California State Assembly

PUBLIC SAFETY

REGINALD BYRON JONES-SAWYER SR.
CHAIR

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AGENDA

Tuesday, February 14, 2023
9 a.m. -- State Capitol, Room 126

ADOPTION OF COMMITTEE RULES

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	AB 18	Joe Patterson	Controlled substances.
2.	AB 21	Gipson	Peace officers: training.
3.	AB 27	Ta	Sentencing: firearms enhancements.
4.	AB 29	Gabriel	Firearms: California Do Not Sell List.
5.	AB 56	Lackey	Victim's compensation: emotional injuries.
6.	AB 67	Muratsuchi	Homeless Courts Pilot Program.
7.	AB 76	Davies	Money laundering: blockchain technology.
8.	AB 88	Sanchez	Criminal procedure: victims' rights.
9.	AB 89	Sanchez	Parole hearings: attorney notice.
10.	AB 97	Rodriguez	Firearms: unserialized firearms.

COVID FOOTER

SUBJECT:

All witness testimony will be in person; there will be no phone testimony option for this hearing. You can find more information at www.assembly.ca.gov/committees.

2023-2024 COMMITTEE RULES

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

1) Setting Bills

   a) Setting: Bills referred to the Committee are set for hearing by the Chair in accordance with the Joint Rules and Assembly Rules, at a time most convenient to the Committee.

   b) Notice: Notice of a bill's hearing by the Committee of first reference shall be published in the Assembly Daily File at least four days prior to the hearing, unless such notice is waived by a majority vote of the Assembly pursuant to Joint Rules 62(a). Otherwise notice shall be published in the daily file two days prior to the hearing.

   c) Procedure: A bill may be set for hearing only three times. A bill is "set" for the purposes of this subsection whenever notice of the hearing has been published in the Assembly Daily File for one or more days. If a bill is set for hearing and the Committee, on its own initiative and not the author's, postpones the hearing or adjourns the hearing while testimony is being taken, such hearing shall not be counted as one of the three times a bill may be set. If the hearing notice in the Assembly Daily File specifically indicates that "testimony only" will be taken, such hearing shall not be counted as one of the three times a bill may be set.

2) Background Sheets:

   a) Background Sheet: When a bill is referred to Committee, the Committee Secretary shall send the author's office a background request to aid in the preparation of the Committee analysis. The Committee requests that electronic copies of the completed background and supporting materials be submitted to the Committee for the Chair and Vice Chair's staff as soon as possible, and no later than one week before the hearing. The Chair may withhold the setting of a bill until the background is completed and returned to the Committee.

   b) Content: The background sheet requests specific facts or examples to demonstrate the need for the bill and an explanation of the deficiency in current law. Prior known legislative history, and the equity impact of the proposed legislation per HR 39 (2021) should also be included. If a bill contains legislative findings and declarations, the background sheet shall include a reliable source for each legislative finding or declaration.

3) Amendments Prior to Hearings

   a) Substantive Amendments: Pursuant to Assembly Rules 55 and 68, an author may, subject to the Joint Rules, amend a bill at any time prior to or during the hearing;

however, substantive author's amendments shall not be accepted by the Committee Secretary later than five legislative days prior to the hearing at which the bill has been set unless otherwise ordered by the Chair. As used in these rules, a "legislative day" is any day on which an Assembly Daily File is published. (Example: No substantive amendments shall be accepted after 5:00 p.m. on the Tuesday of the week prior to a Tuesday hearing.)

b) Discretion: Pursuant to Assembly Rules 55 and 68, the Chair, in consultation with Legislative Counsel, shall have the discretion to determine whether an amendment is "substantive" within the meaning of Subsection (a) above."

c) Mock Ups: If an author gives advance notice to Committee staff of written amendments the author will offer in Committee, the Committee staff may, subject to the Chair's approval and if time permits, analyze the bill as the author proposes to amend the bill in Committee. Unless Committee staff has drafted the amendments, the author must have a written mockup of the amendments at the Committee hearing and provide the mockup of amendments to Committee staff for review prior to the hearing.

4) Letters of Position

a) Submission: Letters of position should be submitted through the CA Legislature portal by the respective organization. Letters must be signed and on official letterhead reflecting the organization or association taking a position on the bill. Coalition letters are discouraged.

b) Timing: Letters received by the committee after 3:00 p.m. on the Thursday prior to the hearing of the measure may not be reflected in the committee analysis.

c) Change in Position: If an organization or association changes their position on a measure, another letter must be submitted reflecting that change in position. It is the responsibility of the author and advocates to provide the committee with any updated position letters in a timely manner to ensure the accuracy of support and opposition listed in the policy and floor analyses.

5) Committee Analysis

a) Availability: Committee staff analyses of bills scheduled for hearing shall be made available to the public at least one working day prior to the day of the hearing. In the case of special hearings, the analysis need not be made available one working day prior to the hearing, but shall be made available to the public at the time of the hearing and prior to any testimony being taken on the bill.

b) Distribution: A copy of the analysis shall be sent to the bill's author and to Committee members prior to its general distribution to the public.

6) Quorum

a) Majority: A majority (five) of the Committee members (eight) shall constitute a quorum.

b) Opening the Meeting: Subject to Committee Rule 6(c), the Committee shall not open a meeting without a quorum present. However, once a meeting has been opened, the members may continue to take testimony even in the absence of a quorum unless a Committee member objects. The Chair is authorized to begin the hearing at the Committee's prescribed hearing time.

c) Subcommittee: In the absence of a quorum, the Chair, operating as a subcommittee, may receive testimony and recommend action on a bill to the majority of the Committee.

7) Order of Agenda

a) Committee Members: Except as otherwise determined by the Chair, Committee members shall present their bills after all other authors.

b) Sign-In Order: Bills set for hearing shall be heard in sign-in order. The Sergeants will have a sign-in sheet available for authors as they enter the hearing room. Measures can be set as a special order of business. When the Chair finds another order of business would be more expedient, measures can be taken up out of order.

c) Consent Calendar: Bills without written opposition may be placed on a proposed consent calendar upon approval by the Chair and Vice Chair. Any Committee member has the right to remove a bill from the consent calendar before the consent calendar is taken up for a vote.

8) Testimony at Hearing

a) Testimony: The Chair directs the order of presentation of the arguments for and against matters for consideration by the Committee. The Chair shall permit questions to be asked by Committee members in an orderly fashion and in keeping with proper decorum. When appropriate, the Chair shall limit witness testimony in order to avoid redundancy or non-relevant discussion.

b) Author: An author shall have a total of five minutes to give an opening and closing statement, allocated as the author desires. The Chair has discretion to allow more time when the agenda is not lengthy or other members are not present to take up their bills.

c) Lengthy Hearings: The Chair and Vice Chair recognize the importance of public hearings and do not wish to stifle testimony at a public hearing. However, when there is a high volume of bills on calendar for hearing and considering the limited hearing time available, the Chair and Vice Chair agree that the number of witnesses for each side must be limited. For example, some Committee members sit on other committees during the afternoon following the Public Safety Committee hearing. Accordingly, the Chair may,

by reason of necessity, be forced to limit the number of witnesses appearing on behalf or in opposition to a bill to two per side. Legislative advocates who do not testify may state their positions and organizations for the record.

9) Voting

a) Print: Subject to Committee Rule 9(b), a vote on passage of any bill shall be made only when the bill, in the form being considered by the Committee, is in print.

b) Discretion: A vote on passage of an amended bill, when the amended form of the bill is not in print, shall be taken only if the Chair determines that the amendment can be readily understood by all Committee members and the audience present at the hearing. Any member may require that such an amendment be in writing at the time of its adoption.

c) Majority: A majority (five) of the Committee membership (eight) is required to pass a bill from the Committee. A majority of those present and voting is sufficient to adopt committee amendments, provided that a quorum is present. A call may be placed on votes to adopt committee amendments.

d) Roll Call: A recorded roll call vote shall be taken on all of the following Committee actions:

i) On an action which constitutes the Committee's final action on a bill, constitutional amendment or resolution.

ii) On Committee amendments taken up in Committee, whether adopted or not.

iii) On motions to reconsider Committee actions.

iv) On recommendations to the Assembly Floor related to Executive Reorganization Plans.

e) Substitution: A roll call vote on a previous bill may be substituted by unanimous consent provided the members whose votes are substituted are present at the time of the substitution.

f) Motions: The Chair may determine a bill be held in committee in the absence of objection. If there is an objection, a motion to "hold in Committee" requires a second, shall be put to the Committee without discussion, and requires an affirmative vote by a majority of those present and voting.

g) Call: The Chair may, at any time, order a call of the Committee. At the request of the author or at the request of any members, the Chair shall order a call.

h) Vote: On the Chair's own initiative or at the request of any member, the Chair may open the roll or may lift the call to permit any member to vote on the bill or Committee amendment and impose or re-impose the call if the bill or Committee amendment has not received a majority vote of the Committee. A member need not be present during the discussion of the bill and the Chair may open the roll at any time after it has been presented to allow the absent Committee member to add on to the roll until adjournment of the Committee meeting. When a bill has already received a majority vote, a member shall be allowed to add their vote to the roll prior to the adjournment of the meeting.

i) Exception: A recorded roll call vote is not required on the following actions by the Committee:

i) A motion to hold a bill "under submission" or other procedural motion which does not have the effect of finally disposing of the bill.

ii) An author's request to withdraw a bill from the Committee's calendar.

iii) The return of a bill to the House when the bill has not been voted upon by the Committee.

10) Reconsideration

a) Reconsider: After a bill has been voted upon, reconsideration may be granted once only. Reconsideration must be granted within 15 legislative days of the bill's defeat.

b) Requirements for Reconsideration: If reconsideration is granted, the Committee may vote on the bill immediately or may postpone the vote to subsequent hearing, as determined most appropriate by the Chair. If the motion for reconsideration fails, the bill shall be immediately returned to the Chief Clerk.

c) Notice: An author seeking reconsideration of a bill shall request/notify the Committee Secretary and the vote on reconsideration must be taken up within 15 legislative days of the original vote. Notice of reconsideration is the same notice required to set a bill unless that vote is taken at the same meeting at which the vote to be reconsidered was taken. A motion to reconsider a bill which passed must be made at the hearing at which the bill passed, and the author must be present in the hearing room.

11) Subcommittee

a) Study: The Speaker may create subcommittees for the in-depth study of a particular subject matter or bills. Bills may be assigned to the subcommittees as deemed proper by the Chair.

b) Rules: Subcommittees shall operate under the same rules as the full Committee. All actions recommended by subcommittees are subject to ratification and further

consideration by the full committee.

12) Executive Reorganization Plans

a) Consideration: Pursuant to Government Code Section 12080.2, Executive Reorganization Plans referred to the Committee pursuant to Government Code Section 12080 shall be considered in the same manner as a bill.

b) Report: Pursuant to Government Code Section 12080.2, after consideration, and at least 10 days prior to the end of the 60-day period specified in Government Code Section 12080.5, the Committee shall forward a report to the Assembly floor which may include the Committee's recommendation on whether or not to allow the plan to take effect.

c) Plans: Pursuant to Government Code Sections 12080 and 12080.2, possible Committee actions with respect to a reorganization plan include the following:

i) Recommend that the Assembly take no action, thus permitting the plan to take effect.

ii) Recommend that the Assembly adopt a resolution disapproving of the plan and preventing it from taking effect.

iii) Make no recommendation.

13) Review of Administrative Plans

a) Staff: Committee staff may review all proposed administrative rules and regulations which are contained in the Notice Supplement of the California Administrative Register and which pertain to agencies and programs within the scope of the Committee's jurisdiction.

b) Duties: Committee staff may review each administrative rule or regulation for conformity with the enabling statute and with legislative intent. Rules or regulations which do not appear to be based on statutory authority or which do not appear to be consistent with legislative intent may be placed on the Committee's agenda for appropriate action.

14) Oversight

a) Investigation: The Speaker may create oversight subcommittees to conduct detailed investigations of the performance and effectiveness of state agencies and programs that come within the scope of the Committee's jurisdiction. Such subcommittees shall make periodic reports to the full Committee on the progress of their oversight activities.

b) Agenda: Whenever reports submitted by the Legislative Analyst or State Auditor are referred to the Committee, any legislative recommendations contained therein may be

placed on the Committee's agenda for appropriate action.

15) Rule Waiver

By at least five affirmative votes, Rules 1 to 12, inclusive, may be suspended so long as the action for which the rule waiver is sought does not conflict with the Joint Rules or the Rules of the Assembly.

Date of Hearing: February 14, 2023
Counsel: Andrew Ironside

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

AB 18 (Joe Patterson) – As Introduced December 5, 2022

SUMMARY: Requires the court to advise a person convicted of specified drug offenses that they could be charged with voluntary manslaughter or murder in the future if they manufacture or distribute controlled substances and somebody dies as a result. Specifically, **this bill**:

1) Requires the court to advise a person who is convicted of, or who pleads guilty or no contest to possession for sale, sale, transportation, distribution, or manufacture of a controlled substance that, "You are hereby advised that the illicit manufacture and distribution of controlled substances, either real or counterfeit, inflicts a grave health risk to those who ingest or are exposed to them. It is extremely dangerous to human life to manufacture or distribute real or counterfeit controlled substances. If you do so, and a person dies as a result of that action, you can be charged with voluntary manslaughter or murder."

2) Requires the court to provide the advisory statement to the defendant in writing, either on the plea form or after sentencing.

3) Requires that the fact that the advisory statement was given to the defendant to be on the record or recorded in the abstract of the conviction.

EXISTING LAW:

1) Provides that murder is the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187, subd. (a).)

2) Provides that malice can be either express or implied:

   a) Express malice is when there is manifested a deliberate intention to unlawfully take away the life of a fellow creature.

   b) Implied malice is when no considerable provocation appears, or when the circumstances attending the killing show an abandoned or malignant heart. (Pen. Code, § 188, subd. (a)(1)-(2).)

3) Provides that manslaughter is the unlawful killing of a human being without malice. (Pen. Code, § 192.)

4) Makes it unlawful for a person to possess for sale or purchase for purpose of sale specified controlled substances. (Health & Saf. Code, § 11351.)

5) Makes it unlawful for a person to transport, import, sell, furnish, administer, or give away, or offer or attempt to transport, import, sell, furnish, administer, or give away specified controlled substances. (Health & Saf. Code, § 11352.)

6) Makes it unlawful for a person to manufacture, compound, convert, produce, derive, process, or prepare, either directly or indirectly by chemical extraction or by means of chemical synthesis any controlled substance. (Health & Saf. Code, § 11379.6.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Fentanyl abuse has personally impacted my family and community. As a result, I have dedicated my first pieces of legislation to combatting this growing problem. Assembly Bill 18 is a part of a three prong approach that I am working on this year to ensure that we deal with the opioid epidemic - education, treatment, and accountability. Fentanyl in particular is a deadly drug and in order to save lives the Legislature must take swift action. AB 18 will help ensure drug traffickers and dealers understand the severity of their actions. We must hold drug traffickers and dealers accountable.

   According to the California Department of Health in 2021 there were 6.843 opioid-related overdose deaths in California, 5.733 of these deaths were related to fentanyl, I am hopeful we can tackle these issues and hold everyone involved in these deaths accountable."

2) **Advisory Statement in This Bill Mirrors Existing Language in DUI Context:** This bill would require the court to advise a person who is convicted of, or who pleads guilty or no contest to, a violation of possession for sale, transporting, importing, selling, furnishing, administering, giving away, or manufacturing specified controlled substances of the following:

   > You are hereby advised that the illicit manufacture and distribution of controlled substances, either real or counterfeit, inflicts a grave health risk to those who ingest or are exposed to them. It is extremely dangerous to human life to manufacture or distribute real or counterfeit controlled substances. If you do so, and a person dies as a result of that action, you can be charged with voluntary manslaughter or murder.

   The author modeled the language in this bill after the language codified by AB 2173 (Parra), Chapter 502, Statutes 2004, which requires the court to provide a person convicted of a reckless driving offense or DUI with the following advisement:

   > You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder.

   (Veh. Code, § 23593.)

With respect to deaths resulting from DUIs, the California Supreme Court held in *People v. Watson* (1981), 30 Cal.3d 290, 298, in affirming a second degree murder conviction, that "when the conduct in question can be characterized as a wanton disregard for life, and the facts demonstrate a subjective awareness of the risk created, malice may be implied." The stated intent of AB 2173 (Parra), Chapter 502, Statutes 2004, was to help prosecutors prove implied malice in second-degree murder cases arising out of DUI cases resulting in death by "making it clear that those individuals were aware of the danger they posed to others by drinking and driving as a result of the statement required by this bill which they signed after the original DUI conviction." (Assem. Com. on Pub. Safety, Analysis of Assem. Bill 2173 (2003-2004 Reg. Sess.) as introduced February 18, 2004, p. 4.) However, the extent to which prosecutors have been successful in proving implied malice and securing second-degree murder convictions in DUI cases resulting in death as a result of the passage of AB 2173 is unclear.

The author intends for the advisory statement required in this bill to make it easier for prosecutors to establish implied malice in a subsequent second-degree murder prosecution of a person convicted of specified drug offenses resulting in the death of another person.

Finally, proponents of the bill have described it as "a statewide Fentanyl Admonishment to be issued to fentanyl dealers and traffickers whose actions result in death." But the scope of the bill is not so limited. As introduced, this bill would require the advisement to be read to anybody convicted of specified drug offenses related to the distribution and manufacture of controlled substances generally.

3) **Harsher Sentences for Drug Trafficking Unlikely to Reduce Drug Use or Deter Criminal Conduct:** This bill attempts to reduce the number of people dying of overdoses involving controlled substances by deterring people who sell or manufacture drugs with the threat of a potential 15 years to life sentence. However, in a report examining the relationship between prison terms and drug misuse, PEW Charitable Trusts found "[n]o relationship between drug imprisonment rates and states' drug problems," finding that "high rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths." (PEW, *More Imprisonment Does Not Reduce State Drug Problems* (Mar. 2018) p. 5 <https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf > [last viewed Feb. 6, 2023].) Put differently, imprisoning more people for longer periods of time for drug trafficking offenses is unlikely to reduce the risk of illicit drugs in our communities.

This may be because of the limited deterrent effect of harsher sentences generally. According the U.S. Department of Justice, "Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not 'chasten' individuals convicted of crimes, and prisons may exacerbate recidivism." (National Institute of Justice, U.S. Department of Justice, Five Things About Deterrence (June 5, 2016) <https://nij.ojp.gov/topics/articles/five-things-about-deterrence> [last visited Feb. 2, 2023]; see also http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf. Noting that "[r]esearch to date generally indicates that increases in the *certainty* of punishment, as opposed to the *severity* of punishment, are more likely to produce deterrent benefits"].)

Harsher sentences for drug trafficking offenses specifically may be particularly ineffective, in part because of the nature of illicit drug markets. As the National Research Council explains:

> For several categories of offenders, an incapacitation strategy of crime prevention can misfire because most or all of those sent to prison are rapidly replaced in the criminal networks in which they participate. Street-level drug trafficking is the paradigm case. Drug dealing is part of a complex illegal market with low barriers to entry. Net earnings are low, and probabilities of eventual arrest and imprisonment are high… Drug policy research has nonetheless shown consistently that arrested dealers are quickly replaced by new recruits….
>
> Despite the risks of drug dealing and the low average profits, many young disadvantaged people with little social capital and limited life chances sell drugs on street corners because it appears to present opportunities not otherwise available. However, [they] … overestimate the benefits of that activity and underestimate the risks. This perception is compounded by peer influences, social pressures, and deviant role models provided by successful dealers who live affluent lives and…avoid arrest… Arrests and imprisonments of easily replaceable offenders create illicit "opportunities" for others. (Cmte. On Causes and Consequence of High Rates of Incarceration, National Research Council, The Growth of Incarceration in the United States: Exploring Causes and Consequences (2014) p. 146.)

According to PEW, "[A] large body of prior research…cast[s] doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations." (PEW, *supra.*) PEW concludes:

> Putting more drug-law violators behind bars for longer periods of time has generated enormous costs for taxpayers, but it has not yielded a convincing public safety return on those investments. Instead, more imprisonment for drug offenders has meant limited funds are siphoned away from programs, practices, and policies that have been proved to reduce drug use and crime. (*Ibid.*)

4) **Individuals Manufacturing and Distributing Controlled Substances:** Proponents of this policy claim that it does not target people who use drugs, only the people who deal drugs. (https://www.comstocksmag.com/longreads/special-report-fighting-fentanyl) However, persons who participate in the drug trade often are themselves people who use drugs. According to the National Research Council: "Facing limited opportunities in legal labor markets and already in contact with drug-selling networks, users provide a ready low-wage labor pool for illegal markets." (https://nap.nationalacademies.org/read/12976/chapter/4 - 24). Indeed, according to a study supplied to the committee by this bill's author, "[Street-involved youth implicated in the drug trade] appear to be motivated by drug dependence," finding: "Among participants who reported drug dealing, 263 (85.6%) individuals stated that the main reason that they sold drugs was to pay for their personal drug use." (Werb et al., *Risks surrounding drug trade involvement among street-involved youth*, Am. J. Drug Alcohol Abuse (2008) < https://pubmed.ncbi.nlm.nih.gov/19016187/> [last visited Feb. 2, 2023].) Another study found that "White youths who misused prescription drugs were three times more likely to sell drugs, compared to White youths who did not misuse prescription drugs." (Floyd et al., *Adolescent Drug Dealing and Race/Ethnicity: A Population-Based study of the*

Differential Impact on Substance Use on Involvement in Drug Trade, Amer. J. of Drug & Alcohol Abuse, Vol. 36, No. 2 (Mar. 2010) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2871399/ - R7> [last visited Mar. 17, 2022].)

Will an advisory statement about potential murder charges sometime in the future effectively deter somebody already at a relatively high risk of death from illicit drug use?

5) **Argument in Support**: According to the *California District Attorneys Association*, "This bill will provide an important tool to help law enforcement in the prosecution of fentanyl trafficking and related deaths. Fentanyl is a synthetic opioid 100 times more potent than morphine. It can be found in methamphetamine, cocaine, heroin, and vaping products, as well as counterfeit pharmaceutical pills such as Xanax, Percocet, hydrocodone or Oxycodone among others.

"In California, Driving Under the Influence (DUI) offenders are read an advisory in court to inform them that repeated offenses resulting in death can be charged as manslaughter or murder. AB 18 is modeled on this platform, establishing a statewide Fentanyl Admonishment to be issued to fentanyl dealers and traffickers whose actions result in death."

6) **Argument in Opposition**: According to *Ella Baker Center for Human Rights*: "This bill would validate the unjust practice of charging a person with murder or manslaughter who sold, furnished, shared, or manufactured a controlled substance in the instance of an accidental overdose resulting in death.

"We are in the midst of a tragic increase in drug overdose deaths. Thousands of lives are lost in California every year – each one leaving an irreparable rift in the hearts and lives of their families and friends. These tragedies are best honored by implementing evidence-based solutions that help individuals, families, and communities heal and that prevent additional avoidable deaths. California needs to invest more in evidence based substance use disorder treatment and harm reduction, rather than pursuing expensive and unproductive incarceration policies.

"Our budgets are not unlimited – we should not lock them up in failed policies. The approximate per capita cost of a year in a California state prison is now over $112,600. The approximate cost of a year of methadone treatment for an opioid dependent person is $6,552. The approximate cost of buprenorphine treatment is less than $6,000. It would be healthier, safer and better for public safety to send an additional 17 people to methadone treatment, or 19 people to buprenorphine treatment, than to incarcerate one person for an additional year. Funding a robust, voluntary drug treatment system is a far more intelligent investment.

"Furthermore, increased punishment may have the unintended consequence of worsening our public health crisis, rather than ameliorating it. The number one reason that witnesses to an overdose hesitate to, or do not call 911 or take a person to an emergency room is fear of incarceration for the person seeking to save a life, or even the person suffering the medical crisis. Attempts by legislators or prosecutors to "make an example" out of a person who sold or shared drugs only makes conditions worse, deterring people from seeking the medical attention needed to save a life.

"The war on drugs failed us, failed families, and failed communities. While incarcerating millions of Americans, drugs became more widely available, stronger, and cheaper. It seems completely irrational to replicate that failed policy. For the reasons, among others, Ella Baker Center opposes AB 18 (Patterson)."

7) **Related Legislation**:

a) SB 13 (Ochoa Bogh), is identical to this bill. SB 13 is currently pending in the Senate Public Safety Committee.

b) SB 44 (Umberg), is identical to this bill. SB 44 is currently pending in the Senate Public Safety Committee.

c) SB 237 (Grove), increases the punishment for drug trafficking fentanyl. SB 237 is currently pending the Senate Public Safety Committee.

d) SB 62 (J. Nguyen), would apply existing weight enhancements increasing the penalty and fine for trafficking substances containing heroin, cocaine base, and cocaine to fentanyl. SB 62 is currently pending in the Senate Public Safety Committee.

8) **Prior Legislation**:

a) AB 2366 (Jim Patterson), of the 2021-2022 Legislative Session, was substantially similar to this bill. The author pulled AB 2366 before the bill's scheduled hearing in this committee.

b) SB 350 (Melendez), of the 2021-2022 Legislative Session, was substantially similar to this bill. SB 350 failed passage in the Senate Public Safety Committee.

c) AB 2246 (Petri-Norris), of the 2021-2022 Legislative Session, would have made possession of two or more grams of fentanyl punishable by imprisonment in a county jail for a period of two, three, or four years; and would make the sale of fentanyl on a social media platform in California punishable by imprisonment in a county jail for a period of three, six, or nine years. AB 2246 failed passage in this committee.

d) AB 1955 (J. Nguyen), of the 2021-2022 Legislative Session, would have applied existing weight enhancements increasing the penalty and fine for trafficking substances containing heroin, cocaine base, and cocaine to fentanyl. AB 1955 died in this committee.

e) SB 75 (Bates), of the 2021-2022 Legislative Session, was identical to AB 1955 (J. Nguyen), of the same session. SB 75 failed passage in the Senate Public Safety Committee.

f) AB 2467 (Patterson), of the 2017-2018 Legislative Session would have increased the punishment for specified drug crimes involving fentanyl. SB 2467 failed passage in this committee.

g) AB 3105 (Waldron), of the 2017-2018 Legislative Session, would have made sale of fentanyl punishable by a term of 10 years to life in a case involving 20 grams or more of

a mixture or substance containing a detectable amount of fentanyl, as defined, or 5 grams or more of a mixture or substance containing an analogue. AB 3105 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California Peace Officers Association
California State Sheriffs' Association
City of Rocklin
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles County Sheriff's Department
Los Angeles School Police Officers Association
Newport Beach Police Association
Orange County District Attorney
Orange County Sheriff's Department
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

ACLU California Action
American Addiction Institute of Mind and Medicine/ Harm Reduction Institute
Anti-recidivism Coalition (UNREG)
Berkeley Needle Exchange Emergency Distribution
Bienestar Human Services
Broken No More
California Attorneys for Criminal Justice
California Public Defenders Association
Californians United for A Responsible Budget
Care First California
Communities United for Restorative Youth Justice (CURYJ)
Community Agency for Resources, Advocacy and Services

Crop Organization
Delivering Innovation in Supportive Housing
Drug Policy Alliance
Ella Baker Center for Human Rights
Glide
Homerise San Francisco
Immigrant Legal Resource Center
Initiate Justice
Inland Empire Harm Reduction
Legal Services for Prisoners With Children
Mental Health Advocacy Services
Milpa (motivating Individual Leadership for Public Advancement)
National Harm Reduction Coalition
Rubicon Programs
San Francisco Public Defender
Sister Warriors Freedom Coalition
The Gubbio Project
Transitions Clinic Network
Treatment on Demand Coalition
Youth Justice Coalition

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744

Date of Hearing: February 14, 2023
Chief Counsel: Sandy Uribe

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

AB 21 (Gipson) – As Introduced December 5, 2022

SUMMARY: Requires the Commission on Peace Officer Standards and Training (POST) to revise their training for field-training officers (FTOs) on interacting with persons with mental illness or intellectual disabilities to also include instruction on interacting with persons with Alzheimer's or dementia. Specifically, **this bill**:

1) Requires POST to revise the training for FTOs on interacting with persons having a mental illness or developmental disability to include instruction on effectively interacting with persons with Alzheimer's disease or dementia.

2) Provides that a training developed by a jurisdiction before January 1, 2024, shall be deemed to be compliant with this new requirement.

3) Provides that a FTO who completed the mental illness/intellectual disability training prior to January 1, 2025, or who was exempt from completing it, is not required to take the updated training.

4) Requires a FTO who has not completed the mental illness/intellectual disability training by January 1, 2025, or who is not exempt from completing it, to complete the revised training.

5) Requires POST to create and electronically distribute a course on how to recognize and interact with persons with Alzheimer's disease or dementia the next time it reviews its training module related to persons with disabilities.

6) Requires POST to consult with the California Department of Aging and other organizations and agencies that have expertise in Alzheimer's disease and dementia when creating the course.

7) Provides that this course shall be made available to peace officers and law enforcement agencies in California.

8) Requires peace officers appointed on or before July 1, 2029 to complete the training by January 1, 2030, and those appointed after July 1, 2029 to complete it within 180 days of being appointed. Limits this requirement to specified peace officers.

9) Specifies that officers can complete this training remotely.

EXISTING LAW:

1) Requires POST to adopt rules establishing minimum standards relating to the recruitment, training and fitness of state and local law enforcement officers. (Pen. Code, §§ 13510 & 13510.5.)

2) Mandates that the course of basic training for law enforcement officers include adequate instruction in specified procedures and techniques relating to the handling of persons with developmental disabilities or mental illness. (Pen. Code, § 13519.2, subd. (a).)

3) Requires POST to review its training module in the regular basic training course relating to persons with a mental illness, intellectual disability, or substance use disorder, and analyze existing curricula in order to identify where additional training is needed to better prepare law enforcement to effectively address incidents involving these populations. (Pen. Code, § 13515.26, subd. (a).)

4) Requires POST to establish and keep updated a continuing education classroom training course related to law enforcement interactions with persons with mental disabilities, as specified. (Pen. Code, §§ 13515.25 & 13515.27.)

5) Requires FTOs to complete at least eight hours of crisis intervention behavioral health training in order to better train new peace officers on how to effectively interact with persons with mental illness or intellectual disability. (Pen. Code, § 13515.28, subd. (a)(1).)

6) Mandates this FTO training to include:

   a) The cause and nature of mental illness and intellectual disabilities;

   b) How to identify indicators of mental illness, intellectual disability, and substance use disorders;

   c) How to distinguish between mental illness, intellectual disability, and substance use disorders;

   d) How to respond appropriately in a variety of situations involving these populations;

   e) Conflict resolution and de-escalation techniques;

   f) Appropriate language usage when interacting with potentially emotionally distressed persons;

   g) Community and state resources to serve these populations and how these resources can be best utilized by law enforcement;

   h) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disabilities, and substance use disorders. (Pen. Code, § 13515.28, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Looking at the course of police work in our country it is imperative that we look at all the interactions that take place in the field. Our loved ones who are mentally disabled need specialized responses in times of crisis. It is not in times of crisis that we abandon and abuse our vulnerable communities. To support law enforcement by giving them the necessary information needed to assist Dementia patients who may be experiencing a mental health crisis. Also, protecting the rights and the dignity of Dementia patients around the state. It is my hope that these interventions between community and law enforcement bear fruit. Leading to more understanding and people centered approaches. This is the start of building a better future for our loved ones."

2) **Existing Training for Officers Related to Intellectual Disabilities and Mental Illness**: California law requires POST to provide, and peace officers to complete, extensive training related to interactions with individuals with intellectual disabilities and mental illness. Most of these requirements were added by SB 11 (Beall), Chapter 468, Statutes of 2015 and SB 29 (Beall), Chapter 469, Statutes of 2015. Officers are required to complete, at a minimum, POST's Regular Basic Course curriculum, which includes 15 hours of instruction on disability laws, developmental disabilities, physical disabilities and mental illness. Additionally, FTOs who are instructors in the field training program must have at least 8 hours of crisis intervention behavioral health training. Further, officers must complete at least 24 hours of Continuing Professional Training every two years, a part of which may be satisfied by the mental health training course developed by POST; however, the course is not mandated as part of the biennial requirement. POST is also required to conduct a review and evaluation of its existing training, identify critical gaps, and work with the appropriate stakeholders to update the training to help officers effectively address incidents involving persons with mental illness or intellectual disability.

   The basic training learning domain covering people with disabilities, includes recognizing appropriate peace officer response(s) and methods of communication during field contacts with people who are affected by dementia. (See LD-37, p. 3, available at https://post.ca.gov/regular-basic-course-training-specifications.)

   This bill would initially revise the training for field-training officers (FTOs) on interacting with persons with mental illness or intellectual disabilities to specifically include recognizing and interacting with persons with Alzheimer's disease or dementia, and impose requirements for FTOs to take that training first. The training requirements for other peace officers would be subsequently implemented.

3) **Little Hoover Commission (LHC) Study:** In November 2021, LHC issued a report examining the various peace officer training requirements and made several recommendations for improving outcomes. Recommendations included asking the Legislature to refrain from amending or adding any new law enforcement training requirements and instead have POST assess how well existing officer training is working in the field and adjust training mandates as needed. LHC also recommended POST collaborate with academic researchers and establish a permanent academic review board to ensure training standards are aligned with the latest scientific research and advise POST on how to incorporate research findings into new and existing standards and training. (*Law*

Enforcement Training: Identifying What Works for Officers and Communities, Little Hoover Commission, Nov. 2021 https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/265/Report265.pdf .)

4) **Argument in Support**: According to the *Alzheimer's Association of California*, "Currently, approximately 690,000 Californians are living with Alzheimer's and this number is slated to double by 2040. Communities of color will shoulder a disproportionate share of the increase in prevalence. Whereas the California Department of Health estimates a doubling in the total number of Californian's living with Alzheimer's by 2040, in that same period the number of Black Californians living with Alzheimer's is projected to nearly triple and Hispanic Californians living with Alzheimer's will more than triple.

   "Currently, there is very little dedicated training on identifying and interacting with individuals with Alzheimer's. This is despite the fact that nearly 70% of those diagnosed will experience 'wandering', which can result in peace officers being called to respond.

   "Ensuring that our state's workforce has dementia training and competency is critical, especially for law enforcement. Recognizing this need, Los Angeles has begun to add dementia-related training for their sworn officers. Ensuring that our entire state has this same training is a reasonable next step to ensuring the state's law enforcement workforce is dementia capable."

5) **Argument in Opposition**: None submitted.

6) **Related Legislation**: AB 390 (Haney), requires POST to partner with academic researchers to conduct an assessment of peace officer training requirements and determine how well they are working.

7) **Prior Legislation**:

   a) AB 2583 (Gipson), of the 2021-2022 Legislative Session, was nearly identical to this bill. AB 2583 was held in the Assembly Appropriations Committee.

   b) AB 2429 (Quirk), of the 2021-2022 Legislative Session, would have required POST to partner with academic researchers to assess existing peace officer training requirements and establish a permanent academic review board to regularly review and update the training requirements. AB 2429 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alzheimer's Association State Policy Office (Sponsor)
Alzheimer's Greater Los Angeles
Alzheimer's Orange County
Alzheimer's San Diego
Arcadia Police Officers' Association
Burbank Police Officers' Association
California Assisted Living Association
California Association of Highway Patrolmen

California Attorneys for Criminal Justice
California Coalition of School Safety Professionals
California Public Defenders Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

None

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

Date of Hearing: February 14, 2023
Chief Counsel: Sandy Uribe

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

AB 27 (Ta) – As Introduced December 5, 2022

SUMMARY: Exempts specified firearm enhancements from the requirement that a court dismiss an enhancement if it is in the furtherance of justice and does not endanger public safety. Specifically, **this bill**:

1) Provides that a court is not required to dismiss specified firearm use enhancements, even if it is in the furtherance of justice to do so.

2) Applies this exemption to the following firearm enhancements:

   a) Carrying a loaded or unloaded firearm during the commission or attempted commission of a street gang crime;

   b) Committing or attempting to commit a felony while armed with a firearm;

   c) Committing or attempting to commit specified sex offenses while armed with a firearm;

   d) Furnishing or offering to furnish a firearm to another for purposes of aiding, abetting, or enabling the commission or attempted commission of a felony;

   e) Personal use of a firearm, assault weapon, or machine gun in the commission or attempted commission of a felony;

   f) The 10-20-life firearm law;

   g) Discharging a firearm from a motor vehicle in the commission or attempted commission of a felony;

   h) Improper transfer of a firearm which is subsequently used in the commission of a felony offense resulting in conviction; and,

   i) Committing another crime while violating the assault weapons ban.

EXISTING LAW:

1) Authorizes the court, either on its own motion or upon motion of the district attorney, and in furtherance of justice, to order an action to be dismissed. The reasons for the dismissal must be stated orally on the record, and entered in the minutes, if requested by either party. (Pen. Code, § 1385, subd. (a).)

2) Provides that if the court has the authority to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice. (Pen. Code, § 1385, subd. (b)(1).)

3) Requires, notwithstanding any other law, the court to dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal of that enhancement that is prohibited by any initiative statute. (Pen. Code, § 1385, subd. (c)(1).)

4) Instructs the court to consider the following factors in determining whether it is in the interests of justice to dismiss an enhancement:

   a) Application of the enhancement would result in a discriminatory racial impact, as specified;

   b) Multiple enhancements are alleged in a single case, in which case all enhancements but one shall be dismissed;

   c) Application of the enhancement could result in a sentence of over 20 years, in which case the enhancement shall be dismissed;

   d) The current offense is connected to mental illness, as specified;

   e) The current offense is connected to prior victimization or childhood trauma, as specified;

   f) The current offense is not a violent felony, as specified;

   g) The defendant was a juvenile when they committed the current offense or any prior juvenile adjudication that triggers the enhancement or enhancements applied in this case;

   h) The enhancement is based on a prior conviction that is over five years old;

   i) Though a firearm was used in the current offense, it was inoperable or unloaded. (Pen. Code, § 1385, subd. (c)(3)(A)-(I).)

5) Requires the court to consider and afford great weight to evidence offered by the defendant to prove that any of the aforementioned mitigating circumstances are present. (Pen. Code, § 1385, subd. (c)(2).)

6) States that proof of the presence of one or more of these mitigating circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would "endanger public safety," meaning that there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others. (Pen. Code, § 1385, subd. (c)(2).)

7) Imposes an additional term of imprisonment for carrying a loaded or unloaded firearm during the commission or attempted commission of a street gang crime. (Pen. Code, § 12021.5, subds. (a) & (b).)

8) Imposes an additional term of imprisonment for committing or attempting to commit a felony while armed with a firearm. (Pen. Code, § 12022.)

9) Imposes an additional term of imprisonment for committing or attempting to commit specified sex offenses while armed with a firearm. (Pen. Code, § 12022.3.)

10) Imposes an additional term of imprisonment for furnishing or offering to furnish a firearm to another for purposes of aiding, abetting, or enabling the commission or attempted commission of a felony. (Pen. Code, § 12022.4.)

11) Provides that any person who personally uses a firearm in the commission or attempted commission of a felony, in addition and consecutive to the punishment for the underlying felony offense, shall be sentenced to a term of 3, 4, or 10 years in state prison, unless the use of a firearm is an element of the offense for which he or she is convicted. A person who personally uses an assault weapon or machine gun during the commission of a felony or attempted felony is subject to an additional consecutive term of 5, 6 or 10 years in state prison. (Pen. Code, § 12022.5, subds. (a) & (b).)[1]

12) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses[2] is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in great bodily injury (GBI) or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison.[3] (Pen. Code, § 12022.53, subds. (b)-(d).)

13) Provides that if the offense is gang-related, the 10-20-life firearm enhancements shall apply to every principal in the commission of the offense. An enhancement for participation in a criminal street gang shall not be imposed in addition to an enhancement under this provision, unless the person personally used or personally discharged a firearm in the commission of the specified offense. (Pen. Code, § 12022.53, subds. (e)(1) & (e)(2).)

14) Provides that only one additional term of imprisonment under the 10-20-life firearm law shall be imposed per person per crime. An enhancement for use of a firearm shall not be imposed on a person in addition to an enhancement under this provision. (Pen. Code, § 12022.53,

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[1] The firearm need not be operable or loaded. (*People v. Nelums* (1982) 31 Cal.3d 355, 360; see *People v. Steele* (1991) 235 Cal.App.3d 788, 791–795.) Someone personally uses a firearm if he or she intentionally displays the firearm in a menacing manner, hits someone with the firearm, or fires the firearm. (*People v. Bland* (1995) 10 Cal.4th 991, 997; *People v. Johnson* (1995) 38 Cal.App.4th 1315, 1319–1320; see also Pen. Code, § 1203.06, subd. (b)(2).)

[2] The felonies which trigger the enhancements under the 10-20-life firearm law are: murder; mayhem, kidnapping; robbery; carjacking; assault with intent to commit a specified felony; assault with a firearm on a peace officer or firefighter; specified sex offenses; assault by a life prisoner; assault by a prisoner; holding a hostage by a prisoner; any felony punishable by death or life imprisonment; and any attempt to commit one of these crimes other than assault. (Pen. Code, § 12022.53, subd. (a).)

[3] The felonies which trigger the 25-to-life enhancement also include discharge of a firearm at an inhabited dwelling and willfully and maliciously discharging a firearm from a motor vehicle. (Pen. Code, § 12022.53, subd. (d).)

subd. (f).)

15) Imposes an additional term of imprisonment for discharging a firearm from a motor vehicle in the commission or attempted commission of a felony (Pen. Code, § 12022.55.)

16) Imposes an additional term of punishment for the improper transfer of a firearm which is subsequently used in the commission of a felony offense resulting in conviction. (Pen. Code, § 27590, subd. (d).)

17) States that notwithstanding any other law, a person who commits another crime with while violating the assault weapons ban, shall receive an additional and consecutive one-year enhancement. (Pen. Code, § 30615.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 27 would hold criminals who commit gun-related crimes accountable, whereas, current law requires judges to dismiss gun-related sentencing enhancements in most circumstances. In response to this oversight, AB 27 would give the discretion back to the judges to decide on the case at hand to determine whether an enhancement is appropriate. This bill is a step toward California's stance against gun violence."

2) **Sentencing Enhancements:** "Generally speaking, sentencing enhancements derive their vitality from, and form a part of, the crime to which they are attached and alter the consequences the offender may suffer. The most direct consequence is additional punishment." (*People v. Fuentes, supra*, 1 Cal.5th at p. 225, citation and quotations omitted.) There are over 100 sentencing enhancements found throughout the Penal Code.

   According to the 2020 Annual Report by the Committee on the Revision of the Penal Code, over 80% of the people sentenced to state prison are serving a sentence lengthened by an enhancement, with some of the most common enhancements including firearm-use enhancements. (See *Annual Report and Recommendations 2020*, Committee on Revision of the Penal Code, at p. 37-38, http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf.) Citing data provided by the California Department of Correction and Rehabilitation's Office of Research, the committee noted that these enhancements are applied disproportionately against people of color and people suffering from mental illness. (*Id.* at p. 38.)

3) **Courts Have Broad Discretion to Strike Enhancements**: Penal Code section 1385 specifies that a judge may, in furtherance of justice, order an action to be dismissed. That provision has been interpreted to allow courts broad discretion to strike prior convictions and enhancements in order to provide individualized sentencing to a defendant. "Section 1385 has long been recognized as an essential tool to enable a trial court 'to properly individualize the treatment of the offender.'" (*People v. Tanner* (1979), 24 Cal.3d 514, 530.) "It was designed to alleviate 'mandatory, arbitrary or rigid sentencing procedures [which] invariably lead to unjust results.'" (*People v. Dorsey* (1972), 28 Cal.App.3d 15, 18.) "Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case. Only the trial judge has the knowledge, ability and tools at hand to

properly individualize the treatment of the offender." (*People v. Williams* (1970) 30 Cal.3d 470, 482, citation and internal quotation marks omitted.) One of the purposes of Section 1385 is to ensure that sentences are proportional to a defendant's conduct.

Effective January 1, 2022, SB 81 (Skinner) Chapter 721, Statutes of 2021, Penal Code section 1385 now requires a court to dismiss an enhancement if it is in the furtherance of justice to do so, unless any initiative statute prohibits such action. In exercising discretion, the court must give great weight to evidence offered by the defendant to prove any of mitigating circumstances. Proof of mitigating circumstances "weighs greatly" in favor of dismissing the enhancement, unless the court finds that dismissal would endanger public safety. Examples of mitigating circumstances include where: the enhancement would result in discriminatory racial impact; multiple enhancements are alleged in a single case; the enhancement could result in a sentence exceeding 20 years; and the enhancement is based on a prior conviction that is over five years old. The statute allows a court to exercise this discretion before, during, or after trial or entry of plea as well as at sentencing.

This bill would exempt specified firearm enhancements from the provision requiring dismissal of an enhancement if it is in furtherance of justice.

4) **Background of "Use of a Gun and You're Done" Law (i.e., the 10-20-life Firearm Law)**: "In 1997, the Legislature passed the "Use a Gun and You're Done" law that significantly increased sentencing enhancements for possessing a gun at the time of committing a specified felony, such as robbery, homicide, or certain sex crimes. Under the law, if someone uses a gun while committing one of the identified crimes, their sentence is extended by 10 years, 20 years, or 25 years-to-life, depending on how the gun was used. Often the enhancement for gun use is longer than the sentence for the crime itself. For example, in the case of second-degree robbery, a person could serve a maximum of five years for the robbery and an extra 10 years for brandishing a gun during the robbery, even if the gun was unloaded or otherwise inoperable. Someone convicted of first-degree murder would be sentenced to at least 50 years-to-life if a gun was used, whereas if the murder was carried out using another method – such as strangulation – the sentence would be half the length (25 years-to-life). A judge has no discretion in applying this enhancement; if a gun was used, a judge must apply it." (California Budget and Policy Center (2015) *Sentencing in California: Moving Toward a Smarter, More Cost-Effective Approach.*)

   Deterrence was a driving factor behind this legislation: "The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime." (AB 4 (Bordonaro), Chapter 503, Statutes of 1997.)

   In 2017, the Legislature passed SB 620 (Bradford), Chapter 682, Statutes of 2017. This legislation allowed a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

5) **Research on the Deterrent Effect and Impact on State Prisons:** In a 2014 report, the Little Hoover Commission addressed the disconnect between science and sentencing – that is, putting away offenders for increasingly longer periods of time, with no evidence that lengthy

incarceration, for many, brings any additional public safety benefit. (Little Hoover Commission, *Sensible Sentencing for a Safer California* (2014) at p. 4 https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf.)

The report also explains how California's sentencing structure and enhancements contributed to a 20-year state prison building boom, specifically remarking on the "significant sentencing enhancements" of the 10-20-life firearm law. (Little Hoover Commission, *supra*, at p.9.)

6) **Argument in Support**: According to the *California District Attorneys Association*, "Notwithstanding some of the strictest gun laws in the United States, at least seven mass shootings have occurred in California since the beginning of 2023, leaving 31 people dead and dozens more injured. These shootings are emblematic of a tremendous increase in the number of firearms-related homicides, which increased 52% between 2019 and 2021, and aggravated assaults, which increased 64% during that same time frame.

"Currently, the language of section 1385(c) too strongly favors dismissal of firearm enhancements by requiring courts to consider and afford great weight to a wide variety of mitigating circumstances in its analysis, one or more of which are likely to be present in most cases. AB 27 wisely helps restore a court's traditional analysis (and greater discretion) in deciding whether to dismiss a firearm enhancement in the interests of justice. AB 27 will make it easier to protect the public from persons prone to use firearms, and sends a message that gun violence will not be tolerated in our communities."

7) **Argument in Opposition**: According to the *American Civil Liberties Union California Action* (ACLU Cal Action), "AB 27 removes a tool from the judges' justice tool kit. In 2017, ACLU Cal Action sponsored Senate Bill (SB) 620 (Bradford, 2017) so that judges could resist a particular species of excessive and unjust sentences—firearms-related enhancements. Specifically, under SB 620, a judge can state its reasons on the record and dismiss a firearms-related enhancement when 'it is in the interests of justice pursuant to Section 1385.' AB 27 takes away this discretion with language that explicitly tells judges they cannot dismiss firearms-related enhancements.

"AB 27 is contrary to the goals of Section 1385. The purpose of Section 1385 is to alleviate mandatory, arbitrary, and rigid sentencing procedures that invariably lead to unjust results. (See *People v. Dorsey* (1972), 28 Cal. App. 3d 15,18.) AB 27 seeks mandatory additional prison time for an individual even where the judge has determined that additional time would be out of proportion to the individual's culpability. There is no doubt that the foreseeable injustices of AB 27 will be disproportionately experienced by Black, American Indian, and Latinx men, as well as LGBTQ+ individuals. Further, history has conclusively proven that stripping judges of discretion efficiently facilitates prison overcrowding. And while prison overcrowding does not make our communities safer, it does result in inhumane prison conditions, cost taxpayers millions of dollars in litigation, and stymies rehabilitation.

"AB 27 is unnecessary and has no public safety benefit. It appears that AB 27 seeks to put the courts' discretion in check. However, there is no evidence that judges are arbitrarily dismissing firearms-related enhancements or that the exercise of this discretion presents a threat to the interests of society. While we appreciate that the intention of the bill may be to reduce crime, the evidence shows that AB 27 will unfortunately fail to do so. Although people will serve longer prison sentences, this will not increase deterrence nor meaningfully

prevent crime by incapacitation. Instead, data show that enhancements increase racial disparities and drive over-incarceration, thus aggravating and exacerbating the root causes of crime."

8) **Related Legislation**: AB 328 (Essayli), prohibits the court from dismissing an enhancement for personal use of a firearm in the commission of certain violent crimes, except when the person did not personally use or discharge the firearm or when the firearm was unloaded. AB 328 is pending hearing in this committee.

9) **Prior Legislation**:

   a) SB 81 (Skinner), Chapter 721, Statutes of 2021, requires the court to dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal is prohibited by an initiative statute.

   b) AB 2027 (Choi), of the 2021-2022 legislative session, would have exempted the hate crime enhancement from the requirement that a court dismiss an enhancement if it is in the furtherance of justice and does not endanger public safety. AB 2027 failed passage in this committee.

   c) AB 1509 (Lee), of the 2021-2022 legislative session, would have repealed several firearm enhancements, reduced the penalty for using a firearm in the commission of specified crimes from 10 years, 20 years, or 25-years-to-life to one, two or three years, and authorized recall and resentencing for a person serving a term for these enhancements. AB 1509 was held in the Assembly Appropriations Committee.

   d) SB 620 (Bradford), Chapter 682, Statutes of 2017, allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association

Orange County District Attorney
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

ACLU California Action
Anti-recidivism Coalition (UNREG)
Bend the Arc: Jewish Action, Southern California
California Attorneys for Criminal Justice
California Public Defenders Association
Californians for Safety and Justice
Care First California
Ceres Policy Research
Communities United for Restorative Youth Justice (CURYJ)
Drug Policy Alliance
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Friends Committee on Legislation of California
Initiate Justice
Legal Services for Prisoners With Children
Pacific Juvenile Defender Center
Sacramento Youth Advocacy Fellowship Pipeline
San Francisco Public Defender
Sister Warriors Freedom Coalition
United Core Alliance
Young Women's Freedom Center

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

Date of Hearing: February 14, 2023
Counsel: Andrew Ironside

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

AB 29 (Gabriel) – As Introduced December 5, 2022

As Proposed to be Amended in Committee

SUMMARY: Requires the Department of Justice (DOJ) to develop and launch an Internet-based platform to allow California residents to voluntarily add their own name to the California Do Not Sell List for firearms, which prohibits an individual from purchasing a firearm. Specifically, **this bill**:

1) Requires DOJ to develop and launch a secure Internet-based platform to allow a person who resides in California to voluntarily add their own name to the California Do Not Sell List, hereafter the registry.

2) Requires DOJ, in cooperation with the State Department of Public Health (DPH), and other relevant state agencies, to ensure that the Internet-based platform is easy to find.

3) Requires DOJ to ensure that the Internet-based platform does all of the following credibly:

   a) Verifies the identity of a person who opts to register or requests removal;

   b) Prevents unauthorized disclosure of a person registering or requesting removal; and,

   c) Informs the potential registrant of the legal effects of registration or removal.

4) Authorizes a person who resides in California, once the Internet-based platform is operative, to request to be added to the California Do Not Sell List.

5) Require DOJ, on an ongoing basis, to ensure that registry information is uploaded and reflected in the National Instant Criminal Background Check System (NICS) Index for California.

6) Prohibits the use of the registry for any purpose other than to determine eligibility to purchase a firearm.

7) Authorizes a person, at the time of registration to voluntarily list up to five electronic email addresses with the registry to be notified that the person has voluntarily added their name to the registry or that the person requested that their name be removed from the registry.

8) Requires DOJ to promptly provide notice by electronic mail to the provided electronic email addresses of the fact that the person has requested removal from the registry.

9) Authorizes a person to request at any time that any of the electronic mail addresses provided to DOJ at the time of registration be removed from the registry for purposes of contact for request for removal from the registry.

10) Requires DOJ to promptly provide notice to the electronic mail address of the fact that the person has requested that the electronic email address not be informed of a request for removal from the registry.

11) Provides that registration on the registry renders receipt of a firearm by a registrant unlawful, however, possession after the moment of receipt is not unlawful and the fact of possession may not be relied upon to prove a violation.

12) Provides that knowingly transferring a firearm to a person on the registry with knowledge that the person is validly registered on the registry is a misdemeanor.

13) Provides that a licensed firearm deal who knowingly transfers a firearm to a person on the registry with knowledge that the person is validly registered on the registry is punishable as a misdemeanor and by a fine of $2,000 and may result in a revocation of the dealer's license.

14) Authorizes a person, no sooner than seven days after filing a voluntary waiver of firearm rights, to file a request for removal from the registry via the Internet-based platform.

15) Requires DOJ, no sooner than 21 days after receiving a request for removal of a voluntary waiver of firearm rights, to remove the person from the National Instant Criminal Background Check System Index for California and any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms in which the person was entered, unless the person is otherwise ineligible to possess a firearm under other statute.

16) Provides that the fact that a person has requested to be added to the registry, is on the registry, has requested to be removed from the registry, or has been removed from the registry is confidential with respect to all matters involving health care, employment, education, housing, insurance, government benefits, and contracting.

17) Provides that a violation of confidentiality occurs if a person or entity other than a healthcare professional, therapist, or counselor, engaged specified activities inquires as to whether a person has requested to be on the registry, is on the registry, has requested to be removed from the registry, or has been removed from the registry.

18) Provides that a violation of confidentiality occurs if a person or entity takes any adverse action based on whether a person has requested to be on the registry, is on the registry, has requested to be removed from the registry, or has been removed from the registry.

19) Provides that the person whose confidentiality is violated by an inquiry or adverse action may bring a private civil action for appropriate relief, including reasonable attorney's fees, for each violation that occurs.

20) Prohibits requiring a voluntary waiver of firearm rights as a condition for receiving employment, benefits, or services.

21) Requires DPH to create and distribute informational materials, including information on how to access the Internet-based platform, to general acute care hospitals and acute psychiatric hospitals, as specified.

22) States that a person presenting in a general acute care hospital or any acute psychiatric hospital who is reasonably believed by the treating clinician to be at substantially elevated risk of suicide should generally, as a best practice, be presented with the informational materials created and distributed by DPH.

23) States that a suicide hotline maintained or operated by an entity funded in whole or in part by the state should generally, as a best practice, inform callers on how to access the registry.

EXISTING LAW:

1) Provides for an automated system for tracking firearms and assault weapon owners who might fall into a prohibited status. The online database, which is known as the Armed Prohibited Persons System (APPS), cross-references all handgun and assault weapon owners across the state against criminal history records to determine whether a person is prohibited from possessing a firearm. (Pen. Code, § 30000, et seq.)

2) Prohibits persons who know or have reasonable cause to believe that the recipient is prohibited from having firearms and ammunition to supply or provide the same with firearms or ammunition. (Pen. Code, §§ 27500, 30306; & Welf. & Inst. Code, § 8101.)

3) Provides that persons convicted of felonies and certain violent misdemeanors are prohibited from owning or possessing a firearm. (Pen. Code, §§ 29800 & 29805.)

4) Prohibits a person from possessing or owning a firearm that is subject to specified restraining orders. (Pen. Code, § 29825.)

5) Prohibits a person who has been taken into custody and admitted to a designated facility on a 72-hour hold because that person is a danger to himself, herself, or to others, as specified, from owning or possessing any firearm for a period of five years after the person is released from the facility. (Welf. & Inst. Code, § 8103, subd. (f)(1).)

6) States that a person taken into custody on a 72-hour hold may possess a firearm if the superior court has found that the people of the State of California have not met their burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. (Welf. & Inst. Code, § 8103, subd. (f)(6).)

7) Requires the DOJ, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. Existing law prohibits the delivery of a firearm within 10 days of the application to purchase, or, after notice by the department, within 10 days of the submission to the department of any corrections to the application to purchase, or within 10 days of the

submission to the department of a specified fee. (Pen. Code, §§ 28200-28250.)

8) Mandates those dealers notify DOJ that persons in applications actually took possession of their firearms. (Pen. Code, § 28255.)

9) Requires the dealer, if unable to legally deliver a firearm, to return the firearm to the transferor, seller, or person loaning the firearm. (Pen. Code, § 28050, subd. (d).)

10) Requires that in connection with any sale, loan or transfer of a firearm, a licensed dealer must provide the DOJ with specified personal information about the seller and purchaser as well as the name and address of the dealer. This personal information of buyer and seller required to be provided includes the name; address; phone number; date of birth; place of birth; occupation; eye color; hair color; height; weight; race; sex; citizenship status; and a driver's license number; California identification card number; or, military identification number. A copy of the DROS, containing the buyer and seller's personal information, must be provided to the buyer or seller upon request. (Pen. Code, §§ 28160, 28210, & 28215.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "According to the Centers for Disease Control and Prevention, 1,586 people died by gun suicide in California in 2019; additionally, more than one-third of all suicides in California are by firearm. Suicide has surpassed homicides as the most prevalent cause of death resulting from the misuse of a firearm in the state.

   "This bill provides those battling suicidal thoughts an option to protect themselves by temporarily limiting their access to purchase firearms during a time of crisis. We know suicide can be an impulsive decision that most survivors regret. Guns are lethal and, unfortunately, rarely allow for second chances. This bill takes action on the data that shows a correlation between mental illness, suicidal thoughts, and gun purchases."

2) **Individuals Prohibited from Possessing Firearms in California:** California has several laws that prohibit certain persons from purchasing firearms. All felony convictions lead to a lifetime prohibition, while a conviction of specified misdemeanors result in a 10-year prohibition. A person may be prohibited from possessing a firearm due to a protective order or as a condition of probation. Another prohibition is based on the mental health of the individual. If a person communicates to his or her psychotherapist a serious threat of physical violence against a reasonably-identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for five years, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat. (Welf. & Inst. Code, § 8100, subd. (b)(1).) If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103, subd. (f).) For the provisions prohibiting a person from owning or possessing a firearm based on a serious threat of violence or based on admittance into a facility as a threat to self or others, the person has the right to request a hearing whereby the person could restore his or her right to own or possess a firearm if a court determines that the person is likely to use firearms or other deadly weapons in a safe

and lawful manner. (Welf. & Inst. Code, §§ 8100, subd. (b)(1) and 8103, subd. (f).)

DOJ developed the Armed Prohibited Persons System (APPS) for tracking handgun and assault weapon owners in California who may pose a threat to public safety. (Pen. Code, § 30000 et seq.) APPS collects information about persons who have been, or will become, prohibited from possessing a firearm subsequent to the legal acquisition or registration of a firearm or assault weapon. DOJ receives automatic notifications from state and federal criminal history systems to determine if there is a match in the APPS for a current California gun owner. DOJ also receives information from courts, local law enforcement and state hospitals as well as public and private mental hospitals to determine whether someone is in a prohibited status. When a match is found, DOJ has the authority to investigate the person's status and confiscate any firearms or weapons in the person's possession. Local law enforcement also may request from DOJ the status of an individual, or may request a list of prohibited persons within their jurisdiction, and conduct an investigation of those persons. (Pen. Code, § 30010.) Since the development of APPS, California has added long-gun transactions to the list of registered firearms and has added restraining orders to the list of prohibiting events. (http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/sb-140-supp-budget-report.pdf) These additional requirements have contributed to a backlog in processing APPS matches.

This bill would make an individual ineligible to purchase a firearm if they choose to include themselves on the Do Not Sell List. This bill would not include such individuals in the APPS database.

3) **Suicide and Firearms:** The fact that a person possesses a firearm increases their risk of suicide. Suicide attempts that involve the use of a gun are more likely to result in death. There is strong evidence that access to firearms, whether from household availability or a new purchase, is associated with increased risk of suicide. The risk of suicide by guns is far higher in states with high rates of gun ownership than in those with low ownership rates. The increased risk of suicide applies not only to the gun owner but to others living in a household with guns. (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3518361/)

Fifty-two percent of gun deaths in California are suicides, which accounts for roughly 1,500 gun violence deaths each year. This is the 44th-higest rate in the nation. On average, more Californians die every year from suicide by firearm than from homicide by firearm. (https://maps.everytownresearch.org/wp-content/uploads/2020/04/Every-State-Fact-Sheet-2.0-042720-California.pdf)

4) **Use of Voluntary Do Not Sell Lists to Reduce Gun Suicide:** Law Professor Frederick Vars wrote an article entitled "Self Defense Against Gun Violence" in October 2015 about the potential policy benefits of providing individuals an opportunity to voluntarily add their own name to the list of those already prohibited from purchasing a firearm. Professor Vars listed three ways that such a policy might reduce the numbers of suicide by firearms.

> The first and most direct pathway is by preventing the purchase of a firearm for quick use in a suicide attempt. . . ., research shows that waiting periods reduce gun prevalence, and that lower gun prevalence reduces suicides. This will reduce the chances that there will be a gun in the home should suicidal thoughts arise in the future.

> Second, introducing and advertising a voluntary do not purchase program may reduce gun access even among people who do not participate. Suicide prevention efforts already advise putting firearms out of reach of people at high risk. Launching a new federal program to reduce suicide by voluntarily curbing access to firearms will help disseminate well-established findings showing the benefits of getting existing firearms out of the house. Some people and their families may decide to remove or lock up firearms even if they do not opt for a voluntary do not purchase program.
>
> Third, providing a relatively easy avenue for people concerned about suicide to reduce their own risk of self harm may help alleviate the despair and anxiety that pushes them toward suicide in the first place. It should be noted that an individual who has volunteered for do not purchase program may be less likely to purchase a firearm at all, even during non-suicidal periods. Voluntary do not purchase programs would "enhance patients' self-efficacy and can help to create a sense that suicidal urges can be mastered," which in turn "may help [patients] feel less vulnerable and less at the mercy of their suicidal thoughts." In short, allowing people to protect themselves in this way may give them back a sense of control over their lives. Relatedly, hopelessness is a significant risk factor for suicide. Providing an opportunity for distressed individuals to take one concrete step to prevent suicide may itself mitigate feelings of hopelessness. This could reduce non-firearm suicides as well.

(Vars, *Self-Defense Against Gun Suicide*, 56 B.C.L.Rev. 1465, 1469-71)

This bill would establish a protocol for a voluntary do not sell list.

5) **Effectiveness of Voluntary Do Not Sell Lists:** Whether voluntary do not sell lists will reduce gun suicide rates is an open question. Proponents point out that a study found that surveyed persons receiving care at an inpatient facility or one of two outpatient clinics and found that 46% of the 200 responses said they would put their names on the list. (https://onlinelibrary.wiley.com/doi/abs/10.1111/sltb.12302) Since 2018, three states have created voluntary do not sell lists—Utah, Virginia, and Washington. How many people have added their names to the lists in those three states is unclear, but a local news report from roughly one year ago found that "41 people in three states across the country have voluntarily banned themselves from buying guns…" (https://fox47.com/news/local/banning-yourself-from-buying-guns-can-a-suicide-prevention-method-happen-in-wisconsin)

   Notably, both Alabama and the three states that have enacted do not sell lists are distinct from California in at least one way: they lack a mandatory waiting period for the delivery of a purchased firearm. In California, there is a 10-day mandatory waiting period before a firearm can be legally delivered to the purchaser. (See Pen. Code, §§ 28200-28250.) Whether mandatory waiting periods in other states would have affected the results of the study or the number of people who have signed up for existing do not sell lists is unclear.

   Regardless, proponents appear to believe that do not sells lists are worthwhile policies regardless of mandatory waiting periods. According to Professor Vars:

> [T]here is an important reason to think [voluntary do not sell lists] will actually be more effective in reducing suicides than an actual waiting period… Having added one's name to NICS, people will be less likely to make the effort to remove it… Actual waiting periods, in contrast, impose only a delay.

(Vars, *supra*, at 1476-77)

The success of the proposed California Do Not Sell List will likely depend at least in part on encouraging people to use the list and convincing likely participants that a 10-day waiting period is insufficient protection against the threat of suicide.

6) **Argument in Support**: According to *California State Association of Psychiatrists*, the sponsor of this bill: "There is strong evidence that access to firearms, whether from household availability or a new purchase, is associated with an increased risk of suicide. According to the Centers for Disease Control and Prevention, suicides make up 52% of all firearm deaths in California, and more than one-third of all suicides in California are by firearm. In 2019, there were 1,586 firearm suicide deaths in California, including 54 children and teens.

   "This decision could be preventable. A recent study found that close to a third of the general population and more than 40% of those with previously diagnosed mental health concerns would add their name to a Do Not Sell List if they had the option.

   "AB 29 will address mental health as it pertains to our gun violence epidemic by creating a platform to allow California residents to voluntarily and confidentially add their own name to the California Do Not Sell List for firearms, which prohibits an individual from purchasing a firearm.

   "This bill provides those battling suicidal thoughts and struggling with severe mental health issues an option to protect themselves by temporarily limiting their access to purchase firearms during a time of crisis. We know suicide can be an impulsive decision that most survivors regret. Guns are lethal and, unfortunately, rarely allow for second chances. This bill takes action on the data that shows a correlation between mental illness, suicidal thoughts, and gun purchases."

7) **Argument in Opposition:** None submitted.

8) **Prior Legislation**: AB 1927 (R. Bonta), of the 2017-2018 Legislative Session, would have required the DOJ to develop and launch an Internet-based platform to allow California residents to voluntarily add their name to the California Do Not Sell List for firearms, which would have prohibited an individual from purchasing a firearm. The governor vetoed a substantially amended version of the bill.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Psychiatrists (CSAP) (Sponsor)

Brady Campaign California
Everytown for Gun Safety Action Fund
Prosecutors Alliance California

Opposition

None

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744

Amended Mock-up for 2023-2024 AB-29 (Gabriel (A))

Mock-up based on Version Number 99 - Introduced 12/5/22
Submitted by: Andrew Ironside, Assembly Public Safety Committee

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

SECTION 1. Chapter 6 (commencing with Section 30180) is added to Division 9 of Title 4 of Part 6 of the Penal Code, to read:

CHAPTER 6. Voluntary Do Not Sell List

30180. (a) The Department of Justice shall develop and launch a secure Internet-based platform to allow a person who resides in California to voluntarily add their own name to the California Do Not Sell List, hereafter the registry. The department, in cooperation with the State Department of Public Health, and other relevant state agencies, shall ensure that this Internet-based platform is easy to find. The department shall ensure that the Internet-based platform does all of the following credibly:

(1) Verifies the identity of a person who opts to register or requests removal.

(2) Prevents unauthorized disclosure of a person registering or requesting removal.

(3) Informs the potential registrant of the legal effects of registration or removal.

(b) (1) Once the Internet-based platform is operative, a person who resides in California may request, via the platform, to be added to the California Do Not Sell List. The department shall, on an ongoing basis, ensure that registry information is uploaded and reflected in the National Instant Criminal Background Check System (NICS) Index for California. The list shall not be used for any purpose other than to determine eligibility to purchase a firearm.

(2) (1) At the time of registration, a person may, but is not required to, list up to five electronic mail addresses with the registry to be ~~contacted~~ **notified that the person has voluntarily added their name to the California Do Not Sell List or that the person has requested** ~~promptly if the person subsequently requests~~ that their name be removed from the registry. The department shall promptly provide notice by electronic mail to the provided electronic mail addresses of the fact that the person has requested removal from the registry. ~~and of the date, time, and location of any hearing to be held pursuant to subdivision (d).~~

(2) A person may request at any time that any of the electronic mail addresses provided to the Department at the time of registration be removed from the registry for purposes of contact for request for removal from the registry. The department shall promptly provide notice to the electronic mail address of the fact that the person has requested that the electronic email address not be informed of a request for removal from the California Do Not Sell List.

(c) (1) Registration on the California Do Not Sell List renders receipt of a firearm by a registrant unlawful, however, possession after the moment of receipt is not unlawful and the fact of possession may not be relied upon to prove a violation of this paragraph.

(2) It is unlawful to knowingly transfer a firearm to a person ~~who~~ **on the California Do Not Sell List with knowledge that the person** is validly registered on the California Do Not Sell List. A violation of this paragraph is **a misdemeanor**. ~~punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in a county jail pursuant to subdivision (h) of Section 1170.~~ A violation of this paragraph by a licensed firearms dealer **is punishable as a misdemeanor and by a fine of two thousand dollars ($2,000) and** may result in a revocation of the dealer's license.

~~(d) A person registered on the California Do Not Sell List may subsequently file a petition in the Superior Court of the county in which the person resides requesting to have their name removed from the registry. The court, after a hearing, shall order removal of the person's name from the registry if they establish by a preponderance of the evidence that they are not at elevated risk of suicide. Upon receiving the court order for removal, the department shall promptly remove the person from the NICS Index for California and shall expunge all records related to the person's registration on the California Do Not Sell List and their removal.~~

(d) (1) No sooner than seven days after filing a voluntary waiver of firearm rights, the person may file a request for removal from the California Do Not Sell List via the Internet-based platform.

(2) No sooner than 21 days after receiving a request for removal of a voluntary waiver of firearm rights, the Department shall remove the person from the National Instant Criminal Background Check System (NICS) Index for California and any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms in which the person was entered, unless the person is otherwise ineligible to possess a firearm under other statute.

(e) (1) The fact that a person has requested to be added to the registry, is on the registry, has requested to be removed from the registry, or has been removed from the registry is confidential with respect to all matters involving health care, employment, education, housing, insurance, government benefits, and contracting.

(2) A violation of confidentiality occurs if a person or entity engaged in any activity described in paragraph (1), other than a healthcare professional, therapist, or counselor, inquires as to any

confidential matter described in paragraph (1), or if any person described in paragraph (1), including, but not limited to, a healthcare professional, therapist, or counselor, takes any adverse action based on that information.

(3) The person whose confidentiality is violated by an inquiry or adverse action in violation of this subdivision may bring a private civil action for appropriate relief, including reasonable attorney's fees, for each violation that occurs.

(g) A voluntary waiver of firearm rights may not be required of an individual as a condition for receiving employment, benefits, or services.

30185. (a) The State Department of Public Health shall create and distribute informational materials, including information on how to access the California Do Not Sell List Internet-based platform, to general acute care hospitals and acute psychiatric hospitals, as defined in Section 1250 of the Health and Safety Code.

(b) A person presenting in a general acute care hospital or an acute psychiatric hospital who is reasonably believed by the treating clinician to be at substantially elevated risk of suicide should generally, as a best practice, be presented with the informational materials provided for in subdivision (a).

(c) A suicide hotline maintained or operated by an entity funded in whole or in part by the state should generally, as a best practice, inform callers on how to access the California Do Not Sell List Internet-based platform.

SEC. 2. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

Date of Hearing: February 14, 2023
Counsel: Liah Burnley

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

AB 56 (Lackey) – As Amended February 9, 2023

SUMMARY: Expands the list of violations eligible for victim compensation from the Victim Compensation Program for emotional injuries to include: mayhem, torture, kidnapping, aggravated kidnapping, kidnapping in the commission of a carjacking, extortion by posing as a kidnapper, assault with intent to commit a sex offense, rape in concert, aggravated sexual assault of a child, sexual acts with a child under 10, stalking, attempted murder, and murder.

EXISTING LAW:

1) Establishes the Victim Compensation Program administered by the California Victim Compensation Board (the "Board") and the procedure for victims to obtain compensation from the Restitution Fund. (Gov. Code, § 13950 et seq.)

2) States the eligibility requirements to obtain victim compensation. (Gov. Code, § 13955.)

3) Provides that a person is eligible for compensation, if as a direct result of the crime, they sustained a physical injury or an emotional injury and a threat of physical injury. (Gov. Code, § 13955, subd. (f).)

4) Provides that a person is eligible for compensation, if as a direct result of the crime, they suffered an emotional injury where the crime was a violation of any of the following offenses:

   a) Human Trafficking;

   b) Rape;

   c) Child abandonment;

   d) Child endangerment;

   e) Child abuse;

   f) Incest;

   g) Sodomy;

   h) Oral copulation;

i) Lewd and lascivious acts with a child;

j) Continuous sexual abuse of a minor;

k) Forcible penetration with an object;

l) Cyber harassment;

m) Coercing a minor to appear in child pornography;

n) Child neglect, other than a failure to pay child support;

o) Statutory rape;

p) Child abduction; and,

q) Deprivation of child custody. (Gov. Code, § 13955, subd. (f).)

5) States the disqualifications for eligibility for victim compensation. (Gov. Code, § 13956.)

6) Defines the scope of victim compensation, including the amount and type of expenses that the Board may reimburse, including, among other things:

a) Medical or medical-related expenses;

b) Outpatient psychiatric, psychological or other mental health counseling related expenses, including counseling to the victim's family;

c) Expense of installing or increasing residential security;

d) Expense of retrofitting a residence or vehicle;

e) Relocation expenses;

f) Funeral and burial expenses;

g) Crime scene clean up;

h) Veterinary services; and,

i) Loss of income and support. (Gov. Code, §§ 13957, 13957.5.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Assembly Bill 56 expands compensation for psychological damage to help assist with developing a continuum of care for effected

individuals. This is a necessary step in helping governmental systems serve victim-survivors, who too often feel as though the structure is set up against them.

"There is immediacy to assist crime victims seeking remedies to trauma. A victim-survivor's pain and suffering following violent crimes leave them shaken to their core. Access to resources would make therapies and other forms of care more readily available. As we reorient our justice system, we should look to implement trauma-informed policies."

2) **The Victim Compensation Program**: The California Victims Compensation Program provides compensation to victims of violent crime for the losses they suffer as a direct result of criminal acts. (Gov. Code, § 13953 et seq.) The Board administers the program and awards compensation to victims with moneys from the state Restitution Fund. (Gov. Code, § 13950, subd. (b).)

   Compensation is available to victims and derivative victims who suffer injuries or death as a direct result of specified crimes. (Gov. Code, § 139501.) To be eligible for compensation, victims must meet specific criteria and file a timely application with the Board. (*Ibid.*)

   Compensation is available for a range of qualified expenses, including, but not limited to, medical and dental expenses, outpatient mental health treatment and counseling, in-patient psychiatric costs, funeral/burial costs, support loss for legal dependents, wage or income loss, job retraining, crime scene clean-up, relocation expenses, veterinarian fees, mileage reimbursements, and home renovation and security improvements. (*Who is Eligible?*, California Victim Compensation Board <https://victims.ca.gov/for-victims/who-is-eligible/> [as of Feb. 8, 2023].)

3) **Victim Compensation for Emotional Injuries**: Generally, victims must be physically injured as a direct result of the crime to receive victim compensation. (Gov. Code, § 13955, subd. (f).)

   In limited circumstances, victims can receive compensation for their emotional injuries. For example, minors are eligible for compensation for emotional injuries from nonconsensual distribution of pictures or video of sexual conduct in which they appear. (Gov. Code, § 13955, subd. (f)(5).) In addition, victims who suffered both, an emotional injury *and* a threat of physical injury are eligible for victim compensation. (Gov. Code, § 13955, subd. (f)(2).)

   Existing law also allows victims to receive compensation for emotional injuries (even if there was no threat of physical injury) for specific violations. (Gov. Code, § 13955, subd. (f)(3)(A)-(D).) These violations include: human trafficking, rape, child abandonment, child endangerment, child abuse, incest, sodomy, oral copulation, lewd and lascivious acts with a child, continuous sexual abuse of a minor, forcible penetration with an object, cyber harassment, coercing a minor to appear in child pornography, child neglect, statutory rape, child abduction, and deprivation of child custody. (*Ibid.*)

   This bill would add several additional offenses to the list of violations for which victims can receive compensation for their emotional injuries. These offenses include: mayhem, torture, kidnapping, aggravated kidnapping, kidnapping in the commission of a carjacking, extortion by posing as a kidnapper, assault with intent to commit a sex offense, rape in concert, aggravated sexual assault of a child, sexual acts with a child under 10, stalking, attempted

murder, and murder.

4) **Condition of the Restitution Fund:** The Restitution Fund, which funds the Victim Compensation Program, has been operating under a structural deficiency for a number of years. In 2015, the Legislative Analyst's Office (LAO) reported the Restitution Fund was depleting and would eventually face insolvency. (LAO, *Improving State Programs for Crime Victims* (2015) <https://lao.ca.gov/reports/2015/budget/crime-victims/crime-victims-031815.aspx≥ [as of Feb. 8, 2023].) Although revenue has remained consistent, expenditures have outpaced revenues since FY 2015-16. The Governor's 2021-22 budget proposed $33 million dollars in one-time General Fund monies to backfill declining fine and fee revenues in the Restitution Fund, and $39.5 million annually afterwards. This amount will allow the Board to continue operating at its current resource level. The Budget Act allows for additional backfill upon a determination that revenues are insufficient to support the Board. (Department of Finance, *California State Budget –2023-24* at 90 <https://ebudget.ca.gov/2023-24/pdf/BudgetSummary/CriminalJustice.pdf> [as of Feb. 8, 2023].) In addition, the 2022 Budget prioritized changes to the victim compensation program and the elimination of the restitution fine, if a determination is made in the spring of 2024 that the General Fund over the multiyear forecast is available to support this ongoing augmentation. (*Ibid.*)

   Should the Legislature expand eligibility for victim compensation when the proposed backfill only allows the Board to continue operating at its current level?

5) **Argument in Support**: According to *California District Attorneys Association* (CDAA), "[AB 56] will bring the Penal Code into closer alignment with our Constitution and ensure just compensation for those who suffer psychological harm from a criminal's violent acts."

6) **Argument in Opposition**: According to *California Attorneys for Criminal Justice* (CACJ), "CACJ asks the Legislature to reject AB 56 and instead follow the lead of the Committee on Revision of the Penal Code and adopt a more functional way to help victims by creating a state-funded system of victim restitution. (2022 Report at pp. 14-18.) Such a system would expedite getting payments to victims…."

7) **Related Legislation**: SB 86 (Seyarto), would require the crime victims resource center to provide information for crime victims through an internet website including information on obtaining restitution from the Board.

8) **Prior Legislation**:

   a) AB 200 (Committee on Budget), of the 2021-2022 Legislative Session, established the Flexible Assistance for Survivors Pilot Program to distribute direct cash assistance to crime victims and made numerous changes to the Board.

   b) SB 993 (Skinner), of the 2021-2022 Legislative Session, was substantially similar to AB 200. SB 993 failed passage on the Assembly Floor.

   c) AB 2534 (Bryan), of the 2021-2022 Legislative Session, would have established the Survivor Support and Harm Prevention Pilot Program to provide resources to survivors of

violence or trauma. AB 2534 was held under submission in the Assembly Appropriations Committee.

d) SB 375 (Durazo), Chapter 375, Statutes of 2019, extended the deadline for victims to file an application for victim compensation from three to 7 years.

e) AB 2809 (Leno), Chapter 587, Statutes of 2008, allowed minors who suffer emotional injuries for witnessing a violent crime to be eligible for victim compensation for the costs of mental health counseling.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association

Opposition

California Attorneys for Criminal Justice

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: February 14, 2023
Counsel: Mureed Rasool

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

AB 67 (Muratsuchi) – As Amended February 9, 2023

SUMMARY: Creates the Homeless Courts Pilot Program, allowing unhoused defendants to participate in a diversion program that would provide the defendant housing, counsel, mental health services, substance abuse treatment, and other specified services. Specifically, **this bill**:

1) Establishes the Homeless Courts Pilot Program in order to provide comprehensive community-based services to homeless defendants and appoints the Judicial Council to award grants as well as oversee its implementation.

2) Requires the Judicial Council to develop guidelines in awarding grants to programs.

3) States that programs must contain, at minimum, all of the following components:

   a) A misdemeanor and infraction diversion program that will require dismissal of charges upon completion;

   b) Representation by a public defender;

   c) A location where the defendant can access all service providers ;

   d) Supportive housing during the course of the program;

   e) A county representative who can assist with obtaining long-term housing, and identify mental health and substance abuse concerns;

   f) Provision of mental health evaluation and services;

   g) Substance abuse treatment; and,

   h) Criminal record clearing services.

4) States that the Judicial Council must give preference to programs that provide:

   a) Weekly mental health and substance abuse counseling services;

   b) Job training or placement services;

   c) Conditional custody release into specified drug abuse programs; and,

   d) Participation of licensed medical practitioners for medication purposes, upon consent of the defendant.

5) Requires applicants to include in their application details regarding staffing activities, services delivered and how grant will cover such costs.

6) Mandates the Judicial Council to establish performance-based outcome measures that at a minimum include:

   a) Demographic information;

   b) Services ordered but not provided;

   c) Housing information;

   d) Detention and conservatorship information;

   e) Successful substance use treatment rates;

   f) Deaths of participants during and after the diversion program; and,

   g) Subjective surveys from participants.

7) Requires the Judicial Council to compile all data and prepare a report to the Legislature outlining the outcomes of the program by July 1, 2027.

8) Sunsets the pilot program on January 1, 2029.

EXISTING LAW:

1) Creates a pretrial diversion program for those charged with certain drug offenses. (Pen. Code, § 1000 *et seq.*)

2) Authorizes courts to create a "deferred entry of judgment" diversion program, as defined. (Pen. Code, § 1000.8 *et seq.*)

3) Creates a pretrial diversion program for those with cognitive developmental disabilities, as defined. (Pen. Code, § 1001.20 *et seq.*)

4) Creates a pretrial diversion program for those with mental disorders, as defined. (Pen. Code, § 1001.35 *et seq.*)

5) Authorizes creation of a pretrial diversion program for traffic violators, as defined. (Pen. Code, § 1001.40.)

6) Authorizes creation of a pretrial diversion program for defendants accused of writing bad checks, as defined. (Pen. Code, § 1001.60 *et seq.*)

7) Creates a pretrial diversion program for members and veterans of the United States military, as defined. (Pen. Code, § 1001.80 *et seq.*)

8) Authorizes creation of a pretrial diversion program for defendants accused of theft offense, as defined. (Pen. Code, § 1001.81 *et seq.*)

9) Creates a pretrial diversion program for primary caregivers under certain circumstances. (Pen. Code, § 1001.83 *et seq.*)

10) Authorizes a pre-booking diversion program for specified offenses to be administered by law enforcement agencies. (Pen. Code, § 1001.87.)

11) Creates a pretrial diversion program for certain misdemeanor offenses. (Pen. Code, § 1001.95 *et seq.*)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 67 builds upon the success of homeless courts as seen in San Diego and Redondo Beach by creating a statewide homeless court grant program. This funding will allow other jurisdictions to apply for their own homeless court which will incorporate certain components of other successful models, but also provides flexibility to tailor their program to their specific region and community's needs. For participants, homeless courts provide access to wraparound services such as housing, employment, public assistance, and treatment programs to better integrate individuals into their communities. For the community, homeless courts engage individuals in a gainful process, removing homeless people from doorways, parks, and gathering places. These individuals can then rebuild their lives by addressing the legal issues that often create barriers to accessing housing, employment, public assistance, and treatment programs."

2) **Judicial Council Recommendations for Assisting with Homelessness**: In 2020, Chief Justice Tani Cantil-Sakauye established a Work Group on Homelessness to "evaluate how court programs, processes, technology, and communications might be improved to better serve people who are without housing or are housing insecure." (Judicial Council, *Report to the Chief Justice: Work Group on Homelessness* (2021) (hereafter *Working Group Homeless Report*) https://www.courts.ca.gov/documents/hwg_work-group-report.pdf at p. 1.) The work group was to "consider how the judicial branch might appropriately work with the executive and legislative branches to reduce homelessness." (*Ibid.*) It found:

> Lack of affordable housing is a major cause of homelessness: experts estimate that California is at least 3 million housing units short of current need. Eviction, foreclosure, conviction, incarceration, civil commitment, debt, increased medical or mental health deterioration or trauma, and loss of a driver's license or transportation are some of the circumstances of homelessness that may flow from the underlying causes. Being without housing can expose a person to legal consequences—such as punishment for loitering, indecent exposure, trespassing, or a failure to appear in court—creating a cycle that is difficult to escape.
>
> Systemic inequality and discriminatory housing practices also significantly contribute to homelessness. Studies show that homelessness disproportionately

> affects those who have already been marginalized or are highly vulnerable, such as people of color, members of the LGBTQIA+ community, youth, foster youth, the elderly, military veterans, and people who have been incarcerated or convicted. Moreover, although it is illegal to discriminate in housing sales, rentals, and lending, equal opportunity does not exist for all. Information gathered by the work group indicates that explicit and implicit biases and systemic disparities continue to exist and affect housing access and retention. (*Id.* at 2 (footnotes omitted).)

According to the work group, homelessness itself is a barrier that impedes access to justice. The group found homeless courts to be a cost-effective model, with savings for the courts exceeding costs, and encouraged "courts to pursue available outside funding to supplant these costs, such as applicable grants administered by the Judicial Council or competitive grants offered through state and federal funding agencies." (*Id.* at 21.) It recommended establishing homeless courts programs in more jurisdictions to reduce barriers to housing stability by clearing fines, fees, warrants, and outstanding cases after treatment and rehabilitation; and emphasized that homeless court eligibility criteria should be as expansive as feasible and should include cases involving higher-level offenses, when appropriate. (*Id.* at 20.)

On collaborative courts more generally, the work group recommended:

- Collaborative courts should be expanded throughout the state by increasing the funding and caseload capacity of existing programs. Courts should ensure that their collaborative court eligibility criteria are as expansive as feasible to enable as many appropriate cases as possible to be processed through the collaborative court programs.

- Courts should implement new collaborative court programs in appropriate jurisdictions. (*Id.* at 22.)

Again, the work group found that these courts saved money, but required dedicated funding to allow caseloads to increase. It encouraged "courts to pursue applicable grants administered by the Judicial Council and competitive grants offered through state and federal funding agencies." (*Id.* at 23.)

This bill would follow the Judicial Council's recommendation to increase the number of homeless court programs and financially support homeless court programs already in existence.

3) **Homeless and Collaborative Courts in California Today:** California has over 450 collaborative courts including homeless courts that "provide rehabilitation services and housing to individuals in need." (Judicial Council, *Report to the Chief Justice: Work Group on Homelessness* (2021) at p. 19.) Collaborative courts generally use a team-based approach to address the underlying issues that led an individual to become involved with the criminal justice system. Teams can include judges, attorneys, probation officers, social workers, service providers, and others. These courts include, among other models, drug courts, reentry courts, mental health courts, homeless courts and veterans treatment courts.

There are currently homeless court programs in 19 counties in the state. (https://www.courts.ca.gov/5976.htm) The first homeless court was created in San Diego in 1989 to specifically address issues facing homeless veterans. Homeless courts generally work with low-level offenders and offer community-based treatment and rehabilitation services rather than jail time to resolve citations and misdemeanors that often result from poverty and homelessness. Homeless courts use "an action-first model that requires participants to achieve individualized treatment, rehabilitation, or other goals before appearing in homeless court. Homeless courts are often convened once a month, and participants resolve their legal issues or cases in a single court appearance." (*Id.* at 20 (footnotes omitted).) According to the Judicial Council, "Homeless court programs recognize the voluntary efforts of participants to improve their lives and move from the streets toward self-sufficiency through community based treatment or services. For participants who complete appropriate treatment or services, the homeless court will dismiss or reduce their charges and clear outstanding fines and fees. (*Id.* at 19.)

This bill would create a pilot program through which the Judicial Council would administer funds and oversee efforts to create new, and expand existing homeless court programs throughout California.

4) **Mental Health, Homeless Courts, and CARE Courts**: Mental health illnesses, drug addiction, and homelessness are unfortunately characteristics that have demonstrably consistent associations with each other. (Stanford Institute for Economic Policy Research (SIEPR). *Homelessness in California: Causes and policy considerations*. (May 2022) https://siepr.stanford.edu/publications/policy-brief/homelessness-california-causes-and-policy-considerations at p. 6-7.) Recently, the LA Homeless Services Authority estimated that 25 percent of homeless individuals had a severe mental illness, one that was a permanent or long-term severe condition. (*Id.* at p. 6.) However, using the same data, the LA Times estimated that about 51 percent of homeless individuals in the survey had a mental health illness. (*Id.*)

   The Community Assistance, Recovery, and Empowerment Act (CARE Act) created a mechanism through which certain individuals can initiate proceedings in a court to require persons with severe mental health illnesses to undergo treatment, both voluntarily and involuntarily. (SB 1338 (Umberg) Chapter 319, Statutes of 2022.) These courts, also known as CARE courts, would potentially apply to homeless individuals with severe mental health illnesses, however, they would not apply to homeless individuals who have mental illnesses that are not as severe. This bill would cover and supply a treatment path to those with less significant mental illnesses, however, unlike CARE courts this bill would only apply if a homeless individual has been charged with a misdemeanor or infraction.

5) **Argument in Support**: According to the *California Public Defenders Association* (CPDA), "AB 67 would, upon appropriation by the Legislature, provide funding for a Homeless Courts Pilot Program designed to provide stabilization for, and address the needs of, chronically homeless justice-involved individuals.

   "CPDA has long supported programs intended to decriminalize and treat poverty, mental illness, and homelessness, and is encouraged by programs like this, which recognize that imprisoning our most vulnerable citizens instead of addressing the root causes of their offense is inefficient, costly, and cruel.

"While we applaud the use of grant funding and innovative thinking to address poverty and mental-health related crimes, we would also respectfully suggest that this bill could, and should, do more.

"As written, the bill applies only to defendants charged with 'infractions or misdemeanors,' thereby excluding anyone charged with a felony, no matter how minor. As we know all too well, laws that draw rigid distinctions between 'felony' and 'misdemeanor' conduct often fail to capture nuance, and do not offer counties and courts needed flexibility, frequently leaving otherwise eligible people on the wrong side of the line.

"A defendant charged with 'felony' vandalism for breaking a window, or a schizophrenic man charged with felony resisting arrest, for example, would be excluded under the language of the current bill, even if the court, prosecutor, and defendant would all prefer that they receive services in a program funded by this bill.

"As such, we urge you to consider expanding this proposal to allow counties that want to offer services to a broader array of people, including homeless defendants charged with felonies, to do so."

6) **Related Legislation**: SB 63 (Ochoa Bogh), would establish the Homeless and Mental Health Court Grant Program to disburse grants to such courts. SB 63 is currently pending hearing in the Senate Public Safety Committee.

7) **Prior Legislation**:

   a) SB 1338 (Umberg), Chapter 319, Statutes of 2022, established the Community Assistance, Recovery, and Empowerment Court Program.

   b) AB 2220 (Muratsuchi), of the 2021-2022 Legislative Session, would have established the Homeless Courts Pilot Program to be administered by the Judicial Council. AB 2220 was referred to the Assembly Appropriations Committee and held in the Suspense File.

   c) SB 1421 (Jones), Chapter 671, Statutes of 2022, created the California Interagency Council on Homelessness primarily to identify and coordinate resources, benefits, and services to prevent and end homelessness in California.

   d) AB 2899 (Migden), of the 2001-2002 Legislative Session, would have established a Homeless Court Pilot Project which would have allowed for alternative sentencing for homeless defendants and would have provided for certain outreach services. AB 2899 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Friends Committee on Legislation of California

Opposition

None

Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

Date of Hearing: February 14, 2023
Counsel: Mureed Rasool

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

AB 76 (Davies) – As Amended February 6, 2023

SUMMARY: Expands anti-money laundering statutes to cover virtual assets using blockchain technology. Specifically, **this bill**:

1) Expands the prohibition on money laundering to cover use of blockchain technology.

2) Defines "monetary instrument" to include virtual assets that use blockchain technology.

3) Defines "blockchain technology" as a "distributed digital ledger of cryptographically signed transactions grouped into blocks, where each block is cryptographically linked to the previous one after validation and undergoing a consensus decision."

4) Makes technical, non-substantive updates.

EXISTING LAW:

1) Prohibits a person from conducting, through a financial institution, one or more transactions of specified amounts of monetary instruments over certain periods of time, in order to facilitate criminal activity or knowing that the monetary instruments are derived from criminal activity. (Pen. Code § 186.10, subd. (a).)

2) Defines a "financial institution" to include, when located or doing business in this state, a national bank, state bank, savings and loan association, foreign bank, brokers or dealers in registerable securities, businesses dealing with money orders, investment bankers, insurers, gold or other specified mineral dealers, pawnbrokers, persons involved in transferring titles of real estate and certain other properties, and specified gambling establishments, among other things. (Pen. Code § 186.9, subd. (b).)

3) Defines "monetary instrument" as, among other things, any currency or coin, bank check, cashier's check, money order, stock, investment security, gold and other specified minerals. Excepts personal checks under certain circumstances. (Pen. Code § 186.9, subd. (d).)

4) Defines "criminal activity" as a criminal offense punishable by death, state prison, imprisonment in county jail pursuant to criminal justice realignment, or an offense committed in another jurisdiction punishable by death or a term of imprisonment exceeding one year. (Pen. Code § 186.9.)

5) States that money laundering is punishable by as an alternate misdemeanor or as a felony under realignment, unless the transaction exceeds certain amounts, in which case additional terms of imprisonment will be imposed. (Pen. Code § 186.10, subd. (c).)

6) Prohibits a person from possessing money or negotiable instruments exceeding a specified amount, knowing that the moneys are the result of illicit controlled substance-related activity. (Health & Saf. Code, § 11370.6.)

7) Prohibits a person from engaging in a specified type of transaction involving proceeds known to derive from certain controlled substance-related violations, with the intent to disguise the source of the proceeds. (Health & Saf. Code, § 11370.9.)

FEDERAL LAW:

1) Prohibits a person, in part, from conducting certain financial transactions knowing that the property contains proceeds of unlawful activity if they did so to facilitate such unlawful activity or to disguise the illicit origins of the proceeds. (18 U.S.C. § 1956, subds. (a)(1)(A)(i) & (a)(1)(B)(i).)

2) Prohibits a person, in part, from conducting certain financial transactions involving property represented by law enforcement to be derived from illicit activity, as specified. (18 U.S.C. § 1956, subds. (a)(3)(A) & (a)(3)(B).)

3) Defines, a "financial transaction," in part, as a transaction which in any way or degree affects interstate or foreign commerce, or involves the movement of funds by wire or any other means. (18 U.S.C. § 1956, subd. (c)(4).)

4) Defines "specified unlawful activity," as certain racketeering offenses, certain offenses related to controlled substances, certain extraditable offenses, among other things. (18 U.S.C. § 1956, subd. (c)(7).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, ""California is a leader in consumer protection and ensuring our laws reflect the growing and innovative technology used for day-to-day transactions. This technology has continued to evolve to now include cryptocurrency. AB 76 is a common-sense measure to strengthen our state's money laundering statutes and close the current loophole that permits the laundering of assets using cryptocurrency. It should also be noted that as we have seen a rise in drug trafficking, nefarious organizations are using this type of currency to escape detection and continue their illegal activities in the underground markets. California law must evolve to keep up with the digital operating methods of financial criminal organizations."

2) **Money Laundering and the Rise of Virtual Assets**: Most individuals generally think money laundering refers to the process by which criminals try to disguise illegally-gained financial assets in a manner such that the assets appear to come from a legal source. However, California's anti-money laundering laws prohibit more than just trying to conceal the nature of ill-begotten assets. (Pen. Code, § 186.10, subd. (a).) State laws prohibit certain transactions simply if a person knew the assets were derived from criminal activity or if they conducted the transaction with the intent to facilitate a criminal activity. (*Id.*) Currently, state law specifies that US and foreign currency, checks, money orders, gold, emeralds, stocks,

investment security, and other types of financial assets are "monetary instruments" and prohibits a person from laundering those items. (Pen. Code, § 186.9, subd. (d).) In part, this bill would include virtual assets, as defined, into California's anti-money laundering statutes.

This update is needed because over the past few years, virtual assets such as bitcoin and non-fungible tokens (NFTs) have risen in use for both legitimate and illegitimate purposes. The rise of virtual assets in general has left governments playing catch-up to try and regulate this new technology. (Department of Treasury. *National Money Laundering Risk Assessment.* (Feb. 2022) (hereafter *ML Risk Assessment*) https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf [as of Feb. 7, 2022] at pg. 40-41.) Although the use of virtual assets for money laundering remains far below traditional methods in volume, law enforcement agencies in the U.S. have recently detected an increase in virtual assets being used to pay for online drugs or to launder proceeds of drug trafficking, fraud, and cybercrime, among other offenses. (*ML Risk Assessment* at 41.) For example, the US Government Accountability Office (GAO) found that 15 of the 27 online commercial sex marketplaces they examined accepted virtual currencies. (GAO. *As Virtual Currency Use in Human and Drug Trafficking Increases, So Do the Challenges for Federal Law Enforcement.* (Feb. 24, 2022) https://www.gao.gov/blog/virtual-currency-use-human-and-drug-trafficking-increases-so-do-challenges-federal-law-enforcement [as of Feb. 9, 2023].)

One of the first issues in discussing virtual assets is conceptually understanding and using the appropriate terminology. A virtual asset can include bitcoin and similar digital coins, which are regarded as "cryptocurrency" and are generally defined as a digital asset/unit within a system, which is cryptographically sent from one blockchain network user to another by using digital signatures. (U.S. Dept. of Commerce National Institute of Standards and Technology (NIST) *Glossary: Cryptocurrency.* https://csrc.nist.gov/glossary/term/cryptocurrency [as of Feb. 7, 2023].) Most cryptocurrencies rely on a "blockchain" to conduct their transactions. (LA Times. *A beginner's guide to cryptocurrency.* (Dec. 24, 2021) (hereafter *Crypto Beginner's Guide*) https://www.latimes.com/business/technology/story/2021-12-24/a-beginners-guide-to-cryptocurrency [as of Feb. 8, 2023].) A blockchain is essentially a network of computers that store and update permanent digital records of every transaction on the network. (*Id.*) Blockchain uses cryptography, a mathematical technique that turns information into unbreakable codes, to ensure bitcoins are not spent more than once and allow for the computers on the network to keep identical and immutable records. (*Id.*) That being said, the future of cryptocurrency may not always be tied to the blockchain system, alternative cryptocurrencies using Directed Acyclic Graphs or Cloud services are already in existence. (TechTarget. *6 alternatives to blockchain for businesses to consider.* (May 25, 2021) https://www.techtarget.com/searchcio/feature/6-alternatives-to-blockchain-for-businesses-to-consider [as of Feb. 6, 2023].)

Although cryptocurrencies are the most prominent of virtual assets, a virtual asset can also, although not always, include an "NFT." (*FATF Update* at pg. 24; US Internal Revenue Service. *Digital Assets.* https://www.irs.gov/businesses/small-businesses-self-employed/digital-assets#:~:text=A%20digital%20asset%20that%20has,to%20as%20convertible%20virtual%20currency. [as of Feb. 7, 2023].) An NFT is generally defined as a virtual asset that is unique, rather than interchangeable, and in practice is used as a collectible, however, its classification

can vary depending on the circumstances of its use. (*Id.*)

As such, a "virtual" or "digital" asset has been defined in various ways depending on the government or agency involved, but one of the most prevalent definitions is, "a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes… [not including] digital representations of fiat currencies…" (*FATF Update* at 109.) This bill would expand California's money laundering statutes to cover instances where criminals conduct transactions using virtual assets based on blockchain technology, if they knew that the virtual assets are derived from the proceeds of criminal activity or if they intended to facilitate a criminal activity.

3)

Virtual Assets and the Circumvention of Financial Institutions: One of the increasingly prevalent methods of transferring virtual assets is through Peer-to-Peer (P2P) transactions. (*ML Risk Assessment* at 41.) P2P transactions in the money laundering context have generally been defined as virtual asset transfers conducted without the involvement of a virtual asset provider (VASP) or other obliged entity. (FATF. *Updated Guidance for a Risk-Based Approach: Virtual Assets and Virtual Asset Service Providers*. (Oct. 2021.) (hereafter *FATF Update*) https://www.fsb.org/2021/10/updated-guidance-for-a-risk-based-approach-to-virtual-assets-and-virtual-asset-service-providers/ [as of Feb. 7, 2023] at pg. 18.) A VASP is a person or business that will exchange virtual assets for fiat currencies or for other types of virtual assets. (*FATF Update* at 24.) In the United States, VASPs have been determined to be "money transmitters," and so they have to comply with numerous registration and reporting requirements designed to prevent money laundering. (*ML Risk Assessment* at 40-41.)

In essence, a P2P transaction means one individual can electronically transfer a virtual asset from their "wallet" directly to another individual's "wallet" without going through a financial institution like a VASP. Money launderers are increasingly using P2P transactions in order to avoid the registration and reporting requirements that apply to VASPs. (*Id.*) As more and more companies begin accepting virtual assets as payment for goods or services, it can be easier for money launderers to use their virtual assets without ever going through a VASP. In terms of NFTs in the money laundering context the US Treasury has stated, "NFTs can be used to conduct self-laundering, where criminals may purchase an NFT with illicit funds and proceed to transact with themselves to create records of sales on the blockchain. The NFT could then be sold to an unwitting individual who would compensate the criminal with clean funds not tied to a prior crime. It is also possible to have direct peer-to-peer transactions of NFT-secured digital art without the involvement of an intermediary, and these transactions may or may not be recorded on a public ledger." (US Dept. of Treasury. *Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art*. (Feb. 2022) https://home.treasury.gov/system/files/136/Treasury_Study_WoA.pdf at pg. 26 [as of Feb. 9, 2023].)

Apart from certain transactions involving controlled substances, California's money laundering statutes require that the transaction go through a financial institution, as specified. (Pen. Code, § 186.10, subd. (a); Health & Saf. Code, § 11370.9.) This bill would not require a transaction that uses virtual assets to go through a financial institution, and so would cover P2P transactions.

4) **Argument in Support**: According to the bill's sponsor, *The Conference of California Bar Associations*, "Last year, illicit cryptocurrency transactions reached an all-time high of $20.1 billion… Given their use in conducting near-instant transactions that can bypass the scrutiny of financial institutions, nonfungible tokens and cryptocurrencies have become major conduits for money laundering…

"Currently, Penal Code section 186.10 provides that the crime of money laundering involves transactions of 'monetary instruments' in amounts greater than $5,000 that are facilitated by a 'financial institution,' with either the intent to facilitate criminal activity or the knowledge that the funds are derived therefrom. Under Penal Code section 186.9, the current definition of 'monetary instrument' includes government-back currencies, checks, money order, and certain kinds of transferable assets, such as precious metals, gems, and securities. But it does not include digital assets, like cryptocurrencies and NFTs…

"…As transactions involving cryptocurrency and non-fungible tokens continue to grow in volume and in commercial acceptance, we must ensure that existing laws that prohibit money laundering are updated to reflect these trends…"

5) **Argument in Opposition**: According to *Sorare* and *Dapper Labs*, "Dapper Labs and Sorare are the world's leading digital collectible NFT companies. They sell modern-day digital versions of baseball, basketball and other sports cards. These digital collectibles are stored on the blockchain, which makes it easy for consumers to confirm their ownership and provenance. But digital baseball cards are not the same as cryptocurrency or digital monetary instruments, and should not be regulated as such. As digital versions of traditional consumer products, NFTs are subject to traditional federal and state consumer protection, anti-fraud, and false advertising laws, and also to federal and state cybercrime and data protection laws that extend to digital products.

"Dapper Labs and Sorare support the author's intention to update California's money laundering law to reflect technological advances and ensure that money laundering with cryptocurrency does not escape law enforcement jurisdiction. However, as written, the bill's definition of "monetary instrument" explicitly includes NFTs and other virtual assets regardless of their financial or monetary utilization and risks. We propose instead that AB 76 be limited to virtual assets that are used as monetary instruments in the traditional sense.

"We encourage the Committee to consider the U.S. Treasury Department's February 2022 report that examined money laundering in the digital art market. On page 26, the report distinguishes between financial and non-financial NFTs. The report states, "Digital assets that are unique, rather than interchangeable, and that are used in practice as collectibles rather than as payment or investment instruments, depending on their characteristics, are generally not considered to be virtual assets under the FATF definition. NFTs or other digital assets, however, that are used for payment or investment purposes in practice may fall under the virtual asset definition, and service providers of these NFTs could meet the FATF definition of a VASP.

"We urge the Committee to adopt our proposed simple fix that aligns with the U.S. Treasury analysis, and thereby ensure that digital collectibles are not captured in AB 76's definition of 'monetary instrument.' "

6) **Related Legislation**: AB 39 (Grayson), would provide for regulatory oversight for digital financial asset businesses. AB 39 is pending hearing in the Assembly Banking and Finance Committee.

7) **Prior Legislation**:

   a) AB 2269 (Grayson), of 2021-22 Legislative Session, would have provided for regulatory oversight for digital financial asset businesses. AB 2269 was vetoed by the Governor.

   b) AB 1489 (Calderon), of 2019-20 Legislative Session, would have established a regulatory framework and licensing requirement for virtual currency business activity based on a model law put forward by the Uniform Law Commission. The bill failed passage in the Assembly Banking Committee.

   c) AB 1123 (Dababneh), of 2017-18 Legislative Session, would have established a regulatory framework and licensing requirement for virtual currency business activity. The bill failed passage in the Assembly Banking Committee.

   d) AB 1326 (Dababneh), of 2015-16 Legislative Session, would have established a regulatory framework and an enrollment program for persons engaged in digital currency business activity. The bill failed passage in the Senate Banking Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California State Sheriffs' Association
Claremont Police Officers Association
Conference of California Bar Associations
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

Dapper Labs
Sorare

Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

Date of Hearing: February 14, 2023
Counsel: Liah Burnley

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

AB 88 (Sanchez) – As Introduced January 4, 2023

SUMMARY: Requires a court to hold a resentencing hearing if the victim notifies the prosecution of their request to be heard. Specifically, **this bill**:

1) States that if a victim wishes to be heard pursuant to Marsy's Law (Cal. Const., art. I, § 28) or any other provision of law applicable to a resentencing hearing, the victim shall notify the prosecution of their request to be heard within 15 days of being notified that resentencing is being sought and the court shall provide an opportunity for the victim to be heard.

2) Prohibits the California Department of Corrections and Rehabilitation (CDCR) and the Board of Parole Hearings (BPH) from requiring a victim, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these persons, or victim support persons to give more than 15 days' notice of their intention to attend a parole hearing.

EXISTING LAW:

1) States that in order to preserve a victims' right to due process and justice, the victim is, among other things, entitled to:

   a) Reasonable notice of all public proceedings that the defendant and the prosecutor are entitled to be present;

   b) Reasonable notice of all of and of all parole or other post-conviction release proceedings, as well as to be present at these proceedings;

   c) The right to be heard, upon request, at any proceeding, including sentencing, a post-conviction release decision, or any proceeding in which a right of the victim is at issue; and,

   d) The right to be informed of all parole procedures, to participate in the parole process, and to provide information to the parole authority to be considered before the person is paroled. (Cal. Const., art. I § 28(b)(7)-(8) & (15).)

2) Provides that when a defendant has been convicted of a felony offense and imprisoned, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation CDCR or BPH in the case of state prison inmates, the county correctional administrator in the case of county jail inmates, or the district attorney of the county in which the defendant was sentenced, or the Attorney General (AG) if the Department of Justice (DOJ) originally prosecuted the case, recall the sentence and

commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, whether or not the defendant is still in custody, provided the new sentence, if any, is not greater than the initial sentence. (Pen. Code, § 1170.03, subd. (a)(1).)

3) Provides that resentencing may be granted without a hearing upon stipulation by the parties. (Pen. Code, § 1170.03, subd. (a)(7).)

4) Prohibits resentencing from being denied, or a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection. (Pen. Code, § 1170.03, subd. (a)(8).)

5) Provides that the victim, next of kin, members of the victim's family and two designated representatives have the right to appear, personally or by counsel, at the parole hearing and to adequately and reasonably express their views concerning the inmate and the case. (Pen. Code, § 3043, subd. (b).)

6) States that the victim or victim's next of kin is entitled to be notified, upon request, of any parole eligibility hearing and of the right to appear, either personally or by other means, to reasonably express their views, and to have their statements considered. (Pen. Code, § 679.02, subd. (a)(5).)

7) Provides that upon request to CDCR and verification of the identity of the requester, BPH must send the victim, or the victim's next of kin, notice of any parole hearing at least 90 days before the hearing. (Pen. Code, § 3043, subd. (a)(1).)

8) States that no later than 30 days before the hearing, any person, other than the victim, entitled to attend the parole hearing must inform BPH of their intention to attend. (Pen. Code, § 3043, subd. (a)(2).)

9) States that no later than 14 days before the hearing, BPH must notify every person entitled to attend the parole hearing confirming the date, time, and place of the hearing. (Pen. Code, § 3043, subd. (a)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Too often, crime victims are unable to voice their concerns during criminal proceedings due to unnecessary bureaucratic hurdles. AB 88 will help crime victims meaningfully access and participate in parole hearings so that their perspectives are shared. The bill ensures that crime victims will not be an afterthought, but can be crucial participants in our criminal justice system."

2) **Marsy's Law:** On November 4, 2008, voters approved Proposition 9, which amended the California Constitution to provide a victim's Bill of Rights. This is Marsy's Law. (Cal. Const., art. I § 28.) Under Marsy's Law a victim has a right to: reasonable notice of all public proceedings that the defendant and the prosecutor are entitled to be present at, reasonable

notice of all parole and post-conviction release proceedings, and to be present at these proceedings; to be heard, upon request, at any proceeding in which a right of the victim is at issue, including sentencing and post-conviction release decisions; and, to be informed of all parole procedures, to participate in the parole process, and to provide information to the parole authority to be considered before the person is paroled. (Cal. Const., art. I § 28, subd. (b)(7)(8) & (15).)

3) **Resentencing**: Generally, a court loses jurisdiction over a sentence when the sentence begins. (*Dix v. Superior Court* (1991) 53 Cal. 3d 442, 455.) Once sentenced, the court no longer has the legal authority to increase, reduce, or change the defendant's sentence. (*Ibid.*) However, the Legislature created limited statutory exceptions allowing a court to recall a sentence and resentence the defendant. Specifically, within 120 days of commitment for a felony conviction, the court has the ability to resentence the defendant as if it had never imposed sentence, if the new sentence is no greater than the original sentence. In addition, CDCR, BPH, the county correctional administrator, the district attorney, or the AG can make a recommendation for resentencing at any time. (Pen. Code, § 1170.03, subd. (a).)

   The recall and resentencing law was recently amended to include procedures such as when a hearing is required. (Pen. Code, § 1170.03; AB 1540 (Ting), Chapter 719, Statutes of 2021.) The recall and resentencing process requires a hearing to be set to determine whether the person should be resentenced, unless otherwise stipulated to by the parties, and requires the court's decision to grant or deny the petition to be stated on the record. (Pen. Code, § 1170.03.)

   This bill would require, notwithstanding the provision that authorizes the parties to stipulate to resentencing without a hearing, the victim to notify the prosecution of their request to be heard within 15 days of being notified that resentencing is being sought, and requires the court to provide the victim an opportunity to be heard.

   Marsy's Law does not authorize victims to require a hearing when neither the prosecution, defense, or court determines one to be necessary; rather, the law states that the victim shall have the opportunity to be heard at any proceeding "involving a post–arrest release decision, plea, sentencing, post–conviction release decision, or any proceeding in which a right of the victim is at issue." (Cal. Const., art. I § 28(b)(8).) This could be satisfied, for example, by allowing a victim to submit a statement or attend and provide a statement in person during relevant resentencing proceedings when they occur.

4) **Parole Hearings**: Penal Code section 3043, subdivision (a)(2), requires any person, other than the victim, who is entitled to attend a parole hearing and intends to do so, to provide at least 30 days' notice to BPH of their intent to attend the hearing. Under CDCR regulations, victims must provide at least 15 days' notice and their next of kin, family members, representative, counsel, and support person must provide at least 30 days' notice of their intention to attend parole hearings, regardless of whether they will participate in person or remotely. (15 CCR § 2057(b)(1)-(3) & (c)(1)-(3).) This bill would limit the amount of notice that CDCR may require from any of these persons, of their intent to attend a parole hearing, to no more than 15 days.

5) **Argument in Support**: According to the *Riverside County Sheriff's Office*, "California afforded crime victims a state constitutional right to be heard when the People passed the

California Victims' Bill of Rights, known as Marsy's Law, in 2008. Since then, there have been several attempts by this legislative body to stomp on those rights by giving more weight to defendants' rights over victims' rights.

"For example, your house introduced and passed AB 1812, which codified §1170(d) of the California Penal Code in 2018, which provides guidelines to the courts for resentencing specified defendants. AB 1812 *did not* take the victim's voice and concerns into consideration. Likewise, your house introduced and passed AB 2942, which took effect in 2019, which further expanded §1170(d) of the California Penal Code, by giving District Attorneys the authority to make resentencing recommendation. As previously noted, this bill also *did not* take the victim's rights into consideration. This bill aims at restoring those constitutional rights belonging to crime victims and their families."

6) **Argument in Opposition**: According to *Initiate Justice*, "AB 88 (Sanchez) purports to support 'voiceless' victims of crime, but in fact, victims do have voices and they have expressed their desire for counseling and healing services, not further exposure to court hearings. According to California Crime Survivors Speak, less than one in five California crime victims report receiving financial assistance, counseling, medical assistance and other types of healing services that can help someone recover and stabilize. Supporting victims looks like ensuring they have what they need to be whole again, not attending more court dates.

"Re-sentencing hearings are few and far in between, and when they do happen, they are the result of years of deliberation. These decisions are not arrived at lightly, and often come after the facts of the case have been closely scrutinized and an incarcerated person has served decades in prison while often times demonstrating a strong rehabilitation record. Rarely, if ever, do victims have any personal knowledge of an incarcerated person's current actions, statements, attitudes, or current risk to public safety."

7) **Related Legislation**: AB 89 (Sanchez), would require the prosecutor's office to give reasonable notice to BPH and the victim, victim's next of kin, or members of the victim's family if they will not send a representative to a parole hearing. AB 89 will be heard in this Committee today.

8) **Prior Legislation**:

   a) AB 1846 (Valladares), of the 2021-2022 Legislative Session, would have reimbursed a victim or their family member for the reasonable cost of attorneys' fees up to $900 when the prosecutor will not appear at the parole hearing on their behalf. AB 1846 was held under submission in Assembly Appropriations Committee.

   b) AB 1847 (Valladares), of the 2021-2022 Legislative Session, was substantially similar to this bill. AB 1847 died on suspense file in Senate Appropriations.

   c) AB 2409 (Davies), of the 2021-2022 Legislative Session, would have required the district attorney to inform any victim of their right to request that BPH notify them of an inmate's parole suitability hearing, and would allow the victims to request specified documents related to the inmate's parole suitability and ask clarifying questions at the

hearing. AB 2409 was held under submission in Assembly Appropriations Committee.

d) AB 1540 (Ting), Chapter 719, Statutes of 2021, prohibited the court from denying a recall and resentencing motion without a hearing and created a presumption favoring recall and resentencing when such a motion is based on the recommendation CDCR, BPH, local authorities, or DOJ.

e) AB 2942 (Ting), Chapter 1001, Statutes of 2018, allowed the district attorney of the county where a defendant was convicted and sentenced to make a recommendation that the court recall and resentence the defendant.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Police Chiefs Association
California State Sheriffs' Association
Orange County Sheriff's Department
Peace Officers Research Association of California (PORAC)
Riverside County Sheriff's Office

Opposition

California Attorneys for Criminal Justice
Initiate Justice

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: February 14, 2023
Counsel: Liah Burnley

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

AB 89 (Sanchez) – As Introduced January 4, 2023

As Proposed To Be Amended In Committee

SUMMARY: Requires the prosecuting agency to give notice to the Board of Parole Hearings (BPH) and the victim, victim's next of kin, or members of the victim's family if they will not send a representative to a parole hearing. Specifically, this bill:

1) Requires the prosecuting agency to give notice no less than 45 days' notice to the BPH, and the victim, victim's next of kin, or members of the victim's family if they will not send a representative to a parole hearing.

2) Provides that the hearing cannot be postponed due the failure of the prosecuting agency to provide notice.

3) Defines "parole suitability hearing" for purposes of this provision as including a youth offender parole hearing, and elderly parole hearing, and nonviolent offender parole hearing.

EXISTING LAW:

1) Authorizes BPH to determine whether people who are serving indeterminate sentences are suitable for release on parole once they reach their minimum eligible parole date. (Pen. Code, § 3041, subd. (a).)

2) Provides that parole shall be granted unless it is determined that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offenses, is such that consideration of the public safety requires a more lengthy period of incarceration. (Pen. Code, § 3041, subd. (b).)

3) Allows the victim of a crime to request that BPH notify them of any parole suitability hearing or, if the victim is deceased, the victim's next of kin may make the request for notification. (Pen. Code, § 3043, subd. (a).)

4) Provides that the victim, next of kin, members of the victim's family and two designated representatives have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express their views concerning the inmate and the case. (Pen. Code, § 3043, subd. (b).)

5) Provides that the BPH, in deciding whether to release the person on parole, must consider the statements of victims, their next of kin, their immediate family members, and designated representatives and include in its report a statement of whether the person would pose a threat to public safety if released on parole. (Pen. Code, § 3043, subd. (d).)

6) Allows the prosecutor to represent the views of the victim, their family members, or next of kin to BPH. (Pen. Code, § 3043.2, subd. (c).)

7) States that the victim, their representative or next of kin, or the prosecutor, when representing their views, has the right to speak last before BPH at the parole hearing. (Pen. Code, § 3043.6.)

8) Entitles victims to be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender. (Cal. Const., Art. I, § 28(b)(15) [Marsy's Law].)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 89 is a commonsense measure that will ensure that crime victims are aware of whether the district attorney's office prosecuting the crime will be sending a representative to attend a parole hearing. Crime victims deserve to know whether a member of the prosecution will be present to make comments in connection to the crime that impacted them. It is common practice for district attorneys to send representatives to these hearings. But if they choose not to, it should be the responsibility of that office to notify the crime victims."

2) **Role of the Victim at Parole Hearings**: Marsy's Law entitles victims to be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender. (Cal. Const., Art. I, § 28(b)(15) [Marsy's Law].)

   Victims, next of kin, members of the victim's family, and their representatives have the right to attend parole hearings and to appear, personally or by counsel, at the hearing and to adequately and reasonably express their views concerning the inmate and the case. (Pen. Code, § 3043.) Victims and victims' next of kin who have registered with CDCR's Office of Victim and Survivor Rights and Services (OVSRS) receive notice of parole hearings at least 90 days before the parole hearing. Notices identify whether the hearing is scheduled to be conducted in person or by videoconference. (CDCR, *Fact Sheet – Proposed Regulations to Conduct Parole Hearings by Videoconference* (Aug. 2021) <https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2021/08/Fact-Sheet-Videoconference-Regs-8-16-2021.pdf> [as of Feb. 8, 2023].) In deciding whether to release the person on parole, BPH must consider the statements of victims, their next of kin, their immediate family members, and designated representatives. (Pen. Code, § 3043, subd. (d).)

3) **Role of the Prosecutor at Parole Hearings**: The prosecutor or a representative of the county from which the inmate was committed must be invited to attend the parole hearing to represent the interest of the people. (Pen. Code, § 3041.7.) BPH regulations permit, but do not require prosecutors to appear at the parole hearing. (Cal. Code Regs., tit. 15, § 2030.) Prosecutors who attend parole hearings are authorized to comment on the facts of the case

and present an option about the appropriate disposition. (*Ibid.*) The prosecutor is allowed, but not required, to represent the views of the victim to BPH. (Pen. Code, § 3043.2, subd. (c).) Prior to the hearing, CDCR will send the inmate, their counsel, the prosecutor, and BPH a "board packet." (Cal. Crim. Law Procedure & Practice (2021) § 47.28, pp. 1580-1581 (CEB).) The packet should include information from the inmate's central file (C-file), including BPH reports, psychological reports, support letters, and records of any prior hearings. (*Id.* at p. 1581.)

4) **Los Angeles County District Attorney's Policy on Attending Parole Hearings**: In December of 2020, the Los Angeles County District Attorney's Office announced a default policy that they would not attend parole hearings, that the office would continue to notify and advise victims under California law, and remain committed to a process of healing and restorative justice for all victims. The Los Angeles District Attorney's Office justified the parole policy on the grounds that:

> We are not experts on rehabilitation. While we have information about the crime of conviction, the Board of Parole Hearings already has this information. Further, as the crime of conviction is of limited value in considering parole suitability years or decades later, the value of a prosecutor's input in parole hearings is also limited. Finally, pursuant to Penal Code section 3041, there is a presumption that people shall be released on parole upon reaching the Minimum Eligible Parole Date (MEPD), their Youth Parole Eligible Date, (YEPD), or their Elderly Parole Date (EPD). Currently, sentences are being served that are much longer than the already lengthy mandatory minimum sentences imposed. Such sentences are constitutionally excessive.

(George Gascón, L.A. Cnty. Dist. Atty's Off., *Special Directive 20-14*, at 8 (2020) <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-14.pdf> [as of Feb. 8, 2023].) Some research has shown that excluding prosecutors from parole hearings could reduce the amount of unhelpful and unreliable evidence introduced at the hearing and could improve California's parole system. (Murica, *Prosecutors, Parole, and Evidence: Why Excluding Prosecutors from Parole Hearings Will Improve California's Parole Process* (2022) 55 Loyola. L.A. L. Rev. 441, 450.)

5) **Proposed Amendments**: As introduced, this bill would require the prosecuting agency to give "reasonable notice" if they will not be sending a representative to a parole hearing. The bill does not define "reasonable notice," which could create confusion for prosecutors, victims, advocates and BPH. The proposed amendments clarify that the prosecuting agency must give no less than 45 days' notice.

As introduced, this bill would only apply to prosecuting agencies that do not have a general policy to send a person to represent the interests of the victim at parole suitability hearings. This provision also lacks clarity because prosecutor's role at the hearing is to represent "the People," not to singularly represent the victim (Pen. Code, § 3041.7.) Accordingly, the proposed amendments remove this provision, so the prosecution agency must notify the victim if they do not intend to appear at the hearing, irrespective of the agency's general internal policy on representing victims at parole hearings.

The proposed amendments also address concerns from advocates that the notice requirement could "postpone a hearing and significantly delay a parole applicant's return to their community due to no fault of the parole applicant." The proposed amendments provide that a hearing cannot be postponed due the failure of the prosecuting agency to provide notice.

6) **Argument in Support**: According to *the Riverside County Sheriff's Office*, "AB 89 is straight forward and simple. It simply requires the original prosecuting agency to provide notice to the board and to the crime victim if they will not be sending a representative to the hearing. These specific government agencies represented the victim, their families, and the people of the state of California in those original criminal proceedings and are intimately familiar with the victims' concerns. If these government agencies choose not to send a representative to the hearing, like some agencies have unfortunately chosen to do, then crime victims are left disenfranchised and unrepresented in violation of their constitutional rights. Crime victims will then have the opportunity to speak for themselves, or have a representative speak for them, if the original prosecuting agencies does not.

   "This measure ensures that victim voices are not disregarded and smothered by the incarcerated person's voice or that of their legal representative's voice."

7) **Argument in Opposition**: According to *Initiate Justice*, "AB 89 (Sanchez) is an unnecessary measure. Under Marsy's Law, the prosecuting agency (either the county district attorney or state attorney general) is allowed to appear at parole hearings, but they appear as representatives of the prosecuting agency, not of the individual victims of any particular crime. Furthermore, their decision whether to participate in a hearing is likely based on whether their presence would add relevant information bearing on the parole applicant's current dangerousness beyond what is already reflected in their paper file (including programming records, disciplinary records, comprehensive risk assessment, parole plans, the parole applicant's written statements, etc.). Since there is no right to legal representation for victims in parole proceedings, and these hearings are administrative and non-adversarial, there is little value in notifying victims of non appearance since their presence isn't meant to relitigate the crime anyway.

   "In order to properly support victims, the Legislature should invest in more healing resources and programs. According to California Crime Survivors Speak1, less than one in five California crime victims report receiving financial assistance, counseling, medical assistance and other types of healing services that can help someone recover and stabilize. Victims are being failed in so many ways, only one of which is by the discretionary parole process that has a 80-85% denial rate each year. Holistic care requires so much more than retraumatizing victims by sending notices of Parole hearings and potential non appearances."

8) **Related Legislation**: AB 88 (Sanchez), would limit the amount of notice victims must provide to attend a parole hearing. AB 88 will be heard in this Committee today.

9) **Prior Legislation**:

   a) AB 1846 (Valladares), of the 2021-2022 Legislative Session, would have reimbursed a victim or their family member for the reasonable cost of attorneys' fees up to $900 when the prosecutor will not appear at the parole hearing on their behalf. AB 1846 was held

under submission in Assembly Appropriations Committee.

b) AB 1847 (Valladares), of the 2021-2022 Legislative Session, would have limited the amount of notice victims must provide to attend a parole hearing. AB 1847 died on suspense file in Senate Appropriations.

c) AB 2409 (Davies), of the 2021-2022 Legislative Session, would have required the district attorney to inform any victim of their right to request that BPH notify them of an inmate's parole suitability hearing, and would allow the victims to request specified documents related to the inmate's parole suitability and ask clarifying questions at the hearing. AB 2409 was held under submission in Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Police Chiefs Association
Crime Survivors Resource Center
Orange County Sheriff's Department
Peace Officers Research Association of California (PORAC)
Riverside County Sheriff's Office

Opposition

California Attorneys for Criminal Justice
Communities United for Restorative Youth Justice (CURYJ)
Initiate Justice
Legal Services for Prisoners With Children

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Amended Mock-up for 2023-2024 AB-89 (Sanchez (A))

Mock-up based on Version Number 99 - Introduced 1/4/23
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 3043.4 is added to the Penal Code, to read:

3043.4. (a) The district attorney's office or the Attorney General's office that prosecuted the case shall provide ~~reasonable~~ **no less than 45 days'** notice to the board and to the crime victim, the victim's next of kin, or members of the victim's family that they will not be sending a representative to a parole suitability hearing, pursuant to Section 3041~~., if the office does not have a general policy to send a person to represent the interests of the victim at parole suitability hearings~~.

(b) For the purposes of this section, "parole suitability hearing" includes a youth offender parole hearing, elderly parole hearing, or a hearing pursuant to paragraph (1) of subdivision (a) of Section 32 of Article I of the California Constitution.

(c) A parole suitability hearing shall not be postponed, canceled or continued as a result of the district attorney's office or the Attorney General's failure to provide notice pursuant to this Section.

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: February 14, 2023
Counsel: Andrew Ironside

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

AB 97 (Rodriguez) – As Introduced January 9, 2023

SUMMARY: Increases the punishment from a misdemeanor to a felony for the crimes of buying, selling, or possessing a firearm with a removed or altered a serial number or possessing a firearm without a valid serial number, and for the crime of failing to obtain a serial number for an assembled firearm.

EXISTING LAW:

1) Provides that any person who changes, alters, removes, or obliterates the name of the maker, model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice (DOJ), on any pistol, revolver, or any other firearm, without first having secured written permission from the department to make that change, alteration, or removal is guilty of a felony punishably by imprisonment in the county jail. (Pen. Code, § 23900.)

2) Provides that any person who buys, sells, receives, or possesses a firearm knowing that the serial number or other mark of identification has been changed, altered, or removed, is guilty of a misdemeanor. (Pen. Code, § 23920.)

3) Requires, beginning July 1, 2018, a person manufacturing or assembling a firearm to apply to the Department of Justice (DOJ) for a unique serial number or other mark of identification for that firearm. (Pen. Code, § 29180, subd. (b)(1).)

4) Punishes the failure to obtain a serial number from DOJ as a misdemeanor, as specified. (Pen. Code, § 29180, subd. (g).)

5) Provides that when the punishment for a felony with a sentence to be served in the county jail is not otherwise prescribed in the underlying offense, then it is punishable by a term of imprisonment in a county jail for 16 months, or two or three years. (Pen. Code, § 1170, subd. (h)(1).)

6) Provides that when the punishment for a misdemeanor is not otherwise prescribed by law, then it is punishable by imprisonment in the county jail not exceeding six months, or by a fine of $1,000, or both. (Pen. Code, § 19.)

7) Provides that an act or omission that is punishable in different ways by multiple provisions of law cannot be punished under more than one provision. (Pen. Code, § 654.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 97 is an important public safety measure needed to deter the public from owning unserialized firearms, also known as ghost guns. There are no records of existence for ghost guns – inhibiting law enforcement efforts to trace the firearm to the owner when used in a crime. That and the fact that these deadly weapons do not require a background check make ghost guns popular among criminals.

   "In the last several years, the number of ghost guns recovered has increased exponentially. For example, last year, Los Angeles Police Department released a report stating ghost guns contributed to more than 100 violent crimes, including 24 murders, 8 attempted homicides, and dozens of armed robberies and assaults. In the first six months of the year, the Department confiscated 863 ghost guns, nearly 300% over the previous year. Enough is enough. These firearms are being used to kill members of our community, including our law enforcement officers. By passing AB 97, California can send a message to criminals thinking of using one of these deadly weapons."

2) **Need for this Bill**: The stated need for the increased penalties proposed by this bill is the proliferation of ghost guns. However, it should be noted that changing, altering, removing, or obliterating the identification markers on a firearm, whether assigned by the DOJ or placed there by the manufacturer, is already a felony. (See (Pen. Code, § 23900.)

   In the event that the firearm is not involved in the commission of a separate crime, a person who removes the identifying markers and then continues to possess that firearm, or transfers it to someone else, could likely only be punished for one of those offenses. The California Supreme Court's opinion in *People v. Jones* (2012) 54 Cal.4th 350, is instructive on this point. In *Jones*, appellant was convicted of possession of a firearm by a convicted felon, carrying a readily accessible concealed and unregistered firearm, and carrying an unregistered loaded firearm in a public place. The three offenses stemmed from the same incident where the police searched a vehicle driven by appellant and found a loaded gun not registered to him in the door panel. The trial court sentenced appellant to three concurrent terms. (*Id.* at p. 352.) The Supreme Court reversed the sentence. The Supreme Court focused on the language of Penal Code section 654, which proscribes multiple punishment for a single act or omission made punishable by different statutes. The court held that "a single possession or carrying of a single firearm on a single occasion may be punished only once under section 654." (*Id.* at p. 357.)

   However, as the author and sponsor of this bill note, recovery of these firearms is usually in connection with the commission of another crime. Therefore, in the more likely event that the person who possesses a ghost gun used it in the commission of another crime, that person will already face punishment for that other, more serious, crime as well as likely face punishment for a gun-use enhancement. Therefore, the increased felony punishment for the three misdemeanors proposed by this bill (failing to get an identifying number from DOJ when assembling a firearm and being in possession of a ghost gun) is unlikely to send a message to criminals.

3) **Harsher Punishment Unlikely to Deter Ghost Gun Possession:** This bill's author asserts that the penalty increases this bill proposes are needed to deter possession of ghost guns. According to the author, "[C]urrent law does not provide an adequate deterrent for those in

possession [of ghost guns]. We must increase the current punishment to ensure the safety of our communities." (Press Release, Assemblymember Rodriguez Introduces Critical Legislation to Help Crack Down on the Ongoing 'Ghost Gun' Epidemic (Jan. 9, 2023) <https://a53.asmdc.org/press-releases/20230109-assemblymember-rodriguez-introduces-critical-legislation-help-crack-down>) [last visited Feb. 2, 2023].)

However, increased criminal penalties for ghost gun possession are unlikely to have the desired impact. According the U.S. Department of Justice, "Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not 'chasten' individuals convicted of crimes, and prisons may exacerbate recidivism." (National Institute of Justice, U.S. Department of Justice, Five Things About Deterrence (June 5, 2016) <https://nij.ojp.gov/topics/articles/five-things-about-deterrence> [last visited Feb. 2, 2023]) Moreover, as previously noted, ghost guns are typically recovered in connection to other crimes for which their use subjects the defendant to a gun-use enhancement. As such, increasing the penalty for ghost gun possession is unlikely to deter criminal conduct or reduce the prevalence of ghost guns in our communities.

4) **Argument in Support**: According to the *California Police Chiefs Association*, "Gun violence has spiked across the state, homicide rates keep climbing, and officers continue to pull more and more illegal firearms off our streets. In 2021, Los Angeles Police Department cited a 400% increase in ghost gun seizures. Just last month, an East Palo Alto officer was shot and injured by a suspect with a fully automatic ghost gun. Despite this violence, possession of a ghost gun is often only chargeable as a misdemeanor. Given the gravity of issue, and potential harm caused by these illegal weapons, it is important our penalties match the threat. From our standpoint, it is completely clear that our laws are not deterring the massive proliferation of weapons – this is the problem AB 97 seeks to fix.

   "By increasing the penalty for possessing an unserialized firearm, or one with the removed serial number, the Legislature can directly aid law enforcement in going after the violent individuals causing so much harm to our communities – for there is no reason for someone to remove a serial number on a gun if they intend to use it for lawful purposes.

   "Our laws are not strong enough, and it is hurting our ability to protect our communities. For that reason, we stand in very strong support of AB 97."

5) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 97 would increase the penalty for possession of a firearm without a serial number or with an altered serial number from a misdemeanor to a felony.

   "While eliminating so called "ghost guns" is a worthy endeavor, imprisoning more Californians is not the solution. We have already seen what mass incarceration has done to black and brown Californians and their families. Resources were diverted to imprison people, while California schools, health care and housing went wanting for adequate funding.

   "Adopting a public health approach to the pandemic of guns in our state would be more cost effective and humane. California has reduced smoking by a combination of taxes on cigarettes, bans on smoking in public spaces and education. Such a multi-pronged strategy should be employed to reduce the number of ghost guns in California.

"Also, the Legislature should consider allowing individuals to bring public nuisance lawsuits against individuals and companies who manufacture ghost guns or ghost gun manufacturing equipment. Serious financial penalties are more likely to deter these individuals and their companies than criminal penalties against the unwitting individual who possesses such a weapon.

"AB 97 is not needed. There are already sufficient penalties for any individual who commits a crime while armed with any kind of firearm or using a firearm. These penalties range from an addition year in county jail or state prison to 25 years to life in state prison depending on the seriousness of the offense."

6) **Related Legislation:**

a) AB 27 (Ta), exempts specified firearm enhancements from the requirement that a court dismiss an enhancement if it is in the furtherance of justice and does not endanger public safety. AB 27 is currently pending in this committee.

b) AB 328 (Essayli), prohibits the court from dismissing an enhancement for personal use of a firearm in the commission of certain violent crimes, except when the person did not personally use or discharge the firearm or when the firearm was unloaded. AB 328 is pending referral by the Assembly Rules Committee.

7) **Prior Legislation**:

a) AB 1869 (Rodriguez), of the 2021-2022 Legislative Session, is substantially similar to this bill. The bill failed passage in this committee.

b) AB 1621 (Gipson), Chapter 76, Statutes of 2022, redefines one of the definitions of "firearm" as including a precursor part, redefines "firearm precursor part" and prohibits a person from possessing or manufacturing a firearm precursor part without authorization

c) AB 1688 (Fong), of the 2021-2022 Legislative Session, would have removed the requirement that a firearm be microstamped with an array of characters in order to be listed on the DOJ roster of "not unsafe" handguns approved for sale. The hearing on AB 1688 in this Committee was cancelled at the request of the author.

d) AB 2156 (Wicks), Chapter 142, Statutes of 2022, reduces the number firearms that a person, firm, or corporation may manufacture without having a state firearms manufacturing license from 49 to three.

e) AB 857 (Cooper), Chapter 60, Statutes of 2016, requires a person to apply to and obtain from the DOJ a unique serial number or other mark of identification prior to manufacturing or assembling a firearm.

f) AB 1084 (Melendez), of the 2013-2014 Legislative Session, would have increased the penalties for numerous offenses related to the illegal possession of firearms, and would have required that many related sentences be served in the state prison rather than county

jail under realignment. AB 1084 failed passage in this committee.

g) SB 644 (Canella), of the 2013-2014 Legislative Session, would have, in pertinent part, raised the sentence for a subsequent conviction of possession of a firearm by a convicted felon from a term of 16 months, 2 years or 3 years to a term of 4, 5, or 6 years. SB 644 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California Peace Officers Association
California Police Chiefs Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles County Sheriff's Department
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
National Rifle Association - Institute for Legislative Action

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