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Assembly California Legislature



ASSEMBLY COMMITTEE ON
PUBLIC SAFETY
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ASSEMBLYMEMBER, FIFTY-NINTH DISTRICT

CHIEF COUNSEL
GREGORY PAGAN
COUNSEL
DAVID BILLINGSLEY
GABRIEL CASWELL
STELLA Y. CHOE
SANDY URIBE

AGENDA

9:00 a.m. – June 14, 2016
State Capitol, Room 126

<u>Item</u>	<u>Bill No. & Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
1.	SB 420 (Huff)	Mr. Caswell	Prostitution.
2.	SB 867 (Roth)	Mr. Billingsley	Emergency medical services.
3.	SB 869 (Hill)	Ms. Uribe	Firearms: securing handguns in vehicles.
4.	SB 880 (Hall)	Mr. Caswell	Firearms: assault weapons.
5.	SB 883 (Roth)	Ms. Uribe	Domestic violence: protective orders.
6.	SB 894 (Jackson)	Ms. Uribe	Firearms: lost or stolen: reports.
7.	SB 1016 (Monning)	Ms. Uribe	Sentencing.
8.	SB 1036 (Hernandez)	Mr. Billingsley	Controlled substances: synthetic cannabinoids: analogs.
9.	SB 1127 (Hancock)	Mr. Pagan	Commission on Correctional Peace Officer Standards and Training: Internet Web site.
10.	SB 1129 (Monning)	Mr. Caswell	Prostitution: sanctions.
11.	SB 1182 (Galgiani)	Ms. Choe	Controlled substances.



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| 12. | SB 1221 (Hertzberg) | Mr. Billingsley | Firefighters: interaction with persons with mental disabilities. |
| 13. | SB 1235 (De León) | Mr. Pagan | Ammunition. |
| 14. | SB 1242 (Lara) | Ms. Uribe | Sentencing: misdemeanors. |
| 15. | SB 1324 (Hancock) | Mr. Billingsley | Incarceration: rehabilitation. |
| 16. | SB 1330 (Galgiani) | Mr. Pagan | Missing persons. |
| 17. | SB 1407 (De León) | Mr. Caswell | Firearms: identifying information. |
| 18. | SB 1446 (Hancock) | Ms. Choe | Firearms: magazine capacity. |
| 19. | SB 1474 (SCOPS) | Ms. Choe | Public Safety Omnibus. |

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Date of Hearing: June 14, 2016
Counsel: Gabriel Caswell

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

SB 420 (Huff) – As Amended April 27, 2015

SUMMARY: Divides the crime of prostitution into three specific crimes based on whether the alleged offender is agreeing to receive compensation for a lewd act, or whether the alleged offender is agreeing to provide compensation for a lewd act. Specifically, **this bill:** defines and divides the crime of prostitution into three separate forms:

- 1) The defendant agreed to receive compensation, received compensation, or solicited compensation in exchange for a lewd act;
- 2) The defendant provided compensation, agreed to provide compensation, or solicited an adult to accept compensation in exchange for a lewd act; and
- 3) The defendant provided compensation, or agreed to provide compensation, to a minor in exchange for a lewd act, regardless of which party made the initial solicitation.

EXISTING LAW:

- 1) Defines “unlawful sexual intercourse” as an act of sexual intercourse accomplished with a person under the age of 18 years, when no other aggravating elements – such as force or duress – are present. (Pen. Code, § 261.5, subd. (a).)
- 2) Provides the following penalties for unlawful sexual intercourse:
 - a) Where the defendant is not more than three years older or three years younger than the minor, the offense is a misdemeanor;
 - b) Where the defendant is more than three years older than the minor, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to \$1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up to \$10,000; or,
 - c) Where the defendant is at least 21 years of age and the minor is under the age of 16, the offense is an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to \$1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up to \$10,000. (Pen. Code, § 261.5, subd (b)-(d).)
- 3) Provides that in the absence of aggravating elements each crime of sodomy, oral copulation or penetration with a foreign or unknown object with a minor is punishable as follows:

- a) Where the defendant is over 21 and the minor under 16 years of age, the offense is a felony, with a prison term of 16 months, two years or three years.
- b) In other cases sodomy with a minor is a wobbler, with a felony prison term of 16 months, two years or three years. (Pen. Code, §§ 286, subd. (b), 288a, subd. (b), 289, subd. (h).)
- 4) Provides that where each crime of sodomy, oral copulation or penetration with a foreign or unknown object with a minor who is under 14 and the perpetrator is more than 10 years older than the minor, the offense is a felony, punishable by a prison term of three, six or eight years. (Pen. Code, §§ 286, subd. (c)(1), 288a, subd. (c)(1), 289, subd. (j).)
- 5) Provides that any person who engages in lewd conduct – any sexually motivated touching or a defined sex act – with a child under the age of 14 is guilty of a felony, punishable by a prison term of three, six or eight years. Where the offense involves force or coercion, the prison term is five, eight or 10 years. (Pen. Code, § 288, subd. (b).)
- 6) Provides that where any person who engages in lewd conduct with a child who is 14 or 15 years old, and the person is at least 10 years older than the child, the person is guilty of an alternate felony-misdemeanor, punishable by a jail term of up to one year, a fine of up to \$1,000, or both, or by a prison term of 16 months, two years or three years and a fine of up to \$10,000. (Pen. Code, § 288, subd. (c)(1).)
- 7) Includes numerous crimes concerning sexual exploitation of minors for commercial purposes. These crimes include:
 - a) Pimping: Deriving income from the earnings of a prostitute, deriving income from a place of prostitution, or receiving compensation for soliciting a prostitute. Where the victim is a minor under the age of 16, the crime is punishable by a prison term of three, six or eight years. (Pen. Code, § 266h, subs. (a)-(b);
 - b) Pandering: Procuring another for prostitution, inducing another to become a prostitute, procuring another person to be placed in a house of prostitution, persuading a person to remain in a house of prostitution, procuring another for prostitution by fraud, duress or abuse of authority, and commercial exchange for procurement. (Pen. Code, § 266i, subd. (a).);
 - c) Procurement: Transporting or providing a child under 16 to another person for purposes of any lewd or lascivious act. The crime is punishable by a prison term of three, six, or eight years, and by a fine not to exceed \$15,000. (Pen. Code, § 266j.)
 - d) Taking a minor from her or his parents or guardian for purposes of prostitution. This is a felony punishable by a prison term of 16 months, two years, or three years and a fine of up to \$2,000. (Pen. Code, § 267.); and,
- 8) Provides that where a person is convicted of pimping or pandering involving a minor the court may order the defendant to pay an additional fine of up to \$5,000. In setting the fine, the court shall consider the seriousness and circumstances of the offense, the illicit gain realized by the defendant and the harm suffered by the victim. The proceeds of this fine shall be deposited in the Victim-Witness Assistance Fund and made available to fund programs for

prevention of child sexual abuse and treatment of victims. (Pen. Code, § 266k, subd. (a).)

- 9) Provides that where a defendant is convicted of taking a minor under the age 16 from his or her parents to provide to others for prostitution (Pen. Code, § 267) or transporting or providing a child under the age of 16 for purposes of any lewd or lascivious act (Pen. Code § 266j), the court may impose an additional fine of up to \$20,000. (Pen. Code, § 266k, subd. (b).)
- 10) Provides that where a defendant is convicted under the Penal Code of taking a minor (under the age of 18) from his or her parents for purposes of prostitution (Pen. Code, § 267), or transporting or providing a child under the age of 16 for purposes of any lewd or lascivious act (266j), the court, if it decides to impose a specified additional fine, the fine must be no less than \$5,000, but no more than \$20,000. (Pen. Code, § 266k, subd. (b).)
- 11) Provides that any person who solicits, agrees to engage in, or engages in an act of prostitution is guilty of a misdemeanor. The crime does not occur unless the person specifically intends to engage in an act of prostitution and some act is done in furtherance of agreed upon act. Prostitution includes any lewd act between persons for money or other consideration. (Pen. Code, § 647, subd. (b).)
- 12) Provides that if the defendant agreed to engage in an act of prostitution, the person soliciting the act of prostitution need not specifically intend to engage in an act or prostitution. (Pen. Code, § 647, subd. (b).)
- 13) Provides that where any person is convicted of a second prostitution offense, the person shall serve a sentence of at least 45 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation. (Pen. Code, § 647, subd. (k).)
- 14) Provides that where any person is convicted for a third prostitution offense, the person shall serve a sentence of at least 90 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation. (Pen. Code, § 647, subd. (k).)
- 15) Requires the California Department of Justice (DOJ) to collect data from law enforcement agencies about “the amount and types of offenses known to the public authorities.” (Pen. Code, §§ 13000 and 13002.) DOJ must:
 - a) Prepare and distribute forms and electronic means for reporting crime data;
 - b) Recommend the form and content of records to “ensure the correct reporting of data...” and instruct agencies in the collecting, keeping and reporting of crime data; and
 - c) Process, interpret and analyze crime data.
- 16) Requires law enforcement agencies, as specified, district attorneys, the Department of Correction and other entities to do the following: (Pen. Code, § 13020.)
 - a) Install and maintain records for reporting statistical data; and

b) Report data to DOJ “in the manner [DOJ] prescribes.”

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Research proves that demand for sex acts drives the market for exploitation, especially among children. Under current law, any person who offers to engage in or engages in any act of prostitution is guilty of disorderly conduct. It's time we call purchasing of sex acts what it is and separate out the buyers from the sellers, who more often than not – are victims of sex trafficking.

"Currently there is no distinction in law between an adult who is selling sexual acts, from the adult who is purchasing sexual acts, or from an adult who is purchasing sex from a minor. SB 420 focuses on the demand side of human trafficking, by amending Penal Code Section 647, to separate the buyers and sellers of human trafficking and prostitution.

"SB 420 is a necessary first step in addressing the demand side of human trafficking. By making a distinct separation in the Penal Code, between the individuals involved in prostitution, we can see real numbers that will tell us how many children and adults are being purchased for sex. By US Department of State estimates, sex trafficking is a \$32 billion industry in this country and 50 percent of trafficking victims are minors.

"Easy access to the Internet enables human beings to become ensnared and sold across state lines. The FBI has determined that three of the nations' thirteen High Intensity Child Prostitution areas are located here in California. Data generated by SB 420 is essential for crafting solutions to a disturbing public safety enemy in our communities, especially among at-risk youth. "

- 2) **Sponsor and Author Seek to Focus Prosecution Efforts on The Demand Side of Prostitution:** The background provided by the author and sponsor notes that the narrow or current purpose of this bill is to collect data on the comparative numbers of arrests in prostitution cases for 1) buyers of sex acts from adults, 2) buyers of sex acts from minors, and 3) sellers of sex acts. The author's background states that the broader goal in this bill is to “focus on the demand side of human trafficking....” These efforts are premised on the understanding that prostitution is integral to and inextricably tied to human trafficking.

It thus appears that the data from this bill will be used to eventually support higher penalties for prostitution purchasers. As the bill separates prostitution into separately defined and charged offenses, different procedures, penalties and other outcomes and goals can easily be amended into the law. It remains to be seen whether treating purchasers and buyers of sexual acts differently can reduce human trafficking and provide needed services to sellers.

- 3) **Prostitution and Human Trafficking, Though Related, are not Always the Same Thing:** A growing number of policy discussions are equating prostitution offenses with human trafficking offenses. There is no doubt that the crimes are related, however, they are not the same crime. A number of proposals seek to treat all prostitution offenses more severely because of the grave threat and nature of human trafficking. Human trafficking is a very

serious crime, involving forced servitude, with very serious penalties. Most prostitution offenses between a person who is soliciting a prostitute and the prostitute themselves are misdemeanor crimes, which are unrelated to human trafficking. Additionally, pimps and panderers generally are treated more severely by the law, with much more serious consequences than the prostitute or the "john." Unlike the crimes of pimping and pandering, human trafficking is a crime that generally involves some form of force or coercion.

California has existing strict laws for the treatment of pimps and panderers, as well as human traffickers. However, those crimes are not the same and should not be treated the same. Furthermore, not every person who solicits a prostitute is engaged in the crime of human trafficking. In fact, the vast majority are not purchasing a commercial sex act with a person who is being forced to engage in the activity through the auspices of human trafficking. Categorizing all "johns" as human traffickers, or all pimps and panderers as human traffickers, is unproductive in setting criminal justice policy. Blurring the lines between the less severe crimes related to prostitution, and the more severe crimes related to human trafficking, weakens the severity of human trafficking offenses. For instance, this committee has approved bills to add human trafficking to the list of serious felonies. However, if we continue to expand the definition of human trafficking to include more minor prostitution-related offenses the committee would have to re-evaluate in the future whether it would still consider human trafficking a serious felony.

According to the Polaris Project, "Human trafficking is a form of modern-day slavery where people profit from the control and exploitation of others. As defined under U.S. federal law, victims of human trafficking include children involved in the sex trade, adults age 18 or over who are coerced or deceived into commercial sex acts, and anyone forced into different forms of 'labor or services,' such as domestic workers held in a home, or farm-workers forced to labor against their will. The factors that each of these situations have in common are elements of force, fraud, or coercion that are used to control people." (<<http://www.polarisproject.org/human-trafficking/overview>>.)

Pimping under California law means receiving compensation from the solicitation of a known prostitute. (Pen. Code, § 266h.) Whereas pandering means procuring another person for the purpose of prostitution by intentionally encouraging or persuading that person to become or continue being a prostitute. (Pen. Code, § 266i.) Oftentimes, pimps use mental, emotional, and physical abuse to keep their prostitutes generating money. Consequently, there has been a paradigm shift where pimping and pandering is now viewed as possible human trafficking.

This new approach has been criticized by some because it blurs the line between human trafficking and prostitution. Sex workers say it discounts their ability to willingly work in the sex industry. (See *Nevada Movement Draws the Line on Human Trafficking* by Tom Ragan, Las Vegas Review Journal, May 26, 2013, <<http://www.reviewjournal.com/news/las-vegas/nevada-movement-draws-line-human-trafficking>>.)

- a) **Prostitution Generally:** The basic crime of prostitution is a misdemeanor offense. (Pen. Code § 647(b).) Prostitution can be generally defined as "soliciting or agreeing to engage in a lewd act between persons for money or other consideration." Lewd acts include touching the genitals, buttocks, or female breast of either the prostitute or

customer with some part of the other person's body for the purpose of sexual arousal or gratification of either person.

To implicate a person for prostitution themselves, the prosecutor must prove that the defendant "solicited" or "agreed" to "engage" in prostitution. A person agrees to engage in prostitution when the person accepts an offer to commit prostitution with specific intent to accept the offer, whether or not the offerer has the same intent.

For the crime of "soliciting a prostitute" the prosecutors must prove that the defendant requested that another person engage in an act of prostitution, and that the defendant intended to engage in an act of prostitution with the other person, and the other person received the communication containing the request. The defendant must do something more than just agree to engage in prostitution. The defendant must do some act in furtherance of the agreement to be convicted. Words alone may be sufficient to prove the act in furtherance of the agreement to commit prostitution

Violation of Pen. Code § 647(b) is a misdemeanor. For a first offense conviction of prostitution the defendant faces up to 180 days in jail. If a defendant has one prior conviction of prostitution he or she must receive a county jail sentence of not less than 45 days. If the defendant has two or more prior convictions, the minimum sentence is 90 days in the county jail.

In addition to the punishment described above, if the defendant has a conviction of prostitution, he or she faces fines, probation, possible professional licensing restrictions or revocations, possible immigration consequences, possible asset forfeiture, and possible driving license restrictions.

Closely associated crimes to prostitution include: abduction of a minor for prostitution (Pen. Code 267); seduction for prostitution (Pen. Code 266); keeping a house of prostitution (Pen. Code 315); leasing a house for prostitution (Pen. Code 318); sending a minor to a house of prostitution (Pen. Code 273e); taking a person against that person's will for prostitution (Pen. Code 266a); compelling a person to live in an illicit relationship (Pen. Code 266b); placing or leaving one's wife in a house of prostitution (Pen. Code 266g); loitering for prostitution (Pen. Code 653.22 subd. (a)); pimping (Pen. Code 266h); or, pandering (Pen. Code 266i). Most of these crimes are punished much more severely than the underlying prostitution offense, particularly the crimes of pimping, pandering, and procurement.

- b) **Human Trafficking Generally:** Human trafficking involves the recruitment, transportation or sale of people for forced labor. Through violence, threats and coercion, victims are forced to work in, among other things, the sex trade, domestic labor, factories, hotels and agriculture. According to the January 2005 United States Department of State's Human Smuggling and Trafficking Center report, "Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking", there is an estimated 600,000 to 800,000 men, women and children trafficked across international borders each year. Of these, approximately 80% are women and girls and up to 50% are minors. A recent report by the Human Rights Center at the University of California, Berkeley cited 57 cases of forced labor in California between 1998 and 2003, with over 500 victims. The report, "Freedom Denied", notes most of the victims in California were from Thailand,

Mexico, and Russia and had been forced to work as prostitutes, domestic slaves, farm laborers or sweatshop employees. [University of California, Berkeley Human Rights Center, "Freedom Denied: Forced Labor in California" (February, 2005).] According to the author:

"While the clandestine nature of human trafficking makes it enormously difficult to accurately track how many people are affected, the United States government estimates that about 17,000 to 20,000 women, men and children are trafficked into the United States each year, meaning there may be as many as 100,000 to 200,000 people in the United States working as modern slaves in homes, sweatshops, brothels, agricultural fields, construction projects and restaurants."

In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's already tough human trafficking laws. The proposition increased criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to \$1,500,000. Additionally, the proposition specified that the fines collected are to be used for victim services and law enforcement. Proposition 35 requires persons convicted of trafficking to register as sex offenders. Proposition 35 prohibits evidence that victim engaged in sexual conduct from being used against victims in court proceedings. Additionally, the proposition lowered the evidential requirements for showing of force in cases of minors.

- i) **Trafficking Victims Protection Act of 2000 (22 USC Sections 7101 *et seq.*):** In October 2000, the Trafficking Victims Protection Act of 2000 (TVPA) was enacted and is comprehensive, addressing the various ways of combating trafficking, including prevention, protection and prosecution. The prevention measures include the authorization of educational and public awareness programs. Protection and assistance for victims of trafficking include making housing, educational, health-care, job training and other federally funded social service programs available to assist victims in rebuilding their lives. Finally, the TVPA provides law enforcement with tools to strengthen the prosecution and punishment of traffickers, making human trafficking a federal crime.
- ii) **Recent Update to Human Trafficking Laws:** In 2012, Californians voted to pass Proposition 35, which modified many provisions of California's already tough human trafficking laws. Specifically, Proposition 35 increased criminal penalties for human trafficking offenses, including prison sentences up to 15-years-to-life and fines up to \$1.5 million. The proposition specified that the fines collected are to be used for victim services and law enforcement. In criminal trials, the proposition prohibits the use of evidence that a person was involved in criminal sexual conduct (such as prostitution) to prosecute that person for that crime if the conduct was a result of being a victim of human trafficking, and makes evidence of sexual conduct by a victim of human trafficking inadmissible for the purposes of attacking the victim's credibility or character in court. The proposition lowered the evidentiary requirements for showing of force in cases of minors.

Proposition 35 also requires persons convicted of human trafficking to register as sex offenders and expanded registration requirements by requiring registered sex offenders to provide the names of their internet providers and identifiers, such as e-

mail addresses, user names, and screen names, to local police or sheriff's departments. After passage of Proposition 35, plaintiffs American Civil Liberties Union and Electronic Frontier Foundation filed a law suit claiming that these provisions unconstitutionally restricts the First Amendment rights of registered sex offenders in the states. A United States District Court judge granted a preliminary injunction prohibiting the implementation or enforcement of Proposition 35's provisions that require registered sex offenders to provide certain information concerning their Internet use to law enforcement. [*Doe v. Harris* (N.D. Cal., Jan. 11, 2013, No. C12-5713) 2013 LEXIS 5428.]

- iii) **California Attorney General's Report on Human Trafficking:** The California Attorney General's Human Trafficking in California 2012 report stated that human trafficking investigations and prosecutions have become more comprehensive and organized. There are nine human trafficking task forces in California, composed of local, state and federal law enforcement and prosecutors.

Data on human trafficking has improved, although the data still does not reflect the actual extent and range of human trafficking. Data from 2010 through 2012 collected by the California task forces are set out in the following chart:

California Human Trafficking Task Forces Data 2010-2012

Investigations	2,552
Victims Identified	1,277
Arrests Made	1,798

Trafficking by Category

Sex Trafficking	56%
Labor Trafficking	23%
Unclassified or Insufficient Information	21%

- 4) **Sexual Acts with Minors Regardless of the Payment of Compensation Constitutes a Sex Crime:** This bill would separately define prostitution in which the person who provides, agreed to provide, sexual services is a minor. Sexual conduct with a minor constitutes a felony in most instances, regardless of whether anything of value was offered or exchanged for the sexual acts. If the minor involved in commercial sex of was under the age of 14, the defendant has committed the felony of lewd conduct, with a prison term of three, six or eight years, or five, eight or 10 years if coercion is involved (Pen. Code § 288, subs. (a) & (b).) Soliciting an act of prostitution from a minor under the age of 14 could likely be prosecuted as attempted lewd conduct. The prison or jail term for an attempt is generally one-half the punishment for the completed crime. Where the defendant solicited or employed a minor

who was 14 or 15 years old, and the defendant was at least 10 years older than the minor, the defendant has committed an alternate felony-misdemeanor.

Any defined sex act – sodomy, sexual penetration, oral copulation or sexual intercourse – with a minor is a crime. The penalties depend on the relative ages of the defendant and the minor and whether the crime involved some form of force, coercion or improper advantage. A defendant charged with a prostitution-related offense involving a minor could also be charged and convicted of a sex crime in the same case. Generally, because the defined sex crime and the sexual commerce offense would involve a single transaction or act, the defendant could only be punished for one offense – the offense carrying the greatest penalty. (Pen. Code § 654.)

- 5) **Accurate and Full Data Collection on Individually Defined Forms of Prosecution:** The narrow or initial purpose of this bill is to collect data to determine how many adults are arrested for and convicted of paying for sexual acts, how many adults are arrested for and convicted of selling sexual acts and how many adults are arrested for and convicted of paying for sexual services from minors. The bill divides the prosecution statute – Penal Code Section 647, subdivision (b) - into three paragraphs reflecting each form of the crime. In order for the data to be valuable and accurate, reporting agencies will need to specifically note the paragraph under which a defendant was arrested and convicted. Representatives from DOJ explained: “The way [crime reports] appears in the system is entirely dependent on the law enforcement agency or court that enters the offense into the system. One agency may enter PC 647(b)(2) while another may only enter PC 647(b).”

Prosecutors will likely record the specific paragraph under which the defendant is convicted - PC 647 (b)(2) for example. However, police officers and sheriff’s deputies might not specifically record the paragraph of arrest unless instructed to do so. Further, it may not be apparent to officers and deputies what specific form of prostitution would be charged by the prosecutor in any particular case. That could cause some confusion and inaccuracy in the data.

Another impediment to full and accurate data collection is the fact that sex with a minor is a crime. If a minor and an adult are involved in a prostitution incident, numerous outcomes involving sex crimes and prostitution could occur. For example, the police could arrest both parties for prostitution, but the prosecutor could charge the adult with a sex crime, or prostitution, or both. The prosecutor could charge the minor with no crime, or file a prostitution charge. The adult could be initially charged with a sex crime but plead guilty to a prostitution offense, perhaps if the minor appeared to be an adult. In sum, it may be difficult to determine the extent of prostitution involving minors from arrest and conviction data. If committee members approve the bill, they may wish to inquire as to whether DOJ should be directed to instruct agencies on the reporting of prostitution offenses. Committee members may also wish to inquire whether it could be assured that prostitution involving minors could be accurately reported and tracked.

- 6) **Argument in Support:** According to the *Alameda County District Attorney's Office*, "I am urging you to support this important legislation. This bill separates the buyers from the sellers of human trafficking and prostitution. Human trafficking is modern-day slavery. It is a serious, psychologically destructive crime. Victims of human trafficking are faced with

tremendous survival and recovery issues. Victims of human trafficking, especially minors, face great danger in terms of physical safety, health risk exposures and homicide.

"Over the past few years laws have strengthened the ability to prosecute traffickers. While prosecution is vital to removing these predators from the community, challenges to stopping human trafficking are much broader. As long as there is demand, there will be an exploiter to fill it. Unfortunately it is at the expense of the life, well-being and psychological, impact of those trapped in sexual slavery. Individuals who purchase human beings for sex fuel the market that traffickers supply with victims. Until we eliminate the demand, the sex exploitation of our society's most vulnerable girls, women and men and boys, will continue."

- 7) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice*, "SB 420 would define prostitution into three separate crime, separating the buyers from the sellers. SB 420 is unnecessary, essentially using different terminology to define the same crime under present law.

"For example, the definition of 'prostitution' and the requirement of an act beyond mere solicitation and agreement are the same under current law, and in this bill. Although SB 420 breaks out solicitation by the prostitute from solicitations by the "Johns," it is quite clear that both aspects are covered by the current statute. If anything, changing a long-standing definition could lead to confusion and costly litigation challenging the application of the new language as well as inconsistent sentencing by jurisdiction.

"Finally, it is concerning to our membership that the definition of human trafficking is being overly expanded to be used as a catch-all for conduct that has fundamentally been considered as prostitution. Not all crimes involving sexual activity are necessarily human trafficking. Human trafficking triggers a visceral reaction. As legislation continues to extend the boundaries of the definition, we do a disservice victims of actual criminal trafficking as well as mislead the public.

"Our criminal justice system was overloaded for too long as a result of mis-categorizing classes of offenses. Unfortunately, SB 420 suffers from the same defect. Human trafficking should retain a very narrow definition and applied to circumstances which the definition legitimately is applicable."

- 8) **Related Legislation:** AB 1708 (Gonzalez), defines and divides the crime of prostitution into three separate forms, in the same manner as this bill. Additionally, AB 1708 imposes stricter sentences on purchasers of prostitution services. AB 1708 is awaiting a hearing in Senate Public Safety.
- 9) **Prior Legislation:**
- a) SB 1388 (Lieu), Chapter 714, Statutes of 2014, increased fines related to the solicitation of an act of prostitution, as specified. Initially the bill contained provisions which separated out the crime of solicitation into two separate crimes of purchasing a sex act, and selling a sex act and imposed significantly higher penalties on purchasers of sex acts. The provisions related to the separation of solicitation and increased penalties were amended out of the bill in the Assembly Public Safety Committee.

- b) SB 982 (Huff), of the 2013-2014 legislative session, provided that soliciting an act of prostitution from a minor, or engaging in an act of prostitution with a minor, as specified, is an alternate felony-misdemeanor for a first conviction, and a straight felony for a repeated conviction. SB 982 failed passage in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office (Co-Sponsor)
Los Angeles County District Attorney's Office (Co-Sponsor)
Alameda County Board of Supervisors
California Against Slavery
California District Attorneys Association
California Police Chiefs Association
Peace Officers Research Association of California
Survivors for Solutions

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association
Erotic Service Providers Union

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

Date of Hearing: June 14, 2016
Counsel: David Billingsley

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

SB 867 (Roth) – As Amended April 12, 2016

SUMMARY: Extends until January 1, 2027, the Maddy Emergency Medical Services (EMS) Fund, which authorizes each county to levy an additional \$2 for every \$10 of criminal fines to establish an emergency medical services fund for reimbursement of costs related to emergency medical services based on fees on criminal convictions.

EXISTING LAW:

- 1) States that for the purposes of supporting emergency medical services as specified, in addition to other specified criminal penalties, the county board of supervisors may elect to levy an additional penalty in the amount of two dollars (\$2) for every ten dollars (\$10), or part of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses. (Gov. Code, § 76000.5, subd., (a)(1).)
- 2) Specifies that the additional penalty for emergency medical services does not apply to the restitution fine, parking violations, the state surcharge and specified penalty assessments. (Gov. Code, § 76000.5, subd., (a)(2).)
- 3) Provides that the emergency medical services funds shall be collected only if the county board of supervisors provides that the increased penalties do not offset or reduce the funding of other programs from other sources, but that these additional revenues result in increased funding to those programs. (Gov. Code, § 76000.5, subd., (b).)
- 4) States that moneys collected for the emergency medical services fund shall be taken from fines and forfeitures deposited with the county treasurer prior to any division. (Gov. Code, § 76000.5, subd., (c).)
- 5) Specifies that funds collected pursuant to this section shall be deposited into the Maddy Emergency Medical Services (EMS) Fund. (Gov. Code, § 76000.5, subd., (d).)
- 6) States the EMS Fund will be repealed on January 1, 2017. (Gov. Code, § 76000.5, subd., (e).)
- 7) Provides that each county may establish an emergency medical services fund, upon the adoption of a resolution by the board of supervisors. (Health & Saf. Code, § 1797.98a, subd. (b)(1).)
- 8) Specifies that the costs of administering the fund shall be reimbursed by the fund in an amount that does not exceed the actual administrative costs or 10 percent of the amount of the fund, whichever amount is lower. (Health & Saf. Code, § 1797.98a, subd. (b)(2).)

- 9) States that all interest earned on moneys in the fund shall be deposited in the fund for disbursement as specified in this section. (Health & Saf. Code, § 1797.98a, subd. (b)(3).)
- 10) States that the amount in the fund, reduced by the amount for administration and the reserve, shall be utilized to reimburse physicians and surgeons and hospitals for patients who do not make payment for emergency medical services and for other emergency medical services purposes as determined by each county according to the following schedule:
 - a) Fifty-eight percent of the balance of the fund shall be distributed to physicians and surgeons for emergency services provided by all physicians and surgeons, except those physicians and surgeons employed by county hospitals, in general acute care hospitals that provide basic, comprehensive, or standby emergency services pursuant to paragraph (3) or (5) of subdivision (f) of Section 1797.98e up to the time the patient is stabilized. (Health & Saf. Code, § 1797.98a, subd. (b)(5)(A).)
 - b) Twenty-five percent of the fund shall be distributed only to hospitals providing disproportionate trauma and emergency medical care services. (Health & Saf. Code, § 1797.98a, subd. (b)(5)(B).)
 - c) Seventeen percent of the fund shall be distributed for other emergency medical services purposes as determined by each county, including, but not limited to, the funding of regional poison control centers. Funding may be used for purchasing equipment and for capital projects only to the extent that these expenditures support the provision of emergency services and are consistent with the intent of this chapter. (Health & Saf. Code, § 1797.98a, subd. (b)(5)(C).)
- 11) States that the source of the moneys in the fund shall be the penalty assessment made for this purpose. (Health & Saf. Code, § 1797.98a, subd. (c).)
- 12) Specifies that of the money deposited into the fund as specified, 15 percent shall be utilized to provide funding for all pediatric trauma centers throughout the county, both publicly and privately owned and operated. (Health & Saf. Code, § 1797.98a, subd. (e).)
- 13) States that counties that do not maintain a pediatric trauma center shall utilize the money deposited into the fund to improve access to, and coordination of, pediatric trauma and emergency services in the county, with preference for funding given to hospitals that specialize in services to children, and physicians and surgeons who provide emergency care for children. (Health & Saf. Code, § 1797.98a, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The Maddy Emergency Medical Services Fund acts as a critical source of funding to ensure patients have access to high quality emergency care. Eliminating these funds will lead to a reduction in emergency physicians staffing. Fewer emergency physicians per shift are a significant contributor to longer wait times, worse outcomes, and poorer access to care for all patients with emergencies – whether they are insured or uninsured. California's Emergency Departments are the healthcare safety

net and front line of any public health emergency. The demand on Emergency Departments is only increasing. Despite the implementation of the Affordable Care Act (ACA), Emergency Room visits are up, and millions of Californians remain uninsured. In fact, a joint report by the UC Berkeley Labor Center and the UCLA Center for Health Policy Research, found that between 3.1 and 4 million Californians will remain uninsured in 2019, even with full implementation SB 867, and the continuation of the Maddy Fund, is critical to maintaining access to quality emergency care for all Californians for the foreseeable future.”

- 2) **Maddy EMS Fund:** In 1987, the Legislature approved the establishment of the Maddy EMS Fund, and although counties are not required to establish EMS Funds, almost all counties have done so. The Legislature intended the EMS Funds to reimburse physicians, hospitals, and other providers of emergency services, specifically for patients who do not have health insurance coverage for emergency services and care, cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government, as specified.

Counties have several sources of revenue for their EMS Funds: Maddy revenues, derived from county penalty assessments on various criminal offenses and motor vehicle violations; traffic violator school fees; and, revenues from taxes on tobacco products deposited in the State's Cigarette and Tobacco Products Surtax Fund, including the EMS Appropriation.

Current law requires courts to collect the fines, penalties, and forfeitures for various criminal offenses, motor vehicle and traffic violations. Currently, the total penalty assessment is \$7 for every \$10 of fines and forfeitures, a portion of which goes to the Maddy EMS Fund. Courts collect the penalty assessments and forward them to counties.

SB 1773 (Alarcon), Chapter 841, Statutes of 2006, further authorized county Boards of Supervisors to levy an additional penalty in the amount of \$2 for every \$10, or part of \$10 for criminal offenses, violations relating to the Vehicle Code and alcohol beverages. Under SB 1773, 15% of the funds collected must be utilized to fund pediatric trauma centers in the county, both publicly and privately owned and operated. The expenditure of money is limited to reimbursement to physicians and surgeons, and to hospitals for patients who do not make payment for emergency care services in hospitals up to the point of stabilization, or to hospitals for expanding the services provided to pediatric trauma patients at trauma centers, other hospitals providing care to pediatric trauma patients, or at pediatric trauma centers, including the purchase of equipment. The remaining 75% in these funds are distributed in accordance with the specified formula. SB 1773 was set to originally sunset in 2009, but was extended to January 1, 2014 under SB 1236 (Padilla), Chapter 60, Statutes of 2008. SB 191 (Padilla), Chapter 600, Statutes of 2013, extended the sunset date until January 1, 2017. This bill deletes that January 1, 2017 sunset date and extends it until January 1, 2027.

- 3) **Existing Penalty Assessments:** There are penalty assessments and fees added on the base fine the court imposes on a defendant for a criminal conviction. The penalty for the Maddy EMS Fund is one of several additional fees added to a defendant's base fine. Assuming a defendant was fined \$1000, the following penalty assessments would be imposed pursuant to the Penal Code and the Government Code:

Base Fine: \$ 1,000

Penal Code 1464 state penalty on fines:	1,000 (\$10 for every \$10)
Penal Code 1465.7 state surcharge:	200 (20% surcharge)
Penal Code 1465.8 court operation assessment:	40 (\$40 fee per offense)
Government Code 70372 court construction penalty:	500 (\$5 for every \$10)
Government Code 70373 assessment:	30 (\$30 per felony/misdo)
Government Code 76000 penalty:	700 (\$7 for every \$10)
Government Code 76000.5 Maddy EMS penalty:	200 (\$2 for every \$10)
Government Code 76104.6 DNA fund penalty:	100 (\$1 for every \$10)
Government Code 76104.7 add'l DNA fund penalty:	500 (\$4 for every \$10)
 Total Fine with Assessments:	 \$4,270

It should be noted that this figure does not include victim restitution, or the restitution fine, and that other fines and fees, such as the jail booking fee, attorney fees, and probation department fees, may also be applicable.

- 4) **Criminal Fines are Not a Reliable Funding Source:** Criminal fines and penalties have climbed steadily in recent decades. Government entities tasked with collecting these fines have realized diminishing returns from collection efforts. Government resources can be wasted in futile collection attempts.

A recent *San Francisco Daily Journal* article noted, "When it comes to collecting fines, superior court officials in several counties describe the process as 'very frustrating,' 'crazy complicated' and 'inefficient.'" (See *State Judges Bemoan Fee Collection Process*, *San Francisco Daily Journal*, 1/5/2015 by Paul Jones and Saul Sugarman.) The fines applicable to procuring and abducting minors for purposes of prostitution may provide an example of this problem. Simply put, criminal defendants can generally not produce a substantial flow of money for fines.

In the same *Daily Journal* article, the Presiding Judge of San Bernardino County was quoted as saying "the whole concept is getting blood out of a turnip." (*Daily Journal, supra.*) The article noted in particular that "Felons convicted to prison time usually can't pay their debts at all. The annual growth in delinquent debt partly reflects a supply of money that doesn't exist to be collected." (*Ibid.*)

- 5) **LAO Report on Criminal Fines and Fees:** The Legislative Analyst's Office (LAO) published a report in January 16, 2016 about California's system of criminal fines and fees. Upon conviction of a criminal offense (including traffic violations), individuals are typically required by the court to pay various fines and fees as part of their punishment. Collection programs—operated by both courts and counties—collect payments from individuals and then distribute them to numerous funds to support various state and local government programs and services. Distribution occurs in accordance to a very complex process dictated by state law.

The LAO identified some particular problems related to criminal fines and fees:

Difficult for Legislature to Control Use of Fine and Fee Revenues. The existing system distributes fine and fee revenue based on various statutory formulas, making it difficult for the Legislature to control how such revenue is used. This is because the

current formula based system limits the information available to guide legislative decisions, makes it difficult for the Legislature to reprioritize the use of revenue, and allows administering entities to maintain significant control over the use of funds.

Revenue Distributions Generally Not Based on Need. The existing system distributes revenue in a manner that is generally not based on program need—thereby resulting in programs receiving more or less funding than needed.

Difficult to Distribute Revenue Accurately. The complexity of the existing system makes it difficult for collection programs to accurately distribute fine and fee revenue.

Lack of Complete and Accurate Data on Collections and Distributions. A lack of complete and accurate data on fine and fee collections and distributions makes it difficult for the Legislature to conduct fiscal oversight. *Improving California's Fine and Fee System*, January, 2016, <http://www.lao.ca.gov/reports/2016/3322/criminal-fine-and-fee-system-010516.pdf>

Given the some of the problems identified by the LAO, the Legislature should consider whether continuing to use criminal fines and fees to distribute revenues through statutory formulas is the best way to fund California's policy priorities.

- 6) **Argument in Support:** According to *The Urban Counties of California*, “ In 2006, the Maddy Emergency Services Fund (SB 1773) was created in response to long wait times at emergency rooms and provided \$50 million in funds by allowing counties to collect additional penalties. These funds are used to reimburse physicians and hospitals that treat uninsured patients in the emergency departments. That law is set to expire on January 1, 2017.

“SB 867 extends the sunset date to January 1, 2027 of this important funding source and allows counties to continue to collect an additional \$2 for every \$10 penalty for all criminal offenses and moving violations. To date, 10 urban counties have elected to adopt this fee. In addition, the bill continues to allocate funds to “Richie’s Fund,” which supports pediatric trauma centers. Without this bill, there is no statewide funding source for pediatric trauma.

“SB 867 preserves California’s emergency care safety net by extending the Maddy Emergency Medical Services Funds and helps to mitigate the losses for treating the uninsured and keeps emergency departments open. California’s emergency rooms are the healthcare safety net and the front lines of any public health emergency. Therefore, this funding option is critical for urban counties.”

7) **Prior Legislation:**

- a) SB 191 (Padilla), Chapter 600, Statutes of 2013, extended the Maddy EMS fund until January 1, 2017.
- b) SB 1236 (Padilla), Chapter 60, Statutes of 2008, extended from January 1, 2009 to January 1, 2014, existing provisions allowing a county Board of Supervisors to levy additional penalties on criminal offenses, for purposes of the Maddy EMS Fund, and

allocate 15% of the funds collected to pediatric trauma centers, as specified.

- c) SB 1773 (Alarcon), Chapter 841, Statutes of 2006, authorized a county Board of Supervisors, until January 1, 2009, to elect to levy an additional \$2 for every \$10 in base funds for purposes of supporting EMS, and requires the additional assessment to be deposited in local Maddy EMS Funds, with 15% to be directed to pediatric trauma services and authorizes up to 10% to be used for administrative expenses.
- d) AB 1475 (Solorio), Chapter 537, Statutes of 2009, provided that the costs of administering the EMS Fund that are reimbursed by the fund are not to exceed the actual costs of administering the fund or 10% of the amount of the fund, whichever amount is lower.

REGISTERED SUPPORT / OPPOSITION:

Support

California Hospital Association (Co-Sponsor)
 California Chapter of the American College of Emergency Physicians (Co-Sponsor)
 California Medical Association (Co-Sponsor)
 Adventist Health
 American Academy of Pediatrics
 California Academy of PAs
 California Ambulance Association
 California Children's Hospital Association
 California Fire Chiefs Association
 California School Nurses Organization
 California Society of Industrial Medicine and Surgery
 California State Association of Counties
 Children's Specialty Care Coalition
 Contra Costa County Board of Supervisors
 Del Norte County Board of Supervisors
 Del Norte Ambulance
 Emergency Medical Services Administrators Association
 Emergency Medical Services Medical Directors Association of California
 Emergency Nurses Association, California State Council
 Fire Districts Association of California
 Health Officers Association of California
 Humboldt County Board of Supervisors
 Lake County Health Services Department
 Los Angeles County Board of Supervisors
 Local Emergency Medical Services Agency (Counties of Del Norte, Humbolt, and Lake)
 Loma Linda University Health
 Marin County
 Osteopathic Physicians and Surgeons of California
 Peace Officers Research Association of California
 Petaluma Valley Hospital
 Private Essential Access Community Hospitals
 Providence Health & Services

Riverside County Board of Supervisors
Rural County Representatives of California
San Bernadino County
San Diego County
Santa Barbara County Board of Supervisors
Santa Rosa Memorial Hospital
St. Helena Hospital, Clear Lake
St. Mary Medical Center, Apple Valley
St. Joseph Hospital, Orange
St. Jude Medical Center, Fullerton
Sutter Lakeside Hospital
Urban Counties of California

Opposition

None

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

Date of Hearing: June 14, 2016

Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 869 (Hill) – As Amended May 18, 2016

SUMMARY: Requires every person who is leaving a handgun in a vehicle to secure the handgun by locking it either in the trunk or in a locked container which is out of plain view. Specifically, **this bill:**

- 1) Requires a person, when leaving a handgun in an unattended vehicle, to lock the handgun in the vehicle's trunk or to lock it in a locked container and place the container out of plain view.
- 2) Makes a violation of the vehicle-securement requirement an infraction punishable by a fine not exceeding \$1,000.
- 3) Defines "vehicle" as "a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks."
- 4) Defines "locked container" as "a secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device." A locked container "does not include the utility or glove compartment of a motor vehicle."
- 5) Provides that a vehicle is unattended when a person who is lawfully carrying or transporting a handgun in a vehicle is not within close enough proximity to the vehicle to reasonably prevent unauthorized access to the vehicle or its contents.
- 6) Exempts a peace officer from this requirement during circumstances requiring immediate aid or action that are within the course of his or her official duties.
- 7) States that the vehicle-securement requirement does not apply to, or affect, the transportation of unloaded firearms by a person operating a licensed common carrier or an unauthorized agent or employee thereof when the firearms are transported in conformance with applicable federal law.

EXISTING LAW:

- 1) Provides that a person is guilty of carrying a concealed firearm when the person:
 - a) Carries concealed within any vehicle that is under the person's control or direction any pistol, revolver, or other firearm capable of being concealed upon the person;

- b) Carries concealed upon the person any pistol, revolver, or other firearm capable of being concealed upon the person; and
 - c) Causes to be carried concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person. (Pen. Code, § 25400, subd. (a).)
- 2) Provides that carrying a concealed firearm is punishable as follows:
- a) If the person previously has been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, as a felony;
 - b) If the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony;
 - c) If the person is an active participant in a criminal street gang, as a felony;
 - d) If the person is not in lawful possession of the firearm or the person is within a class of persons prohibited from possessing or acquiring a firearm, as a felony;
 - e) If the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine; and
 - f) If both of the following conditions are met, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment:
 - i) The pistol, revolver, or other firearm capable of being concealed upon the person is loaded, or both it and the unexpended ammunition capable of being discharged from it are in the immediate possession of the person or readily accessible to that person; and
 - ii) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person. (Pen. Code, § 25400, subd. (c).)
- 3) Exempts the following persons from the prohibition on carrying concealed weapons:
- a) Any peace officer, as specified, whether active or honorably retired;
 - b) Any other duly appointed peace officer;
 - c) Any honorably retired peace officer, as specified;
 - d) Any other honorably retired peace officer who during the course and scope of his or her appointment as a peace officer was authorized to, and did, carry a firearm;

- e) Any full-time paid peace officer of another state or the federal government who is carrying out official duties while in California; or
 - f) Any person summoned by any of these officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. (Pen. Code, § 25450.)
- 4) States that the prohibition on concealed carry is not construed to prohibit any citizen of the United States over the age of 18 years who resides or is temporarily within this state, and who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, from transporting or carrying any pistol, revolver, or other firearm capable of being concealed upon the person, provided that the following applies to the firearm:
- a) The firearm is within a motor vehicle and it is locked in the vehicle's trunk or in a locked container in the vehicle; and
 - b) The firearm is carried by the person directly to or from any motor vehicle for any lawful purpose and, while carrying the firearm, the firearm is contained within a locked container. (Pen. Code, § 25610.)
- 5) States that the prohibition on concealed carry, also does not apply to, or affect:
- a) Any member of the Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, or the National Guard, when on duty, or any organization that is by law authorized to purchase or receive those weapons from the United States or this state; (Pen. Code, § 25620.)
 - b) The carrying of unloaded pistols, revolvers, or other firearms capable of being concealed upon the person by duly authorized military or civil organizations while parading or the members thereof when going to and from the places of meeting of their respective organizations; (Pen. Code, § 25625.)
 - c) Any guard or messenger of any common carrier, bank, or other financial institution, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state; (Pen. Code, § 25630.)
 - d) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using pistols, revolvers, or other firearms capable of being concealed upon the person upon the target ranges, or transporting these firearms unloaded when going to and from the ranges; (Pen. Code, § 25635.)
 - e) Licensed hunters or fishermen carrying pistols, revolvers, or other firearms capable of being concealed upon the person while engaged in hunting or fishing, or transporting those firearms unloaded when going to or returning from the hunting or fishing expedition; (Pen. Code, § 25640.)

- f) The transportation of unloaded firearms by a person operating a licensed common carrier or an authorized agent or employee thereof when the firearms are transported in conformance with applicable federal law; (Pen. Code, § 25645.)
 - g) Upon approval of the sheriff of the county in which the retiree resides, any honorably retired federal officer or agent of any federal law enforcement agency, including, but not limited to, the Federal Bureau of Investigation, the United States Secret Service, the United States Customs Service, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, the Federal Bureau of Narcotics, the United States Drug Enforcement Administration, the United States Border Patrol, and any officer or agent of the Internal Revenue Service who was authorized to carry weapons while on duty, who was assigned to duty within the state for a period of not less than one year, or who retired from active service in the state; and (Pen. Code, § 25650.)
 - h) The carrying of a pistol, revolver, or other firearm capable of being concealed upon the person by a person who is authorized to carry that weapon in a concealed manner, as specified. (Pen. Code § 25655.)
- 6) Requires a firearm to be unloaded and kept in a locked container when it is being transported from one place to another, and contains other conditional exemptions for the transportation of firearms. (Pen. Code, § 25505 et seq.)
 - 7) Makes it a crime to carry a loaded firearm either upon the person, or in a vehicle while in any public place or on any public street in an incorporated city, or in any public place or on any public street in a prohibited area of unincorporated territory. (Pen. Code, § 25850, subd. (a).)
 - 8) Exempts peace officers and concealed carry weapon permit holders from the crime of carrying a loaded firearm in public. (Pen. Code, §§ 25900 & 26010.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "To prevent handgun thefts from vehicles, current law requires civilian handgun owners to store the weapon in a locked box or in the trunk when leaving it unattended in the car. This common sense requirement however, does not apply to law enforcement officers and concealed carry license holders and unfortunately, several handguns have been stolen out of police vehicles and used in deadly crimes.

"For example, an unattended handgun stolen out of a law enforcement vehicle was used to kill Kate Steinle on Pier 14 in San Francisco in July last year. Just this February, the California Supreme Court affirmed the death sentence for a man who murdered four people using a handgun stolen out of the vehicle of an off duty deputy sheriff.

"SB 869 simply extends the existing vehicle handgun storage requirement to anyone who leaves a handgun unattended in their car."

- 2) **Transporting Firearms:** A U.S. citizen over 18 years of age who is not prohibited from possessing a firearm, and who is a California resident or temporarily in the state, may transport by motor vehicle any handgun provided it is unloaded and locked in the trunk or in a locked container. Furthermore, the handgun must be carried directly to or from any motor vehicle for any lawful purpose and, while being carried must be contained within a locked container.

The term "locked container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. This includes the trunk of a motor vehicle, but does not include the utility or glove compartment. (Pen. Code, § 16850.)

Shotguns and rifles are not generally covered by concealed-carry provisions (because they are considered non-concealable) and therefore are not required to be transported in a locked container. But they must be unloaded while they are being transported.

Registered assault weapons may be transported only between specified locations and must also be unloaded and stored in a locked container when transported. (See California Department of Justice Website: <<https://oag.ca.gov/firearms/travel>>.)

- 3) **Impetus for this Bill:** According to the background provided by the author, in recent years there has been an increase in incidents of handguns stolen from cars. This includes handguns stolen from law enforcement vehicles. Tragically, many stolen guns end up being used in violent crimes.

As the background provided by the author notes, in the latter half of 2015, four people were killed with guns stolen from cars; two of the weapons were taken from law enforcement officers' vehicles. For example, in July 2015, a gun stolen from the car of a federal Bureau of Land Management ranger was used to kill a 32-year-old woman at San Francisco's Pier 14. (<http://abc7news.com/news/rangers-stolen-gun-used-in-sf-pier-14-shooting/835700/>.) In September 2015, a gun stolen from the car of a federal Immigration and Customs Enforcement officer was used in the killing of a muralist in Oakland.

(<http://www.sfgate.com/crime/article/Gun-used-to-kill-Oakland-muralist-traced-to-ICE-6657172.php>.) And a weapon stolen from a civilian's vehicle was used to kill a backpacker in Golden Gate Park and a hiker in Marin County.

(<http://www.marinij.com/article/NO/20151008/NEWS/151009812>.)

- 4) **Argument in Support:** According to the *California Chapters of the Brady Campaign to Prevent Gun Violence*, "The proper and secure storage of handguns is a key part of preventing theft. To that end, current California law requires civilians who leave their handguns in their cars to store them securely in a lockbox or in the trunk. Law enforcement officers, however, are exempt from this requirement. Throughout 2015, several handguns were stolen from vehicles owned by law enforcement officers. Some of the guns were used in crimes, including two murders. Had the handguns been properly stored and out of site (sic), it's likely that they would've never been stolen and used in the commission of a crime.

"SB 869 is a common sense measure that would require any person, including law enforcement officers – local, state, and federal officers – to take the same precautions that civilians do when firearms are left in vehicles."

5) Related Legislation:

- a) SB 894 (Jackson) requires a firearm owner to report the theft or loss of a firearm to local law enforcement agency within five days of the time he or she knew, or reasonably should have known, that the firearm had been stolen or lost. SB 894 will be heard by this committee today.
 - b) AB 1695 (Bonta) makes it a misdemeanor to falsely report to law enforcement that a firearm has been lost or stolen. AB 1695 is pending referral by the Senate Rules Committee.
- 6) **Prior Legislation:** AB 231 (Ting), Chapter 730, Statutes of 2013, created the crime of criminal storage in the third degree, which imposes liability if a person negligently stores or leaves a loaded firearm in a place where he or she knows, or reasonably should know, that a child is likely to access it without the permission of the child's parent or guardian.

REGISTERED SUPPORT / OPPOSITION:**Support**

American Academy of Pediatrics, California Chapter
California Association of Highway Patrolmen
California Chapters of the Brady Campaign to Prevent Gun Violence
California Police Chiefs Association
Law Center to Prevent gun Violence
San Francisco Bay Area Rapid Transit

Opposition

None

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

Date of Hearing: June 14, 2016
Counsel: Gabriel Caswell

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

SB 880 (Hall) – As Amended May 17, 2016

SUMMARY: Redefines what constitutes an assault weapon in order to close the bullet button loophole. Also requires registration of weapons previously not prohibited, under the new definition. Specifically, **this bill:**

- 1) Revises the definition of “assault weapon” to mean "a semiautomatic centerfire rifle, or a semiautomatic pistol that does not have a fixed magazine but has any one of those specified attributes."
- 2) Defines “fixed magazine” to mean "an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action."
- 3) Exempts a person who possessed an assault weapon prior to January 1, 2017, if specified requirements are met.
- 4) Requires that any person who, from January 1, 2001, to December 31, 2016, lawfully possessed an assault weapon that does not have a fixed magazine, as defined, register the firearm with the Department of Justice (DOJ) before January 1, 2018.
- 5) Permits the DOJ to increase the \$20 registration fee as long as it does not exceed the reasonable processing costs of the department.
- 6) Requires registrations to be submitted electronically via the Internet utilizing a public-facing application made available by the DOJ.
- 7) Requires the registration to contain specified information, including, but not limited to, a description of the firearm that identifies it uniquely and specified information about the registrant.
- 8) Permits the DOJ to charge a fee of up to \$15 per person for registration through the internet, not to exceed the reasonable processing costs of the department to be paid and deposited, as specified, for purposes of the registration program.
- 9) Requires the DOJ to adopt regulations for the purpose of implementing those provisions and would exempt those regulations from the Administrative Procedure Act.

EXISTING LAW:

- 1) Contains legislative findings and declarations that the proliferation and use of assault and .50 BMG rifles poses a threat to the health, safety, and security of all citizens of California. (Pen. Code, § 30505.)
- 2) States legislative intent to place restrictions on the use of assault weapons and .50 BMG rifles and to establish a registration and permit procedure for their lawful sale and possession. (Pen. Code, § 30505.)
- 3) Prohibits several categories of assault weapons:
 - a) Specified firearms listed by name and others listed by series (Pen. Code, § 30510);
 - b) Semiautomatic centerfire rifles or semiautomatic pistols having the capacity to accept a detachable magazine and also having one of several specified characteristics;
 - c) Semiautomatic centerfire rifles or semiautomatic pistols with a fixed magazine having the capacity to hold more than 10 rounds;
 - d) Semiautomatic centerfire rifles with an overall length of less than 30 inches;
 - e) Semiautomatic shotguns having two specified characteristics;
 - f) Semiautomatic shotguns having the capacity to accept a detachable magazine; and,
 - g) Any shotgun with a revolving cylinder. (Pen. Code, § 30515.)
- 4) Defines a "detachable magazine" as any ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool. Ammunition feeding device includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges into the magazine. (11 Cal. Code Regs. Section 5469.)
- 5) Bans the manufacture, distribution, transportation, importation, sale, gift or loan of an assault weapon. (Pen. Code, § 30600, subd. (a).)
- 6) Makes the possession of an assault weapon a criminal offense, subject to certain exceptions. (Pen. Code, § 30605.)
- 7) Defines a ".50 BMG rifle" as "a center fire rifle that can fire a .50 BMG cartridge and is not already an assault weapon or a machinegun." (Pen. Code, § 30530.)
- 8) Bans the manufacture, distribution, transportation, importation, sale, gift, loan, or possession of .50 BMG rifles. (Pen. Code §§ 30600 & 30610.)
- 9) Exempts the DOJ, law enforcement agencies, military forces, and other specified agencies from the prohibition against sales to, purchase by, importation of, or possession of assault

weapons or .50 BMG rifles. (Pen. Code, § 30625.)

- 10) Requires that any person who lawfully possesses an assault weapon prior to the date it was specified as an assault weapon to register the firearm with DOJ, as specified. (Pen. Code, § 30900 et. seq.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "bullet button-equipped semi-automatic weapons have no legitimate use for sport hunters or competitive shooters. They are designed only to facilitate the maximum destruction of human life. Such weapons have been used in a number of recent gun attacks including the recent terrorist attack in San Bernardino that left 14 Californians dead and 21 injured. Too many Californians have died at the hands of these dangerous weapons.

"SB 880 will make our communities safer and upholds our commitment to reduce gun violence in California by closing the bullet button loophole in California's Assault Weapons Ban. This bill clarifies the definition of assault weapons and provides the DOJ the authority to bring existing regulations into conformity with the original intent of California's Assault Weapon Ban. Absent this bill, the assault weapon ban is severely weakened, and these types of military-style firearms will continue to proliferate on our streets and in our neighborhoods."

- 2) **California's Assault Weapons Ban:** The origin of and subsequent modifications to the assault weapons ban in California are described by the federal Court of Appeal in the following extended excerpt from *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002) (as amend. Jan. 27, 2003).

In response to a proliferation of shootings involving semi-automatic weapons, the California Legislature passed the Roberti-Roos Assault Weapons Control Act (AWCA) in 1989. The immediate cause of the AWCA's enactment was a random shooting earlier that year at the Cleveland Elementary School in Stockton, California. An individual armed with an AK-47 semi-automatic weapon opened fire on the schoolyard, where 300 pupils were enjoying their morning recess. Five children ages six to nine were killed, and one teacher and 29 children were wounded.

The California Assembly met soon thereafter in an extraordinary session called for the purpose of enacting a response to the Stockton shooting. The legislation that followed, the AWCA, was the first legislative restriction on assault weapons in the nation, and was the model for a similar federal statute enacted in 1994. The AWCA renders it a felony offense to manufacture in California any of the semi-automatic weapons specified in the statute, or to possess, sell, transfer, or import into the state such weapons without a permit. The statute contains a grandfather clause that permits the ownership of assault weapons by individuals who lawfully purchased them before the statute's enactment, so long as the owners register the weapons with DOJ. The grandfather clause, however, imposes significant restrictions on the use of weapons that are registered pursuant to its provisions. Approximately 40 models of firearms are listed in the statute as subject to its restrictions. The specified weapons

include “civilian” models of military weapons that feature slightly less firepower than the military-issue versions, such as the Uzi, an Israeli-made military rifle; the AR-15, a semi-automatic version of the United States military’s standard-issue machine gun, the M-16; and the AK-47, a Russian-designed and Chinese-produced military rifle. The AWCA also includes a mechanism for the Attorney General to seek a judicial declaration in certain California superior courts that weapons identical to the listed firearms are also subject to the statutory restrictions.

The AWCA includes a provision that codifies the legislative findings and expresses the legislature’s reasons for passing the law: “The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state. The Legislature has restricted the assault weapons specified in [the statute] based upon finding that each firearm has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is the intent of the Legislature in enacting this chapter to place restrictions on the use of assault weapons and to establish a registration and permit procedure for their lawful sale and possession. It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.”

In 1999, the Legislature amended the AWCA in order to broaden its coverage and to render it more flexible in response to technological developments in the manufacture of semiautomatic weapons. The amended AWCA retains both the original list of models of restricted weapons, and the judicial declaration procedure by which models may be added to the list. The 1999 amendments to the AWCA statute add a third method of defining the class of restricted weapons: the amendments provide that a weapon constitutes a restricted assault weapon if it possesses certain generic characteristics listed in the statute. Examples of the types of weapons restricted by the revised AWCA include a “semiautomatic, center-fire rifle that has a fixed magazine with the capacity to accept more than 10 rounds,” and a semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and also features a flash suppressor, a grenade launcher, or a flare launcher. The amended AWCA also restricts assault weapons equipped with “barrel shrouds,” which protect the user’s hands from the intense heat created by the rapid firing of the weapon, as well as semiautomatic weapons equipped with silencers.

- 3) **Changes This Bill Makes to the AWCA:** As the Court explained, in 1999 the assault weapons ban was amended to expand the definition of an assault weapon to include a definition by the generic characteristics, specifically, to include a “semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine” in addition to one of several specified characteristics, such as a grenade launcher or flash suppressor. [SB 23 (Perata) Statutes of 1999, Chapter 129, Section 7 et seq.] SB 23 was enacted in response to the marketing of so-called “copycat” weapons - firearms that were substantially similar to weapons on the prohibited list but differed in some insignificant way, perhaps only the name of the weapon, thereby defeating the intent of the ban.

SB 23’s generic definition of an assault weapon was intended to close the loophole in the law created by its definition of assault weapons as only those specified by make and model. Regulations promulgated after the enactment of SB 23 define a detachable magazine as any

ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool. In response to this definition, a new feature has been developed by firearms manufacturers to make military-style, high-powered, semi-automatic rifles "California compliant," the bullet button.

In 2012, researchers at the nonprofit Violence Policy Center in Washington, D.C. released a paper describing the phenomenon of the bullet button and its effect on California's assault weapons ban:

The "Bullet Button"—Assault Weapon Manufacturers' Gateway to the California Market

Catalogs and websites from America's leading assault rifle manufacturers are full of newly designed "California compliant" assault weapons. Number one and two assault weapon manufacturers Bushmaster and DPMS, joined by ArmaLite, Colt, Sig Sauer, Smith & Wesson, and others are all introducing new rifles designed to circumvent California's assault weapons ban and are actively targeting the state in an effort to lift now-sagging sales of this class of weapon. They are accomplishing this with the addition of a minor design change to their military-style weapons made possible by a definitional loophole: the "bullet button." [Please see the Appendix beginning on page six for 2012 catalog copy featuring "California compliant" assault rifles utilizing a "bullet button" from leading assault weapon manufacturers.]

California law bans semiautomatic rifles with the capacity to accept a detachable ammunition magazine and any one of six enumerated additional assault weapon characteristics (e.g., folding stock, flash suppressor, pistol grip, or other military-style features).

High-capacity detachable ammunition magazines allow shooters to expel large amounts of ammunition quickly and have no sporting purpose. However, in California an ammunition magazine is not viewed as detachable if a "tool" is required to remove it from the weapon. The "bullet button" is a release button for the ammunition magazine that can be activated with the tip of a bullet. With the tip of the bullet replacing the use of a finger in activating the release, the button can be pushed and the detachable ammunition magazine removed and replaced in seconds. Compared to the release process for a standard detachable ammunition magazine it is a distinction without a difference. (*Bullet Buttons, The Gun Industry's Attack on California's Assault Weapons Ban*, Violence Policy Center, Washington D.C., May 2012.)

One approach to this issue, taken by SB 249 (Yee) in 2012 and SB 47 (Yee) of 2014, as well as AB 1664 (Levine) of this session, and this bill, amends the statute to replace the language regarding detachable magazines. This approach also defines a "detachable magazine" as "an ammunition feeding device that can be removed readily from the firearm without disassembly of the firearm action, including an ammunition feeding device that can be removed readily from the firearm with the use of a tool." In other words, a semiautomatic rifle could have a detachable magazine, as long as that rifle did not also have any of the six prohibited features or that rifle could have the prohibited features as long as it had a fixed

magazine.

Proponents argue the feature that makes one semi-automatic rifle capable of killing or wounding more people in a shorter amount of time than another is the capacity to rapidly reload large amounts of ammunition. For example, proponents note that, in 2011, a man opened fire on teenagers at a summer youth camp in Norway, killing 69 and wounding another 110, using a high-powered, semi-automatic rifle, the .223 caliber Ruger Mini-14. That rifle had none of the features listed in California's definition of an assault weapon and it is a perfectly legal weapon in California; supporters of this bill submit that what made that weapon such an effective tool of mass murder is the fact that the killer was able to rapidly reload one magazine after another of ammunition.

- 4) **Constitutionality:** The Constitutionality of California's assault weapons ban has been upheld by both the California Supreme Court [*Kasler v. Lockyer*, 23 Cal. 4th 472 (2000)] and the federal Court of Appeal. [*Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002) (as amend. Jan. 27, 2003).] While the California Supreme Court rejected allegations that the law violated equal protection guarantees, the separation of powers, and failed to provide adequate notice of what was prohibited under the law, the Ninth Circuit Court of Appeal decision in *Silveira* was based largely on its interpretation of the Second Amendment right to keep and bear arms. The Second Amendment of the Constitution states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." (United States Const. Amend. 2.) The *Silveira* Court based its ruling on the widely held interpretation of the Second Amendment known as the "collective rights" view, that the right secured by the Second Amendment relates to firearm ownership only in the context of a "well regulated militia." [*Silveira v. Lockyer*, 312 F.3d 1052, 1086 (9th Cir. Cal. 2002).]

The *Silveira* Court's interpretation of the meaning of the Second Amendment has since been squarely rejected by the U.S. Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). Whether the *Heller* and *McDonald* cases mean that California's assault weapons ban violates the Second Amendment and is, therefore, unconstitutional is a different matter.

In *Heller*, the Supreme Court rejected the "collective rights" view of the Second Amendment and, instead, endorsed the "individual rights" interpretation, that the Second Amendment protects the right of each citizen to firearm ownership. After adopting this reading of the Second Amendment, the Supreme Court held that federal law may not prevent citizens from owning a handgun in their home. (*District of Columbia v. Heller*, 554 U.S. 570, 683-684.) In the *McDonald* case, the Supreme Court extended this ruling to apply to laws passed by the 50 states. (*McDonald v. City of Chicago*, 130 S. Ct. 3020, 3050.)

In deciding that the Second Amendment guaranteed the right to own a handgun in the home for self-defense, the Supreme Court stated that this ruling has its limitations:

"Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the

Second Amendment or state analogues. Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

- 5) **Governor's Veto Message of 2013's SB 374 (Steinberg):** Governor Brown vetoed somewhat similar legislation (requiring a fixed magazine) in 2013 with the following veto message:

"I am returning Senate Bill 374 without my signature.

"The State of California already has some of the strictest gun laws in the country, including bans on military-style assault rifles and high-capacity ammunition magazines.

"While the author's intent is to strengthen these restrictions, this bill goes much farther by banning any semi-automatic rifle with a detachable magazine. This ban covers low-capacity rifles that are commonly used for hunting, firearms training, and marksmanship practice, as well as some historical and collectible firearms. Moreover, hundreds of thousands of current gun owners would have to register their rifles as assault weapons and would be banned from selling or transferring them in the future.

"Today I signed a number of bills that strengthen California's gun laws, including AB 48, which closes a loophole in the existing ban on dangerous high-capacity magazines. I also signed AB 1131 and SB 127, which restrict the ability of mentally unstable people to purchase or possess guns.

"I don't believe that this bill's blanket ban on semi-automatic rifles would reduce criminal activity or enhance public safety enough to warrant this infringement on gun owners' rights."

- 6) **Argument in Support:** According to the *Law Center to Prevent Gun Violence*, "The California Legislature recognized long ago—after a gunman with an assault weapon shot 34 children at Cleveland Elementary School in Stockton, California—that these military-grade weapons of war have no place in our communities. Since 1989, California has led the nation in enacting common sense gun safety laws to keep assault weapons off our streets. However, the gun industry has repeatedly skirted the limits of this law and exploited its loopholes in order to continue selling military-style weaponry within the state.

"Existing California law defines prohibited assault weapons to include firearms that have both the capacity to accept a detachable magazine and specified military-style features. The ability to accept a detachable magazine allows a shooter to quickly reload an assault weapon to continue firing and killing without interruption.

"California's assault weapons ban does not define the term 'detachable magazine,' however. Perplexingly, current DOJ regulations define 'detachable magazine' in a manner that runs counter to both the spirit and the letter of the state's assault weapons ban. Under these regulations' definition, a weapon is not considered to have a detachable magazine, and is

therefore not a prohibited assault weapon, if a 'tool' is used to release the firearm's magazine instead of the shooter's finger alone. The regulations specifically state that "a bullet or an ammunition feeding device is considered a tool."ⁱ

"The gun industry has exploited this dangerous loophole in recent years by marketing 'California compliant' assault weapons that are equipped with a 'bullet button.' These weapons are the functional equivalents of illegal assault weapons in every respect, except that the shooter uses a bullet, magnet, or other instrument, instead of his or her finger, to depress the button that releases the weapon's magazine. These weapons may be reloaded as quickly and efficiently as prohibited assault weapons, but they have been permitted to flood into this state at an alarming rate, threatening Californians' safety.

"SB 880 would further the letter and spirit of California's assault weapons law by adding a statutory definition of 'fixed magazine' to clarify that bullet button weapons are illegal assault weapons. This definition would establish that firearms like bullet button weapons, whose magazines may be removed and reloaded without disassembling the firearm action, do not have 'fixed magazines.' Individuals who lawfully obtained these weapons prior to January 1, 2017, would be required to register their weapons with DOJ.

"A December 2015 mass shooting tragedy illustrates the compelling need for this legislation. On that day, two radicalized assailants used bullet button weapons to shoot 36 people in a San Bernardino community building in the span of less than four minutes. The 'California compliant' bullet button weapons they used were designed to inflict maximal carnage on military battlefields and were nearly indistinguishable from illegal assault weapons. Any legitimate function these weapons might serve in sport or recreation is substantially outweighed by the danger that they may be used to—and in fact have been used to—quickly and efficiently take large numbers of human lives. By prohibiting all future manufacturing, possession, and sale of these weapons, SB 880 would help protect the public and law enforcement from battlefield weaponry that has no place in our civilian communities.

"This legislation is substantively similar to AB 1664 (Levine), which recently passed with strong support in this Committee and on the Assembly floor."

- 7) **Argument in Opposition:** According to the *Firearms Policy Coalition*, "On behalf of the members and supporters of Firearms Policy Coalition, I respectfully submit our opposition to Senate Bill 880 (Hall and Glazer) and respectfully request your 'NO' vote.

"SB 880 seeks to expand the ban on so-called 'assault weapon' through vague language, by re-defining the term 'detachable magazine' to mean 'an ammunition feeding device that can be removed readily from the firearm without disassembly of the firearm action, including an ammunition feeding device that can be removed readily from the firearm with the use of a tool.'

"SB 880 would ban millions of semi-automatic rifles protected by the Second Amendment to the United States Constitution and violate the civil rights of every law-abiding person in (and visitor to) California, moving the goal posts yet again for the millions of law abiding residents and visitors who have [quite reasonably, given the volume] struggled for years to keep up with the frenetic pace of California's ever-increasing and expensive firearm regulations.

"The California Department of Justice (DOJ) will have to start from scratch to create new regulations, new forms, new databases and new online interfaces. Even with modest compliance by the public, the already struggling DOJ will have to hire or re-purpose dozens of staff in order to process millions of firearms lawfully owned by hundreds of thousands of California residents.

"Law enforcement will find cause to arrest thousands of residents and visitors annually as SB 880 wraps in tens of millions of firearms owned by millions of Californians and visitors. This will burden the courts and the correctional system—with people who are otherwise law-abiding.

"To summarize;

- "SB 880's uninformed new definitions put millions of law-abiding residents and visitors in to our jails and prisons and therefore probation and parole.
- "SB 880 contains no provision for outreach to the millions of Californians who have lawfully acquired firearms that would be subject to SB 880's reach.
- "SB 880 contains no provision for educating law enforcement officers or prosecutors—the very people who will have to interpret and enforce it—which will lead to false arrests and ruined lives.

"SB 880 creates overnight felons for mere possession, transfer, transport or inheritance of common, constitutionally protected items, creating a crisis for residents and visitors who have been law abiding all their lives and could lose all they have worked for –by simply exercising a fundamental right."

8) **Related Legislation:**

- a) AB 1663 (Chiu) takes a different approach to closing the bullet button loophole. AB 1663 was held in Assembly Appropriations Committee.
- b) AB 1664 (Levine) is substantially similar to this legislation. AB 1664 is currently awaiting a hearing in Senate Public Safety.

9) **Prior Legislation:**

- a) SB 47 (Yee), of the 2013-2014 Legislative Session, would have closed the bullet button loophole by redefining an assault weapon in statute as 'a semiautomatic, centerfire rifle that does not have a fixed magazine' and has any one of several specified features. SB 47 was held on the Assembly Appropriations Committee suspense file.
- b) SB 374 (Steinberg), of the 2013-2014 Legislative Session, would have closed the bullet button loophole by redefining an assault weapon as it pertains to rifles and defines "detachable magazines" and "fixed magazines." Specifies that rifles which are not assault weapons have fixed magazines. SB 347 was vetoed by the Governor.

- c) SB 249 (Yee), of the 2011-12 Legislative Session, would have prohibited any person from importing, making, selling, loaning, transferring or possessing any conversion kit designed to convert certain firearms with a fixed magazine into firearms with a detachable magazine. SB 249 was held on the Assembly Appropriations Committee suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics
American College of Emergency Physicians, California Chapter
Bend the Arc
Brady Campaign to Prevent Gun Violence, Orange County
Brotherhood Crusade
California Attorney General
California Academy of Family Physicians
California Catholic Conference
California Chapters of the Brady Campaign
California Communities United Institute
California State PTA
Charles R. Drew University of Medicine and Science
City of Berkeley
City of Long Beach
City of Los Angeles
City of Oakland
Coalition Against Gun Violence
Community Clinic Association
Courage Campaign
International Health and Epidemiology Research Center
Law Center to Prevent Gun Violence
Laguna Woods Democratic Club
Nevada County Democrats
Peace Over Violence
Physicians for Social Responsibility, Sacramento
Physicians for Social Responsibility, San Francisco Bay
Rainbow Services
Santa Clara County Board of Supervisors
Violence Prevention Coalition
Youth Alive

31 private individual

Opposition

California Rifle and Pistol Association
California Sportsman's Lobby
California State Sheriffs' Association
California Waterfowl Association

Crossroads of the West
Gun Owners of California
Firearms Policy Coalition
National Rifle Association
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Rick Farinelli, District 3 Supervisor, Madera County
Safari Club International
San Bernardino Sheriff's Office

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

¹ 11 CCR 5469.

Date of Hearing: June 14, 2016
Counsel: Sandy Uribe

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

SB 883 (Roth) – As Amended March 28, 2016

SUMMARY: Conforms the punishment for a violation of a protection order issued after conviction of an offense involving domestic violence to the punishment for other similar protective orders. Specifically, **this bill:**

- 1) Punishes the first violation of a post-conviction domestic violence restraining order is with imprisonment in the county jail for up to one year, by a fine of up to \$1,000, or both.
- 2) Requires a first violation to include imprisonment in the county jail for at least 48 hours if the violation resulted in physical injury.
- 3) Punishes a second or subsequent violation occurring within seven years and involving an act of violence, or a credible threat of violence, with imprisonment in the county jail not to exceed one year, or by 16 months, or two, or three years in state prison.

EXISTING LAW:

- 1) Authorizes the trial court in a criminal case to issue protective orders when there is a good cause belief that harm to, or intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur. (Pen. Code, § 136.2, subd. (a).)
- 2) Requires a court, in all cases where the defendant is charged with a crime of domestic violence, to consider issuing a protective order on its own motion. All interested parties shall receive a copy of those orders. In order to facilitate this, the court's records of all criminal cases involving domestic violence shall be marked to clearly alert the court to this issue. (Pen. Code, § 136.2, subd. (e)(1).)
- 3) Allows a court, in any case in which a complaint, information, or indictment charging a crime of domestic violence has been filed, to consider, in determining whether good cause exists to issue a protective order, the underlying nature of the offense charged, and information provided to the court through a background check, including information about the defendant's prior convictions for domestic violence, other forms of violence or weapons offenses, and any current protective or restraining order issued by a criminal or civil court. (Pen. Code, §§ 136.2, subd. (h) and 273.75.)
- 4) Provides in all cases in which a criminal defendant has been convicted of a crime of domestic violence, as defined in relevant sections of the Family Code, or any crime that requires the defendant to register as a sex offender, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim. The order may

be valid for up to 10 years, as determined by the court. (Pen. Code, § 136.2, subd. (i)(1).)

- 5) Provides that a person violating a protective order may be punished for any substantive offense described in provisions of law related to intimidation of witnesses or victims, or for contempt of court. (Pen. Code, § 136.2, subd. (b).)
- 6) States that a violation of specified restraining orders, including elder abuse and domestic violence restraining orders issued as a condition of probation, is considered contempt of court and punishable as follows:
 - a) The first violation is punishable as a misdemeanor with imprisonment in the county jail for up to one year, by a maximum fine of \$1,000, or both; and,
 - b) A second violation or subsequent violation occurring within seven years, and involving an act of violence or a credible threat of violence, is a wobbler, punishable by imprisonment in the county jail for up to one year, or in state prison for 16 months, or two or three years. (Pen. Code, § 166, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Vigorous enforcement of protective order violations has been shown to be an effective tool in both protecting victims and in ensuring offender accountability. Under current law, a defendant whose more serious offense lands them in state prison receives less of a consequence for violation of the protective order than a defendant on probation. This bill makes all violations of all criminal restraining orders punishable in the same manner."
- 2) **Domestic Violence Restraining Orders:** As a general matter, the court can issue a protective order in any criminal proceeding, including domestic violence cases, pursuant to Penal Code Section 136.2 where it finds good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this statute are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.)

When criminal proceedings have concluded, the court has authority to issue protective orders as a condition of probation. For example, when domestic violence criminal proceedings have concluded, the court can issue a "no-contact order" as a condition of probation. (Pen. Code, § 1203.097.)

Finally, in some cases in which probation has not been granted, the court also has the authority to issue post-conviction protective orders. The court is authorized to issue no-contact orders for up to 10 years when a defendant has been convicted of willful infliction of corporal injury to a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the defendant's child. The court can also issue no-contact orders lasting up to 10 years in cases involving a domestic-violence-related offense, rape, spousal rape, statutory rape, or any crime requiring sex offender registration. (Pen. Code, § 136.2, subd. (i)(1).)

- 3) **Criminal Contempt:** Disobedience of a court order may be punished as criminal contempt. The crime of contempt is a general intent crime. It is proven by showing that the defendant intended to commit the prohibited act, without any additional showing that he or she intended "to do some further act or achieve some additional consequence." (*People v. Greenfield* (1982) 134 Cal.App.3d Supp. 1, 4.) Nevertheless, a violation must also be willful, which in the case of a court order encompasses both intent to disobey the order, and disregard of the duty to obey the order." (*In re Karpf* (1970) 10 Cal.App.3d 355, 372.)

Criminal contempt under Penal Code Section 166 is a misdemeanor, and so proceedings under the statute are conducted like any other misdemeanor offense. (*In re McKinney* (1968) 70 Cal.2d 8, 10; *In re Kreitman* (1995) 40 Cal.App.4th 750, 755.) Therefore, the criminal contempt power is vested in the prosecution; the trial court has no power to institute criminal contempt proceedings under the Penal Code. (*In re McKinney*, supra, 70 Cal.2d at p. 13.) A defendant charged with the crime of contempt "is entitled to the full panoply of substantive and due process rights." (*People v. Kalnoki* (1992) 7 Cal.App.4th Supp. 8, 11.) Therefore, the defendant has the right to a jury trial, regardless of the sentence imposed. (*People v. Earley* (2004) 122 Cal.App.4th 542, 550.)

- 4) **Necessity for this Bill:** There are certain violations of protective orders that are punished with an enhanced misdemeanor sentence when a violation of that order is proven. These include: (1) protective orders based on the court's finding of good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur; (2) a protective order issued as a condition of probation in a domestic violence case; (3) an order issued after conviction in an elder or dependent adult abuse case; (4) a restraining order after conviction of a sex offense involving a minor; and (5) other family court protective orders.

In 2007, legislation was enacted authorizing a court to issue a protective order for 10 years upon a defendant's felony conviction of willful infliction of corporal injury. Subsequently, in 2011, the Legislature expanded this authority to cover all cases involving domestic violence, regardless of the sentence imposed. (SB 723 (Pavley), Chapter 155, Statutes of 2011.) However, a conforming cross reference was inadvertently omitted from the contempt of court statute, which among other things describes the punishment for violating restraining orders. (See Pen. Code, § 166.)

In contrast, last year when the legislature amended the elder abuse statute, Penal Code section 368, to allow for post-conviction restraining orders in all elder abuse cases regardless of whether probation was granted, the bill was amended to include a conforming cross reference to the statute that provides how a violation of the restraining order is punished, Penal Code section 166. (See SB 352 (Block), Chapter 279, Statutes of 2015, [June 17, 2015 amendments].)

This bill makes the punishment for a violation of a post-conviction domestic violence restraining orders consistent with that for other post-conviction restraining orders against defendants convicted of abuse.

- 5) **Argument in Support:** According to the *Riverside County District Attorney's Office*, "Almost every single form of protective order (both civil and criminal) provides uniform incarceration. Victims of elder abuse, family law restraining order violations, civil

restraining order violations, sexual assault protective orders, stalking protective orders, all have the similar levels of protection. Even victims whose offenders are currently awaiting trial receive the same level of protection. Offenders who violate any of these protective orders can receive up to one year in county jail.

"Currently, an offender who has been convicted of domestic violence and sentenced to prison is subject to less punishment for violating the protective order than all other types of offenders. SB 883 would create more uniform sentencing for protective order violations and give victims of our most serious offenses equal protection from unwanted contact."

- 6) **Argument in Opposition:** According to the *California Public Defenders Association*, "SB 883 proposes increased incarceration for individuals who violate protective orders issued under Penal Code 646.9. Under current law, an individual who disobeys such an order by contacting a protected party by phone, text, letter or in person may already be punished by up to a year in jail. Similarly, under current law, if the individual engages in any other criminal action while contacting the protected party (such as making threats), they are already subject to additional punishment, including potential prosecution as a felon and years in state prison. Nonetheless, SB 883 seeks to increase prison sentences for some violations of Penal Code section 166.

"This bill will unnecessarily increase prison over-crowding in California, threatening efforts to reduce California's expensive and counter-productive reliance on incarceration to establish public policy.

"Here, because the conduct covered by SB 883 is already illegal and is already punishable by time in jail or prison, SB 883 serves no significant purpose beyond slowing efforts to reform California's over-crowded prison system.

"Because criminal justice policies calling for ever-increasing amounts of prison time are ineffective, expensive, and a significant step backwards on the road to criminal justice reform."

- 7) **Related Legislation:** AB 2078 (Kim) is identical to this bill. AB 2078 is pending referral in the Senate Rules Committee.

8) **Prior Legislation:**

- a) SB 352 (Block), Chapter 279, Statutes of 2015, authorizes a court to issue a post-conviction protective order in cases involving elder or dependent adult abuse.
- b) SB 723 (Pavley), Chapter 155, Statutes of 2011, allows a court to issue a protective order for up to 10 years when a defendant is convicted of an offense involving domestic violence, regardless of the sentence imposed.
- c) AB 289 (Spitzer) Chapter 582, Statutes of 2007, allows a court to issue a protective order for 10 years upon a defendant's felony conviction of willful infliction of corporal injury.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
Riverside County District Attorney's Office

Opposition

California Public Defenders Association

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

Date of Hearing: June 14, 2016
Counsel: Sandy Uribe

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

SB 894 (Jackson) – As Introduced January 21, 2016

SUMMARY: Requires that firearm owners report the theft or loss of a firearm to a local law enforcement agency within five days of the time they knew, or reasonably should have known, that the firearm had been stolen or lost. Specifically, **this bill:**

- 1) Requires a person to report the theft or loss of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time the person knew, or reasonably should have known, that the firearm had been stolen or lost.
- 2) Requires every person who has reported a firearm as lost or stolen to notify the local law enforcement agency within 48 hours if the firearm is subsequently recovered.
- 3) Provides that the lost or stolen firearm reporting requirement does not apply to:
 - a) Any law enforcement agency or peace officer acting within the course and scope of his or her employment or official duties, if he or she reports the loss or theft to his or her employing agency;
 - b) Any United States Marshal or member of the Armed Forces of the United States or the National Guard, while engaged in his or her official duties;
 - c) Any federally licensed firearms dealer or manufacturer, as specified, who reports the theft or loss in accordance with specified federal law, or the successor thereto, and the applicable regulations; and,
 - d) Any person whose firearm was lost or stolen before January 1, 2017.
- 4) Provides that a first violation of either of the above reporting requirements provisions is an infraction punishable by a fine not to exceed \$100. A second violation is an infraction, punishable by a fine not exceeding \$1,000. A third or subsequent violation is a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$1,000, or by both that fine and imprisonment.
- 5) Makes it an infraction for a person to report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false. A violation is punishable by a fine not exceeding \$250 for a first offense, and by a fine not exceeding \$1,000 for a second or subsequent offense.

- 6) Requires every person reporting a lost or stolen firearm to report the make, model, and serial number of the firearm, if known.
- 7) Requires every sheriff or police chief to submit a description of each firearm which has been reported lost or stolen directly into the Department of Justice Automated Firearms System.
- 8) Provides that, for purposes of the reporting requirement, a "firearm" includes the frame or receiver of the weapon, but does not include an unloaded antique firearm.
- 9) Requires firearms dealers to conspicuously post notice of these reporting requirements within the licensed premises, as specified.
- 10) Specifies that these reporting provisions do "not preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to reporting the theft or loss of a firearm."

EXISTING LAW:

- 1) Provides that any licensed firearms dealer shall report, within 48 hours of discovery, the loss or theft of specified firearms to the appropriate law enforcement agency in the city, county, or city or county where the licensee's business is located. (Pen. Code, § 26885, subd. (b).)
- 2) Provides that any time a licensed firearms manufacturer discovers that a firearm has been stolen or is missing from the licensee's premises, the licensee shall report the loss or theft within 48 hours of discovery to specified law enforcement agencies, and shall maintain records of lost or stolen firearms for at least 10 years. (Pen. Code, § 29115.)
- 3) Requires handguns to be centrally registered at time of transfer or sale due to various transfer forms centrally compiled by the DOJ. DOJ is required to keep a registry from data sent to DOJ indicating who owns what handgun by make, model, and serial number and the date thereof. (Pen. Code, § 11106, subs. (a) & (c).)
- 4) States that the DOJ must keep a centralized and computerized list of all lost, stolen, and found serialized property reported to DOJ. (Pen. Code, § 11106, subd. (a).)
- 5) Requires each sheriff or police executive to submit descriptions of serialized property, or non-serialized property that has been uniquely inscribed, which has been reported stolen, lost, found, recovered, held for safekeeping, or under observation into the DOJ automated property system for firearms or other stolen property. Information about a firearm entered into the system shall remain in the system until the reported firearm has been found, recovered, is no longer under observation, or the record is determined to have been entered in error. (Pen. Code, § 11108, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The public overwhelmingly supports laws requiring the reporting of lost or stolen firearms. A nationwide poll in 2011 found that 94%

of Americans surveyed favor laws to require the reporting of lost or stolen firearms.

"The reporting of lost or stolen firearms will bring several critical improvements to public safety in California.

"1. Reduce Gun Trafficking

"When a crime gun is traced by law enforcement to the last known purchaser, that person may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. A reporting law would provide a tool for law enforcement to detect firearms trafficking and prosecute 'straw purchasers,' individuals who buy firearms on behalf of criminals who are prohibited from possessing guns.

"An analysis by Mayors Against Illegal Guns – a nationwide coalition of over 600 mayors – found that states without mandatory lost or stolen reporting laws export two and a half times more crime guns across state lines than jurisdictions with such laws. Similarly, researchers from the Johns Hopkins Center for Gun Policy and Research found that state laws requiring the reporting of lost or stolen firearms were associated with crime gun export rates that were 43 percent lower than in states that lacked this policy.

"2. Enhance Armed Prohibited Persons System

"Mandatory reporting of lost or stolen firearms would enhance the California Department of Justice's efforts to remove firearms from convicted criminals and others identified in the state's Armed Prohibited Persons System (APPS). Currently, these individuals, who own firearms, but are prohibited from possessing them, may falsely claim that their illegally-possessed firearms were lost or stolen. Moreover, with a reporting requirement, the APPS program will be more efficient since law enforcement resources will not be wasted on attempts to recover guns that have been reported lost or stolen.

"3. Alert Law Enforcement on Missing Firearms

"A reporting requirement would alert law enforcement to the existence of guns stolen by criminals in their communities. It would also make it easier for law enforcement to return lost or stolen firearms to their rightful owners. A 2007 report by the International Association of Chiefs of Police recommended that state and local governments mandate reporting of lost or stolen firearms. The IACP report concluded that, "law enforcement's early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence."

- 2) **Background:** Under existing law, licensed firearms manufacturers and dealers are required to report the loss or theft of firearms within 48 hours to specified law enforcement agencies, however, there is not a similar requirement on firearm owners whose firearms are lost or stolen.

A report by the International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* (2007), recommended that state and local governments mandate individual reporting of lost or stolen firearms. The IACP report concluded that, "Ensuring law enforcement's early awareness of every lost and stolen gun

will enhance their ability to recover those guns and reduce gun violence." (*International Association of Chiefs of Police, Taking a Stand: Reducing Gun Violence in Our Communities* (Sept. 2007), <http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87>.)

- 3) **Prior Governor Veto Messages:** This legislation is similar to three prior bills that were vetoed by Governors Brown and Schwarzenegger.

SB1366 (DeSaulnier) of 2012, and SB 299 (Desaulnier) of the 2013 were vetoed by Governor Brown. The governor stated in his veto message of SB 299:

"I am returning Senate Bill 299 without my signature.

Last year I vetoed a nearly identical bill, SB 1366, noting that I was not convinced that criminalizing the failure to report a lost or stolen firearm would improve identification of gun traffickers or help law enforcement disarm people prohibited from possessing guns. I continue to believe that responsible people report the loss or theft of a firearm and irresponsible people do not. I remain skeptical that this bill would change those behaviors."

Similarly, SB 59 (Lowenthal) of the 2005-06 Legislative Session, was vetoed by Governor Schwarzenegger. The Governor's veto message stated in pertinent part,

"While I share the Legislature's concern about the criminal use of lost or stolen weapons, the ambiguous manner in which this bill was written would make compliance with the law confusing for legitimate gun-owners and could result in cases where law-abiding citizens face criminal penalties simply because they were the victim of a crime, which is particularly troubling given the unproven results of other jurisdictions in California that have passed similar measures."

- 4) **Penalty Provision:** This bill provides that a violation of the reporting requirement is an infraction, punishable by a fine not exceeding two hundred fifty dollars (\$250) for a first offense, and by a fine not exceeding one thousand dollars (\$1,000) for a second or subsequent offense.

It should be noted that AB 1695 (Bonta) also makes it unlawful to report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false. However, AB 1695 punishes the violation as a misdemeanor.

Thus, there is a conflict between these two bills.

- 5) **Argument in Support:** According to the *Los Angeles County Sheriff's Department*, "[I]n 2013, the Los Angeles County Sheriff's Department sponsored Senate Bill 299 by Senator DeSaulnier, dealing with reporting requirements of lost or stolen firearms. As with SB 299 of 2013, SB 894 would provide a tool for law enforcement to detect firearms trafficking and charge criminals who engage in it. A requirement to report lost or stolen firearms would assist in the identification and prosecution of 'straw buyers,' who are individuals that purchase guns legally, then sell them to people who cannot legally purchase firearms, such as gang members, criminals, or minors. When crime guns are traced to 'straw buyers,' they falsely claim that the firearm was lost or stolen. The lack of a reporting requirement enables

'straw buyers' to shield their criminal activity and continue to sell guns illegally to dangerous criminals. A reporting requirement would likewise assist in the prosecution of armed criminals who falsely claim that a crime gun traced to them was lost or stolen when in fact it was used in a crime. The lack of a reporting requirement enables criminals to hide their involvement in a crime and evade apprehension.

"SB 894 would also help law enforcement efforts to disarm individuals who possess a firearm and subsequently becomes prohibited by law from purchasing or possessing firearms because of falling into a prohibited class. When law enforcement attempts to recover these illegal firearms, gun owners may falsely claim that the gun was lost or stolen. A reporting requirement would improve the efficiency and implementation of the state's Armed and Prohibited Persons System Program, in which law enforcement agencies work to proactively disarm prohibited individuals before they harm themselves or others.

"The reporting requirements in Senate Bill 894 would also alert law enforcement to the existence of a stolen gun in their jurisdictions and facilitate the return of stolen firearms. The recovery of stolen guns protects communities and reduces gun violence."

- 6) **Argument in Opposition:** According to the *National Rifle Association*, "This bill would place firearm owners in jeopardy of prosecution for becoming a victim of a crime by placing criminal liability on the firearm's owner regardless of whether they knew their firearm was stolen, if law enforcement thinks 'they should have known' it was stolen.

"Firearm owners voluntarily and regularly report stolen firearms, but the criminal penalties of SB 894 force crime victims to decline to cooperate with police if a stolen firearm is recovered. A firearms owner who was not aware of the legal requirement to report the loss or theft of a firearm and who is contacted by police investigating a crime faces possible criminal prosecution for failing to report that the firearm was stolen or missing. Such an owner will need to hire a lawyer, who will advise them to remain silent while immunity is negotiated, rather than quickly supplying police the information they need to properly and promptly investigate the crime, which may be time sensitive."

- 7) **Related Legislation:** AB 1695 (Bonta) makes it a misdemeanor to falsely report to law enforcement that a firearm has been lost or stolen, and institutes a 10-year ban on owning a firearm for those convicted of making a false report. AB 1695 is pending in the Senate Public Safety Committee.

8) **Prior Legislation:**

- a) SB 299 (Desaulnier) of the 2013-14 Legislative Session, would have made it a crime to fail to report the theft or loss of a firearm to a local law enforcement agency within seven days of the time the owner knew, or reasonably should have known, that the firearm was lost or stolen. SB 299 was vetoed.
- b) SB1366 (DeSaulnier) of the 2011-2012 Legislative Session, would have made it a crime to fail to report the theft or loss of a firearm he/she owns or possesses to law enforcement agency within 48 hours of the time he/she knew or reasonably should have known that the firearm had been stolen or lost. SB 1366 was vetoed.

- c) SB 59 (Lowenthal), of the 2005-06 Legislative Session, would have required a gun owner to report a lost or stolen firearm within five working days. SB 59 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

American Academy of Pediatrics, California Chapter
American College of Emergency Physicians, California Chapter
California Academy of Family Physicians
California Chapters of the Brady Campaign to Prevent Gun Violence
City of Santa Barbara
City of Santa Barbara Police Department
Coalition Against Gun Violence, Santa Barbara County
Courage Campaign
Holman United Methodist Church
Jewish Labor Committee Western Region
Law Center to Prevent Gun Violence
Los Angeles County Sheriff's Department
Physicians for Social Responsibility – Sacramento Chapter
Physicians for Social Responsibility – San Francisco Bay Area Chapter
Violence Prevention Coalition of Greater Los Angeles
Violence Prevention Coalition of Orange County
Women Against Gun Violence
Youth Alive

One Private Individual

Opposition

California Rifle and Pistol Association
California Sportsman's Lobby
California Waterfowl Association
Firearms Policy Coalition
Gun Owners of California
National Rifle Association
Outdoor Sportsmen's Coalition
Safari Club International

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

Date of Hearing: June 14, 2016

Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1016 (Monning) – As Introduced February 11, 2016

SUMMARY: Extends the sunset date from January 1, 2017 to January 1, 2022 for provisions of law which provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice, as required by SB 40 (Romero), Chapter 40, Statutes of 2007; SB 150 (Wright), Chapter 171, Statutes of 2009; and *Cunningham vs. California* (2007) 549 U.S. 270.

EXISTING LAW:

- 1) Declares that the purpose of imprisonment for crime is punishment; that this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances; and that the elimination of disparity, and the provision of uniformity, of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense, as determined by the Legislature, to be imposed by the court with specified discretion. (Pen. Code, § 1170, subd. (a)(1).)
- 2) Provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. (Pen. Code, § 1170, subd. (b).)
- 3) Provides that when a sentencing enhancement specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. (Pen. Code, § 1170.1(d).)
- 4) Provides that sentencing choices requiring a statement of a reason include "[s]electing one of the three authorized prison terms referred to in section 1170(b) for either an offense or an enhancement." (Cal. Rules of Court, Rule 4.406(b)(4).)
- 5) Requires the sentencing judge to consider relevant criteria enumerated in the Rules of Court. (Cal. Rules of Court, Rule 4.409.)
- 6) Provides that, in exercising discretion to select one of the three authorized prison terms referred to in statute, "the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing." (Cal. Rules of Court, Rule 4.420(b).)

- 7) Prohibits the sentencing court from using a fact charged and found as an enhancement as a reason for imposing the upper term unless the court exercises its discretion to strike the punishment for the enhancement. (Cal. Rules of Court, Rule 4.420(c).)
- 8) Prohibits the sentencing court from using a fact that is an element of the crime to impose a greater term. (Cal. Rules of Court, Rule 4.420(d).)
- 9) Enumerates circumstances in aggravation, relating both to the crime and to the defendant, as specified. (California Rules of Court, Rule 4.421.)
- 10) Enumerates circumstances in mitigation, relating both to the crime and to the defendant, as specified. (California Rules of Court, Rule 4.423.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "In 2007, the Supreme Court of the United States ruled in the *Cunningham v. California* decision that California's determinate sentencing statutes violated the Sixth Amendment and were therefore unconstitutional. The determinate sentencing scheme, in place since the 1970's, allowed the courts with a three-tiered sentencing option consisting of a higher, more-severe term, a middle term, and a lower, less-severe term.

"The Supreme Court suggested two possible remedies to deal with the constitutional issues outlined in the *Cunningham* decision. Through SB 40 (Romero), Statutes of 2007, the Legislature chose to implement a change that would allow for judicial discretion in determining which of the three terms to impose based on the best interest of justice, rather than requiring any specific fact finding by a judge outside of the jury trial. The measure also removed the statutory requirement that judges use the middle term as the presumptive sentencing term.

"Many of the concerns presented in the initial vetting of SB 40 (Romero) have never materialized, and the Legislature has not yet found a more effective fix than to continue to allow for judicial discretion. This can be seen in the California Department of Corrections and Rehabilitation's Upper Term Sentencing Reports, which show that in the eight years since SB 40 (Romero) became law, Judges have only sentenced defendants to the upper term 16% of the time, opting for the middle or lower term in 84% of convictions.

"The legislative fix put in place by SB 40 (Romero) included a sunset date which has been extended and approved by the Legislature through four different bills, almost all of which received no opposition votes by members of the Legislature. The current determinate sentencing laws will sunset on January 1, 2017, and if the sunset date is not extended, California's entire sentencing scheme will become unconstitutional once again. SB 1016 (Monning) will extend the sunset to January 1, 2022, and continue to allow the choice of which of the three determinate sentencing options apply to an offender to rest within the sound discretion of the court."

- 2) **Background:** The Sixth Amendment right to a jury applies to any factual finding, other than that of a prior conviction, necessary to warrant any sentence beyond the presumptive maximum. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *Blakely v. Washington* (2004) 524 U.S. 296, 301, 303-04.)

In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California's Determinate Sentencing Law (DSL) violated a defendant's right to trial by jury by placing sentence-elevating fact finding within the judge's province. (*Id.* at p. 274.) The DSL authorized the court to increase the defendant's sentence by finding facts not reflected in the jury verdict. Specifically, the trial judge could find factors in aggravation by a preponderance of evidence to increase the offender's sentence from the presumptive middle term to the upper term and, as such, was constitutionally flawed. The Court stated, "Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the sentence cannot withstand measurement against our Sixth Amendment precedent." (*Id.* at p. 293.)

The Supreme Court provided direction as to what steps the Legislature could take to address the constitutional infirmities of the DSL:

"As to the adjustment of California's sentencing system in light of our decision, the ball . . . lies in [California's] court. We note that several States have modified their systems in the wake of *Apprendi* and *Blakely* to retain determinate sentencing. They have done so by calling upon the jury - either at trial or in a separate sentencing proceeding - to find any fact necessary to the imposition of an elevated sentence. As earlier noted, California already employs juries in this manner to determine statutory sentencing enhancements. Other States have chosen to permit judges genuinely to exercise broad discretion . . . within a statutory range, which, everyone agrees, encounters no Sixth Amendment shoal. California may follow the paths taken by its sister States or otherwise alter its system, so long as the State observes Sixth Amendment limitations declared in this Court's decisions." (*Cunningham, supra*, 549 U.S. at pp. 293-294.)

Following *Cunningham*, the Legislature amended the DSL, specifically Penal Code Sections 1170 and 1170.1, to make the choice of lower, middle, or upper prison term one within the sound discretion of the court. (See SB 40 (Romero), Chapter 3, Statutes of 2007.) This approach was embraced by the California Supreme Court in *People v. Sandoval* (2007) 41 Cal.4th 825, 843-852. The new procedure removes the mandatory middle term and the requirement of weighing aggravation against mitigation before imposition of the upper term. Now, the sentencing court is permitted to impose any of the three terms in its discretion, and need only state reasons for the decision so that it will be subject to appellate review for abuse of discretion. (*Id.* at pp. 843, 847.)

- 3) **Sunset Provision:** SB 40 included legislative intent language stating that its purpose was to address *Cunningham*, and to stabilize the criminal justice system while sentencing and correctional policies in California are being reviewed. Thus, SB 40, by its own terms, was intended to be a temporary measure. The provisions of SB 40 originally were due to sunset on January 1, 2009, but were later extended to January 1, 2011. Since then, the Legislature has extended the sunset provisions several times. This bill extends those sunset dates to January 1, 2022.

- 4) **Is the Current Method Still Constitutionally Infirm?** The United States Supreme Court "has repeatedly held that, under the Sixth Amendment, any fact that exposes a defendant to a greater potential sentence must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of the evidence." (*Cunningham v. California, supra*, 549 U.S. at 281.) The Court has with increasing frequency in recent years insisted on the jury's essential role in resolving factual issues related to sentencing. (See e.g. *Southern Union Co. v. United States* (2012) 132 S.Ct. 2344 [The rule of *Apprendi* applies to the imposition of criminal fines].) In fact, in 2013 the Court once again considered the scope of the Sixth Amendment in the sentencing context in a case involving mandatory-minimum sentencing schemes, and held that any fact that increases the mandatory minimum is an "element" that must be submitted to the jury. (See *Alleyne v. United States* (2013) 133 S. Ct. 2151, overruling *Harris v. United States* (2002) 536 U.S. 545.) The Court explained that the logic of *Apprendi* requires a jury to find all facts that fix the penalty range of a crime. The mandatory minimum is just as important to the statutory range as is the statutory maximum. (*Id.* at pp. 2160-2161.)

One of the most important sentencing labels that must be scrutinized in assessing a sentencing determination for *Apprendi/Blakely* error is "judicial discretion." The Supreme Court stated in *Apprendi* that it was not eliminating judicial discretion over sentencing. (*Apprendi, supra*, 530 U.S. at p. 482.) However, in *Blakely*, the Court also held that the exercise of judicial discretion is unconstitutional if it relies on a fact not found true by the jury, in whose absence the state's sentencing laws would require a lower sentence. (*Blakely, supra*, 124 S.Ct. at pp. 2537-2538.) Simply because a state's sentencing laws say that they are giving a judge discretion, even broad discretion, to make a particular determination affecting the defendant's sentence does not mean that the exercise of that discretion is immune from an *Apprendi/Blakely* challenge. Unless the state has given the sentencing court unfettered discretion to do whatever it wants to in making a particular determination that affects the defendant's sentence, the exercise of that discretion will potentially be susceptible to such a challenge.

Because Penal Code Section 1170 continues to require judicial findings as a predicate to the imposition of an aggravated term, it arguably still violates the Sixth Amendment. While the trial court "will not be required to cite 'facts' that support its decision or to weigh aggravating and mitigating circumstances" (*People v. Sandoval, supra*, 41 Cal.4th at pp. 846-847, citing Section 1170, subd. (c)), as adopted by the California Supreme Court, Penal Code Section 1170 requires the judge to enter "reasons" supporting the exercise of his or her sentencing discretion on the record. (*Id.* at p. 844; see also Penal Code Section 1170(b).) Those reasons remain governed by the California Rules of Court. (*People v. Sandoval, supra*, 41 Cal.4th at 844; Penal Code Section 1170.3(a)(2).) And the Rules of Court, which lay out the permissible bases for trial courts to impose an upper or lower term, have not changed.

Rule 4.421, listing circumstances in aggravation, distinguishes between factors relating to the crime and factors relating to the defendant. The aggravating factors relating to the crime are: "(1) The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness; (2) The defendant was armed with or used a weapon at the time of the commission of the crime; (3) The victim was particularly vulnerable; (4) The defendant induced others to participate in the commission of the crime or occupied a position of leadership or dominance of other participants in its commission; (5) The defendant induced a minor to commit or assist in the

commission of the crime; (6) The defendant threatened witnesses, unlawfully prevented or dissuaded witnesses from testifying, suborned perjury, or in any other way illegally interfered with the judicial process; (7) The defendant was convicted of other crimes for which consecutive sentences could have been imposed but for which concurrent sentences are being imposed; (8) The manner in which the crime was carried out indicates planning, sophistication, or professionalism; (9) The crime involved an attempted or actual taking or damage of great monetary value; (10) The crime involved a large quantity of contraband; and (11) The defendant took advantage of a position of trust or confidence to commit the offense."

Many of these offense factors involve conduct that is the same conduct proscribed by various sentence enhancements which must be charged and proven to a jury. For example, that the crime involved great violence or bodily harm is substantially similar to the great bodily injury enhancement (Penal Code Section 12022.7); that the defendant was armed with or used a weapon encompasses the same conduct as an arming enhancement (Pen. Code, § 12022); that the crime involved a taking or damage of great monetary value mirrors the value-of-loss enhancement (Pen. Code, § 12022.6); and that the crime involved a large quantity of contraband is akin to the weight enhancement for controlled substance violations. (Health & Saf. Code, § 11370.4.)

Moreover, under the Rules of Court, it remains the case that "[a] fact that is an element of the crime may not be used to impose a greater term." (Cal. Rules of Court, Rule 4.420(d).) Similarly, Penal Code section 1170, subdivision (b) continues to provide that "the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law."

It really should not matter that the factors outlined in the Rules of Court are now called "reasons" rather than "facts." "If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact - no matter how the State labels it - must be found by a jury beyond a reasonable doubt." . . . "[T]he characterization of a fact or circumstance as an 'element' or a 'sentencing factor' is not determinative of the question 'who decides,' judge or jury," . . . (*United States v. Booker, supra*, 543 U.S. at 231.) Since under reformed Penal Code Section 1170, it is still the case that an upper-term sentence must be based on factors in the Rules of Court, arguably the sentencing scheme still violates a defendant's Sixth Amendment rights, at least as to offense-based factors relied upon to impose an upper-term sentence.

- 5) **Argument in Support:** According to the *California District Attorneys Association*, the sponsor of this bill, "In 2007, the Supreme Court of the United States held that California's determinate sentencing law violated the right to a jury trial because it provided that the middle term of imprisonment was the presumptive term, and permitted the sentencing court, without a jury finding, to determine aggravating factors and impose the high term (*Cunningham v. California* (2007) 549 U.S. 270).

"In response to the *Cunningham* decision, and following the direction of the Court, the Legislature passed SB 40 (Romero, 2007), which eliminated the middle term as the presumptive term, and provided that when a statute specifies three possible terms of imprisonment, the choice of the appropriate term rests within the sound discretion of the court.

"Since the passage of SB 40, the sunset has been extended four times, most recently by SB 463 (Pavley, 2013).

"This proposal would extend the sunset yet again, to avoid reverting back to a sentencing scheme that has already been deemed unconstitutional."

- 6) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice* (CACJ), "As it was amended, the California statute essentially eliminates a person's right to confront the witnesses against them by allowing the judge to unilaterally impose an upper term, without a finding of aggravating facts.

"Since 2007, CACJ has sought to eliminate this unconstitutional sentencing scheme. Alternatively, we've fought against making this scheme the permanent law of our state. Our organization has pushed to convene stakeholders to sit and discuss our current scheme as it has led our state to increase punishments, over-criminalization, and a continued state prison overcrowding issue. Since 2007, individuals entering prison each year with upper term sentences have increased from 15% to 22%, which is a 30% rate increase.

"We believe that 2016 is the year to bring California's felony sentencing laws into compliance with the Supreme Court's decision in *Cunningham*. Our organization is running a bill, SB 1202, which would reinstitute this essential right at trial to confront the witnesses against them and prevent a judge from unilaterally imposing an upper term, without a finding of aggravating facts.

"Following our state's monumental actions on criminal justice reform, under Realignment and Propositions 36 & 47, California must seek options to reduce longer prison sentences at the front end of the system. Senate Bill 1016 maintains the status quo, which has proved to be unsuccessful and has lead our state into the mandated oversight of our prison system. CACJ is open and welcomes a dialogue on how we can help address our prison overcrowding and change our felony sentencing schemes in a positive direction."

7) **Related Legislation:**

- a) SB 1202 (Leno) provides that aggravating factors relied upon by the court to impose an upper term sentence or enhancement must be presented to the trier of fact and found to be true beyond a reasonable doubt. SB 1202 is pending referral by the Assembly Rules Committee.
- b) AB 2513 (Williams) allows the court to consider for purposes of determining the sentence on a human trafficking conviction that the defendant recruited or enticed the victim from a shelter or foster placement if this fact is found true by the trier of fact. AB 2513 is pending in the Senate Public Safety Committee.

8) **Prior Legislation:**

- a) SB 40 (Romero), Chapter 3, Statutes of 2007, amended California's DSL to eliminate the presumption for the middle term and to state that where a court may impose a lower, middle or upper term in sentencing a defendant, the choice of appropriate term shall be

left to the discretion of the court.

- b) SB 1701 (Romero), Chapter 416, Statutes of 2008, extended to January 1, 2011, the provisions of SB 40 which were originally due to sunset on January 1, 2009.
- c) SB 150 (Wright), Chapter 171, Statutes of 2009, eliminated the presumption of the middle term relating to sentencing enhancements found in Penal Code Section 1170.1(d).
- d) AB 2263 (Yamada), Chapter 256, Statutes of 2010, extended to January 1, 2012 provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice.
- e) SB 576 (Calderon), Chapter 361, Statutes of 2011, extended to January 1, 2014 provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice.
- f) SB 463 (Pavley), Chapter 598, Statutes of 2013, extended to January 1, 2017 provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interest of justice.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
California Police Chiefs Association
California State Sheriffs Association
Los Angeles County District Attorney's Office
Los Angeles County Professional Peace Officers Association
San Diego County District Attorney
The Arc and United Cerebral Palsy California Collaboration

Opposition

California Attorneys for Criminal Justice

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

Date of Hearing: June 14, 2016
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1036 (Hernandez) – As Introduced February 12, 2016

SUMMARY: Makes it a crime to possess, sell, transport, or manufacture an analog of a synthetic cannabinoid compound, aka “Spice.” Expands the definition of controlled substance analog to include a substance the chemical structure of which is substantially similar to the chemical structure of a synthetic cannabinoid compound.

EXISTING LAW:

- 1) Specifies that every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, or possesses for sale any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, to any person, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment. (Health & Saf. Code, § 11357.5, subd. (a).)
- 2) States that every person who uses or possesses any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, is guilty of an infraction, punishable by a fine not to exceed two hundred fifty dollars (\$250). (Health & Saf. Code, § 11357.5, subd. (b).)
- 3) Specifies that a controlled substance analog shall be treated the same as specified controlled substances of which it is an analog. (Health & Saf. Code, § 11401, subd. (a).)
- 4) Provides that, except as specified, the term "controlled substance analog" means either of the following:
 - a) A substance the chemical structure of which is substantially similar to the chemical structure of specified controlled substances; and (Health & Saf. Code, § 11401, subd. (b)(1).)
 - b) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of specified controlled substances. (Health & Saf. Code, § 11401, subd. (b)(2).)
- 5) Specifies that the term "controlled substance analog" does not mean “any substance for which there is an approved new drug application as specified under the federal Food, Drug, and Cosmetic Act or which is generally recognized as safe and effective as specified by the federal Food, Drug, and Cosmetic Act.” (Health & Saf. Code, § 11401, subd. (c)(1).)

- 6) Lists controlled substances in five “schedules” - intended to list drugs in decreasing order of harm and increasing medical utility or safety - and provides penalties for possession of and commerce in controlled substances. (Health & Saf. Code §§ 11350-11401.)
- 7) Requires non-violent drug possession offenders to be offered drug treatment on probation, which shall not include incarceration as a condition of probation, in the form of, Proposition 36 (Nov. 2000 election), the Substance Abuse and Crime Prevention Act of 2000 (SACPA). (Pen. Code, § 1210.1.)
- 8) Provides that non-violent drug possession offenses include:
 - a) Unlawful use, possession for personal use, or transportation for personal use of a controlled substance; and, (Pen. Code, § 1210, subd. (a).)
 - b) Being under the influence of a controlled substance. (Pen. Code, § 1210, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "In 2011, Governor Jerry Brown signed into law SB 420 (Hernandez), banning the sale of a specific formulation of synthetic cannabis, or 'spice.' Subsequently, spice manufacturers began making slightly different variations, thus staying one step ahead of the law. This presents a uniquely difficult situation for lawmakers, given the deliberate pace with which any new legislation moves, making it impossible to quickly outlaw new substances as they come on the market. SB 1036 will allow for the banning of even slight variations in synthetic marijuana, provided that the chemical makeup and intoxicating effects are similar to the already-banned formulation.

“According to the National Conference on State Legislatures (NCSL) which tracks legislation, analogue laws are: ‘...to ban drugs that are not classified as a controlled substance but are very similar to ones that have been identified and outlawed. Generally, these laws require that the analogue drug be substantially similar in chemical structure and intoxicating (pharmacological) effects as a scheduled controlled substance. According to the National Alliance for Model State Drug Laws, 34 states have analogue laws, and a number of states have amended their analogue laws to specifically address emerging synthetic substances.’

“While outlawing certain families of substances can be helpful, the ingenuity of the criminal mind ensures that new, potentially more dangerous drugs, will take their place. Putting a comprehensive ban in place will assist in forestalling these efforts.”

- 2) **Synthetic Cannabinoids:** Synthetic cannabinoids come in two basic forms. CB1 cannabinoids bind to CB1 cannabinoid receptors in the brain. CB2 cannabinoid receptors bind to cells throughout the body that are largely involved in regulating the immune system, although their full properties of CB2 are not known. It appears that CB2 cannabinoids could be used to treat inflammation. (THC binds to CB1 and CB2 receptors.) CB1 cannabinoids have psychoactive properties. Typically statutes, news reports and academic works concern CB1 synthetic cannabinoids.

The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) is a European Union agency that “exists to provide the EU ... with a factual overview of European drug problems and a solid evidence base to support the drugs debate.”

The EMCDDA Website includes the Following Information about Synthetic Cannabinoids:

Synthetic cannabinoids bind to the same cannabinoid receptors in the brain [as THC] ... More correctly designated as cannabinoid receptor agonists, they were developed over the past 40 years as therapeutic agents. ... However, it proved difficult to separate the desired properties from unwanted psychoactive effects. Although often referred to simply as synthetic cannabinoids [or synthetic marijuana], many of the substances are not structurally related to the so-called “classical” cannabinoids like THC...

... [L]ittle is known about the detailed pharmacology and toxicology of the synthetic cannabinoids and few formal human studies have been published. It is possible that, apart from high potency, some cannabinoids could have... long half-lives... leading to a prolonged psychoactive effect. ... [T]here could [also] be considerable ... batch variability... in terms of substances present and ... quantity.
<http://www.emcdda.europa.eu/topics/pods/synthetic-cannabinoids>

Recent EMCDD Data on Synthetic Cannabinoids Include:

A synthetic cannabinoid, JWH-018, was first detected in “Spice” products in 2008. 81 new psychoactive substances were reported to EMCDDA in 2013, 29 were synthetic cannabinoids.

105 synthetic cannabinoids in total [were] monitored by EU Early Warning System [in January of 2014].

14 recognizable chemical families of synthetic cannabinoids are known.

The EMCDD reports that most synthetic cannabinoids are manufactured in China and shipped through legitimate distribution networks. The White House Office of National Drug Control Policy states that most synthetic cannabinoids originate overseas, but that they are also being made on a small scale in the United States.

<https://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts>

The EMCDD reported on adverse consequences of synthetic cannabinoid use:

The adverse health effects associated with synthetic cannabinoids are linked to both the intrinsic nature of the substances and to the way the products are produced. There have been numerous reports of non-fatal intoxications and a small number of deaths associated with their use. As noted above, some of these compounds are very potent; therefore the potential for toxic effects is high. Harm may result from uneven distribution of the substances within the herbal material, result[ing] in products containing doses that are higher than intended.

The reported adverse effects of synthetic cannabinoid products include agitation, seizures, hypertension, emesis (vomiting) and hypokalemia (low potassium levels). ... There is some evidence... that synthetic cannabinoids can be associated

with psychiatric symptoms, including psychosis. There are also investigations underway in the US regarding links between the use of synthetic cannabinoids... and acute kidney injury and recently, a case report associated the use of the cannabinoid JWH-018 with...strokes in two otherwise healthy males.
<http://www.emcdda.europa.eu/topics/pods/synthetic-cannabinoids>

- 3) **Drug Analog Law in California:** California law treats a substance that is the chemical or functional equivalent of a drug listed in Schedule I or II of the controlled substance schedules the same as the scheduled drug. Such a substance is defined as a controlled substance analog. California law allows prosecution of a person for possession of, or commerce in, of a substance that is an analog of a Schedule I or II drug. (Health & Saf. Code, §§ 11400-11401.) The purpose of the analog law is to prevent street chemists from circumventing drug laws by synthesizing drugs which have slight chemical or functional differences from the prohibited drug.

Newly developed synthetic cannabinoids are not covered by the California analog statute synthetic cannabinoids are not included in Schedule I or II of the controlled substances schedules. Illegal synthetic cannabinoids are separately defined and prohibited.

California's drug analog law provides two ways to establish that a substance is an analog of a drug. The first method relies on demonstrating that the substance has a chemical structure which is "substantially similar" to the chemical structure of the drug. (Health & Saf.Code, § 11401, subd. (b)(1).) The second method requires a showing that the substance has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is "substantially similar" to the effect of the drug. (Health & Saf. Code, § 11401, subd. (b)(2).)

This bill would include synthetic cannabinoids within California's analog law.

- 4) **Criticism of California's Analog Language:** California's analog law has been criticized as being too vague to provide sufficient legal guidance. The criticism has focused on the "substantial similarity" in the chemical structure or in the effect, or intended effect on the central nervous system. California courts have found "substantial similarity" meets constitutional requirements.

In *People v. Silver* (1991) 230 Cal.app.3d 389, the defendant was convicted of possession of sale and sale of MDMA, which the jury found to be an analog of methamphetamine. The defendant appealed the conviction and challenged the analog law as unconstitutionally vague. The Appellate Court upheld the jury's verdict and found that the analog law was not unconstitutionally vague. In reaching that finding the court said, "It may be true that the term "substantially similar" has no scientific meaning, but the Constitution does not require scientific or mathematical precision. All that is required is that the statute be reasonably certain so that persons of common intelligence need not guess at its meaning." (*Id.* at 293-94.)

If this bill becomes law, it will expand the definition of a controlled substance analog to include a substance the chemical structure of which is substantially similar to the chemical structure of a synthetic cannabinoid compound. This bill will not change the criteria used to

determine if a substance is an analog.

- 5) **Argument in Support:** According to *Consortium Management Group*, “Synthetic cannabinoids over the last decade have found a substantial market, especially among young people, who are looking for an arguably legal alternative to marijuana. Sold under familiar brand names such as Spice, Scooby, Snax and K2 (an dozens of others), they seek to mimic the effects of THC in natural cannabinoids. However, they are more toxic and unpredictable, and thus more dangerous, than cannabis.

“The deadly impact is getting worse. Deaths from synthetic cannabinoids tripled in the first half of 2015 compared to the first half of 2014. During the same period, calls to poison centers because of synthetic cannabinoids grew by 229%. The harm that arises from these drugs is further highlighted by the comparable safety of natural cannabinoids.

“A rash of tragic consequences resulting from the use of synthetic cannabinoids led to new law federally and in many states like California that ban synthetic cannabinoids. However, manufacturers have tried to stay a step ahead of the law by making changes at the chemical level so that the new compound is legal. Unfortunately, in some cases, the chemical changes have made the synthetic cannabinoid even more unpredictable and dangerous.

“SB 1036 endeavors to stay ahead of the manufacturers by adding synthetic cannabinoids to current law that makes analogs of a controlled substance subject to the same prohibitions as the controlled substance.”

- 6) **Argument in Opposition:** According to *The American Civil Liberties Union of California*, “While we respect and support the goal of reducing the harms associated with drug use, further criminalization of these substances will not advance this objective and may actually decrease public safety. Since the emergence of synthetic cannabinoid use in the United States, attempted control of the market has been characterized by the enactment of legislation or regulations that seek to ban certain substances, followed by the manufacturers’ quick development of new substances in an attempt to circumvent the bans. Although Section 11401 of the Health and Safety Code purports to address this by treating all substances that are chemically or pharmacologically substantially similar to controlled substances as identical to controlled substances for the purposes of penalties and punishment, manufacturers are likely to continue developing and marketing new formulations that skirt the boundaries of the law.

“By incentivizing manufacturers to constantly develop new substances in response to bans, laws that criminalize synthetic cannabinoids force users to continuously switch to new substances whose safety profile is not known scientifically or anecdotally. Rather than criminalizing users, the legislature should aim to enhance public safety by expanding the scientific knowledge available on existing substances and educating the public about their potential harms.

“The section that SB 1036 seeks to amend is also overbroad because it treats any substance represented as having effects substantially similar to or greater than the effects of a controlled substance classified in Section 11054, 11055, or 11357.5 as identical to a controlled substance for the purposes of penalties and punishment. Under this standard, a person representing a quantity of sugar in their possession as having effects substantially similar to

those of a controlled substance would be subject to prosecution.

“We are also concerned that the existing section which SB 1036 seeks to amend is vague and does not provide sufficient notice to individual users as to when the use or possession of a substance falls outside the law. Existing law does not define 'substantially similar;' the DEA has stated that in cases under the Federal Analogue Act (which uses the same language), the “substantially similar” threshold is subjective and may differ from expert to expert. As such, there seems to be no way for a person to reasonably know whether they are subject to criminal liability for their actions.

“More broadly, during a time of increasing public awareness and consensus that the drug war has failed, there is a need to address drug use and abuse as a public health issue. Now is not the time to be counterproductively criminalizing more substances and putting the public at greater risk of harm.”

7) **Related Legislation:** SB 139 (Galgiani), would expand the definition of a synthetic stimulant compound and a synthetic cannabinoid compound for purposes of existing law. SB 139 is currently held at the Assembly Desk

8) **Prior Legislation:**

- a) SB 1283 (Galgiani), Chapter 372, Statutes of 2013, makes the use or possession of specified synthetic stimulant compounds or synthetic stimulant derivatives, punishable by a fine not exceeding \$250.
- b) AB 2420 (Hueso,) 2011-2012 Legislative Session, would have created infraction and misdemeanor penalties for possession or use of specified synthetic stimulants and synthetic cannabinoids. AB 2420 failed passage in the Assembly Public Safety Committee.
- c) AB 486 (Hueso), Chapter 656, Statutes of 2011, prohibited the sale, dispensing, distribution, furnishment, administration or giving, or attempt to do so, of any synthetic stimulant compound of any specified synthetic stimulant derivative. Violation of this section is punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not exceeding \$1,000, or by both that fine and imprisonment.
- d) SB 420 (Hernandez), Chapter 420, Statutes of 2011, prohibited the sale, dispensing, distribution, administration or giving, or attempt to do so, of any synthetic cannabinoid compound or any synthetic cannabinoid derivative. Violation of this section is punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not exceeding \$1,000, or by both that fine and imprisonment.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Deputy District Attorneys
Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers

California College and University Police Chiefs Association
California Narcotic Officers Association
California Police Chiefs Association
California State Sheriffs' Association
Consortium Management Group
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Office of the Sheriff, County of Los Angeles
Peace Officers Research Association of California
Riverside Sheriffs Association

Opposition

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Public Defenders Association
Drug Policy Alliance

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

Date of Hearing: June 14, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1127 (Hancock) – As Amended April 6, 2016

SUMMARY: Requires the Commission on Correctional Peace Officers Standards and Training (CPOST) to establish an Internet Web site, as specified. Specifically, **this bill:**

- 1) Requires (CPOST) to establish and maintain an Internet Web site to include the following:
 - a) Meeting minutes, agendas, and related supporting documents;
 - b) An archive of past meeting minutes, agendas, and related supporting documents; and,
 - c) Documents to provide employees and the public with greater access to professional development materials.
- 2) Mandates (CPOST) to transmit live video and audio of all of its meetings via the Internet Web site, and shall also include an archive of the video and audio of those meetings on its Internet Web site.

EXISTING LAW:

- 1) Makes the following legislative findings and declarations:
 - a) The Legislature finds and declares that peace officers of the state correctional system, including youth and adult correctional facilities, fulfill responsibilities that require creation and application of sound selection criteria for applicants and standards for their training prior to assuming their duties. For the purposes of this section, correctional peace officers are peace officers as defined in Penal Code Section 830.5 and employed by the California Department of Corrections and Rehabilitation (CDCR).
 - b) The Legislature further finds that sound applicant selection and training are essential to public safety and in carrying out CDCR's missions in the custody and care of California's offender population. The greater degree of professionalism that will result from sound screening criteria and a significant training curriculum will greatly aid CDCR in maintaining smooth, efficient, and safe operations and effective programs. (Pen. Code, § 13600, subd. (a)(1), (2).)
- 2) Creates CPOST within the CDCR. (Pen. Code, § 13600, subd. (b).)

- 3) Requires that the executive board of CPOST be composed of voting members to be determined as follows:
 - a) Three members from, appointed by, and representing the management of CDCR, one of whom shall represent the Department of Juvenile Justice (DJJ) or the Division of Rehabilitative Programming.
 - b) Three members from, and appointed by the Governor, and representing the membership of the California Correctional Peace Officers' Association (CCPOA). Two members shall be rank-and-file persons from State Bargaining Unit 6 and one member shall be supervisory. (Pen. Code, § 13600, subd. (c)(1)(A) &(B))
- 4) States that appointment to the executive board of CPOST shall be for a term of four years. (Pen. Code, § 13600, subd. (c)(1)(C).)
- 5) Provides that the promotion of a member of CPOST shall invalidate the appointment of that member and shall require the recommendation and appointment of a new member if the member was appointed from the rank and file or supervisory personnel and promoted out of his or her respective rank and file or supervisory position during his or her term on CPOST. (Pen. Code, § 13600, subd. (c)(1)(D).)
- 6) States that each appointing authority shall appoint one alternate member for each regular member it appoints. Every alternate member shall possess the same qualifications as a regular member and shall substitute for, and vote in place of a regular member who was appointed by the same appointing authority whenever a regular member is absent. (Pen. Code, § 13600, subd. (c)(2).)
- 7) States the rules for voting on the executive board of CPOST as follows:
 - a) Decisions shall be made by a majority vote;
 - b) Proxy voting shall not be permitted; and
 - c) Tentative approval of a decision may be taken by telephone vote. The CPOST members' decision shall be documented in writing and submitted to CPOST for confirmation at the next scheduled CPOST meeting to become part of the permanent record. (Pen. Code, § 13600, subd. (d)(1)-(3).)
- 8) Provides that CPOST's executive board shall adopt rules as it deems necessary for efficient operations, including, but not limited to, the appointment of advisory members for forming whatever subcommittee it deems necessary to conduct its business. These rules shall be in conformance with the rules and regulations of the State Personnel Board (SPB) and the Department of Personnel Administration, and the provisions of the State Bargaining Unit 6 Memorandum of Understanding. (Pen. Code, § 13600, subd. (e).)
- 9) Requires CPOST to develop, approve and monitor standards for the selection and training of state correctional peace officer apprentices. States that these standards are subject to the approval of the Department of Human Resources. (Pen. Code, § 13601, subd. (a).)

- 10) Allows CPOST to approve standards for a course in the carrying and use of firearms for correctional peace officers. (Pen. Code, § 13601, subd. (b).)
- 11) Permits CPOST to determine the length of the probationary period for correctional peace officer apprentices, subject to approval by the State Personnel Board (SPB). (Pen. Code, § 13601, subd. (c).)
- 12) Requires CPOST to develop, approve and monitor standards for advanced rank-and-file and supervisory state correctional peace officer and training programs for CDCR. (Pen. Code, § 13601, subd. (d).)
- 13) Requires CPOST to develop, approve and monitor standards for training California correctional peace officers in the handling of stress associated with their duties. (Pen. Code, § 13601, subd. (e).)
- 14) Provides that CPOST may confer with, and may avail itself of the assistance and recommendations of, other state and local agencies, boards or commissions. (Pen. Code, § 13601, subd. (f).)
- 15) Gives CPOST the authority to design, deliver and monitor compliance of training programs, and conduct validation studies thereon. (Pen. Code, § 13601, subd. (g).)
- 16) Allows CPOST to disapprove of any training courses created by CDCR if CPOST determines that the courses do not meet the prescribed standards. (Pen. Code, § 13601, subd. (h).)
- 17) Mandates that CPOST annually submit an estimate of the costs to conduct inquiries and audits as may be necessary to determine whether CDCR and each of CDCR's institutions and parole regions are adhering to the standards developed by CPOST. (Pen. Code, § 13601, subd. (i).)
- 18) States that CPOST shall establish and implement procedures for reviewing and issuing decisions concerning complaints or recommendations from interested parties. (Pen. Code, § 13601, subd. (j).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "This bill will require the Commission on Correctional Peace Officer Standards and Training within the Department of Corrections and Rehabilitation to establish an Internet Web site, in order to promote transparency and accountability. The Web site will include meeting minutes, agendas, supporting documents and an archive of past meeting minutes, agendas, supporting documents, video and audio of past meetings. The bill would also require the commission to transmit live video and audio of all its meetings and include documents on the Web site to provide employees and the public with greater access to professional development materials."

"Therefore this bill is intended to provide the career officer support necessary to create an excellent workforce under California Department of Corrections and Rehabilitation. In turn, this will increase employee wellness and professional satisfaction to create safer and more effective institutions, leading to inmate rehabilitation and reduced recidivism. Ultimately, all of this will lead to safer communities."

- 2) **Argument in Support:** According to *Legal Services for Prisoners with Children*, "SB 1127 increases the ability to hold CDCR accountable for the performance of its peace officers. Additionally, by requiring CPOST to publish mandated information on a website, SB 1127 involves the general public, and establishes a more meaningful system of accountability for California's correctional system. We, at LSPC, believe that increased accountability and transparency within the prison system is an essential first step to addressing the systematic problems within our criminal justice system. SB 1127's reform will, therefore, allow for more responsible policies to be implemented and more effective reform to follow."

REGISTERED SUPPORT / OPPOSITION:

Support

Legal Services for Prisoners with Children

Opposition

None

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

Date of Hearing: June 14, 2016
Counsel: Gabriel Caswell

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

SB 1129 (Monning) – As Introduced February 17, 2016

SUMMARY: Repeals specified mandatory minimum sentences for specified prostitution offenses. Specifically, **this bill:**

- 1) Repeals the mandatory minimum terms for repeated prostitution offenses, leaving discretion with the court to impose an appropriate sentence as follows:
 - a) Eliminates the requirement that a person convicted for a second prostitution offense must serve a sentence of at least 45 days, no part of which can be suspended or reduced by the court, regardless of whether or not the court grants probation.
 - b) Eliminates the requirement that a person convicted for a third prostitution offense shall serve a sentence of at least 90 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation.
- 2) Repeals the specific authority of a court to order suspension of the driver's license of a convicted prostitution defendant if the offense was committed with a vehicle within 1,000 feet of a residence.

EXISTING LAW:

- 1) Provides that any person who solicits, agrees to engage in, or engages in an act of prostitution is guilty of misdemeanor. Prostitution includes any lewd act between persons for money or other consideration. (Pen. Code, § 647, subd. (b).)
- 2) Provides that any person who solicits another person to engage in any lewd or dissolute act in a public place is guilty of a misdemeanor. (Pen. Code, § 647, subd. (a).)
- 3) Provides that any person is convicted for a second prostitution offense shall serve a sentence of at least 45 days, no part of which can be suspended or reduced by the court, regardless of whether or not the court grants probation. (Pen. Code, § 647, subd. (k).)
- 4) Provides that any person convicted for a third prostitution offense shall serve a sentence of at least 90 days, no part of which can be suspended or reduced by the court regardless of whether or not the court grants probation. (Pen. Code, § 647, subd. (k).)
- 5) Authorizes a sentencing court to suspend the driver's license of a person convicted of a prostitution offense that occurred with the use of a motor vehicle within 1,000 feet of a "private residence." The court may restrict for six months the person's driving privilege to necessary travel to and from the person's place of employment or education. If operation of

a motor vehicle is necessary for the performance of the person's employment duties, the court may allow driving for that purpose. (Pen. Code, § 647, subd. (k); Veh. Code, § 13201.5.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Mandatory minimum sentencing laws grew largely out of 1980's tough-on-crime laws that sought stiffer punishments for drug and violent crimes and shifted sentencing many crimes from a rehabilitative approach, to a punitive, deterrence centered approach. The creation of statutory minimum sentences has not only increased jail and prison populations over subsequent decades; they have also stripped the court's ability to address the underlying issues that cause a person to offend in the first place.

"California's misdemeanor crime provisions for prostitution contain some of the harshest mandatory penalties of all the current misdemeanor offenses by requiring a mandatory, minimum sentence of up to 90 days in jail for reoffending. Penal Code Section 647 requires that upon a second conviction of prostitution charges an offender must serve a minimum of 45 days in county jail, and 90 days upon a third misdemeanor conviction. The mandatory sentence found in Penal Code 647 exists under the assumption that mandatory jail time will deter future offenders from engaging in prostitution. The efficacy of mandatory minimums as a deterrent to crime has been the subject of debate, with many researchers concluding that they have been massively ineffective.

"California's prison and jail overcrowding problem has reached crisis levels, and has culminated in pushing supervision of more serious offenders down to the county jails. Requiring a 'john' or sex-worker to spend a minimum of 45, or even 90 days in county jail for a misdemeanor like prostitution creates the potential for jails needing to release more serious offenders in order to make room for those convicted of recidivist-prostitution.

"Additionally, the mandatory sentences required under conviction of Penal Code 647 require jail time in all instances, and even goes so far as to specifically forbid judicial intervention. This prohibition on court involvement prevents a judge from tailoring a sentence for a specific offender, or ordering alternative probationary sanctions, such as participation in diversion and rehabilitation programs that target the root cause of the recidivism. Mandatory jail time also creates a potential disincentive for offenders to take part in court mandated probation or treatment programs, as an offender may opt to choose the 45 days in jail in order to avoid longer supervision terms or required programs.

"Many of those who engage in prostitution are themselves victims of human trafficking and are often forced into sex work and should not be incarcerated for 45 to 90 days. Providing the courts discretion will allow judges to recognize trafficking and use their discretion in sentencing. With greater discretion a judge can order a sentence longer than 90 days for a recidivist john, or recommend a lesser, more programmatic-oriented option for victims of trafficking.

"SB 1129 will repeal the mandatory minimum sentencing requirements for repeat offenders of prostitution and ensure that California's crowded jails are not burdened with these non-violent, non-serious offenders. Removing mandatory jail time will ensure repeat offenders are still punished for breaking the law, but allows for judicial discretion in determining the suitability of the punishment.

"SB 1129 will also remove the current statutory punishments outlined in Vehicle Code Section 13201.5, which allow the courts to remove a person's driving privileges for engaging in prostitution. These punitive statutes allow a judge to suspend a person's driver's license for up to 30 days, or restrict their driver's license for up to 6 months, if the prostitution was committed within 1,000 feet of a private residence and with the use of a vehicle. This arbitrary and summary removal of a person's license for up to 6 months is excessive, and would likely derail any rehabilitative efforts that could dissuade an offender from engaging in further prostitution."

- 2) **Prostitution Generally:** The basic crime of prostitution is a misdemeanor offense. (Pen. Code § 647(b).) Prostitution can be generally defined as "soliciting or agreeing to engage in a lewd act between persons for money or other consideration." Lewd acts include touching the genitals, buttocks, or female breast of either the prostitute or customer with some part of the other person's body for the purpose of sexual arousal or gratification of either person.

To implicate a person for prostitution themselves, the prosecutor must prove that the defendant "solicited" or "agreed" to "engage" in prostitution. A person agrees to engage in prostitution when the person accepts an offer to commit prostitution with specific intent to accept the offer, whether or not the offerer has the same intent.

For the crime of "soliciting a prostitute" the prosecutors must prove that the defendant requested that another person engage in an act of prostitution, and that the defendant intended to engage in an act of prostitution with the other person, and the other person received the communication containing the request. The defendant must do something more than just agree to engage in prostitution. The defendant must do some act in furtherance of the agreement to be convicted. Words alone may be sufficient to prove the act in furtherance of the agreement to commit prostitution

Violation of Pen. Code § 647(b) is a misdemeanor. For a first offense conviction of prostitution the defendant faces up to 180 days in jail. If a defendant has one prior conviction of prostitution he or she must receive a county jail sentence of not less than 45 days. If the defendant has two or more prior convictions, the minimum sentence is 90 days in the county jail.

In addition to the punishment described above, if the defendant has a conviction of prostitution, he or she faces fines, probation, possible professional licensing restrictions or revocations, possible immigration consequences, possible asset forfeiture, and possible driving license restrictions.

Closely associated crimes to prostitution include: abduction of a minor for prostitution (Pen. Code, § 267); seduction for prostitution (Pen. Code, § 266); keeping a house of prostitution (Pen. Code, § 315); leasing a house for prostitution (Pen. Code, § 318); sending a minor to a house of prostitution (Pen. Code, § 273e); taking a person against that person's will for

prostitution (Pen. Code 266a); compelling a person to live in an illicit relationship (Pen. Code, § 266b); placing or leaving one's wife in a house of prostitution (Pen. Code, §266g); loitering for prostitution (Pen. Code, § 653.22, subd. (a)); pimping (Pen. Code, § 266h); or, pandering (Pen. Code, § 266i). Most of these crimes are punished much more severely than the underlying prostitution offense, particularly the crimes of pimping, pandering, and procurement.

- 3) **Current Law Limits Judicial Discretion to Impose Appropriate Sentences Based on the Facts and Circumstances of a Particular Case:** Specifically, current law mandates that upon a conviction of subsequent acts of prostitution, an offender must spend 45 days in county jail for a second offense, and 90 days in county jail for a third offense. Additionally, as applied to both mandatory minimum sentences, a person convicted may have no part of which suspended or reduced by the court regardless of whether or not the court grants probation.

From a policy standpoint, there are no mandatory minimum jail sentences for a variety of offenses that are far more serious than misdemeanor prostitution. For instance, there is no mandatory jail sentence for first time domestic violence offenses, or a wide range of violent felony offenses. This bill takes the discretion from a judge to craft an appropriate remedy in a misdemeanor case. Judges are in the best position to make decisions based on the particular facts and circumstances of a case. Imposing mandatory jail time on a person convicted of prostitution can result in the loss of employment and create problems for the offender that may lead to further criminal acts. Courts have found success in fashioning other remedies that have kept offenders employed, outside of county jails at the public expense, and freed up jail space for more dangerous offenders.

- a) **San Francisco District Attorney's Office First Offender Prostitution Program (FOPP):** FOPP is a court diversion program aimed at reducing the volume and impact of sex buying by targeting those who purchase sex. The program was first started in San Francisco in 1995. The program is based on the belief that education as opposed to punishment was an effective strategy to address the problems created by the sex industry.

The program is focused on educating the purchasers of sex, sometimes referred to as "john's." Purchasers of sex that are dealing with criminal charges for that behavior are predominantly men. The curriculum of the first offender is designed to help men understand the negative effects of being raised in a culture that promotes a system of male superiority and entitlement toward women.

The program has incorporated evidence-based practices into the FOPP programming. It includes: Social Learning Theory, Cognitive Behavioral Interventions, Brief Interventions, Harm Reduction, and Peer Reeducation. As part of the FOPP, the legal consequences for subsequent arrests for solicitation of prostitution are emphasized. Participants in the FOPP, are educated about the impacts of prostitution on the participants in the sex industry, the impact of sexual exploitation, the health risks of engaging in prostitution, and the impact of prostitution on the neighborhoods where it occurs.

- b) **Success of Education Programs for Buyers of Sex:** As of 2012, approximately 50 cities and counties in the U.S. including Santa Clara, San Diego, Los Angeles, and Fresno

have similar programs. (An Overview of John Schools in the United States, (2012), pp. 3-5.)

A 2008 study commissioned by the Department of Justice and conducted by Abt Associates found that the First Offender Prostitution Program (FOPP) was successful in substantially reducing recidivism among men arrested for soliciting prostitutes. According to the report, data collected from 10 years prior to implementation and 10 years after implementation (1985 through 2005) showed a sharp drop in re-offense rates (recidivism) in 1995, the first year of implementation. This low level of recidivism was sustained throughout the 10 years studied between 1995 and 2005. The study also found that data from San Diego showed that recidivism rates were cut in half after their education program was implemented. In summary, “FOPP significantly reduces recidivism” and is highly transferable, having been successfully replicated and adapted in other cities in the U.S. (Final Report on the Evaluation of the First Offender Prostitution Program (2008), Abt Associate, pp. v-vi and x.)

- c) **Courts General Power to Impose Conditions of Probation:** Courts have broad general discretion to fashion and impose additional probation conditions that are particularized to the defendant. (*People v. Smith* (2007) 152, Cal.App.4th 1245, 1249.) Courts may impose any “reasonable conditions” necessary to secure justice, make amends to society and individuals injured by the defendant’s unlawful conduct, and assist the “reformation and rehabilitation of the probationer.” (Pen. Code, § 1203.1.) A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)
- 4) **Jail Overcrowding:** According to a recent report by the Public Policy Institute of California titled *Capacity Challenges in California's Jails*, California's county jails are facing increasing adult daily populations (ADP). Many counties are facing capacity constraints on their population. Prior to realignment, 17 counties were operating under court orders limiting the number of inmates in their jails. In all, 13 counties including some of the biggest (Los Angeles, Orange, San Diego, and Sacramento) had average daily populations that were larger than the number of beds their jails were rated for.
- 5) **Mandatory Minimum Sentences and Driver’s License Suspension Provisions:** The authority of a court to suspend for 30 days the driver’s license of a prostitution offender was enacted by AB 2949 (Harvey), Ch. 1019, Stats. of 1996. AB 1788 (Wright), Ch. 758, Stats. of 1998 authorized the court to impose a six month suspension of a driver’s license or a convicted prostitution offender, except for travel to and from work. The Senate Floor Analysis of AB 1788 explained:

The Prostitution Abatement and Neighborhood Protection Act and authorized courts to suspend the driving privilege of any person convicted of soliciting, agreeing to, or engaging in, an act of prostitution with the use of a vehicle and within 1,000 feet of a private residence for up to 30 days. AB 2949's intent was to deter individuals from "cruising" residential neighborhoods in search of prostitutes. According to Los Angeles County: “The existing 30 days suspension is little more than an inconvenience for many offenders. A six month suspension should cause violators to think about potential penalties before engaging in acts of

prostitution in an automobile. It will help keep prostitution away from residential neighborhoods.”

Committee staff is unaware of any studies of the effect the driver’s license suspension had on prostitution offenses committed within 1,000 feet of private residence. Existing law does not define the term “private residence.” A thousand feet is the length of three and 1/3 football fields. It would appear that many, if not most, prostitution offenses in urban areas occur within 1,000 feet of residences. Committee staff found no cases applying or interpreting the license suspension provisions.

- 6) **Mandatory Jail Terms as Conditions of Probation Encourage Defendants to Refuse Probation:** If the court does not impose sentence for a repeated prostitution offenses, but places the defendant on probation, *the 45 and 90-day terms must be imposed as a condition of probation* – the same penalty as the minimum penalty for an executed sentence. Many, if not most, county jails are crowded, particularly in urban areas. A defendant who is convicted of a prostitution offense in a county with crowded jail conditions would very likely refuse probation because he would know that he would not serve more than 45 or 90 days, depending on whether it is the second or subsequent offense, upon a straight sentence without probation.

A defendant who is not on probation cannot be monitored by the probation department or the court. A defendant who is not on probation cannot be ordered to engage in rehabilitative or restorative justice programs. If the odds of getting caught committing such a crime is low, and that may be likely, such a person could remain a significant source of demand for prostitution.

- 7) **Argument in Support:** According to the *American Civil Liberties Union*, "under current California law, a person who solicits, agrees to engage in, or engages in prostitution is guilty of a misdemeanor disorderly conduct offense. If that person is convicted of a second prostitution offense, imprisonment in the county jail for no less than 45 days is required. Third and subsequent prostitution offenses require incarceration for no less than 90 days. A court is also authorized to suspend the driving privileges for up to 30 days of a person convicted of one of the above-described disorderly conduct offenses if the offense was committed within 1,000 feet of a private residence and with the use of a private vehicle.

By removing these delineated additional sanctions for prostitution offenses, SB 1129 aligns these offenses with the rest of the California Penal Code, which imposes mandatory minimums on very few misdemeanor offenses. Mandatory minimum sentencing laws, which grew out of the national tough-on-crime stance from the 1980's, contributed to the problems California faces today with significant prison and jail overcrowding. These mandatory sentencing policies no longer reflect California's current approach to realigning the criminal justice system by adopting smarter and more humane sentencing laws. By removing these sentencing mandates for prostitution offenses, courts can employ evidence-based practices that reduce recidivism and further offender rehabilitation.

This legislation also recognizes that prostitution is a unique criminal offense where the offender can be both a perpetrator and a victim. Many individuals who engage in prostitution are trafficked and forced, induced, or coerced into commercial sex, and others are runaways who find themselves on the streets with no other means to survive. Imposing mandatory

incarceration on these victims fails to advance their rehabilitation or provide them with the services and support they need to escape coercive and abusive situations."

- 8) **Argument in Opposition:** According to the *California District Attorneys Association*, "this bill would eliminate mandatory jail time for individuals convicted of prostitution (buying or selling) more than once. It would also eliminate the authority of a court to suspend a person's driving privileges if the offense was committed in a vehicle in close proximity to a private residence.

"At a time when our communities continue to struggle with the scourge of human trafficking, we cannot support eliminating tools of deterrence frequently deployed against purchasers of commercial sex. We believe these additional sanctions, which apply only to individuals convicted on multiple occasions, serve an important purpose in our efforts to crack down on the illegal sex trade in California."

- 9) **Related Legislation:** AB 1708 (Gonzalez), imposes mandatory minimum sentences of 72 hours upon first offense prostitution offenses. AB 1708 is awaiting a hearing in the Senate Public Safety Committee.
- 10) **Prior Legislation:** SB 244 (Liu) of the 2013-2014 Legislative Session, would have created a 90 day mandatory jail term minimum for solicitation of a minor for prostitution related offenses. SB 244 failed passage in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

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

Opposition

California District Attorneys Association
Erotic Service Providers Union

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

Date of Hearing: June 14, 2016

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1182 (Galgiani) – As Introduced February 18, 2016

SUMMARY: Makes possession of gamma hydroxybutyric acid (GHB), ketamine, or flunitrazepam, also known as Rohypnol, with the intent to commit sexual assault, as defined, a felony. **Specifically**, this bill:

- 1) Defines "sexual assault" for the purposes of this bill to include, but not be limited to, violations of specified provisions related to sexual assault committed against a victim who is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance.
- 2) Specifies that this crime is a county jail-eligible felony, punishable by imprisonment for 16 months, or two or three years.
- 3) States the finding of the Legislature that in order to deter the possession of ketamine, GHB, and Rohypnol by sexual predators and to take steps to prevent the use of these drugs to incapacitate victims for purposes of sexual exploitation, it is necessary and appropriate that an individual who possesses one of these substances for predatory purposes be subject to felony penalties.

EXISTING LAW:

- 1) Provides that the possession of specified controlled substances including ketamine, flunitrazepam and GHB, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, is a misdemeanor punishable by up to one year in a county jail, except for a person who has one or more prior convictions for a specified violent felony or has been convicted of a prior offense requiring the person to register as a sex offender, then the penalty shall be a felony. (Health & Saf. Code, §§ 11350, subd. (a) and 11377, subd. (a).)
- 2) Classifies controlled substances in five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054 to 11058.)
- 3) States, except as provided, that every person who possesses for sale or purchases for purposes of sale any of the specified controlled substances, including cocaine and heroin, shall be punished by imprisonment in a county jail for two, three, or four years. (Health & Saf. Code, § 11351.)

- 4) Provides that every person that transports, imports into the state, sells, furnishes, administers, or gives away, or offers to transport, import into the state, sell, furnish, or give away, or attempts to import into this state or transport cocaine, cocaine base, or heroin, or other specified controlled substances listed in the controlled substance schedule, without a written prescription from a licensed physician, dentist, podiatrist, or veterinarian shall be punished by imprisonment for three, four, or five years. (Health & Saf. Code, § 11352, subd. (a).)
- 5) States that the possession for sale of methamphetamine, and other specified controlled substances is punishable by imprisonment in a county jail for 16 months, or two or three years. (Health & Saf. Code, § 11378.)
- 6) Provides that every person that transports, imports into the state, sells, furnishes, administers, or gives away, or offers to transport, import into the state, sell, furnish, or give away, or attempts to import into this state or transport methamphetamine, or other specified controlled substances listed in the controlled substance schedule, without a written prescription from a licensed physician, dentist, podiatrist, or veterinarian shall be punished by imprisonment for two, three, or four years. (Health & Saf. Code, § 11379, subd. (a).)
- 7) States that every person guilty of administering to another any chloroform, ether, laudanum, or any controlled substance, anesthetic, or intoxicating agent, with intent thereby to enable or assist himself or herself or any other person to commit a felony, is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years. (Pen. Code, § 222.)
- 8) States that rape is an act of sexual intercourse accomplished where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused. Rape is generally punishable by imprisonment in state prison for three, six, or eight years. (Pen. Code, §§ 261, subd. (a)(3); 262, subd. (a)(2); 264.)
- 9) Specifies felony penalties for any person who commits an act of sodomy, oral copulation or sexual penetration where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused. (Pen. Code, §§ 286, subd. (i); 288a, subd. (i); 289, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "In November 2014, California voters approved Proposition 47 which reclassified many crimes from felonies to misdemeanors. One of these reclassifications involved the possession of the drugs Rohypnol, GHB and ketamine—commonly known as 'date rape' drugs.

"Prior to Prop. 47, possession of a date rape drug was punishable as a 'wobbler' in which the prosecutor or judge can determine whether a felony or misdemeanor is appropriate based on the facts of the case. Prop. 47 removed the ability to charge an individual with a felony for possession. Possession of a date rape drug is now a mandatory misdemeanor.

"A fundamental difference exists between the possession of recreational drugs meant to be consumed by that individual and the possession of 'date rape' drugs when intended to be used on another individual. These drugs will render a sexual assault victim completely incapacitated. They also result in a victim having little to no memory of the assault which took place. This allows a rapist to escape prosecution because a victim can't remember the details of the crime when questioned in court.

"Concerns have been expressed in the law enforcement community that the new law relating to the possession of date rape drugs can potentially weaken sexual assault statutes and harm public safety.

"Senate Bill 1182 would give prosecutors the ability to bring felony charges against individuals caught in possession of date rape drugs with the intent to commit a sexual assault.

"This will allow prosecutors to bring felony charges against a perpetrator who has been found in possession of these drugs and has taken steps to use them to facilitate a sexual assault.

"Given the difficult nature of prosecuting sexual assault crimes, the Legislature should embrace this opportunity to provide serious consequences for criminals looking to use date rape drugs to facilitate a heinous crime."

- 2) **Governor's Veto Message:** This bill is identical to SB 333 (Galgiani), of the current legislative session, which was vetoed by the Governor. This bill was among several other criminal justice bills vetoed by the Governor last year signaling the Governor's push for sentencing reform. According to the Governor's veto message:

"Each of these bills creates a new crime - usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.

"Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded.

"Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective."

- 3) **Proposition 47:** On November 4, 2014, California voters approved Proposition 47, also known as the Safe Neighborhoods and Schools Act, which reduced penalties for certain offenders convicted of nonserious and nonviolent property and drug crimes. Proposition 47 also allows inmates serving sentences for crimes affected by the reduced penalties to apply to be resentenced.

According to the California Secretary of State's web site, 59.6 percent of voters approved Proposition 47. (See <http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf> [as of Mar. 14, 2015].) The purpose of the measure was "to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K-12 schools, victim services, and mental health and

drug treatment." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014), Text of Proposed Laws, p. 70.) One of the ways the measure created savings was by requiring misdemeanor penalties instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession for personal use, unless the defendant has prior convictions for specified violent crimes. (*Ibid.*)

Four months into its implementation, Proposition 47 had resulted in fewer inmates in state prisons and county jails. According to the Legislative Analysts' Office (LAO), "As of January 28, 2015, the inmate population in the state's prisons was about 113,500, or 3,600 inmates below the February 2015 cap, and slightly below the final February 2016 cap. The expected impact of Proposition 47 on the prison population will make it easier for the state to remain below the population cap." (LAO, *The 2015-16 Budget: Implementation of Proposition 47* (Feb. 2015), p. 10.) The LAO report also found that Proposition 47 will likely reduce the costs of criminal justice for counties, by freeing up jail beds and reducing the time probation departments need to follow prisoners after they are released. (*Id.* at p. 17.)

In its most recent report on the fiscal impact of Proposition 47, the LAO estimated that the savings resulting from the implementation of Proposition 47 is approximately \$100 million more than what was estimated by the administration. (LAO, *The 2016-2016 Budget: Implementation of Proposition 47* (Feb. 2016), p. 11.)

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

The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a duty to jealously guard the people's initiative power and, hence, to apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473.) Yet, despite the strict bar on the Legislature's authority to amend initiative statutes, judicial decisions have recognized that the Legislature is not thereby precluded from enacting laws addressing the general subject matter of an initiative. The Legislature remains free to address a "related but distinct area" or a matter that an initiative measure "does not specifically authorize or prohibit." (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025-1026.)

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

The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this act." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014), Text of Proposed Laws, p. 74.)

This bill does not affect Proposition 47's misdemeanor penalties for simple possession of drugs. Similar to the statutes that require specific intent to sell controlled substances which remain felonies, this bill will require specific intent to commit sexual assault in order to charge a defendant with a felony. Because the bill as amended does not affect Proposition 47, this bill does not have to go before the voters.

- 5) **Drug-Facilitated Sexual Assault Statistics:** Although a person may be surreptitiously drugged with Rohypnol, GHB, or ketamine in order to incapacitate that person, it is much more common for a person to consume these drugs voluntarily for its intoxicating effects.

One study, funded by the National Institute of Justice, examined the prevalence, nature, and reporting of various types of sexual assault experienced by college students. (Krebs, et al., *The Campus Sexual Assault Study*, National Institute of Justice (Oct. 2007).) The researchers worked with two large, public universities to collect data from over 6,800 undergraduate students (5,466 women and 1,375 men). The data indicated that 7.8% of women were sexually assaulted when they were incapacitated after voluntarily consuming drugs and/or alcohol and 0.6% were sexually assaulted when they were incapacitated after having been given a drug without their knowledge. (*Id.* at p. iv; see also Section 6-1.) The study found that the majority of the sexual assault victims that were incapacitated reported having consumed alcohol (89%) or being intoxicated prior to being assaulted (82%). (*Id.* at Section 5.1.3.)

Another study conducted by the University of Illinois at Chicago, funded by the U.S. Department of Justice, worked with four clinics (Texas, California, Minnesota, and Washington State) to study the prevalence of drugs in sexual assault cases received by these clinics. (Negruz, et al., *Estimate of the Incidence of Drug-Facilitated Sexual Assault in the U.S.*, Univ. of Illinois, Chicago (Nov. 2005).) The study used self-reporting surveys as well as toxicological analyses of the subjects. The drugs inquired about in the self-reporting survey included marijuana, cocaine, and amphetamines. These three drugs were chosen because they are not normally given surreptitiously. (*Id.* at pp. 7-8.) The toxicological analyses tested for those three drugs, as well as other drugs that are often considered "date rape drugs" which include Rohypnol, GHB, ketamine, clonazepam and scopolamine. (*Id.* at p. 112.) Testing positive for one of these drugs could be due to several different reasons: valid prescription use by the subject, recreational drug use by the subject, surreptitious drug administration by a potential assailant, or, in the case of GHB, endogenous levels because GHB exists naturally in the human body. (*Id.* at pp. 112-113.)

Among the 144 participants, 61.8% tested positive for one of the drugs being analyzed in the study. (Negruz, *Estimate of the Incidence of Drug-Facilitated Sexual Assault in the U.S.*, *supra*, at p. 2.) The drugs separated out as "date rape" drugs were found in seven subjects (4.86%), of which three had a prescription. No one admitted to having a prescription for GHB, or using it recreationally, and GHB was only found in levels considered to be endogenous. (*Id.* at p. 113.) However, the study does note that GHB has a short detection time of 10-12 hours and because only four subjects reported to the clinic within 12 hours, if any of the subjects had been given GHB, the levels would have been undetectable. (*Id.* at p.

121.) Ketamine and scopolamine were not reported to by any of the subjects in the surveys, and were not found. Flunitrazepam (Rohypnol) was not admitted to by anyone, but was found in four subjects. (*Id.* at p. 113.) However, when tested a second time a week later, some of these subjects tested positive for flunitrazepam again, indicating that the subjects are likely recreational users of the drug but did not report it in the survey. (*Id.* at pp. 89, 189.) Based on these results, the study concluded that most of the subjects positive for these drugs had taken them by their own accord and not received them surreptitiously. (*Id.* at p. 189.)

The study also evaluated whether participants truthfully reported their drug use. The number of subjects who admitted to taking drugs voluntarily was 40%, as compared to the 61.8% of subjects who tested positive for one of the analyzed drugs. (Negruz, *Estimate of the Incidence of Drug-Facilitated Sexual Assault in the U.S.*, *supra*, at p. 190.) Researchers hypothesized that the subjects' under-reporting of their drug usage may be attributed to the fact that the drugs being analyzed are illegal and a person may face prosecution for its use, or that the subjects may have felt that their recreational use of illegal drugs could negatively affect the course of a sexual assault prosecution. (*Id.* at pp. 16, 190.)

While drug-facilitated sexual assault is a serious problem, these studies confirm that it occurs most often after an individual's own recreational use of drugs, rather than surreptitious drugging by another person. Drugs such as Rohypnol, ketamine and GHB may be used to facilitate sexual assault of an incapacitated person, but these are not the only drugs that can be used, nor are they the most commonly used. The substance that is most commonly found in sexual assault victims is alcohol. (Krebs, *The Campus Sexual Assault Study*, *supra* at p. 89; also see Grimes, *Alcohol is by far the most dangerous "date rape drug"* (Sept. 22, 2014) *The Guardian*, <<http://www.theguardian.com/science/blog/2014/sep/22/alcohol-date-rape-drug-facilitated-sexual-assault-dfsa>> [as of June 8, 2016].)

This bill targets persons who possess these drugs for predatory purposes, rather than those who merely possess these drugs for personal use. This will ensure that victims of these crimes who may have consumed these drugs voluntarily prior to being assaulted will not have to fear prosecution of a felony when deciding to whether to report the incident.

- 6) **Argument in Support:** According to the *California Police Chiefs Association*, "In November 2014, California voters approved Proposition 47 which reclassified many crimes, including the possession of narcotics, from felonies to misdemeanors. By broadly reclassifying personal narcotic possession from a felony to a misdemeanor, Proposition 47 reduced the penalties for the possession of predatory drugs.

"SB 1182 will help keep our communities and college campuses safer by providing law enforcement with the necessary tools to successfully combat the possession and use of predatory drugs."

- 7) **Argument in Opposition:** According to *California Attorneys for Criminal Justice*, "Longer and harsher prison sentences for possession of drugs runs counter to the express preference of California voters for a shift in priorities toward violent crime and away from punishing drug offenders with longer and longer sentences. Moreover, the circumstance SB 1182 seeks to criminalize, the possession of "date rape" drugs by sexual predators who intend to use them to commit sexual assault, is already criminalized, effectively and severely, by attempt and sexual assault laws.

"If a prosecutor can credibly allege that a defendant has the intent to commit a sexual assault, then the prosecutor can combine that intent with the possession of the drugs specified by this bill (an act in furtherance) and charge the defendant with attempted sexual assault. Such a charge would be a felony and carry at least as strong a sentence as the new crime contemplated by this bill.

"SB 1182 is seeking another bite at the apple. Last year, the legislature passed this exact bill, then entitled SB 333, seeking to re-felonize possession of Ketamine, GHB and Rohypnol, and it was summarily vetoed by Governor Brown, along with several other bills seeking to create brand new crimes."

8) Related Legislation:

- a) SB 333 (Galgiani) was identical to this bill. SB 333 was vetoed.
- b) AB 46 (Lackey) was substantially similar to this bill. AB 46 was held in the Committee on Appropriations' Suspense file.

9) Prior Legislation:

- a) SB 649 (Leno), of the 2013-2014 Legislative Session, would have made the simple possession for personal use of cocaine, cocaine base, heroin, opium, and other specified narcotics, opiates and hallucinogens listed in the controlled substance schedule an alternate felony/misdemeanor, rather than a straight felony. SB 649 was vetoed.
- b) SB 1506 (Leno), of the 2011-2012 Legislative Session, would have made the unlawful possession of specified controlled substances a misdemeanor. SB 1506 failed passage on the Senate floor.
- c) SB 1067 (Horton), of the 2003-2004 Legislative session, would have excluded the drugs GHB, Rohypnol, and ketamine from coverage by the term "nonviolent drug possession offense" thereby making possession of these drugs ineligible for probation and drug treatment under Proposition 36, approved by the voters on November 7, 2000. SB 1067 failed passage in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
Association of Orange County Deputy Sheriffs' Association
California District Attorneys Association
California Peace Officers Association
California Police Chiefs Association
California State Sheriffs' Association
California Statewide Law Enforcement Agency
Dave Jones, Insurance Commissioner

Fraternal Order of Police
Long Beach Police Officers Association
Peace Officers Research Association of California
Sacramento County Deputy Sheriffs' Association

Opposition

California Attorneys for Criminal Justice
Legal Services for Prisoners with Children

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744

Date of Hearing: June 14, 2016
Counsel: David Billingsley

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

SB 1221 (Hertzberg) – As Amended April 26, 2016

SUMMARY: Directs the Commission on Peace Officers Standards and Training (POST) to make the existing continuing education classroom training course related to law enforcement interaction with mentally disabled persons available to the State Fire Marshal, who may revise the course as appropriate for firefighters.

EXISTING LAW:

- 1) Establishes the Commission on Peace Officer Training and Standards. (Pen. Code, § 13500.)
- 2) Requires all peace officers to complete an introductory course of training prescribed by POST, demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)
- 3) Empowers POST to develop and implement programs to increase the effectiveness of law enforcement. (Pen. Code, § 13503.)
- 4) Authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental and moral fitness and training that shall govern the recruitment of any peace officers in California. (Pen. Code, § 13510, subd. (a).)
- 5) States that POST shall include in the basic training course for law enforcement officers, adequate instruction in the handling of persons with developmental disabilities or mental illness, or both. In addition to providing instruction on the handling of these persons, the course must also include information on the cause and nature of developmental disabilities and mental illness, as well as the community resources available to serve these persons. (Pen. Code, § 13519.2)
- 6) Requires POST to establish and keep updated a continuing education classroom training course relating to law enforcement interaction with mentally disabled persons. (Pen. Code, § 13515.25.)
- 7) Requires the training course to be developed in consultation with appropriate community, local, and state organizations and agencies that have expertise in the area of mental illness and developmental disability, and with appropriate consumer and family advocate groups. (Pen. Code, § 13515.25.)
- 8) Directs POST to make the course available to law enforcement agencies in California. This course must consist of classroom instruction and utilize interactive training methods to

ensure that the training is as realistic as possible and the course must include, at a minimum, core instruction in the following:

- a) The cause and nature of mental illnesses and developmental disabilities; (Pen.Code, § 13515.25.)
- b) How to identify indicators of mental disability and how to respond appropriately in a variety of common situations; (Pen.Code, § 13515.25.)
- c) Conflict resolution and de-escalation techniques for potentially dangerous situations involving mentally disabled persons; (Pen.Code, § 13515.25.)
- d) Appropriate language usage when interacting with mentally disabled persons; (Pen.Code, § 13515.25.)
- e) Alternatives to lethal force when interacting with potentially dangerous mentally disabled persons; (Pen.Code, § 13515.25.)
- f) Community and state resources available to serve mentally disabled persons and how these resources can be best utilized by law enforcement to benefit the mentally disabled community; and, (Pen.Code, § 13515.25.)
- g) The fact that a crime committed in whole or in part because of an actual or perceived disability of the victim is a hate crime. (Pen.Code, § 13515.25.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "SB 1221 authorizes POST to share their course on interaction with mentally disabled persons, with the State Fire Marshal.

"Making the course available to the State Fire Marshal allows training on topics such as stigmatization and de-escalation tactics, to be specifically tailored for firefighters. Many times firefighters, not law enforcement, are the first responders to an emergency scene and this training will ensure that firefighters can respond to mental health emergencies appropriately.

"Treating a mental health emergency solely as a criminal issue can have serious unintended consequences. SB 1221 protects the safety of mentally-ill individuals and firefighters."

- 2) **POST Continuing Education Course on Developmental Disabilities and Mental Health Issues:** POST currently provides a continuing education course on interacting with individuals with developmental disabilities or mental health issues. This bill would make that training program available to firefighters.

The POST training course consists of classroom instruction and interactive training methods to ensure that the training is as realistic as possible. The course includes topics such as the cause and nature of mental illnesses and developmental disabilities and how to identify

indicators of mental disability and how to respond appropriately in a variety of common situations.

Students are instructed on conflict resolution and de-escalation techniques for potentially dangerous situations involving mentally disabled persons and appropriate language use when interacting with mentally disabled persons. Individuals receiving instruction are also told about community and state resources available to serve mentally disabled persons.

- 3) **Frequency of Law Enforcement Contacts Involving Mental Health Issues:** Law enforcement officers are often the first responders to mental health crisis calls; they respond to 911 calls ranging from suicide attempts to individuals potentially endangering themselves or others. Studies confirm that the volume of calls to law enforcement involving crisis mental health concerns have been increasing in the past decade. Mental health crisis calls also take more officer time to resolve. More than eighty percent of the agencies that Disability Rights California surveyed report that officers spend more time on these calls. Nearly 4 out of 10 agencies estimated that officers spend two hours or more on mental health calls. This means that on a typical day, officers can spend 1/3 of their time in interactions which would necessitate skills in crisis intervention and de-escalation. Beyond crisis calls, officers routinely respond to calls where they are required to determine whether a person meets the criteria for involuntary detention for psychiatric assessment and treatment (otherwise known as 5150). Even standard crime scene calls require officers to use skills to de-escalate potentially volatile situations when interacting with members of the public. (*An Ounce of Prevention: Law Enforcement Training Mental Health Crisis Intervention*, (2014) Disability Rights California, p. 37.)

Many law enforcement agencies throughout the state have augmented their training programs to provide officers with additional training after the academy in responding to people with mental health disabilities in crisis. Augmented training varies widely but generally includes information on recognizing the symptoms of a psychiatric disability and methods for how to interact with an individual in crisis, including specific de-escalation techniques. Topics covered in a typical Crisis Intervention Training (CIT) program are not otherwise mandated in California or required at any level of officer training. Police chiefs and senior officers consistently report that their personnel are better equipped at handling mental health crisis calls after participating in a CIT program. Furthermore, jurisdictions in which officers receive CIT report fewer injuries, fewer incidents requiring use of force, and better outcomes for their officers and community members. (*An Ounce of Prevention: Law Enforcement Training Mental Health Crisis Intervention*, (2014) Disability Rights California, p. 38-39.)

- 4) **Firefighter Contact with Individuals with Mental Health Issues:** As first responders, firefighters are dealing with emergency situations which extend beyond putting out fires.

“In 1980, according to the National Fire Protection Association, the nation's 30,000 fire departments responded to 10.8 million emergency calls. About 3 million were classified as fires. By 2013, total calls had nearly tripled to 31.6 million, while fire calls had plummeted to 1.24 million, of which just 500,000 of were actual structure fires. For America's 1.14 million career and volunteer firefighters, that works out to an average of just one structure fire every other year.” <http://www.governing.com/columns/smart-mgmt/col-fire-departments-rethink-delivery-emergency-medical-services.html>

As first responders, firefighters are dealing with a wide range of situations. Firefighters are likely to interact with individuals with mental health issues at a similar rate as law enforcement officers. To the extent firefighters have a better understanding of mental health issues, those contacts are going to result in better outcomes.

- 5) **Argument in Support:** According to *The Los Angeles County Office of the Sheriff*, "Existing law requires the Commission on Peace Officer Standards and Training to establish a continuing education classroom course related to law enforcement interaction with mentally disabled persons and to make the course available to law enforcement agencies in California. Firefighters, being first responders come into contact with mentally disabled persons as frequently as law enforcement officers. However, the amount of training firefighters receive is minimal, if any at all.

"This bill would authorize the commission to make the course available to the State Fire Marshal. Making the course available to the Fire Marshal allows training on topics such as stigmatization and de-escalation tactics to be specifically tailored for firefighters.

"Very often, firefighters, not law enforcement, are the first responders to any emergency scene and this training will ensure that firefighters can respond to mental health emergencies appropriately. Treating a mental health emergency solely as a criminal issue can have serious unintended consequences and we must ensure that firefighters are equipped to handle a range of emergencies."

6) **Related Legislation:**

- a) AB 1227 (Cooper), of the 2015-16 Legislative Session, would have required POST to study and submit a report to the Legislature, on or before December 31, 2017, that assessed the statuses of specified training courses on mental health issues. AB 1227 was held in Assembly Appropriations.
 - b) SB 29 (Beall), Chapter 469, Statutes of 2015, requires law enforcement field training officers to have at least 8 hours of crisis intervention behavioral health training.
 - c) SB 11 (Beall), Chapter 468, Statutes of 2015, requires POST to update its basic training course related to law enforcement interaction with persons with mental illness to include at least 15 hours.
- 7) **Prior Legislation:** AB 1718 (Hertzberg), Chapter 95, Statutes of 2000, Required that POST establish and keep updated a continuing education classroom training course relating to law enforcement intervention with developmentally disabled and mentally ill persons and that the course be developed in consultation with specified groups and entities.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Sheriff's Office (Sponsor)
Arc and United Cerebral Palsy California Collaboration

Association of Regional Center Agencies
California Council of Community Behavioral Health Agencies
California Fire Chiefs Association
California Public Defenders Association
California State Sheriffs' Association
Disability Rights California
Fire Districts Association of California
League of California Cities
Mental Health America of California
National Association of Social Workers, California Chapter
North Los Angeles County Regional Center
State Council on Developmental Disabilities

Opposition

None

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Date of Hearing: June 14, 2016
Chief Counsel: Gregory Pagan

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

SB 1235 (De León) – As Amended May 17, 2016

SUMMARY: Creates a new regulatory framework for the purchase and sale of ammunition in California. Specifically, **this bill:**

- 1) Requires the Department of Justice (DOJ) to maintain ammunition vendor license information, ammunition transaction information, and authorizes specified agencies, officials, and officers to disseminate the name of a person and specified ammunition purchase information by that person if the subject of the record has been arraigned, is being prosecuted, or is serving a sentence for conviction of domestic violence or is the subject of a protective order, as specified.
- 2) Defines "ammunition" to mean one or more loaded cartridges consisting of primer case, propellant, and with one or more projectiles. Ammunition does not include blanks.
- 3) States that effective January 1, 2018, "ammunition vendor" means any person, firm, corporation, dealer, or any other business that has a current ammunition vendor license, as specified.
- 4) Requires commencing January 1, 2019, that information contained in the Armed Prohibited Persons File (APPS) be used to cross-reference persons who attempt to acquire ammunition to determine if those persons fall within a class of persons who are prohibited from owning or possessing ammunition.
- 5) Provides that any person, corporation, firm, or other business enterprise who supplies, delivers, sells, or gives possession or control of, any ammunition to any person who the person, corporation, firm, or other business enterprise knows or has cause to believe is not the actual purchaser or transferee or has cause to believe is not the actual purchaser or transferee of the ammunition, with knowledge or cause to believe that the ammunition is to be subsequently sold or transferred to a person who is prohibited from owning, possessing, or having under custody or control any ammunition or reloaded ammunition is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.
- 6) States that commencing January 1, 2018, only an ammunition vendor that is licensed by the DOJ shall be authorized to sell ammunition in this state, except for the following entities:
 - a) A commercial hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;

- b) A domesticated game bird hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;
 - c) A domesticated migratory game bird shooting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;
 - d) A nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity provided that the ammunition is used and consumed during the shooting or hunting event conducted by that nonprofit or public benefit corporation;
 - e) A target facility that holds a business or regulatory license provided that the ammunition is at all times kept within the facility's premises and used on the premises; and,
 - f) A person who sells no more than 50 rounds of ammunition to one vendor in one month or cumulatively sells no more than 250 rounds per year to vendors in this state.
- 7) Authorizes the DOJ to issue ammunition vendor licenses pursuant to this article. The department shall, commencing July 1, 2017, accept applications for ammunition vendor licenses. The department shall issue a license or deny the application for a license within 60 days of receipt of the application in the first two years of implementation, and within 30 days thereafter. If the application is denied, the department shall inform the applicant of the reason for denial in writing. The ammunition vendor license shall be issued in a form prescribed by the Attorney General and shall be valid for a period of one year. The license shall allow the licensee to sell ammunition from a fixed location, except as specified.
- 8) Requires the DOJ to issue ammunition vendor licenses to ammunition vendors who are not prohibited by law from possessing, receiving, owning, or purchasing a firearm and possess a certificate of eligibility (COE), and requires any agent or employee of a vendor who handles, sells, or delivers ammunition to possess a COE.
- 9) Requires the DOJ, upon request, to issue ammunition vendor licenses to the following:
- a) Firearms dealers;
 - b) Federal firearms licensees;
 - c) A gunsmith;
 - d) A wholesaler, and,
 - e) A licensed manufacturer or importer of firearms or ammunition.
- 10) States that commencing July 1, 2019, the department shall electronically approve the purchase or transfer of ammunition through a vendor, except as otherwise specified. This approval shall occur at the time of purchase or transfer, prior to the purchaser or transferee taking possession of the ammunition.

- 11) Provides that to determine if the purchaser or transferee is eligible to purchase or possess ammunition, the department shall cross-reference the ammunition purchaser's or transferee's name, date of birth, current address, and driver's license or other government identification number with the information maintained in the Automated Firearms System (AFS). If the purchaser's or transferee's information does not match an AFS entry, the transaction shall be denied. If the purchaser's or transferee's information matches an AFS entry, the department shall determine if the purchaser or transferee falls within a class of persons who are prohibited from owning or possessing ammunition by cross-referencing the APP File. If the purchaser or transferee is prohibited from owning or possessing a firearm, the transaction shall be denied.
- 12) Prohibits a vendor from providing a purchaser or transferee ammunition without department approval. If a vendor cannot electronically verify a person's eligibility to purchase or possess ammunition via an Internet connection, the DOJ shall provide a phone line to verify eligibility. This option is available to ammunition vendors who can demonstrate legitimate geographical and telecommunications limitations in submitting the information electronically, and who are approved by the DOJ to use the phone line verification.
- 13) Allows the DOJ shall recover the reasonable cost of regulatory and enforcement activities related to this article by charging ammunition purchasers and transferees a per-transaction fee not to exceed one dollar (\$1), provided, however, that the fees may be increased at a rate not to exceed any increases in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations, not to exceed the reasonable regulatory and enforcement costs. The fees shall be deposited in the Ammunition Special Account, to be available upon appropriation by the Legislature, for use by the Department of Justice for the purpose of implementing and enforcing this Act.
- 14) Provides that the following are exempt from the ammunition purchase requirements:
 - a) Firearms dealers;
 - b) A person on the centralized list of federal firearms licensees;
 - c) A gunsmith;
 - d) A wholesaler;
 - e) A licensed manufacturer or importer of firearms or ammunition;
 - f) A person whose licensed premises are outside the state, and the person is federally licensed as a dealer or collector of firearms;
 - g) A person who is a federally licensed as a collector of firearms whose licensed premises are within the state and who has a current COE issued by DOJ;
 - h) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the ammunition, written authorization from the head of the agency authorizing the transaction is presented to the

person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency, or designee, by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed;

- i) A properly identified sworn federal, state, or local peace officer;
- j) A target facility that holds a business or regulatory license;
- k) A person who purchases or receives ammunition at a target facility holding a business license or other regulatory license, provided that the ammunition is at all times kept within the facility's premises and used on the premises.
- l) A commercial hunting club, as defined;
- m) A domesticated game bird hunting club, as defined;
- n) A domesticated migratory game bird hunting club, as defined;
- o) A domesticated migratory game bird shooting club, as defined;
- p) A participant at a shooting or hunting event conducted by any of the following:
 - i) A commercial hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;
 - ii) A domesticated game bird hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;
 - iii) A domesticated migratory game bird shooting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;
- q) A nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity;
- r) A nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity provided that the ammunition is used and consumed during the shooting or hunting event conducted by that nonprofit or public benefit corporation;
- s) A peace officer, retired peace officer, or holder of a concealed weapons permit who is authorized to carry a loaded weapon;
- t) A holder of a special weapons permit issued by the DOJ;

- u) A holder of a valid entertainment firearms permit issued by the DOJ; and,
 - v) A person who is not prohibited from purchasing or possessing a firearm who has been approved for a single ammunition transaction or purchase.
- 15) States that a vendor shall not permit an employee who the vendors knows or reasonably should know is a person that is prohibited from purchasing or owning a firearm to handle, sell or deliver ammunition in the course and scope of employment.
- 16) Provides that a vendor shall not sell or otherwise transfer ownership of, offer for sale, or otherwise offer to transfer ownership of, display for sale, or display for transfer any ammunition in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor.
- 17) Requires the sale, delivery, or transfer of ammunition to occur only in a face-to-face transaction with the seller, deliverer, or transferor being provided bona fide evidence of identity from the purchaser or other transferee, provided, however, that ammunition may be purchased over the Internet or through other means of remote ordering if an ammunition vendor in this state initially receives the ammunition and processes the transfer as required by law. An ammunition vendor is required to promptly and properly process those transactions. An ammunition vendor may charge a fee to process the transfer not to exceed ten dollars (\$10) per transaction. An ammunition vendor is not required to house ammunition orders longer than 30 days.
- 18) Provides that the following persons are exempt from the ammunition sales requirements:
- a) Firearms dealers;
 - b) A person on the centralized list of federal firearms licensees;
 - c) A gunsmith;
 - d) A wholesaler;
 - e) A licensed manufacturer or importer of firearms or ammunition;
 - f) A person whose licensed premises are outside the state, and the person is federally licensed as a dealer or collector of firearms;
 - g) A person who is a federally licensed as a collector of firearms whose licensed premises are within the state and who has a current COE issued by DOJ;
 - h) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency, or designee, by which the purchaser, transferee, or person otherwise acquiring ownership is

employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed;

- i) A properly identified sworn federal, state, or local peace officer;
- j) A target facility that holds a business or regulatory license;
- k) A commercial hunting club, as defined;
- l) A domesticated game bird hunting club, as defined;
- m) A domesticated migratory game bird hunting club, as defined;
- n) A domesticated migratory game bird shooting club, as defined;
- o) A nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity;
- p) A consultant-evaluator; and,
- q) A contract or common carrier or an authorized agent or employee thereof.

19) Requires that ammunition sales be conducted at the location specified in the license, but a vendor may sell ammunition at a gun show or event, as specified.

20) Provides that when neither party to an ammunition sales is a licensed vendor, the following shall apply:

- a) The seller shall deliver the ammunition to a vendor to process the transaction.
- b) The vendor shall then promptly and properly deliver the ammunition to the purchaser, if the sale is not prohibited, as if the ammunition were the vendor's own merchandise.
- c) If the vendor cannot legally deliver the ammunition to the purchaser, the vendor shall forthwith return the ammunition to the seller. This return is not subject to Section 30356.
- d) The vendor may charge the purchaser an administrative fee to process the transaction, not to exceed ten dollars (\$10) per transaction processed.
- e) A person selling ammunition pursuant to this section is exempt from the requirement to be licensed as an ammunition vendor.

21) States that notwithstanding the purchase and sale requirements of this act, the sale of ammunition between the following is authorized so long as it does not exceed 50 rounds per month:

- a) The sale of ammunition between licensed hunters while engaged in lawful hunting activity.
 - b) The sale of ammunition between immediate family members, spouses, or registered domestic partners.
- 22) Provides that commencing July 1, 2019, a resident of this state shall not bring into this state any ammunition that he or she purchased from outside this state unless he or she first has that ammunition delivered to an ammunition vendor in this state for delivery to the resident, as specified.
- 23) Provides that the following persons are exempt from the requirements related to bringing into this state any ammunition:
- a) Firearms dealers;
 - b) A person on the centralized list of federal firearms licensees;
 - c) A gunsmith;
 - d) A wholesaler;
 - e) A licensed manufacturer or importer of firearms or ammunition;
 - f) An ammunition vendor;
 - g) A person who is a federally licensed as a collector of firearms whose licensed premises are within the state and who has a current COE issued by DOJ;
 - h) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency, or designee, by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed;
 - i) A properly identified sworn federal, state, or local peace officer;
 - j) A contract or common carrier or an authorized agent or employee thereof, when acting in conformance of federal law;
 - k) A person who purchases the ammunition from an immediate family member, spouse, or registered domestic partner if the person brings or transports into this state no more than 50 rounds.

- l) The executor or administrator of an estate that includes ammunition.
 - m) A person that at the time he or she acquired the ammunition was not a resident of this state;
 - n) Ammunition that is imported into this country, as specified;
 - o) A licensed hunter who purchased the ammunition outside of this state for use in a lawful hunting activity that occurred outside of this state if the person brings or imports no more than 50 rounds into this state and the ammunition is designed and intended for use in the firearm the hunter used in that hunting activity.
 - p) A person who attended and participated in an organized competitive match or league competition that involves the use of firearms in a match or competition; sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms, and the person brings or imports into this state no more than 50 rounds of ammunition designed and intended to be used in the firearm the person used in the match or competition.
- 24) Provides that commencing January 1, 2019, a vendor shall not sell or otherwise transfer ownership of any ammunition without, at the time of delivery, legibly recording the following information:
- a) The purchaser's full name;
 - b) The purchaser's or transferee's driver's license or other identification number and the state in which it was issued;
 - c) The date of the sale or other transaction;
 - d) The brand, type, and amount of ammunition sold or otherwise transferred;
 - e) The name of the salesperson who processed the sale or other transaction;
 - f) The purchaser's or transferee's full residential address and telephone number; and,
 - g) The purchaser's or transferee's date of birth.
- 25) States that commencing July 1, 2019, the vendor shall electronically submit to the DOJ ammunition purchase information in a format and a manner prescribed by the department for all sales or other transfers of ammunition. The department shall retain this information for two years in a database to be known as the Ammunition Purchase Records File for the sole purpose of aiding and assisting local and state law enforcement agencies in an active investigation. The vendor shall not share any of the ammunition purchase information for any reason other than for authorized law enforcement purposes. The information in the Ammunition Purchase Records File may be accessed by a state or local law enforcement agency only if the department is provided a case number or other sufficient information as determined by the department that indicates an active investigation, and the information

sought is for the investigation or prosecution of that case.

- 26) Provides that in the case a vendor cannot electronically transmit the required ammunition purchase information via an Internet connection, the DOJ shall provide a telephone line to submit the information the vendor can demonstrate legitimate geographic and telecommunications limitations to submitting the information electronically, and the DOJ approves the vendor's use of the telephone line.
- 27) Provides that the following persons are exempt from the electronic submission of ammunition purchase information:
- a) Firearms dealers;
 - b) A person on the centralized list of federal firearms licensees;
 - c) A gunsmith;
 - d) A wholesaler;
 - e) A licensed manufacturer or importer of firearms or ammunition;
 - f) An ammunition vendor;
 - g) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency, or designee, by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed;
 - h) A properly identified sworn federal, state, or local peace officer;
 - i) A target facility that holds a business or regulatory license;
 - j) A commercial hunting club, as defined;
 - k) A domesticated game bird hunting club, as defined;
 - l) A domesticated migratory game bird hunting club, as defined;
 - m) A domesticated migratory game bird shooting club, as defined;
 - n) A participant at a shooting or hunting event conducted by any of the following:

- i) A commercial hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;
 - ii) A domesticated game bird hunting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;
 - iii) A domesticated migratory game bird shooting club, as defined, provided the ammunition is used and consumed on the licensed premises while engaged in lawful hunting activity;
 - o) A nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity;
 - p) A participant at a shooting or hunting event conducted by a nonprofit mutual or public benefit corporation organized, as specified, that engages in recreational shooting and lawful hunting activity provided that the ammunition is used and consumed during the event.
- 28) Prohibits a vendor from knowingly making a false entry, or failing to make a required entry of ammunition purchase information.
- 29) Provides that any person that violates any requirement related to the sale or purchase of ammunition is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both imprisonment and a fine.

EXISTING LAW:

- 1) Provides that selling any ammunition to a person under the age of 18, or selling ammunition designed and intended for a handgun to a person under the age of 21 is a misdemeanor. (Pen. Code, § 30300.)
- 2) Provides that, except as specified, any person who is prohibited from owning or possessing a firearm is also prohibited from owning, or possessing ammunition. A violation may be punished as either a felony by 16 months, two or three years in state prison or as a misdemeanor by up to one year in the county jail. (Pen. Code, § 30305, subd. (a).)
- 3) Provides that, except as specified, a person enjoined from engaging in activity pursuant to an injunction against that person as a member of a criminal street gang is prohibited from owning or possessing ammunition. Violation of this section is punishable as a misdemeanor. (Pen. Code, § 30305, subd. (b).)
- 4) Provides that supplying, selling, or delivering ammunition to someone that a person knows or reasonably should know is prohibited from owning or possessing ammunition is a misdemeanor punishable by up to one year in the county jail. (Pen. Code, § 30306.)
- 5) Provides that possession of ammunition on school grounds without the written permission of the school district superintendent is prohibited except for persons who have been issued a license to carry a concealed weapon or in limited situations involving law enforcement or

military personnel. Violation of this section is punishable as a misdemeanor. (Pen. Code, § 30310.)

- 6) Prohibits possession of any handgun ammunition designed primarily to penetrate metal or armor. A violation is punishable as either a felony by 16 months, two or three years in county jail or as a misdemeanor by up to one year in the county jail, unless the person found the ammunition and they are not otherwise prohibited from possessing firearms or ammunition, and they are transporting it to a law enforcement agency for disposal. (Pen. Code, § 30315.)
- 7) Provides that manufacturing, importing, or selling handgun ammunition designed primarily to penetrate metal or armor is a felony, punishable by 16 months, two or three years in state prison and a fine of up to \$5,000, or both. (Pen. Code, § 30320.)
- 8) Provides, commencing February 1, 2011, a vendor of handgun ammunition shall not sell or transfer handgun ammunition without at the time of purchase legibly recording the following information on a form prescribed by the DOJ:
 - a) The date of the transaction;
 - b) The transferee's driver's license or other identification number and the state in which it was issued;
 - c) The brand, type, and amount of ammunition transferred;
 - d) The purchaser or transferee's signature;
 - e) The name of the salesperson who processed the sale or transaction;
 - f) The right thumbprint of the purchaser or transferee on the prescribed form;
 - g) The purchaser's or transferee's full residential address and telephone number; and,
 - h) The purchaser's or transferee's date of birth. (Pen. Code § 30352, subd. (a).)
- 9) Requires, commencing February 1, 2011, the records of the sale or transfer of handgun ammunition shall be maintained on the premises of the vendor for at least five years from the date of the recorded transfer. (Pen. Code § 30355.)
- 10) Requires, commencing February 1, 2011, the handgun ammunition vendor's records of sale shall be subject to inspection by specified peace officers engaged in an investigation where the records may be relevant, is seeking information about prohibited persons, or is engaged in ensuring compliance with laws relating to firearms or ammunition. (Pen. Code § 30355.)
- 11) Provides, commencing February 1, 2011, the sale or transfer of handgun ammunition may only occur in a face-to-face transaction with the seller or transferor being provided with bona fide evidence of identity from the purchaser. (Pen. Code, § 30312, subd. (a).)

- 12) Provides that "it shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver - any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than 18 years of age and, if the firearm or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than 21 years of age" [18 US Code, § 922, subd. (b)(1).]

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, " In 2009, AB 962 (De León), the Anti-Gang Neighborhood Protection Act, was enacted to bring accountability to the sale of handgun ammunition and deter prohibited individuals from purchasing ammunition. Unfortunately, in an attempt to upend the law, the National Rifle Association and others challenged it in court. The resulting case, *Parker v. California*, has prevented the implementation of the law as we wait for the California Supreme Court to make an ultimate decision. As a result of the court-issued injunction applied to AB 962, today any criminal can walk into a Big 5 or Wal-Mart and purchase ammunition, no questions asked. It continues to be easier in California to purchase a pallet of ammunition than a pack of cigarettes or allergy medicine. There is no way to track who is buying and selling bullets and this blind eye approach is putting ammunition in the hands of killers.

" Senate Bill 1235 offers a comprehensive approach to ammunition sales to ensure that criminals and other dangerous individuals cannot purchase ammunition. This proposal strengthens the ammunition regulatory framework by requiring vendors to obtain a state license to sell ammunition, log information about ammunition transactions, and screen the ammunition purchaser for any prohibitions at the point of sale—helping prevent dangerous individuals from purchasing ammunition.

"The ammunition background check proposed under this bill relies on existing firearm registration records rather than require purchasers to apply for a permit, pay a significant application fee, and renew the permit. This approach is more practical than previous proposed legislation and the ballot initiative that is currently being considered because it does not require gun owners to take additional steps to buy ammunition. It is also more cost-effective for the Department of Justice to implement as it will require significantly fewer personnel to operate.

"Nevertheless, the goal remains the same—to make ammunition accessible only to lawful gun owners, and not dangerous criminals."

- 2) **AB 962 and the Ruling in *Parker v. State of California, et al.*:** AB 962 (De León), Chap. 628, Statutes of 2009, created several new requirements regarding handgun ammunition sales. These include requiring that handgun ammunition sellers obtain personal identification information from buyers and retain that information for inspection by law enforcement upon request, (Penal Code Sections 30345, et seq.) and that all delivery of handgun ammunition take place in a face-to-face transaction (prohibiting direct sales over the internet). (Penal Code Section 30312.) On January 31, 2011, a Superior Court in Fresno ruled that the definition of "handgun ammunition" contained in sections 12060(b) and 12318(b)(2) (now

renumbered as section 16650) was unconstitutionally vague, rendering invalid the provisions of sections 12060, 12061 (now renumbered as sections 30345, et seq.) and 12318. Each of these sections were enacted pursuant to AB 962. As a result of this finding the Court enjoined the State Attorney General from enforcing those statutes. (*Parker v. State of California, et al.*, Fresno County Superior Court, Case No. 10 CECG 02116, Order Denying Plaintiff's Motion for Summary Judgment and Granting In Part and Denying In Part Defendant's Motion for Summary Adjudication, , pages 4, 11-17.)

The Court stated: Because the language of the definition of "handgun ammunition" fundamentally requires each law enforcement officer to make a subjective determination as to whether or not the ammunition at issue is ammunition "principally for use" in a handgun and then subjectively apply their own definition to the situation before them, the definition of "handgun ammunition" established in section 12060(b) and 12318(b)(2) gives unlimited discretion to each individual law enforcement officer to determine arbitrarily if the ammunition at issue is "handgun ammunition" and to apply their particular classification of "handgun ammunition" or not to the specific issue before them. (*Id* at pages 14-15.)

- 3) **Effect of this Bill on Parker:** This bill would amend several provisions of current law regarding ammunition sales, which were the subject of the Superior Court ruling in *Parker*. Specifically, this bill defines ammunition to mean "to mean one or more loaded cartridges consisting of primer case, propellant, and with one or more projectiles", which would, in effect, apply the ammunition transfer requirements to all forms of ammunition. This would eliminate the vagueness issue cited by the Court in *Parker*. The policy rationale for creating these requirements on the transfer of ammunition, i.e., ensuring that ammunition is not sold to people who are prohibited from possessing it, applies equally to all forms of ammunition because those who are prohibited from owning ammunition are prohibited from owning all types of ammunition.
- 4) **Argument in Support:** According to the *California Chapters of the Brady Campaign to Prevent Gun Violence*, "Ammunition sales are virtually unregulated in California. The buyers and sellers of ammunition are unknown. There is currently no ability to prevent individuals who, under existing law, are prohibited from purchasing firearms and ammunition from buying ammunition. Dangerous individuals armed with illegal guns can easily purchase ammunition in California.

"SB 1235 authorizes the Department of Justice (DOJ) to issue ammunition vendor licenses to legitimate businesses as specified in the bill. Beginning on January 1, 2018, an ammunition vendor must be licensed in order to sell ammunition. A license would be valid for one year and DOJ would be authorized to charge a fee to cover the cost of issuance. DOJ will maintain a registry of all licensed ammunition vendors. An ammunition vendor registry is important because the State cannot even begin to regulate the sale of ammunition until it is known who is selling ammunition.

"Commencing July 1, 2019, SB 1235 requires ammunition vendors to electronically submit information about a purchaser of ammunition to DOJ, which would cross-reference the Automated Firearms System (AFS) and the Prohibited Armed Persons File (APPS). If the ammunition purchaser has a firearm listed in AFS and has not fallen into APPS because he or she subsequently became prohibited, then the sale would immediately proceed. If an ammunition purchaser does not have a firearm listed in AFS, the person may obtain an

ammunition transaction license from DOJ, which would include a background check, and be approved for a single ammunition transaction.”

- 5) **Argument in Opposition:** According to the *California Rifle and Pistol Association*, "SB 1235 would require the Attorney General to maintain information about ammunition transactions and ammunition vendor licenses. This bill would also authorize specified agencies, officials, and officers to disseminate the name of a person and the fact of any ammunition purchases by that person, as specified, if the subject of the record has been arraigned, is being prosecuted, or is serving a sentence for domestic violence or is the subject of specified protective orders. If passed and enacted into law, SB 1235 would require the collection and reporting of personal consumer information for all ammunition purchases throughout the state. In doing so, SB 1235 would impose drastic and unjustified restrictions on law-abiding gun owners while doing nothing to reduce violent crime.

“First and foremost, the reporting of ammunition sales has already been tried -- and failed -- at the federal level. Throughout the 1980s, Congress considered repeal of a federal ammunition regulation package that required, among other things, reporting of ammunition sales. In 1986, the director of the federal Bureau of Alcohol, Tobacco and Firearms supported eliminating the reporting requirement, stating: ‘The Bureau and the [Treasury] Department have recognized that current record keeping requirements for ammunition have no substantial law enforcement value.’ As a result, the Firearms Owners Protection Act of 1986 repealed the ammunition restrictions, with little opposition to the removal of that requirement.

“SB 1235 will similarly fail to reduce violent crime, as a law requiring honest citizens to register each and every ammunition purchase plainly will not deter criminals. Criminals will simply buy the ammunition elsewhere, steal it, purchase it on the black market, reload their own ammunition or use a straw purchaser. It is also important to remember that ammunition, like Kleenex or computer printer ink, is a ‘consumable’. It is intended to be used and discarded. In the case of ammunition, the bullet is usually fired into a dirt berm and the cartridge case finds its way into a recycling bin. Ammunition can be consumed within days, hours, or even minutes after purchase. The Attorney General's ammunition data base will capture (in perpetuity) billions of rounds of ammunition that no longer exist. In some cases the ammunition may “cease to exist” before it is entered in the database. It's hard to imagine what public safety purpose such a program serves.”

6) **Prior Legislation:**

- a) SB 53 (De Leon), of the 2013-2014 Legislative Session, amended existing law regarding sales of handgun ammunition, as defined, to apply to all ammunition, and places additional regulations on the sale, and purchase of ammunition, as specified. SB 53 failed passage on the Assembly Floor
- b) SB 427 (De León), of the 2011-2012 Legislative Session, clarified that ammunition records could not be provided to a non-authorized person or third-party, unless there is written consent of the purchaser. Provided that ammunition vendors must provide local law enforcement written notice of intent to conduct business. Required a court issuing an injunction against gang activity to state whether any or all the defendants are enjoined from possession a firearm. SB 427 was vetoed by the governor.

- c) AB 2358 (De León), of the 2009-2010 Legislative Session, provided that, commencing February 1, 2011, an ammunition vendor shall not provide ammunition purchaser information to any third party without the written consent of the purchaser, and required that any records no longer required to be maintained be destroyed in a manner that protects the purchaser who is the subject of the record. AB 2358 failed passage on the Senate floor.
- d) AB 962 (De Leon), Chapter 628, Statutes of 2009, required, commencing February 1, 2011, that a handgun ammunition vendor obtain a thumb print and other specified information from an ammunition purchaser and requires that the above information be subject to inspection by law enforcement.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chapters of the Brady Campaign to Prevent Gun Violence
California Police Chiefs Association
Los Angeles County Sheriff's Department
Mayor and Sacramento City Council

Opposition

California Rifle and Pistol Association
Firearms Policy Coalition
Gun Owners of California
Crossroads of the West Gun Shows
California Sportsman's Lobby
National Rifle Association
National Shooting Sports Foundation, Inc.
Outdoor Sportsmen's Coalition of California
Safari Club International

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

Date of Hearing: June 14, 2016

Counsel: Sandy Uribe

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

SB 1242 (Lara) – As Amended March 28, 2016
As Proposed to be Amended in Committee

SUMMARY: Retroactively applies the provision of law defining one year as 364 days for the purposes of sentencing. Specifically, **this bill:**

- 1) States that the reduced sentence applies to all convictions entered before the effective date, even final judgments.
- 2) Provides that a person previously sentenced to one year in county jail may file a motion in the trial court requesting to be resentenced to a period not to exceed 364 days.

EXISTING STATE LAW:

- 1) Defines a felony as a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under Penal Code section 1170, subdivision (h), (realignment). (Pen. Code, § 17, subd. (a).)
- 2) States that every other crime or public offense is a misdemeanor except those offenses classified as infractions. (Pen. Code, § 17, subd. (a).)
- 3) States that every offense which is prescribed by any law of the state to be punishable by imprisonment in the county jail up to or not exceeding one year shall be punishable by imprisonment in the county jail for a period not to exceed 364 days. (Penal Code § 18.5)
- 4) Provides that, except where a different punishment is prescribed, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding \$1,000 or by both. (Pen. Code, § 19.)
- 5) Provides that no part of the Penal Code is retroactive, unless expressly so declared. (Pen. Code, § 3.)

EXISTING FEDERAL LAW:

- 1) Lists several categories of crimes which render a non-citizen removable from the United States, including: crimes of moral turpitude; aggravated felony convictions; domestic violence convictions; firearm convictions, and drug convictions. (INA § 237(a)(2), see also 8 U.S.C. § 1227(a)(2).)
- 2) Lists several categories of crimes which will render a non-citizen inadmissible to the United States, including: crimes of moral turpitude; drug convictions; and prostitution convictions.

(INA § 212(a)(2), see also 8 U.S.C. § 1182(a)(2).)

- 3) Provides for enhanced penalties for a non-citizen who reenters the country illegally after being removed due to a conviction for an aggravated felony. (INA § 276(b)(2); see also 8 U.S.C § 1326(b)(2).)
- 4) Renders an asylum applicant statutorily ineligible for political asylum if convicted of an aggravated felony. (INA §§ 208(b)(2); see also 8 U.S.C. § 1158(b)(2).)
- 6) Defines an "aggravated felony" as specified. (INA § 101(a)(43), see also 8 U.S.C. § 1101(a)(43)(F).)

FISCAL EFFECT:

COMMENTS:

- 1) **Author's Statement:** According to the author, "Two years ago SB 1310 (Lara, 2014) aligned the definition of a misdemeanor between state and federal law. While SB 1310 aligned state and federal law on a prospective basis, it did not help those who were convicted of a misdemeanor prior to 2015. Thousands of legal residents are currently living in California with the threat of deportation looming for minor crimes. Many of those people have families and businesses in the state and few ties to their country of origin. SB 1242 will provide on a retroactive basis that all misdemeanors are punishable for no more than 364 days and ensure that legal residents are not deported due to previous discrepancies between state and federal law."
- 2) **Retroactive Application of New Statutes:** Penal Code section 3 provides: "No part of [the Penal Code] is retroactive, unless expressly so declared." This means that "[a] new statute is generally presumed to operate prospectively absent an express declaration of retroactivity or a clear and compelling implication that the Legislature intended otherwise." (*People v. Hayes* (1989) 49 Cal.3d 1260, 1274.)

In *In re Estrada* (1965) 63 Cal.2d 740, 744, the California Supreme Court recognized an exception to the general rule of prospective application of statutes and found that an intent for retroactive application is inherent where the Legislature changes the law to mitigate the penalty for a crime. When the Legislature amends a statute to reduce punishment, and does not include a savings clause, courts should apply the amendment retroactively so that the lighter punishment is imposed as to all cases not yet final on the effective date of the statute. (*Id.* at pp. 744-745, 748 .)

"[F]or the purpose of determining retroactive application of an amendment to a criminal statute, a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed." (*People v. Vieira* (2005) 35 Cal.4th 264, 306 [citations and internal quotation marks omitted].)

In 2014, SB 1310 (Lara) reduced the maximum misdemeanor sentence to 364 days. Under the principles discussed above, a defendant who was sentenced before the effective date of the new law, but whose appeal was pending was entitled to the benefit of the new law. However, as drafted, all cases which were final on appeal were not entitled to a modification

in sentence. This bill specifies that change applies retroactively to all cases.

- 3) **Legislative Authority to Make an Amendment Fully Retroactive:** While *Estrada, supra*, 63 Cal.2d 740 requires retroactive application to judgments not yet final, nowhere does it prohibit retroactive application to judgments that are final if that is what the Legislature intended or what the Constitution requires. (*In re Chavez* (2004) 114 Cal.App.4th 989, 1000.)

The Legislature has full authority to make a law fully retroactive. "A final judgment is not immune from the Legislature's power to adjust prison sentences for a legitimate public purpose. (*Chavez, supra*, 114 Cal.App.4th 1000, citing *In re Kapperman* (1974) 11 Cal.3d 542, 547; *People v. Community Release Bd.* (1979) 96 Cal.App.3d 792, 800; and *Way v. Superior Court* (1977) 74 Cal.App.3d 165, 181 (conc. opn. of Friedman, J.).)

This bill provides that change applies retroactively to cases that were final.

- 4) **Immigration Consequences of Criminal Convictions:** In addition to criminal punishment, non-citizens can face immigration consequences as a result of a criminal conviction. Certain criminal convictions will make a non-citizen removable (formerly known as deportation), inadmissible (formerly known as exclusion), or both.

Of significance for purposes of this bill, are "aggravated felonies." (8 U.S.C. § 1101(a)(43)(F), see also INA § 101(a)(43).) The term "aggravated felony" suggests a particularly serious offense. However, after the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, there are hundreds of aggravated felonies. Many offenses are aggravated felonies regardless of the sentence imposed. However, some offenses will be classified as aggravated felonies if the defendant is sentenced to a term of one year or more. This is true even though under California law, the crime is characterized as a misdemeanor, and not a felony.

It should be noted that the federal immigration statute defines the term of imprisonment for a sentence as the "period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment in whole or in part." (8 U.S.C. § 1101(a)(48)(B).) Therefore, a person convicted of a misdemeanor who is sentenced to one year with part of, or even most of, the sentence suspended is still convicted of an aggravated felony for purposes of federal immigration law.

Aggravated felonies have the most severe immigration consequences for non-citizens. Conviction of an aggravated felony can result in removal without a hearing and with no appeal, inadmissibility following removal, increased criminal penalties for illegal re-entry after removal based on conviction of an aggravated felony, ineligibility for asylum, and ineligibility for citizenship.

As noted above, in 2014, SB 1310 (Lara) reduced the maximum misdemeanor sentence to 364 days to prevent misdemeanor offenses from being classed as aggravated felonies for purposes of immigration law. By making this law retroactive to cases that were final when SB 1310 was enacted, it will ensure that persons convicted of misdemeanors prior to 2015 will not face harsher immigration consequences than those receiving the benefit of the new

law.

- 5) **Argument in Support:** According to the *California Attorneys for Criminal Justice* (CACJ), a co-sponsor of this bill, "In 2014, CACJ, along with many other co-sponsors, passed Senate Bill 1310. This bill reduced the maximum possible misdemeanor sentence by one day, from one year to 364 days. This one-day change corrected a glitch between California criminal and federal immigration laws, which had a catastrophic impact on California's families. Immigration law will treat a state misdemeanor as a felony if the misdemeanor has a 365-day (as opposed to 364-day) potential sentence. Without §18.5, one misdemeanor, even with no jail time imposed, causes a lawful permanent resident to become automatically deportable.

"However, the language of SB 1310 did not explicitly state whether the statute applied retroactively. This ambiguity has led to unjust results. Hundreds, if not thousands, of Californians may not benefit from the 2014 change because the statute does not explicitly state its retroactivity. As a result, thousands of families may be torn apart every year due to minor crimes, such as writing a bad check. This is an extremely problematic issue that has negative consequences for families in California.

"By making this statute apply retroactively, this law will save the court time and money from families challenging removal proceedings based on old one-year misdemeanor sentences."

- 6) **Prior Legislation:** SB 1310 (Lara), Chapter 174, Statutes of 2014, reduced the maximum sentence for a misdemeanor from 365 days to 364 days.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice (Co-Sponsor)
 Coalition for Humane Immigrant Rights Los Angeles (Co-Sponsor)
 Immigrant Legal Resource Center (Co-Sponsor)
 Latino Coalition for Healthy Communities (Co-Sponsor)
 Los Angeles District Attorney's Office (Co-Sponsor)
 Mexican American Legal Defense Fund (Co-Sponsor)
 A New PATH
 All of Us or None
 American Civil Liberties Union
 American Friends Service Committee
 American Immigration Lawyers Association
 Asian Americans Advancing Justice
 Asian Law Alliance
 California Civil Liberties Advocacy
 California Immigrant Policy Center
 California Labor Federation
 California Public Defenders Association
 California Rural Legal Assistance Foundation
 Californians for Safety and Justice
 Californians United for a Responsible Budget
 Canal Alliance

Center on Juvenile and Criminal Justice
Central American Resource Center
Centro Laboral de Graton
Community Legal Services in East Palo Alto
Courage Campaign
Day Labor Center – Hayward/Oakland
Drug Policy Alliance
Friends Committee on Legislation of California
Human Rights Watch
Latino Coalition for a Healthy California
Lawyers’ Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners with Children
National Center for Youth Law
National Day Laborer Organizing Network
National Immigration Law Center
Pangea Legal Services
Prison Law Office
Project ALOFA
San Quentin Restorative Justice Program
Santa Ana Boys and Men of Color
Santa Clara County Public Defender’s Office
Services, Immigrant Rights & Education Network
Service Employees International Union
Silicon Valley De-Bug
Southeast Asia Resource Action Center
United Farm Workers Foundation

Opposition

None

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

Amendments Mock-up for 2015-2016 SB-1242 (Lara (S))

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

Mock-up based on Version Number 98 - Amended Senate 3/28/16
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 18.5 of the Penal Code is amended to read:

18.5. (a) Every offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to or not exceeding one year shall be punishable by imprisonment in a county jail for a period not to exceed 364 days. ~~A person who was convicted of an offense punishable by imprisonment in a county jail for up to or not exceeding one year prior to the effective date of Chapter 174 of the Statutes of 2014 and who was sentenced to county jail for one year is deemed, for all purposes, to have been sentenced to county jail for 364 days.~~ **This section shall apply retroactively, whether or not the case was final as of the date this section was enacted.**

(b) A person who was sentenced to a term of one year in a county jail prior to the effective date of this section may file a motion before the trial court that entered the judgment of conviction in the case to have the term of the sentence modified to the maximum term specified in subdivision (a).

Date of Hearing: June 14, 2016
Counsel: David Billingsley

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

SB 1324 (Hancock) – As Amended March 28, 2016

SUMMARY: Finds and declares that the purposes of imprisonment for crime include rehabilitation. Specifically, **this bill:**

- 1) Finds and declares that the purposes of imprisonment for crime include rehabilitation, in addition to punishment.
- 2) Finds and declares that these purposes are best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances, and a correctional treatment program designed to address the particular criminogenic needs of offenders.
- 3) States that the mission of the Department of Corrections and Rehabilitation (CDCR) is to promote public safety by providing a safe and constructive prison environment that fosters positive and enduring behavioral change among offenders, both in prison and after their return to the community.

EXISTING LAW:

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

- 5) States that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. (Pen. Code 1170, subd. (b).)
- 6) Species that in determining the appropriate term, the court may consider the record in the case, the probation officer's report, other reports, including reports received, as specified, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. (Pen. Code 1170, subd. (b).)
- 7) States that the court shall select the term which, in the court's discretion, best serves the interests of justice. (Pen. Code 1170, subd. (b).)
- 8) Provides that the statute authorizing discretion of courts to sentence to different terms remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date. (Pen. Code, § 1170, subdivision (i).)
- 9) Finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. (Pen. Code, § 1202.7.)
- 10) Specifies that "probation" means "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer." (Pen. Code, § 1203(a).)
- 11) Specifies that "conditional sentence" means "the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer." (Pen. Code, § 1203(a).)
- 12) Provides that the court, in granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those terms and conditions as it shall determine. (Pen. Code, § 1203.1.)
- 13) States that the court may impose and require any or all of the terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done and for the rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail, as specified. (Pen. Code, § 1203.1, subd. (j).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The mission of CDCR is to promote public safety. This mission can be accomplished only by providing a safe and constructive prison environment. If offenders are expected to change, and if reductions in recidivism are demanded by policymakers and the public, environments that foster positive and enduring behavioral change among offenders must be created. This cannot be done without skilled, committed and supported staff.

"Prisons can be extremely stressful work environments. Correctional fatigue is a very real issue, demonstrated by a high officer suicide rate, alcohol abuse, family strife, physical illness, and professional misconduct. As California's criminal justice systems are retooled to reduce the prison population and increase effective programming for offenders in prison, addressing issues core to the well-being and effectiveness of correctional staff is essential. Staff preparation and training is critically important in creating positive environments for change. Rehabilitation does not happen in a vacuum – it takes staff to make it materialize, not only those who do the programs but those who help create a prison environment conducive to programming and, ultimately, rehabilitation.

"SB 1324 institutes a strong and well-defined mission for the California Department of Corrections and Rehabilitation (CDCR) and its employees consistent with the goals of promoting public safety through professional staff and a safe and constructive correctional rehabilitation environment. This measure also updates existing law regarding the purpose of imprisonment to include rehabilitation and effective rehabilitation programming."

- 2) **California Department of Corrections and Rehabilitation:** The CDCR is responsible for the incarceration of adult felons, including the provision of training, education, and health care services. As of February 4, 2015, CDCR housed about 132,000 adult inmates in the state's prison system. Most of these inmates are housed in the state's 34 prisons and 43 conservation camps. About 15,000 inmates are housed in either in-state or out-of-state contracted prisons. The department also supervises and treats about 44,000 adult parolees and is responsible for the apprehension of those parolees who commit new offenses or parole violations. In addition, about 700 juvenile offenders are housed in facilities operated by CDCR's Division of Juvenile Justice, which includes three facilities and one conservation camp. (Legislative Analyst's Office Analysis of the Governor's 2016-17 Proposed Budget.)
- 3) **CDCR and Rehabilitation:** In 2005, the Department of Corrections was changed to the Department of Corrections *and Rehabilitation*. (Gov. Code, § 12838.) That name change reflected a rededication to the mission of rehabilitation at the state level. CDCR currently provides a range of rehabilitative services to state prison inmates and parolees.

The **Division of Rehabilitative Programs (DRP)** is a branch within the California Department of Corrections and Rehabilitation. DRP describes their role within CDCR as follows:

Our mission, as part of CDCR, is to help offenders leave prison with better job or career skills, education, life skills, and confidence, so they can succeed in their futures despite past obstacles. To accomplish this, DRP provides numerous rehabilitative programs and services to both prison inmates and parolees. Evidence shows successful rehabilitation is

good for communities in a multitude of ways, including a significant reduction in criminal recidivism. <http://www.cdcr.ca.gov/rehabilitation/>

DRP's rehabilitative programming includes educational opportunities, substance abuse, treatment, and vocational training among a number of other areas.

- 4) **The Criminal Justice System Has Increased the Use of Custodial Alternatives in Recent Years to Promote Rehabilitation:** In the wake of prison overcrowding and Criminal Justice Realignment, there has been a focus at every level of the criminal justice system on alternatives to custody and evidence based practices to reduce recidivism. To that end, criminal courts are incorporating more sentencing options that do not involve custody. Frequently, such sentencing approaches attempt to address the underlying issues connected to the defendant's criminal behavior.

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

- 5) **Argument in Support:** According to *SEIU Local 1000*, "In 2005, many of the state's criminal justice programs were reorganized with a greater emphasis given to rehabilitative programs. However, under Section 1170(a)(1) of the Penal Code, the purpose of imprisonment for crime is punishment. This bill broadens the mission of CDCR to go beyond punishment to also include rehabilitation.

"Over the past several years, the teachers and librarians, who are members of SEIU and work in the state prisons, have seen the slow evolution of the department back to an earlier era when rehabilitation was emphasized rather than punishment. As the prison population stabilizes, there is now greater ability to intervene in an inmate's life and provide needed rehabilitative services. Over 60% of inmates read at a ninth grade level or below. Even though recidivism has been shown to be reduced by almost 20% if an inmate has received a job skill that will make him/her employable upon release there are only 8,400 vocation education slots currently available for the nearly 137,000 inmates. Providing both academic and vocational skills is an important part of rehabilitating an inmate so they can become productive citizens when they reenter society following imprisonment."

- 6) **Related Legislation:**

- a) AB 2590 (Weber), finds and declares that the purpose of sentencing is public safety achieved through accountability, rehabilitation, and restorative justice. AB 2590 is awaiting a committee hearing in the Senate Public Safety Committee.

7) Prior Legislation:

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

REGISTERED SUPPORT / OPPOSITION:**Support**

California Catholic Conference
California Public Defenders Association
SEIU Local 1000

Opposition

None

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

Date of Hearing: June 14, 2016
Chief Counsel: Gregory Pagan

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

SB 1330 (Galgiani) – As Amended May 24, 2016

SUMMARY: Clarifies that an "at risk" missing person includes a person that is cognitively impaired or developmentally disabled for the purposes of a "Be On the Look-Out" bulletin, and deletes the requirement that law enforcement exhaust all available resources before activating a "Silver Alert" for a missing person.

EXISTING LAW:

- 1) Requires the Attorney General (AG) to maintain the Violent Crime Information Center (VCIC) to assist in the identification and the apprehension of persons responsible for specific violent crimes and for the disappearance and exploitation of persons, particularly children and dependent adults. The center is required to assist local law enforcement agencies and county district attorneys by providing investigative information on persons responsible for specific violent crimes and missing person cases. (Pen. Code § 14200.)
- 2) Establishes, upon appropriation of funds by the Legislature, the Violent Crime Information Network (VCIN) within the VCIC to enable the DOJ crime analysts with expertise in child abuse, missing persons, child abductions, and sexual assaults to electronically share their data, analysis, and findings on violent crime cases with each other, and to electronically provide law enforcement agencies with information to assist in the identification, tracking, and apprehension of violent offenders. The VCIN shall serve to integrate existing state, federal, and civilian data bases into a single comprehensive network. (Pen. Code § 14201.)
- 3) Mandates the AG to establish and maintain an automated violent crime method of operation system to facilitate the identification and apprehension of persons responsible for murder, kidnap, including parental abduction, false imprisonment, or sexual assault. This unit shall be responsible for identifying perpetrators of violent felonies collected from the center and analyzing and comparing data on missing persons in order to determine possible leads which could assist local law enforcement agencies. This unit shall only release information about active investigations by police and sheriffs' departments to local law enforcement agencies. (Pen. Code § 14203, subd. (a).)
- 4) Requires the AG to establish and maintain a computer system designed to effect an immediate law enforcement response to reports of missing persons. This system must include an active file of information concerning persons reported to it as missing and who have not been reported as found. The computer system is to be made available to law enforcement agencies. However, the AG shall not release the information if the reporting agency requests the AG in writing not to release the information because it would impair a criminal investigation. (Pen. Code § 14204.)

- 5) Requires the AG to establish the Missing and Exploited Children's Recovery Network, an automated computerized system that has the capability to electronically transmit to all state and local law enforcement agencies, and all cooperating news media services, either by facsimile or computer modem, a missing child poster that includes the name, personal description data, and picture of the missing child. (Pen. Code § 14206.)
- 6) Requires the VCIC to make accessible to the National Missing and Unidentified Persons System specific information authorized for dissemination and as determined appropriate by the center that is contained in law enforcement reports regarding missing or unidentified persons. (Pen. Code § 14209.)
- 7) Requires all local police and sheriffs' departments to accept any report, including any telephonic report, of a missing person, including runaways. Local police and sheriffs' departments are required to give priority to the handling of these reports over the handling of reports relating to crimes involving property. In cases where the person making a report of a missing person or runaway, contacts the California Highway Patrol (CHP), the CHP may take the report, and must immediately advise the person making the report of the name and telephone number of the police or sheriff's department having jurisdiction of the residence address of the missing person and of the name and telephone number of the police or sheriff's department having jurisdiction of the place where the person was last seen. If the missing person is under 16 years of age, or there is evidence that the person is at risk, the department shall broadcast a "Be On the Look-Out" bulletin within its jurisdiction. (Pen. Code, § 14211, subs. (a)(b)&(d).)
- 8) Requires that if the person reported missing is under 21 years of age, or if there is evidence that the person is at risk, the law enforcement agency receiving the report shall, within two hours after the receipt of the report, transmit the report to the DOJ for inclusion in the VCIC and the National Crime Information Center (NCIC) databases. (Pen. Code, § 14211, subd. (e).)
- 9) Provides that in cases where the report is taken by a department, other than that of the city or county of residence of the missing person or runaway, the department, or division of the CHP taking the report shall, without delay, and, in the case of children under 21 years of age or where there was evidence that the missing person was at risk, within no more than 24 hours, notify, and forward a copy of the report to the police or sheriff's department or departments having jurisdiction of the residence address of the missing person or runaway and of the place where the person was last seen. The report shall be submitted to the department or division of the CHP that took the report to the VCIC. (Pen. Code, § 14211, subd. (g).)
- 10) Defines a "missing person" to include any of the following:
 - a) An at-risk adult;
 - b) A child who was taken, detained, concealed, enticed away, or retained by a parent illegally; and,
 - c) A child who is missing voluntarily or involuntarily or under circumstances not conforming to his or her ordinary habits or behavior and who may be need of assistance.

(Pen. Code, §14215, subd. (a).)

- 11) Defines an "at-risk" to mean there is evidence of, or there are indications of, any of the following:
 - a) The person missing is a victim of a crime or foul play;
 - b) The person missing is in need of medical attention;
 - c) The person missing has no pattern of running away or disappearing;
 - d) The person missing may be a victim of parental abduction; or,
 - e) The person missing may be mentally impaired. (Pen. Code, §14215, subd. (b).)
- 12) Defines a "Silver Alert" as a notification system, that can be activated as specified, and is designed to issue and coordinate alerts with respect to a person 65 years of age or older who is reported missing. (Gov. Code, § 8594.10, subd. (a).)
- 13) Provides that if a person is reported missing to a law enforcement agency, and that agency determines that specified requirements are met, the agency may request the CHP to activate a "Silver Alert". If the CHP concurs that the specified requirements are met, it shall activate a "Silver Alert" within the geographical area requested by the investigating law enforcement agency. (Gov. Code, § 8594.10, subd. (c).)
- 14) States that a law enforcement agency may request a "Silver Alert" be activated if that agency determines that all of the following conditions are met in regard to the investigation of the missing person:
 - a) The missing person is 65 years of age or older;
 - b) The investigating law enforcement agency has utilized all available local resources;
 - c) The law enforcement agency determines that that the person has gone missing under unexplained or suspicious circumstances;
 - d) The law enforcement agency believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or there are other factors indicating that the person may be in peril; and
 - e) There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person. (Gov. Code, § 8594.10, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** "Senate Bill 1330 will clarify that a "Be On the Look-Out" bulletin should be issued when a missing person is cognitively impaired or developmentally disabled. By updating the "Be On the Look-out" bulletin provisions to conform to the Silver Alert provisions, California will be taking another step towards helping individuals with a developmental disability or cognitive impairment to live in safe communities."
- 2) **Argument in Support:** According to the *United Domestic Workers of America/AFSCME Local 3930*, "Today, more than 250,000 people are living with developmental disabilities in California, and about 1 in 20 adults suffer from a severe mental illness. Statistics show that 6 in 10 people with dementia will wander. These populations are among those at the greatest risk of wandering off on their own. Police and sheriff departments are required to broadcast a bulleting within its jurisdiction when there is evidence that a missing person is 'at-risk'. The 'Be On the Look-Out' bulletin is a critical tool used by law enforcement to aid in the recovery of missing persons.

"When a person is missing, every minute is crucial. SB 1130 expands the 'Be On the Look-Out' requirement so that individuals who are cognitively impaired or developmentally disabled are added to the list of 'at-risk' individuals covered. This bill ensures that valuable time is not lost during the recovery of a missing person."

REGISTERED SUPPORT / OPPOSITION:**Support**

United Domestic Workers of America/AFSCME Local 3930

Opposition

None

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

Date of Hearing: June 14, 2016
Counsel: Gabriel Caswell

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

SB 1407 (De León) – As Amended May 11, 2016

SUMMARY: Requires that any person who manufactures or assembles a firearm to apply to the Department of Justice (DOJ) for a serial number, as specified. Specifically, **this bill:**

- 1) Defines “manufacturing” or “assembling” a firearm as “to fabricate or construct a firearm, or to fit together the component parts of a firearm to construct a firearm.”
- 2) Requires, commencing July 1, 2018, requires any person who manufactures or assembles a firearm to:
 - a) Apply to the Department of Justice for a unique serial number or other mark of identification, as specified;
 - b) Within ten days of manufacturing or assembling the firearm, to engrave or permanently affix the unique serial number or other mark to that firearm, as specified; and,
 - c) Notify the DOJ once the serial number or other mark is affixed to the firearm, as specified.
- 3) States that by January 1, 2019, any person who, as of July 1, 2018, owns a firearm that does not bear a serial number, as specified, must:
 - a) Apply to the Department of Justice for a unique serial number or other mark of identification, as specified;
 - b) Within ten days of manufacturing or assembling the firearm, to engrave or permanently affix the unique serial number or other mark to that firearm, as specified; and,
 - c) Notify the DOJ once the serial number or other mark is affixed to the firearm, as specified.
- 4) Specifies, prior to the DOJ providing the person with a unique serial number or other mark, the person must:
 - a) Present proof the applicant is not prohibited by state or federal law;
 - b) Present proof of age and identity. The applicant must be 18 years of age or older to obtain a unique serial number or mark of identification for a firearm that is not a handgun, and must be 21 years of age or older to obtain a unique serial number or mark of identification for a handgun;

- c) Provide a description of the firearm that he or she owns or intends to manufacture or assemble, in a manner prescribed by the department; and
 - d) Have a valid firearm safety certificate or handgun safety certificate.
- 5) Prohibits the sale or transfer of ownership of a firearm manufactured or assembled pursuant to the provisions of this legislation, but allows for the transfer, surrender, or sale of a firearm to a law enforcement agency, as specified.
- 6) Exempts the following from the provisions of this legislation:
- a) A firearm that has a serial number assigned, as specified;
 - b) A firearm made or assembled prior to December 16, 1968, that is not a handgun;
 - c) A firearm which was entered into the centralized registry, as specified, prior to July 1, 2018, as being owned by a specific individual or entity if that firearm has assigned to it a distinguishing number or mark of identification to that firearm by virtue of the department accepting entry of that firearm into the centralized registry; and
 - d) An antique firearm, as specified.
- 7) Provides if the firearm is a handgun, a violation of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment. For all other firearms, a violation of this section is punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment. Each firearm found to be in violation of this section constitutes a distinct and separate offense. This section does not preclude prosecution under any other law providing for a greater penalty.
- 8) Requires the DOJ to maintain electronic records of all persons that receive a unique serial number or other mark, and notify the DOJ that it has been engraved or affixed to the firearm.
- 9) Requires DOJ to maintain and make available upon request information concerning both of the following:
- a) The number of serial numbers issued, as specified; and
 - b) The number of arrests for violations of Section 29180.
- 10) Allows the DOJ to charge a fee for applications to administer the costs of electronic tracking and would authorize the DOJ to use the Dealer Record of Sales (DROS) account to cover actual costs associated with this legislation.

EXISTING FEDERAL LAW:

- 1) Requires licensed importers and licensed manufacturers to identify each firearm imported or manufactured by using the serial number engraved or cast on the receiver or frame of the weapon, in such manner as prescribed by the Attorney General. (18 U.S.C., § 923, subd. (i).)

- 2) Makes it illegal to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm that is not as detectable by walk-through metal detection as a security exemplar containing 3.7 oz of steel, or any firearm with major components that do not generate an accurate image before standard airport imaging technology. (18 U.S.C., § 922, subd. (p).)

EXISTING STATE LAW:

- 1) Prohibits a person, firm, or corporation licensed to manufacture firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code from manufacturing firearms in California, unless the person, firm or corporation is also licensed under California law. This prohibition does not apply to a person licensed under federal law, who manufactures less than 100 firearms a calendar year. (Pen. Code, § 29010.)
- 2) Makes it illegal to change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark of identification on any pistol, revolver, or any other firearm, without first having secured written permission from the Department of Justice (DOJ) to make that change, alteration, or removal. (Pen. Code, § 23900.)
- 3) Allows DOJ, upon request, to assign a distinguishing number or mark of identification to any firearm whenever the firearm lacks a manufacturer's number or other mark of identification, or whenever the manufacturer's number or other mark of identification, or a distinguishing number or mark assigned by the department has been destroyed or obliterated. (Pen. Code, § 23910.)
- 4) Makes it misdemeanor, with limited enumerated exceptions, for any person to buy, receive, dispose of, sell, offer to sell or have possession any pistol, revolver, or other firearm that has had the name of the maker or model, or the manufacturer's number or other mark of identification changed, altered, removed, or obliterated. (Pen. Code, §§ 23920 & 23925.)
- 5) Requires a person be at least 18 years of age to purchase a rifle or shotgun. To purchase a handgun, a person must be at least 21 years of age. As part of the Dealer Record of Sales (DROS) process, the purchaser must present "clear evidence of identity and age" which is defined as a valid, non-expired California Driver's License or Identification Card issued by the Department of Motor Vehicles. (Pen. Code, §§ 27510 & 16400.)
- 6) Requires purchasers to present a handgun safety certificate prior to the submission of DROS information for a handgun or provide the dealer with proof of exemption pursuant to California Penal Code Section 31700. Beginning on January 1, 2015, this requirement was extended to all firearms. (Pen. Code, § 26840.)
- 7) Requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to DOJ to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. (Pen. Code, §§ 28160-28220.)
- 8) Requires firearms to be centrally registered at the time of transfer or sale by way of transfer forms centrally compiled by the DOJ. DOJ is required to keep a registry from data sent to DOJ indicating who owns what firearm by make, model, and serial number and the date thereof. (Pen. Code, § 11106, subsd. (a) & (c).)

- 9) Requires that, upon receipt of the purchaser's information, DOJ shall examine its records, as well as those records that it is authorized to request from the State Department of Mental Health, in order to determine if the purchaser is prohibited from purchasing a firearm because of a prior felony conviction or because they had previously purchased a handgun within the last 30 days, or because they had received inpatient treatment for a mental health disorder, as specified. (Pen. Code, § 28220.)
- 10) Allows DOJ to require the dealer to charge each firearm purchaser a fee not to exceed \$14, except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations. This fee, known as the DROS fee, shall be no more than is necessary to fund specific codified costs. (Pen. Code, § 28225.)
- 11) Permits DOJ to charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations: (Pen. Code, § 28230.)
- a) For the actual costs associated with the preparation, sale, processing, and filing of specified forms or reports required or utilized;
 - b) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the DOJ;
 - c) For the actual costs associated with the electronic or telephonic transfer of information; and
 - d) Any costs incurred by DOJ to implement this section shall be reimbursed from fees collected and charged pursuant to this section.
- 12) Requires that the Attorney General establish and maintain an online database to be known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Pen. Code, § 30000.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Under the Gun Control Act of 1968, it is illegal for an unlicensed person to make a firearm for sale or distribution. However, a loophole in the law allows for the construction of firearms by unlicensed individuals so long as the firearms are made for personal use and are not sold or transferred.

"Unlike all other firearms, homemade guns have no record of existence. These homemade guns are assembled through the purchase of unfinished receivers, or 80 percent completed lower receivers. Unfinished receivers—the engine of a firearm—are not technically considered firearms because of their incomplete stage and thus do not require a serial number

or background check for purchase. With an unfinished receiver, a firearm parts kit, and basic drilling machinery, an individual can assemble a fully functional firearm without being subject to the requirements placed on all other firearms transactions.

"This loophole poses an increasingly daunting challenge for law enforcement. As reported in the *Sac Bee* (December 19, 2015) "California black market surges for 'ghost guns'," there is an emerging black market for these homemade guns, or ghost guns, because they allow criminals and other dangerous individuals to circumvent background checks and other California firearms laws, including the state's assault weapons ban. Because these firearms are assembled privately and do not produce a sales record, no one knows they exist until a crime is committed. Federal and state officials have seized hundreds of these weapons in a series of ongoing undercover operations.

"Another telling example is the June 2013 shooting in Santa Monica by John Zawahri, who killed five people using a gun assembled at home. Although Zawahri was denied a firearms purchase by the Department of Justice because of mental illness concerns, he was able to skirt the law by purchasing a lower receiver online, which he modified to craft the AR-15 style rifle that was used in the shooting. Similarly, just last year, ghost guns were used in a murder-suicide in Walnut Creek.

"The development of technologies that make the manufacture of weapons accessible to the general public raises questions about whether homemade guns are being made by gang members, felons, and other prohibited individuals. Without specific measures that address the dangers posed by these self-made guns, criminals will exploit the technologies at the expense of public safety—as is proving to be the case throughout the state."

- 2) **Applying Serial Numbers to "Ghost Guns":** SB 1407 would require any person who manufactures or assembles a firearm to first obtain a serial number from the DOJ and demonstrate that he or she is not prohibited from owning firearms. Specifically, any person who manufactures or assembles a firearm will be required to:
- a) Obtain a unique serial number or other mark from the Department of Justice prior to making or assembling a firearm;
 - b) Within ten days of making or assembling to engrave or permanently affix the unique serial number or other mark to the firearm; and,
 - c) Notify the Department of Justice once the serial number or other mark is affixed to the firearm.

Prior to the DOJ providing the person with a unique serial number or other mark, the person must:

- a) Present proof the applicant is not prohibited by state or federal law;
- b) Present proof of age and identity. The applicant must be 18 years of age or older to obtain a unique serial number or mark of identification for a firearm that is not a handgun, and must be 21 years of age or older to obtain a unique serial number or mark of identification for a handgun;

- c) Provide a description of the firearm that he or she owns or intends to manufacture or assemble, in a manner prescribed by the department; and
- d) Have a valid firearm safety certificate or handgun safety certificate.

There are no provisions in existing law that prevent a person from buying an 80% lower receiver¹ and then making it into a fully functional firearm. Because 80% lower receivers are not considered firearms, a person purchasing them does not have to go through a federal firearms dealer, and does not have to undergo a background check. According to the author, SB 1407 will help to close this loophole.

- 3) **Lower Receivers:** There are no provisions in existing law that prevents a person from buying an 80% lower receiver and then making it into a fully functional firearm. According to Tactical Machining, “An 80% Receiver is a partially completed piece of material that requires special tooling and skills to be completed and considered a firearm.” (<http://www.tacticalmachining.com/80-lower-receiver.html>.) Because 80% lower receivers are not considered firearms, a person purchasing them does not have to go through a federal firearms dealer, and does not have to undergo a background check. Additionally, according to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) “firearms that began as receiver blanks have been recovered after shooting incidents, from gang members and from prohibited people after they have been used to commit crimes.” (<https://www.atf.gov/firearms/qa/have-firearms-made-unmarked-receiver-blanks-been-recovered-after-being-used-crime>.) “ATF successfully traces crime guns to the first retail purchaser in most instances. ATF starts with the manufacturer and goes through the entire chain of distribution to find who first bought the firearm from a licensed dealer. Because receiver blanks do not have markings or serial numbers, when firearms made from such receiver blanks are found at a crime scene, it is usually not possible to trace the firearm or determine its history, which hinders crime gun investigations jeopardizing public safety.” (<https://www.atf.gov/firearms/qa/can-functioning-firearms-made-receiver-blanks-be-traced>.)
- 4) **Santa Monica Shooting:** According to a July 15, 2013, briefing prepared by the Minority Staff of the Committee on Energy and Commerce, United States House of Representatives:

On June 7, 2013, John Zawahri, 23, killed five people and injured several more during a shooting rampage that lasted approximately 13 minutes in Santa Monica, California. He first shot and killed his father, Samir Zawahri, and brother, Christopher, at their home. He then pulled over and carjacked Laurie Sisk, forcing her to drive at gunpoint to Santa Monica College. Zawahri shot at numerous cars, pedestrians, and a bus en route, killing the college’s groundskeeper, Carlos Franco, and his daughter, Marcela. Upon arriving at the campus, he then fatally shot another woman, Margarita Gomez. He then entered the school library, where he attempted to kill several library patrons who were hiding in a safe room. Police, who had been alerted to the shooting and to

¹ According to Tactical Machining, “An 80% Receiver is a partially completed piece of material that requires special tooling and skills to be completed and considered a firearm.” (<http://www.tacticalmachining.com/80-lower-receiver.html>.)

Zawahri's location by numerous 911 calls, exchanged gunfire in the library with the shooter and pronounced him dead at the scene. According to authorities, Zawahri fired approximately 100 rounds in total.

Zawahri had a history of mental illness. In 2006, a teacher at his high school discovered Zawahri researching assault weapons online. School officials contacted the police and he was subsequently admitted to the psychiatric ward at the University of California, Los Angeles Medical Center. Zawahri attempted to buy a weapon in 2011, but a background check conducted by the California Department of Justice found him ineligible and denied the purchase. The reasons for this denial have not been publicly released.

Zawahri used a modified AR-15 rifle in the shooting and also carried a .44-caliber handgun. He possessed more than 1,300 rounds of ammunition. The AR-15 rifle is the same type of gun used in the mass shootings that occurred in Aurora, Colorado, and Newtown, Connecticut. The AR-15 firearm held 30 rounds. California state law bans the sale of AR-15 rifles with a magazine capacity greater than ten rounds. Authorities believe that Zawahri assembled his AR-15 rifle using parts he bought in pieces from a number of different sources, including an 80% completed lower receiver. Police found a drill press at Zawahri's home, a tool that can make holes in the lower receiver to complete the weapon. (*Citations Omitted.*)

- 5) **Governor's Veto Message of 2013's SB 808 (De Leon):** SB 808 required serial numbers on lower receivers. The governor vetoed the bill with the following message:

"I am returning Senate Bill 808 without my signature.

"SB 808 would require individuals who build guns at home to first obtain a serial number and register the weapon with the Department of Justice.

"I appreciate the author's concerns about gun violence, but I can't see how adding a serial number to a homemade gun would significantly advance public safety."

- 6) **Argument in Support:** According to the *California Police Chiefs Association*, "the California Police Chiefs Association supports Senate Bill 1407, which would require a person who manufactures or assembles a firearm, or owns a firearm that does not bear a serial number, to apply to the Department of Justice for a unique serial number or other identifying mark.

"There are no provisions in existing law that prevent a person from manufacturing or buying an 80% lower receivers – the basis of a firearm – and then making it into a fully functional firearm. Furthermore, the accessibility of these parts have become increasingly easier to acquire with the invention of 3D printers. Because 80% lower receivers are not considered firearms, a person purchasing them does not have to go through a federal firearms dealer, and does not have to undergo a background check. This has created a loophole that allows prohibited felons, gang members, and mentally ill individuals to obtain firearms against the intent of our laws.

"California has some of the strictest regulations in the nation. The laws are meant to keep our neighborhoods safer and aid law enforcement's fight against gun violence, while still protecting the rights of responsible gun owners. Essential to each is the ability to track and verify the ownership of each firearm in the state. It is detrimental to public safety and law enforcement's ability to solve crimes if there are innumerable firearms in circulation without serialization or registration. If we do not begin to address this problem now, the number of shootings involving untraceable firearms will become a much heavier burden on law enforcement, and the victims of gun violence, in the future."

- 7) **Argument in Opposition:** According to the *Firearms Policy Coalition*, "On behalf of Firearms Policy Coalition, I respectfully submit our opposition to Senate Bill 1407 (de Leon), a measure that seeks to retroactively assign a serial number to every firearm in existence dating back at least 48 years for long guns and 50 years for handguns, take the property of those who bother to actually comply and criminalize and incarcerate residents and visitors for mere possession of any firearm or family heirloom that does not have a serial number, even though firearms manufactured prior to 1968 were not required to be serialized.

"SB 1407 will cost millions to implement and enforce, even with the predictably modest public compliance. It is laughable to think that those with criminal intent will comply--leaving only those law abiding residents who were informed of the new law and how to comply with it as potential test cases.

"SB 1407 requires gun owners to apply for, and affix, a Department of Justice (DOJ) - provided serial number to ALL un-serialized legally acquired firearms dating back around 50 years.

"Oddly, if anyone were to comply with the provisions of this measure and apply for a serial number, they would then lose all interest in the property as SB 1407 prohibits the sale or transfer of those weapons that were serialized according to the bill. This means that mere compliance is a loss of property and inheritance. The measure does not seem to contemplate community property. After the death of a firearm owner who actually complied, will the DOJ be sending in teams of police to confiscate the over-night contraband?

"In order to implement this measure, the California Department of Justice (DOJ) will have to create all new regulations, forms, databases and policies. DOJ will have to hire, shift or contract with dozens of full time staffers in order to take on this ambitious task. Given the DOJ's track record with other programs, databases and inefficient use of special and general funds...we are not optimistic.

"There are hundreds of thousands, and perhaps even millions – of personally assembled and un-serialized firearms in California today. SB 1407 makes no provision for how the Department will communicate with these lawful gun owners and inform them of their new obligations and criminal liabilities under your proposed law. Even if the Department could create and implement such a massive outreach program, SB 1407 does not provide any funding to pay for it. That defect is a terminal one.

"Next, SB 1407 fails to address the bill's effects on the Department of Justice itself. How will the Department pay for handling such a massive influx of applications and maintain its other mandated firearms-related services without causing unconstitutional delays? We note

here that DOJ already has a number of state and federal lawsuits against it because of its continuing failure to respect law-abiding Californians' Second Amendment civil rights.

"What happens to the thousands of law-abiding gun owners that will doubtlessly end up waiting for the Department to wade through the mile-high stack of new background checks and serial number applications? Will they be excused from the enforcement of SB 1407's penalties, or will these good people end up further burdening our court system and adding to our already seriously overcrowded prisons?

"SB 1407 forces law enforcement officers into the job of identifying a firearm's age, which, in many cases, is impossible. Firearms that have been in common use for lawful purposes for decades or centuries, such as model 1911 handguns and AR-15 semi-automatic rifles, made prior to the federal serialization requirement in 1968 are virtually, if not outright, the same as those that will be made after SB 1407 would take effect.

"How will law enforcement determine the difference? Put simply, without destructive metallurgical tests on every gun they encounter, there is no way to know. (Even then, the certainty is not absolute.) SB 1407 will place well-intentioned peace officers into the compromising position of either choosing to not enforce SB 1407 or seizing personal property and/or arresting people with no assurances as to the legal authority for those actions. This bill creates massive cost exposure for the state and local governments through its certain outcome of civil rights lawsuits on claims of Second, Fourth, and Fifth Amendment violations.

"SB 1407 fails to account for the educational costs necessitated for law enforcement education to inform officers which guns fall into the exempted class at any given time. Additionally, any firearm manufactured in 1968 will be considered an exempted curio or relic as a matter of law, just two years after the proposed implementation of SB 1407. This moving target will continue in perpetuity, creating an ever-growing list of exempted firearms for which law enforcement officers will need to be educated.

"Finally, many firearms assembled at home hold substantial monetary value for the sheer fact that they are rare or novel replicas of a historically significant gun. Forced destruction of property will undoubtedly lead to thousands of takings and damage claims against the state.

"SB 1407 adds enormous direct and social costs not limited to the fiscal and policy issues noted above. The bill also presents tangible constitutional conflicts and sets local law enforcement up for expensive litigation and damage awards.

"For these reasons we respectfully ask for you to reject this measure."

- 8) **Related Legislation:** AB 1673 (Gipson), expands the definition of "firearm" to include the frame or receiver of the weapon or a frame or receiver "blank, casting or machined body" that is designed and clearly identifiable as a component of a functional weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. AB 1673 is awaiting a hearing in Senate Public Safety.

9) Prior Legislation:

- a) SB 808 (De León), of the 2013-2014 Legislative Session, required a person, commencing January 1, 2016, to apply to and obtain from the Department of Justice (DOJ) a unique serial number or other mark of identification prior to manufacturing or assembling a firearm. AB 808 was vetoed by the governor.
- b) AB 809 (Feuer), Statutes of 2011, Chapter 745, conformed requirements for reporting and record retention involving the transfer of long guns with those of handguns.
- c) AB 302 (Beall), Statutes of 2010, Chapter 344, required that by July 1, 2012, specified mental health facilities shall report to the DOJ exclusively by electronic means when a person is admitted to that facility either because that person was found to be a danger to themselves or others, or was certified for intensive treatment for a mental disorder, as specified.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Academy of Family Physicians
California Chapters of the Brady Campaign
California Police Chiefs Association

Opposition

Firearms Policy Coalition
Gun Owners of California
California Rifle and Pistol Association

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

Date of Hearing: June 14, 2016

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1446 (Hancock) – As Amended March 28, 2016

SUMMARY: Prohibits the possession of large-capacity magazines, with specified exceptions. Specifically, **this bill:**

- 1) Makes it an infraction, commencing July 1, 2017, for any person who possesses a large-capacity magazine punishable as follows:
 - a) A fine not to exceed \$100 for the first offense;
 - b) A fine not to exceed \$250 for the second offense; and,
 - c) A fine not to exceed \$500 for the third or subsequent offense.
- 2) Requires a person who, prior to July 1, 2017, legally possesses a large-capacity magazine to dispose of that magazine by any of the following means:
 - a) Remove the large-capacity magazine from the state;
 - b) Prior to July 1, 2017, sell the large-capacity magazine to a licensed firearms dealer;
 - c) Destroy the large-capacity magazine; or,
 - d) Surrender the large-capacity magazine to a law enforcement agency for destruction.
- 3) Specifies the following exceptions:
 - a) An individual who honorably retired from being a sworn peace officer, or an individual who honorably retired from being a sworn federal law enforcement officer, who was authorized to carry a firearm in the course and scope of that officer's duties;
 - b) A federal, state, or local historical society, museum or institutional society, or museum or institutional collection, that is open to the public, provided that the large-capacity magazine is unloaded, properly housed within secured premises, and secured from unauthorized handling;
 - c) A person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition, and possessed it no longer than necessary to deliver or transport it to the nearest law enforcement agency;

- d) A forensic laboratory, or an authorized agent or employee thereof in the course and scope of his or her authorized activities;
- e) The receipt or disposition of a large-capacity magazine by a trustee of a trust, or an executor or administrator of an estate, including an estate that is subject to probate, that includes a large-capacity magazine; or,
- f) A person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds 10 or fewer rounds of ammunition is compatible with that firearm and the person possesses the large-capacity magazine solely for use with that firearm.

EXISTING LAW:

- 1) Defines a "large-capacity magazine" as any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:
 - a) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds;
 - b) A .22 caliber tube ammunition feeding device; or,
 - c) A tubular magazine that is contained in a lever-action firearm. (Pen. Code, § 16740.)
- 2) States, except as provided, commencing January 1, 2000, any person in California who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine is punishable by imprisonment in the county jail for either a misdemeanor or a felony. (Pen. Code, § 32310.)
- 3) Provides the following exceptions to the prohibition against manufacturing or causing to be manufactured, importing into the state, keeping for sale, or offering or exposing for sale, or giving, or lending, any large-capacity magazine:
 - a) Government agency charged with law enforcement (Pen. Code, § 32400);
 - b) Sworn peace officer who is authorized to carry a firearm in the course and scope of that officer's duties (Pen. Code, § 32405);
 - c) Sale or purchase by a licensed person (Pen. Code, § 32410);
 - d) Loan under specified circumstances (Pen. Code, § 32415);
 - e) Importation by a person in legal possession prior to January 1, 2000 (Pen. Code, § 32420);
 - f) Delivery to a gun smith (Pen. Code, § 32425);
 - g) Person with permit to sell to an out-of-state client (Pen. Code, § 32430);

- h) Entity that operates armored vehicle business (Pen. Code, § 32435);
 - i) Manufacture for government agency or military (Pen. Code, § 32440);
 - j) Use as a prop (Pen. Code, § 32445); or,
 - k) Holder of a special weapons permit for specified purposes (Pen. Code, § 32450).
- 4) Declares large-capacity magazines to be a nuisance. (Pen. Code, § 32390.)
- 5) Provides that the Attorney General, district attorney, or city attorney may bring an action to enjoin the manufacture of, importation of, keeping for sale of, offering or exposing for sale, giving, lending, or possession of, any item that constitutes a nuisance under any of the specified code sections, including the code section relating to large-capacity magazines. (Pen. Code, § 18010, subd. (a).)
- 6) States that the weapons listed in the specified code sections constituting a nuisance shall be subject to confiscation and summary destruction whenever found within California. (Pen. Code, § 18010, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "In 1999, the Legislature passed SB 23 (Perata) which prohibited the possession of assault weapons, such as the AK-47 and created a generic definition of an assault weapon. As part of that legislation, the importation, manufacture and sale of large capacity ammunition magazines was strictly prohibited. However, the possession of high capacity magazines was not prohibited.

"Federal law also outlawed possession of high capacity magazines as part of the 1994 federal assault weapons ban but allowed current owners to keep them under a 'grandfathering' provision. The federal assault weapons ban was allowed to expire in 2004. Research has shown that, prior to the implementation of the federal assault weapons ban, these high capacity magazines were used in between 14 and 26% of guns used in crime.

"High capacity ammunition magazines are ammunition feeding devices that hold more than ten rounds of ammunition. These mega-magazines can hold upwards of 100 rounds of ammunition and allow a shooter to rapidly fire without reloading.

"High capacity magazines are not designed for hunting or target shooting. High capacity magazines are military designed devices. They are designed for one purpose only – to allow a shooter to fire a large number of bullets in a short period of time.

"This bill will make clear that possession of these 'mega-magazines' is also prohibited. Law enforcement officers have told us that, because the Penal Code currently fails to specifically prohibit possession, the law is very difficult to enforce. This needs to be fixed and this measure addresses that by prohibiting the possession."

- 2) **Background:** Since January 1, 2000, California has banned the importation, manufacture and sale of high capacity magazines. (Pen. Code, §§ 32310 and 32390.) Possession was not banned but because all other means of obtaining large-capacity magazines has been prohibited since January 1, 2000, large-capacity magazines should have phased out naturally over time, however there continues to be a proliferation of these magazines 16 years after the law went into effect.
- 3) **Federal Assault Weapons Ban:** The federal assault weapons law (Violent Crime Control and Law Enforcement Act, H.R. 3355, Pub.L. 103-322), became effective on September 13, 1994, and banned the possession of "assault weapons" and "large-capacity ammunition feeding devices," defined as a magazine capable of holding more than 10 rounds of ammunition, manufactured after that date. The federal assault ban contained a grandfather clause which stated that the ban shall not apply to the possession of a large-capacity ammunition feeding device otherwise lawfully possessed within the United States on or before the date of the enactment of the law. The federal assault weapons law expired in 2004 and has not been reenacted.
- 4) **Existing Law on Large-Capacity Magazines:** Existing law prohibits the manufacture, importation, keeping for sale, offering or exposing for sale, giving or lending any ammunition magazine with a capacity greater than 10 rounds. (Pen. Code, § 32310.) The criminal penalty for violating these prohibitions is an alternate misdemeanor/felony. Possession is not expressly prohibited and continued possession of a large-capacity magazine if owned prior to January 1, 2010 is allowed. (See <<https://oag.ca.gov/firearms/pubfaqs#9>> [as of June 8, 2016].) Exceptions are also allowed for law enforcement agencies, permit holders, peace officers, and other specified persons or entities from the purchase prohibitions on large-capacity magazines. (Penal Code §§ 32315, 32400-32450.)

This bill expands the large-capacity magazine prohibitions to include possession of large-capacity magazines, with specified exceptions, and requires a person who is in lawful possession of the magazine prior to the bill's enactment to dispose of it. A violation of these provisions would be punishable as an infraction with graduated fines.

- 5) **Second Amendment:** The Second Amendment to the federal Constitution provides, "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed." In *District of Columbia v. Heller* (2008) 554 U.S. 570, the United States Supreme Court held that the Second Amendment protects an individual's right to possess and carry weapons in case of confrontation. The Court struck down a law banning possession of handguns in the home.

Subsequently, in *McDonald v. City of Chicago* (2010) 561 U.S. 3025, 130 S.Ct. 3020, the Court held that Second Amendment rights are applicable to the states. The majority found the individual right to bear arms, particularly for self-defense was fundamental.

However, the Second Amendment does not afford an unlimited right to own a weapon. "It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . ." (*Heller, supra*, 554 U.S. at p. 646.) As the Court explained in *Heller*, the right "to keep and carry arms" is limited to weapons "in common use." (Id. at p. 627.) Moreover, in *Heller*, the United States Supreme Court did not strike down neutral

licensing and registration as a condition of possession and the Court also enumerated examples of presumptively valid government regulation of firearms.

While it can be argued that a ban on large-capacity magazines could infringe on a person's right to bear arms as protected by the Second Amendment, this argument would likely be unsuccessful because the ban, unlike the one challenged in *Heller*, does not ban handgun possession outright. Rather, a ban on large-capacity magazines is analogous to regulating the type of firearm that can be possessed, which under *Heller*, is constitutionally permissible.

- 6) **Local Bans on Large-Capacity Magazines:** San Francisco, Sunnyvale, Los Angeles and Oakland have enacted laws banning the possession of large-capacity magazines. These local laws make it a misdemeanor to possess large-capacity magazines within those jurisdictions. This bill would create a statewide ban but make a violation of its provisions an infraction, with graduated fines for repeat offenders. This bill also provides exceptions that are not found in the local laws. Should this bill become law, would the local bans that conflict with the new state law be preempted?

Generally, preemption occurs in two ways: through express preemption and implied preemption. Express preemption occurs when a state provides explicitly, in the language of a statute or constitutional provision, that it intends to remove a lower government's regulatory authority. Absent an express statement, courts may infer an intent to take over a field of regulation, even though there is no express legislative statement to that effect. This is referred to as implied preemption. In general, courts may find that a local law is preempted, and thereby void, if it conflicts directly with state law by requiring what the state law prohibits, or prohibiting what the state law requires. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal. 4th 893, 897.) In addition, when a comprehensive scheme of state regulation exists on a particular subject matter, many state courts find that the state legislature thereby indicated an implied intent to assert exclusive authority over that subject matter.

The San Francisco and Sunnyvale laws have been upheld at the district court level. (*San Francisco Veteran Police Officers Association v. City and County of San Francisco*, 18 F.Supp. 3d 997, 999-1002 (ND Cal. 2014); *Fyock v. City of Sunnyvale*, 25 F.Supp.3d 1267, 1281 (ND Cal. 2014).) Upon appeal Sunnyvale's ban has been upheld. (*Fyock v. City of Sunnyvale*, (9th Cir. 2015) 779 F.3d 991, 999-1001.) The appeal in the San Francisco case is pending. However, those challenges were based on the Second Amendment, not preemption, because currently state law does not prohibit possession of large capacity magazines. This bill does not provide an express preemption and it appears that the Legislature only intended to preempt certain areas of firearms control, not the entire field. (*Suter v. City of Lafayette* (1st Cir. 1997) 57 Cal. App. 4th 1109, 1119.) So whether these local laws are preempted will depend upon whether their provisions are in direct conflict with the provisions in this bill.

- 7) **Equal Protection Concerns:** This bill contains several exceptions including possession of a large-capacity magazine by a retired peace officer. This type of exception has previously been found to violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

In *Silveira v. Lockyer* (9th Cir. 2002), 312 F.3d 1052, plaintiffs challenged the constitutionality of the California Assault Weapons Control Act (AWCA). The AWCA banned the possession of assault weapons by individuals but contained a grandfather clause

allowing the retention of previously owned assault weapons by the owners, provided that the owners register them with the state. The act provided an exception for off-duty officers and retired officers. Plaintiffs claimed that this exception provided a benefit to off-duty and retired officers that are unavailable to the plaintiffs, and that there is no rational reason that law-abiding citizens should be treated differently than off-duty and retired peace officers.

In evaluating the plaintiffs' Equal Protection claim, the Ninth Circuit Court of Appeal used the rational basis test as its standard of review, rather than strict scrutiny, because the court determined that the right to own assault weapons is not a fundamental right, nor are the plaintiffs part of a protected class. (*Silveira, supra*, 315 F.3d at 1087-1088.) The standard requires the statute to be upheld "if the classification drawn by the statute is rationally related to a legitimate state interest." (*Id.* at 1088.)

As to the off-duty officer provision, the court held that there is a rational basis for the classification because "off-duty officers may find themselves compelled to perform law enforcement functions in various circumstances, and that in addition it may be necessary that they have their weapons readily available. Thus, the provision is designed to further the very objective of preserving the public safety that underlies the AWCA." (*Silveira, supra*, 315 F.3d at 1089.)

The retired officer exception, in contrast, was found to be an arbitrary classification, and therefore unconstitutional. The court held that this provision was not only unrelated to a legitimate state interest, it was contrary to the "act's basic purpose of eliminating the availability of high-powered, military-style weapons and thereby protecting the people of California from the scourge of gun violence." (*Silveira, supra*, 315 F.3d at 1090.)

After the *Silveira* ruling, the United States Supreme Court in *District of Columbia v. Heller* (2008) 554 U.S. 570 held that the Second Amendment protects individuals' right to own and possess firearms, although this does not afford an unlimited right to "keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. . . ." (*Heller, supra*, 554 U.S. at p. 646.) Because this right is protected under the Second Amendment, strict scrutiny should have been applied in the *Silveira* case. However, the result in *Silveira* would have been the same, at least in regards to the retired peace officer exception, because this provision was struck down as being unconstitutional using a lower standard. Thus, the provision in the AWCA would not pass constitutional muster under a heightened standard of scrutiny.

Similar to the rationale in *Silveira*, if the purpose of this bill is to eliminate the proliferation of large-capacity magazines, the exception for retired peace officers is contrary to the bill's purpose and as evidenced by the arguments considered and rejected by the court, there is no legitimate state interest in creating this classification. The higher standard of strict scrutiny required under *Heller* makes it even more likely that the exception provided in this bill for retired officers violates the Equal Protection clause.

- 8) **Argument in Support:** The *California Chapters of the Brady Campaign* states "California had a number of mass shootings involving large capacity ammunition magazines before the ban on their sale and transfer in the year 2000 (San Ysidro, Stockton, San Francisco, and Orange). Other rampage shootings involving large capacity magazines have happened since then – and will happen again – because of the prevalence of large capacity magazines and the

difficulty of enforcing existing law. It is nearly impossible to prove when a large capacity magazine was acquired or whether the magazine was illegally purchased after the 2000 ban. Furthermore, until 2014, magazine conversion kits were being sold in California. These kits, containing parts to repair large capacity magazines, were legally purchased and later assembled into new large capacity magazines. Since the possession of large capacity magazines is permissible, this practice, which clearly evaded the intent of the law, was able to increase the proliferation of large capacity magazines in the state. SB 1446 would enable the enforcement of existing law regarding large capacity magazines.

"With average use, magazines typically last about twelve years. It is now time to end the grandfathering of large capacity magazines and exploitation of the law by prohibiting their possession. Serious hunters do not use large capacity magazines. A prohibition on the sale, transfer and *possession* of large capacity magazines clearly furthers public safety."

- 9) **Argument in Opposition:** *Gun Owners of California* argues "[t]o unequivocally state that 'high-capacity' magazines are not designed for hunting or target shooting and that such magazines are 'military designed devices designed for one purpose only – to allow a shooter to fire a large number of bullets in a short period of time' is factually inaccurate. In fact, Modern Sporting Rifles (MSR) are the single largest selling firearms platforms for competition and hunting purposes in California, selling well over a million in the recent past. And, although these firearms may *appear* to have the functionality of a military weapon they do not: rather, they have the capacity to fire only a single round with a single pull of a trigger.

"Further, it's important to acknowledge the Roberti-Roos Assault Weapons Control Act of 1989 states 'It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.' (Penal Code section 12275.5). By focusing on the weapon – rather than those eager to commit heinous acts, nothing will be achieved in the pursuit of public safety."

10) **Related Legislation:**

- a) SB 1235 (de León) creates a new regulatory framework for the purchase and sale of ammunition in California. SB 1235 will be heard by this Committee today.
- b) AB 1663 (Chiu) amends the definition of an assault weapon as it pertains to rifles and defines "detachable magazines" and "fixed magazines". AB 1663 was held on the Committee on Appropriations' Suspense File.
- c) AB 1664 (Levine) redefines what constitutes an assault weapon in order to close the bullet button loophole. AB 1664 is pending referral from the Senate Committee on Rules.
- d) SB 880 (Hall), among other provisions, amends the definition of "assault weapon" and defines "fixed magazine" as "an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action." SB 880 is pending hearing by this Committee.

11) Prior Legislation:

- a) SB 396 (Hancock), Chapter 318, Statutes of 2014, would have prohibited the possession of large-capacity magazines, regardless of the date that the magazine was acquired. SB 396 failed passage on the Assembly Floor and was subsequently amended to a different subject matter with a new author and signed into law.
- b) SB 776 (Hancock), of the 2009-2010 Legislative Session, among other provisions, would have prohibited the possession of large-capacity magazines commencing January 1, 2011, with specified exceptions, and would have required registration for large-capacity magazines that are subject to those exceptions. SB 776 died in the Senate Committee on Public Safety.
- c) SB 626 (Perata), Chapter 937, Statutes of 2001, exempts the manufacture of a large-capacity magazine for certain law enforcement agents, peace officers, government agencies, the military, or for export, and specifies additional magazines that are not included within the definition of "large-capacity magazine."
- d) SB 23 (Perata), Chapter 129, Statutes of 1999, made it an alternate felony/misdemeanor, commencing January 1, 2000, for any person to manufacture or cause to be manufactured, import into California, keep for sale, offer or expose for sale, give away, or lend any large-capacity magazine with specified exceptions.
- e) SB 1483 (Perata), of the 1999-2000 Legislative Session, would have exempted tubular magazines contained in lever-action firearms from the "large-capacity magazine" restrictions, and exempts the manufacture of "large-capacity magazines" for use by specific law enforcement agencies, peace officers, and firearm licensees. SB 1483 passed this Committee, but was later amended and became a vehicle for an unrelated matter.
- f) AB 357 (Roos), Chapter 19, Statutes of 1989, established the Roberti-Roos Assault Weapons Control Act of 1989 which prohibited the manufacture in California of any of the semi-automatic weapons specified in the statute, or the possession, sale, transfer, or importation into the state of such weapons without a permit. AB 357 contained a grandfather clause that permits the ownership of assault weapons by individuals who lawfully purchased them before its enactment, so long as the owners register the weapons with the Department of Justice.

REGISTERED SUPPORT / OPPOSITION:**Support**

American College of Emergency Physicians, California Chapter
California Academy of Family Physicians
California Chapters of the Brady Campaign
California Church IMPACT
California State PTA
City of Long Beach
City of Los Angeles
City of Oakland

City of Santa Monica
Cleveland School Remembers
Coalition Against Gun Violence, a Santa Barbara County Coalition
Courage Campaign
David Alvarez, Councilmember for the City of San Diego
Law Center to Prevent Gun Violence
Physicians for Social Responsibility, Sacramento Chapter
Physicians for Social Responsibility, San Francisco Bay Area Chapter
Rabbis Against Gun Violence
Violence Prevention Coalition of Greater Los Angeles
Youth ALIVE!

Opposition

California Rifle and Pistol Association
California Sportsman's Lobby
California State Sheriffs' Association
Firearms Policy Coalition
Gun Owners of California
National Rifle Association of America
Outdoor Sportsmen's Coalition of California
Rick Farinelli, County of Madera Supervisor
Safari Club International Foundation
San Bernardino County Sheriff

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Date of Hearing: June 14, 2016

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1474 (Committee on Public Safety) – As Amended April 7, 2016

SUMMARY: Makes technical and corrective changes, as well as non-controversial substantive changes, to various code sections relating generally to criminal justice laws. Specifically, **this bill:**

- 1) Deletes references to the Sex Offender Tracking Program and the High Risk Sex Offender Program within the Department of Justice (DOJ) and instead includes general references to the DOJ.
- 2) Allows the district attorney to send a subpoena to a peace officer by electronic means.
- 3) Provides that probation reports may be shared between probation agencies.
- 4) Deletes the requirement that a police vehicle that is monitoring traffic be painted but continues to require the vehicle be a distinctive color.
- 5) Updates the section related to the collection of evidence in sexual assault cases.
- 6) Makes additional clarifying or technical changes.

EXISTING LAW:

- 1) Requires the Department of Corrections and Rehabilitation and the State Department of State Hospitals to perform a risk assessment of every eligible person under their jurisdiction, as specified, and requires those departments to send the scores obtained in accordance with those provisions to DOJ's Sex Offender Tracking Program. (Pen. Code, § 290.06.)
- 2) Requires the State Department of State Hospitals to provide to DOJ's Sex Offender Tracking Program the names of all persons committed to its custody pursuant to specified provisions of law within 30 days of commitment, and requires that department to provide the names of all of those persons released from its custody within 5 working days of release. (Pen. Code, § 290.46.)
- 3) Specifies the means by which a peace officer may be subpoenaed in a criminal matter. (Pen. Code, § 1328, subd. (c).)
- 4) Provides that the report prepared by the probation officer shall be and constitute a part of the records of the court, and shall at all times be open to the inspection of the court or of any person appointed by the court for that purpose, as well as all magistrates, and the chief of police, or other heads of the police, unless otherwise order by the court. (Pen. Code, §

1203.10.)

- 5) States that a traffic officer on duty for the exclusive main purpose of enforcing traffic laws shall wear a full distinctive uniform, and if the officer while on duty uses a motor vehicle, it must be painted a distinctive color specified by the commissioner. (Veh. Code, § 40800.)
- 6) Sets the minimum standards for examination and treatment of victims of sexual assault and lists what should be in a sexual assault collection kit. (Pen. Code, § 13823.11.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "This is the annual omnibus bill. In past years, the omnibus bill has been introduced by all members of the Committee on Public Safety. This bill is similar to the ones introduced as Committee bills in the past in that it has been introduced with the following understanding: the bill's provisions make only technical or minor changes to the law; and there is no opposition by any member of the Legislature or recognized group to the proposal. This procedure has allowed for introduction of fewer minor bills and has saved the Legislature time and expense over the years."
- 2) **Subpoenaing a Peace Officer:** Under existing law, a peace officer may be served a subpoena to appear in court in a criminal matter either by personal delivery of the subpoena to the officer or to the officer's immediate supervisor or agent designated by the immediate supervisor, or in counties where the local agencies have consented with the local marshal's office or sheriff's office to receive subpoenas by electronic means, the subpoena may be served electronically to the officer's immediate supervisor or agent designated by the immediate supervisor. (Pen. Code, § 1328, subd. (c).)

This bill would allow a district attorney to subpoena an officer by electronic means. According to the California District Attorneys Association, the organization that requested this update to the statute:

"About a dozen [district attorney] DA offices in California use a case management system that allows them to generate an electronic subpoena for a peace officer employed by a participating agency. The subpoena can be electronically sent to a portal. The peace officer named in the subpoena receives an email directing him or her to go to the portal for the subpoena. Once the peace officer uses his or her credentials to access the portal and open the subpoena, service is complete. The DA will have an electronic record of the service of the subpoena and the appropriate superior officers within the police agency will have access to the portal to monitor issuance and service of the subpoenas.

"The main distinction between this newer process and the electronic service specifically authorized by section 1328(c) is that now the electronic subpoena can be sent directly to the peace officer named in the subpoena through the portal, rather than to his or her superior for subsequent service on the officer. This newer technology should permit simpler and more reliable service. Section 1328(c) should be amended to add this third more direct mode of electronic service to the two current options contained in the statute. The statute should also be amended to add the 'district attorney' to the 'marshal or sheriff' as officials with whom

local police agencies may enter into an agreement to receive electronic service of subpoenas. By simply adding an additional option for electronic service, this amendment would not interfere with any agencies that are currently using the procedures authorized under the existing section 1328(c)."

- 3) **DOJ Sex Offender Tracking Program:** Existing law requires law enforcement agencies to submit information on registered sex offenders to the DOJ, Sex Offender Tracking Program. (Pen. Code, §§ 290.06, subd. (a)(5), 290.46, subd. (a)(3), and 1203e, subd. (c) The program was renamed but remains unchanged in the relevant statutes.

According to DOJ, "[t]o avoid confusion with the obsolete program name, references to the Sex Offender Trafficking Program should be replaced with generic references to DOJ. This will help ensure DOJ is appropriately identified as the recipient of mandated information, rather than referring to a particular unit or program."

- 4) **Painted Police Vehicles:** Existing law provides that a police vehicle monitoring traffic "shall be painted a distinctive color specified by the commissioner." (Veh. Code, § 40800.) This bill removes the requirement that police vehicles be "painted" but continues to require the vehicle to be a distinctive color.

According to the California Police Chiefs Association, the organization that requested this change, the term "painted" is problematic because agencies have begun to use "vehicle wrap" rather than paint, which is how Ford ships its new black & white cars. Some jurisdictions are concerned about the wording in the current statute that they ordered their Fords black and paid to have them actually painted.

- 5) **Probation Reports:** Existing law specifies what shall be in a probation report and who shall have access to the reports. This bill amends that section to specify that probation agencies can share reports with other agencies. According to the Chief Probation Officers of California, the organization that requested this update to the statutes:

"Record requests and transfers between probation departments are routinely made in managing persons on supervised release. Currently, PC 1203.10 does not expressly recognize this practice. This proposal would clarify that probation departments can share probation reports with other probation agencies for the purpose of carrying out the duties of this section pertaining to the care and supervision of supervised persons."

- 6) **Update Requirements for Sex Assault Kits:** Existing law specifies what physical evidence shall be collected from a sexual assault victim. (Pen. Code, § 13823.11, subd. (g).) The California Clinical Forensic Medical Training Center suggested this amendment in order to conform to updated collection methods including the advent of DNA science and technology.

- 7) **Prior Legislation:**

- a) SB 795 (Committee on Public Safety), Chapter 499, Statutes of 2015, was the annual 2015 Public Safety Committee's omnibus bill.

- b) SB 1461 (Committee on Public Safety), Chapter 54, Statutes of 2014, was the annual 2014 Public Safety Committee's omnibus bill.
- c) SB 514 (Committee on Public Safety), Chapter 59, Statutes of 2013, was the annual 2013 Public Safety Committee's omnibus bill.
- d) SB 1144 (Strickland), Chapter 867, Statutes of 2012, was the annual 2012 Public Safety Committee's omnibus bill.
- e) SB 428 (Strickland), Chapter 304, Statutes of 2011, was the annual 2011 Public Safety Committee's omnibus bill.
- f) SB 1062 (Strickland), Chapter 708, Statutes of 2010, was the annual 2010 Public Safety Committee's omnibus bill.
- g) SB 174 (Strickland), Chapter 35, Statutes of 2009, was the annual 2009 Public Safety Committee's omnibus bill.
- h) SB 1241 (Margett), Chapter 699, Statutes of 2008, was the annual 2008 Public Safety Committee's omnibus bill.
- i) SB 425 (Margett), Chapter 302, Statutes of 2007, was the annual 2007 Public Safety Committee's omnibus bill.
- j) SB 1422 (Margett), Chapter 901, Statutes of 2006, was the annual 2006 Public Safety Committee's omnibus bill.
- k) SB 1107 (Committee on Public Safety), Chapter 279, Statutes of 2005, was the annual 2005 Public Safety Committee's omnibus bill.
- l) SB 1796 (Committee on Public Safety), Chapter 405, Statutes of 2004, was the annual 2004 Public Safety Committee's omnibus bill.
- m) SB 851 (Committee on Public Safety), Chapter 468, Statutes of 2003, was the annual 2003 Public Safety Committee's omnibus bill.
- n) SB 1852 (Committee on Public Safety), Chapter 545, Statutes of 2002, was the annual 2002 Public Safety Committee's omnibus bill.
- o) SB 485 (Committee on Public Safety), Chapter 473, Statutes of 2001, was the annual 2001 Public Safety Committee's omnibus bill.
- p) SB 832 (Committee on Public Safety), Chapter 853, Statutes of 1999, was the annual 1999 Public Safety Committee's omnibus bill.
- q) SB 1880 (Committee on Public Safety), Chapter 606, Statutes of 1998, was the annual 1998 Public Safety Committee's omnibus bill.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association

Opposition

None

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