Assembly
California Legislature

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

AGENDA

9:00 a.m. – February 28, 2017
State Capitol, Room 126

Item	Bill No. & Author	Counsel/ Consultant	Summary
1.	AB 6 (Lackey)	Mr. Billingsley	Driving under the influence: drug testing.
2.	AB 41 (Chiu)	Mr. Caswell	DNA evidence.
3.	AB 78 (Cooper)	Mr. Smith	Vessels: operation and equipment: blue lights.
4.	AB 149 (Jones-Sawyer)	Mr. Caswell	Criminal procedure: disclosure: felony conviction consequences.
5.	AB 152 (Gallagher)	Mr. Pagan	Board of State and Community Corrections: recidivism.
6.	AB 153 (Chávez)	Mr. Smith	Military fraud.
7.	AB 154 (Levine)	Mr. Billingsley	Prisoners: mental health treatment.
8.	AB 194 (Patterson)	Ms. Uribe	Victim restitution: probation: jurisdiction.
9.	AB 222 (Bocanegra)	Mr. Billingsley	False documents.

10.	AB 223 (Eggman)	Mr. Pagan	Commercial sexual exploitation of youth: services.
11.	AB 229 (Baker)	Mr. Billingsley	Human trafficking: vertical prosecution program.

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Date of Hearing: February 28, 2017
Counsel: David Billingsley

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

AB 6 (Lackey) – As Amended February 22, 2017
As Proposed to be Amended in Committee

SUMMARY: Directs California Highway Patrol (CHP) to establish a task force to develop recommendations on driving under the influence of drugs. Specifically, **this bill**:

1) Requires the CHP commissioner to appoint a drugged driving task force to develop recommendations for best practices, protocols, proposed legislation, and other policies that will address the issue of driving under the influence of drugs, including prescription drugs.

2) Provides that the task force shall consist of the commissioner as the Chairperson and at least one member from each of the following:

   a) The Office of Traffic Safety;

   b) National Highway Traffic Safety Administration;

   c) Local law enforcement;

   d) District attorneys;

   e) California Attorneys for Criminal Justice;

   f) Local government representatives;

   g) The California Center for Medicinal Cannabis Research;

   h) The medical cannabis industry;

   i) The pharmaceutical industry;

   j) Licensed physicians; and

   k) Non-governmental organizations that focus on improving roadway safety.

3) Specifies that members of the task force shall serve at the pleasure of the commissioner and without compensation.

4) Requires the task force to report its policy recommendations and what steps state agencies are taking regarding drugged driving to the Legislature, as specified.

EXISTING LAW:

1) Specifies that the Controller shall disburse the sum of $3,000,000 annually to CHP beginning fiscal year 2018–2019 until fiscal year 2022–2023 to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products, and to establish and adopt protocols setting forth best practices to assist law enforcement agencies. (Health and Saf. Code, § 34019, subd. (c).)

2) States that CHP may use those funds to hire personnel to establish the protocols, as specified. (Health and Saf. Code, § 34019, subd. (c).)

3) Provides that CHP may make grants to public and private research institutions for the purpose of developing technology for determining when a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products. (Health and Saf. Code, § 34019, subd. (c).)

4) Requires the Controller to disburse the sum of $10,000,000 to a public university or universities in California annually beginning with fiscal year 2018–2019 until fiscal year 2028–2029 to research and evaluate the implementation and effect of the Control, Regulate and Tax Adult Use of Marijuana Act, and shall, if appropriate, make recommendations to the Legislature and Governor regarding possible amendments to the Control, Regulate and Tax Adult Use of Marijuana Act. (Health and Saf. Code, § 34019, subd. (b).)

5) Requires the universities that receive these funds to publish reports on their findings at a minimum of every two years and shall make the reports available to the public. (Health and Saf. Code, § 34019, subd. (b).)

6) Specifies that the funded research of the universities include, among other priorities:

    a) Impacts on public health, including health costs associated with marijuana use, as well as whether marijuana use is associated with an increase or decrease in use of alcohol or other drugs; (Health and Saf. Code, § 34019, subd. (b)(1).)

    b) Public safety issues related to marijuana use, including studying the effectiveness of the packaging and labeling requirements and advertising and marketing restrictions contained in the act at preventing underage access to and use of marijuana and marijuana products, and studying the health-related effects among users of varying potency levels of marijuana and marijuana products; and (Health and Saf. Code, § 34019, subd. (b)(3).)

    c) Marijuana use rates, maladaptive use rates for adults and youth, and diagnosis rates of marijuana-related substance use disorders. (Health and Saf. Code, § 34019, subd. (b)(4).)

    d) The outcomes achieved by the changes in criminal penalties made under the Control, Regulate and Tax Adult Use of Marijuana Act for marijuana-related offenses, and the outcomes of the juvenile justice system, in particular, probation-based treatments and the frequency of upcharging illegal possession of marijuana or marijuana products to a more serious offense. (Health and Saf. Code, § 34019, subd. (b)(11).)

7) States that by July 15 of each fiscal year beginning in fiscal year 2018–2019, the Controller shall, after disbursing funds as specified, disburse funds deposited in the Marijuana Tax Fund during the prior fiscal year into sub-trust accounts, which includes the State and Local Government Law Enforcement Account:

   a) Twenty percent shall be deposited into the State and Local Government Law Enforcement Account and disbursed by the Controller as follows:

      i) To CHP for conducting training programs for detecting, testing and enforcing laws against driving under the influence of alcohol and other drugs, including driving under the influence of marijuana. The department may hire personnel to conduct the specified training programs. (Health and Saf. Code, § 34019, subd. (f)(3)(A).)

      ii) To CHP to fund internal California Highway Patrol programs and grants to qualified nonprofit organizations and local governments for education, prevention and enforcement of laws related to driving under the influence of alcohol and other drugs, including marijuana; programs that help enforce traffic laws, educate the public in traffic safety, provide varied and effective means of reducing fatalities, injuries and economic losses from collisions; and for the purchase of equipment related to enforcement of laws related to driving under the influence of alcohol and other drugs, including marijuana. (Health and Saf. Code, § 34019, subd. (f)(3)(B).)

      iii) To the Board of State and Community Corrections for making grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of the Control, Regulate and Tax Adult Use of Marijuana Act. The board shall not make any grants to local governments which have banned the cultivation, including personal cultivation, or retail sale of marijuana or marijuana products as specified, or as otherwise provided by law. (Health and Saf. Code, § 34018, subd. (f)(3)(C).)

      iv) For purposes of this paragraph, the Department of Finance shall determine the allocation of revenues between the agencies, with certain specifications. (Health and Saf. Code, § 34019, subd. (f)(3)(D).)

   b) Specifies that 80% of the money will be disbursed by the Controller to other accounts and organizations as specified by Proposition 64.

8) Specifies that the Controller shall disburse $2,000,000 annual to the University of California San Diego Center for Medicinal Cannabis Research to further the objectives of the Center including the enhanced understanding of the efficacy and adverse effects of marijuana. (Health and Saf. Code, § 34019, subd. (e).)

9) Requires the Bureau of Medical Cannabis Regulation contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research to develop a study that identifies the impact that cannabis has on motor skills. (Business and Prof. Code, § 19354.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Proposition 64, California's initiative to legalize recreational use of marijuana, included a substantial amount of funding for the California Highway Patrol (CHP) to develop best practices to assist law enforcement in detecting drug-impaired drivers. It also included funding for enforcement, training and grants to local agencies by CHP.

   "According to DMV in 2012 and 2013, the number of fatal crashes involving drugs or the combination of drugs and alcohol exceed those involving solely alcohol. Current law enforcement practices have been effective at reducing the prevalence of drunk driving, however drugged driving enforcement has been more difficult. The nature of drug-impairment makes enforcing existing drugged driving laws a major challenge because standards for objectively identifying a drug-impaired driver have not been fully developed. Currently, the most effective tool for law enforcement are drug recognition experts who must undergo extensive training that is too costly and time-consuming for all peace officers to receive.

   "AB 6 will require CHP to serve as the lead agency in forming a taskforce made of appropriate state and federal agencies, law enforcement and subject matter experts, including the Center for Medicinal Cannabis Research, to develop a comprehensive approach to the growing problem of drugged driving which includes both illicit drugs and prescription medications.

   "The taskforce will examine new technologies that could be tools for identifying drug-impaired drivers on the road. It will also have authority to conduct pilot programs in partnership with local agencies to further refine its enforcement recommendations.

   "A successful strategy for California will require the cooperation of many stakeholders from all levels of government. CHP's experience and expertise in roadway safety along with the funding provided to them by Proposition 64 makes CHP the ideal state agency to coordinate a comprehensive approach to California's drugged driving enforcement efforts."

2) **Proposition 64 (Adult Use of Marijuana Act) was passed by the voters on November 8, 2016:** As a result of the passage of Proposition 64, adults, aged 21 years or older, are allowed to possess and use marijuana for recreational purposes. The measure created two new taxes, one levied on cultivation and the other on retail price. Revenue from the taxes will be spent on drug research, treatment, and enforcement, health and safety grants addressing marijuana, youth programs, and preventing environmental damage resulting from illegal marijuana production.

   Proposition 64 allows adults to possess up to an ounce of marijuana. Adults are also allowed to cultivate up to six marijuana plants inside their homes. Marijuana packaging is now required to provide the net weight, origin, age, and type of the product, as well as the milligram amount per serving of *tetrahydrocannabinol* and other *cannabinoids*.

   Driving under the influence of marijuana was illegal prior to the passage of Proposition 64 and the Proposition 64 did nothing to change that.

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

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

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

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

4) **Current Study on Interaction of Marijuana and Driving:** The University of California, San Diego houses the Center for Medicinal Cannabis Research. AB 266 (Bonta), Chapter 689, Statutes of 2014, required the Bureau of Medical Cannabis Regulation to contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, to develop a study that identifies the impact that cannabis has on motor skills. The Center for Medicinal Cannabis Research is currently engaged in that clinical study. The title of the study is "A Randomized, Controlled Trial of Cannabis in Healthy

Volunteers Evaluating Simulated Driving, Field Performance Tests and Cannabinoid Levels."

As part of the study, volunteers will inhale smoked cannabis with either 0% (placebo), 6.7%, or 12.6% Δ9-THC at the beginning of the day, and then complete driving simulations, iPad-based performance assessments, and bodily fluid draws (e.g., blood, saliva, breath) before the cannabis smoking and hourly over the subsequent 7 hours after cannabis smoking. (http://www.cmcr.ucsd.edu/index.php/2015-11-20-20-52-15/active-studies/62-ab266)

The purpose of the study is to determine (1) the relationship of the dose of Δ9-THC on driving performance and (2) the duration of driving impairment in terms of hours from initial use, (3) if saliva or expired air can serve as a useful substitute for blood sampling of Δ9-THC in judicial hearings and (4) if testing using an iPad can serve as a useful adjunct to the standardized field sobriety test in identifying acute impairment from cannabis. (Id.)

Proposition 64 provides the University of California San Diego Center for Medicinal Cannabis Research will continue to receive $2,000,000 annually for research on understanding the efficacy and adverse effects of marijuana.

5) **Proposition 64 Provides Financial Resources for CHP to Study Drugged Driving, Including Marijuana:** Proposition 64 provides a couple of funding streams for CHP to address driving under the influence, including driving under the influence of marijuana. The source of the revenue streams is the money that will be generated by taxing marijuana (The Marijuana Tax Fund). One revenue stream is a fixed amount of $3,000,000 a year for four years starting in fiscal year 2018-2019. That money is for CHP "to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products, and to establish and adopt protocols setting forth best practices to assist law enforcement agencies." (Health and Saf. Code, § 34019, subd. (c).) The language of Proposition 64 allows CHP to use those funds to hire personnel to establish the protocols for driving under the influence. In addition, the department may make grants to public and private research institutions for the purpose of developing technology for determining when a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products. (Health and Saf. Code, § 34019, subd. (c).)

Proposition 64 provides a second funding stream to CHP from the Marijuana Tax Fund. The money generated by taxing marijuana will go to a variety of entities to ensure effective implementation of the Proposition 64 and to address policy concerns surrounding the use of marijuana. After the mandatory disbursals from the Marijuana Tax Fund are made each year, the remaining money will be disbursed to specified entities on a percentage basis. Of the remaining money, CHP will receive 20%. That money is provided to CHP for the following purposes:

a) . . . for conducting training programs for detecting, testing and enforcing laws against driving under the influence of alcohol and other drugs, including driving under the influence of marijuana. The department may hire personnel to conduct the training programs specified in this subparagraph. (Health and Saf. Code, § 34018, subd. (f)(3)(A).)

b) . . . to fund internal CHP programs and grants to qualified nonprofit organizations and local governments for education, prevention and enforcement of laws related to driving under the influence of alcohol and other drugs, including marijuana; programs that help enforce traffic laws, educate the public in traffic safety, provide varied and effective means of reducing fatalities, injuries and economic losses from collisions; and for the purchase of equipment related to enforcement of laws related to driving under the influence of alcohol and other drugs, including marijuana. (Health and Saf. Code, § 34018, subd. (f)(3)(B).)

6) **Amendments Proposed by Committee:** The Committee has proposed amendments which:

a) Delete language related to pilot programs.

b) Add a representative from California Attorneys for Criminal Justice to the task force.

c) Clarify that the task force will have a representative from the California Center for Medicinal Cannabis Research.

7) **Argument in Support**: According to *The California Police Chiefs Association*, "With the November 2016 passage of Proposition 64 to legalize marijuana, there is an urgent need to reduce silos between impacted agencies and research institutions to further drug impaired driving research.

"As the recipient of substantial funding for drugged driving enforcement provided by Proposition 64, the California Highway Patrol is the ideal agency to convene this diverse group of stakeholders charged with advancing strategies and technologies to identify drug impaired driving. Furthermore, the taskforce will provide policymakers with nonbiased findings; information that is crucial given the complexity of this subject matter.

"We thank you for taking a measured approach to combatting drug impaired driving. As the number of drug impaired driving incidents continue to increase, it is imperative that California begins to identify the appropriate deterrents, measurements and responses as soon as possible."

8) **Prior Legislation**:

a) AB 266 (Bonta), Chapter 689, Statutes of 2014, required the Bureau of Medical Cannabis Regulation to contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, to develop a study that identifies the impact that cannabis has on motor skills.

b) AB 1731 (Atkins), of the 2015-2016 Legislative Session, would have created the Statewide Interagency Human Trafficking Task Force within the Department of Justice to gather statewide data on human trafficking and make recommendations. AB 1731 was held in the Senate Appropriations Committee.

c) AB 1019 (E. Garcia), of the 2015-2016 Legislative Session, would have required the Department of Justice to establish a Metal Theft Task Force Program related to the investigation and prosecution of illegal recycling operations, and metal theft and related

recycling crimes. AB 1019 was held in the Assembly Appropriations Committee.

d) AB 2626 (Furutani), of the 2011-2012 Legislative Session, would have required county task forces on violence against women, if established, to evaluate and make recommendations on the need for services and access to information provided in languages other than English for women who are victims of violent crime. AB 2626 was returned to the desk without further action.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association (Co-Sponsor)
California Narcotic Officers' Association (Co-Sponsor)
Association of Deputy District Attorneys
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Peace Officers Association
Los Angeles Police Protective League
Los Angeles Deputy Sheriffs
Riverside Sheriffs' Association

Opposition

Drug Policy Alliance

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

Amended Mock-up for 2017-2018 AB-6 (Lackey (A))

Mock-up based on Version Number 98 - Amended Assembly 2/22/17
Submitted by: David Billingsley, Assembly Public Safety Committee

********AMENDMENTS ARE IN ***BOLD*********

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

SECTION 1. Section 2429.7 is added to the Vehicle Code, to read:

2429.7. (a) The commissioner shall appoint a drugged driving task force to develop recommendations for best practices, protocols, proposed legislation, and other policies that will address the issue of driving under the influence of drugs, including prescription drugs. The task force shall also examine the use of technology, including field testing technologies, to identify drivers under the influence of drugs~~, and may conduct pilot programs using those technologies~~. The task force shall consist of the commissioner, who shall serve as chair, and at least one member from each of the following:

(1) The Office of Traffic Safety.

(2) The National Highway Traffic Safety Administration.

(3) Local law enforcement.

(4) District attorneys.

(5) Local government representatives.

(6) ~~Appropriate state and federal agencies.~~ ***California Attorneys for Criminal Justice.***

(7) The California ***Center for Medicinal Cannabis*** ~~Marijuana~~ Research ~~Program~~.

(8) Medical cannabis industry representatives.

(9) Pharmaceutical industry representatives.

(10) Licensed physicians.

(11) Nongovernmental organizations that focus on improving roadway safety.

(b) The members of the task force shall serve at the pleasure of the commissioner and without compensation.

(c) The task force shall report to the Legislature its policy recommendations and the steps state agencies are taking regarding drugged driving. The report shall be submitted in compliance with Section 9795 of the Government Code.

Date of Hearing: February 28, 2017
Counsel: Gabriel Caswell

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

AB 41 (Chiu) – As Introduced December 5, 2016

SUMMARY: Requires local law enforcement agencies to periodically update the Sexual Assault Forensic Evidence Tracking (SAFE-T) database on the disposition of all sexual assault evidence kits in their custody. Specifically, **this bill**:

1) Requires law enforcement agencies to report information regarding rape kit evidence, within 120 days of the collection of the kit, to the Department of Justice (DOJ) through a database established by the DOJ. Specifies that information shall include, among other things:

   a) The number of kits collected;

   b) If biological evidence samples were submitted to a DNA laboratory for analysis; and

   c) If a probative DNA profile was generated.

2) Requires a public DNA laboratory, or a law enforcement agency contracting with a private laboratory, to provide a reason for not testing a sample every 120 days the sample is untested, except as specified.

3) Imposes these requirements for kits collected on or after January 1, 2018.

4) Requires that the DOJ file a report to the Legislature on an annual basis summarizing the information in its database.

5) Prohibits law enforcement agencies or laboratories from being compelled to provide any contents of the database in a civil or criminal case, except as required by a law enforcement agency's duty to produce exculpatory evidence to a defendant in a criminal case.

6) Finds and declares the following:

   a) There is a significant public interest in knowing the percentage of rape kits that are analyzed to identify the perpetrator's DNA profile, as well as the reason for any untested rape kits not being analyzed. Currently, there is no mandatory statewide tracking mechanism to collect and report these metrics. It is the intent of the Legislature in enacting this section, pursuant to recommendations by the California State Auditor to the Joint Legislative Audit Committee, to correct that; and

   b) In 2015, the Department of Justice created the Sexual Assault Forensic Evidence Tracking (SAFE-T) database to track the status of all sexual assault evidence kits collected in the state based on voluntary data input from law enforcement agencies. It is

the intent of the Legislature by enacting this section to require participation in that database.

EXISTING LAW:

1) Requires an adult arrested for or charged with a felony and a juvenile adjudicated for a felony to submit deoxyribonucleic acid (DNA) samples. (Pen. Code, § 296.)

2) Establishes the DNA and Forensic Identification Database and Data Bank Program to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious and accurate detection and prosecution of individuals responsible for sex offenses and other crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children. (Pen. Code, §§ 295, 295.1.)

3) Encourages DNA analysis of rape kits within the statute of limitations, which states that a criminal complaint must be filed within one year after the identification of the suspect by DNA evidence, and that DNA evidence must be analyzed within two years of the offense for which it was collected. (Pen. Code, § 680, subd. (b)(6).)

4) Encourages law enforcement agencies to submit rape kits to crime labs within 20 days after the kit is booked into evidence. (Pen. Code, § 680, subd. (b)(7)(A)(i).)

5) Encourages the establishment of rapid turnaround DNA programs, where the rape kit is sent directly from the facility where it was collected to the lab for testing within five days. (Pen. Code, § 680, subds. (b)(7)(A)(ii) and (E).)

6) Encourages crime labs to do one of the following:

   a) Process rape kits, create DNA profiles when possible, and upload qualifying DNA profiles into CODIS within 120 days of receipt of the rape kit; or

   b) Transmit the rape kit to another crime lab within 30 days to create a DNA profile, and then upload the profile into CODIS within 30 days of being notified about the presence of DNA. (Pen. Code, § 680, subd. (b)(7)(B).)

7) Requires law enforcement agencies to inform victims in writing if they intend to destroy a rape kit 60 days prior to the destruction of the rape kit, when the case is unsolved and the statute of limitations has not run out. (Pen. Code, §§ 680, subds. (e) and (f), 803.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "When tested, DNA evidence can be an incredibly powerful tool to solve and prevent crime. It can identify an unknown assailant and confirm the presence of a known suspect. It can affirm the survivor's account of the attack and discredit the suspect. It can connect the suspect to other crime scenes. It can exonerate innocent suspects.

"However, as we've seen over the past few years, there has been widespread mismanagement of DNA evidence in sexual assault cases in many jurisdictions. Survivors of sexual assault who are submitting sexual assault evidence kits aren't getting the answers they need and deserve.

"To accomplish these things, however, rape kits must be tested. Right now, some kits are analyzed, but a vast majority is not. In California, we know there is a backlog of over 6,100 kits - but we don't know how long they've been sitting on the shelf, or if there were or were not legitimate reasons why they were not tested.

"Currently, there is no comprehensive data on how many rape kits are collected and the reasons why kits are not tested. To get at the crux of the backlog problem, we need to know how many kits are collected each year, and if they're not analyzed, we need to know why.

"AB 41 aims to solve this problem by directing law enforcement agencies to track how many sexual assault evidence kits they collect and the number of kits they analyze each year, and further directing agencies to report annually to DOJ their reasons for not analyzing sexual assault evidence kits.

"Data and transparency are a necessary part of the solution. The data collected through AB 41 could help policy makers consider whether law enforcement agencies' current approaches in this area need to change or whether or not law enforcement needs additional resources to better manage the processing of these kits.

2) **CODIS and SAFE-T**: According to background submitted by the author, "The local law enforcement investigator may request that a crime lab analyze the sexual assault evidence kit to try to match the DNA profile to a suspect in the investigation. The lab can then upload the profile to the combined DNA Index System (CODIS), a network of local, state, and federal databases that allows law enforcement agencies to test DNA profiles against one another. Through this process, labs will sometimes obtain the name of a previously unknown suspect or match multiple cases where the suspect remains unknown.

"The value of DNA evidence in the investigation and prosecution of sexual assault crimes makes these evidence kits critical for law enforcement.

"Even in instances where the identity of assailants is known, forensic analysis often helps identify repeat offenders. However, there is no state or federal law that requires agencies to request analysis of every sexual assault evidence kit."

SAFE-T was created by DOJ in 2015 in part to help track how many rape kits were not being tested and why, to help determine the scope of the problem and to determine if mandatory testing may lead to the apprehension of more repeat offenders or the exoneration of more criminal defendants.

3) **Tracking of Rape Kit Tests**: A recent report by the California State Auditor found that law enforcement agencies rarely document reasons for not analyzing sexual assault evidence kits. (California State Auditor, Sexual Assault Evidence Kits (Oct. 2014).) <https://www.bsa.ca.gov/pdfs/reports/2014-109.pdf> Specifically, the report found that "[i]n 45 cases . . . reviewed in which investigators at the three agencies we visited did not request a

kit analysis, the investigators rarely documented their decisions. As a result, we often could not determine with certainty why investigators decided that kit analysis was not needed. Among the 15 cases we reviewed at each of the three locations, we found no examples of this documentation at either the Sacramento Sheriff or the San Diego Police Department, and we found only six documented explanations at the Oakland Police Department. Investigative supervisors at both the Sacramento Sheriff and the San Diego Police Department indicated that their departments do not require investigators to document a decision not to analyze a sexual assault evidence kit. The lieutenant at the Oakland Police Department's Special Victims Section stated that, during the period covered by our review, the section expected such documentation from its investigators in certain circumstances, but that it was not a formal requirement at that time." (*Id.* at p. 23.)

Upon a more in-depth review of the individual cases, the report found that analysis of the kits would not have been likely to further the investigation of those cases. The "decisions not to request sexual assault evidence kit analysis in the individual cases we reviewed appeared reasonable because kit analysis would be unlikely to further the investigation of those cases. We reviewed specific cases at each agency in which investigators did not request analysis. Our review included 15 cases from each of the three agencies we visited with offenses that occurred from 2011 through 2013, for a total of 45 cases. In those cases, we did not identify any negative effects on the investigations as a result of decisions not to request analysis. We based our conclusions on the circumstances present in the individual cases we reviewed, as documented in the files for the 45 cases and as discussed with the investigative supervisors." (*Id.* at p. 21.)

Even though the individual reasons for not testing the kits was found to be reasonable, the report still stressed the need for more information about why agencies decide to send some kits but not others. It would benefit not only investigators, but the public as well, because requiring investigators to document their reasons for not requesting kit analysis would assist agencies in responding to the public concern about unanalyzed kits. Doing so would allow for internal review and would increase accountability to the public. (*Id.* at pp. 23-24.)

4) **Argument in Support**: According to the *Alameda County District Attorney*, "A 2014 report by the California State Auditor revealed that each year, thousands of sexual assault kits (SAKs) go unanalyzed by a DNA laboratory for a variety of reasons. I found in my own county, that we had a backlog of over 1,900 untested SAKs. The scope of the statewide SAK cannot be determined because of a lack of effective tracking at the local level. More comprehensive data could assist policy makers as they consider whether law enforcement agencies' current approaches in this area need to change or whether or not law enforcement needs additional resources to better manage the processing of kits.

"In many cases, survivors of sexual assault experience re-traumatization when undergoing the forensic evidence collection process. The neglect of these SAKs with no explanation why they were not analyzed simply adds to the trauma ensured by survivors seeking justice. The value of DNA evidence in the investigation and prosecution of sexual assault crimes makes these SAK critical for law enforcement. Even in instances where the identity of the assailants is known, forensic analysis often helps identify repeat offenders.

"AB 41 would require local agencies to track all SAKs collected from survivors by using SAFE-T in accordance with the State Auditor's recommendations. This improved tracking

will help the prosecution of sexual assault cases and provide victims of sexual assault who reported a crime with information about their case that they deserve to know."

5) **Argument in Opposition**: According to the *California State Sheriffs' Association*: "We share your intent that sexual assaults are investigated and perpetrators not go unpunished. In 2014, CSSA worked with then-Assembly Member Nancy Skinner to amend her AB 1517 into a final product that will help achieve those goals without being overly burdensome. However, by requiring law enforcement agencies to provide statistics to the DOJ, AB 41 will create another unfunded mandate and would place significant cost burdens on these agencies in terms of resources and personnel.

"Existing law permits law enforcement to notify a victim about the status of his or her rape kit upon the victim's request as well as requires law enforcement to notify a victim if his or her rape kit is going to be disposed of or not tested. We do not feel that his balanced approach requires alteration.

"Local law enforcement agencies are still dealing with the effects of significant budget cuts over the last several years while trying to maintain critical services. Adding an additional reporting requirement would divert limited resources away from providing current services."

6) **Prior Legislation**:

a) AB 1517 (Skinner), Chapter 874, Statutes of 2014, encourages law enforcement agencies to submit sexual assault forensic evidence received by the agency to a crime lab within 20 days after it is booked into evidence, and ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault to a crime lab within 5 days after the evidence is obtained from the victim.

b) AB 558 (Portantino), of the 2009-2010 Legislative Session, would have required local law enforcement agencies responsible for taking or collecting rape kit evidence to annually report to the Department of Justice statistical information pertaining to the testing and submission for DNA analysis of rape kits. AB 558 was vetoed by Governor Schwarzenegger.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda District Attorney (Sponsor)
Association for Los Angeles Deputy Sheriffs
California College and University Police Chiefs Association
California Narcotic Officers Association
Los Angeles County Probation Officers Union AFSME Local 685
Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
Riverside Sheriffs' Association
San Francisco Department on the Status of Women
San Francisco District Attorney
San Francisco Sheriff
Santa Barbara District Attorney

Santa Clara District Attorney

Opposition

California State Sheriffs' Association

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

Date of Hearing: February 28, 2017
Consultant: Adam Smith

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

AB 78 (Cooper) – As Introduced January 4, 2017

SUMMARY: Expands the allowed use of a distinctive blue light on vessels to include fire department vessels. Specifically, **this bill**:

1) Reserves the use of a distinctive blue light for public safety vessels whenever the vessel is engaged in law enforcement or public safety activities, as specified.

2) Defines "public safety vessel" as "either a law enforcement vessel or a fire department vessel."

EXISTING LAW:

1) Reserves the use of a distinctive blue light, as prescribed by the department, for law enforcement vessels engaged in direct law enforcement activities, as specified. (Harb. & Nav. Code, § 652.5, subd. (a).)

2) Prohibits the display of such lights on vessels for other purposes. (Harb. & Nav. Code, § 652.5, subd. (c).)

3) Requires that a vessel approaching, overtaking, being approached, or being overtaken by a moving law enforcement vessel operating with a siren or an illuminated blue light, or any vessel approaching a stationary law enforcement vessel displaying an illuminated blue light, to immediately slow to a speed sufficient to maintain steerage only, alter its course so as not to inhibit or interfere with the operation of the law enforcement vessel, and proceed at the reduced speed unless otherwise directed. (Harb. & Nav. Code, § 652.5, subd. (d).)

4) Requires the operator of every cable ferry to take whatever reasonable action is necessary to provide a clear course for any law enforcement vessel operating with a siren or an illuminated blue light, or both. (Harb. & Nav. Code, § 652.5, subd. (e).)

5) Provides that a person found guilty of a misdemeanor violation of any regulation adopted by the department pursuant to this section, shall be subject to a fine not to exceed one thousand dollars ($1,000), imprisonment in a county jail not to exceed six months, or both that fine and imprisonment. (Harb. & Nav. Code, § 652, subd. (e).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Under current law fire department vessels are not authorized to equip or use blue lights during an emergency response or operation. Blue lights on vessels simply indicate to civilian boaters to yield the right of way or slow down while passing. Fire departments have a wide range of public safety responsibilities on the water, including fighting boat, structure and bank fires; search and rescue; body recovery and other dive operations; and medical response. AB 78 will greatly improve department vessels response time and fire department personnel safety when they are stationary and engaged in a variety of public safety activities."

2) **Significance of Lights on Land and Water**: Expansion of the permitted use of blue warning lights has been limited in the vehicle code due to the availability of alternative lights and the lack of a legal requirement to comply with blue warning lights. (Assem. Com. on Transportation, Off. of Assem. Floor Analysis, Rep. on Assem. Bill No. 1385 (2009-2010 Reg. Sess.) September 17, 2010.) However, the Harbor and Navigation code has distinct requirements for compliance with blue warning lights and the code provides a different significance for blue lights. (Harb. & Nav. Code, §652.5, subd. (d).) Therefore, expansion of the permitted use of blue warning lights in the Harbor and Navigation Code should be distinguished from the concerns related to expansion of blue lights on land-based emergency vehicles.

3) **Argument in Support**: The *California State Sheriffs' Association* states, "Existing statute authorizes the use of blue emergency lights by law enforcement to patrol lakes and inland waterways for the purpose of maintaining public safety and responding to emergencies. However, existing law does not allow local or state fire agencies to equip their vessels with emergency blue lights, even though, as first responders, fire departments are required to respond to emergencies such as search and rescue and medical calls for service."

4) **Prior Legislation**:

   a) AB 2224 (Achadijan), of the 2015-2016 Legislative Session, would have allowed probation officers to use a blue warning light on their emergency vehicles, as specified. AB 2224 died in the Assembly Public Safety Committee.

   b) AB 1385 (Miller), of the 2009-2010 Legislative Session, would have allowed certain peace officers within fire departments to operate a blue warning light on their emergency vehicles. AB 1385 was vetoed by the Governor.

   c) AB 2215 (Nakanishi), of the 2003-2004 Legislative Session, would have permitted additional peace officers to operate a vehicle using blue warning lights. AB 2215 was held in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association

Opposition

None

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

Date of Hearing: February 28, 2017
Counsel: Gabriel Caswell

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

AB 149 (Jones-Sawyer) – As Introduced January 10, 2017

SUMMARY: Requires that defense counsel advise a defendant of various specified adverse consequences that may result from a guilty or no contest plea to a felony offense, prior to the defendant pleading guilty or no contest to a felony. Specifically, **this bill**:

1) States that prior to the defendant pleading guilty or no contest to a felony offense, defense counsel must inform the defendant that the plea of guilty or no contest may impact the following:

   a) The defendant's ability to obtain employment generally, and may make the defendant ineligible for employment in certain jobs;

   b) The loss of voting rights while incarcerated and while on parole;

   c) The eligibility of the defendant to enlist in the military;

   d) The eligibility to obtain or maintain certain state professional licenses;

   e) The eligibility to serve on a jury;

   f) The eligibility to own or possess a firearm;

   g) The eligibility for federal health care programs if the felony is related to fraud involving a federal program, patient abuse, or drugs;

   h) The eligibility for federal financial aid if the felony was committed while the defendant was receiving financial aid;

   i) The eligibility for federal cash assistance if the felony is drug related;

   j) The ability to receive Supplemental Security Income; and

   k) Legal parental and child custody rights.

2) Specifies that if defense counsel failed to provide this information prior to the entry of a plea prior to January 1, 2018, there is no requirement to vacate the judgment and withdraw the plea, no grounds for finding a prior conviction invalid, and does not provide grounds for appeal from the judgment.

EXISTING LAW:

1) Requires, prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, the court shall administer the following advisement on the record to the defendant: "[i]f you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. (Pen. Code, § 1016.5, subd. (a).)

2) States that upon request, the court shall allow the defendant additional time to consider the appropriateness of the plea in light of the advisement as described in this section. (Pen. Code, § 1016.5, subd. (b).)

3) Provides if the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty or nolo contendere may have the consequences for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States, the court, on defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty. (Pen. Code, § 1016.5, subd. (b).)

4) States that absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement. (Pen. Code, § 1016.5, subd. (b).)

5) Provides that with respect to pleas entered prior to January 1, 1978, it is not the intent of the Legislature that a court's failure to provide the required advisement should require the vacation of judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid. (Pen. Code, § 1016.5, subd. (c).)

6) Finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty or nolo contendere is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the Legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea. It is also the intent of the Legislature that the court in such cases shall grant the defendant a reasonable amount of time to negotiate with the prosecuting agency in the event the defendant or the defendant's counsel was unaware of the possibility of deportation, exclusion from admission to the United States, or denial of naturalization as a result of conviction. It is further the intent of the Legislature that at the time of the plea no defendant shall be required to disclose his or her legal status to the court. (Pen. Code, § 1016.5, subd. (d.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: "Currently, upon arrest, police officers are required to inform a suspect of their Miranda rights, which includes a 'right to silence' warning given by police to criminal suspects in police custody. This bill, similarly, will inform defendants verbally of the civil rights they lose if they take a plea and become a felon. These rights range from a loss of certain professional licensure opportunities to forfeiture of eligibility to become a United States citizen.

   "According to the Harvard University Institute of Politics' Mass Incarceration Policy Group, one out of 100 adults is incarcerated, equaling more than 2.2 million Americans.

   "The system has expanded in recent decades due to the War on Drugs, the implementation of mandatory minimum sentencing, and the prevalence of plea bargaining, a process that circumvents the Constitutional right to trial by jury. While there is a logical appeal to plea deals, which offer a possibility to reduce time to be incarcerated, individuals under arrest, are not being informed adequately about the consequences that result from becoming a felon.

   "According to the New York Times, 'Fewer than one in 40 felony cases now make it to trial, as compared to 1970, when the ratio was about one in twelve. The decline has been even steeper in federal district courts.' From 1986 to 2006 the ratio of pleas to trials nearly doubled, according to the Bureau of Justice Statistics."

2) **Pleas of Guilty or No Contest and the Consequences of Pleas**: "Plea bargaining" refers to the resolution of a case without trial through negotiation between the prosecution and the defense.

   a) ***Generally:*** The most common form of plea bargaining is the guilty or no contest plea whereby the defendant admits guilty to the charges, or agrees to not contest the charges, thereby allowing the judge to find them guilty of one or more of the charged offenses. In accepting a plea, a court must make a finding that the guilty plea was made voluntarily, knowingly, and intelligently. *In re Johnson* (1965) 62 C2d 325; *People v Garcia* (1979) 98 CA3d Supp 14. A plea cannot be considered voluntary unless the defendant is informed of the charges pending against him or her. *People v West* (1970) 3 C3d 595.

   b) ***Advisement of Consequences of a Guilty or No Contest Plea:*** Prior to the acceptance of a plea of guilty or no contest, the court must advise the defendant of the direct consequences of the plea they are accepting. *Bunnell v Superior Court* (1975) 13 Cal.3d 592, 605. Plea consequences are considered "direct" if the consequence has "a definite, immediate and largely automatic effect on the range of the defendant's punishment." *Torrey v Estelle* (1991) 54 Cal.3d 1013, 1022. In *Iowa v Tovar* (2004) 541 US 77, the Supreme Court observed that the U.S. Constitution requires the trial court to inform the accused of the "range of allowable punishments." Generally, a defendant must be advised of the following direct consequences of a guilty or no contest plea:

      i) Immigration consequences of a conviction, including deportation, exclusion from admission to the United States, or denial of naturalization. (Pen. Code § 1016.5, subd. (a).); *People v Superior Court (Zamudio)* (2000) 23 Cal.4th 183; *People v Araujo* (2016) 243 Cal.App.4th 759, 763.

      ii) The maximum parole period that the defendant might have to serve following the completion of any prison term imposed; *In re Moser* (1993) 6 Cal.4th 342, 357;

People v Avila (1994) 24 Cal.App.4th 1455.

iii) The potential maximum sentence in the case; *In re Birch* (1973) 10 Cal.3d 314.

iv) Absolute or presumptive probation ineligibility; *People v Caban* (1983) 148 Cal.App.3d 706.

v) Fines, restitution fines, penalty assessments, and drug laboratory fees if applicable; *People v Villalobos* (2012) 54 Cal.4th 177, 186.

vi) Mandatory revocation of driving privileges on a driving under the influence conviction; and *Corley v DMV* (1990) 222 CA3d 72, 73

vii) Registration requirements for the following:

(1) Arson offender registration; (Pen. Code § 457.1.)

(2) Narcotics offender registration; and (Health & Saf. Code § 11590.)

(3) Sex offender registration. (Pen. Code §§ 290-290.023.)

c) ***Withdrawing a Plea***: At any time before judgment or within 6 months after an order granting probation, and if entry of judgment is suspended, the court may permit the withdrawal of a guilty plea and the entry of a not guilty plea on a showing of good cause. *People v Miranda* (2004) 123 CA4th 1124. "Good cause" to set aside a guilty plea is shown when the defendant demonstrates that "he or she was operating under mistake, ignorance, or any other factor overcoming the exercise of his or her free judgment, including inadvertence, fraud, or duress." *People v Breslin* (2012) 205 CA4th 1409. Common reasons for withdrawing a guilty plea or a plea of no contest include the following:

i) Failure to advise the defendant of constitutional rights (*People v Howard* (1992) 1 Cal.4th 1132, 1175);

ii) Failure to specify the direct consequences of the plea (*People v Walker* (1991) 1 Cal.4th 1013, 1023);

iii) Failure to advise a defendant of immigration consequences of a guilty plea to a particular charge (*Padilla v Kentucky* (2010) 559 US 356);

iv) Violation of the plea bargain (*People v Mancheno* (1982) 32 Cal.3d 855, 860);

v) Improper inducement to enter a plea (*People v Bonwit* (1985) 173 Cal.App.3d 828, 833); and,

vi) Improper sentence contemplated (*People v Baries* (1989) 209 CA3d 313, 319).

3) **Argument in Support**: According to *The California Attorneys for Criminal Justice,* "Being charged and convicted of a felony has dire long-term consequences that a person will have to live with for the rest of their lives. Often times, defendants are not fully informed of the

consequences of accepting a plea and being convicted of a felony. A felony conviction can prevent a person from gainfully acquiring employment, voting, receiving housing, serving on a jury, enlisting in the military, receiving financial aid, gaining child custody rights, or possessing a firearm, to name a few.

"California has one of the highest recidivism rates in the nation. Often times, the unknown consequences of a felony conviction prevents persons from successfully reentering into their communities upon release from incarceration. Removing or limiting the barriers to successful reentry is key to both lowering recidivism rates and helping formerly incarcerated persons reintegrate into society.

"AB 149 would provide an additional safeguard and provide essential information prior to the acceptance of a guilty plea. CACJ strongly supports this explicit expression of a defendant's rights prior to taking a plea to an offense punishable by a felony. CACJ looks forward to working with the author to ensure that a standard form or admonition is created and provided to individuals who find themselves deciding whether to enter a plea or pursue his or her right to a jury trial. "

4) **Prior Legislation**:

a) AB 273 (Jones-Sawyer), of the 2015-2016 Legislative Session, required the court, prior to the acceptance of a guilty plea to a felony offense, to inform the defendant of the various consequences that may result from conviction of a felony. AB 149 was vetoed by the Governor.

b) AB 142 (Fuentes), of the 2011-12 Legislative Session, required that courts advise defendants that if they are deported from the United States and return illegally, they could be charged with a separate federal offense. AB 142 was vetoed by the Governor.

c) AB 806 (Fuentes),of the 2009-10 Legislative Session, required that courts advise defendants that if they are deported from the United States and return illegally, they could be charged with a separate federal offense. AB 806 was vetoed by the Governor.

d) AB 15 (Fuentes), of the 2009-10 Legislative Session, required that courts advise defendants that if they are deported from the United States and return illegally, they could be charged with a separate federal offense. AB 806 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
Firearms Policy Coalition
Friends Committee on Legislation of California

Opposition

None

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

Date of Hearing: February 28, 2017
Chief Counsel: Gregory Pagan

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

AB 152 (Gallagher) – As Introduced January 11, 2017

SUMMARY: Requires the Board of State and Community Corrections (BSCC) to collect and analyze data regarding recidivism rates of all persons who receive a felony sentence or who are placed on postrelease community supervision (PRCS), as specified. Specifically, **this bill**:

1) Requires, commencing on and after July 1, 2018, BSCC, in consultation with the Administrative Office of the Courts, the California State Association of Counties, the California State Sheriffs' Association, the California District Attorneys Association, and the Chief Probation Officers of California, to collect and analyze data regarding recidivism rates of all persons who receive a felony sentence punishably by imprisonment in county jail or who are placed on PRCS on or after July 1, 2018.

2) Mandates that the data shall include, as it becomes available, recidivism rates for these offenders one, two, and three years after their release in the community.

3) States that BSCC shall make any data collected pursuant to this paragraph available on the board's Internet Web site on a quarterly basis beginning on September 1, 2019.

EXISTING LAW:

1) Establishes, commencing July 1, 2012, BSCC and states that all references to the Board of Corrections or the Corrections Standards Authority shall refer to BSCC. (Pen. Code, § 6024, subd. (a).)

2) States that the mission of BSCC shall include providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. This mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations. (Pen. Code, § 6024, subd. (b).)

3) Provides that it shall be the duty of BSCC to collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, including, but not limited to, prevention, intervention, suppression, supervision, and incapacitation, as they relate to both adult corrections, juvenile justice, and gang problems. The board shall seek to collect and make publicly available up-to-date data and information reflecting the impact of state and community correctional, juvenile justice, and gang-related

policies and practices enacted in the state, as well as information and data concerning promising and evidence-based practices from other jurisdictions. (Pen. Code, § 6027, subd. (a).)

4) Requires, commencing on and after July 1, 2012, BSCC, in consultation with the Administrative Office of the Courts, the California State Association of Counties, the California State Sheriffs' Association, and the Chief Probation Officers of California, shall support the development and implementation of first phase baseline and ongoing data collection instruments to reflect the local impact of Public Safety Realignment, specifically related to dispositions for felony offenders and postrelease community supervision. The board shall make any data collected pursuant to this paragraph available on the board's Internet Web site. It is the intent of the Legislature that the board promotes collaboration and the reduction of duplication of data collection and reporting efforts where possible. (Pen. Code, § 6027, subd. (b)(12).)

5) Authorizes BSCC to do either of the following:

   a) Collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of criminal justice in the state; or,

   b) Perform other functions and duties as required by federal acts, rules, regulations, or guidelines in acting as the administrative office of the state planning agency for distribution of federal grants. (Pen. Code, § 6027, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "It is imperative that we track the recidivism rates of offenders who, before realignment, would have served their sentence in prison, but now serve those sentences in county jails or being released early. This is important data that is necessary to evaluate the effects of realignment on public safety in our communities and the effectiveness of rehabilitation programs.

   "This bill builds on AB 1050 (Dickinson 2013) which required the Board of State and Community Corrections to develop a common definition of the term 'recidivism.; AB 602 requires the Board, after July 1, 2016, to report the recidivism rates of those either sentenced under, or receiving post-release community supervision under the public safety realignment law. Consistent with the Department of Corrections and Rehabilitation's data for parolees, it would require this to be reported for those 1, 2, and 3 years after release. Collecting and reporting recidivism data is an essential part of evaluating the success of realignment and in identifying any need for changes."

2) **Background**: BSCC was established, commencing July 1, 2012, by SB 92 (Committee on Budget and Fiscal Review), Chapter 36, Statutes of 2011. "From 2005 through 2012, BSCC was the Correction Standards Authority, a division of CDCR. Prior to that it was the Board of Corrections, an independent state department. The BSCC is responsible for administering various criminal justice grant programs and ensuring compliance with state and federal standards in the operation of local correctional facilities. It is also responsible for providing

technical assistance to local authorities and collecting data related to the outcomes of criminal justice policies and practices." (LAO, The 2013-14 Budget: The Governor's Criminal Justice Proposals, p. 44 (Feb. 15, 2013).)

"In creating BSCC, the Legislature added two responsibilities to the board's core mission: (1) assisting local entities to adopt best practices to improve criminal justice outcomes and (2) collecting and analyzing data related to criminal justice outcomes in the state." (*Id.* at pp. 44-45.)

3) **Effect of Realignment on Crime Rates**: A fact sheet recently released by Public Policy Institute of California (PPIC) on the state's crime rates for 2013 shows that there was an overall decrease in violent crime and property crime rates. Specifically, the violent crime rate dropped by 6.5% in 2013, to a 46-year low of 397 per 100,000 residents. As for property crimes, after a noticeable uptick in 2012, the 2013 rate of 2,665 per 100,000 residents is down 3.9% from 2012 and close to the 50-year low of 2,594 reached in 2011. The fact sheet noted that crime rates vary by region and by category. While some regions did experience increased crime rates, "41 of the state's 58 counties—including 14 of the 15 largest—saw decreases in their violent crime rates in 2013" and "some of the state's largest counties saw substantial decreases in property crime rates in 2013. Orange and Fresno Counties both observed double-digit drops (10% and 13.2% respectively), while the property crime rate in Sacramento County decreased by 9.4%." (Lofstrom and Martin, *Crime Trends in California*, PPIC (Nov. 2014) <http://www.ppic.org/main/publication_show.asp?i=1036> [as of Mar. 27, 2015].)

4) **Prior Legislation**:

   a) AB 1870 (Gallagher) of the 2015-16 Legislative Session, would have required, commencing July 1, 2018, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2018, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2019. AB 1870 was held on the Assembly Committee on Appropriations' Suspense File.

   b) AB 602 (Gallagher), of the 2013-14 Legislative Session, would have required, commencing July 1, 2016, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2016, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2017. AB 602 was held on the Assembly Committee on Appropriations' Suspense File.

   c) AB 2521 (Hagman), of the 2013-14 Legislative Session, would have required, commencing July 1, 2015, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2015, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2016. AB 2521 was held on the Senate Committee on Appropriations' Suspense File.

   d) AB 1050 (Dickinson), Chapter 270, Statutes of 2013, requires BSCC, in consultation with certain individuals that represent or are selected after conferring with specified

stakeholders, to develop definitions of key terms, which include, but are not limited to, "recidivism," "average daily population," "treatment program completion rates," and any other terms deemed relevant in order to facilitate consistency in local data collection, evaluation, and implementation of evidence-based practices, promising evidence-based practices, and evidence-based programs.

e) AB 526 (Dickinson), Chapter 850, Statutes of 2012, requires BSCC to identify and consolidate gang intervention and delinquency prevention programs and grants and focus funding on evidenced-based practices.

f) SB 92 (Budget and Fiscal Review Committee), Chapter 36, Statutes of 2011, starting July 1, 2012, eliminates the Corrections Standards Authority, and assigns its former duties to the newly created 12-member BSCC and assigns additional duties, as provided.

REGISTERED SUPPORT / OPPOSITION:

Support

Peace Officers Research Association of California

Opposition

None

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

Date of Hearing: February 28, 2017
Consultant: Adam Smith

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

AB 153 (Chávez) – As Introduced January 11, 2017

SUMMARY: Modifies the language of the California Stolen Valor Act to conform to the Stolen Valor Act of 2013. Specifically, **this bill**:

1) Requires an officer to forfeit their office under a conviction of the Stolen Valor Act of 2013 instead of the previous Stolen Valor Act of 2005.

2) Defines the intent for military fraud as "the intent to obtain money, property, or other tangible benefit."

3) Defines "district" as "any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

4) Defines "tangible benefit" as "financial remuneration, an affect on the outcome of a criminal or civil court proceeding, or any benefit relating to service in the military that is provided by a federal, state, or local governmental entity."

5) Includes the California National Guard, the State Military Reserve, the Naval Militia, the national guard of any other state, and any other reserve component of the Armed Forces of the United States in the list of service branches covered by the California Stolen Valor Act.

6) Creates the following misdemeanors for any person who:

   a) Forges documentation reflecting the awarding of a military decoration that he or she has not received for the purposes of obtaining money, property, or receiving a tangible benefit;

   b) Knowingly, with the intent to impersonate and to deceive, for the purposes of obtaining money, property, or receiving a tangible benefit, misrepresents himself or herself as a member or veteran of the Armed Forces of the United States, the California National Guard, the State Military Reserve, or the Naval Militia by wearing the uniform or military decoration authorized for use by the members or veterans of those forces;

   c) Knowingly utilizes falsified military identification for the purposes of obtaining money, property, or receiving a tangible benefit, is guilty of a misdemeanor;

   d) Knowingly, with the intent to impersonate, for the purposes of promoting a business, charity, or endeavor, misrepresents himself or herself as a member as a member or veteran of the Armed Forces of the United States, the California National Guard, the

State Military Reserve, or the Naval Militia by wearing the uniform or military decoration authorized for use by the members or veterans of those forces; and

e) Knowingly, with the intent to gain and advantage for employment purposes, misrepresents himself or herself as a member or veteran of the Armed Forces of the United States, the California National Guard, the State Military Reserve, or the Naval Militia by wearing the uniform or military decoration authorized for use by the members or veterans of those forces.

EXISTING LAW:

1) Provides, under federal law, that "whoever, with intent to obtain money, property, or other tangible benefit, fraudulently holds oneself out to be a recipient of a decoration or medal shall be fined under this title, imprisoned not more than one year, or both. (18 U.S.C.A § 704)

2) States that an elected officer of the state or a city, county, city and county, or district in this state forfeits his or her office upon the conviction of a crime pursuant to the federal Stolen Valor Act of 2005 or the California Stolen Valor Act, as specified (Gov. Code, § 3003.)

3) States that it is a misdemeanor for any person to:

   a) Falsely represent himself or herself as a veteran or ex-serviceman of any war in which the United States was engaged, in connection with the soliciting of aid or the sale or attempted sale of any property; (Pen. Code, § 532b, subd. (a).)

   b) Falsely claim, or present himself or herself, to be a veteran or member of the Armed Forces of the United States, with the intent to defraud; and(Pen. Code, § 532b, subd. (b).)

   c) Orally, in writing, or by wearing any military decoration, falsely represents himself or herself to have been awarded any military decoration, with the intent to defraud. If the person is an individual, he or she is guilty of either an infraction or a misdemeanor. (Pen. Code, § 532b, subd. (c)(1) & (2).)

4) Defines "military decoration" as "any decoration or medal from the Armed Forces of the United States, the California National Guard, the State Military Reserve, or the Naval Militia, or any service medals or badges awarded to the members of those forces, or the ribbon, button, or rosette of that badge, decoration, or medal, or any colorable imitation of that item." (Pen. Code, § 532b, subd. (c)(3).)

5) States that this section does not apply to face-to-face solicitations involving less than ten dollars. (Pen. Code, § 532b, subd. (d).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "It is important to create conformity between state and federal law to ensure elected officials are held accountable to be honest about their service or lack thereof."

2) **Background**: California currently requires that an elected officer forfeit their office upon conviction of a crime pursuant to either the federal Stolen Valor Act of 2005 or the California Stolen Valor Act. The federal Stolen Valor Act was updated in 2013 in response to the Supreme Court's ruling that the 2005 act was unconstitutional. (See *United States v. Alvarez* (2012) 132 S.Ct. 2537, 2556 [183 L.Ed.2d 547].) This bill updates the California Stolen Valor Act by requiring a conviction pursuant to the federal Stolen Valor Act of 2013.

   In addition, this bill adds new misdemeanors to the California Stolen Valor Act and changes the intent requirement for a conviction under the Act to mirror federal law.

3) **First Amendment:** The First Amendment of the United States Constitution prohibits Congress from passing laws prohibiting free speech. (U.S. Const., 1st Amend.) State action restricting free speech is likewise prohibited by the Due Process Clause of the Fourteenth Amendment. (*First Nat. Bank of Boston b. Bellotti* (1978) 435 U.S. 765, 779.) Not all speech is protected but categories of unprotected speech should be well-defined and narrowly limited. For example, obscenity, defamation, fraud, incitement, and speech integral to criminal conduct are unprotected categories of speech. (*U.S. v. Stevens* (2010) 559 U.S. 460, 468-469.) If speech does not fall into one of these well-defined categories, then that speech enjoys at least some level of First Amendment protection.

   To determine what level of protection certain speech is given, a court must first determine whether the speech is content-based or content-neutral. (*Madsen v. Women's Health Center, Inc.*, (1994) 512 U.S. 763, 763-764.) Content-based restrictions on speech receive the strictest level of scrutiny. Therefore, a content-based restriction will only survive if the government has a compelling interest in regulating the speech and the restriction is the least restrictive means of regulating such speech. (*McIntyre v. Elections Comm'n* (1995) 514 U.S. 334, 346-47.) On the other hand, content-neutral speech is subject to the less restrictive intermediate scrutiny test, which only requires that the government have a legitimate interest and the means of regulating speech is narrowly tailored to achieve the government's ends. In contrast to strict scrutiny, the means chosen need not be the least restrictive means. (*Ward v. Rock Against Racism* (1989) 491 U.S. 781, 798-800.)

   The Supreme Court has ruled on the speech implicated in this bill when it examined the federal Stolen Valor Act of 2005 in the case of *United States v. Alvarez*, *supra*, 132 S.Ct. 2537. The relevant language of the Act reads:

   "Whoever falsely represents himself or herself, verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States, any of the service medals or badges awarded to the members of such forces, the ribbon, button, or rosette of any such badge, decoration, or medal, or any colorable imitation of such item shall be fined under this title, imprisoned not more than six months, or both."

   The plurality held this provision content-based and therefore subject to strict scrutiny. (Alvarez, supra, 132 S.Ct. at p. 2543.) Critical to their holding is that the statute prohibited false claims without any requirement of cognizable harm as a result of the false claims. The plurality stated that the government's interest is compelling, but that other means exist to

achieve their ends without restricting protected speech. In particular, the Court held the combination of a database for medal recipients coupled with public condemnation would serve just as well to deter false claims regarding military service. (*Alvarez*, *supra*, at pp. 132 S.Ct. at pp. 2550-2551.) Because alternative means exist to address the government's ends, the Court held the statutory provision unconstitutional. (*Ibid.*)

The concurring Justices applied intermediate scrutiny because they found the false speech to be of limited value. (*Alvarez, supra*, 132 S.Ct. at p. 2552.) The false claims at issue here were easily verifiable, and therefore unlikely to aid in the debate of public issues which is the heart of the First Amendment's speech protections. However, the Court still held the statutory provision unconstitutional because of its potential to chill protected speech. Critical to the concurring Justices was the lack of intent to cause some legally cognizable harm, such as obtaining unearned benefits from the VA or unearned employment preferences. (*Id.* at pp. 2555-2556.)

The dissent would have upheld the statute as constitutional. (*Alvarez*, *supra*, 132 S.Ct. at p. 2557.)

The language of the federal Stolen Valor Act has since been amended to reflect the Court's interpretation. The intent to cause some legally cognizable harm has been added. As of now, there has not been a challenge to the federal Act. Moreover, the Court specifically addressed the receipt of unearned benefits and the impacting of judicial proceedings in its holding in Alvarez and stated that such restrictions are likely constitutional. This bill's language largely mirrors the language of the federal Act.

4) **Argument in Support:** According to the *American G.I. Forum of California,* "There have been numerous cases of Stolen Valor in California recently. It is an insult to the brave men and women who have served our country to have those who have not served or who have fabricated and/or enhanced their military service in order to obtain tangible benefits fraudulently."

5) **Prior Legislation**:

   a) AB 1706 (Chávez), of the 2015-2016 Legislative Session, would have modified the language of the California Stolen Valor Act to conform to the Stolen Valor Act of 2013, the same as this proposed bill. AB 1706 was held in Senate Appropriations Committee.

   b) AB 167 (Cook), Chapter 69, Statutes of 2011, requires that elected officers forfeit their office upon conviction of any of the crimes specified in the California Stolen Valor Act in addition to the federal Stolen Valor Act.

   c) AB 265 (Cook), Chapter 93, Statutes of 2009, expands the provision requiring local elected officers to forfeit office upon conviction of a crime pursuant to the federal Stolen Valor Act to include elected state officers.

   d) SB 1482 (Correa), Chapter 118, Statutes of 2008, provides that an elected officer of a city, county, city and county, or district in the state forfeits his or her office upon the conviction of a crime pursuant to the federal Stolen Valor Act, that involves a false claim of receipt of a military decoration or medal described in that Act.

REGISTERED SUPPORT / OPPOSITION:

Support

American G.I. Forum of California
American Legion – Department of California
AMVETS-Department of California
California Association of County Veterans Services Officers
California State Commanders Veterans Council
Military Officers Association of America, California Council of Chapters

Veterans of Foreign Wars
Vietnam Veterans of America – California State Council

Opposition

None

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

Date of Hearing: February 28, 2017
Counsel: David Billingsley

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

AB 154 (Levine) – As Introduced January 11, 2017

SUMMARY: Allows the court to order a defendant to serve all, or part, of their state prison or county jail sentence in a residential mental health facility, when a defendant establishes that they meet specified criteria regarding mental illness. Specifically, **this bill**:

1) Permits a defendant, who at any prior time was eligible for public mental health services due to serious mental illness, or who is currently, or at any prior time was, eligible for Social Security Insurance due to a diagnosed mental illness, to petition the court for a sentence that includes mental health treatment.

2) Specifies that the petition shall be filed after the defendant's plea or conviction, but before his or her sentencing.

3) Specifies that the defendant shall bear the burden of establishing by a preponderance of the evidence that he or she meets the specified criteria regarding mental illness.

4) Authorizes the court, upon a determination that a defendant has met the specified criteria regarding mental illness, and a determination that it is in the public interest, to order one or more of the following:

    a) That the defendant serve, if the defendant agrees, all or a part of his or her sentence in a residential mental health treatment facility instead of in the state prison or county jail. Defendants with a current conviction for a violent felony, as specified, would not qualify.

    b) The California Department of Corrections and Rehabilitation (CDCR) or the county jail to place the defendant in a mental health program within the state prison or county jail system, respectively, at a level of care determined to be appropriate by mental health staff, within 30 days, of the defendant's placement in the state prison or county jail; and

    c) CDCR or the county jail to prepare a postrelease mental health treatment plan six months prior to the defendant's release to parole or postrelease community supervision which specifies the manner in which the defendant will receive mental health treatment services following that release, and shall address, if applicable and in the discretion of the court, medication management, housing, and substance abuse treatment.

5) The defendant or prosecutor may, at any time, petition the court to recall a sentence that includes a mental health treatment order issued under these guidelines and the court may resentence the defendant, provided the defendant gets credit for the time he or she served and the court does not impose sentence longer than originally imposed.

6) Specifies that a re-sentence may, but is not required to, include other mental health treatment, as specified.

7) States that a defendant is not eligible to serve a portion of his or her sentence in a residential mental health treatment facility if their current plea or conviction is for specified offenses.

8) Provides that the defendant has the right to counsel for these proceedings.

EXISTING LAW:

1) Finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. (Pen. Code, § 1202.7.)

2) In any case in which it appears to the person in charge of a county jail, city jail, or juvenile detention facility, or to any judge of a court in the county in which the jail or juvenile detention facility is located, that a person in custody in that jail or juvenile detention facility may be mentally disordered, he or she may cause the prisoner to be taken to a facility for 72-hour treatment and evaluation and he or she shall inform the facility in writing, which shall be confidential, of the reasons that the person is being taken to the facility. The local mental health director or his or her designee may examine the prisoner prior to transfer to a facility for treatment and evaluation. (Pen. Code, § 4011.6.)

3) Where the court causes the prisoner to be transferred to a 72-hour facility, the court shall forthwith notify the local mental health director or his or her designee, the prosecuting attorney, and counsel for the prisoner in the criminal or juvenile proceedings about that transfer. Where the person in charge of the jail or juvenile detention facility causes the transfer of the prisoner to a 72-hour facility the person shall immediately notify the local mental health director or his or her designee and each court within the county where the prisoner has a pending proceeding about the transfer. Upon notification by the person in charge of the jail or juvenile detention facility the court shall forthwith notify counsel for the prisoner and the prosecuting attorney in the criminal or juvenile proceedings about that transfer. (Pen. Code, § 4011.6.)

4) If a prisoner is detained in, or remanded to, a mental health facility pursuant, the facility shall transmit a report, which shall be confidential, to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility and to the local mental health director or his or her designee, concerning the condition of the prisoner. A new report shall be transmitted at the end of each period of confinement as specified, upon conversion to voluntary status, and upon filing of temporary letters of conservatorship. (Pen. Code, § 4011.6.)

5) A prisoner who has been transferred to an inpatient facility pursuant to this section may convert to voluntary inpatient status without obtaining the consent of the court, the person in charge of the jail or juvenile detention facility, or the local mental health director. At the

beginning of that conversion to voluntary status, the person in charge of the facility shall transmit a report to the person in charge of the jail or juvenile detention facility or judge of the court who caused the prisoner to be taken to the facility, counsel for the prisoner, prosecuting attorney, and local mental health director or his or her designee. (Pen. Code, § 4011.6.)

6) If the prisoner is detained in, or remanded to, a mental health facility, the time passed in the facility shall count as part of the prisoner's sentence. When the prisoner is detained in, or remanded to, the facility, the person in charge of the jail or juvenile detention facility shall advise the professional person in charge of the facility of the expiration date of the prisoner's sentence. If the prisoner is to be released from the facility before the expiration date, the professional person in charge shall notify the local mental health director or his or her designee, counsel for the prisoner, the prosecuting attorney, and the person in charge of the jail or juvenile detention facility, who shall send for, take, and receive the prisoner back into the jail or juvenile detention facility. (Pen. Code, § 4011.6.)

7) A defendant, either charged with or convicted of a criminal offense, or a minor alleged to be within the jurisdiction of the juvenile court, may be concurrently subject to mental health detention as specified by law under the Welfare and Institutions Code. (Pen. Code, § 4011.6.)

8) If a prisoner is detained in a mental health facility pursuant to the Welfare and Institutions Code and if the person in charge of the facility determines that arraignment or trial would be detrimental to the well-being of the prisoner, the time spent in the facility shall not be computed in any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings. Otherwise, this section shall not affect any statutory time requirements for arraignment or trial in any pending criminal or juvenile proceedings. (Pen. Code, § 4011.6.)

9) States that upon conviction of any felony in which the defendant is sentenced to state prison, and the court makes any of the findings listed below, a court shall, in addition to any other terms of imprisonment, fine, and conditions, recommend in writing that the defendant participate in a counseling or education program having a substance abuse component while imprisoned:

   a) That the defendant at the time of the commission of the offense was under the influence of any alcoholic beverages; (Pen. Code, § 1203.096, subd. (b)(1).)

   b) That the defendant at the time of the commission of the offense was under the influence of any controlled substance; (Pen. Code, § 1203.096, subd. (b)(2).)

   c) That the defendant has a demonstrated history of substance abuse; and (Pen. Code, § 1203.096, subd. (b)(3).)

   d) That the offense or offenses for which the defendant was convicted are drug related. (Pen. Code, § 1203.096, subd. (b)(4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Jails and prisons have become California's de facto mental health facilities with those who are mentally ill being far more likely to be incarcerated than to be in a psychiatric hospital. Incarcerating those with mental illness does not make sense from an outcomes or a fiscal stand point. Studies have found that individuals who participate in mental health courts reoffend one third of the time than those who do not and that participant's show significant improvement in quality of life. Furthermore, mental health courts have been demonstrated to save $7 in costs for every $1 spent. It costs $51,000 a year to house an inmate, and $20,412 to house and treat a person with mental illness. AB 154 gives the court the ability to consider the presence of a mental illness in criminal sentencing."

2) **Prevalence of Mentally Ill Offenders:** The Department of Corrections and Rehabilitation's (CDCR) Council on Mentally Ill Offenders (COMIO) regards the growing number of inmates suffering from mental health issues as a pressing concern.[1]

   Nationally, a 2009 American Psychiatric Association study "found that 14.5% of male and 31.0% of female inmates recently admitted to jail have a serious mental illness" which is three to six times higher than rates found in the general population. "A serious mental illness" included major depressive disorder, depressive disorder not otherwise specified, schizophrenia spectrum disorder, schizoaffective disorder, schizophreniform disorder, brief psychotic disorder, delusional disorder, and psychotic disorder not otherwise specified.[2]

   In 2009, the Division of Correctional Health Care Services for the CDCR estimated that 23 percent of California's prison inmates have a serious mental illness.[3] According to the Berkeley Center for Criminal Justice, an estimated "40 to 70 percent of youth in the California juvenile justice system have some mental health disorder or illness," with 15 to 25 percent considered severely mentally ill. Based on these numbers, youth in California's juvenile justice system are two to four times more likely to be in need of mental health care than California youth generally.[4] The Bureau of Justice Statistics reported in 2006 that 74 percent of mentally ill state prisoners and 76 percent of mentally ill local jail inmates also met the criteria for substance dependence or abuse indicating a larger issue with co-occurring disorders among mentally ill offenders.[5]

3) **Increased Rates of Recidivism Among Mentally Ill Offenders:** A 2012 review conducted by the Utah Criminal Justice Center found that released inmates with serious mental illness experience poorer outcomes overall as they are "twice as likely to have their probation or parole

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[1] http://www.cdcr.ca.gov/comio/Legislation.html
[2] Steadman, H., Osher, F. C., Robbins, P. C., Case, B., & Samuels, S. (2009). Prevalence of serious mental illness among jail inmates. *Psychiatric Services*, 60(6), 761-765. <http://www.ncbi.nlm.nih.gov/pubmed/19487344>.
[3] Administrative Office of the Courts, Center for Families, Children & the Courts. (2011). *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report.* <http://www.mentalcompetency.org/resources/guides-standards/files/California%20Mental%20Health%20Task%20Force%20Report.pdf>.
[4] Berkeley Center for Criminal Justice. (2010). *Juvenile Justice Policy Brief Series: Mental Health Issues in California's Juvenile Justice System.* <https://www.law.berkeley.edu/img/BCCJ_Mental_Health_Policy_Brief_May_2010.pdf>
[5] Treatment Advocacy Center & National Sheriffs' Association. (2010). *More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of States.*
<http://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf>

revoked, are at an elevated risk for rearrest, incarceration, and homelessness, lack skills to obtain and sustain employment, and have higher rates of medical problems." [6]

In 2009, the Council of State Governors Justice Center released a report entitled *Improving Outcomes for People with Mental Illnesses under Community Corrections Supervision*, which stated that the reasons for increased recidivism among mental ill offenders may be multifaceted:

> Once people with mental illnesses are finally released, it is often extremely difficult for them to successfully transition from incarceration to the community. Their mental illnesses may be linked to community corrections supervision failure in a number of ways. Skeem and Loudon have characterized these links as being *direct, indirect, or spurious*.
>
> First, mental illnesses may *directly* result in probation or parole revocation. For example, an individual may not access treatment, leading him or her to decompensate, behave in a bizarre or dangerous manner in public, get arrested for this behavior, and have his or her probation revoked.
>
> Second, mental illnesses may *indirectly* result in revocation. For example, an individual with clinical depression may have impaired functioning that prevents him or her from maintaining employment and paying court ordered fines, which are standard conditions of release. Notably, many people with mental illnesses returning to the community from jail or prison lack financial or social supports. Some were receiving Medicaid and other forms of public assistance at the time of their arrest, and these benefits are typically terminated rather than suspended during incarceration, and rarely reinstated immediately upon release. In short, there is often no safety net to compensate for functional impairments that may place individuals with mental illnesses at risk for revocation.
>
> Third, mental illnesses may not result in revocation. Instead, the relationship between the two may be *spurious*—that is, more apparent than real—because a third variable associated with mental illness causes revocation. For example, an individual with bipolar disorder may be at risk of committing a new offense not because of his or her mental illness, but because of criminogenic attitudes or affiliation with antisocial peers. Alternatively, an individual with psychosis may be monitored exceptionally closely and revoked readily by his or her probation officer, given that traditional supervision strategies often reflect misconceptions about (and stigma associated with) mental illness.[7]

CDCR data shows higher rates of recidivism in inmates identified with mental health issues when compared to those without. Upon release, inmates exhibiting mental health problems are assigned one of two mental health services designations: Enhanced Outpatient Program (EOP) or Correctional Clinical Case Management System (CCCMS). Inmates with severe mental illness expected to experience difficulty transitioning out of corrections are designated as EOP and receive treatment at a level similar to day treatment services in the community, while inmates

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[6] University of Utah, Utah Criminal Justice Center. (2012). *Treating Offenders with Mental Illness: A Review of the Literature*. <http://ucjc.utah.edu/wp-content/uploads/MIO-butters-6-30-12-FINAL.pdf>.
[7] https://s3.amazonaws.com/static.nicic.gov/Library/023634.pdf.

receiving CCCMS services are housed within the general population and participate on an outpatient basis. In the 2012 CDCR Outcome Evaluation Report, 76.7 percent of first-release inmates with an EOP designation recidivated after three years, compared to lower rates found in CCCMS designees (70.6 percent) and those without a designation (62 percent).[8]

According to a 2005 CDCR report, mental health issues "comprised the single most critical gap in juvenile justice services. ... According to those surveyed, the number of at-risk youth and youthful offenders with mental health problems continues to increase as does the seriousness of their mental illnesses. The only thing not increasing is the resources to treat and confine these troubled and troubling youth." Even if juvenile offenders receive assistance, absence of treatment after release may contribute to a path of behavior that includes continued delinquency and adult criminality.[9]

4) **Under Existing Law, Judges Have Discretion to Impose Conditions on Felony or Misdemeanor Cases When a Defendant is Placed on Probation**: Probation is the suspension of the imposition or execution of a sentence and the conditional release of a defendant into the community under the direction of a probation officer. "Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation." *People v. Carbajal* (1995) 10 Cal.4th 1114,1120. Probation can be conditioned on serving a period of incarceration in county jail and on conditions reasonably related to the offense. Certain convicted felons are not eligible for probation. Other felons are presumptively ineligible for probation, but may be granted probation in an unusual case.

   The primary considerations in granting probation are: (1) Public safety; (2) the nature of the offense; (3) the interests of justice; (4) the victim's loss; and (5) the defendant's needs. (Pen. Code, § 1202.7.)

   Courts have broad general discretion to fashion and impose additional probation conditions that are particularized to the defendants. *People v. Smith* (2007) 152. Cal.App.4th 1245, 1249. Courts may impose any "reasonable" conditions necessary to secure justice and assist the rehabilitation of the probationer. Under existing law, a judge can impose a condition of probation that a defendant spend a certain amount of time in a residential mental health facility in conjunction with a jail sentence, or as an alternative to a jail sentence. In imposing probation conditions related to mental health, the court is not limited to ordering residential mental health treatment. The court can order outpatient mental health treatment, or other mental health directives the court finds appropriate. When a defendant is placed on probation the court retains jurisdiction over the case to ensure the defendant complies with probation. The court has the power to impose further punishment if the defendant does not comply with probation.

5) **California's Current Sentencing Scheme Does Not Provide an Option for a Judge to Impose a Split Prison Sentence:** Under California's sentencing scheme, if a person is sent to state prison, they are sentenced for a determinate amount of time. Once an individual is sentenced to State Prison they are committed to the custody of CDCR. Once CDCR has custody of a defendant, CDCR, not the court, decides where and in what type of custodial setting the defendant serves their state prison term.

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[8] http://www.cdcr.ca.gov/adult_research_branch/Research_Documents/ARB_FY_0708_Recidivism_Report_10.23.12.pdf.
[9] California Department of Corrections and Rehabilitation. (2005). *Status Report on Juvenile Justice Reform.*

When a court sentences a defendant to state prison, the court loses jurisdiction over the individual.

> "If the judgment is for imprisonment, 'the defendant must forthwith be committed to the custody of the proper officer and by him or her detained until the judgment is complied with.' The sheriff, upon receipt of the certified abstract of judgment "or minute order thereof," is required to deliver the defendant to the warden of the state prison together with the certified abstract of judgment or minute order. 'It is clear then that at least upon the receipt of the abstract of the judgment by the sheriff, the execution of the judgment is in progress.'
>
> "Thus, for example, in *People v. Banks*, we considered the effect of a stay of execution in the context of the trial court's authority to grant probation for certain offenses. We observed that upon entry of a guilty plea, if the trial court chooses to retain jurisdiction under the statutes dealing with probation, it may pronounce judgment and suspend its execution by refraining from issuing a commitment of the defendant to the prison authority. We stated: "The critical requirement for control over the defendant and the rest of the action is that the court shall not have surrendered its jurisdiction in the premises *by committing and delivering the defendant to the prison authority.*" *People v. Karaman*, (1992) 4 Cal.4th 335,345 (citation omitted)(italics added.)

Because the court loses jurisdiction over a defendant when they are sentenced to state prison, it is unclear who would have the authority to enforce transfer of a defendant from a mental health facility to a state prison if treatment in a residential mental health treatment was ordered for a portion of the defendant's sentence at the beginning of the sentence. The same problem would exist if the court sentenced the defendant to begin their term with state prison, but directed the later part of the state prison term to be served in a mental health facility.

For the same jurisdictional reasons, it is unclear what remedies would be available if a defendant left a residential mental health treatment facility after being sentenced to such a facility for a portion of, or all of, a state prison sentence.

6) **Logistical Difficulties of Post Sentencing Procedures to Petition the Court to Change the Defendant's Status Regarding Their Mental Health Treatment:** The proposed legislation allows for the defendant or prosecutor to petition the court to transfer the defendant from a residential mental health facility to a state prison or county jail, and provides that defendants have a right to counsel for those proceedings. From a practical standpoint, appointing counsel for an individual who is in a residential mental health treatment facility presents challenges for a system where most of the defendants are represented by Public Defender Offices. Public Defender Offices are accustomed to visiting and representing clients in custody at the local county jail. To see and represent clients placed in a variety of mental health facilities that can be in disparate geographic regions would present substantial obstacles to such representation. The same obstacles are present if a defendant in state prison required representation, in the sentencing court, on a petition to remove the defendant from a mental health program in the state prison.

7) **Michigan**: The state of Michigan passed Senate Bill 558 in 2014. That law requires county law enforcement and community mental health service programs, in coordination with courts and other key local partners, to create policies and practices that would provide mental health

treatment and assistance to individuals with mental illness. Specifically, the policies and practices created would focus on individuals who are considered at risk of entering the criminal justice system; who not receiving needed mental health services during incarceration in a county jail or state prison; and who are not receiving needed mental health treatment services upon release or discharge from a county jail.
http://michigan.gov/snyder/0,4668,7-277-57577-323279--,00.html

8) **Argument in Support**: According to the *Steinberg Institute*, "The Steinberg Institute is starkly aware of the fact that roughly ***half of all prisoners in California live with a mental illness*** and have received psychiatric treatment within the past year. Many of these offenders' crimes were directly linked to their mental health condition and the lack of appropriate treatment. According to the U.S. Supreme Court, conditions in California prisons are exacerbating psychiatric disorders of prisoners living with mental illness. When released from custody, parolees with mental illness have a higher recidivism rate compared to healthy parolees. This creates a revolving door of high cost individuals remaining in the criminal justice system and not accessing the treatment they need to become productive citizens.

"AB 154 addresses this issue by authorizing courts to consider the mental health status of a defendant when sentencing and to include mental health treatment in prison and county jails when in the best interests of the defendant and the community. The bill would authorize the provision of specified mental health service, including placement in a residential mental health treatment facility instead of state prison or county jail, placement in a mental health program within the state prison or county jail, or preparation of a post-release mental health treatment plan. The bill would ensure that the defendant has the right to counsel for these proceedings.

"Simply locking people up with mental illness does not make sense from an outcomes standpoint, or from a civil rights perspective for that matter. We know that mental health conditions worsen behind bars, and that without treatment the rate of repeat offences is much greater. On the flip side of this, mental health court participants have significantly lower recidivism rates, often reintegrating into their community in a productive way and have shown to save $7 in costs for every $1 spent. We believe AB 154 can help to mitigate the state's current struggle to treat offenders with a mental health diagnosis in prison and county jails, especially as people with mental illness are far less likely to commit a crime, violate prison rules, or recidivate if they are receiving high quality treatment."

9) **Argument in Opposition:** According to the *California Public Defenders Association*, "Although the goal of seeking treatment for the mentally ill appears laudable, the proposed legislation has the potential to create havoc in the lives of the mentally ill. This bill creates a considerable invasion of the person's privacy with little or no concomitant benefit.

"1. Only the defendant should be empowered to seek a determination of diagnosable mental illness. An individual has a privacy right in their own mental health diagnosis. The prosecutor should not have the right to seek a mental health diagnosis for the defendant which is ostensibly for the individual's best interest without the defendant's consent.

"There are already provisions to deal with defendants who are so acutely mental ill that they are incompetent to stand trial. (Penal Code section 1368 et seq.) There are also provisions for defendants who are not guilty by reason of insanity. (Penal Code section 1026.) Mentally Disordered Offenders (MDO's) who commit or threaten a crime of violence and whose severe mental illness either caused their offense or exacerbated their offense can be civilly committed to

a state mental hospital after the completion of their prison term. (Penal Code section 2970 et seq.)

"2. Any finding of a diagnosable mental disorder should be confidential and given only to appropriate state prison medical staff or mental health treatment facility. The finding should not be used for any other future purpose. Mentally ill individuals have faced, and continue to face invidious discrimination from employers, landlords and others.

"3. Any determination of a diagnosable mental disorder made as a part of this act should not be used to support a future finding of Sexually Violent Predator (Welfare & Institutions Code section 6600 et seq.) or Mentally Disordered Offender (Penal Code section 2970 et seq.).

"Unfortunately, AB 154 fails to take into account, recent research, mental health proposals being implemented in other parts of the country and even, the data compiled by at least one of its sponsors."

10) Related Legislation:

a) SB 6 (Beall), would require an inmate in the state prison or a county jail to provide inmates with reasonable access to outside victim advocates for emotional support services related to sexual abuse, domestic violence, and suicide prevention by allowing inmates to call the toll-free hotlines of organizations that provide mental health crisis support. SB 6 is awaiting hearing in Senate Public Safety.

b) AB 620 (Holden), would require the department to provide meaningful opportunity for the successful release of inmates by providing individual introspective trauma informed therapy, as defined, for specified inmates at least one year prior to an offender's minimum eligible parole date. AB 629 is pending committee referral in the Assembly Rules Committee.

11) **Prior Legislation**:

a) AB 2262 (Levine), of the 2015-16 Legislative Session, would have allowed the court to order the defendant to serve part of his or her sentence in a residential mental health treatment facility or order the defendant placed in a mental health program in the state prison or county jail, if the defendant had a diagnosable mental condition. AB 2262 was held in the Assembly Appropriations Committee.

b) AB 1006 (Levine), of the 2015-16 Legislative Session, would have allowed the court to order the defendant to serve part of his or her sentence in a residential mental health treatment facility or order the defendant placed in a mental health program in the state prison or county jail, if the defendant had a diagnosable mental condition. AB 1006 was held in the Assembly Appropriations Committee.

c) SB 1054 (Steinberg), Chapter 436, Statutes of 2014, clarifies that mental health grants be divided equally between adult and juvenile mentally ill offender crime reduction grants and streamline the grant process.

d) SB 1323 (Cedillo), of the 2005-06 Legislative Session, would have appropriated $350,000 from the General Fund to the department for allocation, over 5 years, to the County of Los Angeles, at the consent of the county, for the purpose of funding one position to work, in conjunction with the Los Angeles County Superior Court, on a 5-year Prototype Court Pilot Program for nonviolent felony offenders in the state who have been identified as having both serious mental health and substance abuse problems. SB 1323 was held in the Senate Appropriations Committee.

e) SB 643 (Ortiz), of the 2001-02 Legislative Session, would have enacted the Mental Health Enhancement and Crime Prevention Act of 2001, which would require the board to reimburse counties meeting specified requirements for the excess cost of providing more effective psychotropic medications to inmates in county correctional facilities during their incarceration and after release. SB 643 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Catholic Conference
Disability Rights California
Steinberg Institute

Opposition

California Public Defenders Association

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

Date of Hearing: February 28, 2017
Counsel: Sandra Uribe

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

AB 194 (Patterson) – As Amended February 21 2017
As Proposed to be Amended in Committee

SUMMARY: Extends the court's jurisdiction for purposes of amending a restitution order for five years after sentencing or until the defendant is no longer on probation or mandatory supervision, whichever is longer. Specifically, **this bill**:

1) States legislative intent to abrogate the holdings in *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, and *People v. Waters* (2015) 241 Cal.App.4th 822.

2) Provides that the court retains jurisdiction to impose or modify restitution for a period of five years following the date of sentencing, or until termination of probation or mandatory supervision, whichever is longer.

EXISTING LAW:

1) Establishes the right of crime victims to receive restitution directly from the persons convicted of the crimes for losses they suffer. (Cal. Const. art I, § 28, subd. (b).)

2) Requires victim restitution from adult criminal defendants who have been sentenced by the court in every case in which a victim has suffered an economic loss as a result of the defendant's conduct. (Pen. Code, § 1202.4, subd. (f).)

3) Defines probation as "the suspension of the imposition or execution of a sentence and the order of conditional release in the community under the supervision of a probation officer." (Pen. Code, § 1203, subd. (a).)

4) Gives the court discretion in felony cases to grant probation for up to five years, or no longer than the prison term that can be imposed when the prison term exceeds five years. (Pen. Code, § 1203.1, subd. (a).)

5) Gives the court discretion in misdemeanor cases to generally grant probation for up to three years, or no longer than the consecutive sentence imposed if more than three years. (Pen. Code, § 1203a.)

6) Authorizes the extension of probation for five years in certain misdemeanor cases, such as driving under the influence. (Veh. Code, § 23600, subd. (b)(1).)

7) Requires a court which grants probation to make the payment of the victim restitution order a condition of probation. (Pen. Code, § 1202.4, subd. (m).)

8) Authorizes the court to revoke, modify, extend, or terminate its order of probation. (Pen. Code, §§ 1203.2 & 1203.3.)

9) Authorizes the court to modify the dollar amount of restitution at any time during the term of probation. (Pen. Code, § 1203.3, subd. (b)(5).)

10) Prohibits the court from modifying the restitution obligations due to the defendant's good conduct. (Pen. Code, § 1203.3, subd. (b)(4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 194 is an important measure which will clarify that the courts retain jurisdiction over a case in order to require payment of restitution even after the probationary period expires. This will ensure that the Constitutional right of crime victims to receive the restitution that they deserve is upheld.

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

   "AB 194 clarifies that the court will retain jurisdiction over a case for purposes of restitution for five years after probation is sentenced, or for the duration of the probationary period, whichever is longer. This will ensure that victims receive the just restitution that they are owed and that they are provided with the correct amount to compensate their losses and be made whole once again."

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

   In *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, the Court of Appeal held that once probation expires, the judge cannot modify a restitution order. In *Hilton*, the defendant pled to driving under the influence and the court placed him on probation for three years. At a subsequent restitution hearing, the court ordered the defendant to pay $3,000 restitution to the victim, which he did. (*Id.* at pp. 769-770.) The victim then sued the defendant civilly and won $3.5 million. Probation then expired on the criminal case. One year and seven months after probation expired, the victim went back to court and requested that the court

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

order $886,000 more in restitution, to pay for the costs of the civil suit as well as additional lost wages. The defendant objected based on lack of jurisdiction. (*Id.* at 770.) The Court of Appeal reversed the order, holding that once probation expires, the court loses jurisdiction to modify a restitution order and that any extension of probation was an act in excess of jurisdiction and void. (*Id.* at p. 772.) The court noted that termination of probation occurs by operation of law at the end of the probationary period. (*Id.* at p. 773.) The court also held that the language of Penal Code section 1203.3, reflects legislative intent, consistent with pre-exisiting law on probation, that the trial court lacks jurisdiction to impose restitution once probation expires. (*Id.* at pp. 775-776.)

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

This bill seeks to overturn these cases.

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

The court has broader discretion to order restitution as a condition of probation than it does when a defendant is not granted probation. (*People v. Anderson* (2010) 50 Cal.4th 19, 26-27.) When ordering restitution as a condition of probation, the court is not restricted to directing payment to only those victims as defined in the restitution statute. Additionally, the court can order restitution as a condition of probation even when the losses are not necessarily caused by the conduct underlying the defendant's conviction. Rather than having a causal connection, the restitution condition must only be reasonably related to either the defendant's crime or to the goal of deterring future criminality. (*Ibid*; see also *People v Carbajal* (1995) 10 Cal4th. 1114, 1121–1124.)

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

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

4) **Extending Probation**: If the defendant is unable to pay full restitution within the initial term of probation, the court can modify and extend the period of probation to allow the defendant to pay off all restitution within the probation term. (Pen. Code, §1203.3, subd. (b)(4); *People v Cookson* (1991) 54 Cal.3d 1091, 1097.) Generally, the probation term may be extended up to, but not beyond, the maximum probation period allowed for the offense. (*People v Medeiros* (1994) 25 Cal.App.4th 1260, 1267–1268.)

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

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

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

The Proposition was not self-executing, but rather directed the Legislature to adopt implementing legislation. (*People v. Vega-Hernández* (1986) 179 Cal.App.3d 1084.) In response, the Legislature enacted Penal Code sections 1202.4 and 1203.04 (repealed section related to restitution as condition of probation). (*People v. Ortiz* (1997) 53 Cal.App.4th 791, 795, fn. 3.)

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

6) **Argument in Support**: According to the *California District Attorneys Association*, the sponsor of this bill, "The ability of the trial courts to make orders of restitution has recently been left in disarray by the holdings in *People v. Ford*, 61 Cal. 4th 282 (2015), *People v. Waters*, 241 Cal. App. 4th 822 (2015), and *People v. Hilton*, 224 Cal. App. 4th 47 (2014). Those decisions have found that a court cannot modify or order additional restitution after a probation term has expired because the court acts in excess of its jurisdiction pursuant to Penal Code section 1203.3, absent a waiver by the defendant. Following *Hilton*, the court in *Waters* also 'rejected the People's contention that the trial court retained jurisdiction to impose restitution under section 1202.46, reasoning section 1202.46 must be harmonized with preexisting statutory and case law.' *Waters*, 241 Cal. App. 4th at 829 (citing *Hilton*, 224 Cal. App. 4th at 780).

Critically, the court in *Hilton* distinguished *People v. Bufford*, 146 Cal. App. 4th 966 (2007), in which restitution was ordered pursuant to section 1202.46 after the defendant's completion

of a prison sentence. The court in *Hilton* concluded that '*Bufford* was not a probation case...*Bufford* concluded, *inter alia*, the trial court retained jurisdiction under section 1202.46. *Bufford* expressly acknowledged "[Penal Code] section 1203.3 does not apply in this case, because defendant was not placed on probation."' *Hilton*, 224 Cal. App. 4th at 782 (quoting *Bufford*, 146 Cal. App. 4th at 970 n. 4).

"Per *Bufford*, the court apparently still has jurisdiction to act to impose or modify a restitution order if it denies probation at the outset and imposes a state prison sentence that is not subject to section 1170(h). However, per *Hilton* and *Waters*, a court acts in excess of its jurisdiction if it orders restitution after the court's grant of probation has expired, been revoked, or been terminated – including early termination either due to probation violations or the defendant's good behavior. Because sentencing to local prison pursuant to section 1170(h) includes mandatory supervision that is treated like probation pursuant to section 1170(h)(5)(B) and 1203.3(a), a court arguably acts in excess of its jurisdiction when ordering restitution after the completion of a sentence pursuant to section 1170(h) as well. Thus, a victim is likely not going to be able to obtain full restitution under the current law when restitution is not definitively determined before the expiration of a period of supervision (as that term is defined in PC 1203.2(f)(3)). Likewise, a defendant faces the same uncertainty in having restitution ordered against him or her."

"Those differing outcomes based on the defendant's sentencing is not fair from the victim's perspective and is inconsistent with the mandate of Article I, Section 28 of the California Constitution requiring that 'Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.' How the court sentences a defendant should not limit a victim's ability to get a restitution order at a later time. The unfairness is more apparent for crimes involving great bodily injury, where the monetary cost of treatment and rehabilitation can be indeterminate at the time of sentencing. The unfairness also is more apparent in cases of massive financial fraud, where all victims of the crime have not yet been identified at the time of sentencing...."

"AB 194 clarifies that a victim has a definite, statutory right to restitution within a certain period of time regardless of the type of sentence imposed. The bill effectively imposes a five-year, post-sentence statute of limitations upon the ability to obtain restitution when it is not determined at the time of sentencing, unless the court has otherwise retained jurisdiction beyond the five years because of a longer supervision period (either probation or mandatory supervision) pursuant to PC 1203.3. The five-year period is commensurate with the maximum probationary period for most felonies. See PC 1203.1."

7) **Argument in Opposition**: According to the *American Civil Liberties Union*, "Under existing law, a court generally only has power to modify a defendant's sentence within 120 days after judgment. When restitution is ordered, Penal Code section 1203.3(b)(5) expressly allows the court to modify the dollar amount "at any time during the term of the probation." However, the trial court loses jurisdiction over the defendant – including jurisdiction to impose or modify restitution – when the defendant's term of probation ends, absent misconduct by the defendant.

"These statutes and court decisions reflect California's longstanding interest in ensuring that a defendant remain subject to the control of the criminal justice system for the period

proscribed under statute, as applied in the individual case by the court, and no longer. They give victims and prosecutors incentive to exercise due diligence in promptly determining the claim for restitution. By allowing the court to retain jurisdiction to impose or modify restitution for five years after sentencing, AB 194 would subject criminal defendants – and courts, and victims – to an extended period of uncertainty as to the full requirements imposed on the defendant. For example, a defendant sentenced to a year of probation who successfully completed that term – including payment of whatever restitution was initially ordered – would then be left for four more years not knowing whether further restitution might be ordered. The effect in many cases would be to multiply several times over the amount of time that individual remained subject to the control of the criminal justice system.

"In cases in which a defendant plays a role in the delay in proceedings, courts have found that a trial court retains power to order restitution after the expiration of probation. And certainly if restitution is still owing following the expiration of the probationary period, there is nothing that precludes enforcing a restitution order as a civil judgment. However, when delays in imposing or modifying restitution are out of the defendant's control, defendants should not bear the burden of such delays by remaining under court control for years beyond the time for which they are sentenced to probation."

8) **Related Legislation**:

a) AB 596 (Choi) provides that drug diversion qualifies as a conviction for purposes of obtaining victim restitution. AB 596 is pending committee referral from the Assembly Rules Committee.

b) AB 1257 (Baker) makes restitution payments to victims of crimes the first priority for debt collected by the Franchise Tax Board. AB 1257 is pending committee referral from the Assembly Rules Committee.

9) **Prior Legislation**:

a) AB 2477 (Patterson) of the 2015-16 Legislative Session, would have extended the court's jurisdiction for purposes of amending a restitution order indefinitely. AB 2477 failed passage in this committee.

b) AB 2645 (Dababneh), Chapter 111, Statutes of 2014, requires a court transferring a probation or mandatory supervision case to another county to determine the amount of victim restitution before the transfer is made.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice

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

Amendments Mock-up for 2017-2018 AB-194 (Patterson (A))

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

Mock-up based on Version Number 98 - Amended Assembly 2/21/17
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. It is the intent of the Legislature to clarify the proper application of Section 1202.46 of the Penal Code and to abrogate the holdings in Hilton v. Superior Court (2014) 239 Cal.App.4th 766 and People v. Waters (2015) 241 Cal.App.4th 822.

SEC. 2. Section 1202.46 of the Penal Code, as amended by Section 4 of Chapter 37 of the Statutes of 2016, is amended to read:

1202.46. Notwithstanding Sections 1170, ~~1202.4, and 1203.3, or any other law,~~ when restitution for the economic losses of a victim has not been ordered ~~of~~ **or** fully ascertained at the time of sentencing, the court shall~~, regardless of the sentence imposed,~~ retain jurisdiction over a defendant for purposes of imposing or modifying **restitution until such time as the losses may be determined. In cases in which probation has been granted or the defendant's sentence includes a period of mandatory supervision pursuant to Section 1170, subdivision (h)(5), the court shall retain jurisdiction over a defendant for purposes of restitution** for a period five years from the date of sentencing, or until the expiration of ~~the time in which the defendant is a supervised person, as defined in paragraph (3) of subdivision (f) of Section 1203.2~~ **probation or mandatory supervision,** whichever is longer. This section does not prohibit a victim, the district attorney, or a court on its own motion from requesting correction, at any time, of a sentence when the sentence is invalid due to the omission of a restitution order or fine pursuant to Section 1202.4.

Date of Hearing: February 28, 2017
Counsel: David Billingsley

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

AB 222 (Bocanegra) – As Amended February 23, 2017
REVISED

SUMMARY: Reduces the punishment for the crime of using false documents to conceal true citizenship or resident alien status. Specifically, **this bill**:

1) Removes the existing mandatory sentence of a five-year period of imprisonment or a $25,000 fine if convicted of using false documents to conceal true citizenship or resident alien status.

2) Makes the crime of using false documents to conceal true citizenship or resident alien status punishable as a misdemeanor with a maximum of one year in the county jail or a $10,000 fine, or alternatively as a felony with a maximum of three years imprisonment or a $10,000 fine.

EXISTING LAW:

1) States that any person who uses false documents to conceal his or her true citizenship or resident alien status is guilty of a felony, and shall be punished by imprisonment pursuant to realignment for five years or by a fine of $25,000. (Pen. Code, § 114.)

2) Specifies that any person who manufactures, distributes or sells false documents to conceal the true citizenship or resident alien status of another person is guilty of a felony, and shall be punished by imprisonment for five years pursuant to realignment or by a fine of $75,000. (Pen. Code, § 113.)

3) Every person who alters, falsifies, forges, duplicates or in any manner reproduces or counterfeits any driver's license or identification card issued by a governmental agency with the intent that such driver's license or identification card be used to facilitate the commission of any forgery, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment in county jail for up to three years as a realigned felony. (Pen. Code, § 470a.)

4) Every person who displays or causes or permits to be displayed or has in his or her possession any driver's license or identification card of the type specified, with the intent that the driver's license or identification card be used to facilitate the commission of any forgery, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment in county jail for up to three years as a realigned felony. (Pen. Code, § 470b.)

5) States that it is a crime to display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, fraudulently altered, or fraudulently obtained driver's license punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars ($1,000), or by both. (Veh. Code, § 14610, subd.

(a)(1).)

6) Specifies that it is a crime to permit any unlawful use of a driver's license issued to him punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars ($1,000), or by both. (Veh. Code, § 14610, subd. (a)(5).)

7) States that it is crime to display or cause or permit to be displayed or have in his possession any canceled, fictitious, fraudulently altered, or fraudulently obtained identification card punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars ($1,000), or by both. (Veh. Code, § 13004, subd. (a).)

8) Provides that it is crime to permit any unlawful use of an identification card issued to an individual as punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars ($1,000), or by both. (Veh. Code, § 13004, subd. (d).)

9) States that a felony is a crime that is punishable with death, imprisonment in the state prison, or in the county jail under the realignment provisions. All other crimes are misdemeanors, except those classified as infractions. (Pen. Code, § 17, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In 1994, voters passed Proposition 187, a largely unconstitutional attempt to fight the perceived ills of illegal immigration and punish the undocumented. It was designed to prevent undocumented immigrants from receiving public benefits, including social services, health care services, and public education, and it required various agencies to report suspected undocumented immigrants to various levels of state and federal law enforcement. The measure also enacted PC §114 to make it a felony, punishable by five years in prison or a $25,000 fine, to use false citizenship or residence documents to conceal one's country of origin or resident status.

   "In contrast, a felony conviction for assault with a handgun is punishable by two, three or four years in state prison. (PC §245[a][2]). Making a false bomb report is a straight misdemeanor, punishable by a term of imprisonment in county jail not to exceed one year (PC §148.1). And, use of a false identification card or driver's license is a misdemeanor or a felony, punishable by sixteen months, two, or three years in prison, the discretion of which is left to the District Attorney during prosecution.

   "In context: An undocumented individual who purchases a fake driver's license and social security card so that he or she can work or simply avoid deportation is prosecuted and subject to felony and a sentence of five years in prison or a $25,000 fine. However, an underage college student who purchases that same driver's license to buy beer is prosecuted and subject to a misdemeanor or a felony, and is subject to a range of sentencing options.

   "It should also be noted that the disproportionately harsh five-year penalty can prevent the speedy resolution of cases, because defendants are understandably unwilling to accept dispositions that include a mandatory five-year prison sentence. Ultimately, these delays

could cost taxpayers more and more money in trial and incarceration costs, as defendants attempt to negotiate a more reasonable punishment."

2) **Proposition 187:** Proposition 187 was approved by the voters on November 8, 1994. The proposition prohibited any person from receiving public social services or public health care services, or from being admitted or permitted to attend a public elementary, secondary, or postsecondary school, until he or she has been verified as a U.S. citizen, permanent resident, or an otherwise lawfully present alien. The proposition included various reporting requirements with respect to persons suspected of being present in the U.S. in violation of federal immigration laws. The proposition also added criminal statutes related to the use of false documents to conceal immigration status.

   Three days after Proposition 187 was approved, on November 11, federal district court judge issued a temporary injunction against the state of California, forbidding the enforcement of most of the provisions Proposition 187. The criminal statutes, including the section which is the subject of this bill were not part of the injunction. Another federal judge then issued a permanent injunction, pending a trial. The courts imposed the injunction based concern that that the most of the provisions of Proposition 187 violated the U.S. Constitution by infringing on the federal government's jurisdiction over immigration law. In 1997, the state of California asked for the case to be dismissed and the injunction dropped, on the grounds that federal immigration law had changed in the meantime. The federal court denied the request that the case be dismissed. The state of California never appealed that decision, so the permanent injunction stands, and the case never proceeded to trial.

   In addition to the denial of public benefits for undocumented immigrants, the proposition also created the criminal statutes related to fraudulent documents and immigration. Those criminal statutes were not enjoined by the courts and are still in effect. SB 396 (De Leon), Chapter 318, Statutes of 2014, repealed the unenforceable provisions of Proposition 187.

3) **The Penalties for Using False Documents to Conceal True Citizenship or Resident Alien Status are Higher Than Other Crimes Involving the Fraudulent Use of Documents:** The penalty for using false documents to conceal true citizenship or resident alien status mandates a 5 year imprisonment or a $25,000 fine. The mandatory application of a certain period of imprisonment or a certain fine is unusual in California criminal law. Generally, the court has latitude to impose imprisonment and/or a fine within a range. Under those circumstances, the law provides a maximum period of imprisonment and/or a maximum fine, but the judge retains discretion to sentence below the maximum based on the particular circumstances of the case before the court.

   The crime of falsifying a driver's license or identification card is a crime which is similar in nature to the crime at issue in this bill. The punishment for falsifying a driver's license of identification card reflects a typical punishment structure for California crimes. Every person who alters, falsifies, forges, duplicates or in any manner reproduces or counterfeits any driver's license or identification card issued by a governmental agency with the intent that such driver's license or identification card be used to facilitate the commission of any forgery, is punishable by imprisonment in a county jail for not more than one year, or by imprisonment in county jail for up to three years pursuant to a realigned felony. (Pen. Code, § 470a.)

Another crime of a similar nature is possession of a driver's license or identification card with the intent to use that identification to facilitate a forgery. (Pen. Code, § 470b.) That crime has the same sentencing structure and range as falsifying a driver's license or identification card with a maximum period of imprisonment of three years.

When a prosecutor charges a person with one of the crimes above related to falsifying an identification card, the prosecutor has discretion to file the charge as a felony or a misdemeanor. An individual charged with these crimes as a felony, can be sentenced up to a maximum of three years, but the court has discretion to sentence the individual to a lower amount of custody time. The court also has discretion to combine custody time with a period out of custody supervision with conditions such as drug testing and educational requirements. An individual charged with these crimes as a misdemeanor faces a maximum of one year in the county jail.

This bill would make the sentencing structure for using false documents to conceal true citizenship or resident alien status more consistent with other California crimes of a similar nature.

4) **California's Attitude Concerning Undocumented Immigrants Has Changed since the Passage of Proposition 187:** A January, 2017, poll by the Public Policy Institute of California (PPIC) found that Californians are in favor of protecting the rights of undocumented immigrants. A solid majority of adults (65%) and 58 percent of likely voters favor California's state and local governments making their own policies and taking actions—separate from the federal government— to protect the rights of undocumented immigrants living in the state. Opinions differ widely across political parties: 80 percent of Democrats favor state and local government action, while 69 percent of Republicans oppose it. (PPIC Statewide Survey, January, 2017, p. 10.) An overwhelming majority of Californians (85%) say there should be a way for undocumented immigrants to stay in the United States legally if certain requirements are met—only 13 percent say they should not be allowed to stay in this country legally. (Id.)

5) **Legislative Amendments to Proposition 187 Must Further the Purpose of Proposition 187:** The language of Proposition 187 contained a section detailing the requirements to amend Proposition 187.

> "The statutory provisions contained in this measure may not be amended by the Legislature except to further its purposes by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the voters." (Proposition 187, Section 10.)

This bill seeks to reduce the maximum penalties for using false documents to conceal true citizenship or resident alien status. Given that the punitive nature of Proposition 187 in relationship to individuals that are not U.S. citizens there is a question as to whether a bill to reduce criminal penalties for such a group, might not be to further the purposes of Proposition 187. If the provisions of this bill were determined not to further the purposes of Proposition 187, those provisions would need to go before the voters of California.

The Findings and Declarations of Proposition 187 provide an indication of the motivation and intent of the proposition.

> The People of California find and declare as follows: That they have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state. That they have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in this state. That they have a right to the protection of their government from any person or persons entering this country unlawfully.
>
> Therefore, the People of California declare their intention to provide for cooperation between their agencies of state and local government with the federal government, and to establish a system of required notification by and between such agencies to prevent illegal aliens in the United States from receiving benefits or public services in the State of California. (Proposition 187, Section 1. Findings and Declarations, 1994.)

Given the findings and declarations of Proposition 187 and its statutory provisions, it raises the question whether a court would find that the provisions of this bill, which reduces the penalty for a crime enacted by Proposition 187, further the purposes of Proposition 187.

6) **Argument in Support**: According to the *California Public Defenders Association*, "As you well know, in 1994, voters passed Proposition 187, a largely unconstitutional attempt to fight the perceived ills of illegal immigration and punish the undocumented. While the court almost immediately put a stay on many of the provisions of Proposition 187, some unsettling provisions remain. Of those provisions is one that makes it an automatic felony, punishable by five years in prison or a $25,000 fine, to use false citizenship or residence documents to conceal one's country of origin or resident status (PC §114). Conversely, use of a false identification card or driver's license is a misdemeanor or a felony, punishable by sixteen months, two, or three years in prison, the discretion of which is left to the District Attorney during prosecution (PC §47 [a],[b]).

"AB 222 will impose the same punishments for (PC §114) as exist in law for (PC §47 [a],[b]), will ensure an undocumented individual who purchases and is caught using a fake driver's license or social security card so that he or she can work in our state will face the same punishment as an underage college student who purchases and is caught using that same driver's license to illegally purchase alcohol. Any system that imposes different punishments for the same crime based solely on the status of the individual in question is fundamentally unfair."

7) **Related Legislation**:

   a) SB 6 (Hueso), would require the Department of Social Services to contract with specified organizations to provide legal services to individuals facing deportation proceedings who are not otherwise entitled to legal representation. SB 6 is awaiting hearing in the Senate Appropriations Committee.

   b) AB 3 (Bonta), would provide resources and training to county offices of the public defenders on issues relating to the immigration consequences of criminal

convictions. AB 3 is awaiting hearing in the Assembly Appropriations Committee.

c) SB 54 (De León), would prohibit state and local law enforcement agencies and school police and security departments from using resources to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes. SB 54 is awaiting hearing in the Senate Appropriations Committee.

d) SB 31 (Lara), would prohibit a state or local agency or a public employee from providing or disclosing to the federal government personally identifiable information regarding a person's religious beliefs, practices, or affiliation, as specified, when the information is sought for compiling a database of individuals based on religious belief, practice or affiliation, national origin, or ethnicity for law enforcement or immigration purposes. SB 31 is awaiting hearing in the Senate Appropriations Committee.

e) AB 298 (Gallagher), would require a local law enforcement official to cooperate with federal immigration officials by detaining an individual convicted of a felony on the basis of an immigration hold for up to 48 hours, as specified, after the person becomes eligible for release from custody if continued detention on the basis of the immigration hold would not violate federal law. AB 298 is awaiting hearing in the Assembly Public Safety Committee.

8) **Prior Legislation**:

a) SB 396 (De León), Chapter 318, Statutes of 2014, repealed the unenforceable provisions of Proposition 187.

b) AB 60 (Alejo), Chapter 524, Statutes of 2013, requires the Department of Motor Vehicles to issue a driver's license to a person who is unable to submit satisfactory proof that the person's presence in the United States is authorized under federal immigration law if he or she meets all other qualifications for licensure and provides satisfactory proof to the department of his or her identity and California residency.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association

Opposition

None

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

Date of Hearing: February 28, 2017
Chief Counsel: Gregory Pagan

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

AB 223 (Eggman) – As Introduced January 26, 2017

SUMMARY: Requires the Board of State and Community Corrections (BSCC) to establish a pilot project in three counties, in which, if the county elects to participate in the pilot project, the chief probation officer of the county would be required to create a program to provide services to youth within his or her jurisdiction that address the need for services relating to the commercial sexual exploitation of youth. Specifically, **this bill**:

1) Specifies that BSCC shall establish a pilot project in each of the Counties of Alameda, Sacramento, and San Joaquin, in which, if the county elects to participate in the pilot project, the chief probation officer of the county shall create a program to provide services to youth within his or her jurisdiction that addresses the need for services relating to the commercial sexual exploitation of youth.

2) States that programs that receive funding pursuant to this section shall be licensed by the State Department of Social Services and may include, but shall not be limited to, programs that do the following:

    a) Assess the youth victim's condition, including a review of the extent of trauma suffered, physical and mental health, and the status of age-appropriate developmental factors, such as educational status;

    b) Serve exploited youth in a services-rich environment, including trauma-informed counseling services;

    c) Research options, make recommendations, and work to find solutions to provide specialized services and permanent placement solutions for the youth;

    d) Provide staff who are trained to work with, and experienced in working with, child sex trafficking victims;

    e) Include peer mentors in the design and provision of service delivery; and

    f) Provide a plan for how to structure a protective setting secluded from the victim's trafficking environment, which could include strategies such as a geographically remote location, staff protective presence, delayed egress, or any combination of strategies intended to protect the victim.

3) Provides that funding for these purposes shall be contingent upon an appropriation in the annual Budget Act.

4) Provides that funds appropriated for these purposes shall be administered by the Board of State and Community Corrections.

EXISTING LAW:

1) States that "sexual exploitation" refers to a person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for the welfare of a child, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting or other pictorial depiction involving obscene sexual conduct. (Pen. Code, § 11165.1, subd. (c)(2).)

2) Permits a city, county, or community-based nonprofit organization to establish a multiagency, multidisciplinary family justice center to assist victims of domestic violence, sexual assault, elder or dependent adult abuse, and human trafficking, to ensure that victims of abuse are able to access all needed services in one location in order to enhance victim safety, increase offender accountability, and improve access to services for victims of domestic violence, sexual assault, elder or dependent adult abuse, and human trafficking. (Pen. Code, § 13750, subd.(a).)

3) Allows the County of Alameda, contingent upon local funding, to establish a pilot project to develop a comprehensive, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors who have been arrested or detained by local law enforcement for a violations of specified prostitution offenses. (Welf. And Inst. Code, §18259, subd. (a).)

4) Allows the District Attorney of the County of Alameda, in collaboration with county and community-based agencies, to develop, as a component of the specified pilot project, protocols for identifying and assessing minors, upon arrest or detention by law enforcement, who may be victims of commercial sexual exploitation. (Welf. And Inst. Code, § 18259, subd. (b).)

5) Specifies that the District Attorney of the County of Alameda, in collaboration with county and community-based agencies that serve commercially sexually exploited minors, may develop, as a component of the pilot project described in this chapter, a diversion program reflecting the best practices to address the needs and requirements of arrested or detained minors who have been determined to be victims of commercial sexual exploitation. (Welf. And Inst. Code, § 18259, subd. (c).)

6) Permits the District Attorney of the County of Alameda, in collaboration with county and community-based agencies, to form, as a component of the pilot project described in this chapter, a multidisciplinary team including, but not limited to, city police departments, the county sheriff's department, the public defender's office, the probation department, child protection services, and community-based organizations that work with or advocate for

commercially sexually exploited minors. (Welf. And Inst. Code, § 18259, subd. (d).)

7) Requires the District Attorney of the County of Alameda to submit a report to the Legislature by April 1, 2016 that summarizes the activities of the pilot project. (Welf. And Inst. Code, § 18259.1.)

8) States that the authorization for the pilot project in Alameda County will expire on January 1, 2017, unless extended by the Legislature. (Welf. And Inst. Code, § 18259.5.)

9) Provides that a juvenile convicted of specified offenses related to prostitution may, upon reaching 18 years of age, petition the court to have those convictions sealed without having to demonstrate that they have not been convicted of a felony or of any misdemeanor involving moral turpitude, or that rehabilitation has been attained to the satisfaction of the court. (Pen. Code, § 1203.47, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Human trafficking is modern day slavery and, unfortunately, this crime is growing rapidly in our state. According to the FBI, the San Francisco, Los Angeles and San Diego metropolitan areas comprise three of the nation's 13 areas of 'high intensity' child sex trafficking exploitation in the country.

   "Currently, many child victims of sex trafficking, once removed from the sex trade environment, have only two options for housing: juvenile detention and court-ordered foster care placement. Due to this limited range of options, juvenile detention too often means placement of some duration in juvenile hall. Although the foster care system is building service capacity, it does not have a suitable array of specially-tailored service options for this population. Moreover, in the foster care system, it can take some time to finalize a long-term placement appropriate for child sex trafficking victims, and these victims often need a place to stay immediately after being recovered from their trafficker.

   "Consequently, there are few facilities around the state that have the comprehensive services necessary to assist in the recovery and care of these child victims. Child sex trafficking victims have specific needs; many have suffered the same level of trauma as a prisoner of war. Without these services, or without a place to go, victims often end up back on the streets with their traffickers.

   "There are three counties identified in this bill to participate in the pilot program: San Joaquin, Alameda and Sacramento. These were strategic selections based on the proximity and available services within each county. When the minors are pulled out of human trafficking, they are prone to runaway back to their trafficker because of the intense psychological damage. Having a network of services between these counties would allow for a partnership to immediately remove the victim and place them in a location where they can receive proper services, away from their trafficker but within reasonable range for their family to visit.

   "This bill will provide the opportunity for the chief probation officer to create a pilot program

that will provide specific services to youth affected by this criminal enterprise. The program could also include physical and mental health assessments for the young victims, and counseling services to deal with trauma and stigma of being a victim of human trafficking. The goal is to be innovative, and serve a very specific victim that current local services may not be able to reach.

2) **Governor's Veto Message on AB 1730:** AB 1730 (Atkins), of 2015-16 Legislative Session, would have required the BSCC to establish a pilot project in up to four counties that elect to participate in the pilot project and would authorize the Counties of Sacramento, San Diego, San Joaquin, and Santa Clara to elect to participate in the pilot project. The bill would have authorized each participating county to determine whether that county's probation department or child welfare agency, or both, would create and operate a program funded by the pilot project. AB 1730 would have required a program funded by the pilot project to provide services to youth within that county's jurisdiction that address the need for services relating to the commercial sexual exploitation of youth.

   The Governor vetoed AB 1730. The Governor's veto stated: "This bill authorizes a pilot project in four counties to provide services for youth victims of commercial sex trafficking contingent upon an appropriation in the state budget.

   "There are numerous federal, state and local efforts underway to combat commercial sexual exploitation of children. In this year's budget, the state provided $19 million to fund the development of trafficking prevention and intervention services. Establishing a new pilot program in this area should be considered in the budget process."

3) **Juvenile Probation Department Services:** Probation officers are involved throughout juvenile criminal justice proceedings. The probation department may be used at the "front end" of the juvenile justice system for first-time, low-risk offenders or at the "back end" as an alternative to institutional confinement for more serious offenders. The responsibilities of juvenile probation departments include the intake screening of cases referred to juvenile courts, predisposition or presentence investigation of juveniles, and court-ordered supervision of juvenile offenders.

   Juvenile probation officers investigate and provide information to the court about the juvenile's educational status, family situation, and any risk factors to assist the court in making decisions at every step in the juvenile process. When the court makes orders regarding the conduct of the juvenile, the probation officers are responsible for supervising the juvenile to ensure they follow those orders.

   The primary goal of the juvenile criminal justice system is rehabilitation of the juvenile. Sentencing by the court and supervision by probation are meant to further that rehabilitative goal. As part of their supervisory responsibilities, the probation officers provide support to the juvenile and their family to help with the process of rehabilitation. That support can take the form of classes, services, or programs offered or facilitated by the probation department.

   Juvenile victims of human trafficking enter the juvenile justice system when they are arrested for a crime that might, or might not be, related to the fact that they are a victim of human trafficking. To the extent that effective rehabilitation for those juveniles is going to take place, it is important to have resources to address the needs of those juveniles as victims of

human trafficking.

4) **Alameda County Pilot Project:** The Legislature has authorized pilot programs in Alameda and Los Angeles Counties to create, implement, and deliver standardized training curricula that would provide a protocol for law enforcement and social services to assess and recognize sexually exploited minors within the juvenile justice system.

   The Alameda County pilot project was authorized under AB 499 (Swanson), Chapter 359, Statutes of 2008, is part of a larger project called "H.E.A.T (Human Exploitation and Trafficking) Watch." H.E.A.T Watch is a multidisciplinary, multisystem program that brings together individuals and agencies from law enforcement, health care, advocacy, victim and support services, the courts, probation agencies, the commercial sector, and the community to (1) ensure the safety of victims and survivors and (2) pursue accountability for exploiters and traffickers. Strategies employed by H.E.A.T. Watch include, among others, stimulating community engagement, coordinating training and information sharing, and coordinating the delivery of victim and support services.

   The program uses a multisector approach to coordinate the delivery of support services. For example, multidisciplinary case review (modeled on the multidisciplinary team approach) is used to create emergency and long-term safety plans. Referrals for case review are made by law enforcement, prosecutors, probation officials, and social service organizations that have come into contact with these youth. This approach enables members of the multidisciplinary team to share confidential information with agencies that can assist youth in need of services and support. (Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States, A Guide for Providers of Victim and Support Services. Institute of Medicine and National Research Council, Pp. 30-31.)

   In a March 23, 2011 progress report on the AB 499 Diversion Program, the Alameda County District Attorney's Office (ACDAO) stated: "As a result of the passage of AB 499, the ACDAO has been able to develop a comprehensive system response that directs Commercially Sexually Exploited Children (CSEC) away from the criminal justice system and into programs offering specialized services essential for the stabilization, safety, and recovery of these vulnerable children. . . .

   The Legislature authorized the same pilot project for Los Angeles County. (SB 1279 (Pavley), Chapter 116, Statutes of 2010.) The Los Angeles County pilot project sunset on January 1, 2017.

5) **Labor Trafficking Estimated to be More than Three Times as Large as Sex Trafficking:** In 2012, the California Department of Justice published a report about human trafficking in California. The report was compiled by the Attorney General's Human Trafficking Work Group. The Work Group was comprised of representatives of educational institutions, private entities, and a broad spectrum of law enforcement agencies, governmental agencies, victim service providers, and technology companies. Included in the report's findings was an examination of the extent and nature of human trafficking. The report emphasized that labor trafficking was under reported compared to sex trafficking. The report pointed out that labor trafficking was believed to be 3.5 times as prevalent as sex trafficking. (The State of Human Trafficking in California (2012), California Department of Justice, pp. 4, 47.) Given the significance of labor trafficking, consideration should be given to ensure any resources

devoted to county probation departments to assist juvenile victims of human trafficking include victims of labor trafficking.

6) **Argument in Support**: According to the *City of Oakland*: "The City of Oakland has been an active leader in the Bay Area region and the state when it comes to addressing the commercial sexual exploitation of children. We were one of the first cities to work with the young victims to help offer counselling services, help clear their criminal records, and actively enforce existing laws to punish the johns involved in this insidious practice…

"This bill will provide the opportunity for the chief probation officer to create a pilot program that will provide specific services to youth affected by this criminal enterprise. The program could also include physical and mental health assessments for the young victims, and counseling services to deal with the trauma and stigma of being a victim of human trafficking. The goal is to be innovative and serve a very specific victim that current, local services may not be able to reach."

7) **Prior Legislation**:

a) SB 1064 (Hancock), Chapter 653, Statutes of 2016 made permanent the Sexually Exploited Minors Project in the County of Alameda.

b) AB 1730 (Atkins) of the 2015-16 Legislative Session, would have required the Board of State and Community Corrections (BSCC) to establish a pilot project to address the needs of sexually exploited minors in up to 4 counties that elect to participate in the pilot project, and would authorize the Counties of Sacramento, San Diego, San Joaquin, and Santa Clara to elect to participate in the pilot project. AB 1730 was vetoed by the Governor.

c) AB 1731 (Atkins), of the 2015-16 Legislative Session, would have created the Statewide Interagency Human Trafficking Task Force to gather statewide data on human trafficking, to recommend interagency protocols and best practices for training and outreach to law enforcement, victim service providers, and other state and private sector employees likely to encounter sex trafficking, and to evaluate and implement approaches to increase public awareness about human trafficking. AB 1731 was held on the Senate Appropriations Committee suspense file.

d) AB 1623 (Atkins), Chapter 85, Statutes of 2014, authorized a local government or nonprofit organization to establish a family justice center to assist specified types of crime victims, including victims of human trafficking.

e) AB 799 (Swanson), Chapter 51, Statutes of 2011, extended the sexually exploited minor pilot program in Alameda County until January 1, 2017.

f) SB 1279 (Pavley), Chapter 116, Statutes of 2010, established a pilot project in Los Angeles County to create, implement, and deliver standardized training curricula that would provide a protocol for law enforcement and social services to assess and recognize sexually exploited minors within the juvenile justice system.

g) AB 499 (Swanson), Chapter 359, Statutes of 2008, established a pilot project in Alameda County to create, implement, and deliver standardized training curricula that would provide a protocol for law enforcement and social services to assess and recognize sexually exploited minors within the juvenile justice system.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Oakland

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. /

Date of Hearing: February 28, 2017
Counsel: David Billingsley

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

AB 229 (Baker) – As Introduced January 26, 2017

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

1) Requires CalOES to allocate and award funds to up to 11 district attorney offices that employ a vertical prosecution methodology for the prosecution of human trafficking crimes.

2) Requires each county selected for funding meet all of the following minimum requirements:

   a) Employ a vertical prosecution methodology for human trafficking crimes;

   b) Require that a county selected for funding dedicate at least one-half of the time of one deputy district attorney and one-half of the time of one district attorney investigator solely to the investigation and prosecution of human trafficking crime;

   c) Provide CalOES with annual data on the number of human trafficking cases filed by that county, the number of human trafficking convictions obtained, and the sentences imposed for those convicted of human trafficking in that county;

   d) Enter into an agreement, either by contract or by a memorandum of understanding, with an advocacy agency funded by CalOES that provides services, counseling, or both, to victims of human trafficking in order to ensure that victims and witnesses of human trafficking, as appropriate, receive services; and

   e) Funding received by district attorney offices pursuant to this program shall be used to supplement, and not supplant, existing financial resources.

3) Requires CalOES, on or before January 1, 2020, to submit to the Legislature and the Governor's Office a report that describes the counties that received funding pursuant to this program, the number of prosecutions for human trafficking cases filed by the counties receiving funding, the number of human trafficking convictions obtained by those counties, and the sentences imposed for human trafficking crimes in those counties.

4) Appropriates two million six hundred thousand dollars ($2,600,000) from the General Fund to CalOES for the purpose of funding the Human Trafficking Prevention Vertical Prosecution Program

5) Sunsets the provisions of this bill on January 1, 2022.

EXISTING LAW:

1) Establishes the CalOES by the Governor's Reorganization Plan No.2, operative July 1, 2013. (AB 1317 (Frazier), Chapter 352, Statutes of 2013.)

2) States that the CalOES exists within the Governor's office. (Gov. Code, § 8585, subd. (a).)

3) States that the CalOES shall be responsible for the state's emergency and disaster response services for natural, technological, or manmade disasters and emergencies, including responsibility for activities necessary to prevent, respond to, recover from, and mitigate the effects of emergencies and disasters to people and property. (Gov. Code, § 8585, subd. (e).)

4) Specifies that during a state of emergency or a local emergency, the secretary shall coordinate the emergency activities of all state agencies in connection with that emergency, and every state agency and officer shall cooperate with the secretary in rendering all possible assistance in carrying out the provisions of this chapter. (Gov. Code, § 8587, subd. (a).)

5) In addition to the powers designated in this section, the Governor may delegate any of the powers vested in him or her under this chapter to the secretary except the power to make, amend, and rescind orders and regulations, and the power to proclaim a state of emergency. (Gov. Code, § 8587, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Increasing funding to supplement current vertical prosecution programs in California will provide valuable resources to these programs and help further efforts to prosecute and convict human traffickers. Providing this support to vertical prosecution is one of the single most effective ways to get perpetrators behind bars for the crime of human trafficking."

2) **DOJ Report:** According to the California Department of Justice (DOJ), human trafficking is the world's fastest growing criminal enterprise and is an estimated $32 billion-a-year global industry. In their 2012 report, "*The State of Human Trafficking in California,"* DOJ states from mid-2010 to mid-2012, California's nine regional human trafficking task forces identified 1,277 victims, initiated 2,552 investigations, and arrested 1,798 individuals. The public perception is that human trafficking victims are from other countries, but data from California's task forces indicate that the vast majority are American—72% of human trafficking victims whose country of origin was identified were U.S. residents. The report also states that labor trafficking are under-reported and under-investigated as compared to sex trafficking—56% of victims who received services through California's task forces were identified as sex trafficking victims. Yet, data from other sources indicate that labor trafficking is 3.5 times as prevalent as sex trafficking worldwide.

   The report also identifies ways to combat human trafficking; and opportunities in protecting and assisting victims and bringing traffickers to justice. Specifically, the report states that a vertical prosecution model run outside routine vice operations can help law enforcement

better protect victims and improve prosecutions.

3) **OCJP and CalOES:** The former Governor's Office of Criminal Justice Planning (OCJP) was established in 1968 to provide funding for criminal justice and victim assistance programs. OCJP was abolished in the 2003-2004 State Budget on December 31, 2003. All of the programs, with the exception of those in the Juvenile Justice Delinquency Prevention Branch (which transferred to the California Department of Corrections and Rehabilitation), were incorporated into CalOES. Many of these programs include criminal justice and victim service grant programs administered by CalOES. Programs include:

   a) **Violence Against Women Vertical Prosecution Program (VV Program)** - The VV Program is designed to improve the criminal justice system's response to violent crimes against women through a coordinated multidisciplinary response. This is achieved through the creation or enhancement of a specialized unit, which focuses on the vertical prosecution of the defendant and services for the victim(s);

   b) **Unserved/Underserved Victim Advocacy and Outreach Program (UV Program)** - The primary purpose of the UV Program is to focus on service delivery to victims of violent crime within unserved/underserved and socially isolated populations. In addition, it is designed to promote awareness and to improve knowledge about accessing local services available to crime victims; and

   c) **Human Trafficking Advocate Program (HA Program)** – The HA Program provides funding to 10 Victim/Witness Assistance Centers to provide additional support, such as, hiring additional staff, identifying additional human trafficking victims, and providing comprehensive services to victims of human trafficking.

4) **Federal Grant Money to Combat Human Trafficking:** On September 24, 2015, U.S. Attorney General Loretta Lynch announced $44 million in grant money to combat human trafficking and support survivors. The grants will be administered by the Office of Justice Programs' Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Office of Victims of Crime and the National Institute of Justice. The grants are intended to fund efforts across the country to fight human trafficking, to provide services for survivors and to expand research going forward. More than $22.7 million to support 16 anti-human trafficking task forces across the country. Within each task force location, the office of Justice Programs' Bureau of Justice Assistance, will make one award to a lead law enforcement agency and Office for Victims of Crime will make one to the lead victim service provider. The grantees will work collaboratively with other key members of the taskforce, including the U.S. Attorney's Office, local prosecutor's office, federal, state and local law enforcement agencies and community and system-based providers. (https://www.justice.gov/opa/pr/attorney-general-lynch-announces-44-million-grant-funding-combat-human-trafficking-and)

   Of that grant money $1.5 million is directed to the Los Angeles County Area. $750,000 goes to Los Angeles County and $750,000 goes to Coalition Against Slavery and Trafficking. $1.4 million goes to the Riverside County Area. $900,000 to Riverside County and $500,000 to Operations SafeHouse. (http://ojp.gov/newsroom/pdfs/HT_Full_Chart_V.3.pdf)

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

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

6) **Argument in Opposition:** According to the *California Public Defenders Association*, "The prosecution for human trafficking is already taking place in counties throughout the state. The manner in which individual prosecutor offices manage their resources for such prosecutions is based upon crime rates for such offenses in their communities. If prosecutor offices are entitled to additional state funded resources for such prosecutions as opposed to other types of crimes, for example murder, rape, robbery or domestic violence without conferring an equal enhancement of funding and an equal creation of attorney positions in county Public Defender offices for the representation of defendants who will be charged for such offenses, then those presumed innocent defendants will be at an extreme constitutional disadvantage. The risk involved in convicting innocent people in such circumstances by over matched and over funded prosecutor offices in light of the already strapped and limited resources of indigent defendants in criminal cases cannot be overlooked."

7) **Related Legislation**:

   a) AB 704 (Grayson), would authorize a county to establish a domestic violence multidisciplinary personnel team and a human trafficking multidisciplinary personnel team to allow agencies to share confidential information in order to investigate reports of suspected crimes. AB 704 is awaiting referral in the Assembly Rules Committee.

   b) AB 223 (Eggman), would require the Board of State and Community Corrections to establish a pilot project in each of the Counties of Alameda, Sacramento, and San Joaquin, in which, if the county elects to participate in the pilot project, the chief probation officer of the county would be required to create a program to provide services to youth within his or her jurisdiction that address the need for services relating to the commercial sexual exploitation of youth. AB 223 will be heard in this committee on February 28, 2017.

8) **Prior Legislation**:

a) AB 2202 (Baker), of the 2015-2016 Legislative Session, would have established the Human Trafficking Prevention Vertical Prosecution Program. AB 2202 was held in the Assembly Appropriations Committee.

b) AB 1731 (Atkins), of the 2015-2016 Legislative Session, would have created the Statewide Interagency Human Trafficking Task Force within the Department of Justice, which would consist of representatives from several state agencies and be chaired by a representative from the Department of Justice. AB 1731 was held in the Senate Appropriations Committee.

c) AB 1623 (Atkins), Chapter 85, Statutes of 2014, authorized a local government or nonprofit organization to establish a family justice center to assist specified types of crime victims, including victims of human trafficking.

d) SB 1279 (Pavley), Chapter 116, Statutes of 2010, established a pilot project in Los Angeles County to create, implement, and deliver standardized training curricula that would provide a protocol for law enforcement and social services to assess and recognize sexually exploited minors within the juvenile justice system.

e) AB 499 (Swanson), Chapter 359, Statutes of 2008, established a pilot project in Alameda County to create, implement, and deliver standardized training curricula that would provide a protocol for law enforcement and social services to assess and recognize sexually exploited minors within the juvenile justice system.

REGISTERED SUPPORT / OPPOSITION:

Support

California Catholic Conference
District Attorney of Alameda County

Opposition

California Public Defenders Association

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