she has that choice. (Veh. Code, § 23612, subd. (a)(2)(B).)

33) States that a person who chooses to submit to a breath test may also be requested to submit to a blood test if the officer has reasonable cause to believe that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has a clear indication that a blood test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which that belief

and that clear indication are based. The officer shall advise the person that he or she is required to submit to an additional test. The person shall submit to and complete a blood test. If the person arrested is incapable of completing the blood test, the person shall submit to and complete a urine test. (Veh. Code, § 23612, subd. (a)(2)(c).)

34) Requires that the officer advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law. (Veh. Code, § 23612, subd. (4).)

35) Specifies that a person lawfully arrested for an offense allegedly committed while the person was driving a motor vehicle under the influence, may request the arresting officer to have a chemical test made of the arrested person's blood or breath for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed. (Veh. Code, § 23612, subd. (d)(1).)

36) States that if a blood or breath test is not available, the person shall submit to the remaining test in order to determine the percent, by weight, of alcohol in the person's blood. If both the blood and breath tests are unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test. (Veh. Code, § 23612, subd. (d)(2).)

37) Provides that if the person, who has been arrested for specified violations of driving a motor vehicle under the influence of alcohol or drugs, refuses or fails to complete a chemical test or tests, or requests that a blood or urine test be taken, the peace officer, acting on behalf of the department, shall serve the notice of the order of suspension or revocation of the person's privilege to operate a motor vehicle personally on the arrested person. (Veh. Code, § 23612, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 903 seeks to combat increased drug-impaired driving with the passage of Prop. 64. State law currently limits alcohol impairment in drivers to 0.08 percent of blood-alcohol content, but no established limits exist for marijuana impairment. This bill aims to ensure protocols are in place for law enforcement agencies to follow, similar to how states such as Colorado and Washington have done since the passage of their related ballot measures."

2) **UC San Diego Study Commissioned by the Legislature to Develop Sobriety Tests for California Law Enforcement to Spot Drivers Impaired by Marijuana:** The State of California appropriated $1.8 million to the University of California San Diego's Center for Medicinal Cannabis Research to develop a method for determining when drivers are under the influence of marijuana. In addition, Proposition 64 has appropriated an additional $2

million annually to the UC San Diego Center for Medical Cannabis Research. According to an April 17, 2016 article in the San Diego Union-Tribune[1]:

"State asks UCSD to find ways to detect stoned drivers" by Gary Robbins

UC San Diego will try to develop a faster, better way to determine whether drivers are high on marijuana through a study prompted by the possibility that California voters will approve the recreational use of pot in November.

The $1.8 million project was commissioned by the Legislature, which said sobriety tests currently used by law enforcement aren't ideal for spotting drivers impaired by marijuana.

Researchers at the university plan to use driving simulators to study people's behavior while they're high on pot and formulate sobriety exercises that motorists would have to pass on a hand-held device, such as an iPad.

Studies of this type are uncommon in the United States.

The federal government classifies marijuana as a Schedule 1 drug, meaning that it has no accepted medical use and possesses a high potential for abuse. As a result of this categorization, scientists said it can take as long as 18 months to obtain federally sanctioned marijuana for research.

But the government is under pressure to reclassify marijuana because studies of pot have identified some clear medicinal benefits. Nationally, there also has been growing societal acceptance of the drug for medical and recreational uses.

Political experts said a measure to legalize recreational marijuana in California is likely to qualify for the Nov. 8 ballot, and the prospect of the nation's most populous state approving that measure is raising questions about everything from "drugged driving" to where pot would be sold. Such issues haven't been fully resolved, even though California voters approved medical marijuana in 1996.

"We're not trying to punish people; we're trying to prevent accidents," Assemblyman Tom Lackey, R-Palmdale, who was a California Highway Patrol officer for 28 years, said of the sobriety-screening project at UC San Diego.

"We need roadside tools that detect whether a driver is impaired by marijuana. This program could have national implications," he added.

At present, law-enforcement officers in the state have other options for assessing whether a driver has been impaired by marijuana.

They can administer a field sobriety test, which requires drivers to perform certain physical and mental tasks including standing on one leg and counting backward. That

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[1] http://www.sandiegouniontribune.com/news/science/sdut-ucsd-marijuana-sobrietytest-2016apr17-htmlstory.html

evaluation method has proven to be very useful in identifying people who have been drinking alcohol, but scientists said it doesn't always reveal whether a person is high on pot.

In some cases, an officer can subject a motorist to a blood test, which can reveal the presence of THC, the main active ingredient in marijuana. But this analysis doesn't gauge exactly when a person used the drug, and the level of THC doesn't necessarily correlate to how high an individual is.

The UC San Diego study will aim to help clarify matters.

"We want to be able to determine if a motorist is impaired by marijuana, how impaired they are and how long that impairment will last," said Igor Grant, chair of psychiatry at the university and director of the Center for Medicinal Cannabis Research.

"We also would like to measure the strength of the marijuana and how the potency relates to impairment," he added.

One of Grant's colleagues, psychiatry professor Thomas Marcotte, said: "The ultimate goal is to find a way to determine if a motorist is impaired by marijuana by examining various body fluids (blood, saliva, breath) and cognitive testing that could be done at the roadside."

Barth Wilsey, a UC San Diego physician who is also involved in the study, said "People tend to experience distorted time and have problems with memory when stoned. We aim to see whether these and other marijuana-related impairments might be detectable with tests on an iPad that could be used in the field by law-enforcement officers."

It's unclear whether the legalization of marijuana for recreational use will lead to a large, persistent and clearly proven increase in traffic accidents and fatalities. Recreational marijuana is currently legal in four states and the District of Columbia. Colorado led the way in late 2012.

The Colorado Highway Patrol and Denver police have reported a sharp rise in the number of motorists who were ticketed for driving while impaired by marijuana. But law-enforcement officials said they're just beginning to collect the kind of data they'll need to understand the impact of Colorado's marijuana regulations.

Even so, the potential public-safety challenges worry Lackey, who wrote in a newspaper column last year that "If California's experience legalizing recreational marijuana will be anything like Colorado's, we will have a very serious drug-impaired driving problem on our hands that inevitably will increase the number of fatal traffic accidents."

The California branch of the National Organization for the Reform of Marijuana Laws, or NORML, has a different take on the matter.

"Yes, there has been an increase in the number of drivers testing positive for marijuana in Colorado, Washington, California and other states," said Dale Gieringer, state coordinator for California NORML. "However, none of these states show a concomitant

increase in accident rates. On the contrary, accident and DUI rates in California have generally been on the decline even as marijuana positives have increased."

3) **Proposition 64, The California Marijuana Legislation Initiative:** On November 8, 2016, California voters approved the "California Marijuana Legislation Initiative" by 57% of the vote. The initiative was commonly referred to as the Adult Use of Marijuana Act (AUMA).

   Prior to the passage of AUMA the possession or use of marijuana for recreational purposes in the State of California was illegal. In 1996, the passage of Proposition 215 legalized medicinal marijuana. Both medical and recreational marijuana use and possession were, and currently are, illegal under federal law.

   Proposition 64 allowed adults aged 21 years or older to possess and use marijuana for recreational purposes. The initiative levied two additional new excise taxes, one for cultivation of marijuana and the other on the retail sales of marijuana. The first tax is a cultivation tax of $9.25 per ounce for flowers and $2.75 per ounce for leaves, with exceptions for certain medical marijuana sales and cultivation. The second tax is a 15 percent tax on the retail price of marijuana. These taxes will be adjusted for inflation starting in 2020. Local governments were authorized to levy taxes on marijuana as well.

4) **Revenue from the California Marijuana Tax Fund:** Revenue from the two taxes from the AUMA will be deposited in a new California Marijuana Tax Fund. First, the revenue will be used to cover costs of administrating and enforcing the measure. Next, it will be distributed to drug research, treatment, and enforcement, including:

   a) $2 million per year to the UC San Diego Center for Medical Cannabis Research to study the efficacy and adverse effects of marijuana as a pharmacological agent;

   b) $10 million per year for 11 years for public California universities to research and evaluate the implementation and impact of Proposition 64. Researchers would make policy change recommendations to the California Legislature and California Governor;

   c) $3 million annually for five years to the Department of the California Highway Patrol for developing protocols to determine whether a vehicle driver is impaired due to marijuana consumption;

   d) $10 million, increasing each year by $10 million until settling at $50 million in 2022, for grants to local health departments and community-based nonprofits supporting "job placement, mental health treatment, substance use disorder treatment, system navigation services, legal services to address barriers to reentry, and linkages to medical care for communities disproportionately affected by past federal and state drug policies;"

   e) The remaining revenue will be distributed as follows:

      i) 60 percent to youth programs, including drug education, prevention, and treatment;

      ii) 20 percent to prevent and alleviate environmental damage from illegal marijuana producers; and

iii) 20 percent to programs designed to reduce driving under the influence of marijuana and a grant program designed to reduce negative impacts on health or safety resulting from the proposition.

5) **Toxicologists Cannot Produce an Accurate Per Se Drug Impairment Standard:** *If a defendant is to be punished for driving under the influence, they should actually be under the influence at the time of they were operating a motor vehicle.* Otherwise, drivers are merely being convicted of driving under the influence for having ingested a substance (legally or illegally) at some point prior to driving. According to a 2011 National Highway Transportation and Safety Administration, Drug Recognition Expert Training Manual, "Toxicology has some important limitations. One limitation is that, with the exception of alcohol, *toxicology cannot produce 'per se' proof of drug impairment. That is, the chemist can't analyze the blood or urine and come up with a number that 'proves' the person was or wasn't impaired."* (emphasis added). Additionally, The National Highway Transportation Safety Administration also noted in a 2015 report that "specific drug concentration levels cannot be reliably equated with a specific degree of driver impairment."[2] As the bill relates to the presence of THC (marijuana) in the system of a driver, "It is difficult to establish a relationship between a person's THC blood or plasma concentration and performance impairing effects. It is inadvisable to try and predict effects based on blood THC concentrations alone, and currently impossible to predict specific effects based on THC-COOH concentrations[3]."

   The presence of drugs in the system of a driver is helpful when evaluating whether or not a person is driving under the influence. However, that evidence is far from conclusive. Under current law evidence of drug use can be used to argue that a driver was under the influence at the time they drove a vehicle.

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

   The behavioral effects of other drugs are not as well understood compared to the behavioral effects of alcohol. Certain generalizations can be made: high doses generally have a larger effect than small doses; well-learned tasks are less affected than novel tasks; and certain variables, such as prior exposure to a drug, can either reduce or accentuate expected effects, depending on circumstances. However, the ability to predict an individual's performance at a specific dosage of drugs other than alcohol is limited. Most psychoactive drugs are chemically complex molecules whose absorption, action, and elimination from the body are difficult to predict. Further, there are considerable differences between individuals with regard to the rates with which these processes occur. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, pp. 2-3.)

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

[3] http://www.nhtsa.gov/People/injury/research/job185drugs/cannabis.htm

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

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

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

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

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

> Drugs vary by their elimination half-lives, which is the time required for the blood levels to decline by 50%. The half-life of a drug is heavily influenced by a variety of factors, including the individual's age, sex, physical condition and clinical status. A compromised liver and the concurrent presence of another disease or drug have the potential of enhancing the toxic effects of the drug by slowing down the elimination process. Under different clinical conditions, however, the process may be speeded up. Therefore, great variation may be found in the half-lives of the same drug.
>
> Approximately six half-lives are required to eliminate 99% of any drug. Because the half-life of cocaine is relatively short, averaging one hour, only six hours are needed for the elimination of 99% of the drug. Cocaine metabolites have a longer half-life and can be detected for a considerably longer period of time through urine drug assays. Compared with cocaine, phenobarbital has a much longer half-life (80 to 120 hours), so that at least 480 hours, or 20 days, are required to eliminate 99% of the drug. Since there is much variation in the half-lives of different drugs and the absolute amount of drug present can be very small, it is crucial that the appropriate body fluid for analysis is selected for testing.
>
> Elimination of ethanol [alcohol] follows a different pattern. Its levels decline almost linearly over time. The average elimination rate is between 15 mg/100 ml and 20 mg/100 ml (0.015-0.02 per cent) per hour, although rates of between 10 mg/100 ml and 30 mg/100 ml (0.01-0.03 per cent) per hour have also been observed. In the alcoholic patient, the elimination rate is generally higher. In forensic calculations, a rate of 15 mg/100 ml (0.015%) per hour is usually used. (http://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1993-01-01_2_page005.html)

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

10) **Argument in Support**: According to the *California Police Chiefs Association,* "On November 8, 2016 California voters passed Proposition 64 to legalize recreational marijuana. Included in the initiative is a mandate that the California Highway Patrol (CHP) adopt protocols to determine whether a driver is operating a vehicle under the influence of marijuana. AB 903 would also require the CHP to study the viability of standards for marijuana impairment.

"As the number of drug impaired driving incidents continue to increase, it is imperative that California begins to identify the appropriate deterrents, measurements and responses as soon as possible; AB 909 is an important inclusion in this effort."

11) **Prior Legislation**:

a) AB 1571 (Lackey) required the court to consider a blood alcohol concentration (BAC) of .08 or more, in combination with the presence of specified drugs, as an aggravating factor that may justify enhancing the terms and conditions of probation, for first time driving under the influence (DUI) offenders. AB 1571 failed passage in the Assembly Appropriations Committee.

b) AB 2740 (Low) created a per se standard for driving under the influence of marijuana. AB 2740 failed passage in the Assembly Appropriations Committee.

c) AB 1356, Lackey, of the 2015-2016 Legislative Session, would have allowed the use of an oral fluids screening test to determine the presence or concentration of drugs, to assist the officer in making a determination that a person was driving under the influence of drugs. AB 1356 failed passage in the Assembly Public Safety Committee.

d) AB 2500 (Frazier), of the 2013-2014 Legislative Session, would have made it unlawful for a person to drive a motor vehicle if his or her blood contained specified amount of various designated controlled substances. As originally introduced, the bill would have made it unlawful to drive with any "detectable" amount of various designated controlled substances, including delta-9-tetrahydrocannabinol of marijuana. It was modified to incorporate specified measurable amounts – with the amounts varying depending on the substance. The designated amount triggering criminal punishment for delta-9-tetrahydrocannabinol was of 2 nanograms, or more, per milliliter of whole blood. AB 2500 failed passage in the Assembly Public Safety Committee.

e) SB 289 (Correa), of the 2013-2014 Legislative Session, would have created a zero tolerance for drugged driving per se standard. SB 289 failed passage in Senate Public Safety Committee.

f) AB 2552 (Torres), Chapter 753, Statutes of 2012, was originally a zero tolerance for drugged driving per se standard bill but was amended in the Assembly to modify the penal code to allow the tracking of charges for drugged driving as distinguished from driving under the influence of alcohol.

g) AB 1215 (Benoit), of the 2007-2008 Legislative Session, created a zero tolerance for drugged driving per se standard. AB 1215 failed passage in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association
Peace Officers Research Association of California

Opposition

None

Analysis Prepared by: Gabriel Caswell / PUB. S. /

Date of Hearing: April 25, 2017
Counsel: David Billingsley

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

AB 935 (Mark Stone) – As Amended April 6, 2017
As Proposed to be Amended in Committee

SUMMARY: Revises the procedure to determine the mental competence of a juvenile charged with a crime. Specifically, **this bill**:

1) States that whenever the court has a doubt that a minor who is subject to any juvenile proceedings is mentally competent, the court shall suspend all proceedings and make a determination of competence.

2) Specifies that a minor is mentally incompetent if he or she is unable to understand the nature of the proceedings, including his or her role in the proceedings, or unable to assist counsel in conducting a defense in a rational manner, including a lack of a rational and factual understanding of the nature of the charges or proceedings.

3) States that incompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity.

4) Allows the court to receive information from any source regarding the minor's ability to understand the proceedings.

5) States that the minor's counsel or the court may express a doubt as to the minor's competency, but the receipt of information or the expression of doubt of the minor's counsel does not automatically require the suspension of proceedings.

6) Provides that if the court has a doubt as to the minor's competency, the court shall suspend the proceedings.

7) States that unless the parties stipulate to a finding that the minor lacks competency, or the parties are willing to submit on the issue of the minor's lack of competency, the court shall appoint an expert to evaluate the minor to determine if the minor is competent.

8) Requires the expert to have expertise in child and adolescent development and forensic evaluation of juveniles for purposes of adjudicating competency, to be familiar with competency standards and accepted criteria used in evaluating juvenile competency, and to have received training in conducting juvenile competency evaluations.

9) Requires the expert to personally interview the minor and review all of the available records provided, including, but not limited to, medical, education, special education, probation, child welfare, mental health, regional center, and court records, and any other relevant

information that is available.

10) Requires the expert to consult with the minor's counsel and any other person who has provided information to the court regarding the minor's lack of competency, to gather a developmental history of the minor, to administer age-appropriate testing specific to the issue of competency, unless the facts of the particular case render testing unnecessary or inappropriate.

11) Specifies that in a written report, the expert shall opine whether the minor has the sufficient present ability to consult with his or her counsel with a reasonable degree of rational understanding and whether he or she has a rational and factual understanding of the proceedings against him or her.

12) Specifies that if the expert concludes that the minor lacks competency, the expert shall give his or her opinion on whether the minor is likely to attain competency in the foreseeable future, and if so, make recommendations regarding the type of services that would be effective in assisting the minor in attaining competency.

13) Requires the Judicial Council, in conjunction with specified groups or individuals, to adopt a rule of court identifying the training and experience needed for an expert to be competent in forensic evaluations of juveniles, and shall develop and adopt rules for the implementation of the other requirements in this subdivision.

14) Specifies that statements made to the appointed expert during the minor's competency evaluation, statements made by the minor to mental health professionals during the remediation proceedings, and any fruits of those statements shall not be used in any other hearing against the minor in either juvenile or adult court.

15) Allows the district attorney or minor's counsel to retain or seek the appointment of additional qualified experts who may testify during the competency hearing.

16) Requires an expert's report and qualifications to be disclosed to the opposing party within a reasonable time before, but no later than five court days before, the hearing, or sanctions may be imposed.

17) States that the question of the minor's competency shall be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on the findings of the expert.

18) Specifies that it shall be presumed that the minor is mentally competent, unless it is proven by a preponderance of the evidence that the minor is mentally incompetent.

19) Specifies that if the minor is under 14 years old at the time of the commission of the alleged offense the court shall make a determination as to the minor's capacity prior to deciding the issue of competency.

20) Provides that if the court finds, by a preponderance of evidence, that the minor is incompetent, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the

minor will attain competency in the foreseeable future.

21) States that while the minor is deemed incompetent, court may rule on motions that do not require the participation of the minor in the preparation of the motions. These motions include, but are not limited to, all of the following:

    a) Motions to dismiss;

    b) Motions regarding a change in the placement of the minor;

    c) Detention hearings; and

    d) Demurrers.

22) If the minor is found to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed.

23) Provides that if the court finds the minor to be competent, the court shall reinstate proceedings.

24) Requires the court upon a finding of incompetency, to immediately refer the minor to services designed to help the minor attain competency, including, but not limited to, mental health services, treatment for trauma, medically supervised medication, behavioral counseling, curriculum-based legal education, or training in socialization skills, consistent with any laws requiring consent.

25) Specifies that such services shall be provided by the county mental health department and shall be provided in the least restrictive environment consistent with public safety.

26) States that service providers shall promptly determine the likelihood of the minor attaining competency within the foreseeable future, and if the opinion is that the minor will not attain competency within six months, the minor shall be returned to court at the earliest possible date.

27) Provides that the court shall review remediation services at least every 30 calendar days for minors in custody and every 45 calendar days for minors out of custody.

28) Specifies that upon receipt of the recommendation by the designated person or entity, the court shall hold an evidentiary hearing on whether the minor is remediated or is able to be remediated unless the parties stipulate to, or agree to the recommendation of, the remediation program.

29) States that if the recommendation is that the minor has attained competency, and if the minor disputes that recommendation, the burden is on the minor to prove by a preponderance of evidence that he or she remains incompetent.

30) States that if the recommendation is that the minor is unable to be remediated and if the prosecutor disputes that recommendation, the burden is on the prosecutor to prove by a preponderance of evidence that the minor is remediable. If the prosecution contests the

evaluation of continued incompetence, the minor shall be presumed incompetent and the prosecution shall have the burden to prove by a preponderance of evidence that the minor is competent.

31) Provides that if the court finds that the minor has been remediated, the court shall reinstate the proceedings.

32) Specifies that if the court finds that the minor has not yet been remediated, but is likely to be remediated within six months, the court shall order the minor to return to the remediation program.

33) States that if the court finds that the minor will not achieve competency within six months, the court shall dismiss the petition.

34) Allows the court to invite persons and agencies with information about the minor, including, but not limited to, the minor and his or her attorney, the probation department, parents, guardians, or relative caregivers, mental health treatment professionals, the public guardian, educational rights holders, education providers, and social services agencies, to the dismissal hearing to discuss any services that may be available to the minor after jurisdiction is terminated.

35) States that in no case will secure confinement extend beyond six months from the finding of incompetence.

36) States that the presiding judge of the juvenile court, the probation department, the county mental health department, the public defender and other entity that provides representation for minors, the district attorney, the regional center, if appropriate, and any other participants that the presiding judge shall designate, shall develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services.

EXISTING LAW:

1) States that during any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency. (Welf. & Inst., § 709, subd. (a).)

2) Specifies that a minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her. (Welf. & Inst., § 709, subd. (a).)

3) If the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended. (Welf. & Inst., § 709, subd. (a).)

4) States that upon suspension of proceedings, the court shall order that the question of the minor's competence be determined at a hearing. (Welf. & Inst., § 709, subd. (b).)

5) Requires the court to appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so,

whether the condition or conditions impair the minor's competency. (Welf. & Inst., § 709, subd. (b).)

6) Requires the expert to have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence. (Welf. & Inst., § 709, subd. (b).)

7) States that the Judicial Council shall develop and adopt rules for the implementation of these requirements. (Welf. & Inst., § 709, subd. (b).)

8) Specifies that if the minor is found to be incompetent by a preponderance of the evidence, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction. (Welf. & Inst., § 709, subd. (c)(1).)

9) Provides that during the time proceedings are suspended, the court may make orders that it deems appropriate for services that may assist the minor in attaining competency. Further, the court may rule on motions that do not require the participation of the minor in the preparation of specified motions (Welf. & Inst., § 709, subd. (c)(1).)

10) States that if the minor is found to be competent, the court may proceed commensurate with the court's jurisdiction. (Welf. & Inst., § 709, subd. (d).)

11) Specifies that if the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals, as specified, to evaluate the minor. (Welf. & Inst., § 709, subd. (f).)

12) Specifies that the director of the regional center, or his or her designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act, and shall provide the court with a written report informing the court of his or her determination. (Welf. & Inst., § 709, subd. (f).)

13) States that an expert's opinion that a minor is developmentally disabled does not supersede an independent determination by the regional center whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst., § 709, subd. (g).)

14) Specifies that if a doubt arises in the mind of the judge as to the mental competence of an adult defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent. (Pen. Code, § 1368, subd. (a).)

15) Provides that if counsel informs the court that he or she believes the adult defendant is or may be mentally incompetent, the court shall order that the question of the defendant's mental competence is to be determined in a hearing. (Pen. Code, § 1368, subd. (b).)

16) In any case where the adult defendant or the defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two

psychiatrists, licensed psychologists, or a combination thereof; (Pen. Code, § 1369, subd. (a).)

17) Allows one of the psychiatrists or licensed psychologists to be named by the defense and one to be named by the prosecution, when two experts are appointed. (Pen. Code, § 1369, subd. (a).)

18) States a presumption that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. (Pen. Code, § 1369, subd. (f).)

19) States that at the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment, as specified, whichever is shorter, but no later than 90 days prior to the expiration of the defendant's term of commitment, a defendant who has not recovered mental competence shall be returned to the committing court. (Pen. Code, § 1370, subd. (c)(1).)

20) States that if, at the end of one year from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter, the defendant has not recovered mental competence, the defendant shall be returned to the committing court. (Pen. Code, § 1370.01, subd. (c)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 935 would establish timelines and processes relating to the determination of competency in court proceedings and the evaluation and delivery of remediation services. While existing law establishes juvenile competency and sets forth guidelines for these proceedings, there remain some operational ambiguities among practitioners relative to the types of remediation services to be delivered, who is the appropriate entity to deliver them, and where a youth will receive those services and for how long. This bill seeks to provide additional guidance around these questions.

   "The practical impact is that there are times in which juveniles are remaining in the hall without clear timelines governing the length of remediation services. It is important that not only do these vulnerable kids receive appropriate services, but that they do so within a reasonable time frame in order to get them out of the hall and in proper placement and care going forward."

2) **Current Juvenile Competency Standards and Procedures:** Adult mental incompetency is currently defined as lacking sufficient present ability to consult with counsel and assist in preparing a defense with a reasonable degree of rational understanding or lacking a rational as well as factual understanding of the nature of the charges or proceedings. While those same factors would be considered in evaluating the competency of a minor, the court would also consider the minors developmental maturity. Unlike an adult, a minor may be determined to be incompetent based on developmental immaturity alone (*Timothy J. v. Superior Court*, 150 Cal.App.4th 847 (2007)).

   The current statute governing juvenile competency procedures was put in place in 2010. (AB

2212 (Fuentes), Chapter 671, Statutes of 2010.) The language of that statute created some procedural gaps regarding how a juvenile should be treated if they are found to be incompetent. That statute also does not provide thorough guidelines regarding the experts responsible for evaluating the minor.

3) **Adults and Juveniles Have Different Cognitive Abilities:** Researchers in the science of human development, however, generally agree that from a developmental standpoint an adolescent is not an adult.

"The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable . . . Indeed, age 21 or 22 would be closer to the 'biological' age of maturity." [*Adolescent Brain Development and Legal Culpability, American Bar Assn. Criminal Justice Section, Juvenile Justice Center* (Winter 2003).]

Lack of culpability is at the heart of the Court of Appeal decision in *Timothy J., supra,* holding that developmental immaturity is grounds for a finding of not competent. The Court stated:

"As a matter of law and logic, an adult's incompetence to stand trial must arise from a mental disorder or developmental disability that limits his or her ability to understand the nature of the proceedings and to assist counsel (internal citation omitted.) The same may not be said of a young child whose developmental immaturity may result in trial incompetence despite the absence of any underlying mental or developmental abnormality. Dr. Edwards testified that minors are different from adults because their brains are still developing and as myelination occurs during puberty, the minor develops the ability to think logically and abstractly. Both experts concluded that because of his age, [the minor's] brain has not fully developed and he was unable to think in those ways.

"Their conclusions are supported by the literature, which indicates that there is a relationship between age and competency to stand trial and that an adolescent's cognitive, psychological, social, and moral development has a significant biological basis. [Steinberg, *Juveniles on Trial: MacArthur Foundation Study Calls Competency into Question* (2003) 18 Crim. Just. supra, 20, 21.]

"While many factors affect a minor's competency to stand trial, 'the younger the juvenile defendant, the less likely he or she will be to manifest the type of cognitive understanding sufficient to satisfy the requirements of the Dusky standard'." (Internal citation omitted.) According to Steinberg, the frontal lobes oversee high-level cognitive tasks such as hypothetical thinking, logical reasoning, long-range planning, and complex decision-making. During puberty, that area of the brain matures as the myelination process takes place. (Steinberg, *supra*, 18 Criminal Justice, at p. 20.)

"The research indicates that such factors as age, intelligence level, mental health history and severity of diagnosis, history of remedial education, and prior arrest or justice system history are relevant in determining a minor's trial competency (internal citation omitted.) One researcher found that 30 percent of the 11 to 13 year olds, and 19 percent of the 14 and 15 year olds, performed at the level of mentally ill adults who have been found incompetent to

stand trial in matters of understanding and reason" (internal citation omitted.)

4) **Differences of This Bill With AB 689 (Obernolte):** AB 689 (Obernolte) is another bill from this legislative session that would revise the procedures to determine the mental competence of a juvenile charged with a crime. AB 689 was passed out of the Assembly Public Safety Committee earlier this year and is awaiting hearing in the Assembly Appropriations Committee. This bill has many elements which are similar to AB 689.

   A significant difference between AB 689 (Obernolte) and this bill relates to the length of time allowed to re-establish the competence of a juvenile. The process/treatment to reestablish competence is referred to as "remediation." AB 689 does not place any definitive limits on the amount of time a juvenile can be remediated. AB 689 states that a court can continue to order remediation if the court finds that the minor is "likely to be remediated within a reasonable period of time." This bill places stricter limits on the length of time for which a court can order remediation and the circumstances under which remediation can be ordered. This bill only allows remediation to be ordered when the juvenile faces a petition that includes a felony charge. This bill requires a prompt determination of the likelihood of the minor attaining competency within the foreseeable future. If the expert is of the opinion that the minor will not attain competency within six months, the minor shall be returned to court at the earliest possible date. This bill requires a court to find that minor is likely to be restored to competence within six months to continue remediation, otherwise the court must dismiss the case. This bill would prohibit secure confinement of the minor beyond six months from the finding of incompetence.

   In situations in which the juvenile criminal court dismisses a case against a juvenile because the juvenile is not able to be remediated within the limits placed by this bill, a juvenile can be referred for mental health treatment through the civil commitment system (Lanterman-Petris-Short Act) if the minor is a danger to self or others, or is gravely disabled. In addition, dismissal of the court case would not prevent a minor from continuing to receive any other mental health treatment, otherwise available to the minor.

5) **Proposed Amendments to be Adopted in Committee:**

   a) Specify that if an expert's report is not disclosed in a timely fashion, a court may impose a range of sanctions that include, but are not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of the expert or consideration of the expert's report upon a showing of good cause.

   b) Require the court to make a determination as to the minor's capacity (minor's ability to understand the wrongfulness of their actions) prior to deciding the issue of competency if the minor was under 14 years of age at the time of the commission of the alleged offense,

6) **Argument in Support**: According to the *Chief Probation Officers of California*, "The California Legislature enacted juvenile competency proceedings in 2010 by the passage of AB 2212 (Fuentes, Statutes of 2010, Chapter 671). Prior to the passage of this bill, the only guidance for determining legal competency for juveniles was found in California Rules of Court and case law.

   "Under this new law, minors may be deemed incompetent to participate in their court

proceedings as a result of a mental disorder, developmental disability, developmental immaturity, or other conditions that result in the inability to meaningfully understand the proceedings, the charges against them, or work with counsel in their defense. The law also set forth processes for the provision of remediation services upon a determination of incompetency.

"Although the prior legislation represented a giant step forward, there are still ambiguities as to the types of remediation services to be delivered, who will deliver them, and where a youth will receive those services and for how long. Absent clear timelines governing the process, vulnerable children will languish in juvenile halls longer than appropriate in an effort to provide remediation services.

"AB 935 builds upon existing juvenile competency statute by identifying the types of remediation services provided to juveniles, the delivery system protocols, and establishes a maximum six month timeline for a juvenile to remain in the juvenile hall during the delivery of restoration and remediation services. After which time it would allow for arranging alternative mental health treatment and remediation services administered by County Mental Health Departments. Finally, this legislation sets forth the dismissal of misdemeanor cases for youth determined to be incompetent."

7) **Argument in Opposition**: According to the *Bonnie Dumanis, San Diego County District Attorney*, "AB 935 allows the court to immediately dismiss any and all misdemeanor charges filed against a minor who has been found incompetent to stand trial. In San Diego, we do not routinely detain such individuals. We are one of several counties that have established a Restoration of Competency program for out-of-custody minors accused of misdemeanors. Mandatory dismissal of the charges, rather than simply releasing those charged from custody, goes too far particularly where there are victims who are deserving of restitution. Further. AB 935 also allows a judge to immediately dismiss all felony charges brought against a minor who has not been restored to competency within six months. This "bright line" does not serve the mentally ill minor or the safety of the public. There are no provisions to narrow the list of felonies that can be dismissed. As drafted, AB 935 would allow for the dismissal of such violent felonies as murder, rape, sodomy and attempted murder, etc.; the crimes that, before Proposition 57 could have been directly filed in adult court. If the defense alleges that a minor is incompetent before a Fitness hearing occurs, the proceedings are stayed and as written, a potentially dangerous minor would be released to the public within six months. AB 935 states that, 'in no case will secure confinement extend beyond six months from the finding of incompetence.' As written, AB 935 requires that an incompetent minor accused of murder, and who has undergone only six months of treatment, immediately be placed somewhere besides Juvenile Hall. However, there is no Murphy Conservatorship available to juveniles who are pending felony charges and are determined to be dangerous to others, as there are for similarly situated adults. Under what authority, once criminal charges are dismissed, and where will this dangerous juvenile be placed? What happens if a bed is not available (especially a bed in a secure facility for a dangerous and violent minor)? Currently, there are no locked residential facilities in California that are known to us. We place violent juveniles, who might be restored in the foreseeable future in secure residential facilities out-of-state.

"Finally, Ab 935 provides no funding mechanism for probation, county mental health or Regional Centers to ensure that treatment and facilities are available to chronically mentally

ill minors after their criminal cases are dismissed. Instead these violent and dangerous juveniles very potentially would merely be sent home."

8) **Related Legislation**: AB 689 (Obernolte), would revise the procedure to determine the mental competence of a juvenile charged with a crime. AB 689 is awaiting hearing in the Assembly Appropriations Committee.

9) **Prior Legislation**:

   a) AB 2695 (Obernolte), of the 2015-2016 Legislative Session, would have revised the procedure to determine the mental competence of a juvenile charged with a crime. AB 2695 was held in the Assembly Appropriations Committee.

   b) SB 368 (Liu), Chapter 471, Statutes of 2011, requires that the court appoint an expert, as specified, to evaluate whether the minor suffers from a developmental disability. Requires the court to appoint the director of a regional center for developmentally disabled individuals, or his or her designee, to evaluate the minor if the expert believes the minor is developmentally disabled.

   c) AB 2212 (Fuentes), Chapter 671, Statutes of 2010, provides that a minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her. Requires proceedings to be suspended if the court finds substantial evidence raises a doubt as to the minor's competency.

REGISTERED SUPPORT / OPPOSITION:

Support

Chief Probation Officers of California (Sponsor)
California Attorneys for Criminal Justice
Pacific Juvenile Defender Center

Opposition

Office of the San Diego County District Attorney

Analysis Prepared by: David Billingsley / PUB. S. /

Amended Mock-up for 2017-2018 AB-935 (Mark Stone (A))

Mock-up based on Version Number 97 - Amended Assembly 4/6/17
Submitted by: David Billingsley, Assembly Public Safety Committee
**********Amendments are in ***Bold***

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

SECTION 1. Section 709 of the Welfare and Institutions Code is amended to read:

709. (a) (1) Whenever the court has a doubt that a minor who is subject to any juvenile proceedings is mentally competent, the court shall suspend all proceedings and proceed pursuant to this section.

(2) A minor is mentally incompetent for purposes of this section if he or she is unable to understand the nature of the proceedings, including his or her role in the proceedings, or unable to assist counsel in conducting a defense in a rational manner, including a lack of a rational and factual understanding of the nature of the charges or proceedings. Incompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity. Except as specifically provided otherwise, this section applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or 602.

(3) Notwithstanding paragraph (1), during the pendency of any juvenile proceeding, the court may receive information from any source regarding the minor's ability to understand the proceedings. The minor's counsel or the court may express a doubt as to the minor's competency. The receipt of information or the expression of doubt of the minor's counsel does not automatically require the suspension of proceedings. If the court has a doubt as to the minor's competency, the court shall suspend the proceedings.

(b) (1) Unless the parties stipulate to a finding that the minor lacks competency, or the parties are willing to submit on the issue of the minor's lack of competency, the court shall appoint an expert to evaluate the minor and determine whether the minor suffers from a mental illness, mental disorder, developmental disability, developmental immaturity, or other condition affecting competency and, if so, whether the minor is incompetent as defined in paragraph (2) of subdivision (a).

(2) The expert shall have expertise in child and adolescent development and forensic evaluation of juveniles for purposes of adjudicating competency, shall be familiar with competency

standards and accepted criteria used in evaluating juvenile competency, and shall have received training in conducting juvenile competency evaluations.

(3) The expert shall personally interview the minor and review all of the available records provided, including, but not limited to, medical, education, special education, probation, child welfare, mental health, regional center, and court records, and any other relevant information that is available. The expert shall consult with the minor's counsel and any other person who has provided information to the court regarding the minor's lack of competency. The expert shall gather a developmental history of the minor. If any information is unavailable to the expert, he or she shall note in the report the efforts to obtain that information. The expert shall administer age-appropriate testing specific to the issue of competency unless the facts of the particular case render testing unnecessary or inappropriate. The expert shall be proficient in the language preferred by the minor, or, if that is not feasible, the expert shall employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the minor. In a written report, the expert shall opine whether the minor has the sufficient present ability to consult with his or her counsel with a reasonable degree of rational understanding and whether he or she has a rational and factual understanding of the proceedings against him or her. The expert shall also state the basis for these conclusions. If the expert concludes that the minor lacks competency, the expert shall give his or her opinion on whether the minor is likely to attain competency in the foreseeable future, and, if so, make recommendations regarding the type of remediation services that would be effective in assisting the minor in attaining competency.

(4) The Judicial Council, in conjunction with groups or individuals representing judges, defense counsel, district attorneys, counties, advocates for people with developmental and mental disabilities, experts in special education testing, psychologists and psychiatrists specializing in adolescents, professional associations and accredited bodies for psychologists and psychiatrists, and other interested stakeholders, shall adopt a rule of court identifying the training and experience needed for an expert to be competent in forensic evaluations of juveniles. The Judicial Council shall develop and adopt rules for the implementation of the other requirements in this subdivision.

(5) Statements made to the appointed expert during the minor's competency evaluation and statements made by the minor to mental health professionals during the remediation proceedings shall not be used in any other hearing against the minor in either juvenile or adult court.

(6) The district attorney or minor's counsel may retain or seek the appointment of additional qualified experts who may testify during the competency hearing. The expert's report and qualifications shall be disclosed to the opposing party within a reasonable time before, but no later than five court days before, the hearing. If disclosure is not made in accordance with this paragraph, ~~the expert shall not be allowed to testify, and the expert's report shall not be considered by the court unless the court finds good cause to consider the expert's report and testimony.~~ ***a court may make any order necessary to enforce the provisions of this paragraph, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of the expert or consideration of the expert's report upon a showing of good cause, or any other lawful order.*** If, after disclosure of the report, the opposing party

requests a continuance in order to further prepare for the hearing and shows good cause for the continuance, the court shall grant a continuance for a reasonable period of time.

(7) If the expert believes the minor is developmentally disabled, the court shall appoint the director of a regional center for developmentally disabled individuals described in Article 1 (commencing with Section 4620) of Chapter 5 of Division 4.5, or his or her designee, to evaluate the minor. The director of the regional center, or his or her designee, shall determine whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)), and shall provide the court with a written report informing the court of his or her determination. The court's appointment of the director of the regional center for determination of eligibility for services shall not delay the court's proceedings for determination of competency.

(8) An expert's opinion that a minor is developmentally disabled does not supersede an independent determination by the regional center whether the minor is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(9) This section shall not be interpreted to authorize or require either of the following:

(A) The placement of a minor who is incompetent in a developmental center or community facility operated by the State Department of Developmental Services without a determination by a regional center director, or his or her designee, that the minor has a developmental disability and is eligible for services under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(B) Determinations regarding the competency of a minor by the director of the regional center or his or her designee.

(c) The question of the minor's competency shall be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on the findings of the expert. It shall be presumed that the minor is mentally competent, unless it is proven by a preponderance of the evidence that the minor is mentally incompetent. ***With respect to a minor under 14 years of age at the time of the commission of the alleged offense, the court shall make a determination as to the minor's capacity, pursuant to Section 26 of the Penal Code prior to deciding the issue of competency.***

(d) If the court finds the minor to be competent, the court shall reinstate proceedings and proceed commensurate with the court's jurisdiction.

(e) If the court finds, by a preponderance of evidence, that the minor is incompetent, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction and the case must be dismissed. During this time, the court may make orders that it deems appropriate for services.

Further, the court may rule on motions that do not require the participation of the minor in the preparation of the motions. These motions include, but are not limited to, all of the following:

(1) Motions to dismiss.

(2) Motions regarding a change in the placement of the minor.

(3) Detention hearings.

(4) Demurrers.

(f) If the minor is found to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed.

(g) Upon a finding of incompetency, the court shall refer the minor to services designed to help the minor attain competency, including, but not limited to, mental health services, treatment for trauma, medically supervised medication, behavioral counseling, curriculum-based legal education, or training in socialization skills, consistent with any laws requiring consent. The services shall be provided by the county mental health department. Service providers and evaluators shall adhere to the standards stated in this section and the California Rules of Court. Services shall be provided in the least restrictive environment consistent with public safety. Service providers shall promptly determine the likelihood of the minor attaining competency within the foreseeable future, and if the opinion is that the minor will not attain competency within six months, the minor shall be returned to court at the earliest possible date. The court shall review remediation services at least every 30 calendar days for minors in custody and every 45 calendar days for minors out of custody.

(h) (1) Upon receipt of the recommendation by the designated person or entity, the court shall hold an evidentiary hearing on whether the minor is remediated or is able to be remediated unless the parties stipulate to, or agree to the recommendation of, the remediation program. If the recommendation is that the minor has attained competency, and if the minor disputes that recommendation, the burden is on the minor to prove by a preponderance of evidence that he or she remains incompetent. If the recommendation is that the minor is unable to be remediated and if the prosecutor disputes that recommendation, the burden is on the prosecutor to prove by a preponderance of evidence that the minor is remediable. If the prosecution contests the evaluation of continued incompetence, the minor shall be presumed incompetent and the prosecution shall have the burden to prove by a preponderance of evidence that the minor is competent. The provisions of subdivision (c) shall apply at this stage of the proceedings.

(2) If the court finds that the minor has been remediated, the court shall reinstate the proceedings.

(3) If the court finds that the minor has not yet been remediated, but is likely to be remediated within six months, the court shall order the minor to return to the remediation program.

(4) If the court finds that the minor will not achieve competency within six months, the court shall dismiss the petition. The court may invite persons and agencies with information about the minor, including, but not limited to, the minor and his or her attorney, the probation department, parents, guardians, or relative caregivers, mental health treatment professionals, the public guardian, educational rights holders, education providers, and social services agencies, to the dismissal hearing to discuss any services that may be available to the minor after jurisdiction is terminated. If appropriate, the court shall refer the minor for evaluation pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of Part 1 of Division 5 or Article 3 (commencing with Section 6550) of Chapter 2 of Part 2 of Division 6.

(5) In no case will secure confinement extend beyond six months from the finding of incompetence.

(i) The presiding judge of the juvenile court, the probation department, the county mental health department, the public defender and other entity that provides representation for minors, the district attorney, the regional center, if appropriate, and any other participants that the presiding judge shall designate, shall develop a written protocol describing the competency process and a program to ensure that minors who are found incompetent receive appropriate remediation services.

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

Date of Hearing: April 25, 2017
Counsel: David Billingsley

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

AB 955 (Jones-Sawyer) – As Amended April 4, 2017

PULLED BY COMMITTEE

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