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

**AGENDA**

9:00 a.m. – June 28, 2016  
State Capitol, Room 126

**REGULAR ORDER OF BUSINESS**

<u>Item</u>	<u>Bill No. &amp; Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
1.	SB 139 (Galgiani)	Mr. Billingsley	Controlled substances. (Urgency)
2.	SB 881 (Hertzberg)	Mr. Billingsley	Vehicles: violations.
3.	SB 882 (Hertzberg)	Ms. Uribe	Crimes: public transportation: minors.
4.	SB 955 (Beall)	Ms. Choe	State hospital commitment: compassionate release.
5.	SB 966 (Mitchell)	Mr. Pagan	Controlled substances: sentence enhancements: prior convictions
6.	SB 1052 (Lara)	Mr. Caswell	Custodial interrogation: juveniles.
7.	SB 1064 (Hancock)	Mr. Pagan	Sexually exploited minors.
8.	SB 1088 (Nguyen)	Ms. Uribe	Wrongful concealment: accidental death.
9.	SB 1110 (Hancock)	Mr. Billingsley	Law Enforcement Assisted Diversion.
10.	SB 1121 (Leno)	Ms. Uribe	Privacy: electronic

- |     |                    |                 |  |
|-----|--------------------|-----------------|--|
|     |                    |                 | communications: search warrant.                                    |
| 11. | SB 1134 (Leno)     | Ms. Choe        | Habeas corpus: new evidence: motion to vacate judgment: indemnity. |
| 12. | SB 1143 (Leno)     | Ms. Choe        | Juveniles: room confinement.                                       |
| 13. | SB 1189 (Pan)      | Mr. Pagan       | Postmortem examinations or autopsies: forensic pathologists.       |
| 14. | SB 1200 (Jackson)  | Mr. Pagan       | Animal cruelty: criminal statistics.                               |
| 15. | SB 1202 (Leno)     | Ms. Uribe       | Sentencing.  |
| 16. | SB 1238 (Pan)      | Mr. Caswell     | Inmates: biomedical data.  |
| 17. | SB 1322 (Mitchell) | Mr. Billingsley | Commercial sex acts: minors.                                       |
| 18. | SB 1332 (Mendoza)  | Mr. Caswell     | Firearms.  |
| 19. | SB 1389 (Glazer)   | Mr. Caswell     | Interrogation: electronic recordation.                             |
| 20. | SB 1433 (Mitchell) | Mr. Pagan       | Incarcerated persons: contraceptive counseling and services.       |

VOTE ONLY

- |     |                |          |                                       |
|-----|----------------|----------|---------------------------------------|
| 21. | SB 1004 (Hill) | Ms. Choe | Transitional youth diversion program. |
|-----|----------------|----------|---------------------------------------|

Individuals who, because of a disability, need special assistance to attend or participate in an Assembly committee hearing or in connection with other Assembly services, may request assistance at the Assembly Rules Committee, Room 3016, or by calling 319-2800. Requests should be made 48 hours in advance whenever possible.

Date of Hearing: June 28, 2016  
Counsel: David Billingsley

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

SB 139 (Galgiani) – As Amended June 15, 2016

**SUMMARY:** Raises penalties for possession of synthetic cannabinoids and synthetic stimulants. Expands list of substances prohibited as synthetic cannabinoids. Specifically, **this bill:**

- 1) Expands the definition of a synthetic cannabinoid compound by listing additional chemical categories as synthetic cannabinoids.
- 2) Provides that a first offense of using or possessing a synthetic stimulant compound or synthetic cannabinoid is punishable as an infraction, a second offense is punishable as an infraction or a misdemeanor, and a third or subsequent offense is punishable as a misdemeanor.
- 3) Authorizes a person charged with certain crimes relating to synthetic stimulant compounds or synthetic cannabinoid compounds to be eligible to participate in a preguilty plea drug court program.
- 4) Makes technical changes to the definition of synthetic stimulant 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) Defines "synthetic cannabinoid compound" as any of the following substances (Health & Saf. Code, § 11357.5, subd. (c).):
  - a) 1-pentyl-3-(1-naphthoyl)indole (JWH-018);
  - b) 1-butyl-3-(1-naphthoyl)indole (JWH-073);

- c) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200);
  - d) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497); and
  - e) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue).
- 4) Provides that every person who sells or distributes, or offers to sell or distribute, any synthetic stimulant compound, as specified, to any person, or who possesses that compound for sale, is guilty of a misdemeanor, 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. (Health & Saf. Code, § 11375.5, subd. (a).)
- 5) Specifies that every person who uses or possesses any synthetic stimulant compound specified in subdivision (c), or any synthetic stimulant derivative, is guilty of an infraction, punishable by a fine not to exceed two hundred fifty dollars (\$250). (Health & Saf. Code, § 11375.5, subd. (b).)
- 6) Provides that the list of prohibited synthetic stimulants include any quantity of the following substances, as specified, within any of the following specific chemical designations (Health & Saf. Code, § 11375.5, subd. (c).):
- a) Naphthylpyrovalerone whether or not further substituted in the naphthyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the naphthyl ring by one or more other univalent substituents, or whether or not further substituted in the carbon chain at the 3-, 4-, or 5-position with an alkyl substituent; and
  - b) 2-amino-1-phenyl-1-propanone (cathinone) or variation in any of the following ways:
    - i) By substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents.
    - ii) By substitution at the 3-position with an alkyl substituent;
    - iii) By substitution at the nitrogen atom with alkyl, dialkyl, or benzyl groups, or by inclusion of the nitrogen atom in a cyclic structure; and
- 7) 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).)
- 8) 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; or (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).)
- 9) 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).)
- 10) 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.)
- 11) 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.)
- 12) 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, "Synthetic cannabinoid compounds have become a growing problem in our community. Part of the reason that drugs dealers are having so much success marketing the drug to teenagers and young adults is that they are able to market them as being legal. Up until my bill last year, simple possession of these drugs was actually perfectly legal under state law. This is despite their well-documented danger. Now it has come to my attention that underground chemists skirt the law by slightly altering the chemical compounds of these drugs, to come up with new versions, which technically, are NOT illegal yet. Senate Bill 139 will close these loopholes in state law and allow law enforcement to be better equipped in getting these drugs away from our communities."
- 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) **Synthetic Stimulant Chemicals:** It appears that the synthetic stimulant chemicals included in this bill are closely related to cathinone, the psychoactive chemical in the khat plant, which is commonly used in the Middle East. Khat and Cathinone are included in Schedule II stimulants. (Health and Saf. Code § 11055, subd. (d)(7)-(8).) Without this bill, it appears that possession of one of the specified synthetic chemicals would be a crime through the analog statute. The analog statute provides that any drug that has a chemical structure or properties that are similar to a scheduled drug can be the subject of prosecution as though the drug were included in the schedules.

The United Kingdom Advisory Council on the Misuse of Drugs (ACMD) is an agency of the UK Home Office that advises policy makers on drug issues. In the past few years, the ACMD has reported on the synthetic stimulants covered by this bill.

Synthetic cathinones are related to the parent compound cathinone, one of the psychoactive principals in khat... Cathinone derivatives are ... analogues of a corresponding phenethylamine. The group includes several substances that have been used as active pharmaceutical ingredients ... Since the mid-2000s, unregulated ring-substituted cathinone derivatives have appeared in the European recreational drugs market. The most commonly available cathinones sold on the recreational market in the period up to 2010 appear to be mephedrone (Figure 3) and methylone. [The drugs]... are claimed to have effects similar to those of cocaine, amphetamine or MDMA, but little is known of their detailed pharmacology. Apart from cathinone [and other specified chemicals], cathinone derivatives are not under international control.

...Like cocaine, the resulting 'high' of mephedrone is short-lived. Consequently, users may consume several doses in succession. ...[Specified chemical alterations] could [create] more potent [drugs]. It should be noted that...PMA and PMMA are known to have a particularly high toxicity, and this property might translate to their analogues.

As noted above, cathinone is the main psychoactive chemical in the khat plant. Use of khat in the United States has grown in recent decades. The New York State Office of Alcohol and Substance Abuse Services produces research and educational material about drugs. The office has published the following discussion of khat:

Khat has been grown for use as a stimulant for centuries in the Horn of Africa and the Arabian Peninsula. There, chewing khat predates the use of coffee and is used in a similar social context. Its fresh leaves and tops are chewed or...consumed as tea, [producing] euphoria and stimulation. The stimulant effect is most effective when the leaves are still fresh.

Khat use has traditionally been confined to the regions where khat is grown, because only the fresh leaves have the desired... effects. In recent years improved [transportation] has

increased the global distribution.

...In 1975, the [chemical] cathinone was isolated [from khat]. Cathinone is not very stable and breaks down to produce cathine and norephedrine. These chemicals belong to the PPA (phenylpropanolamine) family, a subset of the phenethylamines related to amphetamines and the catecholamines, epinephrine and norepinephrine.

- 4) **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).)

- 5) **Alterations of Chemical Compounds in the Future:** The author has expressed concern that individuals manufacturing synthetic cannabinoids can avoid criminal repercussions by slightly changing the chemical compound of substance that is currently on the list of substances prohibited on the list of synthetic cannabinoids.

The Author states ". . . it has come to my attention that underground chemists skirt the law by slightly altering the chemical compounds of these drugs, to come up with new versions, which technically, are NOT illegal yet." (Author's Statement, *supra*.)

Existing law currently prohibits synthetic cannabinoids and synthetic cannabinoid derivatives. (Health & Saf. Code, § 11357.5, subd. (c).) Existing law lists five chemical compounds as synthetic cannabinoids. Each chemical compound is described by its chemical structure. The author has chosen to add a number of categories and substances (described by their chemical structure) to the existing list of prohibited synthetic cannabinoids. It is not clear that expanding the list will prevent street chemists from continuing to tweak the chemical structure of substances in the future in an attempt to create a substance which is not included in the list.

SB 1036 (Hernandez) takes a different approach to prohibiting synthetic cannabinoids which are not specifically listed under the current statute. SB 1036 includes synthetic cannabinoids within the existing analog statute. If synthetic cannabinoids are included in the analog

statute, the status of any substances with new chemical compositions can be established through expert opinion as an analog of the synthetic cannabinoids which are currently prohibited. SB 1036 (Hernández) is currently awaiting hearing in the Assembly Appropriations Committee.

- 6) **Argument in Support:** According to *The California Police Chiefs Association*, “SB 139 is aimed at prohibiting possession of 'bath salts' and 'spice' and encouraging entry into treatment programs. In addition, SB 139 is drafted so as to be chemically current, thereby preventing bath salts and spice manufacturers from chemically evading the law by making molecular adjustments to their manufacturing process. Senate Bill 139 will assure that Bath Salts cannot continue to cause harm.

“Getting people into treatment is literally lifesaving. The effects of these drugs include agitation, paranoia, hallucinations, severe chest pains, increased pulse, high blood pressure, hyper-aggressive behavior and suicidal thinking/behavior/ Most disturbing, suicidal thinking/behavior may last even after the stimulatory effects of the drugs have worn off. Equally disturbing, the addictive nature of these drugs is so powerful that – even with these symptoms – users report an eagerness to go back and use again. Without treatment intervention, persons using these drugs face a continued downward cycle.”

- 7) **Argument in Opposition:** According to *The American Civil Liberties Union of California*, “Using the criminal justice system to address substance abuse has led to a broken criminal justice system and billions of wasted taxpayer dollars. The state’s current reliance on criminalization of drug abuse does not work, and increasing penalties for simple possession of the drugs targeted by SB 139 will do nothing to resolve existing problems.

“Furthermore, the creation of new misdemeanors may further exacerbate California’s jail overcrowding problem. According to Public Policy Institute of California, “[a]s of September 2012, the average daily jail population was about 3,954 inmates over the statewide rated jail capacity of 76,910 inmates, set by the California Board of State and Community Corrections. Twenty-one counties had an average daily population greater than their rated capacity. Additionally, 18 counties were operating under court-ordered population caps for at least one jail in their county...” Given that the policy of incarceration for possession has been a dismal failure in California and the nation, we should not undertake to pass new penalties that will further strain the capacity of California’s county jails.”

- 8) **Related Legislation:** SB 1036 (Hernández), would expand 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. SB 1036 is awaiting hearing in the Assembly Appropriation Committee.
- 9) **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**

California Narcotics Officers' Association (Sponsor)  
Association of Orange County Deputy Sheriffs  
California District Attorneys Association  
California Police Chiefs Association  
California Statewide Law Enforcement Association  
City of San Marcos  
Fraternal Order of Police, California State Lodge  
Long Beach Police Officers Association  
Sacramento County Deputy Sheriffs' Association  
San Diego County District Attorney

#### **Opposition**

American Civil Liberties Union of California  
Drug Policy Alliance  
Legal Services for Prisoners with Children

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

Date of Hearing: June 28, 2016  
Counsel: David Billingsley

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

SB 881 (Hertzberg) – As Amended May 2, 2016  
As Proposed to be Amended in Committee

**SUMMARY:** Makes changes to existing law relating to suspended licenses for individuals who have failed to pay (FTP) a traffic fine or failed to appear (FTA) in court. Specifically, **this bill:**

- 1) Prohibits the court from imposing a civil assessment for a FTP or FTA, unless the defendant willfully fails to appear or pay.
- 2) Provides that the ability to pay the \$300 assessment shall not be a prerequisite to arraignment, trial, or other court proceedings.
- 3) Provides that payment of bail, fines, penalties, fees, or a civil assessment shall not be required to schedule a court hearing on a pending underlying charge.
- 4) Requires a county or court “comprehensive collection programs” to provide payment plans based on the debtor’s ability to pay, as specified.
- 5) Prohibits a county or court from initiating driver’s license suspension or hold actions as part of a comprehensive collection program.
- 6) Repeals provisions that require the Department of Motor Vehicles (DMV) to suspend a person’s driver’s license upon notification from the court of a FTP or FTA.
- 7) Directs DMV to restrict an individual’s privilege to operate a vehicle to driving for employment or medical purposes for a period of six months upon notice from the court that the individual has an FTA on specified vehicle offenses.
- 8) Allows the restriction on driving privileges to be removed if the individual appears in court, resolves the case, or otherwise satisfies the court’s order.
- 9) Requires DMV to restore all driving privileges suspended as a result of a FTA or FTP by July 1, 2017.
- 10) Provides that the bill applies to commercial driver’s licenses, as well as Class C or M licenses (common and motorcycle licenses).
- 11) Specifies that the court must notify DMV if a person has satisfied court orders related to a FTA or FTP, if the court previously notified DMV of that person’s FTA or FTP.

- 12) Prohibits DMV from suspending a driver's license upon notice from a court of a person's FTA or FTP.
- 13) Specifies that the bill does not apply to license suspensions that are related to specified reckless driving or driving under the influence violations.

**EXISTING LAW:**

- 1) States that if that an individual has a specified failure to appear or failure to pay, DMV shall suspend the person's driving privilege. (Veh. Code, § 13365.)
- 2) Specifies that a suspension for an FTA or FTP shall not be effective before a date 60 days after the date of receipt, by the department, of the notice given as specified, and the notice of suspension shall not be mailed by DMV before a date 30 days after receipt of the specified notice. (Veh. Code, § 13365, subd. (b).)
- 3) States that DMV shall not issue or renew a driver's license to any person when a license previously issued to the person has been suspended until the expiration of the period of the suspension, unless cause for suspension has been removed. (Veh. Code, § 12807, subd. (a).)
- 4) States that the department shall, before issuing or renewing any license, check the record of the applicant for notices of failure to appear in court filed with it and shall withhold or shall not issue a license to any applicant who has violated his or her written promise to appear in court unless the department has received a certificate issued by the magistrate or clerk of the court hearing the case in which the promise was given showing that the case has been adjudicated or unless the applicant's record is cleared as provided. (Veh. Code, § 12808, subd. (b).)
- 5) Provides that the court may impose a civil assessment of up to three hundred dollars (\$300) against a defendant who fails, after notice and without good cause, to appear in court or who fails to pay all or any portion of a fine ordered by the court. (Pen. Code, § 1214.1, subd. (a).)
- 6) States that payment of bail, fines, penalties, fees, or a civil assessment shall not be required in order for the court to vacate the assessment at the time of appearance. Payment of a civil assessment shall not be required to schedule a court hearing on a pending underlying charge. (Pen. Code, § 1214.1, subd. (b)(2).)
- 7) Provides rules for counties to operate comprehensive collection program to collect delinquent fines. (Pen. Code, §, 1463.007.)
- 8) Specifies that a comprehensive collection program engages in each of the following activities:
  - a) Attempts telephone contact with delinquent debtors for whom the program has a phone number to inform them of their delinquent status and payment options;
  - b) Notifies delinquent debtors for whom the program has an address in writing of their outstanding obligation within 95 days of delinquency;

- c) Generates internal monthly reports to track collections data, such as age of debt and delinquent amounts outstanding;
  - d) Uses Department of Motor Vehicles information to locate delinquent debtors; and
  - e) Accepts payment of delinquent debt by credit card.
- 9) Specifies that a comprehensive collection program engages in at least five of the following activities:
- a) Sends delinquent debt to the Franchise Tax Board's Court-Ordered Debt Collections Program.
  - b) Sends delinquent debt to the Franchise Tax Board's Interagency Intercept Collections Program.
  - c) Initiates driver's license suspension or hold actions when appropriate.
  - d) Contracts with one or more private debt collectors to collect delinquent debt.
  - e) Sends monthly bills or account statements to all delinquent debtors.
  - f) Contracts with local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors.
  - g) Coordinates with the probation department to locate debtors who may be on formal or informal probation.
  - h) Uses Employment Development Department employment and wage information to collect delinquent debt.
  - i) Establishes wage and bank account garnishments where appropriate.
  - j) Places liens on real property owned by delinquent debtors when appropriate.
  - k) Uses an automated dialer or automatic call distribution system to manage telephone calls.
- 10) Allows the clerk of the court to accept a payment and forfeiture of at least 10 percent of the total bail amount for each infraction violation of the Vehicle Code prior to the date on which the defendant promised to appear, or prior to the expiration of any lawful continuance of that date, or upon receipt of information that an action has been filed, and prior to the scheduled court date, if specified circumstances exist.
- 11) Specifies that when a clerk accepts an agreement for payment and forfeiture of bail in installments, the clerk shall continue the appearance date of the defendant to the date to complete payment and forfeiture of bail in the agreement. (Veh. Code, § 40510.5, subd. (b).)
- 12) Provides that for the purposes of reporting violations of the Vehicle Code to the Department of Motor Vehicles under Section 1803, the date that the defendant signs an agreement to pay

and forfeit bail in installments shall be reported as the date of conviction. (Veh. Code, § 40510.5, subd. (d).)

- 13) States that when the defendant fails to make an installment payment, the court may charge a failure to appear or pay and impose a civil assessment as specified. (Veh. Code, § 40510.5, subd. (e).)
- 14) States that payment of a bail amount under this section is forfeited when collected and shall be distributed by the court in the same manner as other fines, penalties, and forfeitures collected for infractions. (Veh. Code, § 40510.5, subd. (f).)
- 15) Requires courts to allow a defendant to appear for arraignment and trial without deposit of bail on traffic infraction violations of the Vehicle Code. (Rule of Court 4.105, subd. (b).) except:
  - a) Courts must require the deposit of bail when the defendant elects a statutory procedure that requires the deposit of bail (Rule of Court 4.105, subd. (c)(1).);
  - b) Courts may require the deposit of bail when the defendant does not sign a written promise to appear as required by the court (Rule of Court 4.105, subd. (c)(2).); and
  - c) Courts may require a deposit of bail before trial if the court finds, based on the circumstances of a particular case, that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding. (Rule of Court 4.105, subd. (c)(3).)
- 16) States that courts must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials courts provide for the public that relate to bail for traffic infractions, including any website information, written instructions, courtesy notices, and forms. Courts must implement this subdivision as soon as reasonably possible but no later than September 15, 2015. (Rule of Court 4.105, subd. (d).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Millions of Californians cannot afford the cost of even minor traffic violations. Current law allows the courts to suspend those peoples' driving right for failure to pay. Most of these folks are not unwilling to pay their debts, but simply unable. Taking one's license – and generally one's ability to find and retain work – does nothing to enforce collection of court-ordered debt. In fact, 88% of people with a suspended license lose their income. The practice costs taxpayers by crowding county jails, reduces state revenues, and is not an effective debt collection tool for low-income Californians."
- 2) **Existing Penalty Assessments:** There are penalty assessments and fees added on to the base fine the court imposes on a defendant for a traffic ticket or criminal conviction.

Base Fine:	\$ 100
Penal Code 1464 state penalty on fines:	100 (\$10 for every \$10)
Penal Code 1465.7 state surcharge:	20 (20% surcharge)
Penal Code 1465.8 court operation assessment:	40 (\$40 fee per offense)
Government Code 70372 court construction penalty:	50 (\$5 for every \$10)
Government Code 76000 penalty:	70 (\$7 for every \$10)
Government Code 76000.5 Maddy EMS penalty:	20 (\$2 for every \$10)
Government Code 76104.6 DNA fund penalty:	10 (\$1 for every \$10)
Government Code 76104.7 add'l DNA fund penalty:	40 (\$4 for every \$10)
Government Code 70373 conviction assessment	30 (\$30 or \$35)

Total Fine with Assessments: \$480

- 3) **Imposition of Civil Assessment When an Individual Misses a Court Date or Fails to Pay Fine:** If a person misses a court date or a deadline to pay a traffic ticket, the court can add up to \$300 to the original fine. (Pen. Code, § 1214.1.) This amount is referred to as a “civil assessment” and may only be imposed if the person gets notice and still does not pay or appear within a specified time.

This bill would add the requirement that the failure to appear or to pay is “willful” in order for a court to add the civil assessment up to \$300.

- 4) **DMV Suspension of Driver’s License Because of FTP or FTA:** When people with tickets do not pay a fine on time or fail to appear in court, traffic courts notify the DMV. That notification results in a DMV suspension of the person’s driver’s license.

The consequences of unpaid fines and a suspended driver’s license are significant. First and foremost, a suspended license is a significant barrier to employment – many people lose their jobs or are denied jobs due solely to the lack of a license. Bad credit reports stemming from unpaid tickets can keep a family from being able to rent or buy a home. People without licenses cannot get auto insurance and cannot legally drive, whether for school, work, childcare, or medical appointments. These are steep penalties for an offense like making a left turn at the wrong time and not having money to pay the full fine. The following section will address the impact of court-ordered debt and license suspensions. (Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California. <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf>)

The loss of the ability to drive is a major threat to economic security, particularly for people who already have little or no income. For those who are employed, the suspension might cause them to lose their job once they can no longer drive on the job or no longer have reliable transportation to work. For those who are unemployed, not having a license can be an insurmountable barrier to finding work: a license is often needed for commuting, particularly as jobs are increasingly located outside of inner-city areas; many jobs require driving as part of the work responsibilities; and even for non-driving jobs, employers often require applicants to have a valid driver’s license as an indicator of reliability or responsibility. (*Id.*)

- 5) **Use of Driver's License Suspension to Collect Revenues:** Given the impacts that a license suspension has on an individual's license, such a suspension is a significant incentive to pay fines and fees which have been imposed by the court. However, the same reasons that the suspension of a driver's license provide an incentive to pay, create negative impacts on those individuals who are not in a financial position to pay the fines and fees imposed by the court. Individuals lacking the ability to pay the fine experience a punishment that results in further economic disruption which makes it even less likely that they will be able to pay in the future.

There is concern that if an individual's license can no longer be suspended for a failure to pay, there will be a drop in revenue collected on outstanding fines. If that is the case, it is appropriate for the Legislature to evaluate whether the drop in revenue is worth avoiding further economic disruption for Californians caused by suspension of their driving privileges for failure to pay the fine. Avoiding the negative economic consequences of a license suspension might allow individuals to meet the economic obligations of their outstanding court fines.

Even without the ability to suspend a driver's license for FTP, the courts have other tools ensure payment of fines from individuals that are working and bringing in income. Courts can pursue recovery through Franchise Tax Board. Wage garnishment and liens are available. Courts are also authorized to operate comprehensive collection programs to collect delinquent fines.

- 6) **As Proposed to be Amended in Committee:** The following amendments are proposed to be adopted in Committee:
- a) Direct DMV to restrict an individual's privilege to operate a vehicle to driving for employment or medical purposes for a period of six months upon notice from the court that the individual has an FTA on specified vehicle offenses.
  - b) Allow the restriction on driving privileges to be removed if the individual appears in court, resolves the case, or otherwise satisfies the court's order.
- 7) **Argument in Support:** According to *The Western Center on Law & Poverty*, "The current system of license suspensions is not working. The DMV reports that 612,000 Californians currently have a license suspended solely for having an FTA or FTP. Millions of Californians have unresolved FTAs or FTPs that could lead to their license being suspended at any time. If license suspension was an effective tool for encouraging cooperation, the state would not have such high numbers. The truth is the tickets are too expensive, the civil assessments only make matters worse and that for millions of Californians they simply can't afford to make the payments.

"The current practice results in racially and economically disproportionate outcomes that are significant and troubling. A coalition of legal service organizations did a regression analysis of DMV data by zip codes of persons who had a suspended driver license due solely to having an FTA or FTP. The data showed that African Americans were 60 more likely than their portion of the state's population to have their license suspended and that Latinos were 20 percent more likely to have their license suspended. Our data analysis shows that in areas with high poverty levels that there are literally thousands of license suspensions in single zip

codes. Impacts like these destroy trust in law enforcement and the courts and cause crippling and enduring financial hardship.

“Legal service organizations also made Public Record Act requests of law enforcement agencies on the number of stops, arrests and incarcerations for driving on a suspended license that was suspended due to an FTA or FTP. The Los Angeles County Sheriff reported that in a two year period 23,000 people were arrested for driving on a suspended license for FTA or FTP. Of those persons arrested, 31 percent were African American even though they constitute just 8 percent of the county’s population. In San Francisco, more than 10,000 persons were arrested for driving on a suspended license and 46 percent of them were African American.

“Suspending licenses should only be done to punish serious traffic safety violations. The American Association of Motor Vehicle Administrators (AAMVA) published a best practices guide in 2013 entitled Best Practices top Reducing Suspended Drivers. In its’ findings it says:

*“Some studies have shown that suspending driving privileges for non-highway safety related reasons is not effective. The costs of arresting, processing, administering, and enforcing social non-conformance related driver license suspensions create a significant strain on budgets and other resources and detract from highway and public safety priorities.*

“The AAMVA called for a nationwide change in the use of license suspensions:

*“Eliminating driver license suspensions for non-highway safety violations will significantly reduce the burden on departments of motor vehicles (DMV’s), law enforcement, the courts and society. DMV’s for example, incur exorbitant costs to create, program systems and process these newly legislated suspension types.*

“There are serious legal and constitutional issues with the use of license suspensions to collect exorbitant fines, fees and assessments. The Department of Justice Civil Rights division sent a letter to the heads of all 50 state courts outlining the impacts from using courts to generate revenue:

*“Individuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in cycles of poverty that can be nearly impossible to escape.”*

- 8) **Argument in Opposition:** According to *The California State Association of Counties*, “CSAC has serious concerns with the approach of SB 881, which does not address the complexity of the current collections system, but instead takes away a tool the courts use to collect the fines and fees they are mandated by law to collect. In addition, SB 881 requires the Department of Motor Vehicles (DMV) by July 2017, to restore all driving privileges that have been suspended due to a note of a Failure to Appear (FTA) or Failure to Pay (FTP). This provision eliminates any incentive for individuals to pay outstanding debt for traffic violations they received and failed to pay.

“SB 881 does not address the fact that individuals will still have burdensome court ordered debt that they cannot afford to pay. The unpaid debt can be passed on to the vehicle

registration affecting the individual's ability to register their vehicle and possibly impacting their ability to have valid car insurance.

“Over the last decade California has grappled with the increased costs of traffic fines and fees, and the disproportionate impact that these penalties have on low-income families. While the state Judicial Council annually adopts a uniform traffic penalty schedule for traffic infractions, there are approximately 310% additional penalty assessments added to these base fines to support various state and local government programs and services. As additional assessments have been added to penalties, the default rate has increase.

“With that said, CSAC understands the importance of creating a penalty fee system that provides a reasonable process for individuals to satisfy their financial obligations ordered by the court. That is why CSAC is partnering with the Judicial Council for a federal grant that looks at developing a system focusing on an individual's ability to pay and alternatives for court imposed debt.”

**9) Related Legislation:**

- a) SB 405 (Hertzberg), Chapter 385, Statutes of 2015, required courts to allow individuals to schedule court proceedings, even if bail or civil assessment has been imposed, and clarifies the traffic amnesty program.
- b) SB 85 (Committee on Budget and Fiscal Review), Chapter 26, Statutes of 2015, authorized an 18-month traffic amnesty program, beginning October 1, 2015, for delinquent debt.

**10) Prior Legislation:**

- a) SB 366 (Wright), of the Legislative Session of 2013-2014, would have given courts more discretion to consider defendants ability to pay in setting fines and fees. SB 366 was held in the Senate Appropriations Committee.
- b) AB 2724 (Bradford), of the Legislative Session of 2013-2014, would have allowed defendants to get their driving privileges back when the driver's license had been suspended for failing to pay a fine, if they agree to pay in installments. AB 2724 was held in the Assembly Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

AIDS Legal Referral Panel  
Asian Americans Advancing Justice, California  
American Civil Liberties Union of California  
California Association of Local Conservation Corps  
California Department of Insurance  
California Immigrant Policy Center  
California Latinas for Reproductive Justice  
California Public Defender's Association

Community Housing Partnership  
Drug Policy Alliance  
East Bay Community Law Center  
Ella Baker Center for Human Rights  
Forward Together  
Haywood Burns Institute  
Inland Empire Immigrant Youth Coalition  
Law Foundation of Silicone Valley  
Legal Aid Association of California  
Legal Services for Prisoners with Children  
National Lawyers Guild, San Francisco Bay Area Chapter  
OneJustice  
Root & Rebound  
Safer Streets LA  
San Diego Volunteer Lawyer Program  
Western Center on Law and Poverty

**Opposition**

California Police Chiefs Association, Inc.  
California State Association of Counties

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

AMENDMENTS TO SENATE BILL NO. 881  
AS AMENDED IN SENATE MAY 2, 2016

Amendment 1

On page 7, in line 12, strike out “(c)” and insert:

(b)

Amendment 2

On page 7, in line 24, strike out “(c)” and insert:

(b)

Amendment 3

On page 7, in line 29, strike out “(c)” and insert:

(b)

Amendment 4

On page 8, in line 37, strike out “(c)” and insert:

(b)

Amendment 5

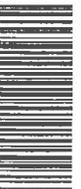
On page 9, in line 10, strike out “If thereafter” and insert:

Upon receipt of the notice, the department shall order the person’s privilege to operate a motor vehicle restricted to employment-related or medically related purposes, including job training, for the person or a member of his or her family. The restriction shall be effective immediately and shall continue for a period of six months. Upon expiration of the six-month period of restriction, the person’s driving privileges shall be fully reinstated. If, during the six-month period of restriction,

Amendment 6

On page 9, in line 14, strike out “effect. If the court provided the department with”, strike out lines 15 and 16 and insert:

effect, and the department shall immediately reinstate the person’s full driving privilege.



Amendment 7

On page 9, strike out lines 17 to 26, inclusive, in line 27, strike out “(c)” and insert:

(b)

Amendment 8

On page 9, in line 27, strike out “subdivisions (a) and (b),” and insert:

subdivision (a),

Amendment 9

On page 9, strike out lines 38 to 40, inclusive, on page 10, in line 1, strike out “(e)” and insert:

(c)

Amendment 10

On page 10, in line 4, strike out “(f)” and insert:

(d)

Amendment 11

On page 10, in line 9, strike out “(c),” and insert:

(b),

Amendment 12

On page 10, in line 10, strike out “(e),” and insert:

(d),

Amendment 13

On page 10, in lines 22 and 23, strike out “If thereafter” and insert:

Upon receipt of the notice, the department shall order the person’s privilege to operate a motor vehicle restricted to employment-related or medically related purposes, including job training, for the person or a member of his or her family. The restriction shall be effective immediately and shall continue for a period of six months. Upon

expiration of the six-month period of restriction, the person's driving privileges shall be fully reinstated. If, during the six-month period of restriction,

Amendment 14

On page 10, in line 26, strike out "effect. If the court", strike out lines 27 and 28 and insert:

effect, and the department shall immediately reinstate the person's full driving privilege.

Amendment 15

On page 10, strike out lines 29 to 40, inclusive, on page 11, in line 1, strike out "(c)" and insert:

(b)

Amendment 16

On page 11, in line 16, strike out "(d)" and insert:

(c)

Amendment 17

On page 11, in line 16, strike out "(c)," and insert:

(b),

Amendment 18

On page 11, in line 20, strike out "(e)" and insert:

(d)

Amendment 19

On page 11, in lines 20 and 21, strike out "or pay a fine or bail"

Amendment 20

On page 11, in line 21, strike out "(a) or (b)," and insert:

(a),

Amendment 21

On page 11, in line 23, strike out “or (b)”

Amendment 22

On page 11, in line 35, strike out “(f)” and insert:

(e)

Amendment 23

On page 11, in line 35, strike out “(c),” and insert:

(b),

Amendment 24

On page 11, in line 37, strike out “(c)” and insert:

(b)

Amendment 25

On page 11, in line 38, strike out “(g)” and insert:

(f)

Amendment 26

On page 11, in line 39, strike out “(b).” and insert:

(a).

Amendment 27

On page 12, in line 3, strike out “(h)” and insert:

(g)

Amendment 28

On page 12, in line 6, strike out “(i)” and insert:

(h)

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Substantive

Amendment 29

On page 12, in line 11, strike out "(c)." and insert:

(b).

- 0 -

Date of Hearing: June 28, 2016  
Counsel: Sandy Uribe

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

SB 882 (Hertzberg) – As Amended May 31, 2016

**SUMMARY:** Provides that minors shall not be subject to criminal penalties for evading a transit fare.

**EXISTING LAW:**

- 1) Makes it a criminal infraction, punishable by a fine not to exceed \$250 and by specified community service, for a person to engage in any of the following activities in a transit vehicle or facility:
  - a) Fare evasion, as specified;
  - b) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare;
  - c) Unauthorized use of a discount ticket or failure to present, upon request from a transit system representative, acceptable proof of eligibility to use a discount ticket. (Pen. Code, § 640.)
- 2) Provides for misdemeanor penalties for third or subsequent offenses for engaging in various forms of fare evasion. (Pen. Code, § 640.)
- 3) Allows transit operators to levy administrative penalties against persons who have committed certain violations on their systems, including fare evasion. (Pub. Util. Code, § 99580, subd. (a).)
- 4) Allows the transit agency to contract with a private vendor or government agency for the processing of notices of fare evasion. (Pub. Util. Code, § 99580, subd. (c)(1).)
- 5) States that a notice of fare evasion must contain specified information including the violation, the administrative penalty, the date, time, and place where the violation occurred, and the procedure for contesting the violation. (Pub. Util. Code, § 99580, subd. (d)(1).)
- 6) Prohibits a transit agency from setting administrative penalties at an amount that exceeds the maximum fine set forth in the Penal Code. (Pub. Util. Code, § 99580, subd. (e).)
- 7) Sets forth a process for an initial review, as well as a subsequent administrative review, of a fare-evasion violation. (Pub. Util. Code, § 99581.)
- 8) Allows a person to appeal an administrative review of a notice of fare evasion in the superior court, as specified. (Pub. Util. Code, § 99582.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "SB 882 prevents minors from being charged with a penal code violation when they fail to pay the fare on public transit.

"Failure to pay is the number one citation for youth in several counties. Once a child appears in court, the likelihood that they will drop out of school and receive another court appearance greatly increases. It is too easy for a child who enters the criminal justice system, to never come out.

"SB 882 does not impact the ability of transit authorities to charge and collect a financial penalty. It does not remove the ability for authorities to cite a person for smoking, selling goods, vandalizing or any other violation.

"SB 882 simply ensures that a child is not made a criminal when they have failed to pay a fare."

- 2) **Administrative Adjudication of Transit Penalties:** Since the enactment of SB 1749 (Migden), Chapter 258, Statutes of 2006, the state law allows for an alternative civil infraction process in San Francisco and Los Angeles Counties. Under these provisions, the City and County of San Francisco (the overseer of the city's transit system) and the Los Angeles County Metropolitan Transportation Authority may adopt and impose an administrative penalty and adjudication process for these same violations committed by adults. This process was subsequently authorized for other transit agencies. (See e.g. SB 1320 (Hancock), Chapter 493, Statutes of 2010.)

Last year, SB 413 (Wieckowski), Chapter 765, allowed transit operators to levy administrative penalties against minors for specified transit violations. Despite this authority, most transit agencies in the state have not adopted an administrative process for addressing fare evasion.

Administrative adjudication of transit violations is similar to the process for issuing and enforcing parking tickets. The issuing officer serves the alleged violator with a "notice of fare evasion or passenger misconduct violation," which includes the date, time, location, and nature of the violation, the administrative penalty amount, the date by which the penalty must be paid, and the process for contesting the citation. If the alleged violator contests the citation, then the issuing agency or its contracted processing agency must provide an initial review. If the citation is not dismissed after the initial review, then the issuing agency or its contracted processing agency must provide an impartial administrative hearing at which the citing officer is not required to appear. If the alleged violator is unsatisfied with the results of the administrative hearing, then he or she may file an appeal in superior court, which hears the case de novo.

This bill decriminalizes fare evasion by minors, thereby making the administrative review process the only option for collecting penalties from minors.

- 3) **Argument in Support:** According to the *Youth Justice Coalition*, a co-sponsor of this bill, "Nearly all of us at the Youth Justice Coalition (YJC) have been directly impacted by the high costs –both personal and financial- of transit evasion, including the extreme fines, lost time at school and work for court, a burdensome and confusing diversion project here in our County, and even warrants for unpaid fines resulting in detention. Three years ago, we began to organize for decriminalizing fare evasion, and we discovered that the number one cause of juvenile citations in L.A. County – as many as 10,000 tickets a year as reported through data we received through a Public Records Act request to the L.A. County Probation Department- was for fare evasion. We won a diversion process in L.A., but have still struggled to make the process clear and accessible. Based on these experiences, SB 882 is so important and personal to us.

"California law allows young people to have charges brought against them for a fare evasion ticket, which may result in court appearances, suspended driver's licenses, and even time in juvenile detention. As fare evasion is almost always committed by people who don't have adequate funds needed to access public transportation, addressing fare evasion through the penal code essentially criminalizes youth for poverty.

"SB 882 does not eliminate the ability of youth to be cited and fined for fare evasion. It simply ends the practice of punishing children and young people for fare evasion in our penal code and in our detention and probation systems. By ending criminalization of youth who ride public transit without paying the fare, we can reduce the likelihood that they will enter the criminal justice system, reduce the expense of trying and detaining youth, and eliminate the life-altering impacts that court and detention have on a young person's life chances."

- 4) **Argument in Opposition:** According to the *California Transit Association*, "Transit fare evasion, whether by minors or adults, is a financial and operational challenge for public transit agencies across California, including those in Los Angeles County. As such, California law has long-authorized public transit agencies to process these common, and sometimes recurring, violations through Penal Code §640. Individuals found guilty of transit fare evasion may face a fine of \$250 and/or community service, and in cases of a repeat offenders, a fine of \$400. In the most extreme cases, individuals may face imprisonment in a county prison for no more than 90 days.

"In 2015, the Association worked with the Legislature to create an additional tool for deterring and enforcing fare evasion by minors by sponsoring SB 413 (Wieckowski) [Chapter 765, Statutes of 2015], which addressed a deficiency in then-current law, to allow public transit agencies to exercise an administrative process for deterring fare evasion and collecting penalties from minors. As a result of this law and with the support of their county governments, the Los Angeles County Metropolitan Transportation Authority and the San Francisco Municipal Transportation Agency, the public transit agencies with the highest ridership in California, were able to decriminalize transit fare evasion on their systems. Despite interest, no other public transit agency in the state has been able to establish similar administrative processes for addressing fare evasion. Asked why they have yet to establish an administrative process for handling fare evasion, our members resoundingly point to the high costs of developing and maintaining the infrastructure necessary to meet the notice and hearing requirements for an administrative process; waning federal, state and local financial support; and, requirements in current law that direct revenue generated from transit enforcement to the general fund of the county in which the citation is administered, and not

to the transit agency for the maintenance of this costly system of enforcement.

"The Association and its members remain sympathetic to the needs of low-income minors, some of whom lack the resources to fully pay for transit fares. To that end, a majority of the transit agencies that comprise our membership offer special reduced fares (e.g. college/vocational, student, and/or youth) that aim to alleviate the financial burden associated with mobility, while still allowing transit agencies to meet the farebox recovery requirements established by law. We oppose this bill because, rather than address the root cause of transit fare evasion, which is transit affordability, or the key impediments to the adoption of an administrative process for transit fare evasion citations, this bill would simply bar cash-strapped transit agencies from utilizing a cost-effective tool that helps ensure that nominal fares are paid by minors.

"In addition, we oppose this bill because, if it were to become law, it would necessitate the overhaul of transit fare enforcement at virtually every transit agency in the state – at great cost to taxpayers– in order to mitigate the impacts of a minor infraction with a historically low-incidence. For context, at the transit agencies with the highest ridership in the state and no administrative process for administering citations, youth fare evasion citations as a percentage of total annual ridership break down as follows: Orange County Transportation Authority – .0000046% (2 fare evasion citations/approx. 43,400,000 annual riders); Santa Clara Valley Transportation Authority – .00056% (246 citations/43,944,096 annual riders); and, San Diego Metropolitan Transit System – .00041% (401/approx. 97,000,000 annual riders).

"Finally, we oppose this bill because, if resources for this overhaul do not follow, and transit agencies are unable to establish an administrative process, fare payment by minors would become merely a suggestion. For the Orange County Transportation Authority, the Sacramento Regional Transit District, the San Diego Metropolitan Transit System and the Santa Clara Valley Transportation Authority, this change could potentially lead to a loss in youth fare revenue of \$6 million, \$2.1 million, \$12 million and \$4.2 million, respectively."

**5) Related Legislation:**

- a) SB 413 (Wieckowski), Chapter 765, Statutes of 2015, in pertinent part, allows transit operators to levy administrative penalties against minors for specified transit violations.
- b) AB 869 (Cooper) authorizes a public transit district with a civil adjudication procedure for minor transit-related offenses committed by adults to instead pursue criminal penalties if a person fails to pay the administrative penalty or successfully complete the civil administrative process. AB 869 has been moved to the inactive file on the Senate Floor.

**6) Prior Legislation:**

- a) SB 1320 (Hancock), Chapter 493, Statutes of 2010, provides authority to specified local transit agencies allowing them to administratively adjudicate transit violations.

- b) SB 1749 (Migden), Chapter 258, Statutes of 2006, allowed for administrative enforcement of transit-related violations in the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Children's Defense Fund of California (Co-Sponsor)  
Western Center on Law and Poverty (Co-Sponsor)  
Youth Justice Coalition (Co-Sponsor)  
Alliance for Boys and Men of Color  
A New Way of Life Reentry Project  
Aspiranet  
California Association of Local Conservation Corps  
California Coalition for Youth  
California Equity Leaders Network  
California Pan-Ethnic Health Network  
California Public Defenders Association  
California School-Based Health Alliance  
Californians United for a Responsible Budget  
Center for Juvenile Law and Policy, Loyola Law School  
Children Now  
Children's Advocacy Institute, University of San Diego Law School  
Coalition of California Welfare Rights Organizations, Inc.  
Comite Civico del Valle  
Community Asset Development Redefining Education  
Courage Campaign  
Ella Baker Center for Human Rights  
El Rancho Unified School District  
First Place for Youth  
Larkin Street Youth Services  
Laborers' International Union of North America Locals 777 & 792  
Lawyers Committee for Civil Rights of San Francisco Bay Area  
Legal Services for Prisoners with Children  
National Association of Social Workers, California Chapter  
National Center for Youth Law  
Pacific Juvenile Defender Center  
Policy Link  
Public Counsel  
Root and Rebound  
Rubicon Programs  
One Private Individual

### **Opposition**

California Police Chiefs Association  
California State Sheriffs Association  
California Transit Association

Riverside Transit Agency  
Sacramento Regional Transit District

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

Date of Hearing: June 28, 2016

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 955 (Beall) – As Amended June 23, 2016

**SUMMARY:** Establishes a compassionate release process for a person who has been committed to, or is in the care of, the Department of State Hospitals (DSH) but is now terminally ill, or permanently medically incapacitated, as specified. Specifically, **this bill:**

- 1) Specifies that the provisions in this bill apply to a person who has been committed to DSH as a mentally disordered offender (MDO) including a person who has been found not guilty by reason of insanity (NGI), or a person who is in the care of DSH because he or she has been found incompetent to stand trial or be adjudicated to punishment (IST).
- 2) Requires a physician employed by DSH to notify the medical director and the patient advocate when a prognosis is made of a patient being eligible for compassionate release, and if the medical director concurs with the diagnosis, the Director of DSH shall be notified.
- 3) Provides that within 72 hours of receiving notification, the medical director or the medical director's designee shall notify the patient of the discharge procedures pursuant to the provisions in this bill and obtain the patient's consent for discharge.
- 4) Requires the medical director or the medical director's designee to arrange for the patient to designate a family member or other outside agent to be notified as to the patient's medical condition, prognosis, and release procedures. If the patient is unable to designate a family member or other outside agent, the medical director or the medical director's designee shall contact any emergency contact listed, or the patient advocate if no contact is listed.
- 5) Requires the medical director or the medical director's designee to provide the patient and his or her family member, agent, emergency contact, or patient advocate with updated information throughout the release process with regard to the patient's medical condition and the status of the patient's release proceedings, including the discharge plan.
- 6) Prohibits the release of a patient unless the discharge plan verifies placement for the patient upon release.
- 7) Allows the patient or his or her family member or designee to contact the medical director or the executive director at the state hospital where the patient is located or the Director of DSH to request consideration for a recommendation to the court that the patient's commitment be conditionally dismissed for compassionate release and the patient released from the department facility.
- 8) Provides upon notification or request as specified in this bill, the Director of DSH may recommend to the court that the patient's commitment be conditionally dismissed for

compassionate release and the patient released from the department facility.

- 9) Gives the court discretion to conditionally dismiss the commitment for compassionate release and release the patient if the court finds either of the following and that the conditions under which the patient would be released or receive treatment do not pose a threat to public safety:
  - a) The patient is terminally ill with an incurable condition caused by an illness or disease that would likely produce death within six months, as determined by a physician employed by DSH; or,
  - b) The patient is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the patient requiring 24-hour total care, including, but not limited to, coma, persistent vegetative state, brain death, ventilator-dependency, loss of control of muscular or neurological function, and that incapacitation did not exist at the time of the original commitment and the medical director responsible for the patient's care and the Director of DSH both certify that the patient is incapable of receiving mental health treatment.
- 10) Requires the court, within 10 days of receiving the recommendation for release, to hold a noticed hearing to consider whether the patient's commitment should be conditionally dismissed and the patient released.
- 11) Specifies the parties that shall receive copies of the medical records reviewed in developing the recommendation for conditional dismissal.
- 12) Provides that the matter shall be heard before the same judge that originally committed the patient, if possible, or if the patient is an MDO on parole and was committed for treatment by the Board of Parole Hearings (BPH), the matter shall be heard by the court that committed the patient to the state prison for the underlying conviction, if possible.
- 13) Requires the patient to be released within 72 hours of receipt of the court's order for the patient's commitment to be conditionally dismissed, unless a longer time period is requested by the Director of DSH and approved by the court.
- 14) States that the executive director of the state hospital or his or her designee shall ensure that upon release, the patient has each of the following in his or her possession, or the possession of the patient's representative:
  - a) A discharge plan;
  - b) A discharge medical summary;
  - c) Medical records;
  - d) Identification;
  - e) All necessary medications; and,

- f) Any property belonging to the patient.
- 15) Specifies that after discharge, any additional records shall be sent to the patient's forwarding address.
- 16) Authorizes the Director of DSH to adopt regulations to implement the provisions of this bill and exempts them from the Administrative Procedure Act.
- 17) Provides that the commitment order by the court is conditionally dismissed but may be reinstated per regulations adopted by the Director of DSH.

#### **EXISTING LAW:**

- 1) Provides if the Secretary of the Department of Corrections and Rehabilitation (CDCR), BPH, or both determine that a prisoner has six months or less to live or that the prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, and that the conditions under which the prisoner would be released do not pose a threat to public safety, the Secretary of CDCR or BPH may recommend to the court that the prisoner's sentence be recalled (compassionate release). (Pen. Code, § 1170, subd. (e)(1) & (2).)
- 2) States that within 10 days of receipt of a positive recommendation by the Secretary of CDCR or BPH, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled. (Pen. Code, § 1170, subd. (e)(3).)
- 3) Provides that any physician employed by CDCR who determines that a prisoner has six months or less to live shall notify the chief medical officer of the prognosis. If the chief medical officer concurs with the prognosis, he or she shall notify the warden. Within 48 hours of receiving notification, the warden or the warden's representative shall notify the prisoner of the recall and resentencing procedures, and shall arrange for the prisoner to designate a family member or other outside agent to be notified as to the prisoner's medical condition and prognosis, and as to the recall and resentencing procedures. (Pen. Code, § 1170, subd. (e)(4).)
- 4) Requires the warden or the warden's representative to provide the prisoner and his or her family member, agent, or emergency contact, updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall and resentencing proceedings. (Pen. Code, § 1170, subd. (e)(5).)
- 5) Requires any recommendation for recall submitted to the court by the CDCR Secretary or BPH to include one or more medical evaluations, a postrelease plan, and findings of the prisoner's eligibility. (Pen. Code, § 1170, subd. (e)(7).)
- 6) States if the court grants the recall and resentencing application, the prisoner shall be released within 48 hours of receipt of the court order, unless a longer time period is agreed to by the inmate. (Pen. Code, § 1170, subd. (e)(9).)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Current law provides for a compassionate release program for state prison inmates. The program allows inmates who have six months left to live, including those receiving treatment in the Department of State Hospitals (DSH), to be discharged to spend their remaining time with family. However, other DSH patients – such as those who are Not Guilty by Reason of Insanity or Incompetent to Stand Trial – are not eligible for such compassionate release. This creates a situation in which a patient can be in a coma and unable to receive treatment, but cannot be released to a more palliative care setting closer to their loved ones.

"This situation also keeps state hospital beds from being used to treat patients that could benefit from treatment. Currently, the state hospitals have a waiting list of more than 600 people. These individuals are languishing in county jails, state prisons, and hospitals, while patients who are unable to participate in treatment because they are terminally ill or permanently incapacitated remain in state hospitals because DSH has no compassionate release program.

"End-of-life care can be very expensive, and when a state hospital patient requires such care, the department, and the state General Fund, is responsible for 100 percent of the costs. However, if they were to be compassionately released, these patients would be eligible for federal matching funds for their treatment. According to the Senate Appropriations Committee, "to the extent even five DSH commitments are released, SB 955 will result in potential future cost savings...likely in the low millions of dollars (General Fund) annually, given these patients likely require the most intensive medical care."

"SB 955 would create a compassionate release program for DSH patients who are Not Guilty by Reason of Insanity, Incompetent to Stand Trial, or Mentally Disordered Offenders. Patients would be required to meet specific criteria, a discharge treatment plan would need to be in place, and petitions for compassionate release would be court-approved. SB 955 will provide a humane, less restrictive environment for terminally ill and medically incapacitated patients and free up much-needed state hospital beds for patients who are currently waiting for placement and could benefit from treatment.

"Under SB 955, in order to be eligible for compassionate release, DSH would have to certify that the patient does not pose a threat to public safety and can no longer benefit from the mental health treatment provided at state hospitals. The bill requires that, if possible, the petition shall be heard before the same court that issued the original commitment order for the patient.

"This bill would require the state hospital, in initiating the petition process, to work with the hospital's patients' rights advocate, available family members of the patient, and the patient, to the extent possible, and to prepare a discharge and post-release plan. The bill would also ensure that the district attorney and public defender (or patient's attorney) of the committing county are involved in the process by requiring DSH to share all medical records reviewed in developing the compassionate release recommendation with the court and with both parties to the hearing."

- 2) **Background on the Mentally Disordered Offender Act (Pen. Code § 2960 et seq.):** An MDO commitment is a post-prison civil commitment. The MDO Act is designed to confine an inmate who is about to be released on parole when it is deemed that he or she has a mental illness which contributed to the commission of a violent crime. Rather than release the inmate to the community, CDCR paroles the inmate to the supervision of the state hospital, and the individual remains under hospital supervision throughout the parole period. The MDO law actually addresses treatment in three contexts - first, as a condition of parole (Pen. Code, § 2962); then, as continued treatment for one year upon termination of parole (Pen. Code § 2970); and, finally, as an additional year of treatment after expiration of the original, or previous, one-year commitment (Pen. Code § 2972). (*People v. Cobb* (2010) 48 Cal.4th 243, 251.)

Penal Code section 2962 lists six criteria that must be proven for an initial MDO certification, namely, whether: (1) the inmate has a severe mental disorder; (2) the inmate used force or violence in committing the underlying offense; (3) the severe mental disorder was one of the causes or an aggravating factor in the commission of the offense; (4) the disorder is not in remission or capable of being kept in remission without treatment; (5) the inmate was treated for the disorder for at least 90 days in the year before the inmate's release; and (6) by reason of the severe mental disorder, the inmate poses a serious threat of physical harm to others. (Pen. Code § 2962, subs. (a)-(d); *People v. Cobb, supra*, 48 Cal.4th at p. 251-252.)

The initial determination that the inmate meets the MDO criteria is made administratively. The person in charge of treating the prisoner and a practicing psychiatrist or psychologist from DSH will evaluate the inmate. If it appears that the inmate qualifies, the chief psychiatrist then will certify to BPH that the prisoner meets the criteria for an MDO commitment.

The inmate may request a hearing before BPH to require proof that he or she is an MDO. If BPH determines that the defendant is an MDO, the inmate may file, in the superior court of the county in which he or she is incarcerated or is being treated, a petition for a jury trial on whether he or she meets the MDO criteria. The jury must unanimously agree beyond a reasonable doubt that the inmate is an MDO. If the jury, or the court if a jury trial is waived, reverses the determination of BPH, the court is required to stay the execution of the decision for five working days to allow for an orderly release of the prisoner.

MDO treatment must be on an inpatient basis, unless there is reasonable cause to believe that the parolee can be safely and effectively treated on an outpatient basis. But if the parolee can no longer be safely and effectively treated in an outpatient program, he or she may be taken into custody and placed in a secure mental health facility. An MDO commitment is for one year; however, the commitment can be extended. (Pen. Code § 2972, subd. (c).) When the individual is due to be released from parole, the state can petition to extend the MDO commitment for another year. The state can file successive petitions for further extensions, raising the prospect that, despite the completion of a prison sentence, the MDO may never be released. The trial for each one-year commitment is done according to the same standards and rules that apply to the initial trial.

- 3) **Compassionate Release:** To be eligible for compassionate release, a prisoner must be "terminally ill with an incurable condition caused by an illness or disease that would produce

death within six months, as determined by a physician employed by [CDCR]." (Pen. Code, § 1170, subd. (e)(2)(A).) Compassionate release may also be available to a prisoner who is permanently incapacitated by a medical condition and unable to perform activities of daily living, requiring 24-hour care. (Pen. Code, § 1170, subd. (e)(2)(C).) The court must also make a finding that the conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety. (Pen. Code, § 1170, subd. (e)(2)(B).)

If the secretary of CDCR determines that the prisoner satisfies the criteria for recall of his or her sentence, the secretary or BPH may recommend to the court that the sentence be recalled. At its next lawfully noticed meeting, BPH must consider this information and make an independent judgment and related findings before rejecting the request or making a recommendation to the court. (Pen. Code, § 1170, subd. (e)(6).) Any recommendation for recall of the inmate's sentence submitted to the court shall include one or more medical evaluations, a postrelease plan, and findings regarding the prisoner's eligibility for release. (Pen. Code, § 1170, subd. (e)(7).) Within 10 days of receipt of a positive recommendation, the court must hold a hearing to consider whether recall is appropriate. (Pen. Code, § 1170, subd. (e)(3).) If possible, the matter must be heard by the judge who sentenced the prisoner. (Pen. Code, § 1170, subd. (e)(8).) If the court grants recall of the prisoner's sentence, the prisoner must be released within 48 hours of receipt of the court's order, unless the inmate agrees to a longer time period. (Pen. Code, § 1170, subd. (e)(9).)

Due to its stringent criteria and lengthy process, the number of prisoners released on compassionate release is quite low. From 2007 through the first ten months of 2013, CDCR received 488 requests for compassionate release, of which 99 were approved. In 2012, 97 applications for compassionate release were submitted to CDCR for review; 35 were approved and advanced to the sentencing court; 13 sentences were recalled by judges, clearing the way for release. 27 cases were never completed due to withdrawal, death, or not meeting the criteria. (McNichol, *Final Requests* (Jan. 2014) California Lawyer, at pp. 18-21.)

According to statistics provided by CDCR, from 2014 through 2015, CDCR received 35 cases for review; 20 of those were approved and referred to the court for recall and resentencing; and 9 of those cases resulted in compassionate release.

- 4) **Argument in Support:** According to the *California Public Defenders Association*, "SB 955 would ensure that all state hospital patients are eligible for compassionate release. This bill is a compassionate measure that ensures that all patients are treated equally and allowed to spend their remaining months with family in a less restrictive environment than a state hospital.

"Current law provides for a compassionate release program for state prison inmates. The program allows inmates who have six months left to live, including those receiving treatment in the Department of State Hospitals (DSH), to be discharged to spend their remaining time with family. However, other DSH patients – such as those who are Not Guilty by Reason of Insanity or Incompetent to Stand Trial – are not eligible for such compassionate release.

"This creates a situation in which a patient can be in a coma and unable to receive treatment, but cannot be released to a more palliative care setting closer to their loved ones. These patients also keep state hospital beds from being used to treat patients that could benefit from

treatment. Additionally, patients released from DSH facilities are eligible for Medi-Cal, allowing the state to pursue federal matching funds for their treatment.

"SB 955 would create a compassionate release program for all DSH patients regardless of commitment reason. Patients would be required to meet specific criteria, including no longer posing a risk to society, and petitions for compassionate release would be approved by the court of commitment."

5) **Argument in Opposition:** According to the *California State Sheriffs' Association*, "SB 955 creates a mechanism to release persons found to be incompetent to stand trial, not guilty by reason of insanity, or mentally disordered offenders from DSH care because they are terminally ill or are permanently, medically incapacitated and do not pose a threat to public safety. People who are committed to the state hospital from the criminal justice system are dangerous and in need of significant treatment. The desire to see such a person enjoy a 'compassionate' release because he or she is near the end of life or meets a definition regarding his or her medical condition should not trump the reason the person was committed for treatment. Mechanisms exist to release patients who no longer need care – this bill goes beyond that notion."

6) **Related Legislation:**

- a) SB 6 (Galgiani) exempts from medical parole and compassionate release eligibility a prisoner who was convicted of the murder of a peace officer, as provided, and applies the provisions of this bill retroactively. SB 6 is pending hearing by the Committee on Appropriations.
- b) SB 1295 (Nielsen) authorizes the use of documentary evidence for purposes of satisfying the criteria used to evaluate whether a prisoner released on parole is required to be treated by DSH as an MDO. SB 1295 is pending hearing by the Committee on Appropriations.

7) **Prior Legislation:**

- a) AB 1156 (Brown), Chapter 378, Statutes of 2015, among other provisions, extended compassionate release to eligible inmates sentenced to county jail under the 2011 Realignment Act.
- b) SB 1399 (Leno), Chapter 405, Statutes of 2010, established California's medical parole law which allows a prisoner who is determined to be medically incapacitated with a medical condition that renders the prisoner permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care to be granted medical parole if BPH determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety.
- c) AB 1539 (Krekorian), Chapter 740, Statutes of 2007, established criteria and procedure for which a state prisoner may have his or her sentence recalled and be re-sentenced if he or she is diagnosed with a disease that would produce death within six months or is permanently medically incapacitated and whose release is deemed not to threaten public safety.

- d) SB 1547 (Romero), of the 2005-06 Legislative Session, would have required CDCR to establish programs that would parole geriatric and medically incapacitated inmates who no longer pose a threat to the public safety. SB 1547 failed passage on the Assembly floor.
- e) AB 1946 (Steinberg), of the 2003-04 Legislative Session, would have provided that terminally ill or medically incapacitated prisoners, as specified, are eligible to apply to have their sentences recalled and to be re-sentenced; and made legislative findings that programs should be available for inmates that are designed to prepare nonviolent felony offenders for successful reentry into the community. AB 1946 was vetoed by the Governor.
- f) AB 29 (Villaraigosa), Chapter 751, Statutes of 1997, established a procedure whereby a court may have the discretion to re-sentence or recall a sentence if a prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Union of American Physicians and Dentists (Sponsor)  
American Federation of State, County and Municipal Employees, AFL-CIO  
American Federation of State, County and Municipal Employees, Local 2620  
California Association of Psychiatric Technicians  
California Attorneys for Criminal Justice  
California Psychiatric Association  
California Public Defenders Association  
Disability Rights California  
Legal Services for Prisoners with Children  
National Association of Social Workers, California Chapter

### **Opposition**

California District Attorneys Association  
California State Sheriffs Association

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

Date of Hearing: June 28, 2016  
Chief Counsel: Gregory Pagan

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

SB 966 (Mitchell) – As Amended June 1, 2016

**SUMMARY:** Limits the current three year enhancement for prior conviction of specified controlled substance offenses to convictions for the manufacture of a controlled substance, or using or employing a minor in the commission of specified controlled substance offenses.

**EXISTING LAW:**

- 1) 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.)
- 2) Provides that any person convicted of, or conspiracy to commit the sale, furnishing, transportation, or possession for sale of cocaine, cocaine base, heroin, or other specified controlled substances shall, in addition to any other punishment, receive a full, separate, and consecutive three year term of imprisonment in a county jail for each prior conviction for sale, possession for sale, manufacturing, possession with the intent to manufacture specified controlled substances, or using a minor in the commission of specified controlled substance offenses. (Health & Saf. Code, § 11370.2, subd. (a).)
- 3) Provides that any person convicted of, or conspiracy to commit the sale, possession for sale, the manufacture, possession with the intent to manufacture PCP, or using a minor in the commission of specified offenses related to PCP shall, in addition to any other punishment, receive a full, separate, and consecutive three year term of imprisonment in a county jail for each prior conviction for sale, possession for sale, manufacturing, possession with the intent to manufacture specified controlled substances, or using a minor in the commission of specified controlled substance offenses. (Health & Saf. Code, § 11370.2, subd. (a).)
- 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, 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.)

- 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 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.)
- 8) Provides that any person who manufactures, compounds, converts, produces, derives, processes, or prepares specified controlled substances is guilty of a felony, punishable by imprisonment in the state prison for three, five or seven years. (Health & Saf. Code, § 11379.6.)
- 9) Any person who possesses specified chemicals with the intent to manufacture methamphetamine or PCP shall be punished by two, four, or six years in state prison. (Health & Saf. Code, § 11383.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, " SB 966 would begin undoing the damage of the failed War on Drugs. Long sentences that were central to the drug war strategy — driven by mandatory sentences like the enhancement SB 966 will repeal — utterly failed to reduce drug availability or the number of people harmed in the illicit drug market. Controlled substances are now cheaper and more widely available than ever before, despite a massive investment of tax revenue and human lives in an unprecedented build-up and fill-up of prisons and jails that have devastated low-income communities of color.

"By amending the sentencing enhancement for prior non-violent drug convictions, this bill will improve public safety and community well-being, reduce racial disparities in the criminal justice system, and allow public funds to be invested in community-based programs instead of costly jail expansion.

"SB966 would address extreme sentences. Enhancements result in sentences being far more severe than is just, sensible, or effective. Under current law, a person may face two to four years in jail for possessing drugs for sale under the base sentence. But if the person has two prior convictions for possession for sale, they would face an additional six years in jail – for a total of ten years. As of 2014, there were more than 1,700 people in California jails sentenced to more than five years. The leading cause of these long sentences was non-violent drug sale offenses.

"SB 966 would reduce racial disparities in the criminal justice system. Although rates of drug use and sales are comparable across racial lines, people of color are far more likely to be

stopped, searched, arrested, prosecuted, convicted, and incarcerated for drug law violations than are whites. Research also shows that prosecutors are twice as likely to pursue a mandatory minimum sentence for Blacks as for whites charged with the same offense.

"SB 966 would help restore balance in the judicial process. Prosecutors use enhancements as leverage to extract guilty pleas, even from the innocent. Prosecutors threaten to use enhancements to significantly increase the punishment defendants would face should they exercise their right to a trial. According to Human Rights Watch, "plea agreements have for all intents and purposes become an offer drug defendants cannot afford to refuse."

"SB 966 will stop the cruel punishment of persons suffering from a substance abuse disorder. People who suffer untreated substance abuse disorders often sell drugs to pay for the drugs that their illness compels them to consume. It is fundamentally unjust, as well as counterproductive, to put a sick person in jail to address behaviors better handled in a medical or treatment setting."

- 2) **Background:** The enhancement for prior drug crime convictions was enacted through AB 2320 (Condit), Chapter 1398, Statutes of 1985). The bill included legislative intent "to punish more severely those persons who are in the regular business of trafficking in, or production of, narcotics and those persons who deal in large quantities of narcotics as opposed to individuals who have a less serious, occasional, or relatively minor role in this activity."

The bill - called "The Dealer Statute" - was sponsored by the Los Angeles District Attorney and also included enhancements based on the weight of the drug involved in specified drug commerce crime. The sponsor explained that the bill was modeled on particularly harsh federal drug crime laws. The sponsor argued that the bill was necessary to eliminate an incentive for persons "to traffic [in drugs] in California where sentences are significantly lighter than in federal law." The federal laws to which the sponsor referred were those enacted in the expansion of the war against drugs during the Reagan administration. These laws included reduced judicial discretion through mandatory minimum sentences. The current administration has begun to pull back on some of the harshest policies and Congress has passed some sentence reductions, most notably reducing the disparity between cocaine powder crimes and cocaine base crimes.

- 3) **Argument in Support:** According to the *American Civil Liberties Union*, "SB 966 will repeal the harsh three-year enhancement for prior nonviolent drug offenses. The enhancement, which has failed to protect communities or reduce the availability of drugs, but has crippled state and local budgets and contributed to jail and prison overcrowding, is one of the many enhancements overdue for repeal.

"Sentence enhancements based on prior convictions target the poorest and most marginalized people in our communities: those with substance use and mental health needs, and those who, after prior contact with police or imprisonment, have struggled to reintegrate into society. These and other long sentences, central to the war on drugs, have utterly failed to reduce drug availability or protect people harmed in the illicit drug market, yet they have devastated low-income communities of color, broken up families, and disrupted lives in California and across the country. Despite significant financial investments in criminal prosecutions and imprisonment, controlled substances are now cheaper and more widely

available than ever before, and our communities are no safer.

“As a result of California’s lengthy sentences, including enhancements like the ones addressed by SB 966, counties around the state are building new jails to imprison people with long sentences. Since 2007, California has spent \$2.2 billion on county jail construction, not including the costs borne by the counties for construction and increased staffing, or the state’s debt service for high-interest loans. Sheriffs have argued for this expansion by pointing to their growing jail populations, particularly people with long sentences and with mental health and substance use needs. However, jail expansion has not improved public safety and has instead funneled money away from the community-based programs and services that have proven to successfully reduce crime.

“By reducing sentences for people with prior drug convictions, SB 966 will allow state and county funds to instead be invested in programs and services that meet community needs and improve public safety, including community-based mental health and substance use treatment, job programs, and affordable housing. SB 966 will ease overcrowding in our county jails, making them safer for inmates and jail staff alike. And lastly, SB 966 will start to undo the state’s shameful legacy of archaic drug laws that have been used to target communities of color for decades.”

- 4) **Argument in Opposition:** According to the *Office of the San Diego County District Attorney*, "Currently, the Office of National Drug Control Policy reports our nation is in the grips of an opioid epidemic, and California is not immune. In 2013, California hospitals treated more than 11,500 patients suffering an opioid or heroin overdose; this is about one overdose every 45 minutes. Now is not the time to reduce penalties for sales and trafficking of opioids. Other states are actually increasing the penalties for trafficking in certain opioids. Legislation aimed at funding educational and prevention programs to reduce the current opioid addiction epidemic would better serve all Californians.

“SB 966 repeals the current three year sentence enhancement for defendants convicted of specified drug sales and possession for sale crimes who have prior convictions for drug sales or possession for sale offenses. The scenario we will face is one where a defendant with multiple convictions for drug sales or possession for sale, or drug manufacturing offenses would be treated the same as a first time offender. This would include reducing the sentences for those who knowingly manufacture “Norco” pills laced with fentanyl, an opiate about 100 times stronger than heroin. The first time offender may need education or treatment for opioid addiction, while the defendant with multiple convictions for sales should receive punishment.

“Heroin addiction has spiked in recent years, especially for counties along the U.S. – Mexico border. In 2014, more than 300 San Diegans died from heroin overdoses, and the percentages of men and women booked into county jail who tested positive for heroin or other opiates were the highest since tracking began in 2000. The problem is severe enough locally that patrol deputies in the San Diego Sheriff’s Department are now equipped to administer a drug that counteracts the effects of heroin and other opioids. Overall, experts say heroin use in San Diego County is at its highest rate in 15 years. Experts say the resurgent heroin epidemic stems in part from doctors’ over-prescription of legal opioid pain killers such as Oxycodone or its time release cousin, OxyContin. When addicts can no longer afford, or find these particularly addictive over-the-counter drugs, they move on to

heroin. Drug cartels are taking notice of the demand and in 2014, law enforcement agencies in the U.S. seized triple the amount of heroin confiscated in 2009. SB 966 will allow these drug dealers to escape the additional punishment they deserve.”

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Civil Liberties Union of California (Co-sponsor)  
Drug Policy Alliance (Co-sponsor)  
Ella Baker Center for Human Rights (Co-sponsor)  
A New Path  
A New Way of Life Reentry Project  
ACCE Action  
Alameda County Public Defender  
Alliance for Men and boys of Color  
American Friends Service Committee  
Arts for Incarcerated Youth Network  
Asian American Criminal Trial Lawyers Association  
Asian Americans Advancing Justice-California  
Asian Pacific Environmental Network  
Bay Area Black Worker Center  
Bay Area Community Resource Workforce Development  
Bend the Arc: A Jewish Partnership for Justice  
Black Women Organized for Political Action  
California Association for Alcohol and Drug Program Executives, Inc.  
California Attorneys for Criminal Justice  
California Coalition for Women Prisoners  
California Immigrant Policy Center  
California Partnership  
California Prison Moratorium Project  
California Public Defenders Association  
California State Conference of the National Association for the Advancement of Colored People  
Californians for Safety and Justice  
Californians United for a Responsible Budget  
Center for Employment Opportunity  
Center for Health Justice  
Center for Living and Learning  
Center on Juvenile and Criminal Justice  
Centro Legal de la Raza  
Coalition for Humane Immigration Rights for Los Angeles  
Communities United for Restorative Justice  
Community Works  
Contra Costa County Public Defender's Office  
Courage Campaign  
Critical Resistance Los Angeles  
East Bay Alliance for a Sustainable Economy  
Enlace  
Essie Justice Group

Felony Murder Elimination Project  
Filipino Bar Association of California  
Forward Together  
Four Private Citizens  
Friends Committee on legislation California  
Harm Reduction Services  
Health Communities, Inc.  
HealthRIGHT 360  
HIV Education & Prevention Program of Alameda County  
Holman United Methodist Church  
Inland Coalition for Immigrant Justice  
Islamic Shura Council of southern California  
John Gioia, Contra Costa County Board of Supervisors  
Justice Not Jails  
Justice Policy Institute  
Law Enforcement Against Prohibition  
Lawyers' Committee for Civil Rights  
Legal Services for Prisoners with Children  
Los Angeles Community Action Network  
Los Angeles County Public Defender  
Marijuana Lifer Project  
Mayor of the City of Richmond  
Monterey Bay Central Labor Council, AFL-CIO  
Mortgage Personnel Services  
Motivating Individual Leadership for Public Advancement (MILPA)  
National Association of Public Defense  
National Association of Social Workers, California Chapter  
National Center for Youth Law  
National Council on La Raza  
National Employment Law Project  
Needle Exchange Emergency Distribution  
Oakland Rising  
Orange County Needle Exchange Group  
Poetic Knights I.N.C.  
Presente.org  
Prison Activist Resource Center  
Prison Law Office  
Prison Policy Initiative  
Project Inform  
Reentry Solutions Group  
Reentry Success Center  
Reform California  
Resource Center for Nonviolence  
Riverside Temple Beth El  
Root & Rebound  
Rubicon Programs  
S.T.O.P. Hepatitis Task-Force  
Safe Return Project  
San Diego Organizing Project

San Francisco Public Defender  
Santa Cruz County Community Coalition to Overcome Racism  
Silicon Valley De-Bug  
Social Justice Learning Institute  
Starting Over, Inc.  
Swords to Plowshares  
Tarzana Treatment Centers, Inc.  
TGI Justice Project  
The Sentencing Project  
Time for Change Foundation  
Time For Change Foundation  
Underground Scholars Initiative, UC Berkeley  
Unite Here, Local 2850  
W. Haywood Burns Institute  
Western Regional Advocacy Project  
Women's Council of the California Chapter of the National Association of Social Workers  
Women's Foundation of California  
Young Women's Freedom Center

### **Opposition**

Association for Los Angeles Deputy Sheriffs  
Association of Deputy District Attorneys  
Association of Orange County Deputy Sheriffs  
California Association of Code Enforcement Officers  
California College and University Police Chiefs Association  
California District Attorneys Association  
California Narcotics Officers Association  
California Police Chiefs Association  
California State Law Enforcement Association  
California State Sheriffs' Association  
Fraternal Order of Police, California State Lodge  
Long Beach Police Officers Association  
Los Angeles County District Attorney's Office  
Los Angeles County Professional Peace Officers Association  
Los Angeles Police Protective League  
Office of the San Diego District Attorney  
Peace Research Association of California  
Riverside Sheriffs Association  
Sacramento Deputy Sheriffs Association  
San Diego County District Attorney's Office

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

Date of Hearing: June 28, 2016  
Counsel: Gabriel Caswell

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

SB 1052 (Lara) – As Amended June 16, 2016

**SUMMARY:** Requires that a youth under the age of 18 consult with counsel prior to a custodial interrogation and before waiving any specified rights. Specifically, **this bill:**

- 1) Provides that prior to a custodial interrogation and before the waiver of any Miranda rights, a youth under 18 years of age shall consult with legal counsel.
- 2) Provides that the consultation with legal counsel shall not be waived.
- 3) Provides that if a custodial interrogation of a minor under 18 years of age occurs prior to the youth consulting with legal counsel, all of the following remedies shall be granted as a relief for noncompliance:
  - a) The court shall, in adjudicating the admissibility of statements of youth under 18 years of age made during or after a custodial interrogation, consider the effect of failure to comply with the consultation to counsel requirement and factors set forth in this bill;
  - b) Provided the evidence is otherwise admissible, the failure to comply with the consultation with counsel requirement shall be admissible in support of claims that the youth's statement was obtained in violation of his or her Miranda rights, was involuntary, or is unreliable; and,
  - c) If the court finds that youth under 18 years of age was subject to a custodial interrogation in violation of the consultation with counsel requirement the court shall provide the jury or the trier of fact with a specified jury instruction.
- 4) Provides that in determining whether an admission, statement, or confession made by a youth under 18 years of age was voluntarily, knowingly, and intelligently made, the court shall consider all circumstances surrounding the statement, including, but not limited to all of the following:
  - a) The youth's age, maturity, intellectual capacity, education level, and physical, mental and emotional health;
  - b) The capacity of the youth to understand Miranda rights, the consequences of waiving those rights and privileges, whether the youth perceived the adversarial nature of the situation, and whether the youth was aware of how counsel could assist the youth during interrogation;

- c) The manner in which the youth was advised of his or her rights, and whether the rights specified in the Miranda rule were minimized by law enforcement;
  - d) The youth's reading and comprehension level and his or her understanding of Miranda rights given by law enforcement;
  - e) Whether the youth asked to speak with a parent or other adult at any time while in law enforcement custody;
  - f) Whether law enforcement offered to allow the youth to consult with a parent or guardian prior to the interrogation, or whether law enforcement took steps to prevent a parent or guardian from speaking to the youth prior to interrogation;
  - g) Whether the youth had been interrogated previously by law enforcement and whether the youth invoked his or her Miranda rights previously;
  - h) Whether the youth requested to leave;
  - i) Whether law enforcement either by express or implied conduct intimated that the youth could leave after speaking, or if any other promises of leniency were made;
  - j) The manner in which the interrogation occurred;
  - k) Whether the youth consulted with counsel prior to waiver; and,
  - l) Any other relevant evidence.
- 5) Provides that the Judicial Council shall develop an instruction advising that statements made in a custodial interrogation in violation of this bill shall be viewed with caution.
- 6) Specifies that the provisions of this bill do not apply to the admissibility of statements of a youth under 18 years of age if both of the following criteria are met:
- a) The officer who questioned the suspect reasonably believed the information he or she sought was necessary to protect life or property from a substantial threat.
  - b) The officer's questions were limited to those questions that were reasonably necessary to obtain this information.

**EXISTING LAW:**

- 1) Provides that a peace officer may, without a warrant, take into temporary custody a minor. (Welf. & Inst. Code, § 625)
- 2) Provides that in any case where a minor is taken into temporary custody on the ground that there is reasonable cause for believing that such minor will be adjudged a ward of the court or charged with a criminal action, or that he has violated an order of the juvenile court or escaped from any commitment ordered by the juvenile court, the officer shall advise such minor that anything he says can be used against him and shall advise him of his constitutional

rights, including his right to remain silent, his right to counsel present during any interrogation, and his right to have counsel appointed if he is unable to afford counsel. (Welf. & Inst. Code, § 625, subd. (c).)

- 3) Provides that when a minor is taken into a place of confinement the minor shall be advised that he has the right to make at least two telephone calls, one completed to a parent or guardian, responsible adult or employer and one to an attorney. (Welf. & Inst. Code, § 627.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Currently in California, children—no matter how young— can waive their *Miranda* rights. When law enforcement conducts a custodial interrogation, they are required to recite basic constitutional rights to the individual, known as *Miranda* rights, and secure a waiver of those rights before proceeding. The waiver must be voluntarily, knowingly, and intelligently made. *Miranda* waivers by juveniles present distinct issues. Recent advances in cognitive science research have shown that the capacity of youth to grasp legal rights is less than that of an adult.

"SB 1052 will require youth under the age of 18 to consult with legal counsel before they waive their constitutional rights. The bill also provides guidance for courts in determining whether a youth's *Miranda* waiver was made in a voluntary, knowing, and intelligent manner as required under existing law."

- 2) **"Miranda Rights" Generally:** In *Miranda v. Arizona* (1966) 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, the Court (5-4) decided four cases (*Miranda v. Arizona*, *Vignera v. New York*, *Westover v. United States*, and *California v. Stewart*) and imposed new constitutional requirements for custodial police interrogation, beyond those laid down [previously].

The Court's decision may be "briefly stated" as follows: "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an

attorney and thereafter consents to be questioned." (86 S.Ct. 1612, 16 L.Ed.2d 706.) (5 Witkin *Cal. Crim. Law Crim Trial* § 107)

- 3) **Miranda as Applied to Minors:** Under this bill, a youth under 18 years of age would be required to consult with counsel prior to waiving his or her rights under *Miranda*. The right to counsel cannot be waived.

California's law on youth waiver of rights has not appreciably changed in decades. "We have not," notes California Supreme Court Justice Goodwin Liu, "extensively examined the issue of juvenile *Miranda* waivers since...almost a half-century ago." *In re Joseph H.*, (2015) Case Number S227929 Cal Supreme Court, petition for review denied. Dissenting statement of Justice Liu. As the proponents have pointed out there have been a number of appreciable discoveries in the area of juveniles and cognitive development. It is now widely accepted that cognitive scientific research has shown that the capacity of youth to grasp legal concepts is less than that of adults. Youth not only have reduced capacity as compared to adults in comprehending complex legal issues, they also frequently lack the ability to appreciate the consequences of their actions. In fact, **recent research has shown that 35 percent of proven false confessions were obtained from suspects under the age of 18.** Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N. C. L. Rev. 891, 906-907 (2004).

If the requirement that the minor consult with counsel before waiving his or her rights is not met the court shall weigh specified factors in determining whether it is admissible. If it is admitted then a jury instruction, as created by Judicial Council should be read that will advise that statements made in a custodial interrogation in violation of this bill should be viewed with caution. This bill further states that the fact that this requirement was not complied with should be admissible in arguments challenging any statements made by the minor.

- 4) **American Academy of Child and Adolescent Psychiatry:** In a Policy Statement dated March 7, 2013 the American Academy of Child and Adolescent Psychiatry expressed its beliefs that juveniles should have counsel present when interrogated by law enforcement:

Research has demonstrated that brain development continues throughout adolescence and into early adulthood. The frontal lobes, responsible for mature thought, reasoning and judgment, develop last. Adolescents use their brains in a fundamentally different manner than adults. They are more likely to act on impulse, without fully considering the consequences of their decisions or actions.

The Supreme Court has recognized these biological and developmental differences in their recent decisions on the juvenile death penalty, juvenile life without parole and the interrogations of juvenile suspects. In particular, the Supreme Court has recognized that there is a heightened risk that juvenile suspects will falsely confess when pressured by police during the interrogation process. Research also demonstrates that when in police custody, many juveniles do not fully understand or appreciate their rights, options or alternatives.

Accordingly, the American Academy of Child and Adolescent Psychiatry believes that juveniles should have an attorney present during questioning by police or other law enforcement agencies. While the Academy believes that juveniles should have a right to consult with parents prior to and during questioning, parental presence

alone may not be sufficient to protect juvenile suspects. Moreover, many parents may not be competent to advise their children on whether to speak to the police and may also be persuaded that cooperation with the police will bring leniency. There are numerous cases of juveniles who have falsely confessed with their parents present during questioning... [citations omitted]

([https://www.aacap.org/aacap/policy\\_statements/2013/Interviewing\\_and\\_Interrogating\\_Juvenile\\_Suspects.aspx](https://www.aacap.org/aacap/policy_statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx))

- 5) **Argument in Support:** According to *Human Rights Watch*, "Human Rights Watch is honored to sponsor Senate Bill (SB) 1052. This bill recognizes both the vulnerability and potential of children and youth, and would create a process to protect their constitutional rights. If passed, a person under the age of 18 will consult with legal counsel before waiving constitutional rights. Senate Bill 1052 also provides guidance for courts in determining whether a young person's *Miranda* waiver was made in a voluntary, knowing, and intelligent manner as required under existing law.

"Human Rights Watch is a non-profit, independent organization that exposes human rights violations and challenges governments to protect the human rights of all persons, including children and prisoners. We investigate allegations of human rights violations in some 90 countries, interviewing victims and witnesses and gathering information from governmental and other sources.

"Under existing law, when a law enforcement officer conducts a custodial interrogation he or she is required to recite what is commonly called the *Miranda* rights, briefly describing several constitutional rights and asking whether the individual waives those rights. The waiver must be voluntarily, knowingly, and intelligently made.

"In California, any child under the age of 18 can relinquish his or her constitutional rights.<sup>i</sup> This would not change under SB 1052; instead, by providing a youth with the opportunity for consultation with counsel, the state will ensure that young people understand their rights before waiving them. Senate Bill 1052 additionally provides guidance grounded in law and science for courts to assess the validity of a waiver. These procedures will prevent *Miranda* 'warnings from becoming merely a ritualistic recitation wherein the effect of actual comprehension by the juvenile is ignored."<sup>iii</sup>

"This bill is necessary because California's law on youth waiver of rights has not appreciably changed in decades. 'We have not,' notes California Supreme Court Justice Goodwin Liu, 'extensively examined the issue of juvenile *Miranda* waivers since...almost a half-century ago."<sup>iii</sup> As a result, California's current law fails to reflect 20 years of dramatic advances in knowledge about adolescent development and capacity. Cognitive scientific research has shown that the capacity of youth to grasp legal concepts is less than that of adults.

"Youth not only have reduced capacity as compared to adults in comprehending complex legal issues, they also frequently lack the ability to appreciate the consequences of their actions. In recent years, the state of California has enacted a number of laws providing safeguards for youth in the criminal justice system. These laws recognize widely-accepted developmental and neurological evidence about adolescents and young adults. Neuroscientific research finds that the process of cognitive brain development continues from childhood into early adulthood. The still-developing areas of the brain, particularly those that affect judgment and decision-making, are highly relevant to the ability to

comprehend *Miranda* rights and the effect of giving up those rights. Courts, too, have made clear that constitutional rights must be examined in light of youthfulness. In the last 10 years, the US Supreme Court has recognized immaturity and age as factors in a series of cases determining the constitutionality of the death penalty, life without parole, sentencing practices, and *Miranda* custody analysis. The Supreme Court has noted that '[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.'<sup>iv</sup>

"The American Academy of Child and Adolescent Psychiatry in its policy statement, *Interviewing and Interrogating Juvenile Suspects*, recommends that in every case juveniles should have an attorney present during questioning by police or other law enforcement agencies.<sup>v</sup> This is a more far-reaching and restrictive policy than the one proffered by SB 1052, but it reflects the expertise of psychiatrists who know well the needs of children and youth.

"Youth should be protected from the effects of their immaturity. In the situation of waiving rights, protection means simply ensuring they understand what they are doing. To argue this is not necessary would imply that youth should have lesser constitutional rights than adults, because a typical adult is capable of understanding their rights and the effect of waiving them.

"Opposition has suggested that this bill will impede police work. Protecting the constitutional rights of people is, of course, one of the most important duties of police. Regardless, this bill's requirement for assistance of counsel would only be triggered in situations where *Miranda* warnings are mandated, and most police interactions with youth do not require *Miranda* warnings. Neither does the bill disallow youth from waiving their rights, as some states have done for certain age groups. Additionally, there are exceptions for situations in which *Miranda* would normally be required, but an officer believes that questioning a suspect is necessary to protect life or property. There, well-established existing law allows *Miranda* to be disregarded, and thus the requirements of this bill would not apply.<sup>vi</sup>

"However, a real concern is the possibility of false confession. The purpose of custodial interrogation is to compel a confession. The US Supreme Court has noted the inherently coercive nature of custodial interrogation, and that the pressure can be substantial, even for adults. "Indeed, the pressure of custodial interrogation is so immense that it 'can induce a frighteningly high percentage of people to confess to crimes they never committed.'"<sup>vii</sup> Estimates of false confessions as the leading cause wrongful convictions range from 14 to 25 percent, and a disproportionate number of false confession cases involve youth under age 18. Recent research has shown that 35 percent of proven false confessions were obtained from suspects under the age of 18.<sup>viii</sup>

" 'We sometimes forget how long it has taken to establish the privilege against self-incrimination, the sources from which it came, and the fervor with which it was defended,' the Supreme Court stated in the seminal case of *Miranda v. Arizona*. 'Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachments on individual liberty. They knew that 'illegitimate and unconstitutional practices get their first footing...by silent approaches and slight deviations from legal modes of procedure.' "<sup>ix</sup> What we know now is that youth need the protection of a process to ensure they understand their rights, and

without that process, individual rights are diminished. Thank you for your support of the constitutional rights of children and youth."

- 6) **Argument in Opposition:** According to the *California District Attorneys Association*. "On behalf of the California District Attorneys Association (CDAA), I regret to inform you that we are opposed to your measure, SB 1052. This bill would require that a juvenile consult with counsel prior to any custodial interrogation, and before waiving his or her rights under *Miranda v. Arizona* (1966) 384 U.S. 436.

"We believe that the procedure sought by this bill would frustrate criminal investigations and cast doubt upon voluntary confessions introduced at trial.

"As subdivision (c) of Section 1 of the bill notes, juveniles already receive a more generous interpretation of *Miranda* rights, in that the court must take the juvenile's age, education, and immaturity into account when considering whether there has been a valid *Miranda* waiver. (*Fare v. Michael C.* (1979) 442 U.S. 707, 725).

"SB 1052 would expand those protections even further, by mandating a consultation between a juvenile and an attorney – a consultation that the juvenile is prohibited from waiving. Failure to follow this procedure would result in a host of sanctions designed to undermine the credibility of any statements made by the juvenile, regardless of whether any actual coercion took place.

"To illustrate one such problem with this approach, consider the following example. A juvenile is arrested, and properly advised of his *Miranda* rights. While in custody, and being transported to the police station, he makes statements incriminating himself, or perhaps even confesses to the crime for which he has been arrested. Upon reaching the police station, the juvenile consults with counsel, per the mandate in SB 1052.

"According to the language of the bill, this would be a 'failure to comply' since the statement was made in a custodial setting prior to the juvenile consulting with counsel. Under proposed Welfare & Institutions Code section 625.6(b)(2), this 'failure' would be admissible in support of a claim that the statement was made in violation of the juvenile's *Miranda* rights, was involuntary, or is unreliable.

"That, of course, is simply untrue. There was no violation of the juvenile's *Miranda* rights, as he was properly advised of them, and the court is already required to consider the additional factors pertaining to juveniles under *Fare*. The only 'right' that was arguably violated was this new statutory right under WIC 625.6 – and even then, the arresting officers attempted to comply at the first available opportunity. Unless every officer is going to have a defense attorney at his or her side when taking juveniles into custody, it's unclear how this would work in practice.

"Given the additional protections in place to guard against unlawfully obtained juvenile confessions, we believe this bill creates an unworkable and costly process that would frustrate our criminal justice system.

"For these reasons, we must respectfully oppose SB 1052."

**REGISTERED SUPPORT / OPPOSITION:****Support**

Human Rights Watch (Co-sponsor)  
Silicon Valley De-Bug (Co-sponsor)  
American Civil Liberties Union  
Amnesty International  
Anti-Recidivism Coalition  
Asian Law Alliance  
California Attorneys for Criminal Justice  
California Catholic Conference  
California Public Defenders Association  
Californians for Safety and Justice  
Children's Defense Fund – California  
Center on Juvenile and Criminal Justice  
Center on Wrongful Convictions of Youth  
Children's Defense Fund-California  
Coalition for Justice and Accountability  
Disability Rights California  
Ella Baker Center for Human Rights  
Fathers & Families of San Joaquin  
Felony Murder Elimination Project  
Friends Committee on Legislation of California  
Healing Dialogue and Action  
Justice Not Jails  
Legal Services for Children  
Legal Services for Prisoners with Children  
NAACP – San Jose/Silicon Valley Branch  
National Center for Youth Law  
National Council on Crime and Delinquency  
National Juvenile Justice Network  
National Lawyers Guild  
Office of the Americas  
Pacific Juvenile Defender Center  
Peace and Justice Commission of St. Mark Presbyterian Church  
Post-Conviction Justice Project of the USC Gould School of Law  
Public Counsel  
Services, Immigrant Rights, and Education Network  
Youth Justice Coalition  
Youth United for Community Action

**Opposition**

California District Attorneys Association  
California State Sheriffs' Association  
Los Angeles District Attorney's Office

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

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<sup>i</sup> *People v. Lara* (1967) 67 Cal.2d 365, 389 (Lara); *In re Gault* (1967) 387 U.S. 1, 55.

<sup>ii</sup> *Commonwealth v. A Juvenile*, (Mass. 1983) 449 N.E.2d 654, 656.

<sup>iii</sup> *In re Joseph H.*, (2015) Case Number S227929 Cal Supreme Court, petition for review denied. Dissenting statement of Justice Liu.

<sup>iv</sup> *Roper v. Simmons*, (2005) 543 U.S. 551; *Graham v. Florida*, (2010) 130 S. Ct. 2011; *Miller v. Alabama*, (2012) 567 U.S. \_\_\_\_; *JDB v. North Carolina*, (2011) 131 S. Ct. 2394.

<sup>v</sup> American Academy of Child and Adolescent Psychiatry, (March 7, 2013), *Policy Statement: Interviewing and Interrogating Juvenile Suspects*.

<sup>vi</sup> *People v. Dean*, (1974) 39Cal. App.3rd 875, 882.

<sup>vii</sup> *Corley v. United States*, 556 U. S. \_\_ (2009) (slip op., at 16); see also *Miranda v. Arizona*, 384 U. S. 436, 455, n. 23.

<sup>viii</sup> Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N. C. L. Rev. 891, 906–907 (2004).

<sup>ix</sup> *Miranda v. Arizona* 384 U.S. 436, 459 (1966), citing *Boyd v. United States*, 116 U. S. 616, 635 (1886).

Date of Hearing: June 28, 2016  
Chief Counsel: Gregory Pagan

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

SB 1064 (Hancock) – As Amended May 31, 2016

**SUMMARY:** Deletes the January 1, 2017 sunset date, and makes permanent the Sexually Exploited Minors Project in the Counties of Alameda and Los Angeles. Specifically, **this bill:**

- 1) Extends indefinitely the Sexually Exploited Minors Project in the Counties of Alameda and Los Angeles.
- 2) Expands the definition of "commercially sexually exploited minor" to include the following:
  - a) A minor who has been adjudged a dependent of the juvenile court as a result of having been commercially sexually exploited;
  - b) A minor who has been kidnapped for the purposes of prostitution;
  - c) A minor who meets the federal definition of a "victim of trafficking"; and,
  - d) A minor who has been arrested or detained for soliciting an act of prostitution, or loitering with the intent to commit an act of prostitution, or is the subject of a petition to adjudge him or her as a dependent of the juvenile court as a result of having been commercially sexually exploited.

**EXISTING LAW:**

- 1) Authorizes the County of Los Angeles to create a pilot project, contingent upon local funding, for the purposes of developing a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors who have been arrested or detained by local law enforcement for a prostitution offense. (Welf. & Inst. Code, § 18259.7(a).)
- 2) Allows the Los Angeles County District Attorney to develop, in collaboration with the county and community-based agencies protocols for identifying and assessing minors who may be victims of commercial sexual exploitations, upon their arrest or detention by law enforcement. (Welf. & Inst. Code, § 18259.7(b).)
- 3) Permits the Los Angeles County District Attorney, in collaboration with county and community-based agencies to develop a diversion program reflecting the best practices to address the needs and requirements of arrested or detained minors who have been determined to be victims of commercial sexual exploitation. (Welf. & Inst. Code, § 18259.7(c).)

- 4) Allows the Los Angeles County District Attorney in collaboration with county and community-based agencies to form a multidisciplinary team including, but not limited to, city police departments, county sheriff's department, the public defender's office, the probation department, child protective services and the community-based organizations that work with or advocate for sexually exploited minors. This team will do both of the following: (Welf. & Inst. Code, § 18259.7(d)(1)(2))
  - a) Develop a training curriculum reflecting best practices for identifying and assessing minors who may be victims of commercial sexual exploitation; and,
  - b) Offer and provide this training curriculum through multidisciplinary teams to law enforcement, child protective services and others who are required to respond to arrested or detained minors who may be victims of commercial sexual exploitation.
- 5) Requires the Los Angeles District Attorney's Office to submit a report to the Legislature on or before April 1, 2016, that summarizes his or her activities with relation to the pilot project to assist the Legislature in determining whether the pilot project should be extended or expanded to other counties. (Welf. & Inst. Code, § 18259.7(e).)
- 6) Requires the Los Angeles District Attorney's Office report to include the number of sexually exploited minors, if any, diverted by the program authorized in subdivision (c), and a summary of the types of services and alternate treatments provided to those minors. The report shall be contingent upon local funding, and shall be required only if the County of Los Angeles establishes a pilot project and the district attorney performs any of the activities of the pilot project authorized. The report shall not include any information that would reveal the identity of a specific sexually exploited minor. (Welf. & Inst. Code, § 18259.7(e).)
- 7) Sunsets the Los Angeles County pilot project on January 1, 2017. (Welf. & Inst. Code, § 18259.10(b).)
- 8) Allows the Alameda County District Attorney to create a pilot project, contingent on local funding, for the purposes of developing a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors. (Welfare and Institutions Code (WIC) Section 18259.)
- 9) Defines "commercially sexually exploited minor" for purposes of the Alameda County pilot project as a person under the age of 18 who has been abused, as specified, and who has been detained for a violation of the law or placed in a civil hold for specified offenses. (Welf. & Inst. Code, § 18259.3.)
- 10) Creates a sunset date for the Alameda County pilot project of January 1, 2012. (Welf. & Inst. Code, § 18259.5.)
- 11) States that "sexual exploitation" refers to a person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or a person responsible for the welfare of a child, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative,

slide, drawing, painting or other pictorial depiction involving obscene sexual conduct. (Pen. Code, § 11165.1(c)(2).)

- 12) Defines the following as "disorderly conduct," a misdemeanor (Pen. Code, § 647):
- a) Solicitation of any person to engage in or who engages in lewd or dissolute conduct in a public place or in any place open to the public or exposed to public view; and,
  - b) Solicitation or agreement to engage in or engagement in an act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes a lewd act between persons for money or other consideration.
- 13) Prohibits loitering in any public place with the intent to commit prostitution. (Pen. Code, § 653.22.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "According to UNICEF, every 2 minutes a child is groomed for sexual exploitation. The California Children's Welfare Council reports that at least 100,000 children are commercially sexually exploited in the United States every year, with another 300,000 children identified as being at risk for exploitation. Despite current national, state, and local efforts, California faces a rapid increase in the number of children being sexually exploited, especially in the form of prostitution and child pornography. According to data collected by the FBI, more than 3,000 juveniles were arrested for prostitution in California between 2006 and 2012.

"According to the U.S. Department of Justice, three of the nation's thirteen High Intensity Child Prostitution areas, as identified by the FBI, are located in California: the San Francisco, Los Angeles, and San Diego metropolitan areas. Despite the shift in treating CSEC as victims, rather than offenders, there were 174 prostitution-related arrests of children, some as young as 12 years old, in California in 2014.

"SB 1064 seeks to respond to the specialized needs of commercially sexually exploited children (CSEC) in a way that focuses on victimization rather than criminalization. The bill eliminates the sunset date of January 1, 2017 on a pilot project that authorized the Counties of Alameda and Los Angeles to develop a multi-disciplinary model that addresses the needs and effective treatment of commercially sexually exploited minors who have been arrested or detained by local law enforcement.

"By eliminating the sunset date, SB 1064 would extend the operation of this project indefinitely in the Counties of Alameda and Los Angeles. This bill would also further align our statutory language defining commercially sexually exploited minors with existing federal and state law."

## 2) **Prior Legislation:**

- a) AB 799 (Swanson), Chapter 51, Statutes of 2011, extended the repeal date until January 1, 2017 of a provision in existing law that authorized the Alameda County to create a pilot project, contingent upon local funding, for the purpose of developing a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors.
- b) SB 1279 (Pavley), Chapter 116, Statutes of 2010, allowed Los Angeles County to create a pilot project, contingent upon local funding, for the purpose of developing a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors.
- c) AB 499 (Swanson), Chapter 359, Statutes of 2008, created a pilot project in Alameda County which may be implemented contingent upon local funding for the purpose of diverting sexually exploited minors accused of soliciting an act of prostitution into supervised counseling and treatment programs.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Alameda County District Attorney's Office (Co-sponsor)  
McGeorge Legislative and Public Policy Clinic (Co-sponsor)  
State Coalition of Probation Officers (Co-sponsor)  
Association for Los Angeles Deputy Sheriffs  
Association of Deputy District Attorneys  
Association of Orange County Deputy Sheriffs  
California Association of Marriage and Family Therapists  
California District Attorneys Association  
California Police Chiefs Association  
California State Association of Counties  
California Statewide Law Enforcement Association  
Fraternal Order of Police, California State Lodge  
Fraternal Order of Police, N. California Probation Lodge 19  
Kern County Probation Officers Association  
Long Beach Police Officers Association  
Los Angeles County Deputy Probation Officers Union, AFSCME, Local 685  
Los Angeles Police Protective League  
Madera Probation Peace Officers Association  
National Association of Social Workers  
Professional Peace Officers Association  
Riverside Sheriffs Association  
Sacramento County Deputy Sheriffs Association

Sacramento County Probation Association  
Sacramento Police Officers Association  
San Diego Police Officers Association  
San Joaquin County Probation Officers Association  
Santa Clara County Probation Peace Officers Union  
Stanislaus County Deputy Probation Officers Association  
Ventura County Professional Peace Officers Association

**Opposition**

None

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

Date of Hearing: June 28, 2016

Counsel: Sandy Uribe

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

SB 1088 (Nguyen) – As Amended March 28, 2016

**SUMMARY:** Increases the penalty for concealing an accidental death from a misdemeanor to an alternate felony-misdemeanor. Specifically, **this bill:**

- 1) States that if the crime of concealing an accidental death is punished as a misdemeanor, then it is punishable by imprisonment in a county jail for not more than one year, or by a fine of at least \$1,000 and up to \$10,000, or by both.
- 2) States that if the crime of concealing an accidental death is punished as a felony, then the punishment is imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of at least \$1,000 and up to \$10,000, or by both.

**EXISTING LAW:**

- 1) Makes it a misdemeanor, punishable by a jail term of up to one year, or a fine of between \$1,000 and \$10,000, or both, to actively conceal an accidental death, or attempt to do so. (Pen. Code, § 152, subd. (a).)
- 2) States that to conceal an accidental death means to do one of the following:
  - a) Perform an overt act that conceals the body or directly impedes the ability of authorities or family members to discover the body;
  - b) Directly destroy or suppress evidence of the actual physical body of the deceased, including, but not limited to, bodily fluids or tissues; or,
  - c) Destroy or suppress the actual physical instrumentality of death. (Pen. Code, § 152, subd. (b).)
- 3) Provides that any person who, after the commission of a felony, harbors, conceals, or aides the perpetrator in such a felony, with the intent to help the perpetrator escape arrest or prosecution is an accessory to the felony. (Pen. Code, § 32.)
- 4) Punishes an accessory as alternate felony-misdemeanor, or by a fine of up to \$5,000, or both fine and imprisonment. (Pen. Code, § 33.)
- 5) States that, except in a case where a different punishment is prescribed, a person who, having knowledge of the commission of a crime, takes money or anything of value, or promise thereof, in exchange for concealing that crime, or abstaining from prosecution, or for

withholding any evidence, is punishable as follows:

- a) If the crime was punishable by death or imprisonment in the state prison for life; by imprisonment in a county jail not exceeding one year, or pursuant to subdivision (h) of Section 1170;
  - b) If the crime was punishable by imprisonment in the state prison for any other term than life; by imprisonment in a county jail not exceeding six months, or pursuant to subdivision (h) of Section 1170; and,
  - c) If the crime was a misdemeanor, by imprisonment in a county jail not exceeding six months, or by fine of up to \$1,000. (Pen. Code, § 153.)
- 6) States that the punishment for a felony which is not otherwise proscribed in a different statute, a felony is punishable by 16 months, or 2 or 3 years in state prison, unless the offense is punishable in county jail under realignment. (Pen. Code, § 18, subd. (a).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "SB 1088 would provide an appropriate avenue to address the current sentencing structure by increasing the consequences for anyone who moves a body after an accidental death. If this bill is not passed, families of the victims of body dumping will remain negatively impacted by the law. Therefore a pathway to allow judges discretion in the classification of a crime, as a misdemeanor or a felony, is essential to resolving the issue of body dumping. By increasing the crime to a felony, the statute of limitations would extend from one to three years. This would provide more time for authorities to hold those responsible for body concealment."
- 2) **Impetus for this Bill:** Erica Alonso, a Laguna Hills resident, was the inspiration for this bill. Ms. Alonso went missing in February of this year, and her body was found about two months later in a remote spot in Cleveland National Forest. An autopsy concluded Ms. Alonso died of an overdose, consisting of a combination of a lethal dose of alcohol and drugs. Ms. Alonso's car was found far from the scene, in a neighborhood of Aliso Viejo. As a result, it has been suggested that someone moved her body. (<http://www.ocweekly.com/news/erica-alonso-saga-inspires-body-dumping-bill-by-state-sen-janet-nguyen-6992400#>)

The person who may have moved the body has not been identified. However, assuming the body was moved, the existing penalty for such an act is up to one year in jail and a potential fine of up to \$10,000. The background provided by the author notes that the community is frustrated that any person who might have concealed the body faces only misdemeanor punishment.

Notably, Penal Code section 152 does not apply to a person who caused the death. Penal Code section 152 also does not apply to a person who is an accessory after the commission of a crime. SB 139 (Johnson), Chapter 396, Statutes of 1999, which created the crime of concealing an accidental death, also initially sought to punish the offense as an alternate felony-misdemeanor. However at that time, the Legislature deemed that misdemeanor

punishment was more appropriate. Should the punishment for this crime now be increased based on a single incident of which all the facts are not yet established?

- 3) **Jail Overcrowding:** According to a December 2014 report by the Stanford Criminal Justice Center at Stanford Law School titled *Court Ordered Population Caps in California Jails*, California's county jails are facing increasing adult daily populations. Many counties are facing capacity constraints on their population. The report notes:

"Currently, 19 of the 58 California county jail systems (33%) are operating under a court-ordered population cap (see Figure 2). Court-ordered population caps are typically issued at a facility level rather than a county level (as many counties operate several jail facilities) and a significant share of California jail facilities currently have a population cap. According to the Board of State and Community Corrections (BSCC) Jail Profile Survey data, as of March 2014 of the 119 county jail facilities, 39 facilities (33%) were operating under a court-ordered population cap. Most notably, as of the beginning of 2014, nearly two-thirds (65%) of jail inmates in California are in custody in counties with a population cap. And because these court orders have been in place for decades, the share of inmates in counties with population orders has been relatively stable since the data started being collected. Given that several of the largest counties are under court orders, including Los Angeles, Riverside, San Bernardino, and San Diego, it is not surprising that such a large share of California's jail inmates are in custody in cap counties. These increased pressures on California jails have occurred in a relatively short period of time and counties have been forced to make difficult decisions about how to manage their growing jail populations." (*Court-Ordered Population Caps in California County Jails*, p. 6. (<<http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/183091/doc/slspublic/Jail%20popn%20caps%201.15.15.pdf>>))

Given the concerns about jail overcrowding in many counties, should the punishment for concealing an accidental death be increased to allow for up to three years in jail?

- 4) **Argument in Support:** According to the *Los Angeles County Sheriff's Department*, "Current law makes it a misdemeanor for a person who has knowledge of an accidental death to actively conceal or attempt to conceal that death by concealing the body. While in most instances the penalty is appropriate, there are some cases where significant malfeasance has taken place.

"Not only does the act of concealing or moving a body create significant challenges for law enforcement when investigating an accidental death, the act also prevents the family members of the deceased from receiving the closure needed when losing a loved one.

"This bill appropriately provides prosecutors with the discretion to raise the penalty from a misdemeanor to a penalty when necessary."

- 5) **Argument in Opposition:** According to the *California Public Defenders Association*, "SB 1088 seeks to increase the punishment for a violation of Penal Code § 152 (concealing accidental death) from a misdemeanor to a felony. Currently, § 152 is punishable as a misdemeanor and by a year in jail. SB 1088 seeks to permit the offense to be charged as a

felony and to triple the punishment (up to three years in jail). It is important to note that § 152 only deals with accidental deaths – deaths that are the result of criminal conduct are not affected by this statute. Consequently, SB 1088 does not address a statute which arguably contributes to public safety – instead SB 1088 merely promises to add to the list of non-violent Californian's convicted of felonies and to contribute to our incarceration crisis, all without adding anything of real benefit. Because SB 1088 fails to contribute to public safety, drastically increases jail sentences for non-violent conduct and increases the rolls of non-violent Californians whose lives will be ruined by felony convictions, this bill is out of step with meaningful criminal justice reform."

**6) Prior Legislation:**

- a) AB 1432 (Mitchell), Chapter 805, Statutes of 2012, requires a parent or guardian to report to law enforcement the death or disappearance of a child, and punishes a violation as a misdemeanor, or by a fine of up to \$1,000, or both.
- b) SB 139 (Johnson) Chapter 396, Statutes of 1999, provides that a person who actively conceals an accidental death, as defined, is guilty of a misdemeanor.
- c) SB 140 (Johnson) of the 1999-2000 Legislative session, would have created criminal penalties for failing to report an accidental death. SB 140 failed passage in the Senate Committee on Public Safety.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Anaheim Police Department  
California State Sheriffs' Association  
Los Angeles County Sheriff's Department  
Orange County District Attorney's Office  
Orange County Sheriff's Department  
Santa Ana Police Department

**Opposition**

American Civil Liberties Union of California  
California Public Defenders Association  
Legal Services for Prisoners with Children

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

Date of Hearing: June 28, 2016  
Counsel: David Billingsley

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

SB 1110 (Hancock) – As Amended May 31, 2016

**SUMMARY:** Establishes the Law Enforcement Assisted Diversion (LEAD) pilot program in up to three jurisdictions where law enforcement officers can take or refer individuals directly to services without pursuing criminal charges. Specifically, **this bill:**

- 1) States that purpose of the LEAD program is to improve public safety and reduce recidivism by increasing the availability and use of social service resources while reducing costs to law enforcement agencies and courts stemming from repeated incarceration.
- 2) Specifies that LEAD pilot programs shall be consistent with the following principles:
  - a) Providing intensive case management services and an individually tailored intervention plan;
  - b) Prioritizing temporary and permanent housing that includes individualized supportive services, without preconditions of drug or alcohol treatment or abstinence from drugs or alcohol;
  - c) Employing human and social service resources in coordination with law enforcement in a manner that improves individual outcomes and community safety, and promotes community wellness; and
  - d) Participation in LEAD services shall be voluntary throughout the duration of the program and shall not require abstinence from drug or alcohol use as a condition of continued participation.
- 3) States that the LEAD program shall be administered by the Board of State and Community Corrections (BSCC).
- 4) Specifies that BSCC shall award grants, on a competitive basis, to up to three jurisdictions.
- 5) Provides that BSCC shall establish minimum standards, funding schedules, and procedures for awarding grants, based on specified criteria.
- 6) Requires successful grant applicants to collect and maintain data pertaining to the effectiveness of the program as indicated by the board in the request for proposals.
- 7) Specifies that LEAD programs funded pursuant to this bill shall provide services to individuals by one of the following options:

- a) Prebooking referral. As an alternative to arrest, a law enforcement officer may take or refer a person for whom the officer has probable cause for arrest for specified offenses to a case manager to be screened for immediate crisis services and to schedule a complete assessment intake interview. Participation in LEAD diversion shall be voluntary, and the person may decline to participate in the program at any time. Criminal charges based on the conduct for which a person is diverted to LEAD shall not be filed, provided that the person finishes the complete assessment intake interview within a period set by the local jurisdictional partners, but not to exceed 30 days after the referral.
  - b) Social contact referral. A law enforcement officer may refer an individual to LEAD whom he or she believes is at high risk of arrest in the future for any of the specified crimes, provided that the individual meets the criteria specified in this paragraph and expresses interest in voluntarily participating in the program. LEAD may accept these referrals if the program has capacity after responding to prebooking diversion referrals.
- 8) Specifies that all social contact referrals to LEAD shall meet the following criteria:
- a) Verification by law enforcement that the individual has had prior involvement with low-level drug activity or prostitution, based on specified criteria;
  - b) The individual's prior involvement with low-level drug or prostitution activity occurred within the LEAD pilot program area;
  - c) The individual's prior involvement with low-level drug or prostitution activity occurred within 24 months of the date of referral;
  - d) The individual does not have a pending case in drug court or mental health court; and
  - e) The individual is not prohibited, by means of an existing no-contact order, temporary restraining order, or antiharassment order, from making contact with a current LEAD participant.
- 9) States that the following offenses are eligible for either prebooking diversion, social contact referral, or both:
- a) Possession for sale or transfer of a controlled substance or other prohibited substance where the circumstances indicate that the sale or transfer is intended to provide a subsistence living or to allow the person to obtain or afford drugs for his or her own consumption;
  - b) Sale or transfer of a controlled substance or other prohibited substance where the circumstances indicate that the sale or transfer is intended to provide a subsistence living or to allow the person to obtain or afford drugs for his or her own consumption;
  - c) Possession of a controlled substance or other prohibited substance;
  - d) Being under the influence of a controlled substance or other prohibited substance;

- e) Being under the influence of alcohol and a controlled substance or other prohibited substance; or
  - f) Prostitution.
- 10) States that the services provided to those participating in LEAD diversion include, but are not limited to, case management, housing, medical care, mental health care, treatment for alcohol or substance use disorders, nutritional counseling and treatment, psychological counseling, employment, employment training and education, civil legal services, and system navigation.
- 11) States that grant funding may be used to support any of the following:
- a) Project management and community engagement;
  - b) Temporary services and treatment necessary to stabilize a participant's condition, including necessary housing;
  - c) Outreach and direct service costs for services described in this section;
  - d) Civil legal services for LEAD participants;
  - e) Dedicated prosecutorial resources, including for coordinating any nondiverted criminal cases of LEAD participants;
  - f) Dedicated law enforcement resources, including for overtime required for participation in operational meetings and training;
  - g) Training and technical assistance from experts in the implementation of LEAD in other jurisdictions; and
  - h) Collecting and maintaining the data necessary for program evaluation.
- 12) Requires BSCC to contract with a nonprofit research entity, university, or college to evaluate the effectiveness of the LEAD program.
- 13) Requires a report of the findings shall be submitted to the Governor and the Legislature, as specified, by January 1, 2020.
- 14) States that BSCC shall not spend more than five percent annually of the moneys allocated to the program for its administrative costs, excluding specified costs.
- 15) The provisions of this bill will sunset as of January 1, 2020.

**EXISTING LAW:**

- 1) Provides that the entry of judgment may be deferred with respect to a defendant charged with specific controlled substance offenses if they meet specific criteria, including no prior convictions for any offense involving a controlled substance and have had no prior felony

convictions within five years. (Pen. Code, §1000.)

- 2) Authorizes the presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, to agree in writing to establish and conduct a preguilty plea drug court for specified drug related offenses, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. (Pen. Code, § 1000.5, subd. (a).)
- 3) States if there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a DEJ program as provided in this chapter. (Pen. Code, § 1000.5, subd. (a).)
- 4) Provides upon successful completion of a DEJ program, the arrest upon which the judgment was deferred shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted DEJ for the offense, except as specified. (Pen. Code, § 1000.4, subd. (a).)
- 5) Authorizes the District Attorney to approve pretrial diversion programs within the county of their jurisdiction.(Pen. Code, § 1001.2.)
- 6) Specifies that pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.1.)
- 7) States that at no time shall a defendant be required to make an admission of guilt as a prerequisite for placement in a pretrial diversion program. (Pen. Code, § 1001.3.)
- 8) Provides that a divertee is entitled to a hearing, as set forth by law, before his or her pretrial diversion can be terminated for cause. (Pen. Code, § 1001.4.)
- 9) States that if the divertee has performed satisfactorily during the period of pretrial diversion, the criminal charges shall be dismissed at the end of the period of diversion. (Pen. Code, § 1001.7.)
- 10) Specifies that upon successful completion of a pretrial diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except as specified. (Pen. Code, § 1001.9, subd. (a).)
- 11) States that a record pertaining to an arrest resulting in successful completion of a pretrial diversion program shall not, without the divertee's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate. (Pen. Code, § 1001.9, subd. (a).)
- 12) Specifies that the divertee shall be advised that, regardless of his or her successful completion of pretrial diversion, the arrest upon which the diversion was based may be disclosed by the Department of Justice in response to any peace officer application request.

(Pen. Code, § 1001.9, subd. (b).)

- 13) Specifies that pretrial diversion shall not apply in the following situations (Pen. Code, § 1001.51, subd. (a)):
- a) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed;
  - b) The defendant's record does not indicate that he has been diverted pursuant to this chapter within five years prior to the filing of the accusatory pleading which charges the divertible offense; and,
  - c) The defendant has never been convicted of a felony, and has not been convicted of a misdemeanor within five years prior to the filing of the accusatory pleading which charges the divertible offense.
- 14) Specifies that pretrial diversion shall not apply if the defendant is charged with a specified misdemeanor. (Pen. Code, § 1001.51, subd. (c).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "As the United States addresses the urgent crisis of mass criminalization and incarceration, there is a clear need to find viable, effective alternatives. Law Enforcement Assisted Diversion (LEAD) is an effort to prevent people from entering the criminal justice system unnecessarily. LEAD uses police diversion and community-based, trauma-informed care systems to improve public safety and reduce law violations by people who participate in the program.

"In a LEAD program, police officers exercise discretionary authority at point of contact to divert individuals to a community-based, harm-reduction intervention. When officers encounter individuals who have violated the law due to unmet behavioral health needs, the officers refer the individuals to a trauma-informed intensive case management program. In lieu of the normal criminal justice system cycle – booking, detention, prosecution, conviction and incarceration – the case management program provides a wide range of support services for the individual, often including transitional and permanent housing and/or drug treatment.

"After three years of operation in Seattle, a 2015 independent, non-randomized controlled outcome study found that LEAD participants were 58% less likely to be arrested after enrollment in the program compared to a control group that went through the usual criminal justice processing. With significant reductions in recidivism, LEAD functions as a public safety program that has the potential to decrease the number of those arrested as well as improve the health and well-being of people struggling at the intersection of poverty and drug and mental health problems."

"Therefore SB 1110 seeks to respond to unaddressed public health and human service needs – addiction, untreated mental illness, homelessness, and extreme poverty – through a public health framework that reduces reliance on the formal criminal justice system. The bill would

approve three counties for the establishment of a LEAD pilot program and would create a sunset date of 3 years.”

- 2) **Pretrial Diversion and Deferred Entry of Judgment:** Existing law provides avenues for diversion on misdemeanor charges through the court system. The statutory framework allows for diversion by means of deferred entry of judgment or pretrial diversion.

In deferred entry of judgment, a defendant determined by the prosecutor to be eligible for deferred entry of judgment must plead guilty to the underlying drug possession charge. The court then defers entry of judgment and places the defendant in a rehabilitation and education program. If he or she successfully completes the program, the guilty plea is withdrawn and the arrest is deemed to have not occurred. If the defendant fails in the program, the court immediately imposes judgment and sentences the defendant.

In pretrial diversion, the criminal charges against an eligible defendant are set aside and the defendant is placed in a rehabilitation and education program treatment. If the defendants successfully complete the program, the arrest is dismissed and deemed to not have occurred. If the defendant fails in the program, criminal charges are reinstated. Existing law provides that counties can set up a misdemeanor pretrial diversion program if the District Attorney, Courts and the Public Defender agree.

This bill would establish a pilot diversion program where the diversion would take place before an individual went to court. An individual’s initial contact with the criminal justice system is with law enforcement. A LEAD program would provide an opportunity for diversion at that first contact with the criminal justice system, as opposed to later in the process once criminal charges have been filed.

This bill would provide that the pilot project would be administered by the Board of State and Community Corrections (BSCC). BSCC would be authorized to provide grant money for up to three jurisdictions to establish a LEAD program with specific guidelines.

- 3) **LEAD Program in Seattle:** In 2011, LEAD program was developed and launched in Seattle, Washington. The program was a new harm-reduction oriented process for responding to low-level offenses such as drug possession, sales and prostitution.

The LEAD program in Seattle was collaboration between police, prosecutors, civil rights advocates, public defenders, political leaders, mental health and drug treatment providers, housing providers, other service agencies and business and neighborhood leaders.

In a LEAD program, police officers exercise discretionary authority at point of contact to divert individuals to a community-based, harm-reduction intervention. When officers encounter individuals who have violated the law due to unmet behavioral health needs, the officers refer the individuals to a trauma-informed intensive case management program. In lieu of the normal criminal justice system cycle – booking, detention, prosecution, conviction and incarceration – the case management program provides a wide range of support services for the individual, often including transitional and permanent housing and/or drug treatment.

The LEAD program in Seattle has similar guidelines to the LEAD program proposed in this

bill.

- 4) **Evaluation of the LEAD Program in Seattle:** A team from University of Washington's Harborview Medical Center prepared two reports evaluating the efficacy of Seattle's LEAD Program.

The first report described findings from a quantitative analysis comparing outcomes for LEAD participants versus "system-as-usual" control participants on shorter- and longer-term changes on recidivism outcomes, including arrests (i.e., being taken into custody by legal authority) and criminal charges (i.e., filing of a criminal case in court). (*LEAD Program Evaluation: Recidivism Report*, University of Washington, March, 2015.)

The first report made the following specific findings regarding recidivism (*Id.*):

**Shorter-term outcomes:** Compared to the control group, the LEAD group had 60% lower odds (likelihood) of arrest during the six months subsequent to evaluation entry.

**Longer-term outcomes:** Compared to the control group, the LEAD group had 58% lower odds of at least one arrest subsequent to evaluation entry.

Analyses indicated that, compared to control participants, LEAD participants had 34% lower odds of being arrested at least once when warrant-related arrests were removed.

Although there was no statistically significant effect for total charges, the LEAD group had 39% lower odds of being charged with a felony subsequent to evaluation entry compared to the control group.

The proportion of LEAD participants charged with at least one felony decreased by 52% subsequent to evaluation entry. The proportion of control group participants receiving felony charges decreased by 18%.

The second report describes findings from a quantitative analysis comparing outcomes for LEAD participants versus "system-as-usual" control participants on criminal justice and legal system utilization (i.e., jail, prison, prosecution, defense) and associated costs. (*Criminal Justice and Legal System Utilization and Associated Costs*, University of Washington, June, 2015.)

The team observed statistically significant reductions for the LEAD group compared to the control group on average yearly criminal justice and legal system utilization and associated costs, across nearly all outcomes.

The team made the following specific findings (*Id.*):

**Jail bookings:** Compared to the control group, LEAD program participants had 1.4 fewer jail bookings on average per year subsequent to their evaluation entry.

**Jail days:** Compared to the control group, the LEAD group spent 39 fewer days in jail per year subsequent to their evaluation entry.

**Prison incarceration:** Compared to the control group, the LEAD group had 87% lower odds of at least one prison incarceration subsequent to evaluation entry.

**Misdemeanor and felony cases:** There were no statistically significant LEAD effects on the average yearly number of misdemeanor cases. Compared to control participants, however, LEAD participants showed significant reductions in felony cases.

**Costs associated with criminal justice and legal system utilization:** From pre- to postevaluation entry, LEAD participants showed substantial cost reductions (-\$2100), whereas control participants showed cost increases (+\$5961).

- 5) **Argument in Support:** According to *Drug Policy Alliance*, “SB 1110 (Hancock) would authorize pre-booking diversion pilot programs for certain non-violent offenses, in particular subsistence level drug selling and sex work, modeled after LEAD (Law Enforcement Assisted Diversion), which was pioneered in Seattle in 2011. The program has since been replicated in Santa Fe, New Mexico and Albany, New York and is being considered by jurisdictions across the United States. LEAD has been proven to reduce criminal behavior and improve public safety by allowing law enforcement to connect low level offenders directly with community-based treatment and supportive services.

“LEAD was created as a response to repeated legal challenges to racially biased arrest practices in Seattle, and its implementation initiated what has become a remarkable renewal of the relationship between the police and the communities they serve. SB 1110 (Hancock) paves the way to affect real change within law enforcement agencies: police officers not only become accustomed to the idea that these offenses do not belong in the criminal justice system, but they also become invested in truly helping those whom they divert.

“SB 1110 (Hancock) will foster significant reductions in recidivism and at a fraction of the cost, and helps California along its path towards a durable solution to prison overcrowding. LEAD is an effective way to decrease the number of those arrested, incarcerated, and otherwise caught up in the criminal justice system and reduce recidivism. Furthermore, LEAD introduces members of the criminal justice system to a health-based harm reduction approach, and a focus on individual and community wellness, rather than an unproductive focus on sobriety and punishment.”

- 6) **Argument in Opposition:** According to *The US Prostitutes Collective*, “While those who put forward SB 1110 may be well-meaning, the legislation was written without input from sex workers. It goes against the demands of the sex worker movement internationally which is for decriminalization, because it treats sex work not as a job but as a disease and sex workers not as workers but as offenders in need of treatment and rehabilitation. Amnesty International, Open Society Foundation and other key organizations support decriminalization.

“Similar programs to those proposed in SB 1110 have been extremely problematic. For example, in Seattle (which is used as an example of good practice for SB 1110) hundreds of people were swept off the street and into LEAD by a four-month police and FBI undercover operation to clean-up downtown.

“LEAD is law enforcement led. It gives the police the power to decide who gets arrested or

not and who goes into the program, and puts women's access to services in police hands. If sex workers refuse LEAD they will be charged. If they accept LEAD, charges still stay open on their file -- if they don't meet all the conditions the program dictates, want out or are kicked out, they will be charged with what they were arrested for. Given institutional racism and sexism, sex workers disproportionately impacted include trans, women of color and immigrants.

"Seattle's LEAD program speaks of being inspired by "arrest-referral" projects in the UK. But sex workers there complain that these programs have not stopped criminalization. Instead they have: increased police powers over sex workers; cut into the ability of sex workers to earn a living; undermined the independence of the few sex worker services that do exist, turning them into an arm of law enforcement.

"Rising poverty is increasing the numbers of women, particularly mothers, going into sex work. For those of us who want to get out of prostitution we need money and resources not punitive rehabilitation programs. The bill includes a diversion program for drug users, which is not being opposed, so anyone who wants drug treatment has this option."

#### 7) **Prior Legislation:**

- a) SB 513 (Hancock), Chapter 798, Statutes of 2013, provides that two years after successfully completing a pre-filing diversion program administered by a prosecuting attorney, an individual may petition the court for an order sealing the records of arrest and related court files and records, as specified.
- b) AB 994 (Lowenthal), of the 2013-14 Legislative Session, would have required each county to establish and maintain a postplea misdemeanor diversion program, to be administered by the district attorney of that county, and authorizes either the district attorney or the superior court to offer diversion to a defendant. AB 994 was vetoed by the Governor.
- c) AB 2199 (Harman), of the 2005-06 Legislative Session, would have established a pretrial diversion education program for persons arrested for nonviolent misdemeanor or felony firearms offenses. AB 2199 was never heard by the Assembly Public Safety Committee.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Drug Policy Alliance (Sponsor)  
Alameda County Board of Supervisors  
American Civil Liberties Union of California  
California Attorneys for Criminal Justice  
California District Attorneys Association  
California Police Chiefs Association  
California Public Defenders Association  
Californians for Safety and Justice  
Center on Juvenile and Criminal Justice

Crime Victims United of California  
County Behavioral Health Directors Association of California

**Opposition**

Erotic Service Providers Union  
US Prostitutes Collective

1 private individual

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

Date of Hearing: June 28, 2016

Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1121 (Leno) – As Amended June 23, 2016

**SUMMARY:** Revises the California Electronic Communications Privacy Act (CalECPA) to authorize a government entity to access without a warrant the location and phone number of an electronic device used to call 911; allows a government entity to retain voluntarily received electronic communication information beyond 90 days if the service provider, subscriber or recipient is a correctional or detention facility; and excludes driver's licenses and other identification cards from its provisions. Specifically, **this bill:**

- 1) Excludes from the definition of an "electronic device" the magnetic stripe on a driver's license or identification card issued by this state or a driver's license or equivalent identification card issued by another state.
- 2) Clarifies that that a government entity may access electronic device information by means of physical interaction or electronic communication with the device, except where prohibited by state or federal law, if the device is found in an area of any correctional facility or a secure area of a local detention facility where inmates have access, not just areas under the jurisdiction of the California Department of Corrections and Rehabilitation.
- 3) Provides that emergency responders may access location information from a device making a 911 call without being subject to additional limitations or requirements.
- 4) Clarifies that, in granting a warrant for electronic information, a court may determine that the warrant need not specify time periods because of the specific circumstances of the investigation, including, but not limited to, the nature of the device to be searched.
- 5) Clarifies that, in granting a warrant for electronic information, information obtained through the execution of the warrant must be sealed and may not be subject to further review, use or disclosure, except pursuant to a court order or to comply with discovery requirements, as specified.
- 6) Provides that electronic communications information disclosed by prisons, jails, or juvenile detention facilities is not subject to mandatory deletion after 90 days if all parties to the communication were informed that the facility may disclose the information.
- 7) Clarifies that if a government entity obtains electronic information pursuant to an emergency involving danger of death or serious physical injury to a person that requires access to the electronic information without delay, the government entity must file an application for a warrant or order, or a motion of approval of the disclosures, within three court days, as specified.

- 8) Clarifies that a government entity that obtains electronic information pursuant to an emergency involving danger of death or serious physical injury to a person, the government entity need not file an application for a warrant or order, or a motion of approval of the disclosures, if the government entity obtains information concerning the location of the electronic device in order to respond to an emergency 911 call.
- 9) Clarifies that any government entity that obtains electronic information in an emergency situation must serve notice on the identified target, as specified, within three court days after obtaining the electronic information.
- 10) Clarifies that the provisions of CalECPA may not be construed to alter the authority of a government entity that owns an electronic device to compel an employee who is authorized to possess the device to return the device to the government entity's possession.
- 11) Makes other technical or nonsubstantive changes.

**EXISTING LAW:**

- 1) Enacts CalECPA, which generally prohibits a government entity from compelling the production of or access to electronic communication information or electronic device information without a search warrant, wiretap order, order for electronic reader records, or subpoena issued pursuant to specified conditions, except for emergency situations. (Pen. Code, §§ 1546-1546.4.)
- 2) Provides that a government entity may access electronic device information by means of a physical interaction or electronic communication device only: pursuant to a warrant; wiretap; with authorization of the possessor of the device; with consent of the owner of the device; in an emergency; if seized from an inmate. (Pen. Code, § 1546.1, subd. (b).)
- 3) Specifies the conditions under which a government entity may access electronic device information by means of physical interaction or electronic communication with the device, such as pursuant to a search warrant, wiretap order, or consent of the owner of the device. (Pen. Code, § 1546.1, subd. (c).)
- 4) Allows a service provider to voluntarily disclose electronic communication information or subscriber information, when the disclosure is not otherwise prohibited under state or federal law. (Pen. Code, § 1546.1, subd. (f).)
- 5) Provides that if a government entity receives electronic communication voluntarily it shall destroy that information within 90 days except under specified circumstances. (Pen. Code, § 1546.1, subd. (g).)
- 6) Provides for notice to the target of a warrant or an emergency obtaining electronic information to be provided either contemporaneously with the service of the warrant or within three days in an emergency situation. (Pen. Code, § 1546.2, subd. (a).)
- 7) Allows a person in a trial, hearing, or proceeding to move to suppress any electronic information obtained or retained in violation of the Fourth Amendment or the CalECPA. (Pen. Code, § 1546.4, subd. (a).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Through the implementation process of CalECPA, several technical, clarifying changes have been identified that will improve compliance with the new law. This bill addresses those concerns and is a clean-up bill to SB 178."
- 2) **Necessity for this Bill:** This bill is intended to codify a variety of changes requested by various stakeholders in the law enforcement community as they pertain to CalECPA, which was enacted last year. CalECPA generally extends the warrant requirement to electronic communication information or electronic device information. The CalECPA also requires proper notice and reporting and has enforcement provisions, including a suppression remedy, to ensure the law is followed.

As CalECPA has been implemented, several technical, clarifying, or clean up changes have been identified. This bill makes revisions to CalECPA to address those issues.

- 3) **Argument in Support:** According to the *American Civil Liberties Union of California*, "SB 178, the California Electronic Privacy Act (Cal-ECPA), protected the electronic privacy rights of Californians by generally requiring the use of a warrant to access that information. SB 1121 is the vehicle to address ambiguities in the language of the Act and make appropriate amendments consistent with the intent of SB 178. The current version of SB 1121 reflects that commitment by, for example, clarifying that Cal-ECPA does not impact the ability of the 911 emergency communications system to access location of the electronic device."
- 4) **Related Legislation:**
  - a) AB 1924 (Low) provides an exemption from CalECPA for pen registers and trap and trace devices to permit authorization for the devices to be used for 60 days. AB 1924 is pending hearing in the Senate Public Safety Committee.
  - b) SB 178 (Leno), Chapter 651, Statutes of 2015, prohibits a government entity from compelling the production of, or access to, electronic-communication information or electronic-device information without a search warrant or wiretap order, except under specified emergency situations.
- 5) **Prior Legislation:**
  - a) SB 467 (Leno) of the 2013-2014 Legislative Session, would have required a search warrant when a governmental agency seeks to obtain the contents of a wire or electronic communication that is stored, held or maintained by a provider of electronic communication services or remote computing services. SB 467 was vetoed.
  - b) SB 1434 (Leno), of the 2011-12 Legislative Session, would have required a government entity to get a search warrant in order to obtain the location information of an electronic

device. SB 1434 was vetoed.

- c) SB 914 (Leno), of the 2011-2012 Legislative Session, would have restricted the authority of law enforcement to search portable electronic devices without obtaining a search warrant. SB 914 was vetoed.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union

**Opposition**

None

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

Date of Hearing: June 28, 2016

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1134 (Leno) – As Amended May 31, 2016

**SUMMARY:** Allows a writ of habeas corpus to be prosecuted on the ground that new evidence exists that is credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial. Specifically, **this bill:**

- 1) Defines, for purposes of this bill, "new evidence" as "evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence, and is admissible and not merely cumulative, corroborative, collateral, or impeaching", and deletes the existing definition of "new evidence."
- 2) Clarifies that the binding nature of the court's credibility determinations on the Attorney General (AG) and the Victims Compensation and Government Claims Board (VCGCB) is true in both contested and uncontested proceedings.
- 3) States that, in a contested proceeding, if the court has granted a writ of habeas corpus and found the person to be factually innocent, that finding shall be binding on the VCGCB for a claim presented to the board, and upon application by the person, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid.
- 4) Provides that in a contested or uncontested proceeding, if the court grants a writ of habeas corpus and did not find the person factually innocent in the habeas corpus proceedings, the petitioner may move for a finding of innocence by a preponderance of the evidence that the crime with which he or she was charged was either not committed at all, or if committed, was not by him or her.

**EXISTING LAW:**

- 1) Provides that every person unlawfully imprisoned or restrained of his or her liberty, under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint. (Pen. Code, § 1473, subd. (a).)
- 2) Specifies that a writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:
  - a) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to his or her incarceration; or,

- b) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person. (Pen. Code, § 1473, subd. (b).)
- 3) States that any allegation that the prosecution knew or should have known of the false nature of the evidence referred to the above provisions is immaterial to the prosecution of a writ of habeas corpus. (Pen. Code, § 1473, subd. (c).)
- 4) States that the express factual findings made by the court, including credibility determinations, in considering a petition for a habeas corpus, a motion to vacate or an application for a certificate of factual innocence shall be binding on the AG, the factfinder, and the VCGCB. (Pen. Code, § 1485.5, subd. (c).)
- 5) Provides that in a contested proceeding, if a court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained, the court vacates a judgment on the basis of new evidence concerning a person who is no longer unlawfully imprisoned or restrained and if the court finds that the new evidence on the petition points unerringly to innocence, that finding shall be binding on the VCGCB for a claim presented to the board, and upon application by the person, the board shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid. (Pen. Code, § 1485.55, subd. (a).)
- 6) States that if the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained on any ground other than new evidence that points unerringly to innocence or actual innocence, the petitioner may move for a finding of innocence by a preponderance of evidence that the crime with which he or she was charged was either not committed at all, or if committed, was not by him or her. (Pen. Code, § 1485.55, subd. (b).)
- 7) Defines "new evidence" to mean "evidence that is not available or known at the time of trial that completely undermines the prosecution case and points unerringly to innocence." (Pen. Code, § 1485.55, subd. (g).)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Under existing California law, an inmate who has been convicted of committing a crime for which he or she claims that s/he has new evidence that points to innocence may file a petition for writ of habeas corpus. The burden for proving that newly discovered evidence entitles an individual to a new trial is not currently defined by statute, but has evolved from appellate court opinions. In order to prevail on a new evidence claim, a petitioner must undermine the prosecution's entire case and 'point unerringly to innocence with evidence no reasonable jury could reject' (*In re Lawley* (2008) 42 Cal.4th 1231, 1239). The California Supreme Court has stated that this standard is very high, much higher than the preponderance of the evidence standard that governs other habeas claims. (*Ibid.*)

"This standard is nearly impossible to meet absent DNA evidence, which exists only in a tiny portion of prosecutions and exonerations. For example, if a petitioner has newly discovered

evidence that completely undermines all evidence of guilt and shows that the original jury would likely not have convicted, but the new evidence does not 'point unerringly to innocence' the petitioner will not have met the standard and will have no chance at a new trial. Thus, someone who would likely never have been convicted if the newly discovered evidence had been available in their original trial is almost guaranteed to remain in prison under the status quo in California.

"The proposed new standard in SB 1134 addresses this anomaly. Our criminal justice system was built on the understanding that even innocent people cannot always affirmatively prove innocence, which is why the burden is on the prosecution to prove guilt when a charge is brought to trial, and absent evidence of guilt beyond a reasonable doubt, innocence is presumed. The new standard contained in this bill ensures that innocent men and women do not remain in prison even after new evidence shows that a conviction never would have occurred had it been available.

"SB 1134 seeks to bring California's innocence standard into line with the vast majority of other states' standards, forty-three in total, and to make it consistent with other postconviction standards for relief such as ineffective assistance of counsel, or prosecutorial misconduct. There is no justification for a different standard to govern these types of claims, as opposed to those brought on the basis of newly discovered evidence. Our laws must recognize that if evidence exists that a jury did not hear (regardless of whether it is the fault of a mistaken or lying witness, an ineffective attorney, or the misconduct of law enforcement), which creates a reasonable probability of a different outcome, the conviction should be reversed."

- 2) **Writ of Habeas Corpus:** Writ of habeas corpus, also known as "the Great Writ", is a process guaranteed by both the federal and state Constitutions to obtain prompt judicial relief from illegal restraint. The functions of the writ is set forth in Penal Code section 1473(a): "Every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint." A habeas corpus claim may be based on proof of false evidence introduced at trial or new evidence that was unavailable at trial. (*In re Lawley* (2008) 42 Cal. 4th 1231, 1238, *In re Bell* (2007) 42 Cal.4th 630, 637; *In re Johnson* (1998) 18 Cal.4th 447, 453–454; *In re Hall* (1981) 30 Cal.3d 408, 415–417; *In re Weber* (1974) 11 Cal.3d 703, 724.) The standard for a habeas corpus petition based on false evidence is lower than the standard for a habeas corpus petition based on new evidence. (*In re Lawley, supra*, 42 Cal. 4th at 1239.)

Penal Code section 1473 provides that "[a] writ of habeas corpus may be prosecuted for, but not limited to, the following reasons: (1) False evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to his or her incarceration; or (2) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, which was a material factor directly related to the plea of guilty by the person."

The standard for granting habeas petitions based on new evidence is not codified in statute. Instead, the standard stems from case law dating back to 1947. In order to be successful on a habeas corpus claim on the grounds that new evidence establishes the person's innocence, the newly discovered evidence "must undermine the entire prosecution case and point unerringly

to innocence or reduced culpability;" and "if a reasonable jury could have rejected the evidence presented, a petition has not satisfied his burden." (*In re Lawley, supra*, 42 Cal. 4th at 1239; *In re Hall, supra*, 30 Cal.3d at 417; *In re Weber* (1974) 11 Cal.3d 703, 724; *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1246, *In re Lindley* (1947) 29 Cal.2d 709, 723.)

This bill would specify in statute that a writ of habeas corpus may be prosecuted based on new evidence and codify a new standard for granting habeas on this ground. This bill would require the new evidence to be "credible, material, presented without substantial delay, and of such decisive force and value that it would have more likely than not changed the outcome at trial." As noted in the author's statement, this standard will make California's postconviction standard consistent with 43 other states.

According to the National Registry of Exonerations at the University of Michigan Law School there were 149 exonerations nationwide in 2015, five of which were in California. (*National Registry of Exonerations*, University of Michigan (Feb. 3, 2016) <[http://www.law.umich.edu/special/exoneration/Documents/Exonerations\\_in\\_2015.pdf](http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2015.pdf)> (as of June 20, 2016).) That was five exonerations under a standard that is higher than the standard in most other states. It is unclear how many others were denied a hearing because they did not meet the current standard.

- 3) **Argument in Support:** According to the *Northern California Innocence Project*, the sponsor of this bill, "To win a claim of factual innocence under current California case law, an individual must 'undermine the entire prosecution case and point unerringly to innocence.' This standard is the most difficult to meet of any standard in the country. Because the language in the current standard is so unusual, courts find it challenging to interpret. As a judge in the California Court of Appeal noted in NCIP's Obie Anthony case, there is no 'road map as to what it would look like from a factual standpoint' to meet the current standard. Thus, individuals trying to prove their innocence must meet a standard that even courts struggle to interpret. As a result, very few claims of new evidence of factual innocence have succeeded in California, and innocent people remain in prison.

"SB 1134 allows courts to grant relief to innocent people who have new evidence that is so strong that it 'would have more likely than not changed the outcome of the trial.' The 'more likely than not' standard proposed by the bill is clear and is a standard familiar to the courts. It is still a very high standard, but a fair one. At least 29 other states use 'more likely than not' or comparable language in their new evidence standard.

"Since 1989, more than 1,760 innocent people nationwide have been exonerated and freed from prison sentences after years, sometimes decades, of wrongful incarceration. The human and societal costs of wrongful incarceration are numerous and significant.

"The high number of exonerations is due in part to the advent of new forensic techniques, especially with regard to DNA. These developments mean that new evidence not known at the time of trial has become more commonplace. Courts across the country have reversed the convictions of hundreds of innocent individuals after determining that, based on new evidence, the conviction was wrong. But not in California where new evidence of factual innocence almost never meets the 'points unerringly to innocence' standard, and individuals must turn, despite this new evidence, to other post-conviction claims."

- 4) **Related Legislation:** SB 694 (Leno) was substantially similar to this bill. SB 694 was held in the Committee on Appropriations.
- 5) **Prior Legislation:**
- a) SB 1058 (Leno), Chapter 623, Statutes of 2014, allowed a writ of habeas corpus to be prosecuted when evidence given at trial has subsequently been repudiated by the expert that testified or undermined by later scientific research or technological advances.
  - b) SB 618 (Leno), Chapter 800, Statutes of 2013, streamlined the process for compensating persons who have been exonerated after being wrongfully convicted and imprisoned.
  - c) AB 1593 (Ma), Chapter 809, Statutes of 2012, allows a writ of habeas corpus to be prosecuted if expert testimony relating to intimate partner battering and its effects was received into evidence but was limited at the trial court proceedings relating to a prisoner's incarceration for the commission of a violent felony committed prior to August 29, 1996, and there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that if the testimony had not been limited, the result of the proceedings would have been different.
  - d) SB 1471 (Runner), of the 2007-08 Legislative Session, would have required habeas petitions in death penalty cases to be filed within one year and change the standards for competent counsel. SB 1471 failed passage in Senate Public Safety.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Innocence Project (Sponsor)  
Northern California Innocence Project (Sponsor)  
American Civil Liberties Union of California (Co-sponsor)  
A New PATH  
California Attorneys for Criminal Justice  
California Catholic Conference  
Drug Policy Alliance  
Ella Baker Center for Human Rights  
Friends Committee on Legislation of California  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
Legal Services for Prisoners with Children  
National Association of Social Workers, California Chapter

### **Opposition**

None

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

Date of Hearing: June 28, 2016

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1143 (Leno) – As Amended May 31, 2016

**SUMMARY:** Provides guidelines for the use of room confinement, as defined, in juvenile detention facilities. Specifically, **this bill:**

- 1) Requires, starting January 1, 2018, the placement of a minor or ward in room confinement to be accomplished in accordance with the following guidelines:
  - a) Room confinement shall not be used before other less restrictive options have been attempted and exhausted, unless attempting those options poses a threat to the safety or security of any minor, ward, or staff.
  - b) Room confinement shall not be used for the purposes of punishment, coercion, convenience, or retaliation by staff.
  - c) Room confinement shall not be used to the extent that it compromises the mental and physical health of the minor or ward.
- 2) Provides that a minor or ward may be held up to four hours in room confinement. After the minor or ward has been held in room confinement for a period of four hours, staff shall do one or more of the following:
  - a) Return the minor or ward to general population;
  - b) Consult with mental health or medical staff; or,
  - c) Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population.
- 3) States that if room confinement must be extended beyond four hours, staff shall do the following:
  - a) Document the reason for room confinement and the basis for the extension, the date and time the minor or ward was first placed in room confinement, and when he or she is eventually released from room confinement;
  - b) Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population; and,
  - c) Obtain documented authorization by the facility superintendent or his or her designee every four hours thereafter.

- 4) Clarifies that the provisions in this bill are not intended to limit the use of single-person rooms or cells for the housing of minors or wards in juvenile facilities and does not apply to normal sleeping hours.
- 5) States that the provisions in this bill do not apply to minors or wards in court holding facilities or adult facilities.
- 6) Provides that nothing in this bill shall be construed to conflict with any law providing greater or additional protections to minors or wards.
- 7) Defines "room confinement" to mean "the placement of a minor or ward in a locked sleeping room or cell with minimal or no contact with persons other than correctional facility staff and attorneys. Room confinement does not include confinement of a minor or ward in a single-person room or cell for brief periods of locked room confinement necessary for required institutional operations."
- 8) Defines "juvenile facility" to include the following:
  - a) A juvenile hall;
  - b) A juvenile camp or ranch;
  - c) A facility of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities;
  - d) A regional youth educational facility;
  - e) A youth correctional center;
  - f) A juvenile regional facility; and,
  - g) Any other local or state facility used for the confinement of minors or wards.

**EXISTING LAW:**

- 1) States that the purpose of the juvenile court system is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. (Welf. & Inst. Code, § 202, subd. (a).)
- 2) Provides that minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. (Welf. & Inst. Code, § 202, subd. (b).)

- 3) Authorizes minors under the age of 18 years to be adjudged to be a ward of the court for violating any law of this state or of the United States or any ordinance of any city or county of this state defining crime, as specified. (Welf. & Inst. Code, § 602.)
- 4) Provides that when a minor is adjudged a ward of the court on the ground that he or she is delinquent, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court, as specified. (Welf. & Inst. Code, § 727, subd. (a).)
- 5) Existing law authorizes the court to place a ward of the court in a juvenile hall, ranch, camp, forestry camp, secure juvenile home, or the Division of Juvenile Facilities, as specified. (Welf. & Inst. Code, § 726.)
- 6) Requires the Board of State and Community Corrections (BSCC) to adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors. (Welf. & Inst. Code, § 210.)
- 7) Provides that in each county there shall be a juvenile justice commission consisting of not less than seven and no more than 15 citizens. Two or more of the members shall be persons who are between 14 and 21 years of age, provided there are available persons between 14 and 21 years of age who are able to carry out the duties of a commission member in a manner satisfactory to the appointing authority. (Welf. & Inst. Code, § 225)
- 8) Authorizes, in lieu of a county juvenile justice commission, the boards of supervisors of two or more adjacent counties to agree to establish a regional juvenile justice commission consisting of at least 8 citizens, two of whom to be between 14 and 21 years of age if available, and having a sufficient number of members so that their appointment may be equally apportioned between the participating counties. (Welf. & Inst. Code, § 226.)
- 9) States that it shall be the duty of a juvenile justice commission to inquire into the administration of the juvenile court law in the county or region in which the commission serves. For this purpose the commission shall have access to all publicly administered institutions authorized or whose use is authorized by this chapter situated in the county or region, shall inspect such institutions no less frequently than once a year, and may hold hearings. A judge of the juvenile court shall have the power to issue subpoenas requiring attendance and testimony of witnesses and production of papers at hearings of the commission. A juvenile justice commission shall annually inspect any jail or lockup within the county that was used to confine a minor for more than 24 hours in the preceding calendar year and issue a written report of the results of such inspection together with its recommendations to the juvenile court and to the Board of Corrections. (Welf. & Inst. Code, § 229.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "This bill seeks to limit the use of room confinement in California's juvenile facilities by providing a standard definition and specific guidelines around its use. The bill requires juvenile facilities to attempt and exhaust less

restrictive options before using room confinement. Room confinement cannot be used to the extent it compromises the mental or physical health of the youth and it cannot be used for the purposes of punishment, retaliation, coercion or convenience by staff. Room confinement lasting beyond four hours requires a sign off by the facility superintendent and every four hours thereafter, documentation, and an individualized plan to reintegrate the youth back into general population.

"The use of long-term isolation is clearly documented in both state and local juvenile facilities. Despite a longstanding consent decree in effect since 2004, an internal CDCR audit found continuing abuses in the Division of Juvenile Facilities as late as 2011, including youth locked up in their cells for more than 23 hours a day. Additionally, in a recent 2014 report released by Barry Krisberg of the Warren Institute at UC Berkeley, youth in the most restrictive current program at DJJ [Department of Juvenile Justice] known as the 'Behavior Treatment Program,' were required to receive only 3 hours outside of their cell, and were typically there for approximately 60 days. Despite some improvements in state conditions since the 2011 audit, the consent decree has since been lifted earlier this year, and it is critical that statutory definitions and parameters on the use of room confinement that is consistent for all juvenile facilities be established going forward. At the local level, there are even fewer guidelines and limitations. A federal class-action lawsuit filed against Contra Costa's juvenile hall for youth with disabilities who were placed in long term isolation and denied education as a punishment was recently settled by the county, and the conditions of the settlement are nearly identical to SB 1143, clearly demonstrating that the parameters established in the bill can be implemented at the county level. There simply must be a statewide standard defining room confinement, and limiting its duration so that youth are in the classroom and other rehabilitative programming. This bill will lead to better rehabilitative outcomes for youth, a safer correctional environment for staff and youth, and the avoidance of costly lawsuits."

- 2) **Background:** According to the background materials provided by the author, "Long-term isolation has not been shown to have any rehabilitative or treatment value, and the United Nations has called upon all member countries to ban its use completely on minors. It is a practice that endangers mental health and increases risk of suicide, and is often used as a method to control a correctional environment, and not for any rehabilitative purpose.<sup>1</sup> It does not properly address disciplinary issues and more often, it increases these behaviors in youth, especially those with mental health conditions.<sup>2</sup> In 1999, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a study of juvenile facilities across the country which found that 50% of youth who committed suicide were in isolation at the time of their suicide.<sup>3</sup> Further, 62% of the suicide victims had a history of isolation.<sup>4</sup> In a report

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<sup>1</sup> Finke, Linda M., RN, PhD, "Use of Seclusion is not Evidence-Based Practice," *Journal of Child and Adolescent Psychiatric Nursing*, Oct.-Dec. 2001, available at [http://www.findarticles.com/p/articles/mi\\_qa3892/is\\_200110/ai\\_n8993463/print](http://www.findarticles.com/p/articles/mi_qa3892/is_200110/ai_n8993463/print).

<sup>2</sup> Remarks of Steven H. Rosenbaum, Chief, Special Litigation Section, before the Fourteenth Annual National Juvenile Corrections and Detention Forum, May 16, 1999, available at <http://www.usdoj.gov/crt/split/documents/juvspeech.htm>.

<sup>3</sup> Hayes, Lindsay M., "Juvenile Suicide in Confinement: A National Survey," *National Center on Institutions and Alternatives*, February 2004.  
[http://www.google.com/url?sa=t&rct=j&q=&csrc=s&source=web&cd=2&ved=0CDcQFjAB&url=http%3A%2F%2Fwww.ncjrs.gov%2Fpdffiles1%2Fojjdp%2F213691.pdf&ei=qx1NT-3oOeniiAK-haTKDw&usq=AFQjCNFhEQITM4y1TvtMO3dZsb\\_8g0Hy\\_Q](http://www.google.com/url?sa=t&rct=j&q=&csrc=s&source=web&cd=2&ved=0CDcQFjAB&url=http%3A%2F%2Fwww.ncjrs.gov%2Fpdffiles1%2Fojjdp%2F213691.pdf&ei=qx1NT-3oOeniiAK-haTKDw&usq=AFQjCNFhEQITM4y1TvtMO3dZsb_8g0Hy_Q)

released by the California Department of Corrections and Rehabilitation in 2012, prisoners who had spent time in isolation in the Security Housing Units had a higher rate of recidivism than those who had not.<sup>5</sup> This bill recognizes the importance of keeping youth in the classroom, in counseling, in programs, and other pro-social activities—all of which will lead to reductions in recidivism.

"Title 15 regulations do not provide specific guidelines around the use of room confinement, oftentimes used interchangeably with terms like 'separation.' Title 15 charges facility administrators to develop written policies and procedures regarding the use of separation, but does not provide additional guidance or limitations except that 'separated youth shall not be denied normal privileges at the facility, except when necessary to accomplish the objectives of separation.'<sup>6</sup> Current regulations and statutes do not prevent isolation that can last 21 hours or more each day."

- 3) **Regulations Pertaining to Juvenile Detention Facilities:** The California Code of Regulations Title 15, Minimum Standards for Juvenile Facilities, provides guidelines on the isolation or separation of juveniles from the general population. "Separation" is defined in the regulations as limiting a youth's participation in regular programming for a specific purpose.

Section 1354 of Title 15 requires the facility administrator to develop and implement written policies and procedures addressing the separation of youth for reasons that include, but are not limited to, medical and mental health conditions, assaultive behavior, disciplinary consequences and protective custody. This section prohibits the denial of normal privileges available at the facility, except when necessary to accomplish the objective of separation. The policies and procedures shall ensure a daily review of separated youth to determine if separation remains necessary.

Section 1359 of Title 15 requires the facility administrator, in cooperation with the responsible physician, to develop and implement written policies and procedures governing the use of "safety rooms." The section provides that the safety room shall be used to hold only those youth who present an immediate danger to themselves or others, who exhibit behavior which results in the destruction of property, or reveals the intent to cause self-inflicted physical harm. A safety room shall not be used for punishment or discipline, or as a substitute for treatment. This section specifies that the policies and procedures shall:

- (a) Include provisions for administration of necessary nutrition and fluids, access to a toilet, and suitable clothing to provide for privacy;
- (b) Provide for approval of the facility manager, or designee, before a youth is placed into a safety room;

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<sup>4</sup> Hayes, 16.

<sup>5</sup> California Department of Corrections and Rehabilitation. 2012 Adult Institutions Outcome Evaluation Report. October 2012. [http://www.cdcr.ca.gov/adult\\_research\\_branch/Research\\_Documents/ARB\\_FY\\_0708\\_Recidivism\\_Report\\_10.23.12.pdf](http://www.cdcr.ca.gov/adult_research_branch/Research_Documents/ARB_FY_0708_Recidivism_Report_10.23.12.pdf).

<sup>6</sup> Title 15, Section 1354 Separation. Found at: [http://www.bscc.ca.gov/downloads/Juvenile\\_Title\\_15\\_Strike\\_Out\\_Underline\\_REVISIONS\\_effective\\_2014-4-1.pdf](http://www.bscc.ca.gov/downloads/Juvenile_Title_15_Strike_Out_Underline_REVISIONS_effective_2014-4-1.pdf)

- (c) Provide for continuous direct visual supervision and documentation of the youth's behavior and any staff interventions every 15 minutes, with actual time recorded;
- (d) Provide that the youth shall be evaluated by the facility manager, or designee, every four hours;
- (e) Provide for immediate medical assessment, where appropriate, or an assessment at the next daily sick call;
- (f) Provide that a youth shall be medically cleared for continued retention every 24 hours;
- (g) Provide that a mental health opinion is secured within 24 hours; and,
- (h) Provide a process for documenting the reason for placement, including attempts to use less restrictive means of control, and decisions to continue and end placement.

Section 1390 provides, when separating the youth for disciplinary reasons, discipline shall be imposed at the least restrictive level which promotes the desired behavior and shall not include corporal punishment, group punishment, physical or psychological degradation.

While the regulations provide some guidance on the use of room confinement on juveniles, there is no specified limit on how long a juvenile may be placed in isolation. This bill generally provides that juveniles may be placed in room confinement for four hours at a time as long as certain procedures and policies are met, and requires facilities to follow specified procedures for when separation will extend beyond four hours.

#### 4) Arguments in Support:

- a) According to the *California Public Defenders Association*, the sponsor of this bill, "Experts agree that the use of solitary confinement is psychologically harmful to both adults and children and is especially harmful to those with pre-existing mental illnesses. Experts also agree that the harmful effects of solitary confinement on children are even greater because of their developmental needs. With this bill, California seeks to join a growing number of states who have restricted or abolished solitary confinement for children.

"Although damaging to all children, isolation is particularly devastating to youth with pre-existing mental illness often exacerbates these conditions, all too frequently with tragic consequences. According to the Department of Justice, more than half of all youth suicides in juvenile facilities occurred when youth are in solitary confinement and that more than 60% of youth committing suicide in detention facilities had a history of being held in isolation."

- b) According to the *Chief Probation Officers of California*, a co-sponsor of this bill, "We believe SB 1143 . . . protects the safety and well-being of the youth and staff by prohibiting the use of room confinement for punishment or coercion, setting parameters around when and how it is used, and taking into account the operational needs of the facilities in order for probation to carry out the mission of ensuring the safety of these

youth while in our care."

- 5) **Argument in Opposition:** None received.
- 6) **Related Legislation:** SB 124 (Leno) would have established standards and protocols for the placement of juvenile offenders in solitary confinement. SB 124 was held in the Committee on Appropriations.
- 7) **Prior Legislation:**
  - a) SB 61 (Yee), of the 2013-2014 Legislative Session, would have established standards and protocols for the use of solitary confinement of minors and wards in state and local juvenile facilities. SB 61 was ordered to the inactive file.
  - b) SB 970 (Yee), of the 2013-2014 Legislative Session, would have generally prohibited a minor or ward who is detained in, or sentenced to, any juvenile facility or other secure state or local facility from being subject to solitary confinement, as defined, unless the minor or ward poses an immediate and substantial risk of harm to others or to the security of the facility, and all other less-restrictive options have been exhausted, and only in accordance with specified guidelines. SB 970 was never heard.
  - c) SB 1363 (Yee), of the 2011-12 Legislative Session, would have established standards and protocols for the use of solitary confinement in state and local juvenile facilities for the confinement of delinquent minors. SB 1363 failed passage in the Senate Committee on Public Safety.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Public Defenders Association (Sponsor)  
 Chief Probation Officers of California (Co-sponsor)  
 Children's Defense Fund – California (Co-sponsor)  
 Ella Baker Center for Human Rights (Co-sponsor)  
 Pacific Juvenile Defender Center (Co-sponsor)  
 Youth Justice Coalition (Co-sponsor)  
 California Coalition for Youth  
 Californians United for a Responsible Budget  
 Alameda County Board of Supervisors  
 Alliance for Boys and Men of Color  
 American Civil Liberties Union of California  
 American Friends Service Committee  
 Bend the Arc: A Jewish Partnership for Justice  
 California Alliance for Youth and Community Justice  
 California Attorneys for Criminal Justice  
 California Prison Focus  
 Center on Juvenile and Criminal Justice  
 Children Now

Communities United for Restorative Youth Justice  
Courage Campaign  
Drug Policy Alliance  
First Congregational Church of Palo Alto  
GSA Network of California  
Immigrant Legal Resource Center  
Law Foundation of Silicon Valley  
Legal Services for Prisoners with Children  
National Association of Social Workers, California Chapter  
National Center for Youth Law  
National Religious Campaign Against Torture  
Prison Activist Resource Center  
Prison Law Office  
Santa Cruz - Statewide Coordinated Actions to End Solitary Confinement

One private individual

**Opposition**

None

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

Date of Hearing: June 28, 2016  
Chief Counsel: Gregory Pagan

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

SB 1189 (Pan) – As Amended June 22, 2016

**SUMMARY:** Requires that a forensic autopsy, as defined, be conducted by a licensed physician and surgeon. Specifically, **this bill:**

- 1) Provides that a forensic autopsy shall only be conducted by a licensed physician and surgeon, and the results of a forensic autopsy only be determined by a licensed physician and surgeon.
- 2) Defines a "forensic autopsy" to mean an examination of a body of a decedent to generate medical evidence for which the cause and manner of death is determined.
- 3) Defines "postmortem examination" to mean the external examination of the body where no manner of death is determined.
- 4) States that the manner of death shall be determined by the coroner or medical examiner of a county. If a forensic autopsy is conducted by a licensed physician and surgeon, the coroner shall consult with the physician in determining the cause of death.
- 5) Provides that for health and safety purposes, all persons in the autopsy suite shall be informed of the risks presented by blood borne pathogens and that they should wear personal protective equipment, as specified.
- 6) States that only persons directly involved in the investigation of the death of the decedent shall be allowed into the autopsy suite.
- 7) Provides that if an individual dies due to the involvement of law enforcement activity, law enforcement directly involved with the death of that individual shall not be involved with any portion of the post mortem examination, nor allowed into the autopsy suite during the performance of the autopsy.
- 8) States that at the discretion of the coroner and in consultation with the licensed physician and surgeon conducting the autopsy, individuals may be permitted in the autopsy suite for educational and research purposes.
- 9) Requires that any police reports, crime scene or other information, videos, or laboratory test that are in the possession of law enforcement and are related to a death that is incident to law enforcement activity be made available to the forensic pathologist prior to the completion of the investigation of the death.

- 10) States that the above autopsy protocol shall not be construed to limit the practice of an autopsy for educational or research purposes.
- 11) Makes conforming changes to other provisions of law relating to the conduct of an autopsy.

**EXISTING LAW:**

- 1) Requires coroners to determine the manner, circumstances and cause of death in the following circumstances:
  - a) Violent, sudden or unusual deaths;
  - b) Unattended deaths;
  - c) When the deceased was not attended by a physician, or registered nurse who is part of a hospice care interdisciplinary team, in the 20 days before death;
  - d) When the death is related to known or suspected self-induced or criminal abortion;
  - e) Known or suspected homicide, suicide or accidental poisoning;
  - f) Deaths suspected as a result of an accident or injury either old or recent;
  - g) Drowning, fire, hanging, gunshot, stabbing, cutting, exposure, starvation, acute alcoholism, drug addiction, strangulation, aspiration, or sudden infant death syndrome;
  - h) Deaths in whole or in part occasioned by criminal means;
  - i) Deaths associated with a known or alleged rape or crime against nature;
  - j) Deaths in prison or while under sentence;
  - k) Deaths known or suspected as due to contagious disease and constituting a public hazard;
  - l) Deaths from occupational diseases or occupational hazards;
  - m) Deaths of patients in state mental hospitals operated by the State Department of State Hospitals;
  - n) Deaths of patients in state hospitals serving the developmentally disabled operated by the State Department of Development Services;
  - o) Deaths where a reasonable ground exists to suspect the death was caused by the criminal act of another; and
  - p) Deaths reported for inquiry by physicians and other persons having knowledge of the death. (Gov. Code, § 27491.)

- 2) Requires the coroner or medical examiner to sign the certificate of death when they perform a mandatory inquiry. (Gov. Code, § 27491, subd. (a).)
- 3) Allows the coroner or medical examiner discretion when determining the extent of the inquiry required to determine the manner, circumstances and cause of death. (Gov. Code, § 27491, subd. (b).)
- 4) Requires the coroner or medical examiner to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has not already been performed. (Gov. Code, § 27520, subd. (a).)
- 5) Allows the coroner or medical examiner discretion to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has already been performed. (Gov. Code, § 27520, subd. (b).)
- 6) Specifies that the cost of autopsies requested by the surviving spouse or other specified persons are borne by the requestor. (Gov. Code, § 27520, subd. (c).)
- 7) Requires that discretionary autopsies include the following:
  - a) All available finger and palm prints;
  - b) Dental examination;
  - c) Collection of tissue including hair sample and DNA sample, if necessary;
  - d) Notation and photographs of significant marks, scars, tattoos and personal effects;
  - e) Notation of observations pertinent to the time of death; and
  - f) Documentation of the location of the remains. (Gov. Code, § 27521, subs. (a) and (b).)
- 8) Provides that a coroner shall within 24 hours, or as soon as feasible thereafter, where the suspected cause of death is sudden infant death syndrome, take possession of the body, and make or cause to be made a postmortem examination or autopsy thereon, and the detailed medical findings resulting from an examination of the body or autopsy by an examining physician must either be reduced to writing, or permanently preserved, as specified. (Gov. Code, § 27491.4, subd. (a).)
- 9) Defines "sudden infant death syndrome" to mean the sudden death of an infant that is unexpected by the history of the infant and where a thorough postmortem fails to demonstrate an adequate cause of death. (Gov. Code, § 27491.49, subd. (a).)
- 10) Requires that an autopsy conducted where it is suspected that the cause of death is sudden infant death syndrome be conducted pursuant to a standardized protocol developed by the SDPH. The protocol shall be developed and approved by July 1, 1990. (Gov. Code, § 27491.41 (d).)

- 11) Requires that all coroners, throughout the state, follow the established protocol when conducting autopsies where the suspected cause of death is sudden infant death syndrome, and requires a coroner to state on the certificate of death that sudden infant death syndrome was the cause of death when the findings are consistent with the definition of sudden infant death syndrome. (Gov. Code, § 27491.41 (e).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to author, "Autopsy reports are valuable documents that should be accurate and unbiased. Current law presents grey areas which could undermine public confidence in autopsy findings by allowing non-medically trained individuals, who are often elected or appointed, to conduct the autopsies. Current law also allows law enforcement involved with the death of the individual inside the autopsy suite during the procedure which could create the appearance of influence on the findings and create public distrust in our criminal justice system. Not only do families deserve to know what happened to their loved ones, but the public and juries need to trust that they received accurate objective information to make the correct verdict on a criminal case. SB 1189 is important to clarify and codify the best practices taking place in an autopsy room to guarantee an objective and trustworthy autopsy system."
- 2) **Argument in Support:** The *Union of American Physicians and Dentists* writes, "Elected officials lack the medical expertise necessary to perform a postmortem examination to the same degree as a forensic pathologist, and this bill seeks to add further legitimacy and authority to death investigations in coroner cases. NAME writes that determining the cause and manner of death should be performed by a medical professional with the expertise to make those medical diagnoses. NAME further states that MEs and forensic pathologists and deaths in custody or associated with law enforcement personnel are some of the most highly contentious deaths and can generate a tremendous amount of public interest, and all affected parties must be able to trust that the professionals investigating these deaths are free of undue influence from the law enforcement personnel who may have been involved in that individual's death. Consumer Attorneys of California writes that it is a conflict of interest to allow the law enforcement personnel, a potential defendant in a civil or criminal action, to be allowed inside the autopsy room during the performance of an autopsy."
- 3) **Argument in Opposition:** The *California State Sheriffs' Association (CSSA)* writes, "Limiting law enforcement access to an autopsy suite causes significant issues especially because many autopsies are conducted because the death is potentially the result of a criminal act. CSSA states that in such a case, the body being examined is, and/or contains, evidence and the presence of law enforcement is crucial to maintain care and custody of that evidence. CSSA contends that while a physician generally determines the cause of death, the manner of death is a determination often made by the coroner in concert with other individuals, including the pathologist, and the coroner's role in making this determination should not be removed."

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Union of American Physicians and Dentists  
California Correctional Health Care Services  
Medical Board of California  
College of American Pathologists  
California Society of Pathologists  
California District Attorneys Association  
Ventura County District Attorney's Office  
Consumer Attorneys of California  
National Association of Medical Examiners

**Opposition**

California State Coroners Association  
California State Sheriffs' Association

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

Date of Hearing: June 28, 2016  
Chief Counsel: Gregory Pagan

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

SB 1200 (Jackson) – As Amended May 31, 2016

**SUMMARY:** Requires the annual crime report published by the Department of Justice (DOJ) to include information concerning arrests for animal cruelty.

**EXISTING LAW:**

- 1) Requires the DOJ to collect specified crime-related data, and to prepare an annual report of crime-related statistics. (Pen. Code, §13010.)
- 2) Specifies that the DOJ annual report contain statistics regarding the amount and types of offenses known to public authorities; the personal and social characteristics of criminals and delinquents; the administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents; and the number of citizens' complaints received by law enforcement agencies, as specified. (Pen. Code, §13012.)
- 3) Requires every person and agency that deals with crimes or criminals or with delinquency or delinquents to maintain specified records and report statistical data to the DOJ when requested by the Attorney General. (Pen. Code §13020.)
- 4) Provides that every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (a).)
- 5) States that when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (b).)

- 6) Specifies that a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, is a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (c).)
- 7) Provides that any person that does any of the following is guilty of a felony and is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine not to exceed \$50,000, or by both imprisonment and a fine:
  - a) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog;
  - b) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other; and,
  - c) Permits any of the above acts to be done on any premises under his or her control, or aid or abets that act. (Pen. Code, § 597.5, subd. (a).)
- 8) Requires that if a defendant is granted probation for a conviction of animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. The counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This does not apply to cases involving police dogs or horses as described in Section 600. (Pen. Code, § 597, subd. (h).)
- 9) Provides that any person who causes any animal, not including a dog, to fight with another animal, or permits the same to be done on any property under his or her control, or aids or abets the fighting of any animal is guilty of a misdemeanor, punishable by up to one year in the county jail or by a fine not to exceed \$10,000, or both imprisonment and a fine. (Pen. Code § 597b, subd. (a).)
- 10) Provides that any person who causes a cock to fight with another cock, or permits the same to be done on any property under his or her control, and any person who aid or abets the fighting of any cock or is present as a spectator is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$10,000, or by both imprisonment and a fine. (Pen. Code, § 597b, subd. (b).)
- 11) Provides that any person who owns, possesses, keeps or trains any bird or other animal with the intent that that it be used an exhibition of fighting is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed \$10,000, or by both imprisonment and a fine. (Penal Code Section 597j.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "In 2014 a man was arrested and later pleaded guilty to four felony counts and one misdemeanor count, which included: two felony charges of animal cruelty, felony assault by force likely to produce great bodily injury, witness dissuasion and violating a court order. The case involved a man abusing his girlfriend and her five month old puppy. The man broke several of the puppy's bones, sexually mutilated and used a utility lighter to inflict burns on 80 percent of its body, for which the puppy was later euthanized due to its injuries. The maximum sentence for the crime was seven years and six months in state prison. The judge sentenced him to a year in county jail and five years on probation based on probation officers' recommendations.

"So evident is the correlation between animal abuse and violence to humans that in 2016 the FBI began collecting data on animal cruelty in the same way as homicide, arson, and assault via its National Incident-Based Reporting System (NIBRS).

"Accurate data is important in order to understand the full scope of the problem. Current animal cruelty reporting to the FBI is only on a voluntary basis.

"This bill would require the Department of Justice (DOJ) to include animal cruelty data in its *DOJ Data Collection and Reporting Responsibility* publication, data that is later forwarded to the Federal Bureau of Investigations (FBI).

"With the proven correlation between animal abuse and human violence the goal of SB 1200 is to gather accurate data so that we can develop appropriate policies to help reduce the possibility of further acts of violence upon people."

- 2) **Related Legislation:** SB 1075 (Runner) requires the DOJ to include disaggregated information on child molestation crimes in its annual statewide criminal statistics report. SB 1075 is pending Hearing in the Assembly Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

San Francisco SPCA  
LIUNA Locals 777 and 792  
Marine Humane Society  
San Diego Humane Society  
City of West Hollywood  
Humane Society of the United States  
Animal Welfare Institute  
American Society for the Prevention of Cruelty to Animals

Animal Legal Defense Fund  
Association of Prosecuting Attorneys  
Association for Los Angeles Deputy Sheriffs  
Los Angeles Police Protective League  
Riverside Sheriffs Association  
Los Angeles Probation Officer's Union, AFSCME Local 685  
Association of Deputy District Attorneys  
Davey's Voice  
Los Angeles County Professional Peace Officers Association  
Social Compassion in Legislation  
State Humane Association of California  
Santa Barbara Women's Political Committee

One Private Individual

**Opposition**

None

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

Date of Hearing: June 28, 2016

Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1202 (Leno) – As Amended May 31, 2016

**SUMMARY:** Provides that aggravating factors relied upon by the court to impose an upper term sentence must be tried to the jury and found to be true beyond a reasonable doubt.

Specifically, **this bill:**

- 1) Makes a legislative declaration that, to ensure proportionality in sentencing, upper terms should be reserved for cases in which aggravating facts exist and have been proven to be true.
- 2) Prohibits imposition of the upper term of imprisonment based on aggravating factors unless those are presented to, and found to be true, by the finder of fact.
- 3) Provides that the court may not impose an upper term based on aggravating facts unless the facts were first presented to the fact-finder and the fact-finder found the facts to be true.
- 4) Requires the court to state on the record at the time of sentencing the specific facts in aggravation relied upon to impose an upper term.
- 5) Provides that a fact pled in the indictment or information or accusatory pleading cannot be used as an aggravating factor at sentencing unless the fact has been proved to the trier of fact (jury or court in a court trial) or admitted by the defendant.
- 6) Provides that a prior conviction that has been pled in the charging document of a jury trial may be proven to the court to the same extent as permitted prior to the effective date of this bill.
- 7) Provides that trial of all facts pled in aggravation of sentence shall be bifurcated. During trial of the underlying charges and any enhancement, the jury shall not be informed of the facts alleged as factors in aggravation unless that fact is admitted or otherwise relevant to prove an element of a charge or enhancement and not excluded as overly prejudicial.

**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, subd. (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, "Senate Bill 1202 seeks to address the constitutional defect in our California Felony Sentencing laws. In 2007, the United States Supreme Court, in its decision in *Cunningham v. California*, 59 U.S. 270 (2007), found California's felony sentencing as unconstitutional. The court found that judges in California improperly sentenced persons to longer prison sentences based on facts that were never presented to the jury and proven true beyond a reasonable doubt. Following the Cunningham decision, the legislature sought to cure this constitutional defect by allowing judges to consider 'factors,' not 'facts' in aggravation when imposing an enhanced sentence. This law,

implemented under SB 40 with a sunset provision, has been extended multiple times since 2007. However, the sunset is set to expire on January 1, 2017.

"Given California's move towards more thoughtful and innovative criminal justice reform, i.e. Realignment, Propositions 36 and 47, 2016 is the year to make a powerful stance on over-criminalization. Along with the Governor's ballot measure, SB 1202 seeks to prevent the unilateral impositions of longer sentences by judges, absent a finding of aggravating facts --- a principle that California relied upon since 1979 but was interrupted by the court decision. This bill would require any aggravating facts to be presented to the jury, and proved true beyond a reasonable doubt, before being presented to a judge for the sentencing decision. In essence, this bill simply ensures facts are vetted by a jury before a judge can rely on these facts to impose a maximum sentence.

"The bill also restores California's practice of presuming the middle term for all felonies -- this prevents arbitrariness and promotes consistency from judge to judge and county to county. Furthermore, this bill would require judges to state on the record the reasons for its sentencing choice, including specific facts of aggravation that led to an imposition of an upper term. This bill would change California's focus from addressing issue of over incarceration at the back end, to providing a mechanism to lower sentences on the front end. The time has come to make major sentencing reform changes. SB 1202 will help lead California."

- 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 1170.2, to make the choice of lower, middle, or upper prison terms 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 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) **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.)

Perhaps the most important sentencing label 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 § 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 Pen. Code, § 1170, subd. (b).) Those reasons remain governed by the California Rules of Court. (*People v. Sandoval, supra*, 41 Cal.4th at 844; Pen. Code, § 1170.3, subd. (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 (Pen. Code, § 12022.7); that the defendant was armed with or used a weapon encompasses the same conduct as an arming enhancement (Penal Code Section 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.

4) **Would Jury Trials on Aggravating Factors Burden the Criminal Justice System?**

California already provides a statutory requirement of a jury trial for many enhancing factors. For example, to subject a defendant to the punishment prescribed by Penal Code Section 667.61, a jury must find the underlying facts such as great bodily injury, mayhem or torture, the use of a deadly weapon, tying or binding, or administration of a controlled substance by force. (Pen. Code, § 667.61, subs. (d), (e) and (i).) In a "Three-Strikes" case, a defendant's prior conviction must be pleaded and proved. (Pen. Code, § 1170.12, subd. (a).) The facts that permit enhancements of punishments for violating various drug laws must also be pleaded and proved. (See e.g. Health and Saf. Code, §§ 11353.1, subd. (b); 11353.4, subd. (c); 11353.6, subd. (e).)

Moreover, in *Blakely, supra*, 542 U.S. 296, the United States Supreme Court acknowledged that a defendant could waive his Sixth Amendment right and consent to judicial fact-finding either as part of a plea-agreement or as part of a bifurcated trial (*Id.*, at p. 310.) As a practical matter, this procedure is often utilized in California courtrooms. For example, although a defendant has a statutory right to a trial by jury on his prior convictions (Pen. Code, § 1025; *People v. Kelii* (1999) 21 Cal.4th 452), defendants often waive that right or admit the priors. Finally, it should also be noted that most criminal proceedings are resolved by plea. Therefore, while jury trial on aggravating factors would impact the judicial system, not all cases would result in these trials.

- 5) **Solutions from Other States:** Several other states have faced the same sentencing dilemma as California. Washington was in the very same position as California in that Washington had its sentencing structure ruled unconstitutional. (*Blakely, supra*, 542 U.S. at pp. 305-306.) In response, the Washington Legislature created a bifurcated trial process in which a jury would decide certain aggravating factors after the jury had found the defendant guilty. (*Cunningham, supra*, 549 U.S. at 294, fn. 17.) In addition to Washington, several other states have adopted a bifurcated trial model: Alaska, Arizona, Kansas, Minnesota, North Carolina, Oregon and Colorado. (*Ibid.*; see also Stemen & Wilhelm, *Finding the Jury: State Legislative Responses to Blakely v. Washington*, 18 Fed. Sentencing Rptr. 7 (Oct. 2005) (majority of affected states have retained determinate sentencing systems).)
- 6) **Argument in Support:** According to the *California Attorneys for Criminal Justice*, the sponsor of this bill, "Current law allows for a judge to choose one of three possible terms when a judgment is imposed: lower, middle, and upper. Until 2007, California required the granting of the middle term unless there are factors of aggravation or mitigation to enhance or reduce the punishment of a crime.

"However, the U.S. Supreme Court, in *Cunningham v. California*, 59 U.S. 270 (2007), ruled the California statute unconstitutional because it failed to provide the right of a jury to determine whether the aggravating factors were true beyond a reasonable doubt. 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.

"SB 1202 would rectify this elimination of this essential right at trial. This bill prevents a

judge from unilaterally imposing an extended prison sentence based on the facts that a jury never sees or finds to be true. The goal of this bill still requires people who break the law to be accountable; nonetheless, the decision to impose a maximum sentence to a person's term should be determined by the jury or an independent factfinder and not the judge unilaterally. Since 2007, individuals entering prison each year with upper term sentences have increased from 15% to 22%, which is a 30% rate increase.

"The United States Supreme Court, in *Cunningham*, endorsed the SB 1202 approach as constitutionally valid and protective of proportional sentencing. The *Cunningham* court stated, '[s]everal States have modified their systems in the wake of Apprendi and Blakely to retain determinate sentencing, by calling upon the jury to find any fact necessary to the imposition of an elevated sentence.' Id at 280.

"SB 1202 will also shift our criminal justice system from reacting to challenges and obstacles to taking a proactive approach. Following our court-ordered mandate to reduce the state prison population, California has reacted with several large criminal justice reforms – realignment, three-strikes reform, and Proposition 47. Rather than scramble to correct previous misguided policies on the back-end of the system, California should move towards addressing these issues on the front-end. By ensuring that aggravating factors be plead and proven, this will safeguard unjust and extended prison sentences."

- 7) **Argument in Opposition:** According to the *San Diego County District Attorney's Office*, "Under current law, selection of the lower, middle, or upper term in determining a felony custodial sentence is vested within the court's sound discretion. This procedure has been in place since 2007, when the Legislature approved and the Governor signed SB 40 (Romero) to address the United States Supreme Court's decision in *Cunningham v. California* (2007) 549 U.S. 270. This procedure has been reaffirmed by the Legislature five times since SB 40 was approved. Changing course now makes little sense.

"There are protections against arbitrary selection of the upper term. The court must state its reasons for selecting a term on the record. The court may not use an element of the offense to justify the upper term nor may it use the fact of any enhancement upon which a sentence is imposed to justify the upper term.

"Requiring the People to plead and prove aggravating facts supporting an upper term, and bifurcated trials would unduly prolong trials and burden already stressed judicial, prosecutorial, defense and law enforcement resources. Extensive new jury instructions and Rules of Court would also have to be drafted.

"Many aggravated factors are ill-suited to jury determination and have traditionally been entrusted to the sound discretion of the sentencing judge. Indeed, requiring aggravating factors to be pleaded by the People and found true by a jury could result in the presumably unintended outcome that the upper term might be imposed more frequently."

8) **Related Legislation:**

- a) SB 1016 (Monning) 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. SB 1016 is pending in the Assembly

Appropriations 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.

9) **Prior Legislation:**

- a) AB 765 (Ammiano), of the 2013-14 Legislative Session, would have prohibited imposition of the upper term of imprisonment unless aggravating factors are found to be true by the finder of fact. AB 765 was held on the Assembly Appropriations suspense file.
- b) AB 520 (Ammiano), of the 2011-12 Legislative Session, would have prohibited imposition of the upper term of imprisonment unless aggravating factors are found to be true by the finder of fact. AB 520 was amended to a different subject matter.
- c) 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.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Attorneys for Criminal Justice (Sponsor)  
American Civil Liberties Union of California  
California Catholic Conference  
California Public Defenders Association  
Drug Policy Alliance  
Friends Committee on Legislation of California  
Legal Services for Prisoners with Children

**Opposition**

California District Attorneys Association  
California State Sheriffs' Association  
Judicial Council of California  
Los Angeles County District Attorney  
San Diego County District Attorney

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

Date of Hearing: June 28, 2016  
Counsel: Gabriel Caswell

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

SB 1238 (Pan) – As Amended March 29, 2016

**SUMMARY:** Permits records-based, statistical research, using existing information, to be conducted on prisoners, notwithstanding a prohibition on biomedical research on prisoners. Specifically, **this bill:**

- 1) Permits records-based biomedical research using existing information, without prospective interaction with human subjects, to be conducted on prisoners, notwithstanding a prohibition on biomedical research on prisoners.
- 2) Restricts the use or disclosure of individually identifiable records pursuant to the above provision permitting records-based biomedical research to only occurring after both of the following requirements have been met:
  - a) The research advisory committee, established pursuant to specified provisions of existing California regulations on research involving prisoners (currently limited to behavioral research), approves of the use or disclosure; and,
  - b) The prisoner provides written authorization for the use or disclosure, or the use or disclosure is permitted by specified provisions of federal HIPAA regulations.
- 3) Excludes from the definition of “biomedical research,” for purposes of provisions of law governing biomedical and behavioral research of prisoners, the accumulation of statistical data in the assessment of the effectiveness of nonexperimental public health programs or treatment programs in which inmates routinely participate

**EXISTING LAW:**

- 1) Defines the following terms: (Pen. Code, § 3500.)
  - a) “Behavioral research” as studies involving, but not limited to, the investigation of human behavior, emotion, adaptation, conditioning, and response in a program designed to test certain hypotheses through the collection of objective data. Behavioral research does not include the accumulation of statistical data in the assessment of the effectiveness of programs to which inmates are routinely assigned, such as, but not limited to, education, vocational training, productive work, counseling, recognized therapies, and programs which are not experimental in nature.
  - b) “Biomedical research” as research relating to or involving biological, medical, or physical science.

- c) "Psychotropic drug" as any drug that has the capability of changing or controlling mental functioning or behavior through direct pharmacological action. Such drugs include, but are not limited to, antipsychotic, antianxiety, sedative, antidepressant, and stimulant drugs. Psychotropic drugs also include mind-altering and behavior-altering drugs which, in specified dosages, are used to alleviate certain physical disorders, and drugs which are ordinarily used to alleviate certain physical disorders but may, in specified dosages, have mind-altering or behavior-altering effects.
  - d) "Research" as a class of activities designed to develop or contribute to generalizable knowledge such as theories, principles, or relationships, or the accumulation of data on which they may be based, that can be corroborated by accepted scientific observation and inferences.
  - e) "Research protocol" as a formal document setting forth the explicit objectives of a research project and the procedures of investigation designed to reach those objectives.
  - f) "Phase I drug" as any drug which is designated as a phase I drug for testing purposes under the federal Food and Drug Administration criteria in Section 312.1 of Title 21 of the Code of Federal Regulations.
- 2) Provides that the Legislature affirms the fundamental right of competent adults to make decisions about their participation in behavioral research. (Pen. Code, § 3501.)
  - 3) Provides that biomedical research shall not be conducted on any prisoner in this state. (Pen. Code, § 3502.)
  - 4) Provides that notwithstanding the bar of biomedical research on prisoners, any physician who provides medical care to prisoners may provide a patient who is prisoner with a drug or treatment available only through a treatment protocol or treatment IND (investigational new drug) if the physician determines that access to that drug is in the best medical interest of the patient, and the patient has given informed consent. (Pen. Code, § 3502.5.)
  - 5) States that any physical or mental injury of a prisoner resulting from the participation in behavioral research, irrespective of causation of such injury, shall be treated promptly and on a continuing basis until the injury is cured. (Pen. Code, § 3504.)
  - 6) Requires that behavioral research be limited to studies of the possible causes, effects and processes of incarceration and studies of prisons as institutional structures or of prisoners as incarcerated persons which present minimal or no risk and no more than mere inconvenience to the subjects of the research. Informed consent shall not be required for participation in behavioral research when the department determines that it would be unnecessary or significantly inhibit the conduct of such research. In the absence of such determination, informed consent shall be required for participation in behavioral research. (Pen. Code, § 3505.)
  - 7) Requires that behavioral-modification techniques shall be used only if such techniques are medically and socially acceptable means by which to modify behavior and if such techniques do not inflict permanent physical or psychological injury. (Pen. Code, § 3508.)

**FISCAL EFFECT:****COMMENTS:**

- 1) **Author's Statement:** According to the author, "Ten years ago, federal court placed the state's prison health care system under a receivership after determining that an average of one inmate per week died as a result of medical malpractice or neglect. The receivership has improved healthcare in prisons over the last ten years, but the inability to share data-backed best practices contributes to the challenge of providing quality health care to 127,000 inmates—who are disproportionately Black and Latino. SB 1238 would authorize the publication of statistical data in the assessment of the effectiveness of nonexperimental public health programs or treatment programs in which inmates routinely participate. This would enable health care providers in prisons and jails to learn from the best practices used at state correctional facilities, and utilize these life-saving techniques.

"In August of 2015, microscopic bacteria contaminated the water supply of San Quentin State Prison (SQ). A physician working in the prison noticed an unusual number of inmate-patients with pneumonia. Two hours into a collaborative email chain, the healthcare providers of SQ identified the cause of the pneumonia increase: Legionnaires' disease. Data sharing among the health care staff enabled the California Correctional Health Care Services (CCHCS) and the California Department of Corrections and Rehabilitation to respond to the potential health crisis immediately. The quick identification and effective treatment of the disease prevented the crisis from turning fatal. Data sharing enabled this life-saving response. The ability to publish some of this data would allow other health care agencies to learn to better manage similar health crises. Nonexperimental medical data can be used to save lives while completely avoiding the ethical dilemmas of allowing experimental biomedical research in prisons.

"California's prison system has been on the cutting edge of providing health care to prison inmates, but current law prevents the publishing of non-experimental medical data that could be used to improve health care in correctional facilities and potentially save lives. Prisons face unique health care challenges, and SB 1238 would allow health care providers to share and learn from non-experimental data in order to provide higher quality health care."

- 2) **California Department of Corrections Healthcare: Federal Receivership:** CCHCS (federal receivership) was established as a result of a class action lawsuit (*Plata v. Brown*) brought against the State of California over the quality of medical care in the state's 34 adult prisons. In its ruling, the federal court found that the care was in violation of the Eighth Amendment of the U.S. Constitution which prohibits cruel and unusual punishment. The state settled the lawsuit and entered into a stipulated settlement in 2002, agreeing to a range of remedies that would bring prison medical care in line with constitutional standards. The state failed to comply with the stipulated settlement and on February 14, 2006, the federal court appointed a receiver to manage medical care operations in the prison system. The current receiver was appointed in January of 2008. The receivership continues to be unprecedented in size and scope nationwide.

CCHCS is the sponsor of this legislation and states in support:

Over the last several years, the prison system has been the site of extremely newsworthy medical developments, and has been on the cutting edge of providing

treatment to prison inmates that would be beneficial to share with the medical community at large. Between 2012 and 2014, the prison system experienced hunger strikes that lasted for a significant period of time. As a result, prison doctors developed an effective monitoring system that provided appropriate treatment as needed during the strikes. Additionally, for the past several years, the prison system has undertaken a massive program for identifying and treating Valley Fever in our central valley prisons: California was the first health care system in the nation to use a newly developed skin test that identifies exposure/non-exposure to Valley Fever which is now used in making wise housing choices for inmates statewide. Finally, just recently the prison system had an outbreak of Legionnaires Disease at San Quentin (SQ) State Prison where, due to quick identification and effective treatment, doctors were able to successfully treat inmates at SQ without the loss of life.

California Correctional Health Care Services, which oversees prison medical care, would like to publish our findings in medical journals that would be of benefit to other correctional and community entities. However, under current law (added in the 1970s) there currently is a prohibition in the California Penal Code for performing or undertaking biomedical research on prisoners. Unfortunately, the broad nature of the current statute would even prohibit CCHCS from publishing an accumulation of statistical data that provided an assessment of the effectiveness of any non-experimental public health or treatment program such as described above.

This bill would narrowly amend the Penal Code to allow CCHCS to publish findings from non-experimental public health or treatment programs.

- 3) **Effect of This Legislation:** This bill provides for the use of statistical data from health treatment programs within prisons in order to publish studies or reports on the efficacy of these health treatment programs. Specifically, this bill excludes from the definition of “biomedical research,” and therefore exempts from the ban on this research, the “accumulation of statistical data” in the assessment of treatment programs in which inmates routinely participated. This bill, additionally, authorizes biomedical research, but only when it is records-based, using existing information, and does not include prospective interaction with prisoners. In this provision, the use or disclosure of individually identifiable records is permitted, either with the written authorization of the prisoner, or when the use or disclosure is otherwise permitted under specified federal privacy regulations that permit disclosure without written authorization under certain circumstances.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Correctional Health Care Services (CCHCS)

##### **Opposition**

None

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

Date of Hearing: June 28, 2016  
Counsel: David Billingsley

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

SB 1322 (Mitchell) – As Amended May 31, 2016

**SUMMARY:** Decriminalizes prostitution for those under 18 years of age. Clarifies that a minor may be taken into temporary custody under limited circumstances. Specifically, **this bill:**

- 1) Specifies that the statutes which makes solicitation of prostitution and loitering with intent to commit prostitution misdemeanors, does not apply to a child under 18 years of age who is alleged to have engaged in such conduct to receive money or other payment.
- 2) States that a commercially sexually exploited child may be taken into temporary custody if the fact that the child is left unattended poses an immediate threat to the child's health or safety, or other specified criteria

**EXISTING LAW:**

- 1) States that any person who solicits or who agrees to engage in or who engages in any act of prostitution is guilty of a misdemeanor. (Pen. Code, § 647, subd. (b).)
- 2) Specifies that a person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. (Pen. Code, § 647, subd. (b).)
- 3) States that "prostitution" includes "any lewd act between persons for money or other consideration." (Pen. Code, § 647, subd. (b).)
- 4) States that it is unlawful for any person to loiter in any public place with the intent to commit prostitution. (Pen. Code, § 653.22, subd. (a).)
- 5) Provides that the intent to loiter to commit prostitution is evidenced by acting in a manner and under circumstances which openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution. (Pen. Code, § 653.22, subd. (a).)
- 6) Provides that any person who causes or persuades, or attempts to cause or persuade, a person who is a minor to engage in a commercial sex act, with the intent to effect a violation of specified sex offenses is guilty of human trafficking. (Pen. Code § 236.1.)
- 7) Specifies that any peace officer may, without a warrant, take into temporary custody a minor when the officer has reasonable cause for believing that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical

environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety, and the minor meets other specified criteria. (Welf. & Inst. Code, § 305.)

- 8) Specifies that if a child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, is within the jurisdiction of the juvenile court and may be found to be a dependent child of the court. (Welf. & Inst. Code, § 300, subd. (b)(1).)
- 9) States that a child who is sexually trafficked, as specified, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts as specified, and whose parent or guardian failed to, or was unable to, protect the child, is within the jurisdiction of the juvenile court and may be found to be a dependent child of the court. (Welf. & Inst. Code, § 300, subd. (b)(2).)
- 10) Establishes the Commercially Sexually Exploited Children Program, (CSECP) as administered by Department of State Social Services (DSS), to serve children who have been sexually exploited. (Welf. & Inst. Code §§ 16524.7.)
- 11) Requires DSS, in consultation with the County Welfare Directors Association of California, to develop an allocation methodology to distribute funding for the program. (Welf. & Inst. Code §§ 16524.7.)
- 12) Authorizes the use of these funds by counties electing to participate in the program for prevention and intervention activities and services to children who are victims, or at risk of becoming victims, of commercial sexual exploitation. (Welf. & Inst. Code §§ 16524.7.)
- 13) Requires DSS to contract for training for county children's services workers to identify, intervene, and provide case management services to children who are victims of commercial sexual exploitation, and for the training of foster caregivers for the prevention and identification of potential victims. (Welf. & Inst. Code §§ 16524.7.)
- 14) Requires DSS, no later than April 1, 2017, to provide to the Legislature, information regarding the implementation of the program. (Welf. & Inst. Code §§ 16524.10.)
- 15) Require each county, electing to receive funds, to develop an interagency protocol to be utilized in serving sexually exploited children who have been adjudged to be a dependent child of the juvenile court. (Welf. & Inst. Code §§ 16524.8.)
- 16) Requires the county interagency protocol to be developed by a team led by a representative of the county human services department and to include representatives from specified county agencies and the juvenile court. (Welf. & Inst. Code §§ 16524.8.)
- 17) States that except as specified, a mandated reporter shall make a report to an agency, as specified, whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated

reporter knows or reasonably suspects has been the victim of child abuse or neglect. (Pen. Code, § 11166, subd. (a).)

- 18) Requires the mandated reporter to make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written follow-up report within 36 hours of receiving the information concerning the incident. (Pen. Code, § 11166, subd. (a).)
- 19) Specifies that POST shall implement by January 1, 2007, a course or courses of instruction for the training of law enforcement officers in California in the handling of human trafficking complaints and also shall develop guidelines for law enforcement response to human trafficking. (Pen. Code 13519.14, subd. (a).)
- 20) Requires every law enforcement officer who is assigned field or investigative duties to complete a minimum of two hours of training in a course or courses of instruction pertaining to the handling of human trafficking complaints as described in subdivision (a) by July 1, 2014, or within six months of being assigned to that position, whichever is later. (Pen. Code 13519.14, subd. (e).)
- 21) Requires law enforcement agencies to use due diligence to identify all victims of human trafficking, regardless of the citizenship of the person. (Pen. Code, § 236.2.):
- 22) Specifies that when a peace officer comes into contact with a person who has been deprived of his or her personal liberty, a minor who has engaged in a commercial sex act, a person suspected of violating specified prostitution offenses, or a victim of a crime of domestic violence or sexual assault, the peace officer shall consider whether the following indicators of human trafficking are present (Pen. Code, § 236.2.):
  - a) Signs of trauma, fatigue, injury, or other evidence of poor care;
  - b) The person is withdrawn, afraid to talk, or his or her communication is censored by another person;
  - c) The person does not have freedom of movement;
  - d) The person lives and works in one place;
  - e) The person owes a debt to his or her employer;
  - f) Security measures are used to control who has contact with the person; and
  - g) The person does not have control over his or her own government-issued identification or over his or her worker immigration documents.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Under California law a child who is under the age of 18 cannot consent to sex. And yet we charge the child victims of commercial sex trafficking with crimes. Crimes like prostitution.

"Under current law a victim can be detained in juvenile hall and prosecuted for prostitution. This is not an appropriate, effective or ethical response to this growing epidemic.

"In 2014, SB 855, a budget trailer bill, was signed into law by Governor Brown. This bill creates a clear path to the dependency system for CSEC victims while allocating \$14 million in ongoing funding for counties and child welfare agencies for prevention, intervention and services for these victims.

"Even though SB 855 was directly setup to identify a clear path to the dependency court system for victims, these CSEC victims are still being prosecuted through the delinquency court system when a victim is arrested for prostitution, loitering, or a similar crime as a result of his/her victimization.

"SB 1322 is in keeping with this shift in policy. This bill will stop the criminalization of CSEC victims by decriminalizing prostitution charges for minors. If it is determined that the person suspected of soliciting prostitution is under the age of 18, law enforcement, as a mandated reporter, shall immediately report any allegation of commercial sexual exploitation to the county child welfare department."

- 2) **Decriminalization of Minors Engaged in Prostitution:** This bill would prohibit the arrest or punishment of a minor who has exchanged or attempted to exchange sex acts in return for money or other forms of payment. Under current law, minors committing prostitution can be arrested by law enforcement. Arrested minors are dealt with through the juvenile justice system. By decriminalizing prostitution of minors, those minors could no longer be arrested and would not go through the juvenile justice system. This bill would instead allow a temporary detention of the minor and a referral to the child welfare system (child protective services).

There are tensions between addressing the problem of minors engaged in prostitution through the juvenile justice system versus child protective services. The ability to arrest a minor and go through the juvenile justice system arguably provides a higher likelihood that the minor will receive services. There is concern that without a court process that has the ability to impose sanctions, the minor will simply return to the situation in which they had been engaging in prostitution.

However, there are concerns about arresting minors engaged in prostitution and processing them through the juvenile justice system. To the extent that a minor engaged in prostitution is a victim of crime, arresting them and charging them with a crime are acts which treat them as a criminal. There is a concern that if a minor is subject to arrest they will be less likely to cooperate with law enforcement to seek help regarding their trafficker. There is also a concern that a minor would be less likely to seek services because of the minor is worried about coming in contact with authorities that might treat them as criminals.

Many district attorney offices throughout the state are choosing to handle minors involved in prostitution through the juvenile justice system, but diverting them very early in the process to programs that can provide the juvenile appropriate services. Such diversion programs allow the minor to avoid any juvenile conviction.

This bill clarifies that officers have the power to take temporary custody of minor's in danger of commercial sexual exploitation for the purposes of their safety and getting the minor to social services. (Welf. & Inst. Code, §§, 300, 305.)

- 3) **Commercially Sexually Exploited Children Program (CSECP):** In June 2014, California Governor Jerry Brown signed SB 855 into law. SB 855 established a state-funded Commercially Sexually Exploited Children (CSEC) Program with an allocation of \$5 million in 2014-15 and \$14 million annually thereafter to fund prevention, intervention, training, and services for trafficked children. SB 855 also clarified that a child who is sexually trafficked and whose parent or guardian has failed or is unable to protect him or her, can be served through child welfare as a victim of abuse and neglect. Children engaged in "survival sex" can also be served through the child dependency system. (<http://youthlaw.org/policy/california-csec-program/>)

The Commercially Sexually Exploited Children Program is administered by the State Department of Social Services and is intended to serve children who have been sexually exploited. The State Department of Social Services authorizes the use of funds by counties electing to participate in the program for certain prevention and intervention activities and services to children who are victims, or at risk of becoming victims, of commercial sexual exploitation. The State Department of Social Services provides training for county children's services workers to identify, intervene, and provide case management services to children who are victims of commercial sexual exploitation, and the training of foster caregivers for the prevention and identification of potential victims, as specified. The bill would also require the department to ensure that the Child Welfare Services/Case Management System is capable of collecting data concerning children who are commercially sexually exploited, as specified. SB 855 requires each county electing to receive funds pursuant to the provisions described above to develop an interagency protocol to be utilized in serving sexually exploited children who have been adjudged to be a dependent child of the juvenile court.

The Commercially Sexually Exploited Children Program reflects a legislative commitment to provide funding and resources to county social services to help commercially sexually exploited youth. By decriminalizing minors engaged in prostitution, this bill would be directing those individuals away from the juvenile criminal justice system and toward the juvenile social services system.

- 4) **Peace Officers are Already Mandated Reporters of Child Abuse or Neglect:** The California Child Abuse Neglect Reporting Act (CANRA) requires mandatory reporting when certain individuals suspect that a child has been abused or neglected. Law enforcement officers are one of the groups which have mandatory reporting responsibilities.

A mandated reporter must make a report whenever, in his/her professional capacity or within the scope of his/her employment, he/she has knowledge of, or observes a child (a person under 18) whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Abuse includes the sexual exploitation of a child.

When law enforcement suspects abuse or neglect they inform child protective services and the district attorney's office of the suspected abuse.

- 5) **Argument in Support:** According to *The Coalition to Abolish Slavery & Trafficking*, "In 2014, SB 855, a budget trailer bill was signed into law by Governor Brown. This bill allocates \$14 million in funding split between CSEC training for county workers and foster care workers and launching and continuing the 'Commercially Sexually Exploited Children Program' which provides counties with funds for prevention, intervention and services for CSEC victims.

"Even though SB 855 was directly setup to identify a clear path to the dependency court system for victims, these CSEC victims are still being prosecuted through the delinquency court system when a victim is arrest for prostitution, loitering, or a similar crime as a result of his/her victimization. Currently, there is little guidance about when and how the decision is made regarding which system will serve the victim. SB 1322 will stop the criminalization of CSEC victims by ensuring minors are not charged with prostitution. If it is determined that the person suspected of soliciting prostitution is under the age of 18, law enforcement shall immediately report any allegation of commercial sexual exploitation to the county child welfare department."

- 6) **Argument in Opposition:** According to *The California District Attorneys Association*, "While we understand that minors engaged in prostitution are often the victims of human trafficking, and share your desire to protect this vulnerable population from criminal prosecution, we do not believe that decriminalization of prostitution for minors is in the public interest, or the interest of the victim.

"The solution proposed by this bill, wherein law enforcement would notify child protective services and take the minor into custody as a dependent under Welfare & Institutions Code section 300, could actually serve to create new victims and undermine law enforcement's ability to address those exploiting such minors.

"Juveniles who come under WIC section 300 dependency jurisdiction are not placed in secure facilities, and in unsecured facilities actually have access to recruit other potential victims.

"Additionally, this bill would allow an aider and abettor to juvenile prostitution, who is also a minor, to avoid punishment. It is our experience as prosecutors that most CSEC victims will not turn over their pimp. Under the language of SB 1322, if the operation uses a minor as the pimp or lookout, he would also avoid prosecution."

7) **Related Legislation:**

- a) AB 1675 (Stone), would specify that a minor who commits those crimes is not subject to criminal charges in the juvenile court, but he or she may be adjudged a dependent child of the child welfare court. AB 1675 is pending hearing in the Senate Public Safety Committee.

- b) AB 1760 (Santiago), would have provided immunity from arrest and prosecution for minors that exchange sex acts for payment, and would have required police officers to make an effort to determine if a minor arrestee is victim of human trafficking or has engaged in a commercial sex act. AB 1760 was amended in the Assembly Public Safety Committee to remove the immunity provisions for minors engaged in sex for payment. AB 1760 was held in the Assembly Appropriations Committee.

**8) Prior Legislation:**

- a) AB 1585 (Alejo), Chapter, 708, Statutes of 2014, provides that a defendant who has been convicted of solicitation or prostitution may petition the court to set aside the conviction if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.
- b) SB 855 (Budget Committee), Chapter 29, Statutes of 2014, established the Commercially Sexually Exploited Children Program to be administered by the State Department of Social Services in order to adequately serve children who have been sexually exploited.
- c) AB 2040 (Swanson), Chapter 197, Statutes of 2012, provides that a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution may petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained.
- d) AB 1940 (Hill), of the 2011-12 Legislative Session, would have authorized a court to seal a record of conviction for prostitution based on a finding that the petitioner is a victim of human trafficking, that the offense is the result of the petitioner's status as a victim of that crime, and that the petitioner is therefore factually innocent. AB 1940 was held on the Assembly Committee on Appropriations' Suspense File.
- e) AB 702 (Swanson), of the 2011-12 Legislative Session, would have allowed a person adjudicated a ward of the court or a person convicted of prostitution to have his or her record sealed or conviction expunged without showing that he or she has not been subsequently convicted or that he or she has been rehabilitated. AB 702 was never heard by this Committee and was returned to the Chief Clerk.
- f) AB 22 (Lieber), Chapter 240, Statutes of 2005, created the California Trafficking Victims Protection Act, which established civil and criminal penalties for human trafficking and allowed for forfeiture of assets derived from human trafficking. In addition, the Act required law enforcement agencies to provide Law Enforcement Agency Endorsement to trafficking victims, providing trafficking victims with protection from deportation and created the human trafficking task force.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

ACT for Women and Girls  
American Civil Liberties Union of California  
Alliance for Children's Rights  
Aviva Family and Children's Services  
Bay Area Youth Center  
Black Women for Wellness  
California Attorneys for Criminal Justice  
Children Now  
Child Abuse Prevention Center  
Children's Law Center of California  
Coalition to Abolish Slavery & Trafficking  
Courage Campaign  
County of Los Angeles  
County Welfare Directors of California  
Crittenton Services for Children and Families  
David and Margaret Youth and Family Services  
District Attorney of Alameda County, Nancy O'Malley  
Family Assistance Program  
Girls Incorporated of Alameda County  
Hathaway Sycamores Child and Family Services  
John Burton Foundation  
Legal Services for Prisoners with Children  
Maryvale  
National Association of Social Workers  
National Center for Youth Law  
New Way of Life Re-Entry Project  
Pacific Juvenile Defender Center  
Rights4Girls  
San Francisco Department on the Status of Women  
San Francisco Women's Political Committee  
Shared Hope  
Summitview Child & Family Services  
Triad Family Services  
Trinity Youth Services  
Westcoast Children's Clinic

**Opposition**

California District Attorneys Association  
California State Sheriffs' Association  
Los Angeles County District Attorney's Office  
Sacramento County District Attorney's Office  
San Diego County District Attorney's Office

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

Date of Hearing: June 28, 2016  
Counsel: Gabriel Caswell

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

SB 1332 (Mendoza) – As Amended May 31, 2016

**SUMMARY:** Provides for the joint registration of firearms between spouses and domestic partners, as specified, and modifies existing firearm loan provisions. Specifically, **this bill:**

- 1) Requires, commencing January 1, 2019, the Department of Justice (DOJ) to permanently keep and properly file and maintain the name of the person and his or her spouse or domestic partner, if the firearm is registered to both individuals, as specified.
- 2) Requires, commencing January 1, 2019, DOJ to modify its registration forms, if it has not already done so, so that both spouses or both domestic partners may register as the owners of the firearm, as specified.
- 3) Provides that requirements that a loan of a firearm must go through a licensed firearms dealer does not apply to the loan of a firearm provided all of the following are met (loans within a single residence):
  - a) If the firearm being loaned is registered to the person making the loan;
  - b) The loan occurs within the individual receiving the firearm and the lender's place of residence or private property, which is not zoned for commercial, retail, or industrial activity;
  - c) The firearm at all times stays within the individual receiving the firearm and the lender's place of residence or private property, which is not zoned for commercial, retail, or industrial activity;
  - d) The individual receiving the firearm is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm;
  - e) The individual receiving the firearm is 18 years of age or older;
  - f) The individual receiving the firearm has a valid firearm safety certificate, except that if the firearm being loaned is a handgun, the individual may instead have an unexpired handgun safety certificate; and
  - g) The person being loaned the firearm resides within the same residence as the lender.
- 4) Provides that requirements that a loan of a firearm must go through a licensed firearms dealer does not apply to the loan of a firearm provided all of the following are met (loans outside a single place of residence for purposes of storage):

- a) If the firearm being loaned is registered to the person making the loan;
  - b) The firearm being loaned is stored in the receiver's place of residence or in an enclosed structure on the receiver's private property, which is not zoned for commercial, retail, or industrial activity;
  - c) The firearm at all times stays within the receiver's place of residence or in an enclosed structure on the receiver's private property, which is not zoned for commercial, retail, or industrial activity;
  - d) The individual receiving the firearm is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm;
  - e) The individual receiving the firearm is 18 years of age or older;
  - f) The individual receiving the firearm has a valid firearm safety certificate, except that if the firearm being loaned is a handgun, the individual may instead have an unexpired handgun safety certificate;
  - g) One of the following applies:
    - i) The firearm is maintained within a locked container;
    - ii) The firearm is disabled by a firearm safety device;
    - iii) The firearm is maintained within a locked gun safe; or
    - iv) The firearm is locked with a locking device, as defined in Section 16860, which has rendered the firearm inoperable.
  - h) The loan does not exceed 30 days in duration;
  - i) The loan is made without consideration;
  - j) There is writing in a format prescribed by the DOJ that explains the obligations imposed by this section that is signed by both the party loaning the firearm for storage and the person receiving the firearm; and
  - k) Both parties to the loan have signed copies of the writing, as specified.
- 5) Defines "residence" for purposes of this legislation and "resides within the same residence," as specified.

**EXISTING LAW:**

- 1) States, in order to assist in the investigation of crime, the prosecution of civil actions by city attorneys, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found

property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of licenses to carry firearms issued as provided, information reported to the Department of Justice (DOJ) as specified, dealers' records of sales of firearms, specified forms and reports, that are not dealers' records of sales of firearms, other specified information, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish this information to the officers authorized to receive state summary criminal history information. (Pen. Code, § 11106, subd. (a).)

- 2) Requires the Attorney General to permanently keep and properly file and maintain all information reported to DOJ pursuant to specified provisions of law as to firearms and maintain a registry thereof. (Pen. Code, § 11106, subd. (b).)
- 3) Provides that any officer referred to in provisions of law related to who may receive state summary criminal history information may disseminate the name of the subject of the record, the number of the firearms listed in the record, and the description of any firearm, including the make, model, and caliber, from the record relating to any firearm's sale, transfer, registration, or license record, or any information reported to DOJ if certain conditions are met. (Pen. Code, § 11106, subd. (c)(1).)
- 4) Requires licensed firearms dealers, before they may deliver a firearm to a purchaser, to perform a background check on the purchaser through the federal National Instant Criminal Background Check System ("NICS"). (18 U.S.C §§ 921, et seq.)
- 5) Requires that, except as specified, all sales, loans, and transfers of firearms to be processed through or by a state-licensed firearms dealer or a local law enforcement agency. (Pen. Code, § 27545.)
- 6) Provides that there is a 10-day waiting period when purchasing a firearm through a firearms dealer. During which time, a background check is conducted and, if the firearm is a handgun, a handgun safety certificate is required prior to delivery of the firearm. (Pen. Code, §§ 26815, 26840, subd. (b) & 27540.)
- 7) Creates numerous exceptions to a variety of different and specified firearms transfer requirements, including penal code section 27545, for loans of firearms under a variety of different circumstances. The general categories of these exceptions are:
  - a) For target shooting at target facility. (Pen. Code, § 26545.)
  - b) To entertainment production. (Pen. Code, § 26580.)
  - c) Several exceptions relating to law enforcement officers and government agencies (Pen. Code, §§ 2660, et seq.)
  - d) For infrequent loan of non-handgun; curio or relic (Pen. Code, § 27966) [commencing January 1, 2014]
  - e) To a consultant-evaluator. (Pen. Code, § 27005.)

- f) To minors. (Pen. Code, § 27505.)
- g) Infrequent loans to persons known to each other. (Pen. Code, § 27880.)
- h) Where the firearm stays within the presence of the owner. (Pen. Code, § 27885.)
- i) To a licensed hunter. (Pen. Code, § 27950.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "According to the Bureau of Justice Statistics (BJS), about 1.4 million firearms were stolen during household burglaries and other property crimes between 2005 and 2010. A 2010 audit conducted by the San Jose Police Department reported that around 300 of its firearms could not be accounted for, some of which may have been stolen from officers' homes. Graham Barlowe, Agent of the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, Sacramento Office, stated that "In this day and age of technology, most of the electronics don't really have any value at all... the firearms do. Even an old firearm is still valuable" (NBC Bay Area, 2015).

"As an overview, per the provisions of the Federal Gun Control Act of 1968 and implementing regulations, a federal firearms licensee may not allow a firearm to leave that licensee's licensed premises in the possession of a person who is not licensed as a federal firearms licensee unless a federal form 4473 is completed. And since 1998, save in two cases a NICS background check must be done as well before the gun leaves the premises. Those two exceptions are for persons with Brady permits (18 USC 922(t)(3)) and authorized law enforcement personnel (18 USC 925(a)(1)). The FBI in implementing NICS has very stringent requirements for granting a Brady Permit which is why most states do not have licenses/permits that qualify. [<sup>1</sup>] In California only a FEP qualifies as a Brady-NICS permit though with the APPS Program I would argue our license to carry should be deemed a Brady-NICS Permit.

"In addition to strengthening gun laws, it is also critical that laws regarding firearms are consistent and uniform. One of the underlying issues in gun loans is intra-spouse 'loans' where the gun in reality is probably viewed as jointly owned. California gun laws do not currently expressly permit spousal joint registration and ownership of a firearm save for .50 BMG rifles and assault weapons.

"Joint registration has been occurring by default for several reasons. First, as a result of some local jurisdictions issuing a license to carry to both spouses for the same handgun. In the case of carry licenses, the local jurisdiction then transmits this information to the California Department of Justice (DOJ).

"This bill seeks to create greater safeguards to prevent guns from falling into the wrong hands and to bring consistency to California's firearms laws."

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<sup>1</sup> To be considered a qualifying permit, the permit must be issued pursuant to a background check with continual review of the person's eligibility being run through NICS.

- 2) **Joint Registration by Spouses and Domestic Partners:** California gun laws do not explicitly permit joint registration and ownership of a firearm. Joint registration has been occurring by default as a result of some local jurisdictions issuing a license to carry to both spouses for the same handgun. The local jurisdiction then transmits this information to the California Department of Justice (DOJ). It also occurs by default via the new resident process and the operation of law process. Joint spousal firearm registration exists in Hawaii, Maryland, and New York. Joint spousal registration will impact the operation of law if one spouse dies, in which case, the firearm would remain in lawful possession of the surviving spouse.
- 3) **Loaning of Firearms:** This bill requires the loaning of firearms in two distinct scenarios. Generally, under existing law, the loan of a firearm must be processed through a state-licensed firearms dealer. This bill creates exemptions to this requirement under two scenarios. The first scenario is between two persons who reside in the same residence. The second scenario is the loaning of a firearm to another person for the purpose of safely storing the firearm.
  - a) ***Loan to a Person in the Same Residence:*** Under this bill, loaning a firearm to a person who resides in the same location will be exempted from having to go through a licensed firearms dealer if all of the following conditions are met:
    - i) The firearm being loaned is registered to the person making the loan;
    - ii) The loan occurs within the individual receiving the firearm and the lender's place of residence or private property, which is not zoned for commercial, retail, or industrial activity;
    - iii) The firearm at all times stays within the individual receiving the firearm and the lender's place of residence or private property, which is not zoned for commercial, retail, or industrial activity;
    - iv) The individual receiving the firearm is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm;
    - v) The individual receiving the firearm is 18 years of age or older;
    - vi) The individual receiving the firearm has a valid firearm safety certificate, except that if the firearm being loaned is a handgun, the individual may instead have an unexpired handgun safety certificate; and
    - vii) The person being loaned the firearm resides within the same residence as the lender.
  - b) ***Loan to a Person for Safe Storage:*** Under this bill, loaning a firearm to another person for the purpose of safe storage will be exempted from having to go through a licensed firearms dealer if all of the following conditions are met:
    - i) If the firearm being loaned is registered to the person making the loan.

- ii) The firearm being loaned is stored in the receiver's place of residence or in an enclosed structure on the receiver's private property, which is not zoned for commercial, retail, or industrial activity.
  - iii) The firearm at all times stays within the receiver's place of residence or in an enclosed structure on the receiver's private property, which is not zoned for commercial, retail, or industrial activity.
  - iv) The individual receiving the firearm is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.
  - v) The individual receiving the firearm is 18 years of age or older.
  - vi) The individual receiving the firearm has a valid firearm safety certificate, except that if the firearm being loaned is a handgun, the individual may instead have an unexpired handgun safety certificate.
  - vii) One of the following applies:
    - (1) The firearm is maintained within a locked container.
    - (2) The firearm is disabled by a firearm safety device.
    - (3) The firearm is maintained within a locked gun safe.
    - (4) The firearm is locked with a locking device, as defined in Section 16860, which has rendered the firearm inoperable.
  - viii) The loan does not exceed 30 days in duration.
  - ix) The loan is made without consideration.
  - x) There is writing in a format prescribed by the DOJ that explains the obligations imposed by this section that is signed by both the party loaning the firearm for storage and the person receiving the firearm.
    - i) Both parties to the loan have signed copies of the writing, as specified.
- 4) **Stolen Firearms:** According to the Bureau of Justice Statistics (BJS), about 1.4 million firearms were stolen during household burglaries and other property crimes between 2005 and 2010. A 2010 audit conducted by the San Jose Police Department reported that around 300 of its firearms could not be accounted for, some of which may have been stolen from officer's homes. Graham Barlowe, Agent of the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, Sacramento Office, stated that "In this day and age of technology, most of the electronics don't really have any value at all... the firearms do. Even an old firearm is still valuable" (NBC Bay Area, 2015). Although reports vary, stolen guns may account for roughly 15% of guns used in crimes, thus it is essential that a safekeeping program is available when a gun owner leaves their property.

- 5) **Argument in Support:** According to *Peace Officers Research Association of California*, "This bill would require the Department of Justice to modify its registration form so that both spouses or both domestic partners may register as the owners of the firearm and would require the department to maintain both names on the firearm's registry. The bill would make related findings and declarations...PORAC supports this bill."
- 6) **Argument in Opposition:** According to *Safari Club International*, "Although joint registration of firearms for spouses or domestic partners is desirable, it does not outweigh our concerns with the provision of the bill that would require all firearms that are loaned pursuant to the proposed loan provisions to be registered with the Department of Justice in order to qualify for an exemption to the existing law that requires loans be processed through a licensed firearms dealer."
- 7) **Related Legislation:** AB 1551 (Santiago), specifies that the infrequent loan of a firearm may only be made to family members. AB 1551 was passed by this committee on June 21, 2016 and is currently awaiting a vote on the Assembly Floor.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Courage Campaign  
Peace Officers Research Association of California

##### **Opposition**

California Sportsman's Lobby  
Gun Owners of California  
Outdoor Sportsmen's Coalition of California  
Safari Club International

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

Date of Hearing: June 28, 2016  
Counsel: Gabriel Caswell

## ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1389 (Glazer) – As Amended May 31, 2016

**SUMMARY:** Requires the electronic recording of the interrogation of any person suspected of murder. Specifically, **this bill:**

- 1) Applies the requirements that an interrogation be electronically recorded to any person suspected of committing murder, not just a juvenile.
- 2) Specifies that for the purposes of the custodial interrogation of an adult, “electronic recording” means a video or audio recording that accurately records a custodial interrogation.

**EXISTING LAW:**

- 1) Provides under the Fifth Amendment of the Federal Constitution provides in pertinent part that “No person shall...be compelled in any criminal case to be a witness against himself...”
- 2) States that the U.S. Supreme Court in *Miranda v. Arizona* (1966) 384 U.S. 436, held that the Fifth Amendment privilege may be invoked during a custodial interrogation. To protect the privilege, when a suspect invokes the right to remain silent or the right to an attorney, all questioning must cease. The only exceptions to this rule are to allow officers to question when reasonably necessary to protect the public safety or to obtain non-incriminating booking information.
- 3) Creates the Commission on Peace Officer Standards and Training (POST) and provides that the Commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of peace officers. (Pen. Code, § 13510)
- 4) Provides that POST shall prepare guidelines establishing standard procedures which may be followed by police agencies and prosecutors in interviewing minor witnesses. (Pen. Code, § 13517.5)
- 5) Provides that a custodial interrogation of a minor who is suspected of committing a murder offense shall be electronically recorded in its entirety. (Pen. Code, § 859.5, subd. (a).)
- 6) Provides that a statement that is electronically recorded as required creates a rebuttable presumption that the electronically recorded statement was, in fact, given and was accurately recorded by the prosecution’s witnesses, provided the electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible. (Pen. Code, § 859.5, subd. (a).)

- 7) Provides that the requirement for the electronic recordation of a custodial interrogation pursuant to this section shall not apply under any of the following circumstances: (Pen. Code, § 859.5, subd. (b).)
- a) Electronic recording is not feasible because of exigent circumstance. The exigent circumstances shall be recorded in the police report;
  - b) The person to be interrogated states that he or she will speak to a law enforcement officer only if the interrogation is not electronically recorded. If feasible, that statement shall be electronically recorded. The requirement also does not apply if the person being interrogated indicates during interrogations that he or she will not participate in further interrogation unless electronic recording ceases. If the person refuses to record any statement, the officer shall document that refusal in writing;
  - c) The custodial interrogation took place in another jurisdiction and was conducted by law enforcement officers of that jurisdiction in compliance with the law of that jurisdiction, unless the interrogation was conducted with the intent to avoid the requirements of this section;
  - d) The interrogation occurs when no law enforcement officer conducting the interrogation has knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a murder. If during a custodial interrogation, the individual reveals the facts and circumstances giving the officer reason to believe a murder may have been committed, continued interrogation concerning that offense shall be electronically recorded;
  - e) A law enforcement officer conducting the interrogation or the officer's superior reasonably believes that electronic recording would disclose the identity of a confidential informant or jeopardize the safety of an officer, the individual being interrogated, or another individual. An explanation of the circumstances shall be recorded in the police report;
  - f) The failure to create an electronic recording of the entire custodial interrogation was the result of a malfunction of the recording device, despite reasonable maintenance of the equipment, and timely repair or replacement was not feasible; and
  - g) The questions presented to a person by law enforcement personnel and the person's responsive statements were part of a routine processing or booking of that person. Electronic recording is not required of spontaneous statements made in response to questions asked during the routine processing of the arrest of the person.
- 8) Provides that if the prosecution relies on an exception to justify a failure to make an electronic recording of a custodial interrogation, the prosecution shall show by clear and convincing evidence that the exception applies. (Pen. Code, § 859.5, subd. (c).)
- 9) Provides that the presumption of inadmissibility of statements provided in this section may be overcome, and a person's statements that were not electronically recorded may be admitted into evidence in a criminal proceeding or in a juvenile court proceeding, as applicable if the court finds that all of the following apply: (Pen. Code, § 859.5, subd. (d).)

- a) If the statements are admissible under applicable rules of evidence;
  - b) The prosecution has proven by clear and convincing evidence that the statements were made voluntarily;
  - c) Law enforcement personnel made a contemporaneous audio or audio and visual recording of the reason for not making an electronic recording of the statements;
  - d) This provision does not apply if it was not feasible for law enforcement personnel to make that recording; and
  - e) The prosecution has proven by clear and convincing evidence that one or more of the exceptions existed at the time of the custodial interrogation.
- 10) Provides that unless the court finds that an exception applies, all of the following remedies shall be granted as relief for noncompliance: (Pen. Code, § 859.5, subd. (e).)
- a) Failure to comply with any requirements of this section shall be considered by the court in adjudicating motions to suppress a statement of a defendant made during or after a custodial interrogation;
  - b) Failure to comply with any of the requirements of this section shall be admissible in support of claims that the defendant's statement was involuntary or unreliable, provided the evidence is otherwise inadmissible; and
  - c) If the court admits into evidence a statement made during the custodial interrogation that was not electronically recorded in compliance with this section, the court, upon request of the defendant, shall give to the jury cautionary instructions.
- 11) Provides that the interrogating entity shall maintain the original or an exact copy of an electronic recording made of an electronic recording made of a custodial interrogation until a conviction for any offense relating to the interrogation is final and all direct and habeas corpus appeals are exhausted or the prosecution for that offense is barred by law, or in a juvenile court proceeding, otherwise provided in Welfare and Institutions Code Section 626.8. The interrogating entity may make one or more true, accurate, and complete copies of the electronic recording in a different format. (Pen. Code, § 859.5, subd. (f).)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "videotaping of interrogations has emerged as a powerful innovation and fact-finding tool for the criminal justice system. The virtue of videotaping interrogations, and its strength as a public policy, lies not only in its ability to develop the strongest evidence possible to help convict the guilty but also to help guard against false confessions.

"This tool goes to the heart of the criminal justice system: to accurately ascertain the facts surrounding criminal offenses so that perpetrators are correctly identified and punished.

"According to national studies, law enforcement agencies that videotape interrogations report that this practice increases the quality of evidence available at trial and allows officers to focus on the suspect during questioning rather than on note-taking.

"The ability to view a permanent record of the interrogation is integral to the subsequent assessment of the suspect; his or her comprehension of the Miranda warnings; and the nature, setting and circumstances of the interrogation. It is particularly important to have a permanent record of interrogations of people with mental disabilities, one of the groups most prone to false admissions of guilt.

"Unfortunately, where there has been an absence of videotaped interrogations, there's also been a rise in convictions later overturned.

"Wrongful convictions have become a nationwide, high-profile issue, reflected in the more than 1,730 exonerations since 1989, according to the National Registry of Exonerations, a project of the University of Michigan Law School. Many of these wrongful convictions are based on an ever-increasing number of false confessions, particularly in homicide cases.

"False confessions were identified as the second most frequent cause of wrongful convictions – behind false eyewitness testimony – in a national study conducted by Professor Samuel Gross of the University of Michigan.

"2015 saw a record number of exonerations in the United States: 149. This record continued the rapid increase in exonerations over the past several years. Wrongfully convicted individuals exonerated in 2015 served an average of 14.5 years in prison.

"2015 also set a record for exonerations resulting from false confessions: 27. Of these 27 false confessions, 22 were in cases involving homicide.

"Because of the increased possibility of false confessions in homicide cases—cases with very high stakes for society, victims' families, and wrongfully convicted individuals—we must have policies in place that ensure accurate documentation of interrogations in these cases so that the best possible evidence is presented in the courtroom.

"The requirement in Senate Bill 1389 to videotape or audio record the custodial interrogations of any person suspected of homicide will improve criminal investigation techniques, document false confessions when they occur, reduce the likelihood of wrongful conviction, and further the cause of justice in California."

- 2) **False Confessions:** Every year many people are wrongly convicted because of false confessions. Defendants also often make motions to exclude statements made during an interrogation arguing that they were coerced, there was abuse or the statement was not made. Studies have shown that recording of interrogations puts an end to disputes regarding statements and also has additional benefits.

In March 2000, after declaring a moratorium on executions, the then Governor of Illinois George Ryan appointed a Commission to see what reforms to the death penalty would be necessary to make it fair and just in Illinois. After 24 months of study the Commission set forth 85 recommendations. Among the recommendations of Illinois Governor's Commission on Capital Punishment (Illinois Commission) was the recommendation that:

Custodial interrogations of a suspect in a homicide case occurring at a police facility should be videotaped. Videotaping should not include merely the statement made by the suspect after interrogation, but the entire process.<sup>1</sup>

Illinois followed the recommendation, becoming "the first state (recently joined by Maine and the District of Columbia) to require by statute electronic recording of custodial interrogations in custodial interrogations in homicide investigations."<sup>2</sup>

On July 25, 2006 the California Commission on the Fair Administration of Justice (CCFAJ) issued a "Report and Recommendations Regarding False Confessions." The Commission had a public hearing on June 21, 2006 and studied the reports of the commissions and task forces assembled in other states addressing the issue of false confessions, as well as research documenting 125 cases of false confessions by suspects who were indisputably proven to be innocent. CCFAJ found that:

Although it may seem surprising that factually innocent persons would falsely confess to the commission of serious crimes, the research provides ample evidence that this phenomenon occurs with greater frequency than widely assumed. The research of Professors Steven Drizin and Richard A. Leo identifies 125 cases which occurred between 1972 and 2002, with 31% of them occurring in the five years previous to 2003. Eight of these examples, or 6 % of the sample, occurred in California cases. (California Commission on the Fair Administration of Justice, "Report and Recommendations Regarding False Confessions" p.2 [www.ccfaj.org](http://www.ccfaj.org))

Like the Illinois Commission CCFAJ found that recording interrogations not only helps reduce false confessions but that:

There are a number of reasons why the taping of interrogations actually benefits the police departments that require it. First, taping creates an objective, comprehensive record of the interrogation. Second, taping leads to the improved quality of interrogation, with a higher level of scrutiny that will deter police misconduct and improve the quality of interrogation practices. Third, taping provides the police protection against false claims of police misconduct. Finally, with taping, detectives, police managers, prosecutors, defense attorneys and judges are able to more easily detect false confessions and more easily prevent their admission into evidence. (*Id.* p. 4)

- 3) **Electronic Recording of Interrogations:** As of January 2014, the law requires the electronic recording of the interrogation of a juvenile suspected of murder. In addition, there

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<sup>1</sup> Recommendation 4, *Report of the Illinois Governor's Commission on Capital Punishment* (April 2002).

<sup>2</sup> Sullivan, Thomas P.; "Police Experiences with Recording Custodial Interrogations" *A special report by: Northwestern University School of Law Center on Wrongful Convictions*, Summer 2004, p. 2. ([www.law.northwestern.edu/wrongfulconvictions/caused/custodialinterrogations.htm](http://www.law.northwestern.edu/wrongfulconvictions/caused/custodialinterrogations.htm))

are a number of jurisdictions in California that voluntarily, at least some of the time, electronically record other interrogations. This bill would extend the provision requiring the electronic recording of the interrogation of juvenile murder suspects to apply to any person suspected of murder.

- 4) **Benefits to Law Enforcement:** There are a number of benefits in recording interrogations: it allows the interviewer to question the suspect without any distractions (notebooks, statement forms, or typewriters), observe the suspect's demeanor and body language, and use the recordings as training for other personnel. Recording interrogations also reduces allegations of coerced or false confessions. A National Institute for Justice study found that law enforcement agencies experienced 43.5% fewer allegations of improper police tactics as a result of recording interrogation sessions. This practice also enhances the reliability of any statements as judges and juries are able to view the tape themselves.
- 5) **Fifth Amendment Protections:** The Fifth Amendment of the U.S. Constitution provides in pertinent part that "No person shall...be compelled in any criminal case to be a witness against himself...."

The U.S. Supreme Court in *Miranda v. Arizona* (1966) 384 U.S. 436, held that the Fifth Amendment privilege may be invoked during a custodial interrogation. To protect the privilege, when a suspect invokes the right to remain silent or the right to an attorney, all questioning must cease. The only exceptions to this rule are to allow officers to question when reasonably necessary to protect the public safety or to obtain non-incriminating booking information.

To establish a valid waiver of *Miranda* rights, the prosecution must show by a preponderance of the evidence that the waiver was knowing, intelligent, and voluntary. [*People v. Williams* (2010) 49 Cal.4th 405, 425.] Voluntariness of a juvenile's confession is to be treated differently than an adult's. The court must consider and weigh the age, intelligence, education and ability to comprehend when determining whether the confession was a product of free will and an intelligent waiver of the minor's Fifth Amendment rights. [*In re Aven S.* (1991) 1 Cal.App.4<sup>th</sup> 69, 75.]

#### 6) **Arguments in Support:**

- a) According to the *American Civil Liberties Union*, "The ACLU of California of proud to cosponsor SB 1389, an important bill that will require the electronic recording of custodial interrogations of any person suspected of committing murder.

"False confessions, extracted during law enforcement questioning of suspects, have been identified as a leading cause of wrongful conviction.<sup>3</sup> A recent report found that more than 80 percent of the exonerations involving false confessions were in homicide cases.<sup>4</sup>

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<sup>3</sup> Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 *Journal of the American Academy of Psychiatry and the Law* (2009), available at <http://www.jaapl.org/content/37/3/332.full.pdf>.

<sup>4</sup> National Registry of Exonerations, *Exonerations in 2015* (2016), available at [http://www.law.umich.edu/special/exoneration/Documents/Exonerations\\_in\\_2015.pdf](http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2015.pdf).

"Three injustices result from such false confessions. First, a false confession can cause an innocent person to be incarcerated. Second, when an innocent person is incarcerated, criminal investigations end and the real perpetrator remains free to commit similar, or potentially worse, crimes. Third, victims' families are subjected to double the trauma, with the loss or injury of a loved one, and the guilt over the conviction of an innocent person. The reforms contained in SB 1389, specifically mandating electronic recording of custodial interrogations of all people suspected of committing murder, will improve criminal investigation techniques, reduce the likelihood of wrongful conviction, and further the cause of justice in California.

"California law enforcement is already familiar with the mandate to record custodial interrogations of murder suspects, as they are already required to conduct such recordings in juvenile cases.<sup>5</sup> As law enforcement agencies across the state and country will attest, electronic recording of custodial interrogations results in many benefits to law enforcement agencies. First, recording creates an objective, comprehensive record of the interrogation, which helps to avoid disputes as to what was said and done by the participants in the interview and how the participants conducted themselves. Second, recording enhances public confidence in law enforcement, while reducing the number of civilian complaints against officers. And lastly, recording captures subtle details that may be lost if unrecorded, which help law enforcement better investigate the crime.

"Because of these benefits, over 500 police departments throughout the country require the taping of interrogations and confessions.<sup>6</sup> The American Federation of Police and Concerned Citizens, International Association of Chiefs of Police, Major Cities Chiefs Association, and National District Attorney's Association are all in support of electronic recording of custodial interrogations.<sup>7</sup> Even before the passage of SB 569, a substantial number of departments in California were already recording a majority of custodial interrogations, including county sheriffs of Alameda, Butte, Contra Costa, El Dorado, Orange, Placer, Sacramento, San Bernardino, San Joaquin, Santa Clara (including all police agencies operating within the county), Ventura, and Yolo counties, as well as numerous municipal police departments.<sup>8</sup>

"SB 1389 is important step in ensuring that confessions made by defendants charged with the most serious crimes are accurate and that the right person is held to answer for the crime in question."

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<sup>5</sup> See SB 569 (Ted Lieu), Chapter 799, Statutes of 2013.

<sup>6</sup> California Commission on the Fair Administration of Justice, *Report and Recommendations Regarding False Confessions* (2006).

<sup>7</sup> Thomas P. Sullivan, *A Compendium of the Law Relating to Electronic Recording of Custodial Interrogations* (2016).

<sup>8</sup> California Commission on the Fair Administration of Justice, *supra* note 4.

- b) According to the *California Attorneys for Criminal Justice*, "This bill would expand Penal Code 859.5 to all persons suspected of committing a crime of homicide.

"Under Penal Code 859.5, a custodial interrogation of a minor that is suspected of committing murder is required to be electronically recorded in its entirety. This law was passed to provide protection for this vulnerable group that needs protection based on their age, cognitive development, and due to the adversarial nature of custodial interrogations.

"The National Registry of Exonerations, a project of the University of Michigan Law School, tracks the number of wrongful convictions in the United States. Since 1989, there have been at least 1,700 exonerations nationwide. According to a national study conducted by Professor Samuel Gross of the University of Michigan, Professor Gross identified that false confessions extracted during police questioning of suspects as the second most frequent cause of wrongful convictions.

"SB 1389 would require the electronic recordation of custodial interrogations of all persons, whether a minor or an adult, suspected of a homicide. Videotaping of interrogations have become commonplace and an accepted best practice among many law enforcement agencies around the nation and in California. This recording not only guards against false confessions, but also develops the strongest evidence possible to help convict the guilty.

"The National Innocence Project has provided research relating to contributing factors causing false confessions including: real or perceived intimidation of the suspect by law enforcement; use of force by law enforcement, compromised reasoning ability of the suspect, due to exhaustion, stress, mental limitations, or limited education; devious interrogation techniques, such as untrue statements about the presence of incriminating evidence, and fear that failure to confess will lead to a harsher punishment.<sup>9</sup>

"Besides being prudent public policy, recording these custodial interrogations benefit both the suspect and law enforcement. This policy ensures that the suspect's rights are protected during the interrogation. Also, this recording creates a deterrent for law enforcement to use coercive techniques as they are aware of the oversight and accountability. Furthermore, the record provides protection for law enforcement if the suspect suggest improper actions during the interrogation. This recording may also increase public confidence in law enforcement by reducing the number of citizen complaints against law enforcement.

"By implementing this best practice, both the alleged suspect and law enforcement benefit from this oversight and protections. For these reasons CACJ is proud to co-sponsor SB 1389."

## 7) **Prior Legislation:**

- a) SB 569 (Lieu) Chapter 799 of the Statutes of 2013, required the custodial interrogation of juveniles suspected of committing murder to be electronically recorded in its entirety.

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<sup>9</sup> <http://www.innocenceproject.org/free-innocent/improve-the-law/fact-sheets/false-confessions-recording-of-custodial-interrogations>

- b) SB 1300 (Alquist), of the 2011-12 Legislative Session, would have required the electronic recordation of custodial interrogations of both adults and minors suspected of serious or violent felonies. SB 1300 was held on the Senate Appropriations Committee's Suspense File.
- c) SB 1590 (Alquist), of the 2007- 08 Legislative Session, would have required the electronic recordation of any custodial interrogation of an individual suspected of homicide or a violent felony. SB 1590 was held on the Senate Appropriations Committee's Suspense File.
- d) SB 511 (Alquist), of the 2007-08 Legislative Session, would have required custodial interrogations of violent felony suspects to be electronically recorded. SB 511 was vetoed.
- e) SB 171 (Alquist), of the 2005- 06 Legislative Session, would have required the electronic recording of all custodial interrogations relating to homicides and all violent felony offenses. SB 171 was vetoed.
- f) AB 161 (Dymally), Chapter 754, Statutes of 2003, would have encouraged law enforcement officials to videotape and record the interrogation of a person accused of, arrested for, or charged with a felony. AB 161 was later amended to a different subject matter.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Civil Liberties Union (Co-sponsor)  
 California Attorneys for Criminal Justice (Co-sponsor)  
 California Public Defenders Association (Co-sponsor)  
 Northern California Innocence Project (Co-sponsor)  
 A New PATH  
 Anti-Recidivism Coalition  
 California Innocence Project  
 Drug Policy Alliance  
 Ella Baker Center for Human Rights  
 Friends Committee on Legislation of California  
 Innocence Project  
 Legal Services for Prisoners with Children  
 Major Cities Chiefs Association

1 private individual

### **Opposition**

None

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

Date of Hearing: June 28, 2016  
Chief Counsel: Gregory Pagan

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

SB 1433 (Mitchell) – As Amended May 31, 2016

**SUMMARY:** Provides that any incarcerated person in the state prison who menstruates shall, upon request, have improved access to personal hygiene materials, and contraceptive services, as specified. Specifically, **this bill:**

- 1) Provides that any incarcerated person in state prison who menstruates shall, upon request, have access and be allowed to use materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system. Any incarcerated person who is capable of becoming pregnant shall, upon request, have access and be allowed to obtain contraceptive counseling and their choice of birth control methods, as specified, unless medically contraindicated.
- 2) States that, except as provided, all birth control methods and emergency contraception approved by the United States Food and Drug Administration (FDA) shall be made available to incarcerated persons who are capable of becoming pregnant, with the exception of sterilizing procedures prohibited by law.
- 3) Requires the California Correctional Health Care Services (CCHCS) to establish a formulary consisting of all FDA-approved birth control methods that shall be available to persons in this legislation. If a birth control method has more than one FDA-approved therapeutic equivalent, only one version of that method shall be required to be made available, unless another version is specifically indicated by a prescribing provider and approved by the chief medical physician at the institution. Persons shall have access to nonprescription birth control methods without the requirement to see a licensed health care provider.
- 4) Any contraceptive service that requires a prescription, or any contraceptive counseling, provided to incarcerated persons who are capable of becoming pregnant provided, shall be furnished by a licensed health care provider who has been provided training in reproductive health care and shall be nondirective, unbiased, and non-coercive. These services shall be furnished by the facility or by any other agency which contracts with the facility. Except as provided, health care providers furnishing contraceptive services shall receive training in the following areas:
  - a) The requirements of this section; and,
  - b) Providing nondirective, unbiased, and non-coercive contraceptive counseling and services.

- 5) States that providers who attend an orientation program for the Family Planning, Access, Care, and Treatment Program shall be deemed to have met the training requirements described.
- 6) Provides that any incarcerated person who is capable of becoming pregnant shall be furnished by the facility with information and education regarding the availability of family planning services and their right to receive nondirective, unbiased, and non-coercive contraceptive counseling and services. Each facility shall post this information in conspicuous places to which all incarcerated persons who are capable of becoming pregnant have access.
- 7) Requires contraceptive counseling and family planning services to be offered and made available to all incarcerated persons who are capable of becoming pregnant at least 60 days, but not longer than 180 days, prior to a scheduled release date.
- 8) States that its provisions are not to be construed to limit an incarcerated person's access to any method of contraception that is prescribed or recommended for any medically indicated reason.

**EXISTING LAW:**

- 1) Requires that any woman inmate, upon her request, be allowed to continue to use materials necessary for (1) personal hygiene with regard to her menstrual cycle and reproductive system and (2) birth control measures as prescribed by her physician. (Pen. Code, § 3049, subd. (a).)
- 2) Requires that each and every woman inmate shall be furnished with information and education regarding the availability of family planning services. (Pen. Code, § 3409, subd. (b).)
- 3) Requires that family planning services be offered to each and every woman inmate at least 60 days prior to a scheduled release date. Upon request any woman inmate shall be furnished by the Department of Corrections and Rehabilitation (department) with the services of a licensed physician or she shall be furnished by the department or by any other agency which contracts with the department with services necessary to meet her family planning needs at the time of her release. (Pen. Code, § 3409 subd. (c).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "SB 1433 will require the California Department of Corrections and Rehabilitation (CDCR) and the California Correctional Health Care Services (CCHCS) to provide family planning services upon request, as well as provide that these services shall be offered between 180 to 60 days prior to an individual's parole release date. Additionally, this bill acknowledges the fact that there are many medical uses for birth control besides preventing pregnancy such as regulating menstrual periods, relieving severe cramps, and treating endometriosis. SB 1433 will ensure that the health care needs of incarcerated women are improved by providing adequate family planning services

upon request and prior to their release date.

- 2) **Argument in Support:** According to the *Planned Parenthood Action Fund of the Pacific Southwest*, "Currently, California's law relating to reproductive healthcare for women are outdated and do not provide for the type of comprehensive care inmates deserve. Current law provides that women who are using birth control may continue using it, however the law does not specify that women who are not using may request to begin use. Additionally, the California Department of Corrections and Rehabilitation (CDCR) allows conjugal visiting for eligible inmates. Therefore, it is important that the law be made clear that incarcerated females have access to birth control and family planning services upon request."

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Attorneys for Criminal Justice  
Community Action Fund of Planned Parenthood of Orange and San Bernardino County  
Friends Committee on Legislation  
Planned Parenthood Action Fund of the Pacific Southwest  
Planned Parenthood Advocacy Project of Los Angeles County  
Planned Parenthood Advocates Pasadena and San Gabriel Valley  
Planned Parenthood Affiliates of California  
Planned Parenthood of Northern California Action Fund

### **Opposition**

None

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

Date of Hearing: June 28, 2016

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1004(Hill) – As Amended May 31, 2016

As Proposed to be Amended in Committee

**FOR VOTE ONLY**

**SUMMARY:** Establishes a pilot program, until January 1, 2020, authorizing specified counties to operate a transitional youth diversion program whereby certain young offenders would serve time in juvenile hall rather than county jail. Specifically, **this bill:**

- 1) Authorizes the counties of Alameda, Butte, Napa, Nevada and Santa Clara to operate a transitional youth diversion program.
- 2) Provides that a defendant may participate in the program within the county's juvenile hall if that person is charged with committing a felony offense, other than the offenses listed, he or she pleads guilty to the charge or charges, and the probation department determines that the person meets all of the following requirements:
  - a) Is 18 years of age or older, but under 21 years of age on the date the offense was committed;
  - b) Is suitable for the program after evaluation using a risk assessment tool, as described;
  - c) Shows the ability to benefit from services generally reserved for delinquents, including, but not limited to, cognitive behavioral therapy, other mental health services, and age-appropriate educational, vocational, and supervision services, that are currently deployed under the jurisdiction of the juvenile court;
  - d) Meets the rules of the juvenile hall;
  - e) Does not have a prior or current conviction for committing a violent or serious felony; and,
  - f) Is not required to register as a sex offender.
- 3) Requires the probation department, in consultation with the superior court, district attorney, and sheriff of the county or the governmental body charged with operating the county jail, to develop an evaluation process using a risk assessment tool to determine eligibility for the program.
- 4) Excludes defendants who commit a violent felony, serious felony, or one of the offenses enumerated in existing provisions of law authorizing juveniles to be tried in adult court.

- 5) States that the court shall grant deferred entry of judgment if an eligible defendant consents to participate in the program, waives his or her right to a speedy trial or a speedy preliminary hearing, pleads guilty to the charge or charges, and waives time for the pronouncement of judgment.
- 6) Provides that if the probation officer determines that the defendant is not eligible for the transitional youth diversion program or the defendant does not consent to participate in the program, the proceedings shall continue as in any other case.
- 7) Authorizes the probation department to file a motion for entry of judgment if it appears to the probation department that the defendant is performing unsatisfactorily in the program as a result of the commission of a new crime or the violation of any of the rules of the juvenile hall or that the defendant is not benefiting from the services in the program.
- 8) States that if the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the court shall dismiss the criminal charge or charges.
- 9) Limits the time a defendant may serve in juvenile hall to one year.
- 10) Requires the probation department to develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program.
- 11) States that the probation department shall submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county.
- 12) Prohibits defendants participating in the program from coming into contact with minors within the juvenile hall for any purpose.
- 13) Requires a county to apply to the Board of State and Community Corrections (BSCC) for approval of a county institution as a suitable place for confinement for the purpose of the pilot program prior to establishing the program, as specified.
- 14) Requires that a county that establishes this program to work with the BSCC to ensure compliance with requirements of the federal Juvenile Justice and Delinquency Prevention Act relating to "sight and sound" separation between juveniles and adult inmates
- 15) Specifies that the program applies to a defendant who would otherwise serve time in custody in a county jail, and participation in the program shall not be authorized as an alternative to a sentence involving community supervision.
- 16) Requires each county to establish a multidisciplinary team that meets periodically to review and discuss the implementation, practices, and impact of the program, and specifies groups that shall be represented on the team.
- 17) Requires a county that establishes a pilot program pursuant to the provisions in this bill to submit data to BSCC and requires BSCC to conduct an evaluation of the pilot program's

impact and effectiveness.

- 18) Specifies that BSCC's evaluation shall include, but not be limited to, evaluating each pilot program's impact on sentencing and impact on opportunities for community supervision, monitoring the program's effect on minors in the juvenile facility, if any, and its effectiveness with respect to program participants, including outcome-related data for program participants compared to young adult offenders sentenced for comparable crimes.
- 19) Requires each evaluation to be combined into an inclusive report and submitted to the Assembly and Senate Public Safety Committees.
- 20) Provides that BSCC may contract out to an independent entity, including, but not limited to, the University of California, to perform the evaluation.

#### **EXISTING LAW:**

- 1) States that when any person under 18 years of age is detained in or sentenced to any institution in which adults are confined, it shall be unlawful to permit such person to come or remain in contact with such adults. "Contact" does not include participation in supervised group therapy or other supervised treatment activities, participation in work furlough programs, or participation in hospital recreational activities which are directly supervised by employees of the hospital, so long as living arrangements are strictly segregated and all precautions are taken to prevent unauthorized associations. (Welf. & Inst. Code, § 208.)
- 2) Provides, notwithstanding any other law, in any case in which a minor who is detained in or committed to a county institution established for the purpose of housing juveniles attains 18 years of age prior to or during the period of detention or confinement he or she may be allowed to come or remain in contact with those juveniles until 19 years of age, at which time he or she, upon the recommendation of the probation officer, shall be delivered to the custody of the sheriff for the remainder of the time he or she remains in custody, unless the juvenile court orders continued detention in a juvenile facility. If continued detention is ordered for a ward under the jurisdiction of the juvenile court who is 19 years of age or older but under 21 years of age, the detained person may be allowed to come into or remain in contact with any other person detained in the institution subject to the specified requirements. (Welf. & Inst. Code, § 208.5, subd. (a).)
- 3) Requires the county to apply to the Corrections Standard Authority [now BSCC] for approval of a county institution established for the purpose of housing juveniles as a suitable place for confinement before the institution is used for the detention or commitment of an individual under the jurisdiction of the juvenile court who is 19 years of age or older but under 21 years of age where the detained person will come into or remain in contact with persons under 18 years of age who are detained in the institution. The authority shall review and approve or deny the application of the county within 30 days of receiving notice of this proposed use. In its review, the authority shall take into account the available programming, capacity, and safety of the institution as a place for the combined confinement and rehabilitation of individuals under the jurisdiction of the juvenile court who are over 19 years of age and those who are under 19 years of age. (Welf. & Inst. Code, § 208.5, subd. (c).)

- 4) Authorizes various diversion programs and deferred entry of judgment programs under which a person arrested for and charged with a crime is diverted from the prosecution system and placed in a program of rehabilitation or restorative justice. Generally, deferred entry of judgment programs are created and run at the discretion of the district attorney. (Pen. Code § 1000 et seq.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "While legally they are adults, young offenders age 18-21 are still undergoing significant brain development and it's becoming clear that this age group may be better served by the juvenile justice system with corresponding age appropriate intensive services. Research shows that people do not develop adult-quality decision-making skills until their early 20's. This can be referred to as the 'maturity gap.' Because of this, young adults are more likely to engage in risk-seeking behavior.

"SB 1004 will allow specific counties to adopt a pilot program that gives young adult offenders the opportunity to take advantage of the supportive and educational services in the juvenile justice system, rather than serve their time in an adult county jail."

- 2) **Diversion Generally:** Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however, a hearing to terminate diversion is required.

This bill creates a post-plea diversion program for young offenders who committed a non-violent, non-serious felony that does not require sex offender registration. Typically, diversion programs require defendants to participate in an out-of-custody program, whereas this bill creates an in-custody diversion program.

- 3) **Will this Bill Lead to Increased Incarceration?** This bill authorizes five counties to place young adult offenders in juvenile hall facilities instead of county jails for certain felony offenses. Although the bill provides that "the program applies to a defendant who would otherwise serve time in custody in a county jail, and participation in the program shall not be authorized as an alternative to a sentence involving community supervision," in practice it would be difficult to ascertain whether a defendant would receive a term of incarceration until he or she is actually sentenced. Since this is a deferred entry of judgment program, the program would be offered to the defendant prior to sentencing. Thus, as brought up by one of the opponents, there would have to be an assumption made as to the sentence that would be received in adult court. Additionally, it is quite possible that a young defendant who committed a non-serious, non-violent, non-sex-based offense would receive probation rather than a term of custody. As written, the bill authorizes any custodial term up to a year to be applied to these defendants. The determination on the length of custody will likely be

determined by each local probation department participating in the pilot program.

Could this bill make it more likely that these defendants would receive a custodial sentence rather than a non-custodial sentence or probation? Additionally, since the program would be offered prior to sentencing and requires the defendant to enter a guilty plea, is there a likelihood that this bill would influence people to plead their case out rather than going forward to trial and risk a felony conviction on their record? Is there sufficient oversight provided in the bill by requiring each county to establish a multidisciplinary team with representatives from the county Public Defender's office and youth advocate organization to periodically review and discuss the implementation, practices, and impact of the program?

- 4) **Argument in Support:** *Chief Probation Officers of California* writes, "Recent research on adolescent brain development notes that young adults are continuing to develop and mature during the early adult years and it's becoming clear that this age group represents a population that may be better served in the juvenile justice system with age appropriate intensive services.

"The pilot program proposed under SB 1004 will allow the Counties of Alameda, Butte, Napa, Nevada and Santa Clara to voluntarily enact a pilot program creating a new category of 'transitional adult youth' that allows young adult offenders ages 18-21 to be housed in a juvenile detention facility in separate units so no comingling will occur in housing, education or recreation. Juvenile detention facilities have such services available for adolescents including, but not limited to, cognitive behavioral therapy, mental health treatment, vocational training, and education among others. The program would enable these young adults to enter into deferred entry of judgement and have their charges dismissed upon successful completion of the program. Eligibility is based upon a risk assessment and determination of suitability; additionally, persons with serious or violent felonies or sex offenses are not eligible for the program. Further, this bill provides for a reentry plan for these young adults and outcome measures to determine effectiveness of the pilot."

- 5) **Argument in Opposition:** *Commonweal, the Juvenile Justice Program*, is opposed and raises the following concerns:

"1. We view the basic premise of the bill—that juvenile halls are appropriate as facilities that can provide good remedial programming to young adults-- as flawed. Juvenile halls are principally designed and operated to serve as short-term detention facilities for minors charged with public offenses, pending trial and disposition or placement. While some minors serve commitment time in juvenile halls, the statewide average length of stay (per BSCC data) is 26 days. The programming capacity in juvenile halls is therefore limited by facility design and by the service capacity of the probation departments operating the halls. We have grave doubt that the programming benefits referenced obliquely in SB 1004 can be implemented in a meaningful way for the proposed young adult population, having up to one year of confinement. The juvenile hall education program is presently geared to meet school-age requirements, not to serve continuing education needs of young adults. Vocational and re-entry services are largely non-existent in the context of juvenile hall operations. Mental health services vary greatly by county and may not be oriented to a young adult population; for example, counties with Mentally Ill Offender Crime Reduction (MIOCR) - Juvenile grants may not be able to apply those resources to young adults. The bill does not outline or include program elements that are specific to the proposed young

adult population. We fear that the bill may serve more as a measure of convenience, to shift young adults from crowded jails to available juvenile hall space, than as a viable 'transition' program for young adults.

"2. Even with BSCC inspection and certification, some juvenile halls simply lack the available space to maintain separation (as required by the bill) between the juvenile and confined adult populations. In smaller county facilities, there may be only one program, recreation or dining space. The movements of juvenile and adult populations, in these smaller facilities, would inevitably result in sight or sound contact between children and young adults. Three-fourths of juvenile hall youth in California are between 15-17 years of age, and 12 percent are age 12-to 14, according to BSCC data. While developmental science tells us that brain progression to maturity continues to age 25, there remain important differences (and vulnerabilities) between 12-15 year olds and 18-22 year olds in custody.

"3. From a defense perspective, we continue to ask how the pilots will operate with respect to the bill's requirement that the bill will apply only to defendants 'who would otherwise serve time in custody in a county jail'. At the time a defendant is plea bargained or offered the juvenile hall custody option, the adult sentencing outcome will not yet be known. Thus the ability to meet this requirement of the bill is based on speculation as to the adult outcome. A better approach, in our view, would be to offer the juvenile hall transition custody option at sentencing in the adult court, when the jail-time status of the defendant can be more clearly ascertained. We do not want to see the measure become a net-widening custody program for young adults who would otherwise receive non-custodial adult court sentences."

- 6) **Prior Legislation:** SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded the youth offender parole process, a parole process for persons sentenced to lengthy prison terms for crimes committed before attaining 18 years of age, to include those who have committed their crimes before attaining the age of 23.

## REGISTERED SUPPORT / OPPOSITION:

### Support

Alameda County Board of Supervisors  
 Butte County Board of Supervisors  
 California Police Chiefs Association  
 California Public Defenders Association  
 California Youth Empowerment Network  
 Chief Probation Officers of California  
 Santa Clara Board of Supervisors

### Opposition

California Attorneys for Criminal Justice  
 Center on Juvenile and Criminal Justice  
 Commonweal, the Juvenile Justice Program  
 Pacific Juvenile Defender Center  
 Prison Law Office  
 Professor Barry Krisberg, U.C. Berkeley School of Law

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

Amendments Mock-up for 2015-2016 SB-1004 (Hill (S))

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

Mock-up based on Version Number 96 - Amended Senate 5/31/16

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

SECTION 1. Chapter 2.55 (commencing with Section 1000.7) is added to Title 6 of Part 2 of the Penal Code, to read:

**CHAPTER 2.55. Transitional Youth Diversion Program**

**1000.7.** (a) The following counties may establish a pilot program pursuant to this section to operate a transitional youth diversion program for eligible defendants described in subdivision (b):

(1) County of Alameda.

(2) County of Butte.

(3) County of Napa.

(4) County of Nevada.

(5) County of Santa Clara.

(b) A defendant may participate in a transitional youth diversion program within the county's juvenile hall if that person is charged with committing ~~an~~ a *felony* offense, other than the offenses listed under subdivision (d), he or she pleads guilty to the charge or charges, and the probation department determines that the person meets all of the following requirements:

(1) Is 18 years of age or older, but under 21 years of age on the date the offense was committed.

(2) Is suitable for the program after evaluation using a risk assessment tool, as described in subdivision (c).

(3) Shows the ability to benefit from services generally reserved for delinquents, including, but not limited to, cognitive behavioral therapy, other mental health services, and ~~age-appropriate~~

*age-appropriate* educational, vocational, and supervision services, that are currently deployed under the jurisdiction of the juvenile court.

(4) Meets the rules of the juvenile hall.

(5) Does not have a prior or current conviction for committing an offense listed under subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5.

(6) Is not required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.

(c) The probation department, in consultation with the superior court, district attorney, and sheriff of the county or the governmental body charged with operating the county jail, shall develop an evaluation process using a risk assessment tool to determine eligibility for the program.

(d) The commission by the defendant of one or more of the following offenses makes him or her not eligible for the program:

(1) An offense listed under subdivision (c) of Section 1192.7.

(2) An offense listed under subdivision (c) of Section 667.5.

(3) An offense listed under subdivision (b) of Section 707 of the Welfare and Institutions Code.

(e) The court shall grant deferred entry of judgment if an eligible defendant consents to participate in the program, waives his or her right to a speedy trial or a speedy preliminary hearing, pleads guilty to the charge or charges, and waives time for the pronouncement of judgment.

(f) (1) If the probation officer determines that the defendant is not eligible for the transitional youth diversion program or the defendant does not consent to participate in the program, the proceedings shall continue as in any other case.

(2) If it appears to the probation department that the defendant is performing unsatisfactorily in the program as a result of the commission of a new crime or the violation of any of the rules of the juvenile hall or that the defendant is not benefiting from the services in the program, the probation department may make a motion for entry of judgment. After notice to the defendant, the court shall hold a hearing to determine whether judgment should be entered. If the court finds that the defendant is performing unsatisfactorily in the program or that the defendant is not benefiting from the services in the program, the court shall render a finding of guilt to the charge or charges pled, enter judgment, and schedule a sentencing hearing as otherwise provided in this code, and the probation department, in consultation with the county sheriff, shall remove the defendant from the program and return him or her to custody in county jail. The mechanism of

Staff name

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when and how the defendant is moved from custody in juvenile hall to custody in a county jail shall be determined by the local justice stakeholders.

(3) If the defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the court shall dismiss the criminal charge or charges.

(g) A defendant shall serve no longer than one year in custody within a county's juvenile hall pursuant to the program.

(h) The probation department shall develop a plan for reentry services, including, but not limited to, housing, employment, and education services, as a component of the program.

(i) The probation department shall submit data relating to the effectiveness of the program to the Division of Recidivism Reduction and Re-Entry, within the Department of Justice, including recidivism rates for program participants as compared to recidivism rates for similar populations in the adult system within the county.

(j) A defendant participating in the program pursuant to this section shall not come into contact with minors within the juvenile hall for any purpose, including, but not limited to, housing, recreation, or education.

(k) Prior to establishing a pilot program pursuant to this section, the county shall apply to the Board of State and Community Corrections for approval of a county institution as a suitable place for confinement for the purpose of the pilot program. The board shall review and approve or deny the application of the county within 30 days of receiving notice of this proposed use. In its review, the board shall take into account the available programming, capacity, and safety of the institution as a place for the confinement and rehabilitation of individuals within the jurisdiction of the criminal court, and those within the jurisdiction of the juvenile court.

(l) The Board of State and Community Corrections shall review a county's pilot program to ensure compliance with requirements of the federal Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. Sec. 5601 et seq.), as amended, relating to "sight and sound" separation between juveniles and adult inmates.

(m) (1) This section applies to a defendant who would otherwise serve time in custody in a county jail. Participation in a program pursuant to this section shall not be authorized as an alternative to a sentence involving community supervision.

(2) Each county shall establish a multidisciplinary team that shall meet periodically to review and discuss the implementation, practices, and impact of the program. The team shall include representatives from the following:

(A) Probation department.

- (B) The district attorney's office.
- (C) The public defender's office.
- (D) The sheriff's department.
- (E) Courts located in the county.
- (F) The county board of supervisors.
- (G) The county health and human services department.
- (H) A youth advocacy group.

(n)(I) A county that establishes a pilot program pursuant to this section shall *submit data to the Board of State and Community Corrections*. ~~conduct an evaluation of its impact and effectiveness. The evaluation shall include, but not be limited to, monitoring the program's effect on minors in the juvenile facility, if any, and its effectiveness with respect to program participants, including outcome-related data for program participants compared to young adult offenders sentenced for comparable crimes.~~

*(2) The Board shall conduct an evaluation of the pilot program's impact and effectiveness. The evaluation shall include, but not be limited to, evaluating each pilot program's impact on sentencing and impact on opportunities for community supervision, monitoring the program's effect on minors in the juvenile facility, if any, and its effectiveness with respect to program participants, including outcome-related data for program participants compared to young adult offenders sentenced for comparable crimes.*

*(3) Each evaluation shall be combined into an inclusive report and submitted to the Assembly and Senate Public Safety Committees.*

*(4) The Board may contract out to an independent entity, including, but not limited to, the University of California, for purposes of this subdivision.*

(o) This chapter shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

**SEC. 2.** The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances in the Counties of Alameda, Butte, Napa, Nevada, and Santa Clara. Recent research on the adolescent brain development has found that brain development continues well after an individual reaches 18 years of age. This bill would therefore allow for the criminal justice system to apply the most recent brain development research to its practices in these counties by allowing certain transitional age youth access to age-

appropriate rehabilitative services available in the juvenile justice system when an assessment determines that the individual would benefit from the services, with the aim of reducing the likelihood of the youth continuing in the criminal justice system.