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Assembly
California Legislature



ASSEMBLY COMMITTEE ON
PUBLIC SAFETY
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CHIEF COUNSEL
GREGORY PAGAN

COUNSEL
GABRIEL CASWELL
STELLA Y. CHOE
SHAUN NAIDU
SANDY URIBE

AGENDA

9:00 a.m. – April 14, 2015
State Capitol, Room 126

<u>Item</u>	<u>Bill No. & Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
1.	AB 46 (Lackey)	Ms. Choe	Controlled substances.
2.	AB 56 (Quirk)	Ms. Choe	Unmanned aircraft systems.
3.	AB 66 (Weber)	Ms. Choe	Peace officers: body-worn cameras.
4.	AB 84 (Gatto)	Mr. Billingsley	Forensic testing: DNA samples.
5.	AB 144 (Mathis)	Mr. Caswell	Dumping.
6.	AB 534 (Linder)	Mr. Pagan	Driver's licenses: suspension of driving privileges.
7.	AB 545 (Melendez)	Mr. Billingsley	Domestic violence.
8.	AB 651 (Cooper)	Mr. Pagan	Public safety officers: investigations and interviews.
9.	AB 666 (Mark Stone)	Ms. Choe	Juveniles: sealing of records.
10.	AB 794 (Linder)	Mr. Billingsley	Criminal acts against law enforcement animals.

11.	AB 818 (Quirk)	Ms. Choe	Criminal procedure: evidence.
12.	AB 829 (Nazarian)	Mr. Caswell	Gangs: shared gang databases.
13.	AB 844 (Bloom)	Ms. Choe	Search warrants: foreign corporations and foreign limited liability companies.
14.	AB 909 (Quirk)	Ms. Choe	Sexual assault crimes.
15.	AB 920 (Gipson)	Ms. Uribe	Parole: information to victims.
16.	AB 947 (Chavez)	Mr. Billingsley	Controlled substances: firearms.
17.	AB 950 (Melendez)	Mr. Caswell	Firearms: gun violence restraining orders.
18.	AB 962 (Maienschein)	Ms. Uribe	Sex offenses: disabled victims.
19.	AB 989 (Cooper)	Ms. Uribe	Juveniles: sealing of records.
20.	AB 1093 (Eduardo Garcia)	Ms. Uribe	Public safety: supervised population workforce training: grant program. (Urgency)
21.	AB 1156 (Brown)	Mr. Pagan	Imprisonment in county jail.
22.	AB 1272 (Grove)	Ms. Uribe	Persons with developmental disabilities: sexual exploitation.
23.	AB 1328 (Weber)	Mr. Pagan	Discovery: prosecutorial duty to disclose information.
24.	AB 1375 (Thurmond)	Ms. Uribe	Criminal penalties: nonpayment of fines.

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| 25. | AB 1423 (Mark Stone) | Mr. Caswell | Prisoners: medical treatment. |
| 26. | AB 1493 (Cooper) | Mr. Pagan | California High Technology
Crimes Task Force. |

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: April 14, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 46 (Lackey) – As Amended April 9, 2015

SUMMARY: Makes the possession of specified controlled substances with the intent to commit sexual assault a felony punishable in the state prison for 16 months or two or three years. Specifically, **this bill:**

- 1) Provides that a person who possesses gamma hydroxybutyric acid (GHB), ketamine or flunitrazepam, also known as Rohypnol, with the intent to commit sexual assault, as defined, is guilty of a felony, punishable by imprisonment in state prison for 16 months, or two or three years.
- 2) Defines "sexual assault" for the purposes of this bill to include, but is not limited to, violations of specified provisions related to sexual assault committed against a victim who is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance.
- 3) States the finding of the Legislature that in order to deter the possession of Ketamine, GHB, and Rohypnol by sexual predators and to take steps to prevent the use of these drugs to incapacitate victims for purposes of sexual exploitation, it is necessary and appropriate that an individual who possesses one of these substances for predatory purposes be subject to felony penalties.

EXISTING LAW:

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

Saf. Code, § 11351.)

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

EXISTING FEDERAL LAW: States that whoever, with intent to commit a crime of violence, including rape, against an individual, distributes a controlled substance to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with relevant provisions of federal law. (110 Stat. 3807, 21 U.S.C. § 801.)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, " In November 2014, Proposition 47 was approved by voters and reclassified many crimes that were previously eligible to be charged as either as a felony, or a misdemeanor, to solely misdemeanor charges. This included

reducing the penalties for illegal possession of the drugs Rohypnol and GHB —commonly known as 'date rape' drugs.

"The law enforcement community and sexual assault survivor advocate organizations expressed concern over this change and how it would weaken current sexual assault laws.

"In order to respond to this concern and ensure that prosecutors have adequate tools to bring justice in sexual assault cases, I have worked with the Public Safety Committee to amend AB 46 from its original version. The bill will now create a new felony crime of possession with intent to commit sexual assault for the commonly known date rape drugs of Rohypnol, GHB and ketamine.

"This will allow prosecutors to bring felony charges against a perpetrator who has been found in possession of these drugs and has taken steps to use them to facilitate a sexual assault. In cases where the assault was fortunately prevented, this new crime created by AB 46 will allow serious punishment for the perpetrator.

"AB 46 in its original version raised questions about whether individuals who possessed these drugs for personal use would now be facing felony charges. My work on amendments with the Public Safety Committee should allow these concerns to be alleviated and also avoids the need for AB 46 to be approved by voters.

"Given to the difficult nature of prosecuting sexual assault crimes, California should embrace this opportunity to provide stiff consequences for criminals looking to use date rape drugs to facilitate a heinous crime. AB 46 recognizes that date rape drugs can be a tool for sexual predators and if they are used for this purpose, there must be a tool available for prosecutors to charge them accordingly."

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

According to the California Secretary of State's web site, 59.6 percent of voters approved Proposition 47. (See <http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf> [as of Mar. 14, 2015].) The purpose of the measure was "to maximize alternatives for nonserious, nonviolent crime, and to invest the savings generated from this act into prevention and support programs in K–12 schools, victim services, and mental health and drug treatment." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014), Text of Proposed Laws, p. 70.) One of the ways the measure created savings was by requiring misdemeanor penalties instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession for personal use, unless the defendant has prior convictions for specified violent crimes. (*Ibid.*)

Four months into its implementation, Proposition 47 has resulted in fewer inmates in state prisons and county jails. According to the Legislative Analysts' Office (LAO), "As of January 28, 2015, the inmate population in the state's prisons was about 113,500, or 3,600 inmates below the February 2015 cap, and slightly below the final February 2016 cap. The expected impact of Proposition 47 on the prison population will make it easier for the state to

remain below the population cap." (LAO, *The 2015-16 Budget: Implementation of Proposition 47* (Feb. 2015), p. 10.) The LAO report also found that Proposition 47 will likely reduce the costs of criminal justice for counties, by freeing up jail beds and reducing the time probation departments need to follow prisoners after they are released. (*Id.* at p. 17.)

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

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

As to the Legislature's authority to amend the initiative, Proposition 47 states: "This act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a two-thirds vote of the members of each house of the Legislature and signed by the Governor so long as the amendments are consistent with and further the intent of this act. The Legislature may by majority vote amend, add, or repeal provisions to further reduce the penalties for any of the offenses addressed by this act." (Ballot Pamp., Gen. Elec. (Nov. 4, 2014), Text of Proposed Laws, p. 74.)

This bill in its original form would have amended Proposition 47's provisions that require misdemeanor penalties for the crime of drug possession for personal use, by allowing felony penalties for the drugs covered by this bill. As amended, this bill does not affect Proposition 47 because this bill no longer deals with simple possession of drug use. Similar to the statutes that require specific intent to sell controlled substances which remain felonies, this bill will require specific intent to commit sexual assault in order to charge a defendant with a felony. Because the bill as amended does not affect Proposition 47, this bill will no longer have to go before the voters.

- 4) "**Club Drugs**": Ketamine, GHB, and flunitrazepam are commonly designated as "club drugs" due to their association with raves, nightclubs, concerts, and parties. Other drugs

included in this designation are MDMA (ecstasy), methamphetamine, and cocaine.

Club drugs became popular in the 1990s and tend to be used by youth and young adults to heighten mood, increase extraversion and physical energy, and intensify the senses. (National Inst. on Drug Abuse, *Drug Facts: Club Drugs (GHB, Ketamine, and Rohypnol)* (December 2014) <<http://www.drugabuse.gov/publications/drugfacts/club-drugs-ghb-ketamine-rohypnol>> [as of Mar. 18, 2015].) Studies also show that these drugs are commonly used by members in the LGBT community. (Palamar and Halkitis, *A Qualitative Analysis of GHB Use Among Gay Men: Reasons for Use Despite Potential Adverse Outcomes* (Jan. 2006); Mansergh, et al., *The Circuit Party Men's Health Survey: Findings and Implications for Gay and Bisexual Men*, *American Journal of Public Health* (June 2001).)

GHB: According to the National Institute on Drug Abuse, GHB is a central nervous system (CNS) depressant that was approved by the Food and Drug Administration (FDA) in 2002 for use in the treatment of narcolepsy, which is a sleep disorder. This approval came with severe restrictions, including its use only for the treatment of narcolepsy, and the requirement for a patient registry monitored by the FDA. GHB is also a metabolite of the inhibitory neurotransmitter gamma-aminobutyric acid (GABA). It exists naturally in the brain, but at much lower concentrations than those found when GHB is abused.

Rohypnol (flunitrazepam): According to the National Institute on Drug Abuse, Rohypnol is a benzodiazepine (chemically similar to sedative-hypnotic drugs such as Valium or Xanax), but it is not approved for medical use in this country, and its importation is banned.

Ketamine: According to the National Institute on Drug Abuse, ketamine is a dissociative anesthetic, mostly used in veterinary practice. (National Inst. on Drug Abuse, *Drug Facts: Club Drugs (GHB, Ketamine, and Rohypnol)* (December 2014) <<http://www.drugabuse.gov/publications/drugfacts/club-drugs-ghb-ketamine-rohypnol>> [as of Mar. 18, 2015].) Recently, small studies at prestigious medical centers like Yale, Mount Sinai and the National Institute of Mental Health suggest ketamine can relieve depression in many people who are not helped by widely used conventional antidepressants like Prozac or Lexapro. (Pollack, *Special K, a Hallucinogen, Raises Hopes and Concerns as a Treatment for Depression*, *New York Times* (Dec. 9, 2014).)

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

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

consumed alcohol (89%) or being intoxicated prior to being assaulted (82%). (*Id.* at Section 5.1.3.)

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

Among the 144 participants, 61.8% tested positive for one of the drugs being analyzed in the study. (Negruz, *Estimate of the Incidence of Drug-Facilitated Sexual Assault in the U.S.*, *supra*, at p. 2.) The drugs separated out as "date rape" drugs were found in seven subjects (4.86%), of which three had a prescription. No one admitted to having a prescription for GHB, or using it recreationally, and GHB was only found in levels considered to be endogenous. (*Id.* at p. 113.) However, the study does note that GHB has a short detection time of 10-12 hours and because only four subjects reported to the clinic within 12 hours, if any of the subjects had been given GHB, the levels would have been undetectable. (*Id.* at p. 121.) Ketamine and scopolamine were not reported to by any of the subjects in the surveys, and were not found. Flunitrazepam (Rohypnol) was not admitted to by anyone, but was found in four subjects. (*Id.* at p. 113.) However, when tested a second time a week later, some of these subjects tested positive for flunitrazepam again, indicating that the subjects are likely recreational users of the drug but did not report it in the survey. (*Id.* at pp. 89, 189.) Based on these results, the study concluded that most of the subjects positive for these drugs had taken them by their own accord and not received them surreptitiously. (*Id.* at p. 189.)

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

While drug-facilitated sexual assault is a serious problem, these studies confirm that it occurs most often after an individual's own recreational use of drugs, rather than surreptitious drugging by another person. Drugs such as Rohypnol, ketamine and GHB may be used to facilitate sexual assault of an incapacitated person, but these are not the only drugs that can be used, nor are they the most commonly used. The substance that is most commonly found in sexual assault victims is alcohol. (Krebs, *The Campus Sexual Assault Study*, *supra* at p. 89;

also see Grimes, Alcohol is by far the most dangerous "date rape drug" (Sept. 22, 2014) The Guardian, <<http://www.theguardian.com/science/blog/2014/sep/22/alcohol-date-rape-drug-facilitated-sexual-assault-dfsa>> [as of Mar. 19, 2015].)

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

- 6) **Related Legislation:** SB 333 (Galgiani) would make possession of GHB, ketamine or flunitrazepam an alternate felony-misdemeanor. SB 333 is pending hearing by the Senate Committee on Public Safety.
- 7) **Prior Legislation:**
 - a) SB 649 (Leno), of the 2013-2014 Legislative Session, would have made the simple possession for personal use of cocaine, cocaine base, heroin, opium, and other specified narcotics, opiates and hallucinogens listed in the controlled substance schedule an alternate felony/misdemeanor, rather than a straight felony. SB 649 was vetoed.
 - b) SB 1506 (Leno), of the 2011-2012 Legislative Session, would have made the unlawful possession of specified controlled substances a misdemeanor. SB 1506 failed passage on the Senate floor.
 - c) SB 1067 (Horton), of the 2003-2004 Legislative session, would have excluded the drugs GHB, rohypnol, and ketamine from coverage by the term "nonviolent drug possession offense" thereby making possession of these drugs ineligible for probation and drug treatment under Proposition 36, approved by the voters on November 7, 2000. SB 1067 failed passage in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County District Attorney's Office
California College and University Police Chiefs Association
California District Attorneys Association
California Peace Officers' Association
California Police Chiefs Association
California Probation, Parole and Correctional Association
California Reserve Peace Officers Association
California State Lodge, Fraternal Order of Police
City of California City
City of Lancaster
City of Murieta
City of Palmdale
California College and University Police Chiefs Association
Crime Victims United
Long Beach Police Officers Association

Los Angeles County Professional Peace Officers Association
Los Angeles County Sheriff's Department
Phelan Piñon Hills Community Services District
Sacramento County Deputy Sheriffs' Association
San Bernardino County Sheriffs' Office
Santa Ana Police Officers Association
WEAVE, Inc.

Two private individuals

Opposition

California Attorneys for Criminal Justice
Californians for Safety and Justice
Drug Policy Alliance
Friends Committee on Legislation of California
Legal Services for Prisoners with Children

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

Date of Hearing: April 14, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 56 (Quirk) – As Amended April 8, 2015

SUMMARY: Regulates the use of unmanned aircraft systems (UAS) by public agencies. Specifically, this bill:

- 1) Defines "UAS" as an unmanned aircraft and associated elements, including communication links and the components that control the unmanned aircraft, that are required for the pilot in command to operate safely and efficiently in the national airspace system.
- 2) Prohibits a public agency from using an UAS, or contracting for the use of an UAS, except as provided in the provisions of this bill.
- 3) States that a law enforcement agency may use an UAS over public lands, highways and spaces open to the public without a warrant.
- 4) Authorizes a law enforcement agency to use an UAS under 400 feet above ground level over private property if it has obtained consent from the property owner or a warrant based on probable cause.
- 5) Allows a law enforcement agency, without first obtaining a warrant or consent from the property owner over private property, to use an UAS in the following circumstances:
 - a) In emergency situations if there is an imminent threat to life or of great bodily harm, including, but not limited to fires, hostage crises, "hot pursuit" situations if reasonably necessary to prevent harm to law enforcement officers or others; and search and rescue operations on land or water;
 - b) To assess the necessity of first responders and process scenes in situations relating to traffic accidents;
 - c) To document traffic collision and crime scenes;
 - d) To inspect state parks and wilderness areas for illegal vegetation or fires regardless of permanent improvements or temporary human habitation; and,
 - e) To determine the appropriate response to an imminent or existing environmental emergency or disaster, including, but not limited to, oils spills or chemical spills.
- 6) Allows a public agency, other than a law enforcement agency, to use an UAS, or contract for the use of an UAS, to achieve the core mission of the agency provided that the purpose is

unrelated to the gathering of criminal intelligence.

- 7) States that a public agency that is not primarily a law enforcement agency, but that employs peace officers or performs functions related to criminal investigations, may use an UAS without obtaining a warrant to achieve the core mission of the agency, provided that the purpose is unrelated to the gathering of criminal intelligence, and that the images, footage, or data are not used for any purpose other than that for which it was collected.
- 8) Defines "criminal intelligence" as information compiled, analyzed, or disseminated in an effort to anticipate, prevent, monitor, or investigate criminal activity.
- 9) Requires reasonable notice to be provided by a public agency and a law enforcement agency prior to using an UAS, or contracting for the use of an UAS, as specified below:
 - a) A public agency shall provide reasonable notice to the public that, at a minimum, consists of a one-time announcement regarding the agency's intent to deploy UAS technology and a description of the technology's capabilities to the public; and
 - b) A law enforcement agency shall provide reasonable notice to the public or to the governing board, or the agency may create a set of guidelines that will be made available to the public, that at a minimum, consists of a one-time announcement regarding the agency's intent to deploy unmanned aircraft system technology, a description of the technology's capabilities, and what it will and will not be used for.
- 10) States that, except as permitted by the provisions in this bill, images, footage, or data obtained by a public agency, or any entity contracting with a public agency, over private property and pursuant to this bill shall not be disseminated to a law enforcement agency unless the law enforcement agency has obtained consent from the property owner or a warrant for the images, footage, or data based on probable cause, or the law enforcement agency would not have been required to obtain a warrant to collect the images, footage, or data itself as specified.
- 11) Allows a public agency that is not primarily a law enforcement agency, but that employs peace officers or performs functions related to criminal investigations, to disseminate images, footage, or data collected by the use of an UAS if the dissemination is to others within that agency.
- 12) Prohibits disseminating the images, footage, or data to entities outside the collecting public agency, unless one of the following circumstances applies:
 - a) To another public agency if the images, footage, or data are related to the core mission of both public agencies involved in the sending or receiving of the images, footage, or data;
 - b) To an entity outside the collecting public agency if the images, footage, or data are evidence in any claim filed or any pending litigation; or
 - c) To a private entity if both of the following conditions are satisfied:

- i) The collecting public agency is not a law enforcement agency; and,
 - ii) The images, footage, or data are related to the core function of the collecting public agency.
- 13) Allows a public agency to make available to the public images, footage, or data obtained by the public agency through the use of an UAS if both of the following conditions are satisfied:
- a) The images, footage, or data do not depict or describe any individual or group of individuals, or the activities of any individual or group of individuals whose identity or identities can be ascertained; and,
 - b) The disclosure of the images, footage, or data is required to fulfill the public agency's statutory or mandatory obligations.
- 14) Prohibits, except as permitted by the provisions of this bill, public agencies from using images, footage, or data obtained by a public agency through the use of an UAS for any purpose other than that for which it was collected.
- 15) Requires images, footage, or data obtained through the use of an UAS to be permanently destroyed within one year, except in the following circumstances:
- a) For training purpose, as specified.
 - b) For academic research or teaching purposes, as specified.
 - c) For purposes of monitoring material assets owned by the public agency.
 - d) For environmental, public works, or land use management or planning by the public agency.
 - e) The images, footage or data are evidence currently being used, or anticipated to be used, in a criminal proceeding.
- 16) States, notwithstanding the above provision, a public agency may retain beyond one year images, footage, or data in the following circumstances:
- a) If a warrant authorized the collection of the images, footage, or data.
 - b) If the images, footage, or data are evidence in any claim filed or any pending litigation or enforcement proceeding.
- 17) Prohibits a person, entity, or public agency from equipping or arming an UAS with a weapon or other device that may be carried by or launched from an UAS and that may cause bodily injury or death or damage to, or the destruction of, real or personal property, unless authorized by federal law.
- 18) Provides that all UAS shall be operated so as to minimize the collection of images, footage, or data of persons, places, or things not specified with particularity in the warrant authorizing

the use of an unmanned aircraft system, or, if no warrant was obtained, for purposes unrelated to the justification for the operation.

- 19) States that none of the provisions in this bill are intended to conflict with or supersede federal law, including rules and regulations of the Federal Aviation Administration (FAA); and authorizes a local legislative body to adopt more restrictive policies on the acquisition or use of unmanned aircraft systems.
- 20) Prohibits a person, entity, or public agency from equipping or arming an UAS with a weapon or other device that may be carried by or launched from an UAS and that may cause bodily injury or death or damage to, or the destruction of, real or personal property.
- 21) Provides that surveillance restrictions on electronic devices shall also apply to UAS.
- 22) States that none of the provisions above are intended to conflict with or supersede federal law, including rules and regulations of the Federal Aviation Administration (FAA).
- 23) Provides that notwithstanding any other provision, images, footage or data obtained through the use of the unmanned aircraft system or any related record, including but not limited to, usage logs or logs that identify any person or entity that subsequently obtains or requests records of that system, are public records subject to disclosure.
- 24) Clarifies that nothing in this bill or any other law requires the disclosure of images, footage, or data obtained through the use of an UAS, or any related record that identify any person or entity that subsequently obtains or requests records of that system, to the extent that disclosure of the images, footage, data, or records would endanger the safety of a person involved in an investigation, or would endanger the successful completion of the investigation.

EXISTING FEDERAL LAW: The Aviation Administration Modernization and Reform Act of 2012 provides for the integration of civil UAS, commonly known as drones, into the national airspace system by September 30, 2015. The Act requires the Administrator of the FAA to develop and implement operational and certification requirements for the operation of public UAS in the national airspace by December 31, 2015. (H.R. 658 2011-12, Section 332.)

EXISTING STATE LAW:

- 1) States that a search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)
- 2) Permits a search warrant to be issued for any of the following grounds:
 - a) When the property subject to search was stolen or embezzled;
 - b) When property or things were used as the means to commit a felony;

- c) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered;
- d) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony;
- e) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child or possession of matter depicting sexual conduct of a person under the age of 18 years has occurred or is occurring;
- f) When there is a warrant to arrest a person;
- g) When a provider of electronic communication service or remote computing service has records or evidence, as specified, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery;
- h) When the property or things to be seized include an item or any evidence that tends to show a violation of a specified section of the Labor Code, or tends to show that a particular person has violated that section;
- i) When the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as specified;
- j) When the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of, specified persons;
- k) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms, as specified, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a specified protective order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law;
- l) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will

assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code;

- m) When a sample of the blood of a person constitutes evidence that tends to show a violation of specified provisions in the Vehicle Code relating to driving under the influence offenses and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as specified; and,
 - n) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order, as specified. (Pen. Code, § 1524, subd. (a).)
- 3) Prohibits wiretapping or eavesdropping on confidential communications, which excludes communications made in public or in any circumstance that the parties may reasonably expect that the communication may be overheard or recorded. (Pen. Code, § 632, subd. (c).)
 - 4) Provides that nothing in the sections prohibiting eavesdropping or wiretapping prohibits specified law enforcement officers or their assistants or deputies acting within the scope of his or her authority, from overhearing or recording any communication that they could lawfully overhear or record. (Pen. Code, § 633.)
 - 5) California Public Records Act generally provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 6250 et. seq.)
 - 6) Provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Gov. Code, § 6253)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "We live in a culture that is extremely sensitive to the idea of preventing unnecessary government intrusion into any facet of our lives. Drones, as with other technologies, can be of great asset to the state and improve public safety. For example, the California Military Department provided firefighters with aerial surveillance while battling the massive Rim Fire in 2013 along the foothills of the Sierra Nevada. This aerial surveillance allowed firefighters to track the fire in real time, allowed commanders to move firefighters out of harm's way and reposition firefighters as the wind shifted the fire across the mountainside. However, privacy concerns are an issue that must be dealt with effectively if the public is to support the use of drones by their local law enforcement agencies.

"In 2013, my local Sheriff attempted to purchase a drone and hide it from the public. When the public found out, the frustration, concern and backlash forced my sheriff to abandon his pursuit of the drone. While he eventually did succeed in purchasing a drone, this time he is working on an operations manual to inform the public on the guidelines his department will follow when deploying a drone. Though still being drafted, it will be made public.

"AB 56 will establish a set of parameters for the use of drones in public and private spaces. It restricts the sharing of data between agencies (public and law enforcement) to prevent the roundabout tracking of individuals. Additionally, this bill will create accountability within the law enforcement community by requiring that they provide notice to their governing agency or public on what they intend to use (and not to use) drones for. This bill recognizes that drones can be a beneficial tool, but at the same time they can be abused without the proper oversight or guidance on their use."

- 2) **Fourth Amendment Considerations: Technology and Warrantless Searches:** Both the United States and the California constitutions guarantee the right of all persons to be secure from unreasonable searches and seizures. (U.S. Const., amend. IV; Cal. Const., art. 1, sec. 13.) This protection applies to all unreasonable government intrusions into legitimate expectations of privacy. (*United States v. Chadwick* (1977) 433 U.S. 1, 7, overruled on other grounds by *California v. Acevedo* (1991) 500 U.S. 565.) In general, a search is not valid unless it is conducted pursuant to a warrant. The mere reasonableness of a search, assessed in light of the surrounding circumstances, is not a substitute for the warrant required by the Constitution. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 758, overruled on other grounds by *California v. Acevedo*, supra.) There are exceptions to the warrant requirement, but the burden of establishing an exception is on the party seeking one. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 760, overruled on other grounds by *California v. Acevedo*, supra.)

Courts have been confronted with questions of how evolving technology intersects with the Fourth Amendment. In *Kyllo v. United States* (2001) 533 U.S. 27, the U.S. Supreme Court considered whether the use of a thermal imager, which detects infrared radiation invisible to the naked eye, to determine whether the defendant was growing marijuana in his apartment, was a search in violation of the Fourth Amendment. The Court held that "[w]here, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant." (*Id.* at p. 40.)

In *United States v. Jones* (2012) 132 S. Ct. 945, the Supreme Court was presented with a Fourth Amendment challenge to the use of a Global Positioning System (GPS) tracking device by law enforcement officers to monitor the movements of a suspected drug trafficker's vehicle over a period of 28 days. The Court held that the government's installation of the GPS device on the defendant's private property for the purpose of conducting surveillance constituted a "search" under the Fourth Amendment. GPS technology is intrusive because it "generates a precise, comprehensive, record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations. The Government can store such records and efficiently mine them for information years into the future." (*Id.* at pp. 955-956.)

Because technology is always evolving it is important to consider how new technology should be regulated in order to avoid governmental abuse. The Court's decisions in prior

cases provide some guidance on how new technology may be evaluated within the framework of the Fourth Amendment's protections against unreasonable searches and seizures. As illustrated in *Kyllo* and *Jones*, even in a public space, the use of advanced technology to conduct surveillance without a warrant may be restricted by the Fourth Amendment.

- 3) **Reasonable Notice Requirement:** This bill requires a public agency to provide reasonable notice to the public before deploying UAS technology. The bill specifies that at minimum, reasonable notice requires the agency to provide a one-time announcement regarding the agency's intent to deploy UAS technology and a description of the technology's capabilities to the public. A law enforcement agency must provide reasonable notice to the public or to the governing board. Alternatively, the law enforcement agency may create a set of guidelines that will be made available to the public. The reasonable notice by a law enforcement agency must, at a minimum, consist of a one-time announcement regarding the agency's intent to deploy unmanned aircraft system technology, a description of the technology's capabilities, and what it will and will not be used for.

The proposed use of UAS by law enforcement has been a divisive issue for some local jurisdictions. Public outcry against the unrestrained use of UAS by the government has led some counties to reconsider their use. In 2013, the sheriff of Alameda County attempted to request funding for UAS by the County Board of Supervisors. The sheriff pulled the item from consideration after public criticism. At the end of 2014, it was revealed that the Alameda County Sheriff went ahead and purchased the UAS using the department's own funds. Critics, including the American Civil Liberties Union, described the issue as "'a troubling example of law enforcement trying to acquire invasive and extremely unpopular surveillance technology in secret.'" (Lee, *Alameda County Sheriff Reveals that He's Bought 2 Drones*, S.F. Gate (Dec. 3, 2014).)

San Jose, after purchasing an UAS, was also met with a hostile response for not informing the public of the device either before or after its purchase. San Jose police issued a statement acknowledging that the department 'should have done a better job of communicating the purpose and acquisition of the (drone) to [the] community. The community should have the opportunity to provide feedback, ask questions, and express their concerns before we move forward with this project.' (Lee, *Alameda County Sheriff Reveals that He's Bought 2 Drones*, S.F. Gate (Dec. 3, 2014).)

This bill requires reasonable notice to be provided to the public or the governing board, specifically requiring agencies to provide information on the technological capabilities of the UAS and the purpose of using the UAS. The bill does specifically require input from the public, however, providing notice will provide the public a chance evaluate the proposal. It may also trigger the public to reach out to members of their local legislative body to express concerns over the use of UAS. The local legislative body is expressly authorized under the provisions of this bill to adopt more restrictive policies on the acquisition or use of unmanned aircraft systems.

- 4) **Weaponized UAS:** UAS devices have the capability of being armed with weapons, lethal and nonlethal. The United States has used armed UAS to target militants in military operations abroad. (Christopher Drew, *Drones Are Weapons of Choice in Fighting Qaeda*, New York Times (Mar. 17, 2009).) Domestically, there has been a push by some law

enforcement agencies to arm UAS to fire rubber bullets and tear gas. (See *Drones over US to get weaponized – so far, non-lethally*, RT.com (May 24, 2012).) This bill would prohibit the equipping or arming of an UAS with a weapon or other launchable device that may cause injury, death, or property damage.

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

6) **Argument in Opposition:** According to the *American Civil Liberties Union of California*, "As amended, AB 56 would grant unprecedented and unconstitutional surveillance powers to the state. For example, by allowing unlimited use of a drone over all public lands, highways, and spaces open to the public, law enforcement would be able to track anyone, including by following them around any time they are in public, which would appear to include all commercial areas open to the general public, without any judicial oversight or cause to suspect wrongdoing. Additionally, AB 56 would authorize warrantless surveillance of activities protected by the First Amendment, such as protest rallies, which has led to documented abuses by law enforcement. Law enforcement should not be authorized to perform such wide-ranging surveillance without a warrant supported by probable cause.

"By creating a categorical warrant exception for any law enforcement use of drones over public lands, AB 56 implies there is no expectation of privacy from being surveilled by a drone so long as the drone is over a public area – even for people in their bedrooms. As amended, the bill appears to allow law enforcement officers to look into upper story windows without a warrant being provided that the drone is over a public street. The right to privacy in personal areas should not be lost simply because the drone is over public land. This kind of invasive spying authorized by AB 56 is not consistent with reasonable expectations of privacy and appears to be in violation of both article 1 § 1 of the California Constitution and the Fourth Amendment to the US Constitution.

...

"We also note that the public-notice provision of Section 14351 is so negligible as to be irrelevant. Drones present a fundamentally new and intrusive threat to privacy that should be subject to initial controls and ongoing oversight by elected officials following a full assessment of the privacy impacts and informed public input before money is sought for their purchase of their use is authorized. The ACLU of California conducted a comprehensive assessment of surveillance technology and issued a report outlining essential processes and minimum standards for local adoption of drones and other intrusive devices. (*Making Smart Decisions About Surveillance: A Guide for Communities*.) AB 56 falls far short of the minimum requirements and approvals that should be in place before police are permitted to use drones. In addition, the bill omits any requirement for public notice and input prior to the use of drones that are borrowed from another police department or other agency."

7) **Related Legislation:** SB 262 (Galgiani) would authorize a law enforcement agency to use UAS if the use of the UAS complies with protections against unreasonable searches guaranteed by the United States Constitution and the California Constitution, federal law applicable to the use of an unmanned aircraft system, a law enforcement agency, state law applicable to a law enforcement agency's use of surveillance technology that can be attached to an UAS. SB 262 is pending hearing by the Senate Committee on Public Safety.

8) Prior Legislation:

- a) AB 1327 (Gorell), of the 2013 to 2014 Legislative Session, would have regulated the use of UAS by public agencies and the dissemination and use of any images, data and footage obtained by those systems. AB 1327 was vetoed.
- b) SB 15 (Padilla), of the 2013-2014 Legislative Session, would have required law enforcement to get a warrant for drone use if it implicated a legitimate expectation of privacy. Would have limited drone use by public agencies to within the scope of the agencies authority and prevented public agencies from providing drone information to law enforcement without a warrant. Would have directed public agencies to destroy drone information after one year except as specified. SB 15 was held in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

American Civil Liberties Union of California

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

Date of Hearing: April 14, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 66 (Weber) – As Amended April 9, 2015
As Proposed to be Amended in Committee

SUMMARY: Provides statewide policies and guidelines for law enforcement agencies that require its officers to wear body-worn cameras. Specifically, **this bill:**

- 1) States that if a law enforcement agency requires a body-worn camera to be worn by a peace officer that the agency employs, the agency shall comply with the following requirements:
 - a) Each law enforcement agency shall conspicuously post its policies and procedures regarding body-worn cameras on its Internet Web site;
 - b) A peace officer shall only use the body-worn camera systems issued and approved by the law enforcement agency that employs him or her for official police duties;
 - c) A peace officer shall not make copies of any body-worn camera files for his or her personal use or use a recording device such as a phone camera or secondary video camera to record a body-worn camera file;
 - d) A peace officer shall not operate a body-worn camera under the following circumstances:
 - i) In a health facility or medical office when patients may be in view of the body-worn camera or when a health care practitioner is providing care to an individual;
 - ii) During an ambulance response to an accident or illness where the victim is not involved in any criminal activity; or,
 - iii) Situations where recording would risk the safety of a confidential informant or undercover peace officer.
 - e) Operation of a body-worn camera shall begin with the officer providing on camera notice to a person being recorded that a body-worn camera is recording video, and provide the person with the option to request that the body-worn camera be turned off under the following circumstances:
 - i) When the subject of the video is a victim of rape, incest, domestic violence, or other forms of domestic or sexual harm; or
 - ii) When an officer is at a private residence without a warrant and in a nonemergency situation;

- f) Where a peace officer is involved in an incident involving use of force or an incident resulting in injury or death, a peace officer may only review his or her body-worn camera video only after making his or her initial statement and report in an administrative or criminal inquiry or investigation; and
 - g) Once a peace officer's initial report has been submitted and approved and the officer has been interviewed by the appropriate investigator, the investigator will show the member the body-worn camera video. The peace officer will be given the opportunity to provide additional information to supplement his or her statement and may be asked additional questions by the investigators. If this results in a modified report, both of the reports shall be provided to all parties to a criminal or administrative investigation.
- 2) Provides that the following are guidelines that a law enforcement agency shall consider when adopting their own policies for a body-worn camera program:
- a) A peace officer equipped with a body-worn camera shall activate the camera when responding to calls for assistance and when performing law enforcement activities in the field including, but not limited to, traffic or pedestrian stops, pursuits, arrests, searches, seizures, interrogations, and any other investigative or enforcement encounters in the field;
 - b) A peace officer shall ensure that a body-worn camera is fully functional, including but not limited to, ensuring that the camera can be turned on and off and record video and audio, and that the camera is properly charged prior to going into the field. A peace officer shall not violate a person's reasonable expectation of privacy when ensuring that a body-worn camera is fully functional pursuant to this paragraph;
 - c) A peace officer wearing a body-worn camera shall position the camera on his or her chest, head, shoulder, collar or any area above mid-torso of his or her uniform to facilitate optimum recording field of view;
 - d) Both video and audio recording functions of a body-worn camera shall be activated when an officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a police officer and a member of the public;
 - e) During an encounter with a member of the public, the officer shall notify the member of the public that the body-worn camera is recording, and shall not deactivate the body-worn camera until the conclusion of the encounter;
 - f) An officer may stop recording when an arrestee is secured inside of the department of police station, as defined;
 - g) A peace officer shall record any interview of a suspect or witness in entirety, unless an exception applies;

- h) When recording interviews of a suspect or witness, a peace officer shall, where applicable, inform the suspect or witness of his or her rights under *Miranda v. Arizona* (1996) 384 U.S. 436;
 - i) In the event of contradicting requests made by a homeowner, occupant, or renter to stop recording, the contradicting requests shall be recorded on video and the peace officer shall continue to operate and record the encounter;
 - j) A peace officer shall not remove, dismantle, or tamper with any hardware or software components or parts of a body-worn camera;
 - k) A peace officer shall not use body-worn camera functions, when there is no investigatory interaction with a member of the public, to record any personal conversation of or with another agency member or employee without the permission of the recorded member or employee;
 - l) A peace officer shall not use a body-worn camera to record non-work related activity or to record in places where a reasonable expectation of privacy exists;
 - m) A law enforcement agency or law enforcement officer shall not allow a computerized facial recognition program or application to be used with a body-worn camera or a recording made by a body-worn camera unless the use has been authorized by a warrant issued by a court; and
 - n) When safe and practical, an on-scene supervisor may retrieve a body-worn camera from an officer. The supervisor shall be responsible for ensuring the camera data is uploaded into the desired data processing and collection method.
- 3) States that the provisions in this bill do not require a peace officer, in a public venue to cease recording an event, situation, or circumstance solely at the demand of a citizen.
 - 4) States that any request from within a law enforcement agency for recordings from a body-worn camera from that agency shall be completed by the system administrator with the approval of the head of the agency.
 - 5) Provides that all other requests for recordings from a body-worn camera shall be processed in accordance with the California Public Records Act.
 - 6) States Legislative findings and declarations related to body-worn cameras.

EXISTING LAW:

- 1) Provides that it is a an alternate felony/misdemeanor for any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message,

report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable by a fine not exceeding \$2,500, or by imprisonment in the county jail not exceeding one year, or by imprisonment in the county jail for 16 months, or two or three years, or by both a fine and imprisonment. (Pen. Code, § 631.)

- 2) States that every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding \$2,500, or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. (Pen. Code, § 632, subd. (a).)
- 3) Defines "confidential communication" to include any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or any legislative, judicial, executive or administrative proceeding open to the public, or in any circumstance that the parties may reasonably expect that the communication may be overheard or recorded. (Pen. Code, § 632, subd. (c).)
- 4) Provides that nothing in the sections prohibiting eavesdropping or wiretapping prohibits specified law enforcement officers or their assistants or deputies acting within the scope of his or her authority, from overhearing or recording any communication that they could lawfully overhear or record. (Pen. Code, § 633.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Over the last year, there have been over a dozen police shootings across the nation of unarmed citizens, many involving minorities. These killings have shaken our communities and mobilized efforts to prevent or mitigate these tragedies. One such creative effort is the use of cameras attached to the clothing or uniform of law enforcement personnel referred to as body-worn cameras (BWC). Even before the devastating events surrounding the shooting of 18-year old unarmed Michael Brown on August 9, 2014 in Ferguson, Missouri, law enforcement had implemented or had plans to implement a body-worn camera program.

"In February of 2011, the City of Rialto began a study to investigate the usefulness of body-worn cameras. Since then, the city has seen a 60 percent reduction in officer use of force incidents and 88 percent reduction in the number of citizen complaints between the year prior to and following camera deployment. Currently, in California, the regions of Los Angeles, Oakland, San Diego, and San Leandro, among others, have developed best practices for the local utilization of peace officer body-worn cameras with more cities rapidly following suit.

However, there are no uniform standardized practices and policies addressing the implementation of these body-camera programs.

"People travel frequently in California. For citizens who travel from city to city, town to town and not have an idea of what their basic rights are regarding officers equipped with BWC's, puts them in an unnecessary vulnerable place. Of such, we must be committed to standardizing some basic common core BWC principles for Californians to know their rights when crossing into different law enforcement department jurisdictions."

- 2) **Background:** A recent report released by U.S. Department of Justice's Office of Community Oriented Policing Services and the Police Executive Research Forum studied the use of body-worn cameras by police agencies. This research included a survey of 250 police agencies, interviews with more than 40 police executives, a review of 20 existing body-camera policies, and a national conference at which more than 200 police chiefs, sheriffs, federal justice representatives, and other experts shared their knowledge of and experiences with body-worn cameras. The report shows that body-worn cameras can help agencies demonstrate transparency and address the community's questions about controversial events. Among other reported benefits are that the presence of a body-worn camera have helped strengthen officer professionalism and helped to de-escalate contentious situations, and when questions do arise following an event or encounter, police having a video record helps lead to a quicker resolution. (Miller and Toliver, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, Police Executive Research Forum (Nov. 2014).)
- 3) **Proposed Amendments:** This bill is being considered by the Committee as proposed to be amended. The bill as it is currently written provides that all of the provisions listed in the new section are requirements that law enforcement must comply with if the agency requires its officers to use a body-worn camera. The proposed amendments change many of those provisions from requirements to guidelines that the agencies must consider when adopting their own policies. The amendments provide policy recommendations that cover when to turn the camera on and off, where the camera should be worn on the body, how to ensure the camera is fully charged and operating properly, who should upload data, and how to avoid violating the privacy of the public as well as other officers.

The provisions that have not been changed to policy recommendations are requirements that a law enforcement agency must comply with if the agency requires its officers to use body-worn cameras. These provisions require the officer to provide notice to person who is being recorded, specifies that in cases of use of force, an officer must write his or her initial report based upon his or her memory prior to being allowed to view the video. There are also prohibitions on recording in hospitals or other situations where information must be kept confidential as well as prohibitions on using any recording device not authorized by the agency. As stated in the author's statement, the intent of retaining these provisions as requirements, rather than guidelines, is to ensure some level of standardization of the policies that the public may rely on when encountered with body-worn cameras in their jurisdictions.

- 4) **Argument in Support:** According to the *American Civil Liberties of California*, "Like most surveillance technologies, depending on the method of use, BWCs [body-worn cameras] implicate privacy interests, transparency in police operations, and increased evidence documentation. For example, BWCs can record in residence and other places that pose heightened privacy expectations, or capture footage of a crime in a public setting. AB 66

strikes the appropriate balance between those factors.

...

"Under AB 66, the Penal Code would provide that '[p]eace officers may only review their body worn camera video after making their initial statement and report, an officer could review BWC video and make an amendment to their statement or report to account for facts not initially recalled.

"Multiple law enforcement agencies have policies that align with this rule. The Oakland Police Department, for instance, has a policy prohibiting officers from reviewing view prior to making a statement in an investigation arising out of a Level 1 use of force (most serious, including shootings, equivalent to LAPD's categorical use of force). Similarly, when the Los Angeles Sheriff's Department recently installed video cameras in its jails, the department, after careful consideration, adopted a policy that requires deputies in the jails to file reports on incidents before viewing video . . .

"In *Implementing Body-Worn Camera Program: Recommendations and Lessons Learned*, published by the Community Oriented Policing Services (COPS) division of the U.S. Department of Justice, a police executive explained as follows, '[i]n terms of the officer's statement, what matters is the officer's perspective at the time of the event, not what is in the video.' [Citation omitted.]"

- 5) **Argument in Opposition:** According to the California State Sheriffs' Association, "[W]e disagree with this bills approach at handling public records act requests. While there are exceptions to the California Public Records Act (Gov. Code, §§ 6250 et seq.) when it comes to records created by law enforcement agencies, given the broad privacy concerns with body-worn cameras, we would urge an exemption to the Public Records Act for all footage obtained by body worn cameras. Any information that is subject to public concern could still be obtained through criminal or civil discovery processes, or may be released by an agency (such as is currently done with mugshots). We believe the privacy concerns of victims of crime and the damage that can be done through the wide dissemination of video through social media outweigh the public's interest in being able to view all footage recorded by law enforcement. This measure would allow the broad dissemination of camera footage of victims of crime and people in crisis.

"Finally, this measure would prohibit the viewing of body-camera footage by an officer prior to making a report. We believe that in the vast majority of cases, it would be detrimental to a law enforcement investigation to prohibit officers from viewing video of questioning before writing a report; it would be akin to prohibiting an officer from reviewing field notes before writing a report. This policy simply seeks to undermine the credibility of an officer that cannot remember an incident exactly as it unfolded."

6) **Related Legislation:**

- a) AB 65 (Alejo), would redirect funds from the Driver Training Penalty Assessment Fund and allocates that money to the Board of State and Community Corrections to be used to fund local law enforcement agencies to operate a body worn camera program. AB 65 is pending a hearing by the Assembly Committee on Appropriations.

- b) AB 69 (Rodriguez) requires law enforcement agencies to follow specified best practices when establishing policies and procedures for downloading and storing data from body-worn cameras. AB 69 is pending hearing by the Assembly Committee on Privacy and Consumer Protection.
- c) SB 175 (Huff) would require each department or agency that employs peace officers and that elects to require those peace officers to wear body-worn cameras to develop a policy relating to the use of body-worn cameras. The bill would require the policy to be developed in collaboration with nonsupervisory officers and to include certain provisions, including, among others, the duration, time, and place when body-worn cameras shall be worn and operational. SB 175 is pending hearing by the Senate Committee on Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
American Federation of State, County, and Municipal Employees (AFSCME), AFL-CIO
California Public Defenders Association
PICO California

Opposition

Association for Los Angeles Deputy Sheriffs
California Association of Highway Patrolmen
California Narcotic Officers' Association
California Peace Officers' Association
California State Sheriffs' Association
Chief Probation Officers of California
Fraternal Order of Police, California State Lodge
Long Beach Police Officers Association
Los Angeles County Probation Officers Union
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Peace Officers Research Association of California
Riverside Sheriffs' Association
Santa Ana Police Officer Association
Sacramento County Deputy Sheriffs' Association

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

Amendments Mock-up for 2015-2016 AB-66 (Weber (A))

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

**Mock-up based on Version Number 97 - Amended Assembly 4/9/15
Submitted by: Stella Choe, Assembly Public Safety**

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

SECTION 1. The Legislature finds and declares:

(a) Twenty-first century policing demands more transparency in everyday interactions with the public. In light of a number of high profile use of force incidents involving law enforcement, body-worn cameras are seen as an important means toward achieving this goal.

(b) Several law enforcement agencies in California are already implementing body-worn camera programs. Because of the potential of this technology to document law enforcement interactions, we must be cognizant in protecting citizen privacy and not violate civil liberties.

(c) ~~The development of statewide guidelines and compilation of best practices will be necessary to ensure the public's trust in law enforcement. The use of the portable video recording system provides documentary evidence for criminal investigations, internal or administrative investigations, and civil litigation.~~

(d) The Legislature intends for officers to utilize body-worn cameras in accordance with the provisions in this act to maximize the effectiveness of the audio and video documentation to achieve operational objectives and to ensure evidence integrity.

SEC. 2. ~~Section 830.105~~ 830.16 is added to the Penal Code, immediately following Section 830.10, to read:

~~830.105.~~830.16. (a) If ~~a~~ *A* law enforcement agency *that* requires a body-worn camera to be worn ~~used~~ by a peace officer that the agency employs, ~~the agency employs~~ shall comply with the requirements of this section. *following requirements:*

(1) A law enforcement agency shall conspicuously post its policies and procedures regarding body-worn cameras on its Internet Web site.

(2) A peace officer shall only use the body-worn camera systems issued and approved by the law enforcement agency that employs him or her for official police duties.

(3) A peace officer shall not make copies of any body-worn camera files for his or her personal use or use a recording device such as a phone camera or secondary video camera to record a body-worn camera file.

(4) A peace officer shall not operate a body-worn camera under the following circumstances:

- (i) In a health facility or medical office when patients may be in view of the body-worn camera or when a health care practitioner is providing care to an individual;***
- (ii) During an ambulance response to an accident or illness where the victim is not involved in any criminal activity; or,***
- (iii) Situations where recording would risk the safety of a confidential informant or undercover peace officer.***

(5) Operation of a body-worn camera shall begin with the officer providing on camera notice to a person being recorded that a body-worn camera is recording video, and provide the person with the option to request that the body-worn camera be turned off under the following circumstances:

- (i) When the subject of the video is a victim of rape, incest, domestic violence, or other forms of domestic or sexual harm.***
- (ii) When an officer is at a private residence without a warrant and in a nonemergency situation.***

(6) Where a peace officer is involved in an incident involving use of force or an incident resulting in injury or death, a peace officer may only review his or her body-worn camera video only after making his or her initial statement and report in an administrative or criminal inquiry or investigation. Once a peace officer's initial report has been submitted and approved and the officer has been interviewed by the appropriate investigator, the investigator will show the member the body-worn camera video. The peace officer may be given the opportunity to provide additional information to supplement his or her statement and may be asked additional questions by the investigators. If this results in a modified report, both of the reports shall be provided to all parties to a criminal or administrative investigation.

(b) (±) In addition to subdivision (a), a law enforcement agency shall consider the following guidelines when adopting a body-worn camera policy:

(1) A peace officer equipped with a body-worn camera shall activate the camera when responding to calls for assistance and when performing law enforcement activities in the field, including, but not limited to, traffic or pedestrian stops, pursuits, arrests, searches, seizures, interrogations, and any other investigative or enforcement encounters in the field.

~~(2) Peace officers~~ *A peace officer shall test ensure that a body-worn-camera camera is fully functional, including, but not limited to, ensuring that the camera can be turned on and off and record video and audio, and that the camera is properly charged, prior to going in to field activities and ensure the unit is properly charged, into the field. A peace officer shall not violate a person's reasonable expectation of privacy when ensuring that a body-worn camera is fully functional pursuant to this paragraph.*

~~(3) Peace officers~~ *A peace officer wearing a body-worn camera shall position the camera on their his or her chest, head, shoulder, collar, or any area above the mid-torso of his or her uniform to facilitate optimum recording field of view.*

~~(e)(1)~~ **(4)** Both video and audio recording functions of a body-worn-camera camera shall be activated when an officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a police officer and a member of the public. During encounters *an encounter* with a member of the public, the officer shall notify the member of the public that the body-worn camera is recording, and shall not deactivate the body-worn camera ~~shall not be deactivated~~ until the conclusion of the encounter.

~~(2) (5) Officers~~ *An officer may stop recording when an arrestee is secured inside a fixed place of detention, as defined in paragraph (3) of subdivision (g) of Section 859.5.*

~~(3) The following shall apply during any interview of a suspect or witness:~~

~~(A) (6) Peace officers~~ *A peace officer shall record any interview of a suspect or witness in its entirety, unless subdivision (d) applies.*

~~(B) (7) When recording interviews of a suspect or witness, peace officers~~ *a peace officer shall, prior to the interview, record any notification of rights, including, but not limited to, where applicable, inform the suspect or witness of his or her rights under Miranda v. Arizona (1966) 384 U.S. 436.*

~~(d) (1) A peace officer shall not operate a body-worn camera under the following circumstances:~~

~~(A) In a hospital emergency room, when it would violate the expectation of privacy of patients. a patient.~~

~~(B) During an ambulance response to an accident or illness where victims are the victim is not involved in any criminal activity.~~

~~(C) Situations where recording would risk the safety of a confidential informant or undercover peace officer.~~

~~(D) During protests or demonstrations.~~

~~(2) Under the following circumstances, operation *Operation* of a body worn camera shall begin with the officer providing on camera notice to persons *a person being* recorded that a body worn camera is recording video, and provide the persons *person* with the option to request that the body worn camera be turned off: *off under the following circumstances:*~~

~~(A) When the subject of the recording is a victim of rape, incest, domestic violence, and other forms of domestic or sexual harm.~~

~~(B) (i) When an officer is at a private residence without a warrant and in a nonemergency situation.~~

~~(ii)~~

~~(3) (8) In the event of contradicting requests made by a homeowner *homeowner, occupant,* or renter, **to stop recording the encounter**, the contradicting requests shall be recorded on video and the peace officer shall continue to operate and record the encounter.~~

~~(e) (1) *Peace* ~~A peace~~ officer shall only use the body worn camera systems issued and approved by the law enforcement agency that employs him or her for official police duties.~~

~~(2) Unauthorized use, duplication, or distribution of body worn camera files are prohibited. *Peace* officers ~~A peace~~ officer shall not make copies of any body worn camera file for their *his* or *her* personal use and are prohibited from using *or use* a recording device such as a phone camera or secondary video camera to record *a* body worn camera files. *file*.~~

~~(3) All recorded media, images, and audio from body worn cameras are property of their respective law enforcement agency, and shall not be copied, released, or disseminated in any form or manner outside the parameters of this section without the written consent of the head of the agency, unless otherwise authorized by law.~~

~~(4) *Peace* officers~~

~~(3) (9) *A Peace officer* shall not remove, dismantle, or tamper with any hardware or software components or parts of body worn cameras. *a body-worn camera*.~~

~~(5) *Peace* officers~~

~~(4) (10) *A peace officer* shall not use body-worn camera functions, when there is no investigatory interaction with a member of the public, to record any personal conversation of or with another agency member or employee without the permission of the recorded member or employee.~~

~~(f) (1) (11) ~~Peace~~ officers ~~A peace~~ officer shall not use *a* body-worn cameras *camera* to record non-work related activity or to record in places where a reasonable expectation of privacy exists.~~

(2) (12) A law enforcement agency or law enforcement officer shall not allow a computerized facial recognition program or application to be used with a body-worn camera or a recording made by a body-worn camera unless the use has been authorized by a warrant issued by a court.

(13) When safe and practical, an on-scene supervisor may retrieve a body-worn camera from an officer. The supervisor shall be responsible for ensuring the camera data is uploaded into the desired data processing and collection method.

~~(3) (c) Nothing in this section shall~~ *This section does not* require a peace officer, in a public venue, to cease recording an event, situation, or circumstance solely at the demand of the a citizen.

~~(g)(1) Unless paragraph (2) or (3) applies, a law enforcement agency shall retain video and audio recorded by a body worn camera for a minimum of one year, after which it will be erased, destroyed, or recycled pursuant to Section 34090.6 of the Government Code.~~

~~(2) A law enforcement agency shall retain video and audio recorded by a body-worn camera under this section for 3 years under any of the following situations:~~

~~(A) The recording is of an incident involving the use of force by a peace officer.~~

~~(B) The recording is of an incident that leads to the detention or arrest of an individual.~~

~~(C) The recording is relevant to a formal or informal complaint against a law enforcement officer or a law enforcement agency.~~

~~(3) If evidence that may be relevant to a criminal prosecution is obtained from a recording made by a body worn camera under this section, the law enforcement agency shall retain the recording for any time in addition to that specified in paragraphs (1) and (2), and in the same manner as is required by law for other evidence that may be relevant to a criminal prosecution.~~

~~(h)~~

~~(g) Each law enforcement agency, subject to the requirements of this section, shall conspicuously post its policies and procedures regarding body-worn cameras on its Internet Web site.~~

~~(i)~~

~~(h) (1) Peace officers A peace officer may only review their his or her body worn camera video only after making their his or her initial statement and report in an administrative or criminal inquiry or investigation.~~

~~(2) When safe and practical, an on-scene supervisor may retrieve a body-worn camera from an officer. The supervisor shall be responsible for assuring *ensuring that* the camera ~~date~~ *data* is uploaded into the desired data processing and collection method.~~

(+)

~~(i) (d)~~ (1) Any request from within a law enforcement agency for recordings from a body-worn camera from that agency shall be completed by the system administrator with the approval of the head of the agency.

(2) All other requests *for recordings from a body-worn camera* shall be processed in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

Date of Hearing: April 14, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 84 (Gatto) – As Introduced January 6, 2015
As Proposed to be Amended in Committee

REVISED

SUMMARY: Expands the collection of DNA samples to include persons convicted of specified misdemeanors. Authorizes samples collected during felony arrests to be forwarded to Department of Justice (DOJ) upon a judicial finding of probable cause. Allows law enforcement to access publicly available databases. Specifically, **this bill:**

- 1) Requires adults who have been convicted of specified serious misdemeanors to provide DNA samples.
- 2) Requires that DNA samples obtained during an arrest on a felony not be sent to Department of Justice for analysis until after a judicial determination of probable cause, operative if the California Supreme Court upholds the case of *People v. Buza*, review granted February 18, 2015, S223698.
- 3) Establishes procedure for a person's DNA sample and searchable database profile to be expunged if the case is dismissed, or the accused is acquitted, or otherwise exonerated, and the person has no past qualifying offense, without the requirement of an application from the person, operative if the California Supreme Court upholds the case of *People v. Buza*, review granted February 18, 2015, S223698. If *Buza* is upheld, any of the following apply.
 - a) Law enforcement has not received notice that a court has found probable cause for a qualifying offense. Or if the charges which served as the basis for including the DNA profile in the state's DNA Database and Data Bank Identification Program have been dismissed by to adjudication by a trier of fact, in which case the district attorney shall submit a letter to the Department of Justice as soon as these conditions have been met.
 - b) The underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed, in which case the court shall forward its order to the Department of Justice upon disposition of the case.
 - c) The person has been found factually innocent of the underlying offense, in which case the court shall forward its order to the Department of Justice upon disposition of the case.
 - d) The defendant has been found not guilty or the defendant has been acquitted of the underlying offense, in which case the court shall forward its order to the Department of Justice upon disposition of the case.

- 4) Allows law enforcement agency to use any publicly available database, excluding any non CODIS law enforcement databases, if (1) the case involves a homicide or a sexual assault involving force; (2) the case is unsolved and all investigative leads have been exhausted; (3) the law enforcement agency must review non-forensic information in order to identify additional evidence bearing on relatedness.

EXISTING LAW:

- 1) Requires the following persons provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis.
 - a) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile where a court has found that they have committed any felony offense. (Pen. Code, § 296, subd. (a)(1).)
 - b) Any adult person who is arrested for or charged with a felony offense. (Pen. Code, § 296, subd. (a)(2)(C).)
 - c) Any person, including any juvenile, who is required to register as a sex offender or arson offender because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense. (Pen. Code, § 296, subd. (a)(3).)
- 2) The term “felony” includes an attempt to commit the offense. (Pen. Code, § 296, subd. (a)(4).)
- 3) Allows the collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense. (Pen. Code, § 296, subd. (a)(5).)
- 4) Requires submission of specimens, samples, and print impressions as soon as administratively practicable by qualified persons and shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles (Pen. Code, § 296, subd. (c).)
 - a) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender. (Pen. Code, § 296, subd. (c)(1).)
 - b) Any person who is designated a mentally ordered offender. (Pen. Code, § 296, subd. (c)(2).)
 - c) Any person found to be a sexually violent predator. (Pen. Code, § 296, subd. (c)(3).)
- 5) Specifies that the court shall inquire and verify, prior to final disposition or sentencing in the case, that the specimens, samples, and print impressions have been obtained and that this fact

is included in the abstract of judgment or dispositional order in the case of a juvenile. (Pen. Code, § 296, subd. (f).)

- 6) Provides that failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements to provide samples. (Pen. Code, § 296, subd. (f).)
- 7) Provides that The Department of Justice(DOJ), through its DNA Laboratory, is responsible for the management and administration of the state's DNA and Forensic Identification Database and Data Bank Program and for liaising with the Federal Bureau of Investigation (FBI) regarding the state's participation in a national or international DNA database and data bank program such as the Combined DNA Index System (CODIS) that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide. (Pen. Code, § 295, subd. (g).)
- 8) Provides that DOJ can perform DNA analysis, other forensic identification analysis, and examination of palm prints pursuant to the Act only for identification purposes. (Pen. Code, § 295.1, subds. (a) & (b).)
- 9) Provides that the DOJ DNA Laboratory is to serve as a repository for blood specimens, buccal swab, and other biological samples collected and is required to analyze specimens and samples and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following (Pen. Code, § 295.1, subd. (c).):
 - a) Forensic casework and forensic unknowns. (Pen. Code, § 295.1, subd. (c)(1).)
 - b) Known and evidentiary specimens and samples from crime scenes or criminal investigations. (Pen. Code, § 295.1, subd. (c)(2).)
 - c) Missing or unidentified persons. (Pen. Code, § 295.1, subd. (c)(3).)
 - d) Persons required to provide specimens, samples, and print impressions. (Pen. Code, § 295.1, subd. (c)(4).)
 - e) Legally obtained samples. (Pen. Code, § 295.1, subd. (c)(5).)
 - f) Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control. (Pen. Code, § 295.1, subd. (c)(6).)
- 10) States that all DNA and forensic identification profiles and other identification information retained by DOJ pursuant to the Act are exempt from any law requiring disclosure of information to the public and are confidential except as otherwise provided in the Act. (Pen. Code, § 299.5, subd. (a).)
- 11) Provides that, except to the defense counsel, upon court order, of a defendant whose DNA and other forensic identification information were developed pursuant to the Act, DOJ and local public DNA laboratories shall not otherwise be compelled in a criminal or civil proceeding to provide any DNA profile or forensic identification database or data bank

information or its computer database program software or structures to any person or party seeking such records or information whether by subpoena, discovery, or other procedural device or inquiry. (Pen. Code, § 299.5, subd. (h).)

- 12) Punishes as an alternate misdemeanor/felony any person who knowingly uses an offender specimen, sample, or DNA profile collected pursuant to the Act for other than criminal identification or exclusion purposes, or for other than the identification of missing persons, or who knowingly discloses DNA or other forensic identification information developed as specified to an unauthorized individual or agency, for other than criminal identification or exclusion purposes, or for the identification of missing persons, by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison for 16 months, or two or three years. (Pen. Code, § 299.5, subd. (i)(1)(A).)
- 13) Specifies that it is not a violation of the above provision for the DOJ DNA Laboratory, or an organization retained as a DOJ agent, or a local public laboratory to use anonymous records or criminal history information obtained pursuant to the Act for training, research, statistical analysis of populations, quality assurance, or quality control. (Pen. Code, § 299.5, subd. (m).)
- 14) Provides that the Act does not prohibit DOJ, in its sole discretion, from the sharing or disseminating of population database or data bank information, DNA profile or forensic identification database or data bank information, analytical data and results generated for forensic identification database and data bank purposes, or protocol and forensic DNA analysis methods and quality assurance or quality control procedures with any third party that DOJ deems necessary to assist the department's crime laboratory with statistical analyses of population databases, or the analyses of forensic protocol, research methods, or quality control procedures, or to assist in the recovery or identification of human remains for humanitarian purposes, including identification of missing persons. (Pen. Code, § 299.6, subd. (a)(5).)
- 15) Specifies the Director of Corrections, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, buccal swab samples, and thumb and palm print impressions were collected send them promptly to the Department of Justice.(Pen. Code, § 298.)
- 16) Requires the DNA Laboratory of DOJ to establish procedures for entering data bank and database information. (Cal. Penal Code § 298(b)(6).)
- 17) Specifies that a person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her DNA specimen and sample destroyed and searchable database profile expunged from the data bank program if the person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Data Bank Program and there otherwise is no legal basis for retaining the specimen or sample or searchable profile. (Cal. Pen. Code § 299, subd. (b).)
 - a) Following arrest, no accusatory pleading has been filed within the applicable period allowed by law charging the person with a qualifying offense as set forth in subdivision

- (a) of Section 296 or if the charges which served as the basis for including the DNA profile in the state's DNA Database and Data Bank Identification Program have been dismissed prior to adjudication by a trier of fact (Pen. Code, § 299, subd.(b)(1).); or
 - b) The underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed (Pen. Code, § 299, subd.(b)(2).); or,
 - c) The person has been found factually innocent of the underlying offense pursuant to Section 851.8, or Section 781.5 of the Welfare and Institutions Code (Pen. Code, § 299, subd.(b)(3).); or,
 - d) The defendant has been found not guilty or the defendant has been acquitted of the underlying offense. (Pen. Code, § 299, subd.(b)(4).)
- 18) Requires the person requesting the data bank entry to be expunged send a copy of his or her request to the trial court of the county where the arrest occurred, or that entered the conviction or rendered disposition in the case, to the DNA Laboratory of the Department of Justice, and to the prosecuting attorney of the county in which he or she was arrested or, convicted, or adjudicated, with proof of service on all parties. The court has the discretion to grant or deny the request for expungement. The denial of a request for expungement is a nonappealable order and shall not be reviewed by petition for writ. (Pen. Code, § 299, subd. (c)(1).)
- 19) Requires DOJ destroy a specimen and sample and expunge the searchable DNA database profile pertaining to the person who has no present or past qualifying offense of record upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following (Pen. Code, § 299, subd. (c)(2).):
- a) The written request for expungement pursuant to this section. (Pen. Code, § 299, subd.(c)(2)(A).);
 - b) A certified copy of the court order reversing and dismissing the conviction or case, or a letter from the district attorney certifying that no accusatory pleading has been filed or the charges which served as the basis for collecting a DNA specimen and sample have been dismissed prior to adjudication by a trier of fact, the defendant has been found factually innocent, the defendant has been found not guilty, the defendant has been acquitted of the underlying offense, or the underlying conviction has been reversed and the case dismissed. (Pen. Code, § 299, subd.(c)(2)(B).)
 - c) Proof of written notice to the prosecuting attorney and the Department of Justice that expungement has been requested. (Pen. Code, § 299, subd.(c)(2)(C).)
 - d) A court order verifying that no retrial or appeal of the case is pending, that it has been at least 180 days since the defendant or minor has notified the prosecuting attorney and the Department of Justice of the expungement request, and that the court has not received an objection from the Department of Justice or the prosecuting attorney . (Pen. Code, § 299, subd.(c)(2)(D).)

- 20) States that the Department of Justice shall destroy not any specimen or sample collected from the person and any searchable DNA database profile pertaining to the person, if department determines that the person is subject to the provisions of this chapter because of a past qualifying offense of record or is or has otherwise become obligated to submit a blood specimen or buccal swab sample as a result of a separate arrest, conviction, juvenile adjudication, or finding of guilty or not guilty by reason of insanity for an offense described in subdivision (a) of Section 296, or as a condition of a plea. (Pen. Code, § 299, subd. (d).)
- 21) The Department of Justice is not required to destroy analytical data or other items obtained from a blood specimen or saliva, or buccal swab sample, if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed or otherwise compromised. (Pen. Code, § 299, subd. (d).)
- 22) States that a judge is not authorized to relieve a person of the separate administrative duty to provide specimens, samples, or print impressions required, including reduction to a misdemeanor (Cal. Penal Code § 17.), or dismissal following conviction. (Cal. Penal Code §§ 1203.4, 1203.4a.) (Cal. Penal Code § 299(f).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 84 will ensure that California has a back-up DNA collection process in place, while the California Supreme Court considers *People v. Buza*. DNA collection from felony arrestees was halted during the months between the lower court's decision and the California Supreme Court granting review of the *Buza* decision and AB 84 seeks to ensure that there is a system for DNA collection from felony arrestees in place should the California Supreme Court uphold the lower court's decision. AB 84 would provide for DNA collection of those charged with a serious felony (rather than every felony, as is currently being decided in the *Buza* case), thus furthering the voters' intent in passing Proposition 69 and creating parity between California's DNA collection laws and those upheld by the US Supreme Court. It strikes a careful balance by enhancing law enforcement's ability to fully utilize the tools necessary to solve crimes, while ensuring for the protection of Californians' constitutional rights. DNA testing is crucial to our ability to solve crimes, and AB 84 strives to make sure that best practices are implemented, the constitution is respected, the innocent are exonerated, and the guilty are brought to justice."
- 2) ***People v. Buza*.** Presently pending before the California Supreme Court is *People v. Buza*, review granted February 18, 2015, S223698. At issue in *Buza* was the legality of California's DNA collection from arrestees on felony offenses. (Proposition 69 (2004).) The *Buza* court found the California DNA scheme unconstitutional. In finding Proposition 69 invalid, the Appellate Court focused on the fact that the California Supreme Court has found that article I, section 13, of the California Constitution as imposing a "more exacting standard" than the equivalent language found in the Fourth Amendment of the U.S. Constitution. *People v. Ruggles* (1985) 39 Cal.3d 1, 11-12, *People v. Brisendine* (1975) 13 Cal.3d 528, 545. The court in *Buza* held that the DNA Act, to the extent it requires felony arrestees to submit to a DNA sample for law enforcement analysis and inclusion in the state

and federal DNA databases, without independent suspicion, a warrant, or a judicial or grand jury determination of probable cause, unreasonably intrudes on the arrestee's expectation of privacy and is invalid under the California Constitution. The language of article I, section 13, of the California Constitution mirrors the language contained in the Fourth Amendment of the U.S. Constitution regarding the right to be free from unreasonable search and seizure.

The court in *Buza* stated, “. . . , the fact that DNA is collected and analyzed immediately after arrest means that some of the arrestees subjected to collection will never be charged, much less convicted, of any crime—and, therefore, that the governmental interest in DNA collection is inapplicable while the privacy interest is effectively that of an ordinary citizen. The absence of automatic expungement procedures increases the privacy intrusion because DNA profiles and samples are likely to remain available to the government for some period of time after the justification for their collection has disappeared, potentially indefinitely. And the fact that familial DNA searches are not prohibited means that the act would permit intrusion into the privacy interests of arrestees' biological relatives if the DOJ were to alter its current policy of not using arrestees' DNA for such searches.”

The *Buza* case is under review by the California Supreme Court. Because the case is under review it has no authority, or value as precedent. As such, Proposition 69 continues to be the law in California. DNA samples continue to be taken, stored, and tested as in the manner laid out by Proposition 69. It is unclear when the Supreme Court will issue a decision in the *Buza* case. The case is currently being briefed. The Supreme Court has wide latitude in setting the briefing schedule and establishing a date for argument.

“In California, the burdened group includes not only those ultimately acquitted of criminal conduct but also those never even charged. The percentage of arrestees potentially affected in the latter way is not small: Statistics published by the DOJ indicate that in 2012, 62 percent of felony arrestees who were not ultimately convicted—almost 20 percent of total felony arrestees—were never even charged with a crime. *People v. Buza* (2014) 231 Cal.app.4th 1446,187 (citing *Crime in California*, California DOJ (2012) at 49.)

- 3) **California DNA Database:** The profile derived from the DNA sample is uploaded into the state's DNA databank, which is part of the national Combined DNA Index System (CODIS), and can be accessed by local, state and federal law enforcement agencies and officials. When a DNA profile is uploaded, it is compared to profiles contained in the Convicted Offender and Arrestee Indices; if there is a "hit," the laboratory conducts procedures to confirm the match and, if confirmed, obtains the identity of the suspect. The uploaded profile is also compared to crime scene profiles contained in the Forensic Index; again, if there is a hit, the match is confirmed by the laboratory. CODIS also performs weekly searches of the entire system. In CODIS, the profile does not include the name of the person from whom the DNA was collected or any case-related information, but only a specimen identification number, an identifier for the agency that provided the sample, and the name of the personnel associated with the analysis. CODIS is a massive computer system which connects federal, state, and local DNA databanks. CODIS is also the name of the related computer software program. CODIS's national component is the National DNA Index System (NDIS), the receptacle for all DNA profiles submitted by federal, state, and local forensic laboratories. DNA profiles typically originate at the Local DNA Index System (LDIS), then migrate to the State DNA Index System (SDIS), containing forensic profiles analyzed by local and state laboratories, and then to NDIS.

- 4) **Proposition 69:** Proposition 69 was passed by the voters in 2004. That proposition expanded the categories of people required to provide DNA samples for law enforcement identification analysis to include any adult person arrested or charged with any felony offense. The language of the proposition included a Section V related to amendments to the proposition which states:

The provisions of this measure may be amended by a statute that is passed by each house of the Legislature and signed by the Governor. All amendments to this measure shall be to further the measure and shall be consistent with its purposes to enhance the use of DNA identification evidence for the purpose of accurate and expeditious crime solving and exonerating the innocent.

- 5) **Proposed Amendments:** The introduced version of the bill would have gone into effect immediately. The proposed amendments includes language which makes the requirement of a probable finding prior to a DNA sample being forwarded to DOJ dependent on a ruling by the California Supreme Court to uphold *People v. Buza*, review granted February 18, 2015, S223698. The proposed amendments contain the same contingency language regarding *Buza* with respect to the implementation of the DNA expungement process described in the bill. The proposed amendments narrows the list of misdemeanors which would require a DNA sample to be provided upon conviction. The requirement for DNA to be provided upon conviction of the specified misdemeanors would be effective upon enactment.

Arguments in support and opposition were submitted prior to proposed amendments.

- 6) **Argument in Support:** According to *Law Center to Prevent Gun Violence*, “Under existing California law, the DNA Act requires a person who has been convicted of a felony offense to provide buccal swab samples, right thumbprints, a full palm print impression of each hand, and any blood specimens or other biological samples required for law enforcement identification analysis

“AB 84 would, among other things, extend these requirement to any person who has been convicted of a misdemeanor to which the 10-year prohibition on the possession of a firearm applies. These misdemeanor offenses include crimes such as sexual battery, assault, stalking, and threatening public officials. The use of DNA data provides law enforcement with a valuable tool for identifying criminal offenders, and it makes sense to extend the collection of this data to individuals who have committed crimes serious enough to subject them to the 10-year firearm prohibition.”

- 7) **Argument in Opposition:** According to *California Attorneys for Criminal Justice*, “This bill proposes collecting DNA from people arrested for minor crimes, like Penal code Section 240. It also proposes collecting DNA from people merely arrested, rather than convicted of crimes. While your office’s talking points on this bill states that the bill is in response to “*People v. Buza*, and seeks to bring California law into line with the U.S. Supreme Court’s decision in *Maryland v. King*, these talking points are outdated, and misguided, in several respects.

“First, The *Buza* decision is currently under review by the California Supreme Court. Any law passed prior to the ultimate outcome in *Buza* is premature, as the final decision in *Buza* could either eliminate the need for AB 84, or conflict with it.

“Secondly, *Maryland v. King* was a 5-4 decision. The Maryland law, which was narrowly upheld, allowed collection of DNA from people arrested in Maryland for a very narrow class of serious, violent felonies. By contrast, your bill seeks to collect DNA samples from California citizens merely arrested for very minor crimes, including a misdemeanor violation of Penal Code section 240, simple assault.

“The Maryland law requires that probable cause exist to arrest for one of the limited, serious violent felonies to which it applies. By contrast, in this state, any citizen may affect an arrest for a misdemeanor. Non-law enforcement citizens are not normally trained in determining probable cause – and presumably your bill would apply to misdemeanants arrested via citizen’s arrest.”

- 8) **Related Legislation:** AB-390 (Cooper), of the 2015 – 2016 legislative session. Would require that individuals, excluding juveniles, who are convicted of specified misdemeanors (drug and property crimes affected by Proposition 47) to provide DNA samples.

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United
Law Center to Prevent Gun Violence

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association
California State Sheriffs’ Association
Firearms Policy Coalition
Legal Services for Prisoners with Children

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

Amendments Mock-up for 2015-2016 AB-84 (Gatto (A))

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

Mock-up based on Version Number 99 - Introduced 1/6/15
Submitted by: David Billingsley, Assembly Public Safety Committee

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

SECTION 1. It is the intent of the Legislature to limit the analysis of buccal swab samples and blood samples taken from felony arrestees for purposes of DNA analysis only to the extent required by the decision in *People v. Buza* (2014) 180 Cal Rptr. 3d753, and to further the purposes of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, Proposition 69, approved by the voters at the November 2, 2004, statewide general election, in light of that decision.

SEC. 2. It is the intent of the Legislature to allow buccal swab samples to be taken for DNA analysis as a condition of a plea or reduction or dismissal of charges, provided that all uses of the DNA sample have been disclosed to the defendant in writing, that consent has been obtained in writing, and that the defendant has signed a written agreement allowing his or her buccal swab sample or blood sample to be taken for DNA analysis. *Buccal swab samples taken as a condition of plea or reduction or dismissal of charges should be done on the basis of individualized consideration.*

SEC. 3. Section 295.1 of the Penal Code is amended to read:

295.1. (a) The Department of Justice shall perform DNA analysis and other forensic identification analysis pursuant to this chapter only for identification purposes.

(b) The Department of Justice Bureau of Criminal Identification and Information shall perform examinations of palm prints pursuant to this chapter only for identification purposes.

(c) The DNA Laboratory of the Department of Justice shall serve as a repository for blood specimens and buccal swab and other biological samples collected, and shall analyze specimens

and samples, and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following:

- (1) Forensic casework and forensic unknowns.
 - (2) Known and evidentiary specimens and samples from crime scenes or criminal investigations.
 - (3) Missing or unidentified persons.
 - (4) Persons required to provide specimens, samples, and print impressions under this chapter.
 - (5) Legally obtained samples.
 - (6) Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control.
- (d) The computerized data bank and database of the DNA Laboratory of the Department of Justice shall include files as necessary to implement this chapter.
- ~~(e) Nothing in this section shall be construed as requiring~~ *This section does not require* the Department of Justice to provide specimens or samples for quality control or other purposes to those who request specimens or samples.
- (f) Submission of samples, specimens, or profiles for the state DNA Database and Data Bank Program shall include information as required by the Department of Justice for ensuring search capabilities and compliance with National DNA Index System (NDIS) standards.
- ~~(g) DNA specimens collected from a person who has been convicted of an offense specified in subdivision (a) of Section 296 may be used to conduct familial searches of the DNA Database.~~

SEC. 4. Section 296 of the Penal Code is amended to read:

296. (a) The following persons shall provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required pursuant to this chapter for law enforcement identification analysis:

- (1) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense *or any person, excluding juveniles, who is convicted of or pleads guilty to a misdemeanor violation of Penal Code sections 136.1, 136.5, 171b, 186.28, 243(b),(c),(d), 243.4, 244.5, 245, 245.5, 417, 417.6, 422, 646.9, 25300, 32625, 26100(d)* or any person who is found not guilty by reason of insanity of any felony offense *or any adult found not guilty by reason of insanity for a misdemeanor offense listed in this paragraph*, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense ~~or a misdemeanor offense specified in Section 29805.~~

(2) Any adult person who is arrested for or charged with any of the following felony offenses:

(A) Any felony offense specified in Section 290 or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.

(B) Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.

(C) Commencing on January 1 ~~of the fifth year following enactment of the act that added this subparagraph, as amended, 2009~~, any adult person arrested or charged with any felony offense.

(3) Any person, including any juvenile, who is required to register under Section 290 or 457.1 because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense.

(4) The term “felony” as used in this subdivision includes an attempt to commit the offense.

(5) ~~Nothing in this chapter shall be construed as prohibiting~~ *This chapter does not prohibit* collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.

(b) The provisions of this chapter and its requirements for submission of specimens, samples and print impressions as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including ~~any a~~ sentence of death, life without the possibility of parole, or ~~any a~~ life or indeterminate term, or ~~any~~ other disposition rendered in the case of an adult or juvenile tried as an adult, or whether the person is diverted, fined, or referred for evaluation, and regardless of disposition rendered or placement made in the case of juvenile who is found to have committed any felony offense or is adjudicated under Section 602 of the Welfare and Institutions Code.

(c) The provisions of this chapter and its requirements for submission of specimens, samples, and print impressions as soon as administratively practicable by qualified persons as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:

(1) Any person committed to a state hospital or other treatment facility as a mentally disordered sex offender under *former* Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

(3) Any person found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(d) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the data bank and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subdivision (a).

(e) If at any stage of court proceedings the prosecuting attorney determines that specimens, samples, and print impressions required by this chapter have not already been taken from any person, as defined under subdivision (a) of Section 296, the prosecuting attorney shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, and print impressions required by law. However, a failure by the prosecuting attorney or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, and print impressions pursuant to this chapter.

(f) Prior to final disposition or sentencing in the case the court shall inquire and verify that the specimens, samples, and print impressions required by this chapter have been obtained and that this fact is included in the abstract of judgment or dispositional order in the case of a juvenile. The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter.

However, failure by the court to verify specimen, sample, and print impression collection or enter these facts in the abstract of judgment or dispositional order in the case of a juvenile shall not invalidate an arrest, plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 5. Section 298 of the Penal Code is amended to read:

298. (a) ~~The Director of Corrections~~ *Secretary of the Department of Corrections and Rehabilitation*, or the Chief Administrative Officer of the detention facility, jail, or other facility at which the blood specimens, buccal swab samples, and thumb and palm print impressions were collected shall cause these specimens, samples, and print impressions to be forwarded promptly to the Department of Justice, *except that a blood specimen or buccal swab sample taken from a person arrested for the commission of a felony as specified in paragraph (2) of subdivision (a) of Section 296 shall be forwarded to the Department of Justice after a judicial determination of probable cause to believe the person has committed the offense for which he or she was arrested*

has been made pursuant to Section 825. The specimens, samples, and print impressions shall be collected by a person using a Department of Justice approved collection kit and in accordance with the requirements and procedures set forth in subdivision (b).

(b) (1) The Department of Justice shall provide all blood specimen vials, buccal swab collectors, mailing tubes, labels, and instructions for the collection of the blood specimens, buccal swab samples, and thumbprints. The specimens, samples, and thumbprints shall thereafter be forwarded to the DNA Laboratory of the Department of Justice for analysis of DNA and other forensic identification markers.

Additionally, the Department of Justice shall provide all full palm print cards, mailing envelopes, and instructions for the collection of full palm prints. The full palm prints, on a form prescribed by the Department of Justice, shall thereafter be forwarded to the Department of Justice for maintenance in a file for identification purposes.

(2) The withdrawal of blood shall be performed in a medically approved manner. Only health care providers trained and certified to draw blood may withdraw the blood specimens for purposes of this section.

(3) Buccal swab samples may be procured by law enforcement or corrections personnel or other individuals trained to assist in buccal swab collection.

(4) Right thumbprints and a full palm print impression of each hand shall be taken on forms prescribed by the Department of Justice. The palm print forms shall be forwarded to and maintained by the Bureau of Criminal Identification and Information of the Department of Justice. Right thumbprints also shall be taken at the time of the collection of samples and specimens and shall be placed on the sample and specimen containers and forms as directed by the Department of Justice. The samples, specimens, and forms shall be forwarded to and maintained by the DNA Laboratory of the Department of Justice.

(5) The law enforcement or custodial agency collecting specimens, samples, or print impressions is responsible for confirming that the person qualifies for entry into the Department of Justice DNA Database and Data Bank Program prior to collecting the specimens, samples, or print impressions pursuant to this chapter.

(6) The DNA Laboratory of the Department of Justice is responsible for establishing procedures for entering data bank and database information.

(c) (1) Persons authorized to draw blood or obtain samples or print impressions under this chapter for the data bank or database shall not be civilly or criminally liable either for withdrawing blood when done in accordance with medically accepted procedures, or for obtaining buccal swab samples by scraping inner cheek cells of the mouth, or thumb or palm print impressions when performed in accordance with standard professional practices.

(2) There is no civil or criminal cause of action against any law enforcement agency or the Department of Justice, or any employee thereof, for a mistake in confirming a person's or sample's qualifying status for inclusion within the database or data bank or in placing an entry in a data bank or a database.

(3) The failure of the Department of Justice or local law enforcement to comply with Article 4 or any other provision of this chapter shall not invalidate an arrest, plea, conviction, or disposition.

(d) This section shall only become operative if the California "Supreme Court rules to uphold the California Court of Appeal decision in People v. Buza (2014) 231 Cal.App.4th 1446 in regard to the provisions of Section 298 of the Penal code, as amended by Section 6 of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, Proposition 69, approved by the voters at the November 2, 2004, general election, in which case this section shall become inoperative immediately upon that ruling becoming final.

SEC. 6. Section 299 of the Penal Code is amended to read:

299. (a) A person whose DNA profile has been included in the data bank pursuant to this chapter shall have his or her DNA specimen and sample destroyed and searchable database profile expunged from the data bank program ~~pursuant to the procedures set forth in subdivision (b)~~ if the person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Data Bank Program and there otherwise is no legal basis for retaining the specimen or sample or searchable profile.

(b) Pursuant to subdivision (a), a person who has no past or present qualifying offense, and for whom there otherwise is no legal basis for retaining the specimen or sample or searchable profile, ~~may make a written request to~~ shall have his or her specimen and sample destroyed and searchable database profile expunged from the data bank program if *any of the following apply:*

~~(1) If within six months following arrest, no accusatory pleading has been filed within the applicable period allowed by law charging the person with the law enforcement agency that collected the DNA specimen and sample has not received notice to forward the DNA specimen or sample to the Department of Justice for inclusion in the state's DNA Database and Data Bank Identification Program pursuant to Penal Code section 298(a) following a determination of probable cause that the person committed a qualifying offense as set forth in subdivision (a) of Section 296, in which case the agency shall destroy the DNA specimen and sample. or if the charges which served as the basis for including the DNA profile in the state's DNA Database and Data Bank Identification Program have been dismissed prior to adjudication by a trier of fact, in which case the district attorney shall submit a letter to the Department of Justice as soon as these conditions have been met.~~

(2) The underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed; *in which case the court shall forward its order to the Department of Justice upon disposition of the case.*

(3) The person has been found factually innocent of the underlying offense pursuant to Section 851.8, or Section 781.5 of the Welfare and Institutions Code; *or, in which case the court shall forward its order to the Department of Justice upon disposition of the case.*

(4) The defendant has been found not guilty or the defendant has been acquitted of the underlying offense, *in which case the court shall forward its order to the Department of Justice upon disposition of the case.*

~~(c)(1) The person requesting the data bank entry to be expunged must send a copy of his or her request to the trial court of the county where the arrest occurred, or that entered the conviction or rendered disposition in the case, to the DNA Laboratory of the Department of Justice, and to the prosecuting attorney of the county in which he or she was arrested or, convicted, or adjudicated, with proof of service on all parties. The court has the discretion to grant or deny the request for expungement. The denial of a request for expungement is a nonappealable order and shall not be reviewed by petition for writ.~~

~~(2)~~

~~(c) Except as provided below in this section, the Department of Justice shall destroy a specimen and sample and expunge the searchable DNA database profile pertaining to the person who has no present or past qualifying offense of record upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following:~~

~~(A) The written request for expungement pursuant to this section.~~

~~(B)~~

~~(1) A certified copy of the court order reversing and dismissing the conviction or case, or a letter from the district attorney certifying that no accusatory pleading has been filed or the charges which served as the basis for collecting a DNA specimen and sample have been dismissed prior to adjudication by a trier of fact, the defendant has been found factually innocent, the defendant has been found not guilty, the defendant has been acquitted of the underlying offense, or the underlying conviction has been reversed and the case dismissed.~~

~~(C) Proof of written notice to the prosecuting attorney and the Department of Justice that expungement has been requested.~~

~~(D)~~

~~(2) A court order verifying that no retrial or appeal of the case is pending, that it has been at least 180 days since the defendant or minor has notified the prosecuting attorney and the Department of Justice of the expungement request, and that the court has not received an objection from the Department of Justice or the prosecuting attorney pending.~~

(d) Upon order from the court, the Department of Justice shall destroy any specimen or sample collected from the person and any searchable DNA database profile pertaining to the person, unless the department determines that the person is subject to the provisions of this chapter because of a past qualifying offense of record or is or has otherwise become obligated to submit a blood specimen or buccal swab sample as a result of a separate arrest, conviction, juvenile adjudication, or finding of guilty or not guilty by reason of insanity for an offense described in subdivision (a) of Section 296, or as a condition of a plea.

The Department of Justice is not required to destroy analytical data or other items obtained from a blood specimen or saliva, or buccal swab sample, if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed or otherwise compromised.

Any identification, warrant, probable cause to arrest, or arrest based upon a data bank or database match is not invalidated due to a failure to expunge or a delay in expunging records.

~~(e) Notwithstanding any other provision of law, the Department of Justice DNA Laboratory is not required to expunge DNA profile or forensic identification information or destroy or return specimens, samples, or print impressions taken pursuant to this section if the duty to register under Section 290 or 457.1 is terminated.~~

~~(f) Notwithstanding any other provision of law, including Sections 17, 1203.4, and 1203.4a, a judge is not authorized to relieve a person of the separate administrative duty to provide specimens, samples, or print impressions required by this chapter if a person has been found guilty or was adjudicated a ward of the court by a trier of fact of a qualifying offense as defined in subdivision (a) of Section 296, or was found not guilty by reason of insanity or pleads no contest to a qualifying offense as defined in subdivision (a) of Section 296.~~

(g) This section shall only become operative if the California Supreme Court rules to uphold the California Court of Appeal decision in People v. Buza (2014) 231 Cal.App.4th 1446 in regard to the provisions of Section 296 of the Penal code, as amended by Section 6 of the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, Proposition 69, approved by the voters at the November 2, 2004, general election, in which case this section shall become inoperative immediately upon that ruling becoming final.

SEC. 7. Section 300 of the Penal Code is amended to read:

300. ~~Nothing in this chapter shall~~ *This chapter does not* limit or abrogate any existing authority of law enforcement officers to take, maintain, store, and utilize DNA or forensic identification

markers, blood specimens, buccal swab samples, saliva samples, or thumb or palm print impressions for identification purposes. *A law enforcement agency may use any publicly available database, excluding any non CODIS law enforcement databases, if (1) The case involves a homicide or a sexual assault involving force; (2) the case is unsolved and all investigative leads have been exhausted; (3) the law enforcement agency must review non-forensic information in order to identify additional evidence bearing on relatedness.*

SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Date of Hearing: April 14, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 144 (Mathis) – As Amended March 26, 2015
As Proposed to be Amended in Committee

SUMMARY: Specifies that the fourth violation of illegal dumping on private property shall be a misdemeanor punishable by up to 30 days in the county jail.

EXISTING LAW:

- 1) States that it is unlawful to dump or cause to be dumped waste matter in or upon a public or private highway or road, including any portion of the right-of-way thereof, or in or upon private property into or upon which the public is admitted by easement or license, or upon private property without the consent of the owner, or in or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property. (Pen. Code, § 374.3, subd. (a).)
- 2) Provides it is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, rocks, concrete, asphalt, or dirt in or upon a private highway or road, including any portion of the right-of-way of the private highway or road, or private property, without the consent of the owner or a contractor under contract with the owner for the materials, or in or upon a public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property. (Pen. Code, § 374.3, subd. (b).)
- 3) States that a person violating dumping provisions is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation the law is a separate violation. (Pen. Code, § 374.3, subd. (c).)
- 4) Provides these provisions do not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies. (Pen. Code, § 374.3, subd. (d).)
- 5) Specifies a person convicted of dumping shall be punished by a mandatory fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars (\$750) nor more than three thousand dollars (\$3,000) upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this

subdivision shall be doubled. (Pen. Code, § 374.3, subd. (e).)

- 6) Provides that the court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property. (Pen. Code, § 374.3, subd. (f).)
- 7) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that a person convicted of a violation of this section pick up waste matter at a time and place within the jurisdiction of the court for not less than 12 hours. (Pen. Code, § 374.3, subd. (g).)
- 8) States that a person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in commercial quantities shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than six months and by a fine. The fine is mandatory and shall amount to not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000) upon a first conviction, not less than three thousand dollars (\$3,000) nor more than six thousand dollars (\$6,000) upon a second conviction, and not less than six thousand dollars (\$6,000) nor more than ten thousand dollars (\$10,000) upon a third or subsequent conviction.
- 9) Defines “commercial quantities” means an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard. This subdivision does not apply to the dumping of household waste at a person’s residence.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Under existing law, dumping in non-commercial quantities on private property is only an infraction and subject to a minor fine and no jail time. Illegal dumping on private property is a serious issue for property owners, law enforcement agencies, and communities as a whole. Dumpers impose significant clean-up costs upon the owners of the afflicted property. Dumping also poses a costly burden on law enforcement officials whom are called to respond when an incident occurs. Communities also suffer more than a nuisance as property values and revenues to local government suffer due to blight from dumping. While the costs and negative outcomes associated with illegal dumping on private property can be high, the penalties for offenders whom are apprehended are too minor to provide adequate deterrence from this behavior. This bill would increase the penalty for illegal dumping on private property in non-commercial quantities from an infraction to a misdemeanor, subject to stiffer fines and up to 30-days of jail time, to discourage illegal dumping."

- 2) **Clarification of No Repeat Misdemeanors:** Under existing law, provisions exist which state that each day that waste placed, deposited, or dumped in violation the law is a separate violation. (Pen. Code, § 374.3, subd. (c).) Under current law, this provision only applies to infractions. This bill specifically exempts the elevated misdemeanor provision for a fourth or subsequent violation from this provision. Therefore, under this bill for example, if waste were present on private property for and the defendant was guilty of three or more prior offenses, they would be charged with one misdemeanor rather than 30 misdemeanors. The bill does not change existing law in this respect. Persons charged with infractions may still be charged daily fines for the waste left on private property.

- 3) **Creates a New Misdemeanor:** This bill creates a new misdemeanor where there is currently an infraction penalty. Every fourth or subsequent violation of dumping waste on private property shall now be punishable by a misdemeanor penalty of up to 30 days in the county jail. As a result of imposing a misdemeanor penalty, this legislation will permit accused persons to apply for the aid of a public defender. Additionally, persons charged with misdemeanor offenses may demand a jury trial in Superior Court.

- 4) **Keeps Existing Fines in Place:** Under current law the existing fines for illegal, non-commercial, dumping are significant. The fines are on a graduated scale that increases for repeated violations of the law. The fines additionally include minimum mandatory fines. This committee generally does not create mandatory minimum fines because they infringe upon judicial discretion. The fine for the misdemeanor offense in this case does include a mandatory minimum fine of not less than \$750 and up to \$3,000. This fine is the existing fine imposed for a third or subsequent infraction. Therefore, the fine is not increasing as a result of this legislation.

- 5) **Penalty Assessments:** The amount spelled out in statute as a fine for violating a criminal offense are base figures, as these amounts are subject to statutorily-imposed penalty assessments, such as fees and surcharges. Assuming a defendant is fined the maximum fine of \$3,000 under Penal Code Section 502, the following penalty assessments would be imposed pursuant to the Government and Penal codes:

Base Fine:	\$3,000.00
Penal Code § 1464 assessment (\$10 for every \$10):	\$3,000.00
Penal Code § 1465.7 assessment (20% surcharge):	\$600.00
Penal Code § 1465.8 assessment (\$40 per criminal offense):	\$40.00
Government Code § 70372 assessment (\$5 for every \$10):	\$1,500.00
Government Code § 70373 assessment (\$30 for felony or misdemeanor offense):	\$30.00
Government Code § 76000 assessment (\$7 for every \$10):	\$2,100.00

Government Code § 76000.5 assessment (\$2 for every \$10):	\$600.00
Government Code § 76104.6 assessment (\$1 for every \$10):	\$300.00
Government Code § 76104.7 assessment (\$4 for every \$10):	\$1,200.00
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Fine with Assessments:	\$12,370.00*
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*In addition to the assessments detailed in the chart, the defendant could be subject to pay "actual administrative costs" related to his or her arrest and booking (Gov. Code, § 29550 et seq.) and victim restitution for damages impose by the court.

- 6) **The Proposed Amendments:** The bill, as introduced, made all illegal dumping on private property a misdemeanor penalty. As a result, all persons charged with these offenses would be permitted jury trials in Superior Court as opposed to routine infraction and fine offenses. This elevation triggers other ancillary rights, such as the right to a public defender if the person charged is indigent. The proposed amendments work with the existing graduated penalties for the offense. Under existing law there are graduated fines for a first, second, or third violation. As amended, this bill would impose a misdemeanor upon a fourth or subsequent violation of illegal dumping on private property. Local prosecutors would be more likely to prosecute these offenses, and the ancillary impacts of elevating an infraction to a misdemeanor are lessened because the body of people who could be charged with these offenses is much smaller. Additionally, this bill now targets serial illegal dumpers with stronger criminal penalties rather than people who engage in this conduct on a single occasion. The amendments removed all opposition from the bill.

- 7) **Prior Legislation:** AB 1992 (Canciamilla), Chapter 416, Statutes of 2006, imposed the graduated penalties and increased fines for second and third violations of illegal dumping offenses. AB 1992 went through the Assembly Committee on Natural Resources Committee and was not heard in the Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

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

WORKING COPY

BILL NUMBER: AB 144 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MARCH 26, 2015

INTRODUCED BY Assembly Member Mathis

JANUARY 13, 2015

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

SECTION 1. Section 374.3 of the Penal Code is amended to read:

374.3. (a) It is unlawful to dump or cause to be dumped waste matter in or upon a public highway or road, including any portion of the right-of-way thereof, or in or upon private property into or upon which the public is admitted by easement or license, or in or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property.

(b) It is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, rocks, concrete, asphalt, or dirt in or upon a private highway or road, including any portion of the right-of-way of the private highway or road, or private property, without the consent of the owner or a contractor under contract with the owner for the materials, or in or upon a public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property.

(c) A person violating subdivision (a) or (b) is guilty of an infraction. Each day that waste placed, deposited, or dumped in violation of subdivision (a) or (b) remains is a separate violation.

(d) This section does not restrict a private owner in the use of his or her own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies.

(e) A person convicted of a violation of subdivision (a) or (b) shall be punished by a mandatory fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars (\$750) nor more than three thousand dollars (\$3,000) upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled.

(f) The court may require, in addition to any fine imposed upon a conviction, that, as a condition of probation and in addition to any other condition of probation, a person convicted under this section remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property.

(g) Except when the court requires the convicted person to remove waste matter which he or she is responsible for dumping as a condition of probation, the court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that a person convicted of a violation of this section pick up waste matter

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at a time and place within the jurisdiction of the court for not less than 12 hours.

(h) (1) A person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of this section in commercial quantities shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than six months and by a fine. The fine is mandatory and shall amount to not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000) upon a first conviction, not less than three thousand dollars (\$3,000) nor more than six thousand dollars (\$6,000) upon a second conviction, and not less than six thousand dollars (\$6,000) nor more than ten thousand dollars (\$10,000) upon a third or subsequent conviction.

(2) "Commercial quantities" means an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard. This subdivision does not apply to the dumping of household waste at a person's residence.

(i) A person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter upon private property, including on any private highway or road, without the consent of the owner ~~is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than 30 days and by a fine.~~ **shall be punished by a fine.** The fine is mandatory and shall amount to not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000) upon a first conviction, not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500) upon a second conviction, and not less than seven hundred fifty dollars (\$750) nor more than three thousand dollars (\$3,000) upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped includes used tires, the fine prescribed in this subdivision shall be doubled. Each day that waste placed, deposited, or dumped remains is a separate violation. **Upon a fourth or subsequent conviction, the person is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than 30 days and by a fine of not less than seven hundred fifty dollars (\$750) nor more than three thousand dollars (\$3,000). For the fourth or subsequent violation the provision requiring that each day that waste placed, deposited, or dumped remains is a separate violation shall not apply.**

(j) For purposes of this section, "person" means an individual, trust, firm, partnership, joint stock company, joint venture, or corporation.

(k) Except in unusual cases where the interests of justice would be best served by waiving or reducing a fine, the minimum fines provided by this section shall not be waived or reduced.

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

Date of Hearing: April 14, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 534 (Linder) – As Introduced February 23, 2015

SUMMARY: Requires the court to suspend the driving privilege for six months of any person who pleads guilty or nolo contendere to hit and run with property damage if the charge is a substitute or in satisfaction of the charge of hit and run resulting in injury or death. Specifically, **this bill:**

- 1) Provides that if the prosecution agrees to a plea of guilty or nolo contendere to a charge of leaving the scene of an accident resulting in property damage without stopping and properly identifying himself or herself, in satisfaction of, or a substitute for the charge of leaving the scene of an accident resulting in injury or death without stopping and properly identifying himself or herself, the prosecutor shall state for the record the factual basis for the satisfaction or substitution, including whether the defendant was involved in accident in which a person was struck.
- 2) States that if the court accepts the defendant's plea of guilty or nolo contendere to a charge of leaving the scene of an accident resulting in property damage without stopping and properly identifying himself or herself, and the prosecutor's states that the driver of the vehicle was involved in an accident where a person was struck, the court shall immediately suspend the convicted driver's privilege to operate a motor vehicle for a period of six months.

EXISTING LAW:

- 1) Provides that a court may suspend, for not more than six months, the privilege of a person to operate a motor vehicle upon conviction of any of the following offenses:
 - a) Failure of a driver involved in an accident where property is damaged to stop and exchange specified information;
 - b) Reckless driving proximately causing bodily injury;
 - c) Failure of a driver to stop at a railroad crossing as required;
 - d) Evading or fleeing from a peace officer in a motor vehicle or upon a bicycle; and,
 - e) Knowingly causing or participating in a vehicular collision, or any other vehicular accident, for the purpose of presenting or causing to be presented any false or fraudulent insurance claim. (Veh. Code, §13201.)
- 2) States that the Department of Motor Vehicles (DMV) immediately shall revoke the privilege of a person to operate a motor vehicle upon receipt of a duly certified abstract of the record

of a court showing that the person has been convicted of any of the following crimes or offenses:

- a) Failure of the driver of a vehicle involved in an accident resulting in injury or death to stop or otherwise comply, as specified;
 - b) A felony in which a motor vehicle is used, except as specified; and,
 - c) Reckless driving causing bodily injury. (Veh. Code, § 13350, subd. (a).)
- 3) Provides that the driver of any vehicle involved in an accident resulting in damage to any property, including a vehicle, shall immediately stop the vehicle and exchange information, as specified, or leave in a conspicuous place on the vehicle or other property damaged written notice giving the name and address of the driver of the vehicle involved. The failure to comply with these requirements is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed \$1,000, or by both a fine and imprisonment. (Veh. Code, § 20002.)
- 4) Requires the driver of any vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in the death of any person to immediately stop the vehicle at the scene of the accident and to fulfill specified requirements. The failure to comply is punishable by imprisonment in the state prison for 16 months, two, or three years or, by imprisonment in a county jail not to exceed one year, or by a fine of not less than \$1,000 nor more than \$10,000, or by both a fine and imprisonment. If the accident results in death or permanent, serious injury, the offense is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by a fine of not less than \$1,000 nor more than \$10,000, or by both a fine and imprisonment. (Veh. Code, § 20001, subds. (a) & (b).)
- 5) Provides that a person who flees the scene of the crime after committing vehicular manslaughter with gross negligence or vehicular manslaughter while intoxicated, upon conviction for that offense, in addition and consecutive to the punishment prescribed, shall be punished by an additional term of imprisonment of five years in the state prison. Existing law provides that this additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. (Veh. Code, § 20001, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 534 adds Section 13200.3 of the Vehicle Code to help reduce the number of hit-and-run accidents, while prioritizing highway safety and protecting victims. This bill addresses hit-and-run drivers who commit an offense punishable by a mandatory one year license revocation, but get to keep their licenses after entering into a plea bargain. AB 534 ensures that this will no longer happen by granting prosecuting agencies the flexibility to plea bargain a hit-and-run with injury down to a hit-and-run with property damage while ensuring a mandatory six month license suspension."

- 2) **Argument in Support:** The *Association of California Highway Patrolmen* argues, "Under current law hit and run accidents are classified into three categories: (1) a misdemeanor hit-and-run with property damage, (2) a wobblers hit-and-run involving other injury, and (3) a wobblers hit and run involving serious injury or death. A level one conviction is subject to a six month license suspension; however, it is at the discretion of the court.

"This bill would revise these provisions and make the six month suspension mandatory.

"Hit and run accidents are becoming more prevalent. Current penalties do not reflect the seriousness of the crime and therefore do not act as an effective deterrent. AB 534 would change the law to make hit and run drivers more accountable for their actions, in the hopes of reducing the number of accidents."

- 3) **Argument in Opposition:** The *American Civil Liberties Union* argues, "AB 534 would require courts to immediately suspend, for six months, the driving privilege of any defendant who pleads guilty or nolo contendere to a violation of Vehicle Code section 20002 (failure to comply with specified requirements in accidents resulting only in damage to property) which was originally charged as a violation of Vehicle Section 20001 (failure to comply with specified requirements in accidents resulting in injury to a person) when the prosecution states for the record that the person was involved in an accident where a person was struck.

"However, under current law, courts already have within their discretion the ability to suspend for six months, the driver's privilege of any defendant convicted of a violation of Vehicle Code section 20002 – regardless of whether a defendant was involved in an accident where a person was struck (Vehicle Code section 13201). By requiring courts to immediately suspend driver's privileges in all cases in which a defendant is convicted of a violation of Vehicle Code section 20002 under the circumstances described by the bill, AB 534 unnecessarily and improperly strips courts of their discretion."

4) **Prior Legislation:**

- a) AB 1532 (Gatto), of the 2013-14 Legislative Session, would have required that the privilege to operate a motor vehicle shall be suspended for six months for any person convicted of being a driver of a vehicle involved in an accident where a person is struck, but not injured, and the driver of the vehicle leaves the scene of the accident without exchanging required information, as specified. AB 1532 was vetoed by the Governor.
- b) AB 2337 (Linder), of the 2013-14 Legislative Session, would have increased from one to two years the mandatory suspension of the privilege to operate a motor vehicle for any person convicted of leaving the scene of an accident resulting in injury or death without exchanging required identification information. AB 2337 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Highway Patrolmen
Association for Los Angeles Deputy Sheriffs
Los Angeles Police Protective League
Riverside Sheriffs' Association
Crime Victims United of California
American Motorcyclist Association
City of Torrance
Walk & Bike Mendocino

Opposition

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

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

Date of Hearing: April 14, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 545 (Melendez) – As Amended March 19, 2015
As Proposed to be Amended in Committee

SUMMARY: Imposes minimum period of imprisonment in county jail of two days for individuals convicted of domestic battery with a prior conviction for domestic violence. Makes the law consistent with situations when individual has prior conviction for domestic battery. Specifically, **this bill:**

- 1) Requires a minimum of two days of imprisonment when an individual is convicted of a domestic battery probation is granted, and the individual has a prior conviction for domestic violence.
- 2) Allows the court, on a showing of good cause, to choose not to impose the minimum imprisonment.

EXISTING LAW:

- 1) Defines as a crime, any battery committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiance, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship. (Pen. Code, § 243(e).)
- 2) Imposes punishment for such a battery by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as specified, or if none is available, another appropriate counseling program designated by the court. (Pen. Code, § 243(e).)
- 3) Requires that if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of domestic battery, the person shall be imprisoned for not less than 48 hours in addition to the conditions required. However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence. (Pen. Code, § 243(e).)
- 4) Specifies that if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

- a) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars (\$5,000).
 - b) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.
- 5) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse until all separate property of the offending spouse is exhausted. (Pen. Code, § 243.)
 - 6) A battery is any willful and unlawful use of force or violence upon the person of another. (Pen. Code, § 242.)
 - 7) A battery is punishable by a fine not exceeding two thousand dollars, or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. (Pen. Code, § 243, subd. (a).)
 - 8) States that person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000), or by both that fine and imprisonment. (Pen. Code, § 273.5, subd. (a).)
 - 9) Defines "victim" as the offender's spouse or former spouse, the offender's cohabitant or former cohabitant, the offender's fiance or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, as defined, or the mother or father of the offender's child. (Pen. Code, § 273.5, subd. (b).)
 - 10) Defines "traumatic condition" means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck. (Pen. Code, § 273.5, subd. (d).)
 - 11) Specifies that any person convicted of violating this section for acts occurring within seven years of a specified previous domestic violence related, shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to ten thousand dollars (\$10,000). (Pen. Code, § 273.5, subd. (f)(1).)
 - 12) Specifies that any person convicted of a violation of this section for acts occurring within seven years of a previous domestic violence conviction shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or

by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and fine. (Pen. Code, § 273.5, subd. (f)(2).)

- 13) Requires that if probation is granted to any person convicted of domestic violence the court shall impose specified probation conditions. (Pen. Code, § 273.5, subd. (g).)
- 14) States that if probation is granted, or the execution or imposition of a sentence is suspended, for any defendant convicted of domestic violence who has been convicted of any prior specified conviction, the court shall impose one of the following conditions of probation:
 - a) If the defendant has suffered one prior conviction within the previous seven years for a violation of any offense specified, it shall be a condition of probation, in addition to specified provisions, that he or she be imprisoned in a county jail for not less than 15 days. (Pen. Code, § 273.5, subd. (h)(1).)
 - b) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of any offense specified, it shall be a condition of probation, in addition to specified provisions, that he or she be imprisoned in a county jail for not less than 60 days. (Pen. Code, § 273.5, subd. (h)(2).)
 - c) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause. (Pen. Code, § 273.5, subd. (h)(3).)
- 15) States that if probation is granted upon conviction of domestic violence, the conditions of probation may include, consistent with the terms of probation, in lieu of a fine, one or both of the following requirements:
 - a) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097. (Pen. Code, § 273.5, subd. (i)(1).)
 - b) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense. (Pen. Code, § 273.5, subd. (i)(2).)
- 16) Specifies that upon conviction of domestic violence, the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation. (Pen. Code, § 273.5, subd. (j).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, " We must make certain that repeat domestic abusers are recognized in the law as repeat offenders and held accountable to their actions, regardless of the order in which their crimes are committed."
- 2) **Felony Battery vs. Domestic Violence:** California has created an elaborate scheme for dealing with the problem of domestic violence. Individuals who are arrested, charged, or convicted of domestic violence-related offenses have a variety of conditions mandated and services available which are not in place for simple assault and battery offenses. Individuals arrested and charged with domestic violence offenses may be required to appear in court at times when battery defendants are not and face stiffer rules related to protective orders. Probation conditions include an extensive counseling program for the purpose of deprogramming violent conduct as it relates to domestic scenarios. Additionally, criminal penalties for recidivist conduct are more severe. Finally, additional counseling and victim advocacy services are available for victims of domestic violence.
- 3) **Proposed Amendment:** The opposition letters submitted prior to proposed amendments to the bill and thus the argument in opposition is not reflective of the bill before the committee as it is proposed to be amended.
- 4) **Argument in Support:** None submitted.
- 5) **Argument in Opposition:** According to the *California Public Defender Association*, "AB 545 seeks to amend Penal Code section 243 to provide for a mandatory minimum 5 and 10 day jail sentences for misdemeanor battery on a spouse or domestic partner with a specified prior conviction for a similar offense. Under existing law there is a two day, mandatory minimum jail sentence.

"Although it is a laudable goal to wish to end domestic violence, there is no evidence showing that doubling or increasing the mandatory sentence five-fold is a deterrent. The judge already has discretion to impose a lengthy county jail sentence in the appropriate case.

"This proposed legislation adds an additional burden on already overcrowded county jails. The scarce public resources involved in further incarceration could be better spent on providing victims, primarily women, with the resources to leave abusive relationships, specifically housing, job training and education."

- 6) **Prior Legislation:** AB 2066 (Friedman), Chaptered 421 of the statutes of 1996. Required that upon conviction of a violation of this Penal Code 243(e) (domestic battery), if probation was granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United of California

Opposition

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

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

Amendments Mock-up for 2015-2016 AB-545 (Melendez (A))

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

**Mock-up based on Version Number 98 - Amended Assembly 3/19/15
Submitted by: Staff Name, Office Name**

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

SECTION 1. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, nonsworn employee of a probation department, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(c) (1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a nonsworn employee of a probation department, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal

control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars (\$2,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

(2) When the battery specified in paragraph (1) is committed against a peace officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the battery is punishable by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, or by both that fine and imprisonment.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e) (1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as described in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars (\$5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's

shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(3) ~~(A)~~ Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of *Penal Code section 243(e)* or *Penal Code section 273.5*, ~~this subdivision and sentenced under paragraph (1)~~, the person shall be imprisoned for not less than 48 hours ~~five days~~ in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision ~~subparagraph~~ and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

~~(B) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of sentence is suspended and the person has previously been convicted of a violation of Section 273.5, the person shall be imprisoned for not less than 10 days in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subparagraph and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.~~

(4) The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(5) If a peace officer makes an arrest for a violation of paragraph (1) of subdivision (e) of this section, the peace officer is not required to inform the victim of his or her right to make a citizen's arrest pursuant to subdivision (b) of Section 836.

(f) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person who is either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a valid certificate or license in accordance with the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(4) “Serious bodily injury” means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(5) “Injury” means any physical injury which requires professional medical treatment.

(6) “Custodial officer” means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(7) “Lifeguard” means a person defined in paragraph (5) of subdivision (d) of Section 241.

(8) “Traffic officer” means any person employed by a city, county, or city and county to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(9) “Animal control officer” means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(10) “Dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

(11) (A) “Code enforcement officer” means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.

(B) “Code enforcement officer” also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(12) “Custody assistant” means any person who has the responsibilities and duties described in Section 831.7 and who is employed by a law enforcement agency of any city, county, or city and county.

(13) "Search and rescue member" means any person who is part of an organized search and rescue team managed by a government agency.

(14) "Security officer" means any person who has the responsibilities and duties described in Section 831.4 and who is employed by a law enforcement agency of any city, county, or city and county.

(g) It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

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

SECTION 1.

~~Section 273.5 of the
Penal Code is amended to read:~~

~~273.5.~~

~~(a) Every person who willfully inflicts corporal injury that results in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000), or by both that fine and imprisonment.~~

~~(b) Subdivision (a) applies if the victim is or was one or more of the following:~~

~~(1) The offender's spouse or former spouse.~~

~~(2) The offender's cohabitant or former cohabitant.~~

~~(3)The offender's fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243.~~

~~(4)The mother or father of the offender's child.~~

~~(c)Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as that term is used in this section.~~

~~(d)As used in this section, "traumatic condition" means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.~~

~~(e)For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.~~

~~(f)(1)Every person convicted of violating this section for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to ten thousand dollars (\$10,000).~~

~~(2)Every person convicted of a violation of this section for acts occurring within seven years of a previous conviction under subdivision (e) of Section 243 shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and fine.~~

~~(g)If probation is granted to a person convicted under subdivision (a), the court shall impose probation consistent with the provisions of Section 1203.097.~~

~~(h)If probation is granted, or the execution or imposition of a sentence is suspended, for a defendant convicted under subdivision (a) who has been convicted of a prior offense specified in subdivision (f), the court shall impose one of the following conditions of probation:~~

~~(1)If the defendant has suffered one prior conviction within the previous seven years for a violation of an offense specified in subdivision (f), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 15 days.~~

~~(2)If the defendant has suffered two or more prior convictions within the previous seven years for a violation of an offense specified in subdivision (f), it shall be a condition of probation, in~~

~~addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 60 days.~~

~~(3)The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.~~

~~(i)If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:~~

~~(1)That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.~~

~~(2)(A)That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.~~

~~(B)For an order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. An order to make payments to a battered women's shelter shall not be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.~~

~~(j)Upon conviction under subdivision (a), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation.~~

~~(k)If a peace officer makes an arrest for a violation of this section, the peace officer is not required to inform the victim of his or her right to make a citizen's arrest pursuant to subdivision (b) of Section 836.~~

Date of Hearing: April 14, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 651 (Cooper) – As Amended April 9, 2015

SUMMARY: Allows a peace officer or firefighter to have a representative present when questioned by his or her employer regarding the investigation of another peace officer or firefighter, if that interview may result in punitive action against the officer who is not formally under investigation, when representation is mutually agreed upon, as specified. Specifically, **this bill:**

- 1) Provides that if an investigation focuses on matters that may result in punitive action against a public safety officer or firefighter who is not formally under investigation but is interviewed regarding the investigation of another public safety officer or firefighter, the public safety officer or firefighter may have representation in the interview when the representation has been mutually agreed upon.
- 2) Allows the public safety officer or firefighter to choose a representative who is reasonably available to represent the public safety officer or firefighter at an interrogation that has been reasonably scheduled and the representative shall be permitted to be present at all times during the interview.
- 3) Provides that the representative shall not to be a person subject to the same investigation and that the representative cannot be required to disclose, or be subject to punitive action for refusing to disclose, any information received from the public safety officer or firefighter being interviewed as part of the investigation for noncriminal matters.
- 4) States that the above provisions shall not be construed to impair any right or privilege established pursuant to a memorandum of understanding between a public agency and a recognized bargaining unit or pursuant to an action by a governing body or by mutual agreement between the governing body and recognized bargaining unit, or limit the ability of the parties to negotiate an agreement to a higher standard of rights or privileges.

EXISTING LAW:

- 1) Establishes the Firefighters Procedural Bill of Rights (FBOR), which provides procedural guarantees to firefighters, who include, but are not limited to, any firefighter who is a paramedic or emergency medical technician, under investigation. (Gov. Code, § 3250 et seq.)
- 2) Establishes the Public Safety Officers Procedural Bill of Rights (POBOR), which provides procedural guarantees to public safety officers, as defined, under investigation. (Gov. Code, § 3300 et seq.)

- 3) States that, for purposes of FBOR and POBOR, "punitive action" means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, §§ 3251, subd. (c), & 3303.)
- 4) Provides that when any firefighter or public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing department, that could lead to punitive action, the interrogation is to be conducted under certain conditions, including those described directly below, except as specified. (Gov. Code, §§ 3251 & 3303.)
- 5) States that upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that may result in punitive action against any firefighter, that firefighter, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. Provides that the representative is not to be a person subject to the same investigation and that the representative cannot be required to disclose, or be subject to punitive action for refusing to disclose, any information received from the firefighter under investigation for noncriminal matters. (Gov. Code, § 3253, subd. (i).)
- 6) States that upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. Provides that the representative is not to be a person subject to the same investigation and that the representative cannot be required to disclose, or be subject to punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters. (Gov. Code, § 3303, subd. (i).)
- 7) Provides that POBOR interrogation rights do not apply to any interrogation of an officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor to an investigation concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)
- 8) States that no public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under POBOR, or the exercise of any rights under any existing administrative grievance procedure. (Gov. Code, § 3304, subd. (a).)
- 9) States that nothing in the provision above is to prevent a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. Allows the agency to officially charge an officer with insubordination if he or she fails to comply with such an order. (Gov. Code, § 3304, subd. (a).)

FISCAL EFFECT: Unknown

- 4) **Argument in Support:** The *Sacramento Deputy Sheriffs' Association* states, "This bill seeks to clarify and ensure procedural due process for peace officers and firefighters during investigations, including that witness peace officers or firefighters are entitled to the right of representation consistent with Public Safety Officers Procedural Bill of Rights (POBOR) and the Firefighters Procedural Bill of Rights (FPBOR).

"The right to representation is a foundational right in POBOR and FPBOR. In many departments, peace officers and firefighters are routinely allowed representation when being questioned as a witness under the existing provisions of POBOR and FPBOR.

"Unfortunately, some departments have recently interpreted Government Code Sections 3253 and 3303 in a manner to deny peace officer and firefighter representation requests. This new interpretation has not only led to reduced rights, but has also created unnecessary and costly litigation.

"As a retired police captain, we applaud your sense of fairness and your willingness provide a mechanism for those without this protection to achieve it. The permissive language in this bill is not ideal from our perspective. However, we recognize it to be a rational, deliberative compromise that protects local control and management's authority.

"AB 651 will simply provide an opportunity for peace officers and firefighters to secure witness representation in areas where it is currently unavailable. AB 651 is not a mandate, but would require future action by a local agency or adoption via the collective bargaining process to become effective."

- 5) **Argument in Opposition:** The *California State Sheriffs' Association* argues, "The Public Safety Officers Procedural Bill of Rights balances the public interest in maintaining the efficiency and integrity of a law enforcement agency with a peace officer's interest in receiving fair treatment. As such, it requires certain protections when an officer faces a formal investigation into matters that are likely to result in punitive action by an employer. "Even if not criminal in nature, acts of a police officer that tend to impair the public's trust in its police department can be harmful to the department's efficiency and morale. Thus, when allegations of officer misconduct are raised, it is essential that the department conduct a prompt, thorough, and fair investigation." (*Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 568.)

"This measure is similar to last year's Senate Bill 388 (Lieu), which was vetoed by the Governor. We appreciate the fact that this bill permits rather than mandates representation for "witness officers." However, we must remain opposed. Although permissive, we believe this measure will ultimately interfere with a law enforcement agency's ability to discipline officers for engaging in job-related misconduct. Discouraging officers from cooperating in investigations by encouraging representation during any questioning that may involve officer discipline will chill investigations and result in the retention of officers that have engaged in noncriminal misconduct."

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 651 seeks to clarify the permissibility of agencies to witnesses being interrogated in internal affairs investigations. It also seeks to clarify that the right of witness representation can also be mutually agreed upon by a city or county and a recognized employee bargaining unit."
- 2) **Background:** POBOR was enacted in 1976 and provided law enforcement officers with a variety of procedural protections. The courts have summarized POBOR as follows:

[T]he Act: (1) secures to public safety officers the right to engage in political activity, when off duty and out of uniform, and to seek election to or serve as a member of the governing board of a school district; (2) prescribes certain protections which must be afforded officers during interrogations which could lead to punitive action; (3) gives the right to review and respond in writing to adverse comments entered in an officer's personnel file; (4) provides that officers may not be compelled to submit to polygraph examinations; (5) prohibits searches of officers' personal storage spaces or lockers except under specified circumstances; (7) gives officers the right to administrative appeal when any punitive action is taken against them, or they are denied promotion on grounds other than merit; and (8) protects officers against retaliation for the exercise of any right conferred by the Act. (*Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1805, fn. 5 [internal citations omitted].)

While the purpose of POBOR is to maintain stable employer-employee relations and thereby assure effective law enforcement, it also seeks to balance the competing interests of fair treatment to officers with the need for swift internal investigations to maintain public confidence in law enforcement agencies. (*Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564.)

AB 220 (Bass), Chapter 591, Statutes of 2007, created FPOR. FPOR provides firefighters, paramedics and emergency medical technicians with rights that are analogous to the rights provided to public safety officers under POBOR. Like POBOR, FPOR establishes rules governing the interrogation of an employee who is under investigation.

- 3) **Governor's Veto of SB 388 (Lieu):** SB 388 (Lieu) of the 2013-14 Legislative Session was similar to this bill, but gave the officer being interviewed the right to representation. SB 388 was vetoed by the Governor. Governor Brown in his veto message stated, "This bill would allow peace officers and firefighters who have witnessed an alleged misconduct incident to have a representative present during questioning if there is a chance the witness could be the subject of punitive action.

"The need for this bill is unclear. Under current law, as soon as an employer learns during an interview that the witness is subject to punitive action, questioning must stop until a representative is provided if requested by the employee. If this doesn't happen any information obtained can be excluded at trial."

- 6) **Prior Legislation:** SB 388 (Lieu) of the 2013-14 Legislative Session was similar to this bill, but gave the public safety officer the right to representation, whereas, this bill make representation discretionary. SB 388, also, included firefighters. SB 388 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Sacramento County Deputy Sheriffs' Association (Co-sponsor)
Los Angeles County Professional Peace Officers Association
Long Beach Police Officers Association
Fraternal Order of Police, California State Lodge
Santa Ana Police Officers Association

Opposition

California State Association of Counties
California State Sheriff's Association
League of California Cities
California Association of Joint Powers Authority
LIUNA Locals 777 & 792

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

Date of Hearing: April 14, 2015

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Bill Quirk, Chair

AB 666 (Mark Stone) – As Amended April 9, 2015

SUMMARY: Requires records in the custody of law enforcement agencies, the probation department, or any other public agency having records pertaining to the case, to also be sealed, in a case where a court has ordered a juvenile's records to be sealed, as specified. Specifically, **this bill:**

- 1) Requires the court to send a copy of the order to each agency and official named therein, directing the agency to seal its records and specifying a date thereafter to destroy the sealed records.
- 2) States that each such agency and official shall seal the records in its custody as directed by the order, advise the court of its compliance and thereupon seal the copy of the court's order or sealing of records that was received.
- 3) Requires the court to provide notice to the minor and minor's counsel that it has ordered the petition dismissed and the record sealed in the case, including notice of the minor's right to nondisclosure of the arrest and proceedings as specified.
- 4) States that upon the court's order of dismissal of the petition, the arrest and other proceedings in the case shall be deemed not to have occurred and the person who was the subject of the petition may properly reply accordingly to any inquiry by employers, educational institutions or other persons or entities regarding the arrest and proceedings in the case.
- 5) Provides that satisfactory completion of informal supervision or another term of probation shall be deemed to have occurred if the person has no new finding of wardship or conviction for a felony offense for or a misdemeanor involving moral turpitude during the period of supervision or probation and if he or she has not failed substantially to comply with the reasonable orders of supervision or probation that are within his or her capacity to perform.
- 6) Prohibits the extension of the period of supervision or probation solely for the purpose of deferring or delaying eligibility for dismissal of the petition and sealing of the records.
- 7) States that an unfulfilled order or condition of restitution that can be converted to a civil judgment shall not be deemed to constitute unsatisfactory completion of supervision or probation.
- 8) Specifies that a record that has been ordered sealed by the court under this section may be accessed, inspected or used only under the following circumstances:

- a) By the prosecuting attorney and the probation department for the limited purpose of determining whether the minor is eligible for deferred entry of judgment or for a program of supervision, as defined.
 - b) By the court for the limited purpose of verifying the prior jurisdictional purpose of a ward who is petitioning the court to resume its jurisdiction.
 - c) If a new petition has been filed against a minor for a felony offense, by the probation department for the limited purpose of identifying the minor's previous court-ordered programs or placements, and in that event solely to determine the individual's eligibility or suitability for remedial programs or services. The information obtained under this exception shall not be disseminated to other agencies or individuals, except as necessary to implement referral to a remedial program or service, and shall not be used to support the imposition of penalties or detention or other sanctions upon the minor.
 - d) By the person whose record has been sealed, upon his or her request and petition to the court to permit inspection of the records.
- 9) States that access to or inspection of a sealed record authorized by these provisions shall not be deemed an opening of the record and shall not require notice to any other agency.
 - 10) Requires Judicial Council to adopt rules of court, and shall make available appropriate forms, providing for the standardized implementation of this section by the juvenile courts.
 - 11) Revises the exclusion of 707(b) offenses from sealing under this section to specify that the offense must have been committed when the minor was 14 years of age or older.
 - 12) States the finding of the Legislature that in order to protect the privacy of children who have had their juvenile delinquency court records sealed, it is necessary that related records in the custody of law enforcement agencies, the probation department, or any other public agency also be sealed.

EXISTING LAW:

- 1) Provides that five years or more after the jurisdiction of the juvenile court has terminated over a person adjudged a ward of the court or after a minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18, the person or county probation officer, with specified exceptions, may petition the juvenile court for sealing of the records, including arrest records, relating to the person's case, in the custody of the juvenile court, the probation officer, or any other agency or public official. (Welf. & Inst. Code, § 781, subd. (a).)
- 2) States that once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may reply accordingly to any inquiry about the events. (Welf. & Inst. Code, § 781, subd. (a).)
- 3) Prohibits, notwithstanding any other provision of law, the court from ordering a person's records sealed in any case in which the person has been found to have committed an offense

listed in section 707(b), which are offenses for which certain minors could be tried in adult court. (Welf. & Inst. Code, § 781, subd. (a).)

- 4) Permits the court to access a file that has been sealed for the limited purpose of verifying the prior jurisdictional status of the ward who is petitioning the court to resume its jurisdiction, as specified. This access is not to be deemed an unsealing of the records. (Welf. & Inst. Code, § 781, subd. (e).)
- 5) Allows a judge of the juvenile court in which a petition was filed to dismiss the petition, or to set aside the findings and dismiss the petition, if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal, or if it finds that he or she is not in need of treatment or rehabilitation. The court has jurisdiction to order dismissal or setting aside of the findings and dismissal regardless of whether the person who is the subject of the petition is, at the time of the order, a ward or dependent child of the court. (Welf. & Inst. Code, § 782.)
- 6) Provides that, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation for any offense other than a specified serious, sexual, or violent offense, then the court shall order sealed all records pertaining to that dismissed petition in the custody of the juvenile court, except that the prosecuting attorney and the probation department of any county shall have access to these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. The court may access a file that has been sealed pursuant to this section for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction. This access shall not be deemed an unsealing of the record and shall not require notice to any other entity. (Welf. & Inst. Code, § 786.)
- 7) States that any person who was under the age of 18 when he or she was arrested for a misdemeanor may petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, in certain circumstances. (Pen. Code, § 851.7.)
- 8) Provides that a person who was under the age of 18 at the time of commission of a misdemeanor and is eligible for, or has previously received expungement relief, may petition the court for an order sealing the record of conviction and other official records in the case, including arrest records and records relating to other offenses charged in the accusatory pleading, whether the defendant was acquitted, or the charges dismissed. Thereafter the conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence. (Pen. Code, § 1203.45, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 666 is an important measure that can reduce recidivism and open doors to jobs and education for many of California youth. The goal is to open pathways to college and jobs for justice-involved youth whose criminal

records and histories stand in the way of employment and other re-entry opportunities. SB 1038 (Leno, 2014) revised the central policy and process for the sealing and dismissal of charges in non-violent juvenile delinquency cases. However, in the past few months experience in the courts has revealed implementation concerns. If passed AB 666 will provide for statewide standards for the courts and ensure access of youth to jobs and higher education."

- 2) **Sealing and Destruction of Records:** Minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed unless they were found to have committed certain serious offenses. (Welf. & Inst. Code, § 781.) A person may have his or her juvenile court records sealed by petitioning the court "five years or more after the jurisdiction of the juvenile court has terminated over [the] person adjudged a ward of the court or after [the] minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18." (Welf. & Inst. Code, § 781, subd. (a).) Once the court has ordered the records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events. (*Ibid.*) The relief consists of sealing all of the records related to the case, including the arrest record, court records, entries on dockets, and any other papers and exhibits. The court must send a copy of the order to each agency and official named in the petition for sealing records, directing the agency to seal its records and stating the date thereafter to destroy the sealed records. (*Ibid.*)

The court may also order the dismissal of a minor's juvenile court case and have the court records sealed without a petition from the minor if the minor has been found to have satisfactorily completed an informal program of supervision or probation, except in specified cases. (Welf. & Inst. Code, § 786.) Upon sealing of the record, the arrest upon which the judgment was deferred shall be deemed to have never occurred. (*Ibid.*) The court shall order sealed all records in its custody pertaining to a petition dismissed. (*Ibid.*) The prosecuting attorney and the probation department of any county shall have access to these records after they are sealed for the limited purpose of determining whether the minor is eligible for deferred entry of judgment. The court may access the sealed file for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction. (*Ibid.*)

The automatic dismissal and sealing of a minor's juvenile court records described above was established by SB 1038 (Leno), Chapter 249, Statutes of 2014. According to the bill analysis, "[b]ecause the petition to seal requires the involvement of the probation office, the prosecutor, and the court, there are often lengthy delays as well as significant costs associated with sealing. Moreover, many youth are unaware of their right to petition, or may have moved out of state and are unable to complete the process.

"The fact that many youth are unaware of their right to seal their juvenile record, or are unable to complete the process due to procedural, logistical or financial barriers is a serious shortcoming of our juvenile justice system. . . . SB 1038 seeks to remedy these shortcomings in current law by streamlining the process for sealing a juvenile's record . . .

"In doing so, this bill will further the dual purposes of the juvenile justice system: rehabilitation and reintegration, by better ensuring that juveniles have a clear pathway to clearing their records, when in compliance with existing statutory and probationary

requirements. The bill recognizes the established role of California's Juvenile Courts as institutions of reform, not punishment, and will help individuals with juvenile records to find and hold jobs, and become fully functioning members of society." (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 1038 (2013-2014 Reg. Sess.) as amended Mar. 28, 2014.)

Unlike the sealing process under Welfare and Institutions Code § 781, SB 1038 did not require the court to order records sealed in the possession of other public agencies such as law enforcement or probation. Arrest records and probation records can be damaging on an individual's ability to pursue higher education or find a job. This bill seeks to address these concerns by requiring those records to be sealed as well, and provides access to those records for the limited purposes of determining DEJ eligibility or suitability for referral to a program or service, and resuming the court's jurisdiction. The bill specifies that the information in the records "shall not be used to support the imposition of penalties or detention or other sanctions upon the minor." This bill also clarifies that the 707(b) exclusion from sealing applies if the offense was committed when the minor was 14 years of age or older, which mirrors the exclusion in Welfare and Institutions Code § 781.

- 3) **Deferred Entry of Judgment (DEJ):** DEJ is a form of diversion. Generally, if a defendant is granted DEJ, entry of judgment on the defendant's guilty plea is deferred pending successful completion of a program or other conditions. If a defendant placed in a DEJ program fails to complete the program or comply with the conditions imposed by the court, criminal proceedings resume and the defendant, having already pleaded guilty, is sentenced.

In the juvenile justice setting, DEJ is available to minors who are at least 14 years of age and alleged to have committed a felony offense. Additionally, the minor must have not been previously declared a ward of the court for the commission of a felony offense; the current offense charged must not be one of the enumerated offenses in Welfare and Institutions Code section 707(b); the minor must not have previously been committed to the custody of the Division of Juvenile Justice; the minor's record must not indicate that probation has ever been revoked without being completed; and the minor must be eligible for probation. (Welf. & Inst. Code, § 790, subd. (a).)

The prosecuting attorney has a duty to determine whether the minor is eligible for DEJ and file a declaration with the court or state on the record the grounds upon which the determination was made. The minor must admit to the charges and the court must also find that the minor is suitable for DEJ. (Welf. & Inst. Code, § 790, subd. (b).) This bill allows access to sealed juvenile court records in order to determine whether a minor is eligible for DEJ.

- 4) **Argument in Support:** According to *Commonweal*, the sponsor of this bill, "SB 1038 requires the Juvenile Court to seal the court records and to dismiss the petition in delinquency cases where the minor has satisfactorily completed probation or a program of informal probation supervision. Sealing and dismissal under Section 786 are intended to be automatic (court-initiated), as an alternative to the existing, cumbersome and costly petition process that is so little utilized and largely inaccessible by former juvenile offenders.

"AB 666 meets needs that have become apparent since SB 1038 was enacted, including:

- a) *Inconsistent implementation.* Implementation of the auto-sealing and dismissal provisions of Section 786 has been inconsistent among California courts, based on the information we are getting from counsel in sealing cases. Some courts are asking for prior probation department approval to initiate the new sealing process or are requiring that the minor make the sealing request—even though the process in qualifying cases was intended to be self-initiated by the Court. AB 666 would require the Judicial Council to adopt rules and forms to assure the consistent and standardized implementation of the new sealing law.
- b) *Records not covered.* In addition, SB 1038 did not cover arrest and other law enforcement records. A key goal of SB 1038 was to open doors to employment and higher education for former juvenile offenders who have met their justice system obligations. To achieve this goal, arrest and probation records need to be included in the scope of records that the court requires to be sealed upon dismissing the charges. AB 666 adds this protection, which also brings Section 786 into alignment with the older sealing statute, WIC Section 781.

...

"We also indicate our support for . . . better guidance to courts in determining what constitutes 'satisfactory completion' of probation or supervision under Section 786. We are recommending that 'satisfactory completion' be defined utilizing two criteria. First (drawing from WIC Section 781, the 'older' sealing statute) that the individual not have been adjudicated or convicted for a new felony or misdemeanor involving moral turpitude during the period of supervision. Second, that the person did not fail substantially to comply with the reasonable orders of probation that were within his or her capacity to perform. This latter criterion is viewed as providing a 'passing grade' standard for 'satisfactory' completion. Many probation orders in delinquency cases are checklists of conditions that are difficult or impossible for many adolescents to perform at an 'A' grade level—including such conditions as 'must attend all school classes' and 'must obey all orders of parents or guardian'. On occasion, children on probation backslide by perhaps failing a drug test or skipping an appointment—but this does not mean that they cannot or do not rebound to a level of satisfactory overall performance. We find support in case law and prior legislation for the concept that successful completion of probation does not require the fulfillment of every probation condition. See, for example, *In re Timothy N*, 216 Cal.App.4th 725 (2013) where the court ruled that probation was successfully completed even though the minor had an unfulfilled order and condition of restitution. . . [Citation omitted.]

"Our goal, after all, is to support the re-entry, rehabilitation and employability of juveniles having justice system histories, and not to impose lifetime barriers to success based on probation performance criteria that are too rigid or unrealistic from an adolescent development perspective."

- 5) **Argument in Opposition:** According to the *California District Attorneys Association*, "In determining what 'care, treatment, and guidance' is best for a minor, a simple rule of thumb applies (and is articulated throughout the W&I code) – the more information the court and other involved agencies have, the more likely the juvenile justice system as a whole will be able to tailor the services provided to the minor to ensure that those services address the minor's specific needs. Restricting access to potentially important information about a minor's prior contact with law enforcement or the juvenile justice system in this manner is

tantamount to telling a diagnosing physician that she cannot consider a patient's entire medical record in determining a treatment plan.

"In an effort to extend the confidentiality of juvenile records so that delinquency contacts from years past do not burden people unduly in the future, this bill will in fact have the unfortunate effect of preventing the juvenile court, probation, and other agencies from accurately assessing what level of intervention and treatment is appropriate for a minor who has multiple contact with the system. This certainly is not of benefit to the minor, and is contrary to 'conformity with the interests of public safety and protection.'"

- 6) **Related Legislation:** AB 989 (Cooper) would authorize the probation department of any county to access a minor's sealed records for the limited purposes of determining a minor's prior program referrals and risk-needs assessments. AB 989 will be heard by this Committee today.
- 7) **Prior Legislation:**
 - a) SB 1038 (Leno), Chapter 249, Statutes of 2014, provides for the automatic dismissal of juvenile petitions and sealing of records when a juvenile offender successfully completes probation.
 - b) AB 1756 (Skinner), of the 2013-2014 Legislative Session, would have provided that only a person 26 years of age or older may be charged a fee for petitioning the court for an order sealing his or her juvenile record. AB 1756 was held on the Senate Committee on Appropriation's Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

Commonweal, The Juvenile Justice Program (Sponsor)
American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Coalition for Youth
Center on Juvenile and Criminal Justice
Juvenile Court Judges of California
League of Women Voters of California
Legal Services for Prisoners with Children
National Association of Social Workers, California Chapter
Youth Law Center

Opposition

California District Attorneys Association

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

Date of Hearing: April 14, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 794 (Linder) – As Amended April 8, 2015

SUMMARY: Expands criminal acts against law enforcement animals to include offenses against animals used by volunteers acting under the direct supervision of a peace officer. Specifically, **this bill:**

- 1) Expands crimes against law enforcement animals to include acts carried out against a horse or dog being used by, or under the supervision of, a volunteer who is acting under the direct supervision of a peace officer in the discharge or attempted discharge of his or her assigned volunteer duties.
- 2) Expands the restitution requirements for defendants convicted of those acts to include a volunteer who is acting under the direct supervision of a peace officer using their own horse or dog. In such a case, the defendant would be required to make restitution to the volunteer, or the agency that provides, or individual that provides, veterinary care for the horse or dog.

EXISTING LAW:

- 1) Provides that any person who maliciously strikes, beats, kicks, stabs, shoots, or throws, hurls, or projects any rock or object at any horse being used by a peace officer, or any dog being supervised by a peace officer in the performance of his or her duties is a public offense. If the injury inflicted is a serious injury, as specified, the person shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, two or three years, or in a county jail for not exceeding one year, or by a fine not exceeding two thousand dollars, or by both a fine and imprisonment. If the injury inflicted is not a serious injury, the person shall be punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars, or by both a fine and imprisonment. (Pen. Code, § 600, subd. (a).)
- 2) States that any person who willfully and maliciously interferes with, or obstructs, any horse or dog being used by a peace officer or any dog being supervised by a peace officer in the performance of his or her duties by frightening, teasing, agitating, harassing, or hindering the horse or dog shall be punished by imprisonment in a county jail not exceeding one year; by a fine not exceeding \$1,000; or by both. (Pen. Code, § 600, subd. (b).)
- 3) Provides that any person who, with the intent to inflict serious injury or death, personally causes the death, destruction, or serious physical injury of a horse or dog being used by, or under the direction of, a peace officer shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment pursuant to subdivision 9h) of Section 1170 for one year. (Pen. Code, § 600, subd. (c).)

- 4) Defines "serious injury" to include bone fracture, loss or impairment of function of any bodily member, wounds requiring extensive suturing, or serious crippling. (Pen. Code, § 600, subd. (c).)
- 5) Provides that any person with the intent to inflict that injury, personally causes great bodily injury to a person not an accomplice, shall, upon conviction of a felony under this section, in addition and consecutive, be punished by an additional term of imprisonment in the state prison for two years unless the conduct can be punished under Penal Code section 12022.7 or it is an element of a separate offense for which the person is convicted. . (Pen. Code, § 600, subd. (d).)
- 6) Requires the defendant to make restitution to the agency owning the animal and employing the peace officer for any veterinary bills, replacement costs of the animal if it is disabled or killed, and the salary of the peace officer for the period of time his or her services are lost to the agency. (Pen. Code, § 600, subd. (e).)
- 7) Provides that when battery is committed against any person, including a peace officer and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in the state prison for two, three, or four years or by imprisonment in a county jail not exceeding one year. (Pen. Code, § 243, subd. (d).)
- 8) Specifies the actions of a person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal as a criminal offense. (Pen. Code, § 597.)
- 9) Specifies 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 as a criminal offense. (Pen. Code, § 597, subd. (b).)
- 10) Specifies the actions of a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, as specified as a criminal offense. (Pen. Code, § 597, subd. (c).)
- 11) Requires punishment as a felony by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of not more than twenty thousand dollars (\$20,000), or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail for not more than one year, or by a fine of not more than twenty thousand dollars (\$20,000), or by both that fine and imprisonment for violations of Penal Code section 597(animal cruelty). (Pen. Code, § 597, subd. (d).)

- 12) Specifies that upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as specified, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as specified, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition. (Pen. Code, § 597, subd. (g).)
- 13) Specifies that mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state. (Pen. Code, § 597, subd. (g).)
- 14) Requires that if a defendant is granted probation for a conviction 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).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "In Penal Code 600, it is an offense to willfully, maliciously harm, injure, obstruct, or interfere with a horse or a dog under the supervision of a law enforcement officer in the discharge of official duties. These violations are punishable by a fine and/or imprisonment. Punishment depends on the seriousness of the injury to the animal. Upon conviction, a defendant must also pay restitution for damages. Unfortunately, Penal Code 600 only covers animals that are directly being used by an employed peace officer.

"AB 794 would add to Penal Code section 600, to additionally include animals that are being used by volunteer peace officers. With budgets being stretched at the local level and efforts being made to engage with citizens, many counties are creating more volunteer opportunities to work with law enforcement. For many years Riverside County has worked with locals in Norco to take advantage of their love of horses by having the Mounted Posse. These volunteers serve the region by observing and reporting directly to the Sheriff's office. While the volunteers themselves are protected from harm under state, their horses are not. AB 794

will ensure that those who volunteer to help protect their communities will also have protections for their animals afforded to law enforcement animals."

- 2) **Riverside County Sheriff's Department Citizen Volunteers:** Riverside County Sheriff's Department allows citizens to volunteer their time in a variety of ways. Among those volunteers, are a group called the Sheriff's Mounted Posse. The citizen volunteers that participated in the mounted posse must meet the following requirements:

Volunteers must be 18 years of age. Be a citizen of the United States of America or a legal resident with a citizen application in process, pass a basic background investigation and be in reasonable health and physically able to perform the duties required of a Mounted Posse members. Riding members must own, or have reasonable access to and satisfactorily maintain an equine in good condition and sound health. Riding members must also own or have reasonable access to a truck and horse trailer. Ground support members need not own a horse or trailer, but should be able to meet the physical requirements of their duties.

Mounted citizen volunteers provide assistance to law enforcement in Riverside County by being "eyes and ears." They do not have the powers or authority vested in peace officers. Citizen volunteers are directed to contact law enforcement if they witness a crime or suspicious. Citizen volunteers are not expected to take direct action on any potential criminal activity. <http://www.riversidesheriff.org/volunteer/posse.asp>

- 3) **Argument in Support:** According to the *California Mounted Officers Association (CMOA)*, "The CMOA Board of Directors, who represent over 250 CMOA members who are comprised of mounted law enforcement personnel and mounted law enforcement volunteers, whole heartedly support and sponsor AB-794.

"The CMOA recognizes that under the current law of Penal Code 600, law enforcement volunteers and their mounts do not have any protection. Also currently, law enforcement personnel cannot take any legal action in regard to someone who would assault the mount of a mounted law enforcement volunteer.

"CMOA understands the dedication, time, personal expense, and providing their own mounts that law enforcement mounted volunteers give to their communities across the state every day. AB-794 helps protect these dedicated volunteers and their mounts who provide volunteer service to their communities. AB-794 will also allow law enforcement to enforce the new amended PC 600."

- 4) **Prior Legislation:** AB 667 (Smyth), of the 2007-2008 legislative session, would have increased the punishment for violation of Penal Code section 600 to two, three, or four years in the state prison. The bill was held in Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Mounted Officers Association
American Society of the Prevention of Cruelty to Animals

California Association of Highway Patrolmen
Peace Officers Research Association of California

Opposition

None

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

Date of Hearing: April 14, 2015

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Bill Quirk, Chair

AB 818 (Quirk) – As Introduced February 26, 2015

As Proposed to be Amended in Committee

SUMMARY: Authorizes a party in a criminal action to make a written motion for the comparison of deoxyribonucleic acid (DNA) evidence or latent fingerprint evidence.

Specifically, **this bill:**

- 1) States that a party in a criminal action may make a motion for the comparison of DNA obtained from biological evidence in the case with DNA profiles contained in the State DNA Index System (SDIS) and, if appropriate the National DNA Index System (NDIS).
 - a) Specifies that this provision does not require a prosecuting attorney to file the motion prior to comparing DNA obtained from biological evidence in a case with DNA profiles contained in SDIS or NDIS.
 - b) Requires the party seeking the comparison to provide written notice to the local law enforcement agency and opposing counsel 30 days prior to a hearing on the motion.
 - c) States that the court may grant the motion for DNA comparison if it determines that the course of the DNA profile is material to guilt or innocence.
 - d) Provides if the court grants the motion for DNA comparison, the court shall order the local law enforcement agency to conduct the comparison and order that the identity of any individuals whose DNA profile matched the DNA submitted for comparison, if available, and a description of DNA profiles that matched the DNA submitted for comparison, if no identity is associated with the matching DNA profile, be provided to the court for distribution to the parties.
- 2) Provides that a party in a criminal action may make a written motion for the comparison of latent fingerprint evidence in the case with fingerprints contained in the Integrated Automated Fingerprint Identification System (IAFIS) and in local fingerprint databases, including, but not limited to, the Los Angeles Automated Fingerprint Identification Systems (LAFIS).
 - a) Specifies that this provision does not require a prosecuting attorney to file the motion prior to comparing latent print evidence in a case with fingerprints contained in IAFIS or local fingerprint databases.
 - b) Requires the party seeking the comparison to provide written notice to the local law enforcement agency and opposing counsel 30 days prior to a hearing on the motion.

- c) Provides that the court may grant the motion for latent print comparison if it determines that the comparison is material to guilt or innocence.
- d) States if the court grants the motion for latent print comparison, the court shall order the local law enforcement agency to conduct the comparison and order that the identity of any individuals whose fingerprints match the latent prints submitted for comparison be provided to the court for distribution to the parties.

EXISTING LAW:

- 1) Allows a person who was convicted of a felony and is currently serving a term of imprisonment to make a written motion before the trial court that entered the judgment of conviction in his or her case, for performance of forensic DNA testing. (Pen. Code, § 1405, subd. (a).)
- 2) Allows a person to request appointment of counsel by sending a written request to the court stating that he or she was not the perpetrator of the crime and explaining how the DNA testing is relevant to his or her assertion of innocence. Allows the court, if it finds the person indigent, to appoint counsel to investigate and, if appropriate, file a motion for DNA testing, and to represent the person solely for the purpose of obtaining DNA testing. (Pen. Code, § 1405, subd. (b).)
- 3) Authorizes the court, upon request of the convicted person or convicted person's counsel, to order the prosecutor to make all reasonable efforts to obtain, and police agencies and law enforcement laboratories to make all reasonable efforts to provide, the following documents that are in their possession or control, if the documents exist:
 - a) Copies of DNA lab reports, with underlying notes, prepared in connection with the laboratory testing of biological evidence from the case, as specified.
 - b) Copies of evidence logs, chain of custody logs and reports, including but not limited to, documentation of current location of biological evidence, and evidence destruction logs and reports.
 - c) If evidence has been lost or destroyed, a custodian of records shall submit a report to the prosecutor and the convicted person or convicted person's counsel that sets forth the efforts that were made in an attempt to locate the evidence, as specified. (Pen. Code, § 1405, subd. (c).)
- 4) Requires a motion for DNA testing to be verified by the convicted person under penalty of perjury stating that he or she is innocent and not the perpetrator of the crime and make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought. Among other things, the motion shall explain in light of all evidence how DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction. (Pen. Code § 1405, subd. (d).)
- 5) Requires the court to grant the motion for DNA testing if it determines all of the following have been established:

- a) The evidence to be tested is available and in a condition that would permit DNA testing requested in the motion;
 - b) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not be substituted, tampered with, replaced, or altered in any material aspect;
 - c) The identity of the perpetrator of the crime was or should have been, a significant issue in the case;
 - d) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence. The convicted person is only required to demonstrate that the DNA testing he or she seeks would be relevant to, rather than dispositive of, the issue of identity. The convicted person is not required to show a favorable result would conclusively establish his or her innocence;
 - e) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial. In determining whether the convicted person is entitled to develop potentially exculpatory evidence, the court shall not decide whether, assuming a DNA test result favorable to the convicted person, he or she is entitled to some form of relief;
 - f) The evidence to be tested was not tested previously or the evidence was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results;
 - g) The testing requested employs a method generally accepted within the relevant scientific community; and
 - h) The motion is not made solely for the purpose of delay. (Pen. Code, § 1405, subd. (g).)
- 5) Requires the court order to identify the specific evidence to be tested and the DNA technology to be used if it grants the motion for DNA testing. (Pen. Code, § 1405, subd. (h)(1).)
 - 6) Allows the laboratory to communicate with either party, upon request and in accordance with the court's order, during the testing process. The result of any DNA testing ordered, as applicable here, shall be fully disclosed to the person filing the motion, the district attorney, and the Attorney General. Requires the court to order production of the underlying laboratory data and notes if requested by any party. (Pen. Code, § 1405, subd. (i).)
 - 7) Provides that the cost of DNA testing is to be borne by the state or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay, except that the cost of any additional testing to be conducted by

the district attorney or Attorney General shall not be borne by the convicted person. (Pen. Code, § 1405, subd. (i)(1).)

- 8) Requires the appropriate governmental entity to retain all biological material that is secured in connection with a criminal case for the period of time that any person is incarcerated. Allows the destruction of the biological evidence if notice is sent to the person and the notifying entity does not receive within 180 days of the notice any of the following:
- a) A motion filed under Penal Code section 1405;
 - b) A request under penalty of perjury that the evidence not be destroyed because the person is going to file a motion under Penal Code section 1405 within one year; or,
 - c) A declaration of innocence under penalty of perjury that has been filed within one year of the judgment of conviction. (Pen. Code, § 1417.9.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Over the last few years, California has taken great steps to prevent the wrongful conviction and imprisonment of innocent people. Most recently, SB 980 (Lieu, 2014) updated the process by which convicted individuals could request post-conviction DNA testing to prove their innocence. However, California has not done enough to prevent wrongful convictions from occurring in the first place.

"Currently, prosecutors alone decide (1) whether or not an item of physical evidence should be examined and/or tested and (2) decide whether or not the results of that examination or analysis should be searched against existing law enforcement controlled databases such as CODIS, IAFIS and IBIS.

"While Penal Code §1054 allows defense counsel to make a motion to have additional evidence tested, there is no explicit authority to compel the prosecution to test the evidence or have it searched against one of the databases when directed by a judge.

"These databases are powerful crime fighting tools but are presently only available to law enforcement and prosecution. They alone decide what evidence to collect and test. The ends of justice are not met when law enforcement has exclusive control over the decision of whether or not to test and upload evidence that may prove the accused is actually innocent of the crime charged and may provide evidence that someone else is actually guilty. Furthermore, the previous president of the National District Attorneys Association has publicly stated that defense attorneys should have access to these databases.

"AB 818 will promote fairness and justice in the criminal justice system."

- 2) **The Need for this Bill:** DNA databases such as CODIS, NDIS, and SDIS contain DNA profiles uploaded by law enforcement agencies from biological materials collected from crimes scenes, and from arrestees and convicted offenders. IAFIS and local fingerprint identification systems are databases that contain biometric information and criminal histories

of offenders. A search of these databases allow criminal justice agencies to compare DNA or fingerprints in a case that is being investigated with data in these systems to find a match or connect the suspect with other criminal cases.

Criminal justice agencies, such as prosecutors and law enforcement, and qualified laboratories, are the only ones allowed access to these databases to upload data and search for matches. Several states also allow defense attorneys to have access to these databases, including Colorado, Georgia, Illinois, Maryland, Mississippi, New York, North Carolina, Ohio and Texas. (Bronner, *Lawyers, Saying DNA Cleared Inmate, Pursue Access to Data*, The New York Times (Jan. 3, 2013) <http://www.nytimes.com/2013/01/04/us/lawyers-saying-dna-cleared-inmate-pursue-access-to-data.html?_r=0> [as of Apr. 8, 2015].) In California, defense attorneys do not have access to these databases, nor is there a statutory mechanism in place to request a comparison of DNA or fingerprint evidence.

While prosecutors have the duty to disclose all exculpatory evidence to the defense, they may not know that DNA or fingerprints were found and not tested, or that testing of the samples were not done correctly.

A recent news article provides examples of why defendants should be able to request comparison of DNA. The first incident involved a case in December where a police officer assigned to the San Francisco Police Department crime lab, confronted with low-quality, incomplete DNA from the assailant, allegedly made assumptions about missing data and, with her supervisor's agreement, submitted two apparently complete genetic profiles to be compared with those of known offenders listed in a state database. The defense attorney learned late in trial that one of the profiles did not match the defendant. The defendant was convicted however, based on his confession to the crime.

Another incident illustrated in the article involved another police officer assigned to the same crime lab. The officer is alleged to have done an incomplete DNA analysis in the 2007 killing of a reputed gang leader by two men on bicycles. Two suspects had been arrested in the case, but a third person's DNA was found on one of the bicycles, which the officer did not enter into the state and federal database. When asked about the third DNA profile by defendants' attorneys, the officer stated she did not enter the third DNA profile because the material could have belonged to an innocent person. The defendants were acquitted in that case. (Van Derbeken, *Technician Boss in SFPD Lab Scandal Flunked DNA Skills Exam*, S.F. Gate (Mar. 31, 2015) <<http://www.sfgate.com/bayarea/article/Technician-boss-in-S-F-police-lab-scandal-6169230.php>> [as of April 6, 2015].)

These examples show that during the investigation and pre-trial phase, prosecutors may not be aware of improper analyses of DNA or why decisions were made by the laboratory or law enforcement not to test or upload to databases certain DNA or fingerprints. While it is unknown how common these types of problems occur, when they do occur, they can result in a miscarriage of justice. Allowing the defense to request comparison of DNA and fingerprint evidence testing will place an additional check against these kinds of problems. This bill allows a court to decide when to order a comparison of DNA, and provides guidance of that decision by requiring the court to determine in each case where the comparison is requested that the comparison is material to guilt or innocence.

- 3) **American Bar Association Standards on DNA Evidence:** The American Bar Association (ABA) has endorsed providing access to these databases to defendants in certain cases. Rule 8.3 of the Criminal Justice Standards on DNA Evidence, approved by the ABA House of Delegates in August 2006, provides that information in a database should be provided only to criminal justice agencies and only for purposes of criminal identification, except:
- a) A defendant should have access to:
 - i) the results of all database searches and analyses performed in connection with the case;
 - ii) the search procedures used to identify profiles relevant to the case; and
 - iii) upon a showing of good cause, any other information related to the database that is relevant to the defense.
 - b) Upon a showing of good cause, a court should grant a defendant's request to order a comparison of profiles in the database with an unknown profile;
 - c) A prosecutor should have access to the same information provided to the defense pursuant to subdivisions (a) and (b) of this standard;
 - d) The agency maintaining a database should be permitted to disclose information about the database for the purpose of seeking advice on quality control and assurance;
 - e) Persons conducting scientific research on population genetics or related issues may be granted access to genetic profiles in a database for the purposes of that research, provided that the profiles are anonymous, privacy concerns are resolved, and the security of the information is assured; and
 - f) As allowed under another rule specifying use restrictions and destruction of DNA evidence.
- 4) **Argument in Support:** According to the *American Civil Liberties Union (ACLU) of California*, a co-sponsor of this bill, "ACLU has long advocated reforms to prevent wrongful convictions. When the innocent go to prison, the guilty go free. Wrongful convictions continue to occur and typically take many years, even decades, to rectify. An innocent person who has been wrongfully convicted may one day regain his or her freedom, but that person's life will never be restored. Meanwhile, the true perpetrator remains free to commit additional crimes.

"Thanks to the leadership of Senator Lieu, individuals who have been convicted of a crime in California are now permitted to request that a court order a search of the DNA database if such a search will help prove that the person was wrongfully convicted. (Lieu SB 980). Yet, people accused of a crime do not have the same right. Nor is there a means to ask a court to search the state's fingerprint and gun databases, even when evidence has been collected from the scene of the crime that does not match the person accused. No matter how compelling a case may be made that a search of one of those databases will demonstrate that the wrong person is being prosecuted, only law enforcement may cause such a search to occur.

"AB 818 will fix this problem. AB 818 will permit the court on its own motion or at the request of a party to order such a search if the results of the search would be material to guilt or innocence. This bill will affect the small number of cases in which the prosecution has charged someone with a crime but there is untested physical evidence – DNA, a fingerprint or a bullet or cartridge casing – that may help prove that person accused is actually innocent and at the same time help identify the true perpetrator. A number of states including Maryland and Illinois permit a judge to order search of the DNA database at the request of a defendant who is facing trial."

5) **Prior Legislation:**

- a) SB 980 (Lieu), Chapter 554, Statutes of 2014, revised the process for obtaining a court order authorizing post-conviction forensic DNA testing.
- b) SB 83 (Burton), Chapter 943, Statutes of 2001, established a procedure for the court to appoint counsel for an indigent person in order to investigate and file a motion for post-conviction DNA testing.
- c) SB 1342 (Burton), Chapter 821, Statutes of 2000, established the procedure for the post-conviction testing of DNA evidence.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (Co-sponsor)
California Public Defenders Association (Co-Sponsor)
California Attorneys for Criminal Justice
Taxpayers for Improving Public Safety

Opposition

None

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

Amendments Mock-up for 2015-2016 AB-818 (Quirk (A))

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

Mock-up based on Version Number 99 - Introduced 2/26/15
Submitted by: Stella Choe, Assembly Public Safety

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

SECTION 1. (a) The Legislature finds and declares both of the following:

(1) One of the purposes of a criminal trial is the ascertainment of the truth of the charges against the accused person. Deoxyribonucleic acid (DNA) profile comparisons, latent fingerprint comparison, and firearms comparison evidence are commonly used in criminal proceedings to help identify the perpetrator of the crime. With these techniques, the evidence from a crime scene is compared with information stored in a database to determine whether the DNA profile or fingerprint matches a previously convicted person, who may then be identified as a suspect. ~~or whether firearms related evidence appears to match firearms related evidence used in another crime, thereby potentially identifying a suspect.~~ The systems commonly used are known as the Combined DNA Index System (CODIS); **and** the Integrated Automated Fingerprint Identification System (IAFIS). ~~and the National Integrated Ballistic Information Network (NIBIN).~~ There are also local databases, including the Los Angeles Automated Fingerprint Identification System (LAFIS). ~~and other databases that utilize an Integrated Ballistics Identification System (IBIS).~~

(2) Currently, a law enforcement agency on its own or at the request of the prosecuting attorney has the sole discretion to determine if evidence recovered from a crime scene is searched against any of these databases. A court does not have the power on its own to order a search of these databases even if a search will lead to relevant exculpatory evidence, helping prove that the person accused of a crime is being wrongfully prosecuted, or helping identify the actual perpetrator of the crime.

(b) It is the intent of the Legislature that the act that added this section grant a court the authority to make a pretrial order to compare relevant evidence with information contained in these databases. It is further the intent of the Legislature that the act that added this section will promote fairness and justice, will prevent wrongful convictions, and will ensure that the guilty are prosecuted and the innocent exonerated.

SEC. 2. Section 1405.2 is added to the Penal Code, to read:

1405.2. (a) (1) A party in a criminal action may make a written motion for the comparison of deoxyribonucleic acid (DNA) obtained from biological evidence in the case with DNA profiles contained in the State DNA Index System (SDIS) and, if appropriate, the National DNA Index System (NDIS).

(2) This subdivision does not require a prosecuting attorney to file the motion described in paragraph (1) prior to comparing DNA obtained from biological evidence in a case with DNA profiles contained in SDIS or NDIS.

(b) The party seeking the comparison shall provide written notice to the local law enforcement agency and opposing counsel 30 court days prior to a hearing on the motion.

(c) The court ~~shall~~ **may** grant the motion for DNA comparison if it determines that the source of the DNA profile is material to guilt or innocence.

(d) ~~(4)~~ If the court grants the motion for DNA comparison, the court shall order the local law enforcement agency to conduct the comparison and order that the identity of any individuals whose DNA profile matched the DNA submitted for comparison, if available, and a description of DNA profiles that matched the DNA submitted for comparison, if no identity is associated with the matching DNA profile, be provided to the court *for distribution to the parties*.

~~(2) The court shall review any results submitted pursuant to paragraph (1) and determine if the results are material. Upon a finding of materiality, the court shall disclose the results to the parties.~~

SEC. 3. Section 1405.3 is added to the Penal Code, to read:

1405.3. (a) (1) A party in a criminal action may make a written motion for the comparison of latent print evidence in the case with fingerprints contained in the Integrated Automated Fingerprint Identification System (IAFIS) and in local fingerprint databases, including, but not limited to, the Los Angeles Automated Fingerprint Identification Systems (LAFIS).

(2) This subdivision does not require a prosecuting attorney to file the motion described in paragraph (1) prior to comparing latent print evidence in a case with fingerprints contained in IAFIS or local fingerprint databases.

(b) The party seeking the comparison shall provide written notice to the local law enforcement agency and opposing counsel 30 court days prior to a hearing on the motion.

~~(c) The court shall grant the motion for latent print comparison if it determines that the comparison may identify the putative perpetrator of the crime.~~ *The court may grant the motion*

for latent print comparison if it determines that the comparison is material to guilt or innocence.

(d) ~~(1)~~ If the court grants the motion for latent print comparison, the court shall order the local law enforcement agency to conduct the comparison and order that the identity of any individuals whose fingerprints match the latent prints submitted for comparison be provided to the court *for distribution to the parties.*

~~(2) The court shall review any results submitted pursuant to paragraph (1) and determine if the results are material. Upon a finding of materiality, the court shall disclose the results to the parties.~~

SEC. 4. Section 1405.4 is added to the Penal Code, to read:

~~**1405.4.** (a) (1) A party in a criminal action may make a written motion for the comparison of firearms-related evidence, including, but not limited to, cartridge casings, bullets, or firearms, in the case with firearms-related data contained in an Integrated Ballistics Identification System (IBIS), the National Integrated Ballistic Information Network (NIBIN), or both.~~

~~(2) This subdivision does not require a prosecuting attorney to file the motion described in paragraph (1) prior to comparing firearms-related evidence in a case with firearms-related data contained in an IBIS or the NIBIN.~~

~~(b) The party seeking the comparison shall provide written notice to the local law enforcement agency and opposing counsel 30 court days prior to a hearing on the motion.~~

~~(c) The court shall grant the motion for firearms-related evidence comparison if it determines that the comparison may provide evidence that is material to guilt or innocence.~~

~~(d) (1) If the court grants the motion for firearms-related evidence comparison, the court shall order the local law enforcement agency to conduct the comparison and order that the identity of any individual associated with firearms-related data that matched the firearms-related evidence submitted for comparison be provided to the court.~~

~~(2) The court shall review any results submitted pursuant to paragraph (1) and determine if the results are material. Upon a finding of materiality, the court shall disclose the results to the parties.~~

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.