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Assembly
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**ASSEMBLY COMMITTEE ON
PUBLIC SAFETY**
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ASSEMBLYMEMBER, TWENTIETH DISTRICT

CHIEF COUNSEL
GREGORY PAGAN

COUNSEL
GABRIEL CASWELL
STELLA Y. CHOE
SHAUN NAIDU
SANDY URIBE

AGENDA

9:00 a.m. – April 7, 2015
State Capitol, Room 126

<u>Item</u>	<u>Bill No. & Author</u>	<u>Counsel/ Consultant</u>	<u>Summary</u>
1.	AB 69 (Rodriguez)	Ms. Choe	Peace officers: body-worn cameras.
2.	AB 84 (Gatto)	Mr. Billingsley	PULLED BY AUTHOR.
3.	AB 160 (Dababneh)	Mr. Caswell	Criminal profiteering: counterfeit labels: sales and use taxes.
4.	AB 247 (Waldron)	Mr. Billingsley	Animal control officers.
5.	AB 441 (Wilk)	Ms. Choe	Identity theft: seniors: enhancements.
6.	AB 487 (Gonzalez)	Mr. Billingsley	Parole hearings: notification of district attorneys.
7.	AB 489 (Gonzalez)	Mr. Pagan	Public Safety Officer Medal of Valor Act.
8.	AB 512 (Mark Stone)	Mr. Pagan	Corrections: program credit reductions.
9.	AB 526 (Holden)	Ms. Uribe	Abduction.
10.	AB 539 (Levine)	Ms. Uribe	Search warrants.

11.	AB 546 (Gonzalez)	Mr. Caswell	Peace officers: basic training requirements.
12.	AB 602 (Gallagher)	Ms. Choe	Board of State and Community Corrections.
13.	AB 618 (Maienschein)	Mr. Pagan	Parole: primary mental health clinicians.
14.	AB 672 (Jones-Sawyer)	Ms. Uribe	Inmates: wrongful convictions: assistance upon release.
15.	AB 673 (Santiago)	Mr. Pagan	Probation and mandatory supervision: jurisdiction.
16.	AB 696 (Jones-Sawyer)	Mr. Billingsley	Defendants: arraignment.
17.	AB 730 (Quirk)	Ms. Uribe	Controlled substances: transport.
18.	AB 832 (Cristina Garcia)	Ms. Choe	Child abuse: reportable conduct.
19.	AB 860 (Daly)	Mr. Caswell	Sex crimes: professional services.
20.	AB 892 (Achadjian)	Mr. Caswell	Unsafe handguns: peace officer's state-issued handguns: transfer to spouse.
21.	AB 926 (Jones-Sawyer)	Ms. Uribe	Parole: Safe Communities Grant Program.
22.	AB 929 (Chau)	Mr. Caswell	Pen registers: authorized use.
23.	AB 1001 (Maienschein)	Mr. Pagan	Child abuse: reporting.
24.	AB 1019 (Eduardo Garcia)	Mr. Caswell	Metal theft and related recycling crimes.
25.	AB 1134 (Mark Stone)	Mr. Pagan	Firearms: concealed firearm licenses.

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Date of Hearing: April 7, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 69 (Rodriguez) – As Amended March 16, 2015

SUMMARY: Requires law enforcement agencies to follow specified best practices when establishing policies and procedures for downloading and storing data from body-worn cameras. Specifically, **this bill:**

- 1) States the intent of the Legislature to establish policies and procedures to address issues related to the downloading and storage data recorded by a body-worn camera worn by a peace officer. These policies and procedures shall be based on best practices.
- 2) States that when establishing policies and procedures for the implementation and operation of a body-worn camera system, law enforcement agencies, departments, or entities shall consider the following best practices regarding the downloading and storage of body-worn camera data:
 - a) Designate the person responsible for downloading the recorded data from the body-worn camera;
 - b) Establish when data should be downloaded;
 - c) Include specific measures to prevent data tampering, deleting, and copying;
 - d) Categorize and tag body-worn camera video at the time the data is downloaded and classified according to the type of event or incident captured in the data;
 - e) State the length of time that recorded data shall be stored;
 - f) State where the body-worn camera data will be stored; and
 - g) If using a third-party vendor to manage the data storage system, the following factors shall be considered to protect the security and integrity of the data:
 - i) Using an experienced and reputable third-party vendor;
 - ii) Entering into contracts that govern the vendor relationship and protect the agency's data;
 - iii) Using a system that has a built in audit trail to prevent data tampering and unauthorized access;
 - iv) Using a system that has a reliable method for automatically backing up data for storage;

- v) Consulting with internal legal counsel to ensure the method of data storage meets legal requirements for chain-of-custody concerns; and
- vi) Using a system that includes technical assistance capabilities.

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, "While the 2012 Rialto Study on body-worn cameras concluded that there is a correlation between the use of body-worn cameras and the reduction of excessive use of force complaints, we must not lose sight that this is a

developing technology and we have yet to learn and fully understand how this technology is being used in the field and the impact it has on police-citizen behavior and on crime. AB 69 focuses on providing guidelines for downloading and storing body-worn camera data for those law enforcement agencies that choose to implement a body-worn camera program."

- 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).) The report made specified recommendations related to data storage and retention policies. These recommendations include who should download the video, when the video should be downloaded, where the data should be stored, how long to retain the data, and measure to prevent tampering, deleting and tampering. (*Id.* at pp. 42-45.)
- 3) **Argument in Support:** According to the *California Public Defenders' Association (CPDA)*, "CPDA supports the use of body-worn cameras by law enforcement. Of equal importance to the wearing of body-worn cameras are policies concerning the use of these cameras and the proper storage of data collected from these cameras.

"CPDA believes that this bill is a good start in establishing these policies. Once the use of body-worn cameras by law enforcement becomes more common, these policies may need to be revisited and updated to ensure integrity in their use and integrity in the data captured by them.

"Further, CPDA believes that the use of body-worn cameras will help build trust between communities and their law enforcement officers, and promote the truth finding process."

4) **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 Committee on Appropriations.
- b) AB 66 (Weber), would state the intent of the Legislature to enact legislation to require local police departments that utilize police body-worn cameras to follow policies and procedures that will streamline best practices to better enhance the quality of the services that those departments provide to Californians. AB 66 is pending hearing by this Committee.

- 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.

- d) SB 195 (Anderson), would state the intent of the Legislature to enact legislation that protects the privacy of individuals recorded by body-worn cameras utilized by law enforcement officers and the privacy of law enforcement officers wearing body-worn cameras. SB 195 is pending referral by the Senate Rules Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association

Opposition

None

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

Date of Hearing: April 7, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 84 (Gatto) – As Introduced January 6, 2015

PULLED BY THE AUTHOR

Date of Hearing: April 7, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 160 (Dababneh) – As Amended March 19, 2015
As Proposed to be Amended in Committee

SUMMARY: Expands the list of crimes that allow for forfeiture of assets and prosecution of criminal profiteering and broadens the definition of criminal profiteering by broadening the organized crime element to include other specified offenses. Specifically, **this bill:**

- 1) Expands the list of offenses which can serve as a basis for a criminal profiteering action to include piracy, insurance fraud, and tax fraud.
- 2) Expands provisions from the "organized crime" element as it pertains to criminal profiteering by the provisions that require that the nature of the conspiratorial action be of an organized nature to include such examples as:
 - a) pimping and pandering;
 - b) counterfeiting of any registered trademark;
 - c) illegal piracy of recordings or audiovisual works;
 - d) embezzlement;
 - e) securities fraud;
 - f) state tax fraud;
 - g) insurance fraud;
 - h) grand theft;
 - i) money laundering; and
 - j) forgery.

EXISTING LAW:

- 1) Establishes the "California Control Profits of Organized Crime Act." (Pen. Code, § 186.)
- 2) Declares that the Legislature finds and declares that an effective means of punishing and deterring criminal activities of organized crime is through the forfeiture of profits acquired and accumulated as a result of such criminal activities. It is the intent of the Legislature that

the "California Control of Profits of Organized Crime Act" be used by prosecutors to punish and deter only such activities. (Pen. Code, § 186.1).

- 3) Defines "criminal profiteering activity" as any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following offenses: arson, bribery, child pornography or exploitation, felonious assault, embezzlement, extortion, forgery, gambling, kidnapping, mayhem, murder, pimping and pandering, receiving stolen property, robbery, solicitation of crimes, grand theft, trafficking in controlled substances, violation of the laws governing corporate securities, specified crimes involving obscenity, presentation of a false or fraudulent claim, false or fraudulent activities, schemes, or artifices, money laundering, offenses relating to the counterfeit of a registered mark, offenses relating to the unauthorized access to computers, computer systems, and computer data, conspiracy to commit any of the crimes listed above, offenses committed on behalf of a criminal street gang, offenses related to fraud or theft against the state's beverage container recycling program, human trafficking, any crime in which the perpetrator induces, encourages, or persuades a person under 18 years of age to engage in a commercial sex act, any crime in which the perpetrator, through force, fear, coercion, deceit, violence, duress, menace, or threat of unlawful injury to the victim or to another person, causes a person under 18 years of age to engage in a commercial sex act, theft of personal identifying information, offenses involving the theft of a motor vehicle, abduction or procurement by fraudulent inducement for prostitution. (Pen. Code, § 186.2(a).)
- 4) Defines "pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering, as defined by this chapter, that meet the following requirements: (Pen. Code, § 186.2(b)(1).)
 - a) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics;
 - b) Are not isolated events; and/or
 - c) Were committed as a criminal activity of organized crime.
- 5) Defines "organized crime" as a crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as narcotics, prostitution, loan-sharking, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, or systematically encumbering the assets of a business for the purpose of defrauding creditors. "Organized crime" also means crime committed by a criminal street gang, as defined. "Organized crime" also means false or fraudulent activities, schemes, or artifices, as defined, and the theft of personal identifying information, as defined. (Pen. Code, § 186.2(d).)
- 6) States that the following assets of any person who is convicted a specified underlying offense and of engaging in a pattern of criminal profiteering activity are subject to forfeiture (Pen. Code, § 186.3):

- a) Any property interest whether tangible or intangible, acquired through a pattern of criminal profiteering activity; and
 - b) All proceeds of a pattern of criminal profiteering activity, which property shall include all things of value that may have been received in exchange for the proceeds immediately derived from the pattern of criminal profiteering activity.
- 7) States that, notwithstanding that no response or claim has been filed, in all cases where property is forfeited, as specified, and, if necessary, sold by the Department of General Services (DGS) or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows (Pen. Code, § 186.8):
- a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all those lien holders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed;
 - b) To DGS or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized, as specified; and
 - c) To the State's General Fund or local governmental entity, whichever prosecutes.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Criminals should not profit from their crimes. Unfortunately, California's asset forfeiture laws for non-drug related crimes, like financial crimes and other white collar offenses, are so poorly drafted that they are almost unusable by District Attorneys and the Attorney General's office. As a result, white collar victims who sometimes have lost everything due to a defendant's fraud, often cannot collect restitution to make them whole. Adding more examples of crimes to the definition of "organized crime" will ensure that prosecutors are able to seize unlawfully obtained assets.

"Equally problematic, underground economy crimes like tax evasion that drain public resources from our schools, health services and law enforcement, are not even included among the list of crimes in which asset forfeiture is available. As found by the Little Hoover Commission, after an investigation of over a year, in the current climate, "Crime Actually Does Pay--people participate in the underground economy because the rewards outweigh the risk." (Lit. Hoov. Comm. Report # 226, p. 30.) This bill fixes the internal inconsistencies in the language of the state's asset forfeiture laws, and adds certain underground economy crimes to the list of offenses that can trigger asset forfeiture of criminal profits. This bill is to make it so that crime no longer pays in California.

"

- 2) **Criminal Profiteering Asset Forfeiture Generally:** Criminal profiteering asset forfeiture is a criminal proceeding held in conjunction with the trial of the underlying criminal offense. Often, the same jury who heard the criminal charges also determines whether the defendant's assets were the ill-gotten gains of criminal profiteering. As a practical matter, the prosecution must assemble its evidence for the forfeiture matter simultaneously with the evidence of the crime.

Under Penal Code Section 186.2, asset forfeiture for is allowed upon conviction of more than thirty crimes under specified circumstances.

"Criminal profiteering activity means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime [under various criminal statutes]. Those crimes include: arson; bribery, child pornography or exploitation, which may be prosecuted as a felony; felonious assault, embezzlement; extortion, forgery, gambling, kidnapping, mayhem, murder, pimping and pandering, receiving stolen property, robbery, solicitation of crimes, grand theft, trafficking in controlled substances, violation of the laws governing corporate securities, crimes related to possession and distribution of obscene or harmful matter, presentation of a false or fraudulent claim, false or fraudulent activities, schemes, or artifices, money laundering, offenses relating to the counterfeit of a registered mark, offenses relating to the unauthorized access to computers, computer systems, and computer data, conspiracy to commit any of the crimes listed above, felony gang activity, as specified, any offenses related to fraud or theft against the state's beverage container recycling program, including, but not limited to, those offenses specified in this subdivision and those criminal offenses specified in the California Beverage Container Recycling and Litter Reduction Act, human trafficking, any crime in which the perpetrator induces, encourages or persuades a person under 18 years of age to engage in a commercial sex act, any crime in which the perpetrator, through force, fear, or coercion, deceit violence, duress, menace, or threat of unlawful injury to the victim or to another person, causes a person under 18 years of age to engage in a commercial sex act, theft of personal identifying information, motor vehicle theft, and abduction or procurement by fraudulent inducement for prostitution". (Pen. Code, § 186.2(a)(1) to (33).)

- 3) **Criminal Profiteering Proceeds:** Under existing law, forfeited assets are distributed as follows:
- a) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all those lien holders and protect their interests and may, at its discretion, order the proceeds placed in escrow for up to an additional 60 days to ensure that all valid claims are received and processed.
 - b) To the Department of General Services (DGS) or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized, as specified.
 - c) To the State's General Fund or local governmental entity, whichever prosecutes.

Under existing law, the forfeited proceeds of criminal profiteering are placed in the county general fund with no directions for use. There is an exception for forfeiture in child pornography cases. In such cases, the money is deposited in the county or State Children's Trust Fund for child abuse and neglect prevention and intervention. (Pen. Code, § 186.8 and Welf. and Inst. Code, § 18966 and 18969.) In California drug asset forfeiture, law enforcement receives 65% of forfeiture proceeds. (Health and Safety Code Sections 11469 *et seq.*) Of this amount, 15% must be placed in a special county or city fund used "to combat drug abuse and divert gang activity." Under federal forfeiture law allowing "adoption" of state seizures of drug proceeds, the agency seizing that property may receive as much as 80% of these proceeds. This money must be used according to guidelines set by the United States Department of Justice and require that the money be used largely for law enforcement.

- 4) **Elements of the Offense:** Proceeds can be forfeited if the proceeds were gained through a pattern of criminal activity and were gained through involvement in organized crime.
- a) **Pattern of Criminal Activity:** "Pattern of criminal profiteering activity" means engaging in at least two incidents of criminal profiteering (listed above), that meet the following requirements
- i) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics;
 - ii) Are not isolated events; and/or
 - iii) Were committed as a criminal activity of organized crime.
- b) **Organized Crime:** "Organized crime" means crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as narcotics, prostitution, loan-sharking, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, or systematically encumbering the assets of a business for the purpose of defrauding creditors. "Organized crime" also means crime committed by a criminal street gang. "Organized crime" also means false or fraudulent activities, schemes, or artifices, and the theft of personal identifying information.
- 5) **The Proposed Amendments:** The proposed amendments to the bill take a different approach to the modification of the organized crime element of criminal profiteering. The bill, as introduced, eliminated the specified examples of organized crime and instead categorized organized crime as conspiratorial crimes. The original purpose of criminal profiteering was to create an "effective means of punishing and deterring criminal activities of organized crime is through the forfeiture of profits acquired and accumulated as a result of such criminal activities." (Pen. Code § 186.) This bill, as introduced, would have revised that intent to include commission of any of the listed qualifying crimes that are committed in a simple conspiracy, not for the purpose of organized crime. As proposed to be amended, the bill adds crimes to the list of examples of organized crime, thereby preserving the original intent of the organized crime element.

Additionally, as introduced, this bill redirected forfeited proceeds for tax fraud, insurance fraud, and piracy in the following priority: (1) to the victims of the crime, (2) to cover the costs of investigation, and finally (3) to the General Fund of the state. The redistribution of funds in this manner would have been highly irregular in light of existing forfeiture procedures. Specifically, as a policy matter, we do not allow law enforcement and government entities to recoup costs for the costs of investigations with forfeited proceeds. To allow the recoupment of costs creates a conflict of interest that can call into question the integrity of an investigation. By allowing a law enforcement entity to financially benefit from a conviction is per se a conflict of interest. Additionally, by eliminating potential bona fide purchasers, the introduced version of the bill would have cut out ancillary victims of the crime. For example, people who might legitimately purchase pirated goods would not be compensated for their financial loss. The proposed amendments do not modify the distribution of any forfeited assets and follows the provision in existing law.

The listed letters in support and opposition were written to address the introduced version of the bill, not the proposed amendments. The amendments are an attempt to address the majority of the opposition's concerns, while continuing to address the concerns of the proponents of the bill.

- 6) **Argument in Support:** According to *Liberty Mutual Insurance*, "While existing legal statutes provide an index of crimes that trigger the forfeiture of assets acquired from engagement in illicit activities, prosecutors are required to further demonstrate a 'pattern of criminal activity' to warrant the seizure of property in cases involving white-collar crime. However, a pattern of criminal activity must fall within the scope of 'organized crime,' which is defined with arbitrary examples of criminal acts that omit others. The result of inconsistent language contained in Penal Code section 186.2 places victims at risk of not receiving the compensation they are rightfully owed.

"AB 160 would include offenses relating to piracy, insurance fraud, and tax fraud within the definition of criminal profiteering activity and broaden the scope of organized crime to include illegal activities involving conspiratorial nature that are achieved through planning and coordination of individual efforts. The bill also provides procedure for the redistribution of seized funds stemming from felony violations that relate to piracy, insurance fraud, and tax fraud by prioritizing that recovered proceeds must first be paid to the victims of the crime, followed by reimbursement for investigative costs, and the remainder to the General Fund.

"Fraud has a consequential impact upon victims, business, and the state of California. For example, a recent report by the Little Hoover Commission found that the state loses as much as \$10 billion in tax revenue annually as a result of the underground economy. Additionally, law enforcement has too often witnessed felony convictions that were unable to provide restitution to the victims who suffered significant loss. AB 160 is a necessary measure that will deliver justice, strengthen the judicial process, and foster a thriving economy."

- 7) **Argument in Opposition:** According to *The American Civil Liberties Union of California*, "We regret to inform you that we oppose AB 160 unless amended. Specifically, we oppose the broad expansion of the definition of 'organized crime' and the requirement that proceeds

from seized property be distributed to investigating agencies.

"California's Criminal Profiteering statute allows a prosecuting agency to seize any property that has been 'acquired through a pattern of criminal profiteering activity,' as well as the proceeds of criminal activity. (Pen. Code sec. 186.3(b)(c).) Forfeiture statutes are intended to reach beyond merely specific property that has been stolen. The entire purpose of forfeiture statutes is to allow the government to seize property that may have later been acquired, even if it is only tangentially related to the original crime.

"Because of the potential to use forfeiture statutes to reach far beyond just stolen property, these statutes should be narrowly drawn. Indeed, in enacting our statutory scheme, the California Legislature stated:

"The Legislature hereby finds and declares that an effective means of punishing and deterring criminal activities of organized crime is through the forfeiture of profits acquired and accumulated as a result of such criminal activities. It is the intent of the Legislature that the "California Control of Profits of Organized Crime Act" be used by prosecutors to punish and deter *only such activities*. (Pen. Code sec. 186.2 [emphasis added].)

"AB 160 would amend California's Criminal Profiteering statute in three ways:

- "1) The bill would add piracy, insurance fraud and tax fraud to the list of crimes for which a prosecuting agency may pursue forfeiture;
- "2) The bill would greatly expand the definition of "organized crime," thereby greatly expanding the reach of the statute; and
- "3) The bill would direct that the proceeds from forfeitures related to piracy, insurance fraud and tax fraud be distributed to the victims of the crime, then investigating agencies, then the General Fund.

"While the ACLU has no objection to the first proposed change, we do object to the other proposed amendments for the reasons noted below.

"The proposed changes to the definition of "organized crime" would greatly expand the reach of the statute Currently, the definition of "organized crime" in Penal Code section 186.2 includes the requirement that:

- "the crime 'is either of an organized nature and seeks to supply illegal goods and services such as narcotics, prostitution, loan-sharking, gambling, and pornography,' or
- "the crime, 'through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, or systematically encumbering the assets of a business for the purpose of defrauding creditors.' (Pen. Code sec. 186.2(d).)

"AB 160 would eliminate both of these elements, instead merely requiring that the crime is 'of a conspiratorial nature and that is achieved through planning and coordination of

individual efforts.' This change applies to all crimes that trigger criminal forfeiture, not just the new crimes that AB 160 proposes to add to the statute.

"This is a dramatic change in the scope of the definition of 'organized crime,' one that would take California's Criminal Profiteering statute far beyond its original intent. The newly proposed definition would effectively include any criminal offense committed by two or more people. While the statute still requires a 'pattern of criminal profiteering activity' to trigger seizure, this requires merely two incidents. (Pen. Code sec. 186.2(b)(1).) Under the new proposed definition of 'organized crime,' therefore, two people who committed two relatively minor theft offenses in the course of one evening would now be subject to forfeiture proceedings.

"The proposed change to the definition of 'organized crime' would take California's Criminal Profiteering statute in a whole new direction, allowing prosecutors to seize a vast array of property from individuals who have committed only minor crimes, including property that was acquired long after the crime and with just a small portion of the proceeds of the crime. This sweeping change to the criminal forfeiture statutes is unwarranted and will lead to abuse.

"Distributing the proceeds from seized property to investigating agencies will lead to abuse. Finally, AB 160 would designate that the proceeds from property seized for the specific crimes of piracy, insurance fraud and tax fraud would be distributed as follows: to the crime victims, 'to cover the costs of investigation,' and then to the General Fund. Since the victims of these crimes are corporations insured for loss or the government, the inclusion of crime victims on this list will have little impact. Instead, the amendment effectively directs proceeds from seized property to the investigating agencies, creating an incentive for law enforcement agencies to pursue criminal forfeiture for their own financial reasons. This type of incentive structures in forfeiture statutes leads to abuse.

"We urge you to amend AB 160 to address these problems. Please do not hesitate to contact us should you have any questions or concerns."

- 1) **Related Legislation:** AB 443 (Alejo), would add trafficking in firearms or other deadly weapons and trafficking in endangered species to the list of acts which can constitute criminal profiteering activity. And allows the prosecuting agency to file a petition of forfeiture prior to the commencement of the underlying criminal proceeding if the value of the assets seized exceeds \$10,000, if there is a substantial probability that the prosecuting agency will file a criminal complaint, there is a substantial probability the prosecuting agency will prevail on the issue of forfeiture and failure to enter the order will result in the property being destroyed or otherwise removed from the jurisdiction of the court, and the need to preserve the property outweighs the hardship on any party against whom the order is entered. AB 443 is scheduled to be heard in this committee on April 14, 2014.

REGISTERED SUPPORT / OPPOSITION:

Support

AFSCME

Association of California Insurance Companies

California College and University Police Chiefs
California District Attorneys Association
California State Sheriffs' Association
Independent Insurance Agents and Brokers of California
Liberty Mutual Insurance

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice

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

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AMENDMENTS TO ASSEMBLY BILL NO. 160
AS AMENDED IN ASSEMBLY MARCH 19, 2015

Amendment 1

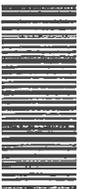
On page 5, strike out lines 35 to 39, inclusive, on page 6, strike out lines 1 to 9, inclusive, and insert:

(d) "Organized crime" means crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods or services such as narcotics, prostitution, pimping and pandering, loan-sharking, counterfeiting of a registered mark in violation of Section 350, the piracy of a recording or audiovisual work in violation of Section 653w, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, fraud against the beverage container recycling program, embezzlement, securities fraud, tax fraud and insurance fraud in violation of the provisions listed in paragraph 34 of subdivision (a), grand theft, money laundering, forgery, or systematically encumbering the assets of a business for the purpose of defrauding creditors. "Organized crime" also means crime committed by a criminal street gang, as defined in subdivision (f) of Section 186.22. "Organized crime" also means false or fraudulent activities, schemes, or artifices, as described in Section 14107 of the Welfare and Institutions Code, and the theft of personal identifying information, as defined in Section 530.5.

Amendment 2

On page 9, strike out lines 37 to 40, inclusive, strike out page 10 and insert:

SEC. 4. 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 7, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 247 (Waldron) – As Amended March 24, 2015

SUMMARY: Establishes continuing education training for animal control officers and includes initial and continuing education for animal control officers in the list of items for which fees from dog license tags may be used. Specifically, **this bill:**

- 1) Requires persons appointed as an animal control officer (ACO) complete a course in the exercise of the powers of arrest. ACOs appointed before January 1, 2016 shall complete training by January 1, 2017. Any ACOs appointed after that date shall complete the training within one year of appointment.
- 2) Requires 40 hours of continuing education and training relating to the duties of an animal control officer during each three year period from July 1, 2016, or from date of appointment.
- 3) Requires that continuing education include at least four hours of course work in the exercise of powers of arrest and to serve warrants taught by a Commission on Peace Officer Standards and Training certified instructor, four hours of coursework in officer safety, four hours or coursework in animal-related laws, four hours of coursework in conducting investigations, and four hours of coursework in one or more of the topics of animal handling, animal care, animal diseases, or public health.
- 4) Requires the continuing education be provided by an accredited postsecondary institution, the Commission on Peace Officer Standards and Training, a law enforcement agency, the National Animal Care and Control Association, the California Animal Control Directors Association, the California Veterinary Medical Association, or the State Humane Association of California.
- 5) Requires every person appointed as a director, manager, or supervisor to complete a course in the exercise of the power of arrest within one year of appointment.
- 6) Provides that failure to satisfactorily complete the continuing education and training requirements within 90 days after the expiration of each three-year period shall result in the immediate suspension of the authority to arrest and serve warrants.
- 7) Allows fees from the issuance of dog license tags and fines collected in enforcement of license tags may be used to pay for initial and in-service training for persons charged with enforcing animal control laws, including animal control officers.

EXISTING LAW:

- 1) States that animal control officers are not peace officers but may exercise the powers of arrest of a peace officer as specified in California Penal Code section 836 and the power to serve warrants as specified in California Penal Code sections 1523 and 1530 during the course and with the scope of their employment, if those officers successfully complete a course in the exercise of those powers pursuant to California Penal Code section 832. (Pen. Code, § 830.9.)
- 2) That part of the training course pertaining to the carrying and use of firearms shall not be required for any animal control officer whose employing agency prohibits the use of firearms. (Pen. Code, § 830.9.)
- 3) Requires peace officers, and specified other public officers “not a peace officer,” including animal control officers, to complete training prescribed by the Commission on Peace Officer Standards and Training (POST) and to pass an appropriate POST examination. ((Pen. Code, § §, 830.9, 832.)
- 4) States that an arrest is taking a person into custody, in a case and in the manner authorized by law and that an arrest may be made by a peace officer or a private person. ((Pen. Code, § 834.)
- 5) An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his or her arrest and detention. ((Pen. Code, § 835.)
- 6) A private person may arrest another person for a public offense committed or attempted in his or her presence, when the person arrested has committed a felony regardless of whether it was committed in his or her presence, and when a felony has been committed and he or she has reasonable cause for believing the person to be arrested has committed it. ((Pen. Code, § 837.)
- 7) With limited exceptions, a peace officer may arrest a person when the officer has reasonable cause to believe the person to be arrested has committed a public offense in the officer's presence, when the person arrested has committed a felony regardless of whether it was committed in the officer's presence, and when the officer has reasonable cause to believe the person to be arrested has committed a felony. ((Pen. Code, § 836.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 247 requires ACOs to complete a standardized training course in the powers of arrest and the powers of serving warrants. The bill also requires ACOs to complete continuing education and training courses once every three years. The provisions of the bill are self-regulating and give local jurisdictions flexibility how they want to meet the training guidelines set by the California Animal Control Directors Association, including no-cost and in-house training.

"Animal control officers (ACOs) need training throughout their career to properly to carry out the job's responsibilities. Additional training will ensure the safety of the ACOs and allow them to adequately handle dangerous situations. AB 247 will ensure that ACOs safely conduct their duties and will prevent unintended abuse of authority."

- 2) **Cost Concerns of Counties:** Rural County Representatives of California (RCRC) and the California State Association of Counties (CSAC) expressed concerns that training would still impose costs on the county in spite of state reimbursement and that state funding for the training might be eliminated in future years after the public has a new level of expectation of service.
- 3) **Current Training Materials Available for Animal Control Officers.** POST currently provides a DVD specifically on warrant service and building entry tactics. POST has other training materials on DVD and Webinar which include Officer Safety, Stress Management, Search Warrant Fundamentals, Surviving Deadly Assaults. American Society for the Prevention of Cruelty to Animals (ASPCA) has webinars which have content related to the duties of animal control officers.
- 4) **2012 death of Animal Control Officer Roy Marcum:** In November 2012, an unarmed animal control officer was shot and killed in Sacramento County . . . while trying to retrieve pets from a home whose owner was evicted the previous day.

The officer had gone to the home to rescue dogs and cats authorities thought had been left behind, a day after Joseph Francis Corey was served an eviction notice and a sheriff's deputy changed the locks.

The officer — Roy Curtis Marcum, 45, of Elk Grove — and a bank employee knocked on the door when Corey fired a shotgun through the door, striking the officer in the torso, Sacramento County Sheriff's Sgt. Jason Ramos said. (*Calif. animal control officer killed in eviction*, The Daily Republic, November 30, 2012.)

The Humane Society and Roy Curtis Marcum Foundations are co-sponsoring the legislation and feel that additional training will help avoid more situations like Roy Marcum's. According to the Humane Society and the Roy Curtis Marcum Foundation, who are co-sponsoring this legislation:

"Despite the duties of enforcing state and local laws, including felonies, there is no standardized training or in-service training for ACOs. In fact, humane officers and security guards have stricter training requirements than ACOs. The lack of officer training can contribute to tragic results. In 2012, Sacramento County Animal Care and Regulation Officer Roy C. Marcum was fatally shot through the front door by an irate animal owner. Despite Officer Marcum's years of experience, he lacked the necessary and ongoing training to safely address the hazards he faced." They support that the proposed legislation seeks to standardize training on the powers of arrest and requires continuing education and training.

- 5) **Argument in Support:** According to *the Humane Society of the United States*, "Animal control officers (ACOs) are no longer just dog catchers. They are animal law enforcement officers, with all of the obligations, authority—and dangers—of

peace officers. They respond to life-threatening emergency calls daily, protecting the lives of both people and animals.

“Almost all are unarmed—usually having only a clipboard and a catch pole for protection—yet they investigate felony crimes, from murder to the most heinous and sadistic animal abuse, putting people in state prison. They are usually alone day and night—without the assistance of peace officers.

“Despite the duties of enforcing state and local laws, including felonies, there is no standardized training or in-service training for ACOs. In fact, humane officers and security guards have stricter training requirements than ACOs. The lack of officer training can contribute to tragic results. In 2012, Sacramento County Animal Care and Regulation Officer Roy C. Marcum was fatally shot through the front door by an irate animal owner. Despite Officer Marcum’s years of experience, he lacked the necessary and ongoing training to safely address the hazards he faced.

“AB 247 requires all ACOs to complete a standardized training course in the powers of arrest and to serve warrants and requires a minimum 40 hours of continuing education and training every three years to protect ACOs as they perform their duties. This will ensure that ACOs safely conduct their duties and will prevent inadvertent abuse of authority. The confidence that comes with training will also increase appropriate protection of even more animals and people.

“AB 247 does not change a local jurisdiction’s ability to decide the level of authority that ACOs may ultimately exercise. Additionally, the bill does not change ACOs status as a non-peace officer, and will not provide a pathway for peace officer status nor expand the use of firearms. The bill simply seeks to standardize and provide continuing ACO training in existing powers and duties. AB 247 takes the necessary action to ensure that all ACOs have basic training in approaching potentially dangerous situations, are better prepared to address combatant animal owners, and know the boundaries of their duties. In addition, the training will help reduce a jurisdiction’s costs related to liability and workers’ compensation claims.”

- 6) **Argument in Opposition:** According to Jolena Voorhis of *the Urban Counties Caucus*, “While generally we are in support of training, by requiring animal control officials to receive specific training, this bill would have a fiscal impact on counties. For urban counties, many of which may have several animal control officers, this could be a significant fiscal impact. The bill does allow dog licenses fees to be used to provide funding, however, our counties have noted that this will not cover the cost of this training. Until the bill provides a funding source to cover the cost of this training, UCC will have to remain opposed.”
- 7) **Related Legislation:** SB 237 (Anderson and Leno), of this legislative session, requires training for animal control officers in the exercise of the powers of arrest and to serve warrants. The bill would also require animal control officers to complete at least 40 hours of continuing education and training during each three year period. Adds training of animal control officers to the list of beneficiaries of dog license fees. SB 237 is pending hearing by the Senate Appropriations Committee.

8) Prior Legislation:

- a) AB 1511 (Gaines), Chapter 449, Statutes of 2014, allowed animal control officers to access summary criminal history information from a criminal justice agency when necessary for the performance of his or her official duties and upon a showing of compelling need.
- b) SB 1278 (Leno and Wyland), of the 2013 – 2014 Legislative Session, , would have required initial training of animal control officers and 40 hours of continuing education every three years. Proposed use of dog license fees to be used for the training of animal control officers. SB 1278 was held in the Senate Appropriations Committee.
- c) SB 1162 (Runner), Chapter 594, Statutes of 2012, authorized animal control officers to possess and administer a tranquilizer that contains a controlled substance to wild, stray, or abandoned animal, with direct or indirect supervision as determined by a licensed veterinarian, provided that the officer meets prescribed training requirements.
- d) SB 1190 (Cedillo), Chapter 109, Statutes of 2012, removed the requirement that animal control officers and illegal dumping enforcement officers complete training, certified by the Department of Consumer Affairs, in order to be permitted to carry a club or baton and instead required the officers to complete training approved by the Commission on Peace Officer Standards and Training in the carrying and use of the club or baton.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
LIUNA Locals 777 & 792
The Humane Society

Opposition

Urban Counties Caucus

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

Date of Hearing: April 7, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 441 (Wilk) – As Introduced February 23, 2015

SUMMARY: Creates a sentencing enhancement of two additional years of imprisonment for any person convicted of identity theft if the victim was 65 years of age or older at the time of the offense.

EXISTING LAW:

- 1) Provides that every person who willfully obtains personal identifying information, as defined, of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the county jail for 16 months, or two or three years. (Pen. Code, § 530.5, subd. (a).)
- 2) States that every person who, with the intent to defraud, acquires or retains possession of the personal identifying information of another person is guilty of a public offense, and is punishable by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment. (Pen. Code, § 530.5, subd. (c)(1).)
- 3) States that every person who, with the intent to defraud, acquires or retains possession of the personal identifying information of another person, and who has previously been convicted of a violation of this section, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment for 16 months, or two or three years. (Pen. Code, § 530.5, subd. (c)(2).)
- 4) Provides that every person who, with the intent to defraud, sells, transfers, or conveys the personal identifying information of another person is punishable by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the county jail for 16 months, or two or three years. (Pen. Code, § 530.5, subd. (d)(1).)
- 5) Specifies that any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:
 - a) By a fine not exceeding \$2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, or by

- imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950.
- b) By a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950. (Pen. Code, § 368, subd. (d).)
- 6) Provides that any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:
- a) By a fine not exceeding \$2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, or by imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950.
- b) By a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950. (Pen. Code, § 368, subd. (e).)
- 7) Defines "elder" as any person who is 65 years of age or older. (Pen. Code, § 368, subd. (g).)
- 8) States that upon conviction of any felony it shall be considered a circumstance in aggravation in imposing the upper term if the victim of an offense is particularly vulnerable, or unable to defend himself or herself, due to age or significant disability. (Pen. Code, § 1170.85, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Seniors are one of the most vulnerable groups of people and it is important we protect them from being taken advantage of. Technology is constantly changing and due to their unfamiliarity, seniors are more likely to be targets for identity theft scams. This bill hopes that the increased punishment will deter criminals from targeting vulnerable seniors."
- 2) **Necessity of this Bill:** Under existing law, identity theft may be punished as either a misdemeanor or a felony. A person convicted of misdemeanor identity theft may be sentenced to up to one year in county jail. If convicted of felony identity theft, the person may be imprisoned in the county jail for 16 months, or two years or three years. It is within the court's discretion to apply the term that best serves the interests of justice. (Pen. Code, § 1170, subd. (b).) The court may consider circumstances in mitigation and aggravation when deciding which term to apply. (*Ibid.*) The vulnerability of a victim, specifically due to age or

disability, is a recognized circumstance in aggravation. (Pen. Code, § 1170.85, subd. (b); Cal. Rules of Court, Rule 4.421, subd. (a)(3).)

Existing law also provides for enhanced penalties for specified crimes committed against elderly or dependent persons. (Pen. Code, § 368.) Identity theft is one of the crimes specified in the statute that may trigger the enhanced penalty. (*Ibid.*) If convicted under this statute, a person may face misdemeanor or felony penalties, depending upon the value of the money, labor, goods, services, or real or personal property taken or obtained. If the value exceeds \$950, then the felony penalty would apply and the person would face imprisonment for two, three or four years, and a fine not exceeding \$10,000. (Pen. Code, § 368, subds. (d)(1) and (e) (1).) If the value does not exceed \$950, then the misdemeanor penalty would apply and the person could face up to one year in jail, and a fine not exceeding \$1000. (Pen. Code, § 368, subds. (d)(2) and (e)(2).)

In light of the existing statute that provides enhanced penalties for financial crimes committed against elderly persons, which specifically includes identity theft, as well as the ability of the court in an identity theft case to choose the upper term for various reasons, including if the victim was particularly vulnerable due to age, there does not appear to be a demonstrated need for this bill.

- 3) **Argument in Support:** According to the *California Senior Legislature*, the sponsor of this bill, "This bill would provide an enhanced sentence of an additional 2 years of imprisonment for a felony conviction when the victim is 65 years of age or older.

"We are hopeful that the increased punishment will deter criminals from targeting vulnerable senior citizens."

- 4) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice*, "The United States Department of Justice, in a statistical study covering a 10 year span between 2003-2013, found that people aged 65 years or older actually experienced lower rates of identity theft (5.0%) than people aged 25-49 (7.9%) and people aged 50-64 (7.8%). (Morgan, Rachel and Mason, Britney, "Crimes Against the Elderly, 2003-20013" [as of March 24, 2015, hosted at <http://www.bjs.gov/content/pub/pdf/cae0313.pdf>].) Additional studies by the Federal Trade Commission have reached the same conclusion. In other words, the people most vulnerable to identity theft are working age adults, who are taking out home mortgages, opening new bank accounts and applying for credit, and not seniors living on fixed incomes. By singling out identity theft against seniors for harsher punishment, AB 441 may have the unintended effect of pushing would be identity thieves the more prevalent identity theft epidemic plaguing working age adults.

"AB 441 would take away discretion from trial judges who are best placed to consider the individual punishments that find individual offenders. Judges are currently vested with substantial discretion to impose a wide variety of penalties and conditions of parole and probation that can adequately punish identity theft and associated crimes when those crimes target more vulnerable victims, whether that vulnerability is related to age or other factors not considered by AB 441, such as a disability or infirmity."

5) Related Legislation:

- a) SB 196 (Hancock) would, commencing July 1, 2016, authorize a county adult protective services agency to file a petition for a protective order on behalf of an elder or dependent adult if the elder or dependent adult has been identified as lacking capacity and a conservatorship is being sought. SB 196 is pending hearing by the Senate Committee on Judiciary.
- b) SB 338 (Morell) would provide that a person who knows or reasonably should know that the victim is an elder or dependent adult, and under circumstances or conditions likely to produce significant or substantial mental suffering, willfully causes or permits the victim to suffer unjustifiable mental suffering, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed \$6,000, or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years. SB 338 is pending hearing by the Senate Committee on Public Safety.

6) Prior Legislation:

- a) AB 2623 (Pan), Chapter 823, Statutes of 2014, expands the elder and dependent adult abuse training curriculum requirements mandatory for specified peace officers, to include legal rights and remedies available to victims; and requires the Commission on Peace Officer Standards and Training (POST) to consult with local protective services offices and the Office of the State Long-Term Care Ombudsman when creating new or updated training materials.
- b) SB 543 (Block), Chapter 782, Statutes of 2013, specifies a conviction for theft, embezzlement, forgery, fraud, or identity theft against an elder or dependent adult as a prior qualifying offense in the crime of petty theft with a specified prior conviction.
- c) AB 1525 (Allen), Chapter 632, Statutes of 2012, requires money transmitters to provide their contracted agents with training materials on recognizing and responding to elder or dependent adult financial abuse by April 1, 2013, and annually thereafter.
- d) AB 332 (Butler), Chapter 366, Statutes of 2011, increased the fines for fraud, embezzlement, theft, and identity theft against an elder or dependent adult when the amount taken is more than \$950.
- e) AB 1293 (Blumenfeld), Chapter 371, Statutes of 2011, authorizes prosecutors to petition for forfeiture of assets in specified cases involving financial abuse of elder or dependent adults.

REGISTERED SUPPORT / OPPOSITION:

Support

California Senior Legislature (Sponsor)
California Association for Health Services at Home
California District Attorneys Association

Opposition

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

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

Date of Hearing: April 7, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 487 (Gonzalez) – As Introduced February 23, 2015
As Proposed to be Amended in Committee

SUMMARY: Requires that when an inmate requests to advance a parole hearing, notice be sent to the district attorney of the county in which the offense was committed, in addition to the victim. Failure to notify the district attorney or victim of a request to advance the hearing shall postpone any action being taken on the hearing advancement until the notice is properly made. Specifically, **this bill:**

- 1) Requires that when an inmate requests that the parole board advance a parole hearing to an earlier date, by submitting a written request to the board, notice be sent to the district attorney of the county in which the offense was committed and to the victim, if the victim requested notification.
- 2) Requires notice of the inmate's request to advance the parole hearing to be forwarded by the parole board to the district attorney and the victim, if the victim requested notification, no less than 30 days before the board may grant the inmate's request.
- 3) Specifies that a failure to notify the district attorney or the victim, if the victim requested notification, of a request to advance the hearing shall postpone any action being taken on the hearing advancement until the notice is properly made.

EXISTING LAW:

- 1) Provides guidelines for the Board of Parole Hearings to schedule parole hearings for prisoners in California Department of Correction and Rehabilitation for whom they are appropriate. (Pen. Code, § 3041.5.)
- 2) Requires the board set a date to reconsider whether an inmate should be released on parole that ensures a meaningful consideration of whether the inmate is suitable for release on parole. (Pen. Code, § 3041.5.)
- 3) Requires that within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions. (Pen. Code, § 3041.5, subd. (b)(1).)
- 4) Requires that within 20 days following any meeting where a parole date has not been set, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated. (Pen. Code, § 3041.5, subd. (b)(2).)

- 5) Specifies that the board shall schedule the next hearing, after considering the views and interests of the victim, as follows:
 - a) Fifteen years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than 10 additional years. (Pen. Code, § 3041.5, subd. (b)(3)(A).)
 - b) Ten years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than seven additional years. (Pen. Code, § 3041.5, subd. (b)(3)(B).)
 - c) Three years, five years, or seven years after any hearing at which parole is denied, because the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety requires a more lengthy period of incarceration for the prisoner, but does not require a more lengthy period of incarceration for the prisoner than seven additional years. (Pen. Code, § 3041.5, subd. (b)(3)(c).)
- 6) Allows the Board of Parole Hearings discretion, after considering the views and interests of the victim, advance a parole hearing to an earlier date, when a change in circumstances or new information establishes a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the prisoner. (Pen. Code, § 3041.5, sub. (b)(4).)
- 7) Allows an inmate to request that the board exercise its discretion to advance a hearing set pursuant to paragraph (3) of subdivision (b) to an earlier date, by submitting a written request to the board, with notice, upon request, and a copy to the victim which shall set forth the change in circumstances or new information that establishes a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration of the inmate. (Pen. Code, § 3041.5, sub. (d)(1).)
- 8) Mandates that the board shall have sole jurisdiction, after considering the views and interests of the victim to determine whether to grant or deny a written request to advance the hearing, and its decision shall be subject to review by a court or magistrate only for a manifest abuse of discretion by the board. The board shall have the power to summarily deny a request that does not comply with the provisions of this subdivision or that does not set forth a change in circumstances or new information as required. (Pen. Code, § 3041.5, sub. (d)(2).)
- 9) Specifies an inmate may make only one written request to advance a hearing during each three-year period. Following either a summary denial of a request to advance a hearing, or the decision of the board after a hearing to not set a parole date, the inmate shall not be entitled to submit another request for a hearing pursuant to subdivision to set a parole date

until a three-year period of time has elapsed from the summary denial or decision of the board. (Pen. Code, § 3041.5, sub. (d)(3).)

- 10) Specifies that within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action. (Pen. Code, § 3041.5, sub. (b)(5).)
- 11) Requires that within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing as specified. (Pen. Code, § 3041.5, sub. (b)(6).)
- 12) Requires the board conduct a parole hearing as a de novo hearing. Findings made and conclusions reached in a prior parole hearing shall be considered in but shall not be deemed to be binding upon subsequent parole hearings for an inmate, but shall be subject to reconsideration based upon changed facts and circumstances. When conducting a hearing, the board shall admit the prior recorded or memorialized testimony or statement of a victim or witness, upon request of the victim or if the victim or witness has died or become unavailable. At each hearing the board shall determine the appropriate action to be taken based on the criteria set forth in Penal Code Section 3041. (Pen. Code, § 3041.5, sub. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 487 is a way to ensure that all victims are notified when an inmate files a petition to advance their parole date. By requiring that the Board of Parole Hearings also notify the District Attorney of the County in which the offense was committed, there will be no doubt that a representative advocating for the victim's interests will be available for comment in those situations that merit such involvement.
- 2) **Marsy's Law (Proposition 9, 2008):** Proposition 9 was passed by the voters of in 2008. Proposition 9 included a victims' bill of rights. Among the protections in the victims' bill of rights, was the right for victims to be noticed of criminal proceedings in which they were a victim. Proposition 9 also provided victims with the right to be heard at criminal proceedings. Victims can express their views personally, or through a representative. Criminal proceedings where victims have a right to notice and expression of views include parole hearings for inmates serving indeterminate life terms in the California Department of Corrections and Rehabilitation (CDCR).

California Department of Corrections and Rehabilitation has an Office of Victim and Survivor Rights and Services (OVSRS) that provides assistance to victims surrounding issues involving inmates in CDCR. OVSRS handles requests by victims for notification regarding inmates involved in their crime. OVSRS currently handles requests by victims for notification regarding parole hearing dates for offenders sentenced to life imprisonment.

- 3) **Argument in Support:** According to Bonnie Dumanis, *San Diego County District Attorney*, Notes that California voters passed the Victims' Bill of Rights Act (Marsy's Law) in 2008, which amend the state's Constitution and certain Penal Code sections to protect and expand the legal rights of victims of crime to including (among 17 others) the right to be noticed and to be heard, upon request, at any proceeding, including post-conviction release decisions.

"Unfortunately, existing law only requires that the Board of Parole Hearings notify the victims or next of kin if an inmate files a petition to advance their parole date, and omits the District Attorney in the notification process. Moreover, it has come to our attention that some victims are not getting notified in a timely fashion. Assembly Bill 487 would provide a safety net to ensure that when an inmate files such a petition, the district Attorney of jurisdiction will also be notified. Failure to notify the victim and the district Attorney of record will make void the requested petition and reinstate the original hearing date.

"Our office is a significant stakeholder in parole hearings, and our prosecutors appear at about 45 hearings each year and advocate the State's position with respect to public safety, and sometime serve as the voice of crime victims and their next of kin. This bill would fix a large omission in the hearing advancement process, consisting of notice of potential hearing advancements, and an opportunity to be heard, after we have expended significant time and resources to convict this inmate.

". . . , AB 487 would give the District Attorney the opportunity to immediately notify victim and extent of kin upon learning of a hearing advancement. Marsy's Law advocated predictability and promised to eliminate endless and repeated parole hearings which re-traumatize crime victims and their families. Currently, victims are being re-traumatized and have no one to turn to, as the District Attorney is circumvented in the entire process. Ab 487 does not take away any power or authority from the Board of Parole Hearings, as it will still decide the matter of advancement as it see just and fit. There is no downside to simply providing significant stakeholders with an opportunity to weigh-in before that decision is made."

- 4) **Argument in Opposition:** According to *The California Public Defenders Association*, "This bill would require notification of the district attorney of the county in which the offense was committed, or his or her designee, to receive notification of specified parole proceedings and would require nullification of action taken on the hearing advancement if the district attorney of the county in which the offense was committed, or his or her designee, and the victim are not notified.

"This bill requires prior notification of the committing county's district attorney. It does not affect the rights of victims. Under current law, district attorneys are notified of parole hearings in cases where the inmate was convicted of an offense carrying a life term (So called "Lifer Hearings"). AB 487 expands this notification requirement to situations where an inmate is requesting an earlier parole date. A failure to so notify the District Attorney requires postponement of the hearing.

"This bill simply adds a possible impediment to a timely hearing through no action of the inmate."

- 5) **Related Legislation:** SB 230 (Hancock), of this legislative session, would specify that the purpose of the meeting between the Board of Parole Hearings and an inmate during the 6th year before the inmate's minimum eligible parole date is to review and document the inmate's activities and conduct pertinent to parole eligibility. The bill would require a panel of 2 or more commissioners or deputy commissioners to meet with each inmate one year before the inmate's minimum eligible parole date in order to grant or deny parole, as specified. The bill would prohibit an inmate from being released before reaching his or her minimum eligible parole release date unless the inmate is eligible for earlier release pursuant to his or her youth offender parole eligibility date.

Existing law authorizes the Governor to request a review of a decision by the board to grant or deny parole to an inmate up to 90 days before the inmate's scheduled release date.

The bill would authorize the Governor to request a review of a decision by the board to grant or deny parole at any time before the inmate's scheduled release. The bill would make conforming changes.

REGISTERED SUPPORT / OPPOSITION:

Support

Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
California College and University Police Chiefs Association
California Correctional Supervisors Organization
California District Attorneys Association
California Narcotic Officers Association
California State Sheriffs' Association
Chief Probation Officers of California
County of San Diego
Crime Victims United of California
Los Angeles Police Protective League
Riverside Sheriffs Association
San Diego County District Attorney

Opposition

California Public Defenders Association
Taxpayers for Improving Public Safety

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

Amendments Mock-up for 2015-2016 AB-487 (Gonzalez (A))

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

**Mock-up based on Version Number 99 - Introduced 2/23/15
Submitted by: David Billingsley, Assembly Public Safety Committee**

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

SECTION 1. Section 3041.5 of the Penal Code is amended to read:

3041.5. (a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, with the exception of en banc review of tie votes, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of Parole Hearings, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf. Neither the prisoner nor the attorney for the prisoner shall be entitled to ask questions of any person appearing at the hearing pursuant to subdivision (b) of Section 3043.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections and Rehabilitation shall be present to ensure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner and any person described in subdivision (b) of Section 3043 shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(6) The board shall set a date to reconsider whether an inmate should be released on parole that ensures a meaningful consideration of whether the inmate is suitable for release on parole.

(b) (1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

(3) The board shall schedule the next hearing, after considering the views and interests of the victim, as follows:

(A) Fifteen years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than 10 additional years.

(B) Ten years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than seven additional years.

(C) Three years, five years, or seven years after any hearing at which parole is denied, because the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety requires a more lengthy period of incarceration for the prisoner, but does not require a more lengthy period of incarceration for the prisoner than seven additional years.

(4) The board may in its discretion, after considering the views and interests of the victim *and the district attorney of the county in which the offense was committed*, advance a hearing set pursuant to paragraph (3) to an earlier date, when a change in circumstances or new information establishes a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the prisoner provided in paragraph (3).

(5) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action.

(6) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing in accordance with paragraph (3).

(c) The board shall conduct a parole hearing pursuant to this section as a de novo hearing. Findings made and conclusions reached in a prior parole hearing shall be considered in but shall not be deemed to be binding upon subsequent parole hearings for an inmate, but shall be subject to reconsideration based upon changed facts and circumstances. When conducting a hearing, the board shall admit the prior recorded or memorialized testimony or statement of a victim or witness, upon request of the victim or if the victim or witness has died or become unavailable. At each hearing the board shall determine the appropriate action to be taken based on the criteria set forth in ~~paragraph (3)~~ of subdivision ~~(a)~~ (b) of Section 3041.

(d) (1) An inmate may request that the board exercise its discretion to advance a hearing set pursuant to paragraph (3) of subdivision (b) to an earlier date, by submitting a written request to the board, ~~with notice, upon request, and copies a copy to for the district attorney of the county in which the offense was committed, or his or her representative, and to for the victim,~~ which shall set forth the change in circumstances or new information that establishes a reasonable likelihood that consideration of the public

David Billingsley

Assembly Public Safety Committee

04/01/2015

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safety does not require the additional period of incarceration of the inmate. *The Board shall provide notice of the request be forwarded by the board to the district attorney and the victim, if the victim has previously requested notification of all board actions, within no less than 30 days before the board may grant of receipt of the inmate's request. Notice shall be satisfied by mailing copies of the inmate's request to the office of the district attorney and, if applicable, to the last address provided by the victim to Office of Victim and Survivor Rights and Services. if the victim requests notification.*

(2) The board shall have sole jurisdiction, after considering the views and interests of the *district attorney of the county in which the offense was committed, or his or her representative, and the victim* to determine whether to grant or deny a written request made pursuant to paragraph (1), and its decision shall be subject to review by a court or magistrate only for a manifest abuse of discretion by the board. The board shall have the power to summarily deny a request that does not comply with the provisions of this subdivision or that does not set forth a change in circumstances or new information as required in paragraph (1) that in the judgment of the board is sufficient to justify the action described in paragraph (4) of subdivision (b).

(3) An inmate may make only one written request as provided in paragraph (1) during each three-year period. Following either a summary denial of a request made pursuant to paragraph (1), or the decision of the board after a hearing described in subdivision (a) to not set a parole date, the inmate shall not be entitled to submit another request for a hearing pursuant to subdivision (a) until a three-year period of time has elapsed from the summary denial or decision of the board.

(4) Failure to provide notification as required in paragraph (1) of this subdivision shall postpone post pone any action being taken on the hearing advancement until the notice is properly made.

Date of Hearing: April 7, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 489 (Gonzalez) – As Introduced February 23, 2015

SUMMARY: Adds ocean lifeguards to the list of public safety officers eligible to receive the Public Safety Medal of Valor (PSMOV) for extraordinary valor above and beyond the call of duty, and authorizes a group to be named later to represent ocean lifeguards on the PSMOV Review Board.

EXISTING LAW:

- 1) Provides that the Governor may annually present in the name of the State of California a Medal of Valor to one or more public safety officers cited by the Attorney General (AG) upon the recommendation of the Medal of Valor Review Board for extraordinary valor above and beyond the call of duty. The Public Safety Medal of Valor shall be the highest state award for valor given to a public safety officer, which includes any person serving a public service agency, with or without compensation, as a firefighter, a law enforcement officer, including a corrections or court officer or a civil defense officer, or an emergency services officer. (Gov. Code, § 3401.)
- 2) Creates the "Medal of Valor Review Board", comprised of representatives or their designees, selected by the following organizations:
 - a) California Association of Highway Patrolman;
 - b) California Coalition of Law Enforcement Associations;
 - c) California Correctional Peace Officers Association;
 - d) California Peace Officers' Association;
 - e) California Police Chiefs' Association;
 - f) California Professional Firefighters;
 - g) California State Firefighters' Association;
 - h) California State Sheriffs' Association;
 - i) California Statewide Law Enforcement Association;
 - j) Peace Officers Research Association of California; and

- k) A group representing emergency medical technicians and paramedics, to be selected by the Board. (Gov. Code, § 3402.)
- 3) Provides that the Board shall be chaired by a member elected by a majority of the members at the first official meeting of the Board each year. The Board shall meet at the call of the chair. Members shall serve without compensation or reimbursement for travel, per diem, or other expenses, and they shall minimize travel expenses to the greatest extent possible. Any cost incurred by a member as a result of serving as a member shall not be paid by the state. (Gov. Code, § 3402, subd. (c).)
- 4) Requires the Board to review applications for the PSMOV to determine which applicants, if any, to recommend to the AG. Not more than once each year, the Board may present to the AG the names of those persons, if any, it recommends for the PSMOV. (Gov. Code, § 3402, subds. (d) & (e).)
- 5) Authorizes the Board to receive donations to pay for meeting and witness expenses. Witnesses requested to appear before the Board may be paid no more than the fees paid to witnesses under Code of Civil Procedure. The per diem and mileage allowance may be paid by funds donated to the Board and shall not be paid by the state. If donated funds are not available to the Board, the Board shall not hold hearings or have witnesses. (Gov. Code, § 3402, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The Public Safety Medal of Valor is the highest state award given to public safety officers for showing "extraordinary valor beyond the call of duty". Lifeguards in most jurisdictions in California are classified as public safety officers and they should be eligible to qualify for this award. Their heroic actions save thousands of lives each year and the dangerous work they perform has led some to pay the ultimate price, yet they cannot be considered for this honor.

"AB 489 will become more inclusionary of those who risk their lives every day and add ocean lifeguards to the list of eligible public servants alongside firefighters, law enforcement officers, corrections officers and emergency service officers."

- 2) **Argument in Support:** *The California Marine Safety Chief's Association* states, "On July 6, 2014, 32 year-old Newport Beach Lifeguard Ben Carlson tragically lost his life in the line of duty. Ben entered the water and made contact with a swimmer in distress. During the rescue, the two were hit by a large set of waves estimated at 10' – 12'. Ben, believed to be knocked unconscious, was lost in the turbulent water conditions. The swimmer was assisted to safety by a body boarder in the area and was uninjured.

"Every day of the year, people go to the beach to enjoy the amenities it provides. However, there are inherent risks involved with the ocean and many municipalities and government

agencies provide a service to protect and educate the public. California ocean lifeguards rescue around 45,000 individuals annually and make millions of preventative actions to reduce injury and prevent drowning. With this, lifeguards risk their lives and safety to perform their duties, whether it is in large surf, around rocks and piers, or other dynamic and unpredictable forces of nature.

“Assembly Bill 489 will become more inclusionary of those who risk their lives every day to protect all of us in the state. Our organization strongly supports adding ocean lifeguards to the list of eligible public servants, alongside firefighters, law enforcement officers, corrections officers and emergency service officers. AB 489 would also include a 12th member that represents ocean lifeguards to sit on the Public Safety Medal of Valor Review Board, a group that reviews and recommends candidates to the Attorney General.”

- 3) **Argument in Opposition:** The *Peace Officers Research Association of California* (PORAC) argues, “AB 489 would add ocean lifeguards to the list of public safety officers eligible to receive the award and authorize an unspecified group to represent ocean lifeguards on the review board.

“The Public Safety Officer Medal of Valor is meant to recognize the heroic acts of sworn public safety personnel. While we appreciate the heroism of our ocean lifeguards and commend their efforts to keep our coastline safe, the Medal of Valor is not the appropriate avenue for recognition. There are separate medals for citizen and non-sworn public safety personnel and PORAC believes those awards are better suited for non-sworn ocean lifeguards.”

- 4) **Prior Legislation:** AB 467 (Krekorian), Chapter 462, Statutes of 2009, required the Governor to annually present a Golden Shield Award, of appropriate design, to the next of kin or immediate family of every public safety officer, as defined, who, while serving in any capacity under competent authority, has been killed in the line of duty.

REGISTERED SUPPORT / OPPOSITION:

Support

Myrtle Cole, San Diego City Council Member
Mark Kersey, San Diego City Council Member
California Marine Safety Chief's Association
California Teamsters Public Affairs Council
California State Lodge, Fraternal Order of Police
Los Angeles County Professional Peace Officers Association
Long Beach Police Officers Association
Sacramento County Deputy Sheriffs' Association
San Diego Police Department
San Diego Fire-Rescue Department
Santa Ana Police Offices Association
Unite States Lifesaving Association
Five Private Citizens

Opposition

California Professional Firefighters
Peace Officers Research Association of California

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

Date of Hearing: April 7, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 512 (Mark Stone) – As Introduced February 23, 2015
As Proposed to be Amended in Committee

SUMMARY: Increases from six weeks to 18 weeks the maximum additional program credits that may be awarded to a state prison inmate during any 12 month period of continuous incarceration for the successful completion of certain programs offered by the California Department of Corrections and Rehabilitation (CDCR). Specifically, **this bill:**

- 1) Increases from six weeks to 18 weeks the maximum additional program credits that may be awarded to a state prison inmate during any 12 month period of continuous incarceration for the successful completion of certain programs offered by CDCR.
- 2) States that persons serving a sentence for conviction of a "violent" felony, or a conviction under the "Three Strikes Law", shall not be eligible for program credit reductions that in combination with credit reductions under other provisions of law would exceed 20% of the total term of imprisonment imposed.
- 3) Provides that all the following prisoners shall not be eligible for additional program credits:
 - a) A person sentenced to prison under the "One Strike Sex Law", or as a "Habitual Sex Offender";
 - b) Persons sentenced to state prison for conviction of specified serious and violent felonies with prior conviction for serious and violent felonies, and are ineligible to earn credit on his or her term of imprisonment;
 - c) A person serving a life sentence without possibility of parole; and
 - d) A person sentenced to death.

EXISTING LAW:

- 1) Provides that in addition to credit awarded for good behavior, CDCR may also award a prisoner program credit reduction from his or her term of confinement. The Secretary of CDCR shall provide guidelines for credit reductions for inmates who successfully complete specific programming performance objectives for approved rehabilitative programming, including, but not limited to, credit reductions of not less than one week to credit reduction of not more than six weeks for each performance milestone. Regulations promulgated by CDCR shall specify the credit reductions applicable to distinct objectives in a schedule of graduated program performance objectives concluding with the successful completion of an in-custody rehabilitation program. Commencing upon the approval of these guidelines, the sheriff shall

thereafter calculate and award credit reductions as authorized. A prisoner may not have his or her term reduced by more than six weeks for credits awarded during any 12-month period of continuous confinement. (Pen Code, § 2933.05, subd. (a).)

- 2) Prohibits the following persons from earning additional program credits :
 - a) Any person serving a prison term for the commission of a "violent" felony;
 - b) Any person sentenced to prison under the "Three strikes Law"; and,
 - c) Any person required to register as a convicted sex offender.
- 3) States that program credits is a privilege, not a right. Prisoners shall have a reasonable opportunity to participate in program credit qualifying assignments in a manner consistent with institutional security and available resources. Assignments made to program credit qualifying programs shall be made in accordance with the prisoner's case plan, when available. (Pen Code, § 2933.05, subd. (b).)
- 4) Provides that "approved rehabilitation programming" shall include, but is not limited to, academic programs, vocational programs, vocational training, and core programs such as anger management and social life skills, and substance abuse programs. (Pen Code, § 2933.05, subd. (c).)
- 5) Provides that additional credits awarded may be forfeited, as specified. Inmates shall not be eligible for program credits that result in an inmate being overdue for release. (Pen Code, § 2933.05, subd. (d).)
- 6) Allows the CDCR, with specific exceptions, to reduce the sentence of a person committed to CDCR by one-third for good behavior and participation, and may reduce the sentence by as much as one-half for participation in one-half-time credit qualifying assignments or educational programs. (Pen Code, § § 2931 and 2933.)
- 7) Provides that a person convicted of a "violent" felony offense shall accrue no more than 15 percent of work-time credit, as defined. (Pen. Code, § 2933.1.)
- 8) States that the total number of credits awarded to any person sentenced under the "Three Strikes Law" shall not exceed one-fifth of the total term of imprisonment and shall not accrue until the defendant is physically placed in the state prison. (Pen Code, § 667, subd. (c)(5))

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "In spite of a recent reduction in the prison population due to realignment, California's prisons continue to be overcrowded, which compromises the safety of incarcerated people and prison staff and reduces the effectiveness of rehabilitation efforts. As of February 2015, the California prison system was at 136.6% of design capacity.

"Credit Earning Programs relieve prison overpopulation by allowing eligible prisoners to modestly reduce their sentences through certain approved education and life skills programs that help prepare for life after release. Research suggests that people who participate in this type of rehabilitative programming are significantly less likely to recidivate.

"CDCR data shows that California prisons have an alarmingly high 63.7% three year recidivism rate. However, Credit Earning programs have a proven track record of helping people released from prison stay out of trouble with the law. For instance, incarcerated people who completed the Substance Abuse Program training had a recidivism rate of less than half the statewide recidivism rate. Just 5.4% of prisoners who graduated from the Prison University Project, which provides higher education programs for San Quentin State Prison prisoners, returned to prison within one year. A comparable group of prisoners who did not enroll in the program had a one year recidivism rate of 21.2%. Other available credit earning programs include vocational training, academic training, and firefighting programs.

"Credit earning programs are a key example of programs that the California Rehabilitation Oversight Board (CROB) has recommended expanding because they create 'positive reinforcements for offenders who successfully complete their rehabilitation program requirements.' This bill provides prisoners an additional incentive to participate in programs that CROB has recommended. The prisoners who are eligible for these credits already have a set release date or hearing, but most of these individuals will be released without having participated in any evidence-based programming aimed at reducing their likelihood of recidivating. By providing a greater incentive to participate and complete programs, we are encouraging prisoners to participate in programs that create opportunities for education and learning life skills. Furthermore, by encouraging prisoners to participate in these programs we can better help prisoners transition back into society."

- 2) **Argument in Support:** The *American Civil Liberties Union* states, "AB 512 will expand the number of sentence reduction credits eligible prisoners can receive, from a maximum of 6 weeks per year, to 18 weeks per year off their time served. Under the bill, this expansion will apply retroactively. This bill helps ensure that currently eligible prisoners have the opportunity and incentive to continue to participate in and complete recidivism-reducing curriculum. Additionally, although the bill does not make every prisoner eligible for expanded credits, the measure does provide credits to Second Strikers; people with convictions for serious or violent crimes so long as they do not exceed the limitations of the Three Strikes initiatives (i.e. 20% or 1/5 time off of one's sentence); and people serving time for a parole violation who do not have a new term.

"The use of credits is a particularly effective way to reduce the number of people in California's prisons because credits received are directly tied to participation in rehabilitation programs. Prisoners have to earn the credits through their involvement in work, educational programs, and positive programming, which will provide them skills that will be useful once they leave prison and return to our communities. Research overwhelmingly suggests that people who participate in rehabilitative programming are significantly less likely to commit new crimes upon release from prison. For example, CDCR data from 2012 revealed an overall recidivism rate of 63.7%, while prisoners who completed Substance Abuse Program Training had a lower rate of 31.3% recidivism. Those who graduated from the Prison University Project had an even lower rate of 5.4%."

- 3) **Argument in Opposition:** The *California District Attorneys Association* states, “This bill would amend Penal Code section 2933.05 to increase the enhanced program credits allowed against a state prison sentence from 6 to 18 weeks per year, and would reduce the categories of inmates excluded from earning such enhanced program credits.

“As an initial matter, AB 512 goes too far by tripling the enhanced credits available to eligible inmates. Given that other laws have greatly curtailed the categories of inmates who actually go to state prison, this level of increase in credits seems excessive.

“Perhaps more troubling is the way this bill tinkers with the categories of inmates who would be ineligible for the enhanced program credits. Under current law, inmates convicted of violent felonies cannot receive credits in excess of 15 percent (PC 2933.1), and are excluded from earning enhanced program credits. AB 512 would not only make them eligible to earn enhanced program credits, but would raise the 15 percent cap to 20 percent. Additionally, while current law excludes PC 290 registrant sex offenders from earning enhanced program credits, AB 512 seeks to remove that eligibility exclusion.

“Allowing violent felons and sex offenders to earn credits three times faster so that they can be released sooner jeopardizes public safety and does a disservice to victims of crime. For those reasons, we must respectfully oppose AB 512.”

- 4) **Prior Legislation:** AB 624 (Mitchell), Chapter 266, Statutes of 2013, authorized a sheriff or county director of corrections to award a prisoner program credit reduction of no more than six weeks during any 12 month period deducted from an inmate's term of confinement for the successful completion of performance objectives for approved rehabilitative programming.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians United for a Responsible Budget (Sponsor)

Dignity and Power Now (Sponsor)

Ella Baker Center for Human Rights (Sponsor)

American Friends Service Committee

Center on Juvenile and Criminal Justice

National Association of Social Workers – California Chapter

American Civil Liberties Union

Alliance for Change

Drug Policy Alliance

California Attorneys for Criminal Justice

California Catholic Conference of Bishops

California Public Defenders Association

Justice Not Jails

Courage Campaign

Roots & Rebound

Parents for Addiction Treatment and Healing

A New Way of life

Hunger Action Los Angeles

Community United Against Violence
Time for Change Foundation
Communities United for Restorative Justice
Legal Services for Prisoners with Children
One Private Citizen

Opposition

California District Attorneys Association

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

Amendments Mock-up for 2015-2016 AB-512 (Mark Stone (A))

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

**Mock-up based on Version Number 99 - Introduced 2/23/15
Submitted by: Greg Pagan, Assembly Public Safety Committee**

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

SECTION 1. Section 2933.05 of the Penal Code is amended to read:

2933.05. (a) In addition to any credit awarded pursuant to Section 2933, the department may also award a prisoner program credit reductions from his or her term of confinement as provided in this section. Within 90 days of the enactment of this section, the secretary shall promulgate regulations that provide for credit reductions for inmates who successfully complete specific program performance objectives for approved rehabilitative programming ranging from credit reduction of not less than one week to credit reduction of no more than ~~six~~ 18 weeks for each performance milestone. Regulations promulgated pursuant to this subdivision shall specify the credit reductions applicable to distinct objectives in a schedule of graduated program performance objectives concluding with the successful completion of an in-prison rehabilitation program. Commencing upon the promulgation of those regulations, the department shall thereafter calculate and award credit reductions authorized by this section. However, a prisoner may not have his or her term of imprisonment reduced more than ~~six~~ 18 weeks for credits awarded pursuant to this section during any 12-month period of continuous confinement.

(b) Program credit is a privilege, not a right. Prisoners shall have a reasonable opportunity to participate in program credit qualifying assignments in a manner consistent with institutional security and available resources. Assignments made to program credit qualifying programs shall be made in accordance with the prisoner's case plan, when available.

(c) As used in this section, "approved rehabilitation programming" shall include, but is not limited to, academic programs, vocational programs, vocational training, and core programs such as anger management and social life skills, and substance abuse programs.

(d) Credits awarded pursuant to this section may be forfeited pursuant to the provisions of Section 2932. Inmates shall not be eligible for program credits that result in an inmate overdue for release.

~~(e) The following prisoners shall not be eligible for program credits pursuant to this section:~~

Greg Pagan
Assembly Public Safety Committee
04/02/2015
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~~(1) Any person serving a term of imprisonment for an offense specified in subdivision (e) of Section 667.5.~~

~~(2) Any person sentenced to state prison pursuant to Section 1170.12 or subdivisions (b) to (i), inclusive, of Section 667.~~

~~(3) Any person required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.~~

~~(4) Any person serving a term of imprisonment as a result of a violation of parole without a new term.~~

(e) (1) A person serving a term of imprisonment for an offense specified in subdivision (c) of Section 667.5 shall not be eligible for program credit reductions pursuant to this section that, in combination with credit reductions pursuant to any other law, are in excess of the limits imposed by Section 2933.1.

(2) A ~~or a~~ person sentenced to state prison pursuant to Section 1170.12 or subdivisions (b) to (i), inclusive, of Section 667 shall not be eligible for program credit reductions pursuant to this section that, in combination with credit reductions pursuant to any other law, are in excess of the limits imposed by paragraph (5) of subdivision (c) of Section 667 or paragraph (5) of subdivision (a) of Section 1170.12.

(3)(2) All of the following prisoners shall not be eligible for program credit reductions pursuant to this section:

(A) A person sentenced to state prison pursuant to Section 667.61 or 667.71.

(B) A person excluded from eligibility pursuant to Section 2933.5

(C) A person serving a life sentence without the possibility of parole.

(D) A person sentenced to death.

(f) The changes made to subdivision (e) by the act that added this subdivision apply retroactively.

Date of Hearing: April 7, 2015

Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 526 (Holden) – As Introduced February 23, 2015

SUMMARY: Increases the fine for the crime of abducting a minor for prostitution from a maximum of \$2,000 to a maximum of \$5,000.

EXISTING LAW:

- 1) Provides that every person who takes away any other person under the age of 18 years from the parent, guardian, or other person having the legal charge of the other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison and a fine not exceeding \$2,000. (Pen. Code, § 267.)
- 2) States that upon conviction of any person for a violation of either procurement of a child under 16 for lewd or lascivious acts or abduction of a minor for purposes of prostitution, the court may impose an additional fine not to exceed \$25,000. (Pen. Code, § 266k, subd. (b).)
- 3) States that a person who, for the purpose of committing a lewd or lascivious act, persuades or entices by false promises, misrepresentations, or the like, any child under 14 years of age, to go out of the country, state, county, or into another part of the same county, is guilty of kidnapping. (Pen. Code, § 207, subd. (b).)
- 4) Provides that when a person is convicted of kidnapping a victim under 14 years of age, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years. (Pen. Code, § 208.)
- 5) Provides that where a person is convicted of pimping or pandering involving a minor the court may order the defendant to pay an additional fine of up to \$5,000. In setting the fine, the court shall consider the seriousness and circumstances of the offense, the illicit gain realized by the defendant and the harm suffered by the victim. The proceeds of this fine shall be deposited in the Victim-Witness Assistance Fund and made available to fund programs for prevention of child sexual abuse and treatment of victims. (Pen. Code § 266k, subd. (a).)
- 6) States any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, when the prostitute is a minor, is guilty of pimping a minor, a felony, and shall be punishable as follows:

- a) If the person engaged in prostitution is a minor over the age of 16 years, the offense is punishable by imprisonment in the state prison for three, four, or six years.
 - b) If the person engaged in prostitution is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 266h, subd. (b).)
- 7) Provides that any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of enticement of a minor into prostitution, pimping or pandering, abduction of a minor for the purposes of prostitution, child pornography, or extortion, is guilty of human trafficking, and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than \$500,000. (Penal Code Section 236.1, subd. (b).)
- 8) States that any person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of enticement of a minor into prostitution, pimping or pandering, abduction of a minor for the purposes of prostitution, child pornography, or extortion, is guilty of human trafficking, and shall be punishable by imprisonment in the state prison as follows:
- a) Five, 8, or 12 years and a fine of not more than \$500,000.
 - b) Fifteen years to life and a fine of not more than \$500,000 when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Penal Code Section 236.1, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "For more than 30 years, the penalty for committing abduction for the purposes of prostitution has not been increased to match the growing criminal enterprise of human trafficking. AB 526 would increase the penalty threshold of committing abduction for the purposes of prostitution from up to a \$2,000 fine to up to a \$5,000 fine."
- 2) **Existing Penalty Assessments:** There are penalty assessments and fees assessed on the base fine for a crime. Assuming a defendant was fined the maximum \$5,000, as provided in this bill, the following penalty assessments would be imposed pursuant to the Penal Code and the Government Code:

Base Fine:	\$ 5,000
Penal Code 1464 state penalty on fines:	5,000 (\$10 for every \$10)
Penal Code 1465.7 state surcharge:	1,000 (20% surcharge)
Penal Code 1465.8 court operation assessment:	40 (\$40 fee per offense)
Government Code 70372 court construction penalty:	2,500 (\$5 for every \$10)
Government Code 70373 assessment:	30 (\$30 per felony/misdo)
Government Code 76000 penalty:	3,500 (\$7 for every \$10)

Government Code 76000.5 EMS penalty:	1,000 (\$2 for every \$10)
Government Code 76104.6 DNA fund penalty:	500 (\$1 for every \$10)
Government Code 76104.7 add'l DNA fund penalty:	2,000 (\$4 for every \$10)

Total Fine with Assessments: \$20,570

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

- 3) **Practical Considerations:** Criminal fines and penalties have climbed steadily in recent decades. Government entities tasked with collecting these fines have realized diminishing returns from collection efforts. Government resources can be wasted in futile collection attempts. A recent San Francisco Daily Journal article noted, "When it comes to collecting fines, superior court officials in several counties describe the process as 'very frustrating,' 'crazy complicated' and 'inefficient.'" (See *State Judges Bemoan Fee Collection Process*, San Francisco Daily Journal, 1/5/2015 by Paul Jones and Saul Sugarman.)

The fines applicable to procuring and abducting minors for purposes of prostitution may provide an example of this problem. Simply put, criminal defendants can generally not produce a substantial flow of money for fines. That well will quickly run dry. In the same Daily Journal article, the Presiding Judge of San Bernardino County was quoted as saying "the whole concept is getting blood out of a turnip." (*Daily Journal, supra.*) The article noted in particular that "Felons convicted to prison time usually can't pay their debts at all. The annual growth in delinquent debt partly reflects a supply of money that doesn't exist to be collected." (*Ibid.*)

- 4) **Prioritization of Court-Ordered Debt:** Current law under Penal Code section 1203.1d prioritizes the order in which delinquent court-ordered debt received is to be satisfied. The priorities are 1) victim restitution, 2) state surcharge, 3) restitution fines, penalty assessments, and other fines, with payments made on a proportional basis to the total amount levied for all of these items, and 4) state/county/city reimbursements, and special revenue items.
- 5) **Potential Double Punishment Issues:** Penal Code section 654 states, in relevant part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." Fines are penal in nature and therefore subject to the limitations of Penal Code section 654. (*People v. Tarris* (2009) 180 Cal.App.4th 612, 628.)

As the author correctly notes, the fine for the crime of abducting a minor for prostitution has not been increased in decades. The fine was doubled in 1983. (See AB 1485 (Sher), Chapter 1092, Statutes of 1983.)

Nevertheless, other fines that affect the same or similar conduct have been enacted or increased. Most notably, in 2009 the Legislature enacted a *separate* and *additional* fine of up to \$20,000 specifically applicable to convictions for the crime of abduction of a minor for purposes of prostitution. (Pen. Code, § 266k, subd. (b).) That fine was increased to \$25,000 last year. (SB 1388 (Lieu), Chapter 714, Statutes of 2014.) Admittedly that fine is

discretionary. (Pen. Code, § 266k, subd. (b).) However, it raises the question whether if the larger fine is imposed, the fine at issue in the bill can also be imposed.

- 6) **Argument in Support:** According to one private individual, "Currently the penalty for kidnapping a child and forcing the child into prostitution is prison time plus a \$2,000 fine. AB 526 would increase the fine to \$5,000.

"Our nation has an epidemic of child prostitution. According to a report by the FBI, 100,000 children are sold for sex each year within the United States, and as many as 300,000 children are at risk of becoming victims of sexual exploitation. Usually the exploitation starts during adolescence. For boys the average age is between eleven and thirteen, and, for girls, between twelve and fourteen.

"California has emerged as a magnet for sexual exploitation of children. Three of the nation's High Intensity Child Prostitution areas, as identified by the FBI, are located in California: the San Francisco, Los Angeles, and San Diego metropolitan areas.

"I think this is disgraceful. Hopefully the higher the fine for this sexual exploitation will persuade some adults from doing this to children. I think the fine should be even higher. But, AB 526 is a step in the right direction."

- 7) **Argument in Opposition:** According to the *California Public Defenders Association*, "This bill would modify a seldom-invoked penal code section. After the passage of Prop 35 in 2012, Penal Code § 236.1 was amended to read, in part, "Any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).

"The punishment is increased for victims who are minors; under certain circumstances, the possible punishment is a life sentence under Penal Code § 236.1(c)(1)-(2).

"Prosecutors will not use Penal Code § 267, because Penal Code § 236.1 is available to them. In the unlikely event that PC § 267 is charged, it will serve only to hamper low-income defendants from complying with their sentence. Wealthier defendants will be much more able to pay a \$5,000 fine than poor defendants. Furthermore, any money that a defendant has ought to go to the true victim—the prostituted minor. Increasing the statutory fine will take money away from victims and give it to the State."

- 8) **Related Legislation:** AB 733 (Chavez), among other things, would make the fine for a person convicted of soliciting a minor mandatory and would fix the amount of the fine at \$10,000. AB 733 is pending hearing in this committee.

9) **Prior Legislation:**

- a) SB 1388 (Lieu), Chapter 714, Statutes of 2014, in pertinent part, imposed a number of "additional" fines on top of existing criminal fines related to commercial sex acts with minors.

- b) AB 17 (Swanson), Chapter 211, Statutes of 2009, in pertinent part, created an additional fine not to exceed \$20,000 for abduction of a minor for purposes of prostitution and procurement of a minor under the age of 16 for purposes of lewd acts.

REGISTERED SUPPORT / OPPOSITION:

Support

52 Private Individuals

Opposition

California Public Defenders Association

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

Date of Hearing: April 7, 2015
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 539 (Levine) – As Introduced February 23, 2015

SUMMARY: Authorizes the issuance of a search warrant to compel a blood draw from a person suspected of operating a boat while under the influence of alcohol or drugs. Specifically, **this bill:**

- 1) Permits the issuance of a search warrant when all of the following apply:
 - a) A blood sample constitutes evidence that tends to show a violation of specified sections of the Harbors and Navigation Code relating to the operation of a marine vessel while under the influence of drugs or alcohol;
 - b) 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; and,
 - c) The sample will be drawn from the person in a reasonable, medically approved manner.
- 2) States that these provisions are not intended to abrogate the court's duty to determine the propriety of issuing a search warrant on a case-by-case basis.

EXISTING LAW:

- 1) Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13.)
- 2) Defines a "search warrant" as a written order in the name of the people, signed by a magistrate and 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.)
- 3) States that a search warrant may be issued upon any of the following grounds:
 - a) When the property was stolen or embezzled.
 - b) When the property or things were used as the means of committing 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, 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 a provider of electronic communication service or remote computing service has records or evidence 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.
- i) When the property or things to be seized include an item or any evidence that tends to show a violation of the Labor Code, as specified.
- j) 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.
- k) 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, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.
- l) 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 under specified provisions of the Family Code.
- m) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony or a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code.
- n) When a sample of the blood of a person constitutes evidence that tends to show a violation of misdemeanor driving under the influence 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.

- o) When 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. This final provision does not go into effect until January 1, 2016. (Pen. Code, § 1524, subd. (a).)
- 4) Provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)
- 5) Requires a magistrate to issue a search warrant if he or she is satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence. (Pen. Code, § 1528, subd. (a).)
- 6) Prohibits a person from operating a vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, any drug, or the combined influence of an alcoholic beverage and any drug. (Harb. & Nav. Code, § 655, subd. (b).)
- 7) Prohibits a person from operating any recreational vessel or manipulating any water skis, aquaplane, or similar device if the person has an alcohol concentration of 0.08 percent or more in his or her blood. (Harb. & Nav. Code, § 655, subd. (c).)
- 8) Prohibits a person from operating any vessel other than a recreational vessel if the person has an alcohol concentration of 0.04 percent or more in his or her blood. (Harb. & Nav. Code, § 655, subd. (d).)
- 9) Authorizes a peace officer who arrests a person for boating under the influence to ask that person to submit to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcohol content of the blood. (Harb. & Nav. Code, § 655.1.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 539 reasonably brings boating laws in line with DUI laws, and provides law enforcement with the proper tools to investigate and prosecute those boating under the influence."
- 2) **Missouri v. McNeely:** In *Missouri v. McNeely* (2013) 133 S.Ct. 1552, the United States Supreme Court held that the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every drunk-driving investigation sufficient to justify conducting a blood test without a warrant. Rather, the court directed that the matter be determined on a case-by-case assessment of the totality of the circumstances, in which the dissipation element is a factor in evaluating whether an exigency exists. "In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." (*Id.* at p. 1561.)

Before the *McNeely* decision, the California Supreme Court had applied older U.S. Supreme Court precedent, *Schmerber v. California* (1966) 384 U.S. 757, and held that the evanescent nature of blood alcohol created exigent circumstances and sufficient rationale for permitting warrantless chemical testing following a DUI arrest. (See *People v. Superior Court (Hawkins)* (1972) 6 Cal.3d 757, 761.)

When *Missouri v. McNeely* was decided, there was nothing in the statute listing the types of evidence that may be obtained by means of a search warrant that would authorize a warrant for a DUI blood draw unless the crime under investigation was a *felony*. The Legislature subsequently amended the statute pertaining to grounds for the issuance of a search warrant to allow law enforcement to obtain one on this basis. (Pen. Code, § 1524, subd. (a)(13).) However, the amendment to the statute did not cover misdemeanor offenses involving boating under the influence. This bill seeks to include those offenses as grounds for issuing a search warrant.

- 3) **Boating Accident Statistics:** According to a 2013 report by the California State Parks Division of Boating and Waterways, between 2009 and 2013 32% of all boating fatalities in the state involved alcohol. (See *2013 California Recreational Boating Accident Statistics*, p. 17, http://dbw.ca.gov/Reports/BSRs/2013/2013_AccidentStats_CA_05_08_2014.pdf.)
- 4) **Argument in Support:** The *California State Sheriffs' Association*, the sponsor of this bill, states, " In 2013, the United States Supreme Court (*Missouri v. McNeely* (2013) 569 U.S. ____ [133 S.Ct.1552]) ruled that the dissipation of alcohol in a person's bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant to determine whether a person was driving an automobile while under the influence. This ruling effectively requires law enforcement to obtain a search warrant when it needs to conduct a forced blood draw on a person who refuses to submit to, or fails to complete, a chemical test. The ruling recognized that exigent circumstances can arise, and in such a case, a warrantless blood draw can be justified. However, absent an exigency, a search warrant is required to compel a blood draw.

"Under existing California law, the authority to issue search warrants is generally limited to cases involving felonies. In 2013, in response to the Supreme Court's decision in *McNeely*, the Legislature approved and the Governor signed SB 717 (DeSaulnier, Chapter 317, Statutes of 2013). This measure permitted, but did not require, law enforcement to seek and obtain a search warrant when a sample of the blood of a person constitutes evidence that tends to show a violation of driving a motor vehicle while under the influence of drugs and/or alcohol 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.

"While SB 717 addressed the issue identified in *McNeely* for cases involving driving under the influence, statutes governing the operation of a marine vessel while under the influence were not similarly amended. As such, there is no specific statutory authority that allows law enforcement to comply with the U.S. Supreme Court's holding in *McNeely* when it comes to the need to compel a blood draw in a boating under the influence case. AB 539 provides this limited authority to obtain a search warrant in compliance with all existing state and federal requirements when the alleged offense is the misdemeanor of boating under the influence. Being able to accurately and legally determine a person's intoxication level will allow for

appropriate enforcement of California's boating laws while protecting the public's use and enjoyment of the state's navigable waters."

5) **Argument in Opposition:** According to the Taxpayers for Improving Public Safety, "The proposed amendment creates an unprecedented presumption of guilt, or at least probable cause, based upon speculative circumstantial evidence. Although there is an absolute need to prevent the operation of any vehicle under the influence, the most important purpose of the law is to protect the innocent from unnecessary searches. Each time the goal post is moved removing the protection from unreasonable search and seizure, the slippery slope gets shorter as we near the bottom of the slope gets shorter as we near the bottom of the slope and accept the premise that the 'ends justify the means,' the death knell of democracy."

6) **Related Legislation:**

- a) AB 39 (Medina), would revise the procedure by which a magistrate may issue a search warrant by use of a telephone and facsimile transmission, electronic mail, or computer server. AB 39 is pending referral in the Senate Rules Committee.
- b) AB 1104 (Rodriguez), would authorize the issuance of a search warrant on the grounds that the property or thing to be seized consist of an item or constitute evidence that tends to show a violation of any of the crimes that were previously felonies but reduced to misdemeanors under Proposition 47. AB 1104 is pending hearing in this committee.
- c) AB 1365 (Lackey), would provide for oral fluids testing for purposes of determining if a driver is driving under the influence. AB 1365 is pending hearing in this committee.

7) **Prior Legislation:**

- a) AB 1014 (Skinner), Chapter 872, Statutes of 2014, provided, in pertinent part, that a search warrant may be issued when the property or things to be seized are firearms or ammunition that are in the custody or control of, or is owned or possessed by, a person who is the subject of a gun violence restraining order.
- b) SB 717 (DeSaulnier), Chapter 317, Statutes of 2013, authorized the issuance of a search warrant to allow a blood draw to be taken from a person in a reasonable, medically approved manner as evidence that the person has violated specified provisions relating to driving under the influence, and the person has refused a peace officer's request to submit to, or failed to complete a blood test.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association (Sponsor)
California Association of Harbor Masters and Port Captains
California District Attorneys Association
California Yacht Brokers Association
Marina Recreation Association

Peace Officers Research Association of California
Worldwide Boaters Safety Group

Opposition

Taxpayers for Improving Public Safety

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

Date of Hearing: April 7, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 546 (Gonzalez) – As Introduced February 23, 2015

SUMMARY: Provides that a probation department may apply to either the Commission on Peace Officer Standards and Training (POST) or the Board of State Community Corrections (BSCC) to become a certified provider of specified training courses for becoming peace officers under California law.

EXISTING LAW:

- 1) Provides that every person described in this chapter as a peace officer shall satisfactorily complete an introductory training course prescribed by the Commission on Peace Officer Standards and Training. On or after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by the commission. Training in the carrying and use of firearms shall not be required of a peace officer whose employing agency prohibits the use of firearms. (Pen. Code, § 832, subd. (a).)
- 2) Provides that every peace officer described in this chapter, prior to the exercise of the powers of a peace officer, shall have satisfactorily completed the specified training course. (Pen. Code, § 832, subd. (b)(1).)
- 3) Provides that every specified peace officer may satisfactorily complete the training required by this section as part of the training prescribed. (Pen. Code, § 832, subd. (b)(2).)
- 4) Provides that persons described in this chapter as peace officers who have not satisfactorily completed the specified course shall not have the powers of a peace officer until they satisfactorily complete the course. (Pen. Code, § 832, subd. (c).)
- 5) Provides that a peace officer who, on March 4, 1972, possesses or is qualified to possess the basic certificate as awarded by the Commission on Peace Officer Standards and Training is exempted from this section. (Pen. Code, § 832, subd. (d).)
- 6) Requires all peace officers to complete an introductory course of training prescribed by POST, demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)
- 7) Establishes the Commission on Peace Officer Training and Standards. (Pen. Code, § 13500.)
- 8) Empowers POST to develop and implement programs to increase the effectiveness of law enforcement. (Pen. Code, §13503.)

- 9) Authorizes POST, for the purpose of raising the level of competence of local law enforcement officers, to adopt rules establishing minimum standards related to physical, mental and moral fitness and training that shall govern the recruitment of any peace officers in California. (Pen. Code, § 13510, subd. (a).)
- 10) Requires POST to conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability and adopt standards supported by this research. (Pen. Code, § 13510, subd. (b).)
- 11) Requires POST to establish a certification program for peace officers, which shall be considered professional certificates. (Pen. Code, § 13510.1, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The work of probation departments has become an essential part of our public safety blueprint in California. To ensure we are meeting local and regional training demands for our officers, Assembly Bill 546 would authorize these departments to submit the PC 832 course for certification to either POST or the Board of State and Community Corrections. Allowing probation departments to have another option for certification will better facilitate the delivery and coordination of courses, giving County probation departments across the state the ability to choose what best fits their training needs."
- 2) **POST Training Requirements Generally:** POST was created by the legislature in 1959 to set minimum selection and training standards for California law enforcement. (Pen. Code, § 13500, subd. (a).) Their mandate includes establishing minimum standards for training of peace officers in California. (Pen. Code § 13510, subd. (a).) As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. (Pen. Code, § 832, subd. (a).)

According to the POST Web site, the Regular Basic Course Training includes 42 separate topics, ranging from juvenile law and procedure to search and seizure. [POST, *Regular Basic Course Training Specifications*; <<http://post.ca.gov/regular-basic-course-training-specifications.aspx>>.] These topics are taught during a minimum of 664 hours of training. [POST, *Regular Basic Course, Course Formats*, available at: [<<http://post.ca.gov/regular-basic-course.aspx>>.] Over the course of the training, individuals are trained not only on policing skills such as crowd control, evidence collection and patrol techniques, they are also required to recall the basic definition of a crime and know the elements of major crimes. This requires knowledge of the California Penal code specifically.

- 3) **Peace Officer "Arrest and Firearm" Training Course:** The introductory training course prescribed in Penal Code section 832, subdivision (a) is commonly referred to as the "PC 832 Arrest and Firearms" course and is the minimum training standard required of California peace officers in order to exercise peace officer powers, namely those of making arrests and using and carrying firearm throughout the state (with specified exceptions). According to POST, this course is the "entry-level training requirement for many California peace

officers." (*Regular Basic Course*, POST <<http://post.ca.gov/regular-basic-course.aspx>> [as of Apr. 1, 2014].) The course can be completed through a 664-hour-minimum Standard Format training or a 730-hour-minimum Modular Format, which can be taken over an extended period of time. (*Ibid.*) The curriculum for the course is divided among 41 topics called "Learning Domains," which "contain the minimum required foundational information for given subjects." (*Ibid.*) The Learning Domains include the following topics: leadership, professionalism, and ethics; criminal justice system; policing in the community; laws of arrests; search and seizure; presentation of evidence; investigative report writing; use of force; crime scene, evidence, and forensics; arrest and control; firearms/chemical agents; and cultural diversity/discrimination. (*PC 832 Arrest and Firearms Training Specifications*, POST <<http://post.ca.gov/pc-832-arrest-and-firearms-training-specifications.aspx>> [as of Apr. 1, 2014].)

- 4) **BSCC Training:** Board of State and Community Corrections' (BSCC) currently provides training for probation departments through their Standards and Training for Corrections (STC) program. Under current law, the BSCC provides all of the training probation departments receive other than the PC 832 training that must be completed through a POST certified program. The current BSCC Standards & Training for Corrections (STC) program focuses on two main training areas:
 - a) Core training program – six courses, depending on classification, for corrections staff employed in local jails and probation departments. http://www.bscc.ca.gov/s_stcaboutcoretrainingprogram.php
 - b) Annual training program – mandatory annual training that is based on the needs related to the employee's job classification. http://www.bscc.ca.gov/s_stcservices.php (e.g. Family Finding and Engagement Skill Building Workshop, From Prisons to Probation, Mentally Disordered Inmates: Effective Skills for Corrections Staff, etc)
- 5) **Probation Departments and Lack of Vacancies:** According to the proponents of the bill, there is a significant waiting list for probation department officers to receive the basic "PC 832" training due to a lack of vacancies in existing classes which are offered by other agencies. By permitting BSCC to certify courses for probation departments, probation officers would no longer have such significant waiting times in order to be properly trained pursuant to the requirements of Penal Code section 832.
- 6) **Argument in Support:** According to *The Chief Probation Officers of California*, "Under existing law, probation officers are required to complete a course of training certified by the Commission on Peace Officer Standards and Training (POST) prior to being sworn in as a peace officer. This training requirement includes the PC 832 Arrest and Firearms Course , which consists of a minimum of 64 hours learning domains such as use of force, laws of arrest, search and seizure, investigate report writing, arrest methods and other topics.

"In order for a department to offer a PC 832 course, the courts and trainer must be certified by POST. This course is the only training that probation departments must obtain through POST. The rest of the probation training is done through the Board of State and Community Corrections' (BSCC) Standards and Training for Corrections (STC) program.

Probation departments across the state are facing significant access issues to attending this particular PC 832 training. This is due to fewer courses being offered over the last few years, attendance slots can be difficult to identify for non-POST agencies and therefore not available when probation seeks registration, and travel challenges in regions where fewer courses are offered.

"A recent informal survey of 22 counties showed that half of those counties have experienced difficulty in gaining access to PC 832 training within the last year, with seven of those counties having officers on formal waitlists for courses.

"17 of the 22 respondents have to send officers out of county at a cost of \$500-1,700 per officers due to costs associated with mileage, meals, lodging, and tuition. The cost will vary by the distance of travel required and the length of time.

"Despite the abovementioned training needs, additional courses have not been considered for certification. This is causing new hires to delay the start of their service. In some areas for several months, and is forcing numerous departments to send personnel out of county which can be time-consuming and expensive.

"To ensure we are meeting local and regional training demands, AB 546 would authorize probation departments to submit their course for certification to either POST or the Board of State and Community Corrections for the purpose of training probation officers.

"Allowing probation to seek certification through the BSCC will better facilitate the delivery and coordination of courses as departments and training officers work regularly with the BSCC's STC program for all other training."

- 7) **Prior Legislation:** AB 1860 (V. Manual Perez), Chapter 87, Statutes of 2014, provided that a probation department that is a certified provider of a specified peace officer introductory training course on arrests and firearms prescribed by the Commission on Peace Officer Standards and Training (POST) is not required to offer the course to the general public.

REGISTERED SUPPORT / OPPOSITION:

Support

Chief Probation Officers of California (Sponsor)
California Probation, Parole, and Correctional Association
L.A. County Probation Officers Union
Riverside Sheriffs' Association

Opposition

None

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

Date of Hearing: April 7, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 602 (Gallagher) – As Amended April 6, 2015

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

- 1) Requires, commencing on and after July 1, 2016, BSCC, in consultation with the Administrative Office of the Courts, the California State Association of Counties, the California State Sheriffs' Association, the California District Attorneys Association, and the Chief Probation Officers of California, to collect and analyze data regarding recidivism rates of all persons who receive a felony sentence punishable by imprisonment in county jail or who are placed on PRCS on or after July 1, 2016.
- 2) Mandates that the data shall include, as it becomes available, recidivism rates for these offenders one, two, and three years after their release in the community.
- 3) States that BSCC shall make any data collected pursuant to this paragraph available on the board's Internet Web site on a quarterly basis beginning on September 1, 2017.

EXISTING LAW:

- 1) Establishes, commencing July 1, 2012, BSCC and states that all references to the Board of Corrections or the Corrections Standards Authority shall refer to BSCC. (Pen. Code, § 6024, subd. (a).)
- 2) States that the mission of BSCC shall include providing statewide leadership, coordination, and technical assistance to promote effective state and local efforts and partnerships in California's adult and juvenile criminal justice system, including addressing gang problems. This mission shall reflect the principle of aligning fiscal policy and correctional practices, including, but not limited to prevention, intervention, suppression, supervision, and incapacitation, to promote a justice investment strategy that fits each county and is consistent with the integrated statewide goal of improved public safety through cost-effective, promising, and evidence-based strategies for managing criminal justice populations. (Pen. Code, § 6024, subd. (b).)
- 3) Provides that it shall be the duty of BSCC to collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, including, but not limited to, prevention, intervention, suppression, supervision, and incapacitation, as they relate to both adult corrections, juvenile justice, and gang problems. The board shall seek to collect and make publicly available up-to-date data and information reflecting the impact of state and community correctional, juvenile justice, and gang-related

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

- 4) Requires, commencing on and after July 1, 2012, BSCC, in consultation with the Administrative Office of the Courts, the California State Association of Counties, the California State Sheriffs' Association, and the Chief Probation Officers of California, shall support the development and implementation of first phase baseline and ongoing data collection instruments to reflect the local impact of Public Safety Realignment, specifically related to dispositions for felony offenders and postrelease community supervision. The board shall make any data collected pursuant to this paragraph available on the board's Internet Web site. It is the intent of the Legislature that the board promote collaboration and the reduction of duplication of data collection and reporting efforts where possible. (Pen. Code, § 6027, subd. (b)(12).)
- 5) Authorizes BSCC to do either of the following:
 - a) Collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of criminal justice in the state; or,
 - b) Perform other functions and duties as required by federal acts, rules, regulations, or guidelines in acting as the administrative office of the state planning agency for distribution of federal grants. (Pen. Code, § 6027, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

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

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

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

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

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

- 3) **Effect of Realignment on Crime Rates:** A fact sheet recently released by Public Policy Institute of California (PPIC) on the state's crime rates for 2013 shows that there was an overall decrease in violent crime and property crime rates. Specifically, the violent crime rate dropped by 6.5% in 2013, to a 46-year low of 397 per 100,000 residents. As for property crimes, after a noticeable uptick in 2012, the 2013 rate of 2,665 per 100,000 residents is down 3.9% from 2012 and close to the 50-year low of 2,594 reached in 2011. The fact sheet noted that crime rates vary by region and by category. While some regions did experience increased crime rates, "41 of the state's 58 counties—including 14 of the 15 largest—saw decreases in their violent crime rates in 2013" and "some of the state's largest counties saw substantial decreases in property crime rates in 2013. Orange and Fresno Counties both observed double-digit drops (10% and 13.2% respectively), while the property crime rate in Sacramento County decreased by 9.4%." (Lofstrom and Martin, *Crime Trends in California*, PPIC (Nov. 2014) <http://www.ppic.org/main/publication_show.asp?i=1036> [as of Mar. 27, 2015].)
- 4) **Argument in Support:** According to the *Long Beach Police Officers Association*, "AB 602 will provide sold data to law enforcement agencies throughout California. This data will allow the agencies to utilize an evidence-based approach in dealing with these offenders while maintaining the safety of all Californians."
- 5) **Prior Legislation:**
 - a) AB 2521 (Hagman), of the 2013-2014 Legislative Session, would have required, commencing July 1, 2015, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2015, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2016. AB 2521 was held on the Senate Committee on Appropriations' Suspense File.
 - b) AB 1050 (Dickinson), Chapter 270, Statutes of 2013, requires BSCC, in consultation with certain individuals that represent or are selected after conferring with specified stakeholders, to develop definitions of key terms, which include, but are not limited to, "recidivism," "average daily population," "treatment program completion rates," and any other terms deemed relevant in order to facilitate consistency in local data collection, evaluation, and implementation of evidence-based practices, promising evidence-based practices, and evidence-based programs.
 - c) AB 526 (Dickinson), Chapter 850, Statutes of 2012, requires BSCC to identify and consolidate gang intervention and delinquency prevention programs and grants and focus funding on evidenced-based practices.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Crime Victims United
Fraternal Order of Police
Long Beach Police Officers Association
Los Angeles County Professional Peace Officers Association
Peace Officers Research Association of California
Santa Ana Police Officers Association
Sacramento County Deputy Sheriff's Association

Opposition

None

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

Date of Hearing: April 7, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 618 (Maienschein) – As Introduced February 24, 2015

SUMMARY: Requires an independent professional appointed by the Board of Parole Hearings (BPH), to, at the request of a prisoner, who is appealing a designation as a mentally disordered offender (MDO), or is serving an indeterminate sentence with the possibility of parole, as specified, consult with the prisoner's primary mental health clinician before making a recommendation to the BPH concerning that prisoner's status or parole suitability, as applicable. Specifically, **this bill:**

- 1) Requires an independent professional appointed by BPH for purposes of determining the designation as a MDO, at the request of the prisoner, to consult with a prisoner's primary mental clinician, if any, before making a recommendation concerning that prisoner to BPH. Defines "primary mental clinician," for purposes of this provision, to mean a licensed psychiatrist, psychologist, or clinical social worker who regularly treats the prisoner, including, but not limited to, an employee of the State Department of State Hospitals or a privately-hired person.
- 2) Requires BPH, at any hearing where BPH considers a Psychological Risk Assessment, as specified, as part of its determination of whether to set, postpone, or rescind a parole release date of a prisoner under a life sentence, at the request of the prisoner under a life sentence, also consult with the prisoner's primary mental clinician if that person exists. Defines "primary mental clinician," for purposes of this provision, to mean a licensed psychiatrist, psychologist, or clinical social worker who regularly treats the prisoner, including, but not limited to, a state employee or a privately-hired person.

EXISTING LAW:

- 1) States a legislative finding and declaration that the Department of Corrections (CDCR) should evaluate each prisoner for severe mental disorders during the first year of the prisoner's sentence, and that severely mentally disordered prisoners should be provided with an appropriate level of mental health treatment while in prison and when returned to the community. (Pen. Code, § 2960.)
- 2) Requires, as a condition of parole, a prisoner who meets the following criteria to be treated by the State Department of State Hospitals (DSH) and DSH to provide the necessary treatment:
 - a) The prisoner has a severe mental disorder, as defined, that is not in remission, as defined, or cannot be kept in remission without treatment;
 - b) The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime, as specified, for which the prisoner was sentenced to prison;

- c) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release; and,
 - d) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the DSH or a chief psychiatrist of CDCR, as applicable, have evaluated the prisoner at a CDCR facility or state hospital, as applicable, and a chief psychiatrist of CDCR has certified to BPH that the prisoner meets the above criteria and that by reason of his or her severe mental disorder the prisoner represents a substantial danger of physical harm to others. (Pen. Code, § 2962.)
- 3) Requires BPH to order a further examination by two independent professionals, as specified, if the professionals doing the evaluation described above do not concur that (i) the prisoner has a severe mental disorder, (ii) that the disorder is not in remission or cannot be kept in remission without treatment, or (iii) that the severe mental disorder was a cause of, or aggravated, the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the BPH. Requires the certification by a chief psychiatrist to stand if at least one of the independent professionals who evaluate the prisoner concurs with the chief psychiatrist's certification. (Pen. Code, § 2962, subd. (d)(2) & (3).)
 - 4) Allows BPH, upon a showing of good cause, to order an inmate to remain in custody for up to 45 days past the scheduled release date for a full MDO evaluation. (Pen. Code, § 2963.)
 - 5) Allows the prisoner to challenge the MDO determination both administratively (at a hearing before the board) and judicially (via a superior court jury trial). (Pen. Code, § 2966.)
 - 6) Provides that if the MDO determination made by BPH is reversed by a judge or jury, the court shall stay the execution of the decision for five working days to allow for an orderly release of the person. (Pen. Code, § 2966.)
 - 7) Requires MDO treatment to be inpatient treatment unless there is reasonable cause to believe that the parolee can be safely and effectively treated on an outpatient basis. Allows a parolee to request a hearing to determine whether outpatient treatment is appropriate if the hospital does not place the parolee on outpatient treatment within 60 days of receiving custody of the parolee. (Pen. Code, § 2964, subds. (a) & (b).)
 - 8) Requires the director of the hospital to notify BPH and discontinue treatment if the parolee's severe mental disorder is put into remission during the parole period and can be kept that way. (Pen. Code, § 2968.)
 - 9) Allows the district attorney to file a petition in the superior court seeking a one-year extension of the MDO commitment. (Pen. Code, § 2970.)
 - 10) Requires the following persons released from prison on or after October 1, 2011, be subject to parole under the supervision of CDCR:
 - a) A person who committed a serious felony, as specified;

- b) A person who committed a violent felony, as specified;
 - c) A person serving a Three-Strikes sentence;
 - d) A high-risk sex offender;
 - e) A mentally disordered offender;
 - f) A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which he or she is being released; and,
 - g) A person subject to lifetime parole at the time of the commission of the offense for which he or she is being released. (Pen. Code, § 3000.08, subs. (a) & (c).)
- 11) Requires all other offenders released from prison on or after October 1, 2011 to be placed on postrelease community supervision under the supervision of a county agency, such as a probation department. (Pen. Code, § 3000.08, subd. (b).)
- 12) Provides that prior to a life inmate's initial parole consideration hearing, a Comprehensive Risk Assessment will be performed by a licensed psychologist employed by BPH, except as specified. (Cal. Code Regs., tit. 15, § 2240, subd. (a).)
- 13) Provides that a Comprehensive Risk Assessment will be completed every five years and will consist of both static and dynamic factors which may assist a hearing panel or BPH in determining whether the inmate is suitable for parole. Provides that the assessment may include, but is not limited to, an evaluation of the commitment offense, institutional programming, the inmate's past and present mental state, and risk factors from the prisoner's history and that the assessment will provide the clinician's opinion, based on the available data, of the inmate's potential for future violence. Allows BPH psychologists to incorporate actuarially-derived and structured professional judgment approaches to evaluate an inmate's potential for future violence. (Cal. Code Regs., tit. 15, § 2240, subd. (b).)
- 14) States that in the 5-year period after a Comprehensive Risk Assessment has been completed, life inmates who are due for a regularly scheduled parole consideration hearing will have a Subsequent Risk Assessment completed by a licensed psychologist employed by BPH for use at the hearing; however, this will not apply to documentation hearings, cases coming before BPH en banc, progress hearings, 3-year reviews of a 5-year denial, rescission hearings, postponed hearings, waived hearings or hearings scheduled pursuant to court order, unless the board's chief psychologist or designee, in his or her discretion, determines a new assessment is appropriate under the individual circumstances of the inmate's case. Provides that the Subsequent Risk Assessment will address changes in the circumstances of the inmate's case, such as new programming, new disciplinary issues, changes in mental status, or changes in parole plans since the completion of the Comprehensive Risk Assessment but will not include an opinion regarding the inmate's potential for future violence because it supplements, but does not replace, the Comprehensive Risk Assessment. (Cal. Code Regs., tit. 15, § 2240, subd. (c).)

- 15) Requires, regardless of the length of time served, a life prisoner to be found unsuitable for and denied parole if in the judgment of the BPH panel the prisoner will pose an unreasonable risk of danger to society if released from prison, with the following circumstances tending to indicate unsuitability:
- a) Commitment offense (The prisoner committed the offense in an especially heinous, atrocious, or cruel manner.);
 - b) Previous record of violence;
 - c) Unstable social history;
 - d) Sadistic sexual offenses;
 - e) Psychological factors (The prisoner has a lengthy history of severe mental problems related to the offense.); and,
 - f) Institutional behavior. (Cal. Code Regs., tit. 15, § 2281, subs. (a) & (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "If it is determined that the prisoner is fit to receive a parole hearing, current law requires that the clinician in charge of treating the prisoner and an independent evaluator from within the CDCR evaluate the prisoner. The law also requires the Board of Parole Hearings to appoint two independent professionals to conduct an additional review in certain circumstances.

"However, these independent evaluators are not required to consult with a prisoner's primary clinician before making a recommendation to the board. The findings of these evaluators may be incomplete or lack context since they may not know the unique circumstances facing the prisoner.

"AB 2520 would require the independent evaluator from CDCR to consult with the prisoner's primary clinician before making a recommendation to the BPH. This would help ensure public safety and the well-being of the prisoner by improving communication between the prisoner's health team and independent evaluators.

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

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

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

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

MDO treatment must be on an inpatient basis, unless there is reasonable cause to believe that the parolee can be safely and effectively treated on an outpatient basis. But if the parolee can no longer be safely and effectively treated in an outpatient program, he or she may be taken into custody and placed in a secure mental health facility.

A MDO commitment is for one year; however, the commitment can be extended. (Pen. Code, § 2972, subd. (c).) When the individual is due to be released from parole, the state can petition to extend the MDO commitment for another year. The state can file successive petitions for further extensions, raising the prospect that, despite the completion of a prison sentence, the MDO may never be released.

- 3) **Effect of Psychological Evaluations at Parole Hearings:** In 2011, the Stanford Criminal Justice Center studied the parole process and outcomes of California prison inmates sentenced to life with the possibility of parole. In examining the results of parole determinations, the researchers found that the psychological evaluations used to assess an inmate's psychological stability and risk potential played an influential role in whether parole was granted or denied. (Weisberg, et al., *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California*, Stanford Criminal Justice Center (Sept. 2011) p. 23-24.) Specifically, the report stated the following:

Virtually all inmates who appear at parole hearings have undergone psychological evaluations. Parole commissioners always receive and often review the results of

these evaluations carefully.

The two most common types of clinical opinions in our sample are the Axis V Global Assessment of Functioning Scale and the Clinician Generic Risk assessment. The Axis V GAF measures a patient's overall level of psychological, social, and occupational functioning on a 100-point continuum, with higher scores indicating higher functioning. The Clinician Generic Risk, by contrast, assigns inmates a simple risk-of-recidivating score: low, low-moderate, moderate, moderate-high, and high.

Both the Clinician Generic Risk and the Axis V-GAF are significantly correlated with grant rate. This is especially true of the Clinician Generic Risk assessment, which is statistically significant at the .001 level. ... [I]nmates who receive an average score or higher virtually never receive parole release. Similarly, none of the inmates in our sample who received below 75 on the Axis V-GAF enjoyed favorable release outcomes.

(*Id.* at p. 23.)

This bill would require BPH to consult with an inmate's primary mental clinician as part of its determination of whether to set, postpone, or rescind a parole release date of an inmate serving a life sentence with the possibility of parole, if the inmate so requests. Additionally, this bill would require an independent mental health evaluator to consult with a MDO inmate's primary mental clinician, at the request of the inmate, in making a recommendation to BPH about the inmate's psychological state. Some stakeholders express concern that requiring consultation with the primary mental clinician might pressure the independent evaluator to adopt the clinician's diagnoses or findings of the inmate's mental condition or unfairly prejudice the prisoner from obtaining what otherwise might be a grant of parole. Considering, however, that this bill requires consultation with the primary mental clinician only at the request of the inmate, and that an inmate would request the consultation likely only when it would be favorable to the inmate and not when it would reveal disadvantageous information, this bill could result in BPH receiving more favorable information about an inmate than the board otherwise would have in making a parole determination. Moreover, given the greater familiarity a primary treating clinician has with the mental health of an inmate and the strong correlation an inmate's psychological evaluation has with parole determinations, the consultation required by this bill may provide BPH with a more thorough evaluation of the inmate.

- 4) "**Governor's Veto Message of AB 2520 (Maienschien):** AB 2520 (Maienschien) of the 2014 Legislative Session was identical to this bill in that it required an independent professional appointed by the BPH, to, at the request of a prisoner, who is appealing an MDO determination, or is serving an indeterminate sentence with the possibility of parole, as specified, consult with the prisoner's primary mental health clinician before making a recommendation to the BPH concerning that prisoner or for purposes of determining parole suitability. Governor Brown vetoed this measure and stated in his veto message, "I am returning AB 2520 without my signature.

"AB 2520 requires mental health evaluators appointed by the BPH to consult directly with a prison inmate's primary mental health treatment clinician when considering

parole suitability or MDO status.

The BPH evaluators have access to the inmate's mental health treatment records and can directly consult with clinicians if needed."

- 5) **Prior Legislation:** AB 2520 (Maienschein), of the 2013-14 Legislative Session, was identical to this bill. AB 2520 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of School, County, and Municipal Employees, Local 2620

National association of Social Workers

Legal Services for Prisoners with Children

Taxpayers for Improving Public Safety

Opposition

California Public Defenders Association

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

Date of Hearing: April 7, 2015
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 672 (Jones-Sawyer) – As Introduced February 25, 2015

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to provide transitional services to wrongfully convicted persons upon their release. Specifically, **this bill:**

- 1) Requires CDCR to assist a person who was wrongfully convicted with obtaining an identification card upon release from prison.
- 2) Requires CDCR to provide transitional services to a wrongfully convicted person, including housing assistance, job training, and mental health services, as applicable.
- 3) States that the extent of the services is to be determined by CDCR.
- 4) Specifies that the services shall be provided for a period of not less than six month and no more than two years upon release.

EXISTING LAW:

- 1) Requires CDCR and the Department of Motor Vehicles (DMV) to ensure that all eligible inmates released from prison have valid identification cards issued. (Pen. Code, § 3007.05.)
- 2) Requires CDCR to establish a case management reentry pilot program for offenders who are likely to benefit from case management reentry strategies designed to address homelessness, joblessness, mental disorders, and developmental disabilities among offenders transitioning from prison into the community. (Pen. Code, § 3016.)
- 3) Requires the court to inform a person whose conviction has been set aside based upon a determination that the person was factually innocent of the charge of the availability of indemnity for persons erroneously convicted and the time limitations for presenting those claims. (Pen. Code, § 851.86.)
- 4) States that if a person has secured a declaration of factual innocence, the finding shall be sufficient grounds for compensation by the Victim Compensation and Government Claims Board (VCGCB). Upon application the VCGCB shall, without a hearing, recommend to the Legislature that an appropriation be made. (Pen. Code, § 851.865.)
- 5) Provides that any person who, having been convicted of any crime against the state amounting to a felony and imprisoned in the state prison for that conviction, is granted a pardon by the Governor for the reason that the crime with which he or she was charged was either not committed at all or, if committed, was not committed by him or her, or who, being

innocent of the crime with which he or she was charged for either of the foregoing reasons, shall have served the term or any part thereof for which he or she was imprisoned, may, as specified, present a claim against the state to the VCGCB for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment. (Pen. Code, § 4900.)

- 6) Gives erroneously convicted and pardoned individuals two years to file a claim against the state. (Pen. Code, § 4901.)
- 7) Sets the rate of compensation at \$100 per day of incarceration served subsequent to the claimant's conviction, and specifies that this appropriation shall not be considered gross income for state tax purposes. (Pen. Code, § 4904.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 672 is intended to ensure that individuals who are released from prison after being wrongfully convicted, are able to access reentry services such as housing assistance or job training. This bill was inspired by Anthony Obie who after spending 17 years in prison for a crime he did not commit, was released in 2011 with just the clothes on his back and a few dollars in his pocket."
- 2) **California Commission on the Fair Administration of Justice Report and Recommendations:** A 2008 report by the California Commission on the Fair Administration of Justice addresses some of the obstacles faced by persons who have established their innocence after conviction of a crime in gaining access to post-conviction relief, achieving reintegration into society, and gaining compensation for their wrongful convictions. As to reintegration in particular, the report states:

"Ironically, even the limited resources made available to convicted felons who have served their sentences and are released from prison are not available to those whose convictions have been set aside. Parolees are released to the community in which they were arrested or convicted; services such as counseling and assistance in locating housing or jobs are limited to those who remain under parole supervision. But those who are being released because their conviction is set aside, including those who have been found innocent, receive none of these services. Those who have been released back into the community after successfully challenging their convictions, whether innocent or not, face the same obstacles encountered by parolees, and more. Many are afflicted with post-traumatic stress disorder, or other psychological damage resulting from their wrongful incarceration over a long period of time. Of the States with compensation laws, only three – Massachusetts, Louisiana and Vermont – provide for the costs of medical and psychological care. The New York Times recently gathered information on 137 of the 206 imprisoned individuals who have been found innocent by DNA testing from 1989 through 2007. The reporters also researched the compensation claims of all 206. They found that at least 79 of these persons (40%) received no compensation at all. More than half of those who did receive compensation waited two years or longer after exoneration for the first payment. Few received any government services after their release. They typically left prison with less help – prerelease counseling, job training, substance-abuse treatment, housing assistance and other services – than some states offer to paroled prisoners. Most found that authorities were slow to wipe the

convictions from their records, if they did so at all. Even those who were well educated and fully employed at the time of their wrongful conviction had difficulty finding work after their release. Roberts & Stanton, *A Long Road Back After Exoneration, and Justice is Slow to Make Amends*, New York Times, Nov. 25, 2007; Santos & Roberts, *Putting a Price on a Wrongful Conviction*, New York Times, Dec. 2, 2007.

"The Commission recommends that services to assist with reintegration into society be available to all those released from prison after their judgment of conviction has been reversed, vacated or set aside. This would include assistance in locating housing, a cash allowance, clothing, and employment counseling." (*Report and Recommendations on Remedies*, pp. 6-8, <http://www.ccfaj.org/documents/reports/incompetence/official/REPORT%20AND%20RECOMMENDATIONS%20ON%20REMEDIES.pdf> .)

- 3) **Argument in Support:** According to the *California Attorneys for Criminal Justice*, the sponsor of this bill, "Wrongful convictions are sadly becoming more frequent in our criminal justice system. With the technological developments of DNA evidence, and a growing number of Innocence Projects throughout the state, persons convicted and incarcerated of crimes they did not commit are receiving a second chance at life. According to an LA Times special report, the number of people exonerated each year in the United States has nearly tripled over the last two decades, according to the National Registry of Exonerations. A total of 1,493 wrongfully convicted inmates have been set free since the first DNA tests in 1989.

"However, once a person is released from state prison as wrongfully convicted, they are released back into the community without any compensation or reentry services. By contrast, parolees often receive assistance with various necessities such as food and clothing vouchers, benefits, job training and housing placement. For persons released after being wrongfully convicted and incarcerated, these persons are released without such necessities, identification cards or drivers licenses, because they are no longer in custody of the state.

"In 2011, Obie Anthony spent 17 years in prison after being wrongfully convicted when it was uncovered that a prosecutor failed to disclose that the key witness had received a "deal" with the prosecutor in exchange for the testimony. The witness eventually recanted and Anthony was released from custody. Obie was released only with the clothes on his back, a few dollars in his pocket, and somehow expected to successfully transition back into the community.

"The criminal justice system stole precious years from Obie; it is an unfortunate reality of our criminal justice system that no services are provided to help Obie, and others wrongfully convicted. Although there is a compensation process, it takes months or years to receive compensation. The critical reentry time is the first few days and weeks upon release. The California Department of Corrections and Rehabilitation should, at the very least, provide essential reentry services to persons wrongfully convicted."

- 4) **Prior Legislation:**

- a) AB 2308 (Stone), Chapter 607, Statutes of 2014, required CDCR and DMV to ensure that all inmates released from state prisons have valid identification cards.
- b) SB 618 (Leno), Chapter 800, Statutes of 2013, streamlined the process for compensating persons exonerated after being wrongfully convicted and imprisoned.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice (Sponsor)
American Civil Liberties Union of California
California Catholic Conference
California Public Defenders Association
Legal Services for Prisoners with Children
Taxpayers for Improving Public Safety

Opposition

None

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

Date of Hearing: April 7, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 673 (Santiago) – As Introduced February 25, 2015

SUMMARY: Establishes procedures for the payment and collection of fines, fees, and restitution if a person is released on probation or mandatory supervision, and the jurisdiction of the case is transferred to the superior court of another county. Specifically, **this bill:**

- 1) Requires the receiving court, when probation or mandatory supervision is transferred to the superior court in another county, to accept the entire jurisdiction over the case effective the date that the transferring court orders the transfer.
- 2) Provides that, notwithstanding, the fact that jurisdiction over the case transfers to the receiving court effective the date that the transferring court orders the transfer, if the transferring court has ordered the defendant to pay fines, fees, or restitution, the transfer order shall require that those and any other collections ordered by the transferring court be paid by the defendant to the collection agency for the transferring court for proper distribution and accounting.
- 3) States that the receiving court and receiving county probation department may amend financial orders and add additional local fees as authorized, and shall notify the responsible collection agency of those changes.
- 4) Provides that any local fees imposed by the receiving court shall be collected by the collection agency for the receiving court, and shall not be sent to the collection agency for the transferring court.
- 5) Allows a receiving court to collect court-ordered payments from a defendant, provided however, that the collection agency for the receiving court transmit the funds to the collection agency for the transferring court for deposit and accounting. A collection agency for the receiving court shall not charge administrative fees for collections completed for the transferring without an agreement with the other agency.
- 6) Allows a collection agency for a receiving court to voluntarily collect funds for the transferring court, and shall not report funds owed or collected on behalf of the transferring court as part of those collections required to be reported by the court to the Administrative Office of the courts.

EXISTING LAW:

- 1) Provides that whenever a person is released upon probation or mandatory supervision the court, upon noticed motion, shall transfer the case to the superior court in any other the person resides permanently, meaning the stated intention to remain for the duration of probation or mandatory supervision, unless the transferring court determines that the transfer is inappropriate and states its reasons on the record. Upon notice of the motion for transfer, the court of the proposed receiving county may provide comments for the record regarding the proposed transfer following procedures set forth in rules of court developed by the Judicial Council. The court and the probation department shall give the matter of investigating those transfers precedence over all actions and proceedings therein, except actions or proceedings to which special precedence is given by law, to the end that all those transfers shall be completed expeditiously. (Pen. Code, § 1203.9, subd. (a).)
- 2) Requires the court of the receiving county to accept the entire jurisdiction over the case. (Pen. Code, § 1203.9, subd. (b).)
- 3) Mandates that the order of transfer contain an order committing the probationer to the care and custody of the probation officer of the receiving county and an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county as specified. A copy of the orders and probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper. (Pen. Code, § 1203.9, subd. (c).)
- 4) Requires that the order of transfer contain an order committing the probationer or supervised person to the care and custody of the probation officer of the receiving county and, if applicable, an order for reimbursement of reasonable costs for processing the transfer to be paid to the sending county as specified. A copy of the orders and any probation reports shall be transmitted to the court and probation officer of the receiving county within two weeks of the finding by that county that the person does permanently reside in or has permanently moved to that county, and thereafter the receiving court shall have entire jurisdiction over the case, with the like power to again request transfer of the case whenever it seems proper. (Pen. Code, § 1203.9(d).)
- 5) Requires the Judicial Council to adopt rules providing factors for the court's consideration when determining the appropriateness of a transfer, including but not limited to the following:
 - a) Permanency of residence of the offender;
 - b) Local programs available for the offender; and,
 - c) Restitution orders and victim issues. (Pen. Code, § 1203.9, subd. (d).)
- 6) States that the transferring court must consider at least the following factors when determining whether transfer is appropriate:

- a) The permanency of the supervised person's residence;
 - b) The availability of appropriate programs for the supervised person;
 - c) Restitution orders, including inability to determine restitution amount and the victim's ability to collect; and
 - d) Other victim issues, including residence and places frequented by the victim and enforcement of protective orders. (Cal. Rules of Court, rule 4.530(f).)
- 7) States that, to the extent possible, the transferring court must establish any amount of restitution owed by the supervised person before it orders the transfer. (Cal. Rules of Court, rule 4.530(g)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: According to the author, "Penal Code 1203.9 was enacted to establish a process whereby persons on probation could have their supervision and case transferred from the sentencing county to their county of residence. Currently, this section calls for the transfer of the "entire case" to the new jurisdiction. However, PC 1203.9 is silent on court ordered debt as it relates to the transfer and the process for collection and distribution once transferred. Therefore, there are varying degrees of how the collection and distribution of these funds are handled.

"AB 673 streamlines existing probation and court processes relative to the transfer of fines and fees that a probationer is responsible for by creating a single, uniform process statewide. The bill would keep the responsibility for collection of fines and fees with the sentencing county and the sentencing county would then disburse the payments received accordingly. This construct is particularly useful in cases where a probationer transfers residences multiple times since they would always make payments to their sentencing county which handled the case. This also serves a great benefit to victims seeking restitution as it would create a singular contact for the victim that would always know where the case is currently being supervised in the event the victim needs to get in touch with the supervising agency."

REGISTERED SUPPORT / OPPOSITION:

Support

Chief Probation Officers of California
California District Attorneys Association
California Probation, Parole and Correctional Association

Opposition

California Public Defenders Association

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

Date of Hearing: April 7, 2015
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 696 (Jones-Sawyer) – As Introduced February 25, 2015

SUMMARY: Requires the judge to make a finding of probable cause that a crime has been committed when an out of custody defendant is facing a misdemeanor charge. Specifically, **this bill:**

- 1) Requires that when the defendant is not in custody at the time he or she appears for arraignment and the offense is a misdemeanor to which the defendant has pleaded not guilty, the judge shall determine whether there is probable cause to believe that a crime has been committed by the defendant, unless the counsel for the defendant, or the defendant, waives that determination.
- 2) States that the probable cause determination be made 30 days before the date calendared for trial at the arraignment, unless a later date is requested by the defense in order to allow the prosecution to supplement the materials described, with the discovery that the prosecution is legally required to provide.

EXISTING LAW:

- 1) Requires that if the defendant is in custody at the time they appear before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof (Pen. Code, § 991, subd. (a).)
- 2) Requires the determination of probable cause to be made immediately unless the court grants a continuance for good cause not to exceed three court days. (Pen. Code, § 991, subd. (b).)
- 3) States that in determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference thereto, which, if based on information and belief, state the basis for such information, or any other documents of similar reliability. (Pen. Code, § 991, subd. (d).)
- 4) Provides that if, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall set the matter for trial. (Pen. Code, § 991, subd. (e).)
- 5) Requires the court dismiss the complaint and discharge the defendant if it determines that no probable cause exists. (Pen. Code, § 991, subd. (f).)

- 6) Allows the prosecution to refile the complaint within 15 days of the dismissal of a complaint pursuant to Penal Code section 991. (Pen. Code, § 991, subd. (g).)
- 7) States that a second dismissal pursuant to this section is a bar to any other prosecution for the same offense. (Pen. Code, § 991, subd. (h).)
- 8) Requires that when a defendant is arrested, they are to be taken before the magistrate without unnecessary delay, and, in any event, within 48 hour, excluding Sundays and holidays. (Pen. Code, § 825, subd. (a)(1).)
- 9) Prescribes that the 48 hour limitation for arraignment be extended when:
 - a) The 48 hours expire at a time when the court in which the magistrate is sitting is not in session, that time shall be extended to include the duration of the next court session on the judicial day immediately following. (Pen. Code, § 825, subd. (a)(2).)
 - b) The 48-hour period expires at a time when the court in which the magistrate is sitting is in session, the arraignment may take place at any time during that session. However, when the defendant's arrest occurs on a Wednesday after the conclusion of the day's court session, and if the Wednesday is not a court holiday, the defendant shall be taken before the magistrate not later than the following Friday, if the Friday is not a court holiday. (Pen. Code, § 825, subd. (a)(2).)
- 10) Allows after the arrest, any attorney at law entitled to practice in the courts of record of California, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay to the party aggrieved the sum of five hundred dollars (\$500), to be recovered by action in any court of competent jurisdiction. (Pen. Code, § 825, subd. (b).)
- 11) Requires the time specified in the notice to appear be at least 10 days after arrest when a person has been released by the officer after arrest and issued a citation. (Pen. Code, § 853.6(b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Current law is replete with various means to weed out weak, baseless, or insufficiently supported lawsuits, whether criminal or civil. Such means are designed to prevent unnecessary stress, oppression, and expense for civil and criminal defendants, and also to prevent unnecessary consumption of court time and resources. By identifying meritless cases at an early stage before complex and expensive proceedings, including a jury trial, such costs are prevented.

"Federal constitutional law requires a probable cause determination by an impartial magistrate within 48 hours of arrest for those in custody on criminal charges. The US

Constitution, State Constitution, and statutory law require probable cause determination for accused felons, whether in custody or not, by way of a grand jury indictment or a felony preliminary hearing.

“After a felony preliminary hearing, a defendant can seek a review of the preliminary hearing judge’s ruling by way of a Penal Code section 995 motion. If a misdemeanor defendant is in custody he can seek a probable cause determination from the judge presiding at his arraignment by way of a Penal Code 991 motion. What is missing from this otherwise comprehensive scheme is any vehicle for measuring the merit of misdemeanor charges for a defendant who is not in custody. He is not entitled to an initial probable cause determination or a 991 motion because he is not in custody, and he is not entitled to a preliminary hearing or a 995 motion because he is not charged with a felony.

“Preparation for a misdemeanor trial requires investigation, subpoenaing of witnesses, extensive discovery of the opposing party’s evidence, and often the filing of legal motions and the analysis of physical evidence and the employment of expert witnesses. The time and expense required for this preparation could be obviated if there was a convenient means for washing out the weak and baseless cases at an early stage.

“In the wake of Proposition 47, it has been projected that misdemeanor trial courts statewide will be inundated with thousands and perhaps tens of thousands of what were formerly low level felonies. These courts and defendants will be without the means to weed out the weakest of those charges. Without additional authority to evaluate those cases, the courts may very well find themselves overwhelmed with pending misdemeanor trials.

“AB 696 will provide that authority. It will amend Penal Code § 991 to allow courts to make a probable cause determination for out-of-custody misdemeanors as well as custody misdemeanors. Unlike custody PC § 991 motions, however, it will not require the determination to be made at arraignment. It will allow the prosecutor time to gather more evidence and supporting documentation. Under Penal Code § 1054, both parties must provide discovery of their evidence to the other side 30 days before trial. This bill would provide that the probable cause determination be made at the point that the prosecution should have provided all of its evidence to the defense. The determination will be based on all of that evidence, as long as it meets the minimum test of reliability.

“Though hundreds of thousands of misdemeanors are filed in this state each year and tens of thousands of misdemeanants are in custody at arraignment, experience has shown, since PC § 991 was enacted in 1980, that only a small fraction of those defendants will bring a PC § 991 motion. When they do bring the motion, it normally takes the judge only a few minutes to read the documents, listen to arguments, and make his ruling. When defendants are not in custody, and their liberty is consequently not at stake, it is even less likely that they will bring a motion unless they legitimately believe there is insufficient probable cause to support the charges. PPTThe legal calculus dictates that far less time will be consumed by hearing a few additional PC § 991 motions for out-of-custody misdemeanants than will be saved from having to conduct meritless misdemeanor trials that could otherwise be identified and eliminated at an early stage. This bill would additionally benefit the prosecution by allowing it more time to gather and present evidence to support its claim of probable cause. As such, this authority for expanded probable cause determination should also place little or no additional burden on the courts.

“AB 696 provides an inexpensive and streamlined mechanism in identifying meritless cases and should pay dividends in saved time, stress, and resources for all involved.”

- 2) **Argument in Support:** According to Legal Services for Prisoners with Children, “This bill will increase Californians’ Due Process Rights and also improve judicial efficiency by giving all defendants a review of the charges before trial and dismissing charges that are not supported by probable cause. It will further improve judicial efficiency and protect people from prosecutorial harassment by limiting prosecutors from refiling more than once when there is no probable cause to support the charge(s) filed.

“Even when a person is found not-guilty at trial, the many court appearances he must make can often harm him. For instance, a person may need to miss work or school or get child care in order to go to court. Dismissing charges that are not supported makes good sense for the defendant and the overburdened California court system. This will decrease the number of times a person may have to go to court and improve his and others’ judicial outcomes.”

- 3) **Argument in Opposition:** According to the California District Attorneys Association, “In *Gerstein v. Pugh* (1975) 420 U.S. 103, the United States Supreme Court held that the Fourth Amendment provides in-custody defendants with the right to a prompt post-arrest determination of whether there is probable cause to believe that he or she has committed a crime.

“Following *Gerstein*, Penal Code section 991 was enacted “to be a safeguard against the hardship suffered by a misdemeanor who is detained in custody, by providing that a probable cause hearing will be held immediately, at the time of arraignment . . . : (*People v. Ward* (1986) 188 Cal.App.3d Supp. 11, 15, 17.) This is evident from the plain language of PC 991 which begins with “If the defendant is in custody . . .” The deprivation of liberty for a confined defendant is the hardship that PC 991 exists to protect against. For an out-of-custody defendant, there is no such hardship.

“To expand PC 991 to apply to out-of-custody defendants is to misunderstand the entire purpose of PC 991, and would result in additional trial court resources being spent to remedy a hardship that arguably does not exist.

“Further, AB 696 seeks to create a more onerous procedure, with additional timelines, than that which currently exists for in-custody misdemeanants. If PC 991 is to be expanded to include out-of-custody misdemeanants, it follows that the process should be the same, regardless of custodial status.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Legal Services for Prisoners with Children

Opposition

California District Attorneys Association

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

Date of Hearing: April 7, 2015
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 730 (Quirk) – As Introduced February 25, 2015

SUMMARY: Provides that "transportation" of marijuana, phencyclidine (PCP), or mushrooms shall be defined to mean transportation for purposes of sale. Specifically, **this bill:**

- 1) Defines "transport" for purposes of the statute prohibiting the transportation of not more than 28.5 grams of marijuana or other concentrated cannabis as "transport for sale."
- 2) Defines "transport" for purposes of the statute prohibiting the transportation of PCP or any of its analogs or precursors as "transport for sale."
- 3) Defines "transport" for purposes of the statute prohibiting the transportation of any spores or mycelium capable of producing mushrooms or other materials which contain psilocybin or psilocin as "transport for sale."
- 4) Provides that these provisions of law do not preclude or limit prosecution under an aiding and abetting theory, or conspiracy offenses.

EXISTING LAW:

- 1) Provides that every person who transports, imports into the state, sells, furnishes, administers, or gives away, or offers to transport, import into the state, sell, furnish, administer, or give away, or attempts to import into this state or transport marijuana shall be punished in the county jail pursuant to realignment for a period of two, three or four years. (Health & Saf. Code, § 11360, subd. (a).)
- 2) Provides that every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport PCP or any of its specified analogs or precursors shall be punished by imprisonment pursuant to realignment for a period of three, four, or five years. (Health & Saf. Code, § 11379.5, subd. (a).)
- 3) Provides that every person who transports, imports into this state, sells, furnishes, gives away, or offers to transport, import into this state, sell, furnish, or give away any spores or mycelium capable of producing mushrooms or other material which contain a specified controlled substance shall be punished by imprisonment in the county jail for a period of not more than one year or in the state prison. (Health & Saf. Code, § 11391.)
- 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, administer or give away, or attempts to import into this state or transport cocaine, cocaine base, or heroin, or

any controlled substance which is a narcotic drug, without a written prescription shall be punished by imprisonment pursuant to realignment for three, four, or five years. Specifies that "transport" means transportation for sale. (Health & Saf. Code, § 11352.)

- 5) 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 any controlled substance, which is not a narcotic, listed in the controlled substance schedule without a written prescription shall be punished by imprisonment for two, three, or four years. Specifies that transport means transportation for sale. (Health & Saf. Code, § 11379.)
- 6) 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.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 730 is about fairness and consistency. Two years ago, the Legislature clarified that 'transportation' of illegal drugs was intended to apply to transportation of the drugs for sale, not for personal use. However, the Legislature overlooked certain statutes in its deliberations, resulting in a situation where transportation of some drugs for personal use can be charged only as a possession offense, while transportation of other drugs for personal use can be charged as both possession and transportation. AB 730 removes this unfair inconsistency and makes it clear that in Health & Safety Code §11360, §11379.5 and §11391 'transport' of those specified drugs means transportation with intent to sell."
- 2) **Transportation of a Controlled Substance:** Previously, a person could be convicted of transportation of a controlled substance if such a substance was minimally moved, regardless of the amount of the controlled substance or intent of the possessor. "Transportation of a controlled substance is established by simply carrying or conveying a usable quantity of a controlled substance with knowledge of its presence and illegal character." (See e.g., *People v. Emmal* (1998) 68 Cal.App.4th 1313, 1316.) Courts had interpreted the word "transports" to include transport of controlled substances for personal use. (*People v. Rogers* (1971) 5 Cal.3d 129, 134-135; *People v. Eastman* (1993) 13 Cal.App.4th 668.)

Effective January 1, 2014, three statutes prohibiting transportation of a controlled substance were amended to add an intent-to-sell element. Specifically the statutes added a new subdivision which states "For purposes of this section 'transports' means to transport for sale."

However, other transportation-of-controlled-substance statutes were not affected. This bill requires that a person transporting marijuana, phencyclidine, or mushrooms have the intent to sell the controlled substance in order to be convicted of felony transportation of a controlled substance, eliminating the possibility of a person transporting a small amount of a controlled

substance for personal use of being convicted of felony transportation.

- 3) **Equal Protection:** The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution is essentially a direction that all persons similarly situated should be treated alike. (*Lawrence v. Texas* (2003) 539 U.S. 558, 579 (conc. opn. of O'Connor J., citations and quote marks omitted.) Under current law, a person can be punished more severely for transporting marijuana for personal use than for transporting methamphetamine or cocaine. That they are treated differently raises equal protection concerns.

"The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner." (*In re Eric J.* (1979) 25 Cal.3d 522, 530; *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) Under the equal protection clause, a court does not inquire "whether persons are similarly situated for all purposes, but 'whether they are similarly situated for purposes of the law challenged.'" (*Cooley v. Superior Court, supra*, 29 Cal.4th at p. 253, quoting *People v. Gibson* (1988) 204 Cal.App.3d 1425, 1438.) "The 'similarly situated' prerequisite simply means that an equal protection claim cannot succeed, and does not require further analysis, unless there is some showing that the two groups are sufficiently similar with respect to the purpose of the law in question that some level of scrutiny is required in order to determine whether the distinction is justified. (*People v. Nguyen* (1997) 54 Cal.App.4th 705, 714.)

Although "a defendant convicted of one crime is not similarly situated to a defendant convicted of a different crime" (*People v. Jacobs* (1984) 157 Cal.App.3d 797, 800; *People v. Barrerra* (1993) 14 Cal.App.4th 1555, 1565), defendants who have committed the "same quality" of offense are similarly situated. (*Skinner v. Oklahoma* (1942) 316 U.S. 535, 541 [thieves and embezzlers similarly situated]; *In re King* (1970) 3 Cal.3d 226 [out-of-state fathers who fail to support children are similarly situated with in-state nonsupporting fathers].)

The two groups at issue here are arguably similarly situated for purposes of these statutes. Where no sales element is proven, each group is transporting controlled substances for personal use. The only difference is the specific drug possessed for personal use. All other parts of the contested act, such as the method of transportation, are the same.

If it is found that that the groups are similarly situated, in the second prong of an equal protection analysis, the court will apply different levels of scrutiny to different types of classifications. "In the absence of a classification that is inherently invidious or that impinges upon fundamental rights, a state statute is to be upheld against equal protection attack if it is rationally related to the achievement of legitimate governmental ends." (*Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 514.)

At first blush, the most obvious reason for the differing treatment is that controlled substances are on different schedules for drug classification. Marijuana is a schedule I drug while methamphetamine is a schedule II drug. Although schedule II through V drugs may be prescribed under certain conditions (see e.g., Health & Saf. Code, § 11158), no such provisions exist for schedule I.

However, California recognizes the use of marijuana for medicinal purposes. (See Health &

Saf. Code, § 11362.5 et seq., the Compassionate Use Act.) Moreover, marijuana is certainly treated differently than any other schedule I drug throughout the Penal Code. The Legislature has deemed that mere possession of marijuana is a less serious offense than possession of methamphetamine. Possession of less than 28.5 grams of marijuana is an infraction, while possessing more than that amount is a misdemeanor warranting not more than six months in jail. (Health & Saf. Code, § 11357, subs. (b) & (c).) Compare that with possession of any usable amount of methamphetamine, which until the passage of Proposition 47 was an alternate felony/misdemeanor offense, and which is now a misdemeanor carrying a jail term of up to one year. (Health & Saf. Code, § 11377, subd. (a).) It stands to reason, then, that transporting marijuana for personal use should carry less of a penalty (or at least an equal penalty) than transporting methamphetamine. However, the opposite is true. This by itself supports the notion of an equal protection violation as to transportation of marijuana. This bill would address those equal protection concerns.

- 4) **Argument in Support:** According to the *Conference of California Bar Associations*, a co-sponsor of this bill, "AB 730 would conform the definition of 'transportation' of drugs in Health & Safety Code §§11360, 11379.5 and 11391 with the changes made in 2013 to Health & Safety Code §§11352 and 11379, making it applicable solely to transport for sale, not for personal use. This will add common sense, consistency and fairness to the statutes being conformed. It will also prevent problems resulting from the current inconsistency between the various statutes.

"Existing law penalizes the transportation of drugs more severely than the simple possession of drugs because transportation is most often linked with the sale of drugs. However, California courts have interpreted the term 'transportation' in the drug statutes in its most literal sense – moving a prohibited drug from point A to point B, regardless of intent. This means that a person riding a bicycle with drugs can be guilty of transportation (*People v. LaCross* (2001) 91 Cal.App.4th 182), as can a person simply walking with drugs (*People v. Ormiston* (2003) 105 Cal. App. 4th 676), even if those drugs are for personal use. These rulings have created problems for persons otherwise eligible for Proposition 36 drug probation, with appellate courts allowing a judge to determine whether transportation was for sale even though a jury had acquitted the defendant of possession for sale (*People v. Dove* (2004) 124 Cal.App.4th 1.).

"In 2013, the Legislature enacted AB 721 (Bradford), Chapter 504, which amended Health & Safety Code §§11379 and 11352 to specify that 'transportation' of specified drugs, including cocaine and methamphetamine, meant transportation for sale, not for personal use. At the time, however, the Legislature neglected to make the same change to three other anti-drug sections of the Health and Safety Code – including those dealing with marijuana (§11360) and with PCP and other drugs (§11379.5) - that impose harsher penalties for transportation, even if the drug possession is for personal use and the transportation is simply incidental. In fact, the Legislature's failure to make a consistent change in these statutes can and will be taken by the courts as evidence of the Legislature's intent to impose the higher penalty on incidental transportation.

"AB 730 corrects this oversight by making the transportation-related language in all these anti-drug statutes consistent, with 'transportation' meaning transport for sale, not transport incidental to personal use. Simple possession remains a crime – it is not decriminalized. The only change is that a person walking down the street with drugs can only be charged with

simple possession unless there is evidence the transportation is for sale."

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

6) **Related Legislation:**

- a) AB 46 (Lackey), would reverse provisions recently enacted by Proposition 47 related to possession for personal use of specified controlled substances. AB 46 is pending hearing in this committee.
- b) AB 947 (Chávez), would make the crime of unlawfully possess any amount of cocaine base, cocaine, heroin, methamphetamine, or phencyclidine while armed with a loaded, operable firearm punishable by imprisonment in the county jail rather than state prison. AB 947 is pending hearing in this committee.
- c) SB 333 (Galgiani), is substantially similar to AB 46. SB 333 is pending in the Senate Public Safety Committee.

7) **Prior Legislation:** AB 721 (Bradford) Chapter 504, Statutes of 2013, made the transportation of specified controlled substances a felony only if the individual transports the controlled substance for purposes of sale.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice (Co-Sponsor)
Conference of California Bar Associations (Co-Sponsor)
American Civil Liberties Union
California NORML
California Public Defenders Association
Drug Policy Alliance
Legal Services for Prisoners with Children
Taxpayers for Improving Public Safety

Opposition

None

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

Date of Hearing: April 7, 2015
Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 832 (Cristina Garcia) – As Introduced February 26, 2015
As Proposed to be Amended in Committee

SUMMARY: Provides that "sexual assault" for purposes of reporting incidents of abuse under the Child Abuse Neglect and Reporting Act (CANRA) does not include voluntary acts of sodomy, oral copulation, or sexual penetration, unless it involves a person who is 21 years of age or older engaging in these acts with a minor who is under 16 years of age.

EXISTING LAW:

- 1) Establishes CANRA for the purpose of protecting children from abuse and neglect. (Pen. Code, § 11164.)
- 2) Defines "child" under CANRA to mean a person under the age of 18 years. (Penal Code Section 11165.)
- 3) Enumerates categories of persons who are mandated reporters under the Act. (Pen. Code, § 11165.7, subd. (a).)
- 4) Requires, except as provided, a mandated reporter to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and shall prepare and send, fax, or electronically transmit a written follow up report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident. (Pen. Code, § 11166, subd. (a).)
- 5) Defines "reasonable suspicion" to mean that it is objectively reasonable for a person to entertain a suspicion, based upon the facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. (Pen. Code, § 11166, subd. (a)(1).)
- 6) Provides that any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of \$1,000 or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a specified agency discovers the offense. (Pen. Code, § 11166, subd. (c).)

- 7) Defines "child abuse or neglect" under CANRA to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child as defined, and unlawful corporal punishment or injury as defined. (Pen. Code, § 11165.6.)
- 8) States that "sexual abuse" means sexual assault or sexual exploitation. (Pen. Code, § 11165.1.)
- 9) Defines "sexual assault" as conduct in violation of one or more of the following crimes: rape, statutory rape involving a person who is 21 years of age or older with a minor who is under 16 years of age, rape in concert, incest, sodomy with a person who is under 18 years of age, lewd or lascivious acts upon a child who is under 14, or who is 14 or 15 years of age by a person who is at least 10 years older than the child, oral copulation, sexual penetration, or child molestation, as specified. (Pen. Code, § 11165.1, subd. (a).)
- 10) Provides that unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor (statutory rape). For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age. (Pen. Code, § 261.5, subd. (a).)
- 11) States that it is a misdemeanor for any person who engages in an act of unlawful sexual intercourse with a minor when there is not more than a three year age difference. (Pen. Code, § 261.5, subd. (b).)
- 12) Provides that it is an alternate felony/misdemeanor for any person who engages in an act of unlawful sexual intercourse with a minor when there is more than a three year age difference, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in county jail for 16 months, two, or three years. (Pen. Code, § 261.5, subd. (c).)
- 13) States that any person 21 years of age or older who engages in unlawful sexual intercourse with a minor who is under 16 years of age is guilty of an alternate felony/misdemeanor punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in county jail for two, three, or four years. (Pen. Code, § 261.5, subd. (d).)
- 14) States, except as provided in provisions of law related to lewd and lascivious conduct with minors under the age of 14, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. (Pen. Code, § 286, subd. (b)(1).)
- 15) Makes any person over 21 years of age who participates in an act of sodomy with another person who is under 16 years of age guilty of a felony, except as provided in provisions of law related to lewd and lascivious conduct with minors under the age of 14. (Pen. Code, § 286, subd. (b)(2).)
- 16) States, except as provided in provisions of law related to lewd and lascivious conduct with minors under the age of 14, any person who participates in an act of oral copulation with

another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. (Pen. Code, § 288a, subd. (b)(1).)

- 17) Provides that any person over 21 years of age who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony, except as provided in provisions of law related to lewd and lascivious conduct with minors under the age of 14. (Pen. Code, § 288a, subd. (b)(2).)
- 18) States, except as provided in provisions of law related to lewd and lascivious conduct with minors under the age of 14, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in a county jail for a period of not more than one year. (Pen. Code, § 289, subd. (h).)
- 19) States, except as provided in provisions of law related to lewd and lascivious conduct with minors under the age of 14, any person over 21 years of age who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony. (Pen. Code, § 289, subd. (i).)
- 20) Defines "sexual penetration" as the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by a foreign object, substance, instrument, or device, or by any unknown object. (Pen. Code, § 289, subd. (k)(1).)
- 21) States that any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes as provided, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 288, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 832 creates a clear, uniform, and non-discriminatory standard for mandated reporters to follow when reporting instances of consensual sexual expressions amongst minors. Clear and consistent reporting requirements would ensure that reporters are more confident and knowledgeable about what needs to be reported and result in increased safety for our youth.

"AB 832 would treat all consensual sexual activity the same way that sexual intercourse is treated for the purposes of child abuse reporting. All activity that is exploitive or coercive in nature would remain a mandated report."

- 2) **CANRA and Reportable Incidents of Sexual Assault:** CANRA was established in 1981 for the purpose of protecting children from abuse and neglect. The law imposes a mandatory reporting requirement on individuals whose professions bring them into contact with

children. These professionals are called mandated reporters for purposes of CANRA. Whenever a mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

A mandated reporter must report an incident of child abuse by telephone to a police or sheriff's department or a county probation or welfare department immediately or as soon as practically possible, and then prepare and submit a written follow up report within 36 hours of receiving the information concerning the incident. A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect is guilty of a misdemeanor.

Under CANRA, child abuse includes sexual abuse. Not all sexual conduct involving a minor constitutes sexual abuse requiring a mandated reporter to report the incident. (*Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal. App. 3d 245.) In *Planned Parenthood Affiliates*, the petitioners sought to enjoin implementation of CANRA following an opinion of the Attorney General which held that the statute imposed on professionals and others a duty to report any sexual activity of minors under the age of 14 years as child abuse. Petitioners claimed the law violated the constitutional right to privacy of such minors and placed professionals in circumstances in which they would be forced to choose between compliance with the law and fidelity to their ethical duties to preserve patients' confidential medical histories. (*Id.* at pg. 257.)

In order to explore legislative intent behind CANRA, the court reviewed the Act in light of other statutes that relate to sexual conduct by minors. Various statutes give minors the right to consent to the prevention or treatment of pregnancy (Fam. Code, § 6925, formerly Civ. Code, § 34.5); the right to consent to treatment of sexually transmitted diseases (Fam. Code, § 6926, formerly Civ. Code, § 34.8); and the right to consent to treatment for rape or sexual assault (Fam. Code, §§ 6927 and 6928, formerly Civ. Code, §§ 34.9 and 34.10). Existing statutes also provide minors a privilege of medical record confidentiality. (Civ. Code, §§ 56 *et seq.*) (*Planned Parenthood Affiliates, supra*, 181 Cal. App. 3d at p. 269.) The court found that an interpretation of the law that requires mandated reporters, which include physicians and counselors, to report all instances of sexual conduct by minors, regardless of suspected child abuse, would unjustifiably interfere with a minor's right to confidential reproductive health care. (*Id.* at pp. 270-271.)

A part of the court's analysis also involved discussion of a prior challenge to CANRA's inclusion of statutory rape as the statute was written at the time. At the time, Penal Code Section 261.5 prohibited any act of intercourse with an unmarried woman under 18, regardless of whether the act is voluntary. The California Supreme Court ordered the case transferred to the First District Court of Appeal with directions to issue the alternative writ of mandate, staying operation and enforcement of the reporting law insofar as it applied to conduct in violation of section 261.5. Shortly thereafter, the Legislature deleted section 261.5 from the CANRA statutes and concluded that "[the] existing provisions of law are causing the overreporting of various acts unrelated to child abuse . . . creating a detrimental impact upon the efforts of the Legislature to deal with the problem of child abuse." (*Planned*

Parenthood Affiliates, supra, 181 Cal. App. 3d at p. 272, citing the analysis by the Assembly Committee on Criminal Justice (May 9, 1981).¹

The court held that the legislative intent of CANRA was "to allow the trained professional to determine an abusive from a nonabusive situation. Instead of a blanket reporting requirement of all activity of those under a certain age, the professional can make a judgment whether a minor is having voluntary relations or is being sexually abused." (*Id.* at p. 272.) The court found that, although Penal Code Section 288 (lewd and lascivious conduct with a minor under the age of 14) is included in CANRA, the inclusion of this section did not render all sexual conduct of such minors child abuse per se, and that mature minors under 14 enjoyed the same presumptive constitutional right to sexual privacy as adults. The court reasoned that the CANRA "provisions contemplate criminal acts of child abuse causing trauma to the victim; they do not contemplate the voluntary sexual associations between young children under the age of 14 who are not victims of a child abuser and are not the subjects of sexual victimizations." (*Id.* at p. 267.)

Therefore, the court concluded that "[t]he de facto voluntary sexual conduct among minors under the age of 14 may be ill advised, but it is not encompassed by section 288. The inclusion of that statute in the reporting law does not mandate reporting of such activity. (*Id.* at p. 276.)

Likewise, in 2013, the Department of Consumer Affairs (DCA) evaluated the issue of whether CANRA requires practitioners to report all conduct by minors that fall under the definition of sodomy and oral copulation. Relying on case law, including *Planned Parenthood Affiliates v. Van de Kamp, supra*, and the legislative intent behind CANRA, DCA concluded that mandated reporters are not required to report consensual sex between minors of like age for any of the conduct listed as sexual assault unless the practitioner reasonably suspects that the conduct resulted from force, undue influence, coercion, or other indicators of child abuse. Because sexual conduct of minors that meet the definition of sodomy and oral copulation must be treated the same as all other conduct listed in the section (i.e. Penal Code Section 288), only instances involving acts that are nonconsensual, abusive or involves minors of disparate ages, conduct between minors and adults, and situations where there are indicators of abuse. Accordingly, DCA stated that it was not necessary to amend the statute or remove sodomy or oral copulation from CANRA. (See DCA, Memorandum on the Evaluation of CANRA Reform Proposal Related to Reporting Consensual Sex Between Minors (Apr. 11, 2013).)

As stated in relevant case law and the DCA memo, mandated reporters are not required to report all sexual conduct by minors listed in the CANRA statutes under the definition of "sexual assault." Rather, mandated reporters must use their judgment in determining which situations may involve child abuse. However, several mandated reporters have expressed that the statute is confusing as written and may lead to discrimination against minors who participate in sexual conduct that is not covered by the statutory rape statute. Thus, the intent of this bill is to specify in statute that the reporting requirements under CANRA do not

¹ CANRA's definition of "sexual assault" currently includes statutory rape involving a person who is 21 years of age or older with a minor who is under 16 years of age. (Pen. Code, § 11165.1, subd. (a); Pen. Code, § 261.5, subd. (d).) This was added to the section by AB 327 (Havice), Chapter 83, Statutes of 1997.

require mandated reporters to report voluntary acts of sodomy, oral copulation and sexual penetration between persons who are 16 years or older and a person who is under 21 years of age, which mirrors how the statute treats statutory rape between persons who are 16 years or older and a person who is under 21 years of age.

- 3) **Argument in Support:** According to *Equality California*, "Mandated reporting law currently requires mandated reporters to make a child abuse report anytime they reasonably believe that a youth has been the victim of sexual assault or coerced into sexual activity in any way. AB 832 will not change that. AB 832 simply proposes to amend the definition of sexual abuse so that all sexual activity among young people is treated the same under California's definition of child abuse and reporting law.

"We support AB 832 because it will increase access to critical preventive health and mental health care services for young people; will allow reporters and child welfare to focus on youth who truly are abused or at risk of abuse; and will eliminate a law that has a discriminatory impact and is rooted in discriminatory and outdated beliefs."

- 4) **Argument in Opposition:** According to the *California District Attorneys Association*, "This bill would remove from the definition of 'sexual assault' in the in the Child Abuse and Neglect Reporting Act any consensual sodomy, oral copulation, or sexual penetration between those 16 years or older and under 21 years of age. In other words, mandated reporters would not have to report suspected 'child abuse or neglect' as provided in Penal Code section 11165.1 under the definition of sexual assault unless that conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age.

"Consensual sexual conduct between a 16 year old and a 20 year old is still a misdemeanor. We believe that removing that category from the mandated reporter statute is bad policy. The purpose of the Child Abuse and Neglect Reporting Act is to protect children from abuse and neglect and to 'do whatever is necessary to prevent psychological harm to the child victim.' Removing this category from the Act goes against its very purpose."

5) **Related Legislation:**

- a) AB 1001 (Maienschein), would make it a misdemeanor to impede or interfere with the making of a report of suspected child abuse or neglect by a mandated reporter. AB 1001 is being heard by the Committee today.
- b) AB 1207 (Lopez), would require the Department of Social Services to develop and disseminate information to specified employees of child day care centers and home licensees that care for children regarding the duties of mandated reporters under CANRA.
- c) SB 332 (Block) would authorize a mandated reporter to make a report to a school district police department. SB 332 is pending hearing by the Senate Committee on Public Safety.
- d) SB 478 (Huff), would authorize, until January 1, 2021, certain county welfare agencies to develop a pilot program for Internet-based reporting of child abuse and neglect, as specified. SB 478 is pending hearing by the Senate Committee on Public Safety.

- 6) **Prior Legislation:** AB 1505 (Garcia), of the 2013-2014 Legislative Session, would have excluded from the definition of reportable "sexual assault" under CANRA acts of sodomy or oral copulation, unless the act involves either a person over 21 years of age or a minor under 16 years of age. AB 1505 failed passage in the Committee on Appropriations.

REGISTERED SUPPORT / OPPOSITION:

Support

American Association for Marriage and Family Therapy, California Division
American Civil Liberties Union of California
California Public Defenders Association
Equality California
Gerry Grossman Seminars
National Center for Youth Law

144 private individuals

Opposition

California District Attorneys Association

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

ASSEMBLY BILL

No. 832

Introduced by Assembly Member Cristina Garcia
(Coauthor: Assembly Member Susan Eggman)

February 26, 2015

An act to amend Section 11165.1 of the Penal Code, relating to child abuse.

legislative counsel's digest

AB 832, as introduced, Cristina Garcia. Child abuse: reportable conduct.

The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined, to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Existing law provides that "child abuse or neglect" for these purposes includes "sexual assault," that includes, among other things, the crimes of sodomy, oral copulation, and sexual penetration.

This bill would provide that "sexual assault" for these purposes does not include consensual sodomy, oral copulation, or sexual penetration, unless that conduct is between a person who is 21 years of age or older and a minor who is under 16 years of age.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11165.1 of the Penal Code is amended
2 to read:

3 11165.1. As used in this article, "sexual abuse" means sexual
4 assault or sexual exploitation as defined by the following:

5 (a) "Sexual assault" means conduct in violation of one or more
6 of the following sections: Section 261 (rape), subdivision (d) of
7 Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest),
8 286 (sodomy), subdivision (a) or (b), or paragraph (1) of
9 subdivision (c) of Section 288 (lewd or lascivious acts upon a
10 child), 288a (oral copulation), 289 (sexual penetration), or 647.6
11 (child molestation). *"Sexual assault" for the purposes of this article*
12 *does not include consensual voluntary conduct in violation of Section 286,*
13 *288a, or 289, unless the conduct is between a person 21 years of*
14 *age or older and a minor who is under 16 years of age.*

15 (b) Conduct described as "sexual assault" includes, but is not
16 limited to, all of the following:

17 (1) Penetration, however slight, of the vagina or anal opening
18 of one person by the penis of another person, whether or not there
19 is the emission of semen.

20 (2) Sexual contact between the genitals or anal opening of one
21 person and the mouth or tongue of another person.

22 (3) Intrusion by one person into the genitals or anal opening of
23 another person, including the use of an object for this purpose,
24 except that, it does not include acts performed for a valid medical
25 purpose.

26 (4) The intentional touching of the genitals or intimate parts,
27 including the breasts, genital area, groin, inner thighs, and buttocks,
28 or the clothing covering them, of a child, or of the perpetrator by
29 a child, for purposes of sexual arousal or gratification, except that
30 it does not include acts which may reasonably be construed to be
31 normal caretaker responsibilities; interactions with, or
32 demonstrations of affection for, the child; or acts performed for a
33 valid medical purpose.

34 (5) The intentional masturbation of the perpetrator's genitals in
35 the presence of a child.

36 (c) "Sexual exploitation" refers to any of the following:

37 (1) Conduct involving matter depicting a minor engaged in
38 obscene acts in violation of Section 311.2 (preparing, selling, or

1 distributing obscene matter) or subdivision (a) of Section 311.4
2 (employment of minor to perform obscene acts).

3 (2) A person who knowingly promotes, aids, or assists, employs,
4 uses, persuades, induces, or coerces a child, or a person responsible
5 for a child's welfare, who knowingly permits or encourages a child
6 to engage in, or assist others to engage in, prostitution or a live
7 performance involving obscene sexual conduct, or to either pose
8 or model alone or with others for purposes of preparing a film,
9 photograph, negative, slide, drawing, painting, or other pictorial
10 depiction, involving obscene sexual conduct. For the purpose of
11 this section, "person responsible for a child's welfare" means a
12 parent, guardian, foster parent, or a licensed administrator or
13 employee of a public or private residential home, residential school,
14 or other residential institution.

15 (3) A person who depicts a child in, or who knowingly develops,
16 duplicates, prints, downloads, streams, accesses through any
17 electronic or digital media, or exchanges, a film, photograph,
18 videotape, video recording, negative, or slide in which a child is
19 engaged in an act of obscene sexual conduct, except for those
20 activities by law enforcement and prosecution agencies and other
21 persons described in subdivisions (c) and (e) of Section 311.3.

Date of Hearing: April 7, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 860 (Daly) – As Amended March 25, 2015

SUMMARY: Expands the definitions of sexual battery, rape, sodomy, forced oral copulation, sodomy, and sexual penetration to include non-consensual sexual contact by a person who has been engaged for a professional purpose. Specifically, **this bill:**

- 1) Expands the crime of sexual battery to apply to a person who performs professional services that entail having access to another person's body, who touches an intimate part of the that person's body while performing those services and the touching was against the person's will and for the purpose of sexual arousal, sexual gratification, or sexual abuse. Punishes this crime by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding \$10,000.
- 2) Expands the definitions of rape, sodomy, oral copulation, and sexual penetration to include when any of those acts are performed against a victim's will by a professional whose services entail having access to the victim's body, if the conduct is performed by the professional while performing those services. By expanding the scope of crimes, this bill would impose a state-mandated local program.

EXISTING LAW:

- 1) States any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this law is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding \$2,000; by imprisonment in the state prison for two, three, or four years; and by a fine not exceeding \$10,000. (Pen. Code, § 243.4, subd. (a))
- 2) Provides rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:
 - a) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship, as specified, the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

- b) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.
 - c) 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.
 - d) Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.
 - e) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" is defined as a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.
 - f) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" is defined as a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official. (Pen. Code, § 261(a)(1) to (7).)
- 3) States where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" is defined as incapable of resisting because the victim meets one of the following conditions:
- a) Was unconscious or asleep.
 - b) Was not aware, knowing, perceiving, or cognizant that the act occurred.
 - c) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.
 - d) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose. (Pen. Code, § 261, subs. (a)(4)(A) to (D).)
- 4) States any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 286, subd. (c)(2).)
- 5) Requires that any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 288a, subd.

(c)(2).)

- 6) States any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years. (Pen. Code, § 289, subd. (a)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Sexual Assault is a serious crime, and perpetrators who use positions of trust to assault their clients should be prosecuted to the fullest extent of the law. AB 860 will ensure that these violators are charged with felony sex crimes."
- 2) **Background:** According to the background provided by the author, under current law, providers of specified professional services who sexually assault their clients can be charged with a felony sex crime if *any* of the following conditions occur:
 - A) *Fraud in fact* (e.g., informing a client that they will be examined by a medical instrument causing penetration, obtaining their consent, and then performing the "examination" using their own body part)
 - B) *Fraud by inducement* (e.g., informing a client that sexual penetration served a professional purpose when it did not)
 - C) Or if the victim was unaware, unconscious, restrained, or unable to perceive the essential characteristics of the sexual act.

-However-

A perpetrator of these types of crimes can only be tried for misdemeanor sexual battery if all of the following occur:

- During a session, there is touching which is clearly not related to the professional service, which the victim cannot reasonably believe was said service; and
- The victim was conscious of the nature of the act in terms of its sexual nature; and
- The victim did not consent to the act under fraudulent means (fraud in fact or inducement).

For example: An individual receives facial treatments, and the service provider begins to massage other parts of his or her body sexually without asking the victim for consent (or misleading the victim by claiming that the act was part of that service). If the provider then

stops when the victim objects, the provider could only be charged, under current law, with misdemeanor sexual battery.

Because these acts are not committed while the person is impaired or unconscious of the actions of the provider, they can object to it and are able to perceive the essential characteristics of the sex act. Their consent is not considered to have been obtained by fraudulent misrepresentation during the course of the treatment. In this instance, the rape by fraud in fact or inducement statutes do not apply.

As a consequence, some individuals who have committed a felonious sexual assault can only be charged with less serious crimes.

- 3) **Penalties Provided in Existing Law:** This bill provides any massage therapist, physical therapist, holistic healer, chiropractor, or other professional service provider who touches an intimate part of another's body against his or her will for sexual gratification while in the practice of the profession is guilty of one of the enumerated sex crimes. Lack of consent is the foundation of most prosecutions for sexual assault and may be proven many ways. The victim objects to the conduct and the defendant disregards the objection by force, duress, threat of force, or threat of future retaliation. (See Pen. Code §§ 261(a)(2), 286(c)(2), and 288a(c)(2).) The penalty for most forcible sex offenses is three, six or eight years in state prison. However, there are instances in which the defendant may be guilty of a sex offense even where the victim did not specifically object. Lack of consent is implied if the victim is not able to object because he or she is unconscious, unaware the act occurred, or was not aware of the essential characteristics of the act because of fraud. (See Pen. Code §§ 261(a)(4) and 288a(f)(1) to (4).) This includes a perpetrator who fraudulently claims the act is necessary for some professional purpose or otherwise convinces the victim to consent to one act but then does another. The courts have distinguished between "fraud in fact" and "fraud in inducement." Fraud in fact "appears to be limited to those narrow situations in which the victim consented to the defendant's act, but because the victim believed the essential characteristics of the act consented to were different from the characteristics of the act the defendant actually committed, the victim was incapable of resisting the act actually committed because the victim was ignorant of the true nature of the act permitted. In contrast, when the victim consents to the defendant's act with the full knowledge of the essential characteristics of the act, a conviction was induced the unconscious-due-to-fraud-in-fact concept cannot stand even though the victim was induced to consent by fraudulent representations as to the benefits resulting from the act." (*People v. Stuedemann* (2007) 156 Cal.App. 4th 1, 7; *People v. Cook* (1964) 228 Cal.App. 2nd 716, 718; *People v. Harris* (hereinafter *Harris*) (1979) 93 Cal. App. 3rd 103, 114.) In *People v. Harris*, the defendant's conviction for rape was overturned under a "fraud in fact" theory. In that case, the victim agreed to sexual intercourse with the defendant if she lost a bet, but was unaware the bet was rigged to ensure she lost. (*Harris* at 111).

In affirming the rape conviction of a physician, the California Appellate Court stated, "It is settled that a victim need not be totally and physically unconscious in order for the statute defining rape as an act of sexual intercourse accomplished with a person who is at the time 'unconscious of the nature of the act' to apply (citation omitted). In this context, unconsciousness is related to the issue of consent, which, in prosecution under Penal Code Section 261 (rape) is 'defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the

nature of the act or transaction." (Penal Code Section 261.6). (*People v. Ogunmola* (hereinafter *Ogunmola*) (1987) 193 Cal.App 3rd 274, 279; see also *People v. Minkowski* (1962) 204 Cal.App. 2nd 832.) In *Ogunmola*, the defendant was a gynecologist who raped patients while performing examinations. Neither of the two victims knew the defendant was engaged in the criminal conduct until he committed the act of penetration. Neither victim objected at the time of the examination. The Appellate Court held:

"Similarly, in the present case, the trier of fact could reasonably conclude from the testimony of the victim gynecological patients, who reposed great trust in their physician in placing themselves in positions of great vulnerability from which they could not readily perceive his conduct toward them, that neither was aware of the nature of the act, i.e., neither consciously perceived or recognized that defendant was not engaged in an examination, but rather in an act of sexual intercourse, until he had accomplished sexual penetration, and the crime had occurred. Each of the victims, who had consented to a pathological examination, with its concomitant manual and instrumental intrusions, was 'unconscious of the nature of the act' of sexual intercourse committed upon her by defendant, until the same was accomplished, and cannot be said to have consented thereto. Defendant's conduct on each occasion was clearly within the scope of Penal Code Section 261(a)(4) (rape of an unconscious person), and constituted rape." (*Ogunmola* at 280, 281.) The *Ogunmola* case likely proceeded under a theory that the victims were not aware or cognizant of the act when it occurred and does not seem to deal with fraud in fact. (Penal Code Section 261(a)(4)(B).)

Penal Code Section 263 states, "The essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, however, slight, is sufficient to complete the crime". It is unclear how this bill will provide more protection to the victims because it requires the specified sex offense be committed against the will of the victim. In instances where the victim objects or there is no opportunity for consent because he or she is "unconscious", as specified, the offender is guilty of the substantive offense (rape, sodomy, oral copulation, rape with a foreign object or sexual battery).

- 4) ***People v. Stuedemann***: The sponsor points to *People v. Stuedemann* (hereinafter *Stuedemann*) (2007) 156 Cal.App. 4th 1 as evidence of infirmity in the law that must be remedied. In *Stuedemann*, the People charged the defendant, a massage therapist, with sexual penetration of an unconscious person and oral copulation of an unconscious person, as specified. Penal Code Section 288a(f)(3) is oral copulation of a person who is "unconscious of the nature of the act" because the victim was not aware of the essential characteristics of the act due to the perpetrator's fraud in fact. Penal Code Section 289(d)(3) is sexual penetration under the same circumstances. The defendant was convicted of both charges at trial and appealed. The theory presented by the People was that the defendant was guilty oral copulation and sexual penetration because the victim was unconscious of the essential characteristics of the act due to the defendant's fraud in fact. (*Stuedemann* at 6.) Therefore, the appellate court reviewed the case pursuant to a fraud in fact claim. However, the court was not persuaded by the fraud in fact theory and stated, "Applying this framework here [defining fraud in fact], the evidence does not support a conviction under the unconsciousness provisions of oral copulation and sexual penetration. There is no evidence Griselda [the victim] consented or cooperated (was 'incapable of resisting') because of her ignorance of the true nature of the acts performed by Stuedemann. To the contrary, she did not permit Stuedemann to orally copulate or digitally penetrate her believing the copulation or penetration was something other than a sexual copulation or penetration; instead, she

immediately recognized the acts for what they were and expressed her non-consent."
(*Stuedemann* at 11.)

The court distinguished the *Ogunmola* case explained above because the victim in this case was not consenting to a full on medical examination where penetration for some legitimate purpose might occur. The court concluded, "Unlike *Ogunmola* and its predecessors, there was no evidence Griselda consented to anything resembling the acts undertaken by Stuedemann. Although Griselda consented to a massage, the result of which made her vulnerable to Stuedemann's acts that overstepped the boundaries of her consent, the evidence showed she was fully aware of the nature of Stuedemann's acts when those acts transgressed the boundaries and was capable of (and did) express her non-consent and resistance to the conduct. We conclude that Stuedemann's 'conduct, reprehensible though it was', did not violate [sections on oral copulation and sexual penetration] because Griselda was not unconscious due to Stuedemann's fraud in fact, the only theory asserted by the prosecution.] If there is a statutory oversight in this area of the penal law, the Legislature may address it (*citation omitted*)." (*Stuedemann* at 14.)

Additionally, the court offers under existing law to re-sentence the defendant for battery, as specified; however, the parties reject the court's invitation. It is unclear if charging the defendant under a different statute - one not based on fraud - would have resulted in a different outcome. Although, as the court points out, this case is somewhat troubling, there are factual issues of consent. The only remedy is to craft a statute that would remove the consent element where the victim is in a state of undress or is otherwise in a semi-vulnerable position. However, this may inadvertently punish consensual conduct or fail to protect persons who are fully clothed or not necessarily in a semi-vulnerable position. As noted above, this bill's language still requires the action be committed against the person's will. If that were the case in *Stuedemann* if the defendant had disregarded the victim's objections, the defendant would be guilty of oral copulation and sexual penetration and no discussion of consent would have been necessary.

- 5) **Argument in Support:** According to *The Orange County District Attorney*, "The Orange County District Attorney's Office is pleased to support AB 860, which would close a loophole in the law to address sexual predators who provide professional services (such as doctors, chiropractors, massage therapists and others in positions of trust/power) and prey on vulnerable victims.

"Currently, there is no provision in the law to address a sexual assault committed without a victims' consent in the context of professional services, other than *misdemeanor* sexual battery. AB 860 addresses this gap in the law by providing that a sexual assault committed against these vulnerable victims will be punished similarly to offenses where their consent was obtained fraudulently.

"My office strongly supports this legislation that will protect the public from sexual predators. Thank you for your leadership on this important issue."

- 6) **Prior Legislation:** AB 2049 (Saldana), of the 2007-2008 Legislative Session, was identical to this bill. AB 2049 was never heard in Senate Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys' Association
Orange County District Attorney's Office

Opposition

None

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

Date of Hearing: April 7, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 892 (Achadjian) – As Introduced February 26, 2015

SUMMARY: Exempts from the prohibition on unsafe handguns the purchase of a state-issued handgun by the spouse or domestic partner of a peace officer who died in the line of duty.

EXISTING LAW:

- 1) Provides that any person in California who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year. (Pen. Code, § 32000, subd. (a).)
 - a) Specifies that this section shall not apply to any of the following (Pen. Code, § 32000, subd. (b).):
 - i) The manufacture in California, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice (DOJ) to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited, inclusive, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this.
 - ii) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section.
 - iii) Firearms listed as curios or relics, as defined in federal law.
 - iv) The sale or purchase of any pistol, revolver, or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person.

- 2) Specifies that violations of the unsafe handgun provisions are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. (Pen. Code, § 32000, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Assembly Bill 892 would add an exemption for the spouse of domestic partner of a peace officer who was killed in the line of duty, which would allow them to receive their spouse or domestic partner's state-issued service weapon, regardless of whether it has been deemed unsafe by the Department of Justice."
- 2) **Safe Handgun Law:** SB 15 (Polanco), Chapter 248, Statutes of 1999, made it a misdemeanor for any person in California to manufacture, import for sale, offer for sale, give, or lend any unsafe handgun, as defined, with certain specific exceptions. SB 15 defined an "unsafe handgun" as follows: (a) does not have a requisite safety device, (b) does not meet specified firing tests, and (c) does not meet a specified drop safety test.
 - a) **Required Safety Device:** The Safe Handgun Law requires a revolver to have a safety device that, either automatically in the case of a double-action firing mechanism or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge or in the case of a pistol have a positive manually operated safety device.
 - b) **Firing Test:** In order to meet the "firing requirements" under the Safe Handgun Law, the manufacturer must submit three unaltered handguns, of the make and model for which certification is sought, to an independent laboratory certified by the Attorney General. The laboratory shall fire 600 rounds from each gun under certain conditions. A handgun shall pass the test if each of the three test guns fires the first 20 rounds without a malfunction, and fires the full 600 rounds without more than six malfunctions and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user. "Malfunction" is defined as a failure to properly feed, fire or eject a round; failure of a pistol to accept or reject a manufacturer-approved magazine; or failure of a pistol's slide to remain open after a manufacturer approved magazine has been expended.
 - c) **Drop Test:** The Safe Handgun Law provides that at the conclusion of the firing test, the same three manufacturer's handguns must undergo and pass a "drop safety requirement" test. The three handguns are dropped a specified number of times, in specified ways, with a primed case (no powder or projectile) inserted into the handgun, and the primer is examined for indentations after each drop. The handgun passes the test if each of the three test guns does not fire the primer.
- 2) **Failure to Pay a Fee may Result in a Weapon Being Deemed Unsafe:** The Department of Justice deems some weapons to be "unsafe" because a particular gun manufacturer has not paid the appropriate fees and/or submitted the proper paperwork. The weapons themselves may be "safe" under the standards listed above, but they are deemed "unsafe" for purposes of categorization. Law enforcement agencies may still use these weapons. Some of these

weapons may be used on duty by officers who have died. The spouse or domestic partners of a deceased officer may wish to purchase these weapons for sentimental reasons.

- 3) **Argument in Support:** According to the *California Association of Highway Patrolmen (CAHP)*, "AB 892, closes a loophole in existing law related to the transfer of a state-issued handgun to the spouse or domestic partner of a peace officer that was killed in the line of duty.

"Existing law allows the department head to authorize the transfer of a state-issued handgun to the widow or domestic partner of a peace officer who was killed in the line of duty. However, the Department of Justice maintains a list of "unsafe handguns" and prohibits the manufacture, import, sale and possession of such handgun. A violation constitutes imprisonment in a county jail for no more than one year. Since many of the state-issued handguns to law enforcement are included on the list of unsafe handguns, a transfer of such firearm is prohibited to the spouse and/or domestic partner.

"AB 892 adds an exemption for the spouse or domestic partner of a peace officer who was killed in the line of duty, which will essentially allow them to receive their spouse or domestic partner's state-issued service weapon, regardless of whether it has been deemed unsafe by the Department of Justice.

"In closing, we thank you again for authoring this legislation, and we look forward to its successful passage."

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen

Opposition

None

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

Date of Hearing: April 7, 2015
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 926 (Jones-Sawyer) – As Introduced February 26, 2015

SUMMARY: Implements an earned-compliance-credit program which provides eligible parolees with the opportunity to reduce the length of parole and direct the savings to job training and housing support for parolees. Specifically, **this bill:**

- 1) Requires the California Department of Corrections and Rehabilitation (CDCR) to establish rules and regulations for implementing an earned compliance credit program that provides eligible parolees with the opportunity to reduce their period of parole supervision upon compliance with their parole conditions.
- 2) Authorizes CDCR to award earned compliance credits to eligible parolees who are in compliance with the terms and conditions of parole, but who are not subject to lifetime parole.
- 3) Provides that for each full calendar month of compliance with parole conditions, earned compliance credits equal to the number of days in that month shall be deducted from the parolee's parole discharge date.
- 4) Provides that earned compliance credits begin to accrue after the first full calendar month of compliance with parole-supervision conditions.
- 5) Requires earned compliance credits to be applied to the parole discharge date within 30 days of the end of the month in which the credits were earned.
- 6) Requires CDCR or the supervising parole agent to notify the parole authority in the impending discharge with 60 days before the date of final discharge.
- 7) Specifies that if the time served on parole combined with the earned compliance credits satisfies the terms of parole, the parole authority shall order the final discharge of the parolee.
- 8) States that a parolee is deemed to be in compliance with the conditions of parole supervision if a citation was not issued to the parolee and the parolee was not arrested as a result of a violation of the conditions of parole supervision.
- 9) Deems the following persons eligible to participate in the earned compliance credit program:
 - a) A person paroled under Penal Code sections 3000 or 3000.08; or

- b) A person serving a California sentence for an eligible offense in any jurisdiction under the Interstate Compact for adult Offender Supervision.
- 10) Disallows the accrual of earned compliance credits in any month during which any of the following circumstances apply:
- a) The parolee has absconded from supervision;
 - b) The parolee has been arrested for a new offense. Credits shall not accrue for months between the arrest and the final outcome of the arrest. If the charges are dropped, dismissed, or the parolee is otherwise absolved, the parolee shall be deemed compliant and shall have the lost credits restored, beginning on the first day of the month in which the arrest occurred.
 - c) The parolee is serving a term of incarceration for a parole violation or a new conviction.
- 11) Requires CDCR to annually provide the following information to the Director of the Department of Finance and the Legislative Analyst's Office:
- a) The number and percentage of qualifying parolees;
 - b) The total amount of credits earned by parolees within the year; and
 - c) The average amount of credits earned by parolees within the year.
- 12) Creates the Safe Communities Grant Program Fund within the state treasury and specifies that it is continuously appropriated without regard to fiscal year to carry out its purpose.
- 13) Requires the Director of Finance to calculate the savings accrued to the state from the implementation of the earned compliance credit program beginning on or before July 31, 2017, and annually thereafter.
- 14) Requires the Controller to transfer the total amount of savings accrued from the General Fund to the Safe Communities Grant Program Fund before August 31, 2017, and annually thereafter.
- 15) Establishes the Safe Communities Grant Program to be administered by CDCR in consultation with specified agencies.
- 16) Requires CDCR to hold a minimum of two public meetings in the process of developing the program in order allow for public comment and input.
- 17) Requires CDCR to allocate monies deposited in the Fund to the counties to provide employment and housing support for parolees.
- 18) Defines the following terms:
- a) "Department" means the California "Department of Corrections and Rehabilitation."

b) "Parole authority" means the "Board of Parole."

EXISTING LAW:

- 1) Provides, generally, for a period of post-prison supervision immediately following a period of incarceration in state prison. (Pen. Code, § 3000 et seq.)
- 2) Provides for varying lengths of parole, depending on the commitment offense and the date of commitment. (Pen. Code, § 3000, subd. (b).)
- 3) Requires all persons paroled before October 1, 2011 to remain under the supervision of the California Department of Corrections and Rehabilitation (CDCR) until jurisdiction is terminated by operation of law or until parole is discharged. (Pen. Code, § 3000.09.)
- 4) Requires the following persons released from prison on or after July 1, 2013, be subject to parole under the supervision of CDCR:
 - a) A person who committed a serious felony listed in Penal Code section 1192.7, subdivision (c);
 - b) A person who committed a violent felony listed in Penal Code section 667.5, subdivision (c);
 - c) A person serving a Three-Strikes sentence;
 - d) A high risk sex offender;
 - e) A mentally disordered offender (Pen. Code, §3000.08, subd. (a));
 - f) A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which he or she is being released; and,
 - g) A person subject to lifetime parole at the time of the commission of the offense for which he or she is being released. (Pen. Code, § 3000.08, subsd. (a) and (c).)
- 5) Authorizes parole officials to "impose additional and appropriate conditions of supervision," upon a finding of good cause that the parolee has committed a violation of law or violated his or her conditions of parole; those may include "rehabilitation and treatment services and appropriate incentives for compliance, and impose immediate, structured, and intermediate sanctions for parole violations, including flash [short term] incarceration in a county jail." (Pen. Code, § 3000.08, subd. (d).)
- 6) Provides that the parole agent or peace officer may bring a parolee before the court for a violation of the conditions of parole. If the court finds that the parolee has violated a condition of parole, the court may impose any of the following sanctions for parole violations, as specified:

- a) Return the person to parole supervision with modifications of conditions, if appropriate, including a period of incarceration in county jail;
 - b) Revoke parole and order the person to confinement in the county jail;
 - c) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion; and (Pen. Code, § 3000.08, subd. (f).)
 - d) States that confinement for parole violation shall not exceed a period of 180 days in the county jail. (Pen.Code, § 3000.08, subd. (f).)
- 7) Authorizes the early discharge of a parolee from parole upon successful completion of a certain amount of parole time, known as continuous parole. The eligible discharge date is based on the commitment offense and the statutorily-required length of parole. (Pen. Code, § 3001.)
- 8) Authorizes CDCR to recommend to the parole board that a parole be retained on parole for good cause. (Pen. Code, § 3001.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "There is a growing momentum among states seeking to safely reduce corrections costs and reduce recidivism. California has the opportunity to take this policy one step further by reinvesting resources to ensure greater reductions in recidivism and improve outcomes for individuals, families and communities.

This bill creates an earned compliance credit program that provides eligible parolees with the opportunity to reduce their period of parole supervision upon compliance with their parole conditions. Savings from the reduced parole supervision shall be reinvested into job training and housing support for state parolees to reduce recidivism."

- 2) **Changes to Parole As a Result of Criminal Justice Realignment:** Prior to realignment, individuals released from prison were placed on parole and supervised in the community by parole agents of CDCR. If it was alleged that a parolee had violated a condition of parole, he or she would have a revocation proceeding before the Board of Parole Hearings (BPH). If parole was revoked, the offender would be returned to state prison for violating parole.

Realignment shifted the supervision of some released prison inmates from CDCR parole agents to local probation departments. Parole under the jurisdiction of CDCR for inmates released from prison on or after October 1, 2011 is limited to those defendants whose term was for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. (Pen. Code, §§ 3000.08, subds. (a) & (c), and 3451, subd. (b).) All other inmates released from prison are subject to up to three years of Post Release Community Supervision under local supervision. (Pen. Code, §§ 3000.08, subd. (b), and 3451, subd. (a).)

Realignment also changed where an offender is incarcerated for violating parole. Most individuals can no longer be returned to state prison for violating a term of supervision; offenders serve the revocation term in county jail. (Pen. Code, §§ 3056, subd. (a), and 3458.) There is a 180-day limit to incarceration. (Pen. Code, §§ 3056, subd. (a), and 3455, subd. (c).) The only offenders who are eligible for return to prison for violating parole are life-term inmates paroled pursuant to Penal Code section 3000.1 (e.g., murderers, specific life term sex offenses).

Additionally, realignment changed the process for revocation hearings. As of July 1, 2013, the trial courts assumed responsibility for holding all revocation hearings for those individuals who remain under the jurisdiction of CDCR. Moreover, intermediate sanctions, including flash incarceration, also became available for state parolees on July 1, 2013. (Pen. Code, § 3000.08, subd. (d).) Despite the new authority to impose terms of flash incarceration upon state-supervised parolees, the Division of Adult Parole Operations (DAPO) has made a policy decision not to utilize flash incarceration. (See *Valdivia v. Brown*, Response to May 6 Order, filed 05/28/13, p. 17.) CDCR has informed this committee that at this time DAPO is still not utilizing flash incarceration.

- 3) **Discharge after certain periods of continuous parole:** "The granting of parole is an essential part of our criminal justice system and is intended to assist those convicted of crime to integrate into society as constructive individuals *as soon as possible* and alleviate the cost of maintaining them in custodial facilities." (*In Re Vasquez* (2009) 170 Cal.App.4th 370, 379–380, citations omitted.)

Under current law, most parolees can be discharged from parole early if they successfully complete a certain period of parole and there is not good cause to retain them. When a parolee serves a period of time on continuous parole (i.e. without violations, revocations, or absconding), the parole board must conduct a discharge review. Depending on the underlying commitment offense and the statutorily-imposed length of parole, different time periods apply in determining the presumptive discharge date. For example, if a parolee has a three-year parole term, he or she is eligible for discharge after one year, assuming the parolee has had successful continuing parole. Likewise, a parolee with a five-year parole term can be discharged after three years if the parolee has been on parole continuously. Unless the board acts to retain the parolee after the presumptive discharge date, the parolee is discharged from parole.

The earned compliance credits proposed by this bill will presumably advance the possible discharge dates.

- 4) **Argument in Support:** The *Ella Baker Center for Human Rights*, the sponsor of this bill, writes, "There is a growing momentum among states to safely reduce correction costs and reduce recidivism. Gone are the days of increasing penalties and building supermax prisons – states are now engaging in reforms that downsize the prison apparatus and incentivize and reward positive behavior and participation. According to a report by the Association of State Correctional Administrators, 6 out of 7 state respondents who implemented an earned compliance credit program stated that public opinion on the reduction of community supervision has not been a problem in managing the program. Further, 6 out of 7 states that have an earned compliance credit program for parolees or probationers have seen reductions in costs for supervision. Similar to these efforts, AB 926 will help save the state by reducing

the costs associated with parole supervision and the costs associated with returns to prison.

"In the last decade, more than a dozen states have implemented earned credit mechanisms for people on parole or probation. The impact of these policies has yielded substantial savings without harming public safety. California has the opportunity to take this policy one step further by reinvesting resources to ensure greater reductions in recidivism and improve outcomes for individuals, families, and communities."

- 5) **Argument in Opposition:** The *California District Attorneys Association* states, "Requiring the California Department of Corrections and Rehabilitation and Board of Parole Hearings to establish a credit program may sound better than proposing to cut supervision periods in half, but, in reality, that's exactly what AB 926 does."

"Although this bill seeks to allow parolees to 'earn' credits by complying with the conditions of their release, the practical effect is a 50 percent reduction in the length of every grant of supervision. This bill does not require parolees to do anything other than what they're already supposed to be doing. In order for someone not to earn credits, he or she would have to abscond from supervision, violate the conditions of his or her release, or commit a new offense. At that point, supervision would be revoked anyway."

"At a time when California is putting more offenders back into the community soon, the last thing we need is *less* supervision. This jeopardizes public safety, and runs counter to the goals of using community-based supervision and treatment in lieu of incarceration to rehabilitate offenders. To do so in the name of 'Safe Communities' is a particularly tragic irony."

"While we certainly recognize the connection between employment, stable housing, and a decreased likelihood of recidivating, we disagree with the wisdom of funding those programs by reducing community supervision of parolees. Additionally, much of the savings generated by this proposal would likely be consumed by the additional costs of administering the new credits scheme, further depriving our communities of any potential benefit."

- 6) **Related Legislation:** AB 512 (Stone), would increase the number of weeks of additional program credit reductions that may be awarded to a prisoner. AB 512 is pending hearing in this committee today.

REGISTERED SUPPORT / OPPOSITION:

Support

Ella Baker Center for Human Rights (Co-Sponsor)
Friends Committee on Legislation of California (Co-Sponsor)
California Attorneys for Criminal Justice
California Catholic Conference
California Public Defenders Association
Californians United for a Responsible Budget
Center of Juvenile and Criminal Justice
Drug Policy Alliance
Fair Chance Project
Forward Together

Legal Services for Prisoners with Children
National Association of Social Workers – California Chapter
Prison Activist Resource Center
Prison Law Office
Western Regional Advocacy Project

Opposition

California District Attorneys Association

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

Date of Hearing: April 7, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 929 (Chau) – As Introduced February 26, 2015
As Proposed to be Amended in Committee

SUMMARY: Authorizes state and local law enforcement to use pen register and trap and trace devices under state law, and permits the issuance of emergency pen registers and trap and trace devices. Specifically, **this bill:**

- 1) Defines “pen register” as a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, but not the contents of a communication. “Pen register” does not include a device or process used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider, or a device or process used by a provider or customer of a wire communication service for cost accounting or other similar purposes in the ordinary course of its business.
- 2) Defines “trap and trace device” means a device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, but not the contents of a communication.
- 3) Specifies the offenses for which an order for installation of a pen register of a trap and trace device may be granted, as specified here for:
 - a) Stolen or embezzled property;
 - b) Property or things used as the means of committing a felony;
 - c) Property or things 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) Evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony;
 - e) Evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11 has occurred or is occurring;

- f) The location of a person who is unlawfully restrained or reasonably believed to be a witness in a criminal investigation or for whose arrest there is probable cause;
 - g) Evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code; and
 - h) 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.
- 4) Provides, except as specified, a person may not install or use a pen register or a trap and trace device without first obtaining a court order.
- a) Permits a provider of electronic or wire communication service to use a pen register or a trap and trace device for any of the following purposes:
 - i) To operate, maintain, and test a wire or electronic communication service;
 - ii) To protect the rights or property of the provider;
 - iii) To protect users of the service from abuse of service or unlawful use of service;
 - iv) To record the fact that a wire or electronic communication was initiated or completed to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service; and
 - v) If the consent of the user of that service has been obtained.
 - b) Provides that a violation of this section is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment for 16 months, two or three years, or by both that fine and imprisonment; and
 - c) Provides that a good faith reliance on specified orders is a complete defense to a civil or criminal action brought under this section or under this chapter.
- 5) Specifies that information acquired solely pursuant to the authority for a pen register or trap and trace device shall not include any information that may disclose the physical location of the subscriber, except to the extent that the location may be determined from the telephone number.

- 6) Provides that the magistrate, before issuing the order, may examine on oath the person seeking the warrant and any witnesses the person may produce, and shall take his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the parties making them.
- 7) Specifies that a peace officer may make an application to a magistrate for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device. The application shall be in writing under oath or equivalent affirmation, and shall include the identity of the peace officer making the application and the identity of the law enforcement agency conducting the investigation. The applicant shall certify that the information likely to be obtained is relevant to an ongoing criminal investigation and shall include a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.
- 8) Provides that if the magistrate finds that the information likely to be obtained by the installation and use of a pen register or a trap and trace device is relevant to an ongoing criminal investigation, and finds that there is probable cause to believe that the pen register or trap and trace device will lead to obtaining evidence of a crime, contraband, fruits of crime, things criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed, or will lead to learning the location of a person who is unlawfully restrained or reasonably believed to be a witness in a criminal investigation or for whose arrest there is probable cause, the magistrate shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device.
- 9) Provides that an order issued by a magistrate shall specify all of the following:
 - a) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;
 - b) The identity, if known, of the person who is the subject of the criminal investigation;
 - c) The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order;
 - d) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates;
 - e) The order shall direct, if the applicant has requested, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device; and
 - f) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 60 days.
- 10) Provides that extensions of the original order may be granted upon a new application for an order if the officer shows that there is a continued probable cause that the information or items sought under this subdivision are likely to be obtained under the extension. The period

of an extension shall not exceed 60 days.

- 11) Provides that an order or extension order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that the order be sealed until otherwise ordered by the magistrate who issued the order, or a judge of the superior court, and that the person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person, unless or until otherwise ordered by the magistrate or a judge of the superior court.
- 12) States that upon the presentation of an order issued by a magistrate for installation of a pen register or trap and trace device, by a peace officer authorized to install and use a pen register, a provider of wire or electronic communication service, landlord, custodian, or other person shall immediately provide the peace officer all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services provided to the party with respect to whom the installation and use is to take place, if the assistance is directed by the order.
- 13) Provides upon the request of a peace officer authorized to receive the results of a trap and trace device, a provider of a wire or electronic communication service, landlord, custodian, or other person shall immediately install the device on the appropriate line and provide the peace officer all information, facilities, and technical assistance, including installation and operation of the device unobtrusively and with a minimum of interference with the services provided to the party with respect to whom the installation and use is to take place, if the installation and assistance is directed by the order.
- 14) States that unless otherwise ordered by the magistrate, the results of the pen register or trap and trace device shall be provided to the peace officer at reasonable intervals during regular business hours for the duration of the order.
- 15) Provides that except as otherwise provided, upon an oral application by a peace officer, a magistrate may grant oral approval for the installation and use of a pen register or a trap and trace device, without an order, if he or she determines all of the following:
 - a) There are grounds upon which an order could be issued under specified normal application for a pen register or trap and trace device.
 - b) There is probable cause to believe that an emergency situation exists with respect to the investigation of a crime.
 - c) There is probable cause to believe that a substantial danger to life or limb exists justifying the authorization for immediate installation and use of a pen register or a trap and trace device before an order authorizing the installation and use can, with due diligence, be submitted and acted upon.
- 16) Provides that by midnight of the second full court day after the pen register or trap and trace device is installed by oral application, a written application pursuant to Penal Code Section 638.52 shall be submitted by the peace officer who made the oral application to the

magistrate who orally approved the installation and use of a pen register or trap and trace device. If an order is issued pursuant to Section 638.52, the order shall also recite the time of the oral approval and shall be retroactive to the time of the original oral approval.

- 17) Specifies that in the absence of an authorizing order, the use shall immediately terminate when the information sought is obtained, when the application for the order is denied, or by midnight of the second full court day after the pen register or trap and trace device is installed, whichever is earlier.
- 18) Provides that a provider of a wire or electronic communication service, landlord, custodian, or other person who provides facilities or technical assistance pursuant to this section shall be reasonably compensated by the requesting peace officer's law enforcement agency for the reasonable expenses incurred in providing the facilities and assistance.

EXISTING FEDERAL LAW:

- 1) Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13.)
- 2) Provides, except as provided, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this *title* [18 USCS § 3123] or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.). (18 USCS § 3121.)
 - a) The prohibition does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or where the consent of the user of that service has been obtained. (18 USCS § 3121, subs. (a) & (b).)
 - b) A government agency authorized to install and use a pen register or trap and trace device under this chapter (18 USCS §§ 3121 et seq.) or under State law shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing, routing, addressing, and signaling information utilized in the processing and transmitting of wire or electronic communications so as not to include the contents of any wire or electronic communications. (18 USCS § 3121, subd. (c).)
 - c) Whoever knowingly violates the prohibition shall be fined under this title or imprisoned not more than one year, or both.

- 3) Provides that unless prohibited by state law, a state investigative or law enforcement officer may make application for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such state. (18 USCS § 3122.)
- 4) Provides that an attorney for the Government, upon an application, the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. The order, upon service of that order, shall apply to any person or entity providing wire or electronic communication service in the United States whose assistance may facilitate the execution of the order. Whenever such an order is served on any person or entity not specifically named in the order, upon request of such person or entity, the attorney for the Government or law enforcement or investigative officer that is serving the order shall provide written or electronic certification that the order applies to the person or entity being served. (18 USCS § 3121, subd. (a)(1).)
- 5) Provides that a state investigative or law enforcement officer, upon an application made as specified, the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court, if the court finds that the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. (18 USCS § 3121, subd. (a)(2).)
- 6) Provides that where the law enforcement agency implementing an ex parte order under this subsection seeks to do so by installing and using its own pen register or trap and trace device on a packet-switched data network of a provider of electronic communication service to the public, the agency shall ensure that a record will be maintained which will identify: (18 USCS § 3121, subd. (a)(3).)
 - a) Any officer or officers who installed the device and any officer or officers who accessed the device to obtain information from the network;
 - b) The date and time the device was installed, the date and time the device was uninstalled, and the date, time, and duration of each time the device is accessed to obtain information;
 - c) The configuration of the device at the time of its installation and any subsequent modification thereof; and
 - d) Any information which has been collected by the device.
- 7) Provides to the extent that the pen register or trap and trace device can be set automatically to record this information electronically, the record shall be maintained electronically throughout the installation and use of such device. (18 USCS § 3121, subd. (a)(3).)
- 8) States that the record maintained shall be provided ex parte and under seal to the court which entered the ex parte order authorizing the installation and use of the device within 30 days after termination of the order (including any extensions thereof). (18 USCS § 3121, subd.

(a)(3).)

- 9) An order issued for installation of a pen register or track and trace device shall include: (18 USCS § 3121, subd. (b).)
 - a) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied;
 - b) The identity, if known, of the person who is the subject of the criminal investigation;
 - c) The attributes of the communications to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied, and, in the case of an order authorizing installation and use of a trap and trace device, the geographic limits of the order; and
 - d) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and
 - e) Shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device.
- 10) Provides that an order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days. (18 USCS § 3121, subd.(c).)
 - a) Provides that extensions of such an order may be granted, but only upon an application for an order and upon the judicial finding required as specified. The period of extension shall be for a period not to exceed sixty days.
 - b) States that nondisclosure of existence of pen register or a trap and trace device. An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that the order be sealed until otherwise ordered by the court; and the person owning or leasing the line or other facility to which the pen register or a trap and trace device is attached, or applied, or who is obligated by the order to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.
- 11) Provides that notwithstanding any other provision, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General, or by the principal prosecuting attorney of any state or subdivision thereof acting pursuant to a statute of that state, who reasonably determines that: (18 USCS § 3125.)

- a) an emergency situation exists that involves;
 - b) immediate danger of death or serious bodily injury to any person;
 - c) conspiratorial activities characteristic of organized crime;
 - d) an immediate threat to a national security interest; or
 - e) an ongoing attack on a protected computer that constitutes a crime punishable by a term of imprisonment greater than one year;
- 12) Provides that in the absence of an authorizing order, such use shall immediately terminate when the information sought is obtained, when the application for the order is denied or when forty-eight hours have lapsed since the installation of the pen register or trap and trace device, whichever is earlier. (18 USCS § 3125.)

EXISTING STATE LAW:

- 1) Defines a "search warrant" as a written order in the name of the people, signed by a magistrate and 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) States that a search warrant may be issued upon any of the following grounds:
 - a) When the property was stolen or embezzled.
 - b) When the property or things were used as the means of committing 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, 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 a provider of electronic communication service or remote computing service has records or evidence 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.
 - i) When the property or things to be seized include an item or any evidence that tends to show a violation of the Labor Code, as specified.
 - j) 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.
 - k) 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, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.
 - l) 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 under specified provisions of the Family Code.
 - m) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony or a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code.
 - n) When a sample of the blood of a person constitutes evidence that tends to show a violation of misdemeanor driving under the influence 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.
 - o) When 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. This final provision does not go into effect until January 1, 2016. (Pen. Code, § 1524, subd. (a).)
- 3) Provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)
- 4) Requires a magistrate to issue a search warrant if he or she is satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence. (Pen. Code, § 1528, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS: >

- 1) **Author's Statement:** According to the author, "As technology advances, criminals are becoming more and more sophisticated in their use of technology to commit crimes and avoid law enforcement. As a result, law enforcement officials have a variety of electronic tools to counter this and help them apprehend criminals in this age of rapidly changing technology.

"One of the tools available to law enforcement is called a 'pen register' which allows law enforcement officers to record all outgoing numbers from a particular telephone line. In addition, another tool law enforcement uses is called a "trap and trace device" which allows them to record what numbers have called a specific telephone line, i.e. all incoming phone numbers. Both pen registers and trap and trace devices do not record audio or text messages and cannot be used to obtain real-time location data on a cellular telephone. But these tools are extremely useful for law enforcement in situations such as gang and narcotic investigations.

"AB 929 would authorize state and local law enforcement officers to use pen register and trap and trace devices, including during emergency situations. The bill will require law enforcement officers to obtain a court order before using such devices by providing a judge with information that the use of information is relevant to an ongoing criminal investigation, and that there is probable cause to believe that the pen register or trap and trace device will lead to obtaining evidence of a crime.

"This higher standard of proof (probable cause vs. reasonable suspicion) is more restrictive than under federal law and is more consistent with California law governing search warrants. The bill would prohibit the installation and use of the device for longer than 60 days, but would permit an extension if there is proof of continuing probable cause to a judge. "

- 2) **General Background:** Federal law allows law enforcement agencies to use pen register and trap and trace devices, but they must obtain a court order from a judge prior to the installation of the device. However, during an emergency situation, law enforcement agencies may use these devices without a court order if they obtain the court order within 48 hours of the use of the device. Law enforcement agencies must demonstrate that there is reasonable suspicion that the use of the device is relevant to an ongoing criminal investigation and will lead to obtaining evidence of a crime for a judge to authorize the use.

Though federal law authorizes states and local law enforcement officers to use pen register and trap and trace devices by obtaining a court order first, it does not allow them to obtain an emergency order unless there is a state statute authorizing and creating a process for states and local law enforcement officers to do so. To date, California does not have a state statute authorizing the use of pen registers or trap and trace devices.

Pen registers and track and trace devices generally track incoming and outgoing telephone calls. They are often utilized by law enforcement to track which people in an investigation are communicating with one another and at what times. Unlike a wiretap authorization, pen registers and track and trace devices do not provide law enforcement with the content of the

messages which are transmitted. Wiretap authorizations are therefore subject to a much higher standard of scrutiny than the orders contained within this bill. Under federal law, these authorizations can be granted on a reasonable suspicion standard, while search warrants are subject to a higher standard of probable cause.

- 3) **Probable Cause Standard:** Though the federal standard for the issuance of a pen register or a trap and trace device is "reasonable suspicion" California law arguably requires a higher "probable cause" standard. (86 Ops.Cal.Atty.Gen 198 (2003).) This bill imposes the probable cause standard and is therefore compliant with both state and federal law.
- 4) **The Proposed Amendments:** The proposed amendments were drafted by committee staff in consultation with the Los Angeles District Attorney's Office and the American Civil Liberties Union (ACLU). The amendments are an attempt to address a number of concerns raised by the ACLU. Namely, the amendments limit the application of these orders to the same circumstances for which law enforcement officers can request the issuance of a search warrant. Additionally, the amendments permit a judge for whom a request has been made for an order to question the law enforcement agent pertaining to the need for the information. The amendments also clarify that any location information obtained by a pen register or a track and trace device is limited to the information that is contained in the telephone number (e.g. the area code). The amendments address what information obtained pursuant to the bill can be eventually made public, subject to the limitations of an ongoing investigation. Finally, the amendments place some technical limits on the application of the section to ensure that the orders are limited to the contents of the limitations placed in the bill.
- 5) **Attorney General Opinion:** In 2003 the District Attorney of Contra Costa County requested an opinion of the Attorney General on the issue of whether or not state or local law enforcement had the authority to seek a state court order permitting a state law enforcement officer to install a pen register or a trap and trace device. (86 Ops.Cal.Atty.Gen 198 (2003).) The Attorney General opined as follows:

"1. The federal statutes governing the installation of pen registers and trap and trace devices do not provide authority for issuance of a state court order permitting a state law enforcement officer to install or use pen registers or trap and trace devices.

"2. The state statutes governing the issuance of administrative subpoenas do not provide authority for a state law enforcement officer to install or use pen registers or trap and trace devices.

"A 'pen register' records the numbers dialed out from a particular telephone line. (*Smith v. Maryland* (1979) 442 U.S. 735, 736,¹ *People v. Blair* (1979) 25 Cal.3d 640, 654, fn. 11.) A "trap and trace device" records the originating telephone numbers of the calls dialed into a particular telephone line. (*People v. Suite* (1980) 101 Cal.App.3d 680, 684.) n1 The placement of pen registers and trap and trace devices allows law enforcement officers to obtain such information as the names of suspects in an investigation, the identities and

¹ Pen registers and trap and trace devices are not "wiretaps," that is, they do not eavesdrop on or record telephone conversations. (*Smith v. Maryland, supra*, 442 U.S. at p. 736, fn. 1; *People v. Blair, supra*, 25 Cal.3d at p. 654, fn. 11; 69 Ops.Cal.Atty.Gen. 55, 58 (1986).) Generally speaking, the legal requirements for placing a wiretap are more stringent than those for placing a pen register or trap and trace device. (69 Ops.Cal.Atty.Gen. *supra*, at pp. 56-58.)

relationship between individuals suspected of engaging in criminal activity, especially in conspiracies, and the location of fugitives.

"Search warrants issued by a court and subpoenas issued either by a court or grand jury are normally available to authorize the placement of pen registers and trap and trace devices in California.² The two questions presented for resolution concern whether federal statutes governing the installation of pen registers and trap and trace devices and state statutes governing the issuance of administrative subpoenas may also provide authority for state law enforcement officers to obtain telephone calling records. We conclude that these two additional sources of authority are not available to state law enforcement officers in the circumstances presented.

"1. Federal Statutes

"The Fourth Amendment to the United States Constitution guarantees 'the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.' To determine whether a particular form of governmental surveillance is a "search" within the meaning of the Fourth Amendment, courts generally look to the leading case of *Katz v. United States* (1967) 389 U.S. 347, which involved eavesdropping by means of an electronic listening device placed on the outside of a telephone booth. (See, e.g., *Kyllo v. United States* (2001) 533 U.S. 27, 32-33.) In *Katz*, the court held that the eavesdropping in question constituted an unlawful search because it violated a subjective expectation of privacy that society recognized as reasonable. (*Katz v. United States, supra*, 389 U.S. at p. 353.)

"In *Smith v. Maryland, supra*, 442 U.S. 735, the court followed the *Katz* standard, concluding that individuals have no Fourth Amendment expectation of privacy in the numbers dialed to or from their telephone lines. The court reasoned that telephone customers are generally aware that telephone companies routinely collect and use such information for various purposes including billing and system maintenance.

"In 1986, following the *Smith* decision, Congress enacted a statutory scheme (18 U.S.C. §§ 3121-3127)³ regulating the use of pen registers and trap and trace devices.⁴ As relevant for our purposes, section 3121 provides:

"(a) Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title . . .
. (a)(2) Unless prohibited by State law, a State investigative or law enforcement officer may

² Law enforcement officers may also procure telephone calling information by obtaining the person's consent or if "exigent circumstances" are present. (See, e.g., *People v. Chapman* (1984) 36 Cal.3d 981, 113; *People v. Suite, supra*, 101 Cal.App.3d at p. 687.)

³ All references hereafter to title 18 of the United States Code prior to footnote 7 are by section number only.

⁴ The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act, Pub. L. No. 107-56) amended the definitions of "pen register" and "trap and trace device" to include processes that capture routing, addressing, or signaling information transmitted by an electronic communication facility. (18 U.S.C. § 3127 (3), (4).) These amendments permit government officials to obtain information from computers and cell phones as well as from land-line telephones. (See 18 U.S.C. § 3121.) Issues arising from these statutory amendments are beyond the scope of this opinion.

make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State. (b) An application under subsection (a) of this section shall include (1) the identity of . . . the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and (2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"Section 3123 provides: (a)(2) Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device within the jurisdiction of the court if the court finds that . . . the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation... (d) An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that (1) the order be sealed until otherwise ordered by the court; and (2) the person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

"Thus, as a general rule, federal law forbids the use of pen registers and trap and trace devices without the consent of the telephone consumer or a court order. (§ 3121.) Significantly, the federal statutes do not allow state law enforcement officers to apply for a state court order if the order would be 'prohibited by State law.' (§ 3122(a)(2).) Accordingly, we must look to California law to determine if the federal statutes may provide authority for state law enforcement officers to obtain telephone calling records in the circumstances presented.⁵

"The California Constitution is a 'document of independent force' (*American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 325), which extends protection for civil rights broader than an independent of the parallel rights afforded by the United States Constitution. (*Id.* at pp. 325-326; see *People v. Pettingill* (1978) 21 Cal.3d 231, 247; *People v. Hannon* (1977) 19 Cal.3d 588, 606.) Section 13 of article I of the California Constitution protects "against unreasonable seizures and searches."⁶ Our Supreme Court has held "that, in determining whether an illegal search has occurred under the provisions of our Constitution,

⁵ We recognize that the California Constitution eliminates any judicially created independent state grounds for the exclusion of evidence. (Cal. Const., art. I, § 28, subd. (d); *In re Lance W.* (1985) 37 Cal.3d 873, 886-887.) As a result, telephone calling records would be admissible against a California defendant in a criminal trial even though their seizure violated the California Constitution, as long as the records were admissible under the federal Constitution. (See, e.g., *People v. Bencomo* (1985) 171 Cal.App.3d 1005, 1015; *People v. Lissauer* (1985) 169 Cal.App.3d 413, 419.) Regardless of the evidence's admissibility, however, the underlying act of seizure in violation of the California Constitution would remain unlawful. (*In re Lance W.*, *supra*, 37 Cal.3d at p. 886; *People v. Martino* (1985) 166 Cal.App.3d 777, 785, fn. 3.)

⁶ "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated . . ." (Cal. Const., art. I, § 13.)

the appropriate test is whether a person has exhibited a reasonable expectation of privacy and, if so, whether that expectation has been violated by unreasonable governmental intrusion." (*Burrows v. Superior Court* (1974) 13 Cal.3d 238, 242-243.) In *Burrows*, the court concluded that bank customers have a reasonable expectation of privacy in the financial information they transmit to their banks, reasoning that it is impossible to participate in the economic life of contemporary society without maintaining a bank account and that the totality of a person's bank records provides a "virtual current biography." (*Id.* at p. 247.)

"In *People v. Blair*, *supra*, 25 Cal.3d 640, the court rejected the rationale of *Smith v. Maryland*, *supra*, 442 U.S. 735, and concluded that telephone records, like the bank records found protected under California law in *Burrows v. Superior Court*, *supra*, 13 Cal.3d 238, were protected against unreasonable searches and seizures in California. (*Id.* at p. 653.) In *Blair*, the telephone records were obtained by a subpoena issued by a Federal Bureau of Investigation agent under authority of a United States Attorney as authorized by a federal grand jury. The court found that the federal subpoena was insufficient for purposes of the search and seizure provisions of the California Constitution since there had been no prior "judicial determination that law enforcement officials were entitled" to the records. (*Id.* at p. 655; see *Carlson v. Superior Court* (1976) 58 Cal.App.3d 13, 21-23.) Consequently, the seizure of the telephone records was ruled a violation of article I, section 13 of the California Constitution.

"We believe that telephone calling records would additionally be protected under article I, section 1 of the California Constitution, which provides: 'All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.'

"Under the rationale of *Burrows* and *Blair*, information obtained from pen registers and trap and trace devices would fall within the zone of privacy protected by the state Constitution, since the records of incoming or outgoing calls could lead to the discovery of an individual's 'virtual current biography.' (*People v. Blair*, *supra*, 25 Cal.3d at p. 653; *Burrows v. Superior Court*, *supra*, 13 Cal.3d at p. 247; *People v. Chapman*, *supra*, 36 Cal.3d at p. 109.)

"Based upon the foregoing, we find that the California Constitution allows the placement of pen registers and trap and trace devices only if a judicial ruling is first obtained that the law enforcement officers are entitled to the records. (See 69 Ops.Cal.Atty.Gen., *supra*, at p. 59.) Do the court procedures set forth in federal law meet this state constitutional standard for prior judicial review? They do not.

"The federal statutory scheme permits state law enforcement officers to apply for a state court order authorizing the use of a pen register or trap and trace device based upon a written certification that the information is 'relevant to an ongoing criminal investigation.' (18 U.S.C. § 3122(b)(2).) Upon a proper application, the court *must* issue the order. (18 U.S.C. § 3122(a)(2).) The statutes do not authorize a court to go outside the written certification (*In re Order Authorizing Installation of Pen Reg.* (M.D.Fla. 1994) 846 F.Supp. 1555, 1559), thus making the judicial review 'ministerial in nature' (*United States v. Fregoso* (8th Cir. 1995) 60 F.3d 1314, 1320).

"Under *Burrows* and *Blair*, this federal statutory process is inadequate to protect a California resident's privacy interests in telephone calling records. As previously noted, the federal

subpoena in *Blair* was found not to constitute appropriate 'legal process' because issuance of the subpoena was a ministerial act with no 'judicial determination' that the issuer was 'entitled' to obtain the information. (*People v. Blair, supra, 25 Cal.3d at pp. 651, 655.*) A seizure of information is unreasonable when 'the character, scope, and relevancy of the material obtained were determined entirely by the exercise of the unbridled discretion of the police.' (*People v. Chapman, supra, 36 Cal.3d at p. 113, quoting Burrows v. Superior Court, supra, 13 Cal.3d at p. 243*); see *People v. Blair, supra, 25 Cal.3d at p. 651.*)

"The federal statutes governing pen registers and trap and trace devices likewise fail the California constitutional test. No adequate prior judicial review is provided in the statutory scheme; rather, unbridled discretion is given to law enforcement officers.

"We conclude in answer to the first question that the federal statutes governing the installation of pen registers and trap and trace devices do not provide authority for issuance of a state court order permitting a state law enforcement officer to install or use pen registers or trap and trace devices."

"2. State Administrative Subpoena Statutes

"*Government Code section 11180*⁷ authorizes the head of each of the state's departments to conduct investigations concerning matters relating to the subjects under the department's jurisdiction. Included within this power is the right to subpoena records. (§ 11181, subd. (e).) The department head may delegate subpoena powers to any officer of the department authorized to conduct the investigation. (§ 11182.)

"Significantly, the department head or designee may issue a subpoena for investigative purposes in the absence of any formal charge or court proceeding. (§§ 11180, 11181; *Brovelli v. Superior Court (1961) 56 Cal.2d 524, 527-528.*) The subpoenas are returnable directly to the department head, and no provision is made for notice to a third party--such as a telephone customer--or for the filing of a motion to quash or other formal opposition. (Compare §§ 11181, 11184, 11187 with *Pen. Code, §§ 1325, 1327; Code Civ. Proc., §§ 1385.3, 1385.4.*) Instead, if the subpoenaed party fails to comply with the subpoena, the department head may apply to a court for an order enforcing the subpoena. (§ 11187.) If it appears at the hearing 'that the subpoena was regularly issued . . . the court *shall* enter an order' enforcing the subpoena. (§ 11188, italics added.) Hence, judicial enforcement of administrative subpoenas is subject to a standard less exacting than that required for a criminal search warrant. (See *Craib v. Bulmash (1989) 49 Cal.3d 475, 481-486.*)

"Of course, 'department heads cannot compel the production of evidence in disregard of . . . the constitutional provisions prohibiting unreasonable searches and seizures.' (*Brovelli v. Superior Court, supra, 56 Cal.2d at p. 529; see also Pacific-Union Club v. Superior Court (1991) 232 Cal.App.3d 60, 70, 79-80; Wood v. Superior Court (1985) 166 Cal.App.3d 1138, 1146-1147.*) '[A] governmental administrative agency is not in a special or privileged category, exempt from the right of privacy requirements which must be met and honored generally by law enforcement officials.' (*Board of Medical Quality Assurance v. Gherardini*

⁷ All references hereafter to the Government Code are by section number only.

(1979) 93 Cal.App.3d 669, 679-680; see *Carlson v. Superior Court*, supra, 58 Cal.App.3d at p. 22 ['Surely an accused's constitutional right to privacy in his papers and records is not diminished because law enforcement officials seek to obtain them by subpoena rather than by warrant'].)

'As with the federal statutes governing the installation of pen registers and trap and trace devices, the state administrative subpoena statutes do not contain a provision allowing for prior judicial review establishing that the law enforcement officers are entitled to the records. The California Constitution requires such prior review.

"We conclude in answer to the second question that the state statutes governing the issuance of administrative subpoenas do not provide authority for a state law enforcement officer to install or use pen registers or trap and trace devices

- 6) **Argument in Support:** According to *The Los Angeles County District Attorney's Office* "A 'pen register' is an electronic device which records all numbers called from (outgoing) a particular telephone line. A 'trap and trace device' records what numbers had called a specific telephone, i.e. all *incoming* phone numbers. Pen registers and trap and trace devices are extremely useful investigative tools. They are used to identify accomplices, for example.

"Under federal law, law enforcement agencies must obtain a court order from a judge prior to the installation of a pen register or trap and trace device. According to Section 3123(a)(1) of Title 18 of the United States Code, the court shall enter an ex parte order authorizing the installation and use of a pen register or trap and trace device anywhere within the United States, if the court (state or federal) finds that the attorney for the Government has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"Once obtained, a pen register or trap and trace device order cannot exceed 60 days in duration. As opposed to a wiretap, a pen register/trap and trace device only records the numbers dialed to or from a particular phone number. It does not record audio or text messages, and cannot be used to obtain real-time location data on a cellular telephone. (47 U.S.C. § 1002(a)(2)(B).)

"Section 3125 of Title 18 of the United States Code authorizes the installation and use of a pen register/trap and trace device for 48 hours without a court order if an emergency situation exists, including one that involves "immediate danger of death or serious bodily injury to any person." An emergency order can be obtained if grounds exist to obtain a written order, but the emergency situation requires the installation and use of a pen register or a trap and trace device before an order authorizing such installation and use can, with due diligence, be obtained. Within 48 hours after the installation has occurred, or begins to occur, an order approving the installation or use in accordance with section 3123 must be obtained.

"Section 3125 of Title 18 of the United States Code authorizes any investigative or law enforcement officer, specially designated by enumerated prosecutorial agencies, to obtain an emergency pen register/trap and trace device. However, there is no enabling statute in California that allows California District Attorneys to utilize section 3125.

"Emergency/warrantless pen registers are lawful in only six states (AL, FL, GA, IA, TX, and WA) which possess emergency state statutes in accordance with section 3125.

Notwithstanding, some law enforcement agencies in the remaining 44 states utilize warrantless emergency declarations. The result is that the requesting agency will unlawfully receive pen register or trap and trace data. This is a misdemeanor under federal law (18 U.S.C. § 3121). The individuals who improperly access the information may incur civil liability.

"Assembly Bill 929 would authorize state and local law enforcement officers to use pen register and trap and trace devices under state law. AB 929 would also authorize the issuance of emergency pen registers and trap and trace devices. Under the provisions of AB 929 a California court could issue a court order authorizing the use of a pen register and/or a trap and trace device upon a showing of probable cause which is a higher standard than the reasonable suspicion standard required under federal law.

"In 2003, the CA Attorney General's Office issued an opinion concluding that the "federal statutes governing the installation of pen registers and trap and trace devices do not provide authority for issuance of a state court order permitting a state law enforcement officer to install or use pen registers and trap and trace devices" because the federal pen register statute requires less than probable cause. (86 Ops.Cal.Att.Gen 198 (2003).) Our office's 2013 Search Warrant Manual cites this opinion and advises state law enforcement officers to establish probable cause in the affidavit seeking the installation or use of a pen register under the applicable federal statute.

"AB 929 would create a comprehensive pen register/ trap and trace device statute in the Penal Code to cover all requests for pen registers and trap and trace devices in California, including emergency pen registers."

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Sheriff's Office (co-sponsor)
Los Angeles District Attorney's Office (co-sponsor)
Association for Los Angeles County Sheriffs
California District Attorneys Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
Fraternal Order of Police
Long Beach Police Officers Association
Los Angeles Police Protective League
Los Angeles County Professional Peace Officers Association
Riverside Sheriffs Association
Sacramento county Deputy Sheriffs' Association
Santa Ana Police Officers Association

Opposition

None

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

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BILL NUMBER: AB 929 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Chau

FEBRUARY 26, 2015

An act to add Sections 638.50, 638.51, 638.52, and 638.53 to the Penal Code, relating to privacy.

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

SECTION 1. Section 638.50 is added to the Penal Code, to read:
638.50. For purposes of this chapter, the following terms have the following meanings:

(a) "Wire communication" and "electronic communication" have the meaning set forth in subdivision (a) of Section 629.51.

(b) "Pen register" means a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, but not the contents of a communication. "Pen register" does not include a device or process used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider, or a device or process used by a provider or customer of a wire communication service for cost accounting or other similar purposes in the ordinary course of its business.

(c) "Trap and trace device" means a device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, but not the contents of a communication.

SEC. 2. Section 638.51 is added to the Penal Code, to read:

638.51. (a) Except as provided in subdivision (b), a person may not install or use a pen register or a trap and trace device without first obtaining a court order made pursuant to Penal Code Sections 638.52 and 638.53.

(b) A provider of electronic or wire communication service may use a pen register or a trap and trace device for any of the following purposes:

(1) To operate, maintain, and test a wire or electronic communication service.

(2) To protect the rights or property of the provider.

(3) To protect users of the service from abuse of service or unlawful use of service.

(4) To record the fact that a wire or electronic communication was initiated or completed to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service.

(5) If the consent of the user of that service has been obtained.

(c) A violation of this section is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both that fine and imprisonment.

(d) A good faith reliance on an order issued pursuant to Section 638.52,

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or an authorization made pursuant to Section 638.53, is a complete defense to a civil or criminal action brought under this section or under this chapter.

SEC. 3. Section 638.52 is added to the Penal Code, to read:

638.52. (a) A peace officer may make an application to a magistrate for an order or an extension of an order authorizing or approving the installation and use of a pen register or a trap and trace device. The application shall be in writing under oath or equivalent affirmation, and shall include the identity of the peace officer making the application and the identity of the law enforcement agency conducting the investigation. The applicant shall certify that the information likely to be obtained is relevant to an ongoing criminal investigation and shall include a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

(b) If the magistrate finds that the information likely to be obtained by the installation and use of a pen register or a trap and trace device is relevant to an ongoing criminal investigation, and finds that there is probable cause to believe that the pen register or trap and trace device will lead to obtaining evidence of a crime, contraband, fruits of crime, things criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed, or will lead to learning the location of a person who is unlawfully restrained or reasonably believed to be a witness in a criminal investigation or for whose arrest there is probable cause, the magistrate shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device.

If the magistrate finds that the information likely to be obtained by the installation and use of a pen register or a trap and trace device is relevant to an ongoing criminal investigation, and finds that there is probable cause to believe that the pen register or trap and trace device will lead to obtaining evidence of a crime, contraband, fruits of crime, things criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed, or will lead to learning the location of a person who is unlawfully restrained or reasonably believed to be a witness in a criminal investigation or for whose arrest there is probable cause to:

(1) stolen or embezzled property,

(2) property or things used as the means of committing a felony,

(3) property or things 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,

(4) evidence that tends to show a felony has been committed, or tends to show that a particular person has committed or is committing a felony,

(5) evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11 has occurred or is occurring,

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(6) the location of a person who is unlawfully restrained or reasonably believed to be a witness in a criminal investigation or for whose arrest there is probable cause,

(7) evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code,

(8) 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

the magistrate shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device.

(c) Information acquired solely pursuant to the authority for a pen register or trap and trace device shall not include any information that may disclose the physical location of the subscriber, except to the extent that the location may be determined from the telephone number. Upon the request of the person seeking the pen register or trap and trap device, the magistrate may seal portions of the application pursuant to *People v. Janet Marie Hobbs* (1994) 7 Cal.4th 948, and Evidence Code sections 1040-1042.

~~(e)~~ (d) An order issued pursuant to subdivision (b) shall specify all of the following:

(1) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached.

(2) The identity, if known, of the person who is the subject of the criminal investigation.

(3) The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order.

(4) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

(5) The order shall direct, if the applicant has requested, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device.

~~(d)~~ (e) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 60 days.

~~(e)~~ (f) Extensions of the original order may be granted upon a new application for an order under subdivisions (a) and (b) if the officer shows that there is a continued probable cause that the information or items sought

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under this subdivision are likely to be obtained under the extension. The period of an extension shall not exceed 60 days.

~~(f)~~ (g) An order or extension order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that the order be sealed until otherwise ordered by the magistrate who issued the order, or a judge of the superior court, and that the person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person, unless or until otherwise ordered by the magistrate or a judge of the superior court- or for compliance with the provisions of Sections 1054.1 and 1054.7.

~~(g)~~ (h) Upon the presentation of an order, entered under subdivisions (b) or ~~(e)~~ (f), by a peace officer authorized to install and use a pen register, a provider of wire or electronic communication service, landlord, custodian, or other person shall immediately provide the peace officer all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services provided to the party with respect to whom the installation and use is to take place, if the assistance is directed by the order.

~~(h)~~ (i) Upon the request of a peace officer authorized to receive the results of a trap and trace device, a provider of a wire or electronic communication service, landlord, custodian, or other person shall immediately install the device on the appropriate line and provide the peace officer all information, facilities, and technical assistance, including installation and operation of the device unobtrusively and with a minimum of interference with the services provided to the party with respect to whom the installation and use is to take place, if the installation and assistance is directed by the order.

~~(i)~~ (j) Unless otherwise ordered by the magistrate, the results of the pen register or trap and trace device shall be provided to the peace officer at reasonable intervals during regular business hours for the duration of the order.

(k) The magistrate, before issuing the order pursuant to subdivision (b), may examine on oath the person seeking the pen register or trap and trace device, and any witnesses the person may produce, and shall take his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the parties making them.

SEC. 4. Section 638.53 is added to the Penal Code, to read:

638.53. (a) Except as otherwise provided in this chapter, upon an oral application by a peace officer, a magistrate may grant oral approval for the installation and use of a pen register or a trap and trace device, without an order, if he or she determines all of the following:

(1) There are grounds upon which an order could be issued under Section 638.52.

(2) There is probable cause to believe that an emergency situation exists with respect to the investigation of a crime.

(3) There is probable cause to believe that a substantial danger to life or limb exists justifying the authorization for immediate installation and use of a pen register or a trap and trace device before an order authorizing the installation and use can, with due diligence, be submitted and acted upon.

(b) (1) By midnight of the second full court day after the pen register or trap and trace device is installed, a written application pursuant to

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Section 638.52 shall be submitted by the peace officer who made the oral application to the magistrate who orally approved the installation and use of a pen register or trap and trace device. If an order is issued pursuant to Section 638.52, the order shall also recite the time of the oral approval under subdivision (a) and shall be retroactive to the time of the original oral approval.

(2) In the absence of an authorizing order pursuant to paragraph (1), the use shall immediately terminate when the information sought is obtained, when the application for the order is denied, or by midnight of the second full court day after the pen register or trap and trace device is installed, whichever is earlier.

(c) A provider of a wire or electronic communication service, landlord, custodian, or other person who provides facilities or technical assistance pursuant to this section shall be reasonably compensated by the requesting peace officer's law enforcement agency for the reasonable expenses incurred in providing the facilities and assistance.

SEC. 5. 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 7, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1001 (Maienschein) – As Introduced February 26, 2015
As Proposed to be Amended in Committee

SUMMARY: Prohibits a person from impeding or interfering with the making of a report of suspected child abuse or neglect under the Child Abuse and Neglect Reporting Act (CANRA). Specifically, **this bill:**

- 1) Prohibits a person from impeding or interfering with the making of a report of suspected child abuse or neglect under CANRA.
- 2) Provides that a person who intentionally impedes or interferes with a report of suspected child abuse being made is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed one thousand (\$1,000), or by both.

EXISTING LAW:

- 1) Defines "mandated reporter" under CANRA as any of the following: a teacher; an instructional aide; a teacher's aide or teacher's assistant employed by any public or private school; a classified employee of any public school; an administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school; an administrator of a public or private day camp; an administrator or employee of a public or private youth center, youth recreation program, or youth organization; an administrator or employee of a public or private organization whose duties require direct contact and supervision of children; any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis; a licensee, an administrator, or an employee of a licensed community care or child day care facility; a Head Start program teacher; a licensing worker or licensing evaluator employed by a licensing agency as defined; a public assistance worker; an employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities; a social worker, probation officer, or parole officer; an employee of a school district police or security department; any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school; a district attorney investigator, inspector, or local child support agency caseworker unless the investigator, inspector, or caseworker is working with an attorney appointed to represent a minor; a peace officer, as defined, who is not otherwise described in this section; a firefighter, except for volunteer firefighters; a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage and family therapist, clinical social worker, professional clinical counselor, or any other person who is currently licensed as a health care professional as specified; any emergency medical technician I or II, paramedic, or other person certified to provide emergency medical services; a registered psychological

assistant; a marriage and family therapist trainee, as defined; a registered unlicensed marriage and family therapist intern; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a medical examiner, or any other person who performs autopsies; a commercial film and photographic print processor, as defined; a child visitation monitor, as defined; an animal control officer or humane society officer, as defined; a clergy member, as defined; any custodian of records of a clergy member, as specified; any employee of any police department, county sheriff's department, county probation department, or county welfare department; an employee or volunteer of a Court Appointed Special Advocate program, as defined; any custodial officer, as defined; any person providing services to a minor child, as specified; an alcohol and drug counselor, as defined; a clinical counselor trainee, as defined; and a registered clinical counselor intern. (Pen. Code, § 11165.7, subd. (a).)

- 2) Provides that when two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report. (Pen. Code, § 11166, subd. (h).)
- 3) States that the reporting duties under CANRA are individual and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided they are not inconsistent with CANRA. (Pen. Code, § 11166, subd. (i)(1).)
- 4) Provides that volunteers of public or private organizations, except a volunteer of a Court Appointed Special Advocate program, whose duties require direct contact with and supervision of children are not mandated reporters but are encouraged to obtain training in the identification and reporting of child abuse and neglect and are further encouraged to report known or suspected instances of child abuse or neglect to a specified agency. (Pen. Code, § 11165.7, subd. (b).)
- 5) Strongly encourages employers to provide their employees who are mandated reporters with training in the duties imposed by CANRA. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with a statement that informs the employee that he or she is a mandated reporter and informs the employee of his or her reporting obligations and of his or her confidentiality rights. (Pen. Code, § 11165.7, subd. (c).)
- 6) Encourages public and private organizations to provide their volunteers whose duties require direct contact with and supervision of children with training in the identification and reporting of child abuse and neglect. (Pen. Code, § 11165.7, subd. (f).)
- 7) Requires a mandated reporter to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects

has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written follow-up report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident. (Pen. Code, § 11166, subd. (a).)

- 8) Provides that any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a specified agency discovers the offense. (Pen. Code, § 11166, subd. (c).)
- 9) Provides that any supervisor or administrator who interferes or inhibits a mandated reporter from reporting suspected child abuse or neglect shall be punished by not more than six months in a county jail, by a fine of not more than one thousand dollars (\$1,000), or by both imprisonment and a fine. (Pen. Code, § 11166.01, subd. (a).)
- 10) Defines "child" under CANRA to mean person under the age of 18 years. (Pen. Code, § 11165.)
- 11) Defines "child abuse or neglect" under CANRA to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child as defined, and unlawful corporal punishment or injury as defined. "Child abuse or neglect" does not include a mutual affray between minors. "Child abuse or neglect" does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer. (Pen. Code, § 11165.6.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Unlike many other states, California law does not explicitly spell out consequences for those who interfere with a mandated reporter's duty to notify the proper authorities of suspected incidences of child abuse or neglect. Mandated reporting of child abuse and neglect is a critical system designed to protect our state's most vulnerable children. However, social workers who work for private, non-profit foster family agencies ('FFAs') and one teacher have confidently reported that supervisors at FFAs will override mandated reporting.

"Mandated reporters should have a clear path to reporting and eliminating child abuse and neglect without interference. AB 1001 will allow for accountability, and reasonable punishment for those who make this impossible, improving our chance at identifying and eliminating child abuse within our state."

2) **As Proposed to be Amended in Committee.** Committee staff has suggested to the author that the bill be amended in Committee to delete language that would have, specifically, created a statutory cause of action for actual damages sustained by a victim of child abuse or neglect for any abuse or neglect that occurs after a person impeded or interfered with the report being made. Under existing law, Penal Code Section 11166 (a) makes it a misdemeanor for a mandated reporter to fail to report a suspected incident of child abuse or neglect. This section does not provide for a statutory cause of action for damages against a mandated reporter for failing to make a legally required report. Likewise, Penal Code Section 11166.01 (a) makes it a misdemeanor for a supervisor or administrator to impede or inhibit a mandated reporter from making a mandated report of suspected child abuse neglect. Section 11166.01 (a), also, does not provide for a statutory cause of action for damages against a supervisor or administrator that interferes or inhibits a mandated report from being made. The newly created section in this bill should conform with existing law which only provides for criminal liability for failing to make a mandated report, or interfering or impeding a mandated reporter from performing his or her duty, and does not, specifically, create a statutory civil cause of action for damages sustained by a victim of child abuse or neglect against a mandated reporter, or a supervisor or administrator that interfered in the making of a report.

3) **Argument in Support:** The *California Association of Private School Organizations* writes that, "We believe AB 1001 proposes a sensible means of facilitating compliance with the laws governing mandated reporters of suspected acts of child abuse or neglect. Suspecting persons who intentionally impeded or interfere with the obligatory reporting of such acts to possible punitive action and personal liability is likely, in our view to lower the incidence of obstruction, and correspondingly reduce institutional culpability. Most importantly, a greater number of victims will receive the assistance they require.

"In a school setting, teachers and other personnel may often seek the advisement of principals and/or other administrators to help ascertain whether, in the view of such persons, particular evidence is deemed sufficient to invoke the mandate. It would be inopportune to see administrators refuse to engage in such discussions for fear of inviting a subsequent charge of obstruction. We therefore suggest that the committee, together with the author, devote consideration to clarifying what constitutes 'impeding' and 'interfering,' as well as how it can be ascertained that such actions are 'intentional.'"

4) **Argument in Opposition:** The *California Attorneys for Criminal Justice* argues that "The proposed addition to P.C. 11166, subsection (l), criminalizes any interference with a 'mandated reporter' under the Child Abuse and Reporting Act. (Penal Code section 11164 through Penal Code 11174.3.) In particular, Penal Code § 11165.7 details who is a 'mandated reporter.' The term 'mandated reporter' includes, among others, teachers, social workers, district attorney investigators, psychologists, psychiatrists and dentists. Most of these classifications are either professionals or people who have had special training in working with children.

...

"The average citizen does not have special training in child care or special training in the reporting requirements of Penal Code § 11166. As such, they cannot always be reasonably expected to understand why and when these reports must be made. All the more so when this

law has such a broad reporting requirement.

"Is a mother, who knows that her daughter fell on the ground, interfering with a report by pointing out the truth to a mandated reporter? What does it mean to impede a report? The broad nature of these terms could unintentionally criminalize innocent conduct including a parent's natural tendency to defend their children and their spouses.

"Amending Penal Code § 11166 is not necessary. As currently written, Penal Code § 11166 already gives strong incentives to report child abuse. If a mandated reporter does not report suspected child abuse, she faces up to 6 months in jail. (Cal. Penal Code 11166(c).) IN most cases, these people will also lose their job, their professional reputation, and their standing in the community. As a result, mandated reporters have always been very active."

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Advocacy Institute (Sponsor)
California Association of Private School Organizations
California District Attorneys Association
California State Sheriffs' Association
Crime Victims United
Junior Leagues of California

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association

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

Amendments Mock-up for 2015-2016 AB-1001 (Maienschein (A))

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

Mock-up based on Version Number 99 - Introduced 2/26/15
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax, or electronically transmit a written followup report within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For purposes of this article, “reasonable suspicion” means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. “Reasonable suspicion” does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any “reasonable suspicion” is sufficient. For purposes of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If, after reasonable efforts, a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic

transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone followup call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written followup report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the State Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the

discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse and that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) (1) A commercial film, photographic print, or image processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, slide, or any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image depicting a child under 16 years of age engaged in an act of sexual conduct, shall, immediately or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images are seen. Within 36 hours of receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a copy of the image or material attached.

(2) A commercial computer technician who has knowledge of or observes, within the scope of his or her professional capacity or employment, any representation of information, data, or an image, including, but not limited to, any computer hardware, computer software, computer file, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image that is retrievable in perceivable form and that is intentionally saved, transmitted, or organized on an electronic medium, depicting a child under 16 years of age engaged in an act of sexual conduct, shall immediately, or as soon as practicably possible, telephonically report the instance of suspected abuse to the law enforcement agency located in the county in which the images or material are seen. As soon as practicably possible after

(i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse or neglect reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall be reported only to the county welfare or probation department. A law enforcement agency shall report to the county welfare or probation department every known or suspected instance of child abuse or neglect reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency also shall send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

(l) A person shall not impede or interfere with the making of a report of suspected child abuse or neglect required under this section. A person who intentionally impedes or interferes with a report of suspected child abuse or neglect being made is guilty of a misdemeanor, and may be

receiving the information concerning the incident, the reporter shall prepare and send, fax, or electronically transmit a written followup report of the incident with a brief description of the images or materials.

(3) For purposes of this article, “commercial computer technician” includes an employee designated by an employer to receive reports pursuant to an established reporting process authorized by subparagraph (B) of paragraph (43) of subdivision (a) of Section 11165.7.

(4) As used in this subdivision, “electronic medium” includes, but is not limited to, a recording, CD-ROM, magnetic disk memory, magnetic tape memory, CD, DVD, thumbdrive, or any other computer hardware or media.

(5) As used in this subdivision, “sexual conduct” means any of the following:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(B) Penetration of the vagina or rectum by any object.

(C) Masturbation for the purpose of sexual stimulation of the viewer.

(D) Sadoomasochistic abuse for the purpose of sexual stimulation of the viewer.

(E) Exhibition of the genitals, pubic, or rectal areas of a person for the purpose of sexual stimulation of the viewer.

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

(g) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse or neglect may report the known or suspected instance of child abuse or neglect to an agency specified in Section 11165.9. For purposes of this section, “any other person” includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.

(h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

~~liable for actual damages sustained by a victim of child abuse or neglect for any abuse or neglect that occurs after the person impeded or interfered with the report being made.~~

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 7, 2015
Counsel: Gabriel Caswell

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1019 (Eduardo Garcia) – As Introduced February 26, 2015

SUMMARY: Creates the Metal Theft Task Force (MTTF) Program to provide funding for local law enforcement agencies, as specified, to combat metal theft and related recycling crimes. Specifically, **this bill:**

- 1) Requires the Department of Justice (DOJ) to establish a Metal Theft Task Force Program designed to enhance the capacity of the department to serve as the lead law enforcement agency in the investigation and prosecution of illegal recycling operations, and metal theft and related recycling crimes, and would authorize the department to enter into partnerships, as defined, with local law enforcement agencies, regional task forces, and district attorneys for the purpose of achieving the goals of the program.
- 2) Authorizes the DOJ to enter into an agreement with any state agency for the purpose of administering the program.
- 3) Establishes the Metal Theft Task Force Fund, to be administered by the DOJ, and would continuously appropriate all moneys in that fund to the department for the purposes of the program, thereby making an appropriation.
- 4) Requires the DOJ to submit a comprehensive report to the Legislature, no later than December 31, 2018, on the status and progress, since the year 2016, of the program in deterring, investigating, and prosecuting illegal recycling operations, and metal theft and related recycling crimes.
- 5) Specifies that the program would not be implemented until the DOJ determines that sufficient moneys have been deposited in the fund to implement the program.
- 6) Extends the operation of the provision requiring a weighmaster to pay a specified additional fee of \$500 until January 1, 2020, and would additionally require a weighmaster who is a junk dealer or recycler, as defined, to pay a specified additional license fee to be deposited into the Metal Theft Task Force Fund and to be expended by the Department of Justice for the purpose of administering the Metal Theft Task Force Program. The additional fee is specified as follows:
 - a) One thousand dollars (\$1,000) if the weighmaster is operating at a fixed location; and
 - b) One thousand five hundred dollars (\$1,500) if the weighmaster is operating at other than a fixed location;

- 7) Prohibits the proceeds of this fee from exceeding an aggregate total of \$2,000,000 per year.
- 8) Defines the following terms as follows for the purposes of this bill:
 - a) “Agency” means a regional task force, a local law enforcement agency, or a district attorney;
 - b) “Department” means the Department of Justice;
 - c) “Fund” means the Metal Theft Task Force Fund;
 - d) “Junk” has the same meaning as set forth in Section 21600 of the Business and Professions Code;
 - e) “Junk dealer” has the same meaning as set forth in Section 21601 of the Business and Professions Code;
 - f) “Program” means the Metal Theft Task Force Program; and
 - g) “Recycler” has the same meaning as set forth in Section 21605 of the Business and Professions Code.
- 9) Provides that the Metal Theft Task Force Fund is hereby established within the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund is hereby continuously appropriated to the department for the purposes set forth in this title. Transfers to the Metal Theft Task Force Fund shall be deposited in the State Treasury, or in a state depository bank approved by the Treasurer.
 - a) Provides that the fund shall consist of moneys deposited into it received from, or recovered by, the federal government, industry, and private sources, moneys appropriated by the Legislature, and from fees collected as specified. General Fund moneys shall not be deposited into the fund nor used to start up, implement, or support the continuing administration of the provisions of this title. The fund shall be administered by the DOJ.
 - b) Moneys distributed from the fund pursuant to the program are intended to ensure that the department is equipped with the necessary personnel and tools to successfully combat metal theft and related recycling crimes, with a primary focus of shutting down illegal recycling operations, which include, but are not limited to, all of the following offenses:
 - i) Illegal recycling operations, in which a junk dealer or recycler does not possess any of the following:
 - (1) A current business license;
 - (2) A stormwater permit, application for a stormwater permit, or a statement indicating that the applicant has either filed an application for a stormwater permit or is not required to obtain a stormwater permit; or

- (3) A weighmaster's license issued as specified.
 - ii) The theft of metals, including, but not limited to, nonferrous metals;
 - iii) The purchase and recycling of stolen metals by recyclers;
 - iv) The transportation of stolen metals from junk dealers and recyclers in this state to another state; and
 - v) The transportation of stolen metals from another state to this state.
- 10) Provides that after deduction of the DOJ's actual and necessary administrative costs, moneys in the fund shall be expended for the exclusive purpose of enhancing the capacity of the department to serve as the lead law enforcement agency in deterring, investigating, and prosecuting illegal recycling operations, and metal theft and related recycling crimes.
 - 11) Provides that moneys in the fund may be expended for the purpose of enabling the department to enter into partnerships with local law enforcement agencies, regional task forces, or district attorneys.
 - 12) Provides that the DOJ shall establish and administer the Metal Theft Task Force Program. The department may enter into an agreement with any state agency for the purpose of administering the program.
 - 13) Provides that the program shall be designed to enhance the capacity of the DOJ to serve as the lead law enforcement agency in the investigation and prosecution of illegal recycling operations and metal theft and related recycling crimes.
 - 14) Provides that the DOJ shall consult at least twice per calendar year with pertinent recycling trade associations, including, but not limited to, the Institute of Scrap Recycling Industries, California Chapter and the California Metal Coalition, to determine the best allocation of resources, for purposes of the program, from an industry perspective, in preventing metal theft, with an emphasis on eliminating illegal recycling operations from the state.
 - 15) Provides that the DOJ may enter into partnerships with local law enforcement agencies, regional task forces, or district attorneys. For purposes of this title, "partnership" means a collaborative effort involving financial contributions by the department to achieve the goals of the program established by this title.
 - 16) States that no later than December 31, 2018, the DOJ shall submit a comprehensive report to the Legislature on the status and progress, since the year 2016, of the program in deterring, investigating, and prosecuting illegal recycling operations, and metal theft and related recycling crimes. The report shall include, but be not limited to, all of the following information:
 - a) The number of metal theft and related recycling crime cases filed;
 - b) The number of metal theft and related recycling crimes cases investigated;

- c) The number of victims involved in the cases reported;
 - d) The number of convictions obtained;
 - e) The total aggregate monetary loss suffered by the victims, including damage caused by the theft;
 - f) The number of illegal recycling operations or illegal junk dealers or recyclers, or both, shut down; and
 - g) An accounting of moneys received and expended in each program year, commencing with 2016, which shall include all of the following:
 - i) The amount of moneys received and expended by the department;
 - ii) The use to which those moneys were put, including payment of salaries and benefits, operating expenses, equipment purchases, and allowable expenditures; and
 - iii) Any other relevant information requested.
- 17) Provides that the program established pursuant to this title shall not be implemented until the department determines that sufficient moneys have been deposited in the Metal Theft Task Force Fund to implement the provisions of this title. The DOJ shall only be required to implement the provisions of this title upon the availability of moneys in the fund in an amount sufficient to cover all costs relating to the startup, implementation, and continuing administration of the provisions of this title.
- 18) Sunsets the provision of this bill on January 1, 2020.

EXISTING LAW:

- 1) Provides that a weighmaster shall pay to the department the following license fee for each license year as applicable to the operation: (Bus. & Prof. Code § 12704, subd. (a).)
 - a) Seventy-five dollars (\$75) if the weighmaster is operating at a fixed location;
 - b) Thirty dollars (\$30) for each additional fixed location at which the weighmaster is operating;
 - c) Two hundred dollars (\$200) if the weighmaster is operating at other than a fixed location; and
 - d) Twenty dollars (\$20) for each deputy weighmaster.
- 2) Provides in addition to the license fees set forth a weighmaster who is a recycler or a junk dealer as defined, or is performing services on behalf of a recycler or junk dealer shall also pay to the department the following license fee for each license year as applicable to the

operation: (Bus. & Prof. Code § 12704, subd. (b).)

- a) Five hundred dollars (\$500) if the weighmaster is operating at a fixed location;
 - b) Five hundred dollars (\$500) for each additional fixed location at which the weighmaster is operating; and
 - c) Five hundred dollars (\$500) if the weighmaster is operating at other than a fixed location.
- 3) Defines "license year" as the period of time beginning with the first day of the month the weighmaster is required to be licensed in this state, and ending on the date designated by the secretary for expiration of the license, or yearly intervals after the first renewal. (Bus. & Prof. Code § 12704, subd. (c).)
 - 4) States that "location" means a premise on which weighing, measuring, or counting devices are used. (Bus. & Prof. Code § 12704, subd. (d).)
 - 5) Provides that the provisions of this section shall remain in effect until January 1, 2019. (Bus. & Prof. Code § 12704, subd. (e).)
 - 6) Provides that all license fees collected pursuant to this chapter shall be deposited in the Department of Food and Agriculture Fund to be expended by the department for the administration and enforcement of this chapter, except as provided. (Bus. & Prof. Code § 12709, subd. (a).)
 - 7) License fees collected pursuant to specified sections shall be deposited in a special account in the Department of Food and Agriculture Fund to be expended by the department for the administration and enforcement of specified provisions. (Bus. & Prof. Code § 12709, subd.(b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "This bill will establish The Metal Theft Taskforce within the California Department of Justice (DOJ). The Taskforce will distribute grants to regional and local law enforcement agencies for use in combating metal theft crimes. Grant will also be available for prosecution efforts. Funding for these grants would come from license fees.

"The legislation also directs DOJ to award grants based on a number of criteria to determine where the most pressing needs for additional funding are."

- 2) **Metal Theft in California:** Metal theft has been well documented throughout California. In 2007, the New York Times reported:

"This is the No. 1 crime affecting farmers and ranchers right now," said Bill Yoshimoto, an assistant district attorney in the agriculturally rich Tulare County in the Central Valley.

"Virtually every farmer in the Central Valley has been hit," Mr. Yoshimoto said. But some have been hit far beyond the value of the metal. For the farmer to replace the pump is anywhere between \$3,000 to \$10,000, and then there is downtime, and loss to crops.

Some sheriff's departments in agricultural counties have rural crime units that investigate metal crimes almost exclusively these days, setting up sting operations in recycling shops and tagging copper bait with electronic tracking devices.

Metal theft from California farmers rose 400 percent in 2006 over the previous year, according to the Agricultural Crime Technology Information and Operations Network, a regional law enforcement group headed by Mr. Yoshimoto. The numbers this year are equally high. Through the end of June, there were nearly 1000 incidents of scrap metal theft on farms, causing more than \$2 billion in losses, the group's figures show. (*Unusual Culprits Cripple Farms in California*, New York Times (July 1, 2007).)

Moreover, metal theft is not confined to only farms and rural areas. (See *Metal Marauders on Loose*, Monterey County Herald (May 10, 2008) [stating: "Demand for copper, brass, platinum, stainless steel and other valuable metals has turned the underside of cars, abandoned buildings, farms, freeways and industrial yards into gold mines for thieves. 'It's an easy way to make a quick buck,' said sheriff's detective Matt Davis. 'Everybody is stealing.'].)

- 3) **Prior Attempts at Establishing a Metal Theft Taskforce:** In 2013, the Legislature passed AB 909 (Gray) which was substantially similar to this bill, with the major differences being that AB 909 had the Department of Justice establish and oversee the MTTF Program and did not provide a funding source for the MTTF. The Governor vetoed AB 909 with the following rationale in his veto message: "[AB 909] creates a new enforcement effort without identifying a funding source. Today I signed SB 485, which does provide a funding source for greater enforcement within the existing infrastructure. More can certainly be done, but let's build on stable funding base."

Additionally, in 2014 AB 2313 (Nestande) was also substantially similar to this bill when it was passed out of Assembly Public Safety. That bill was amended to a bill that was identical to this bill and it failed passage on the Senate floor.

- 4) **Argument in Support:** According to *Liberty Mutual Insurance*, "Over the past decade metal theft has remained a growing problem in California that presents significant costs to victims who typically include home and vehicle owners, small and large businesses, and public agencies. In fact, the United States Department of Energy estimates that metal theft and resulting power outages, revenue losses and repairs costs the nation some \$1 billion annually. Although the Legislature has taken action to help reduce the occurrence of metal theft, a significant factor that prevents criminals from facing justice stems from a lack of resources and expertise required to investigate such crimes."

5) Prior Legislation:

- a) AB 2313 (Nestande), of the 2013-2014 legislative session, would have created the Metal Theft Task Force (MTTF) Program to provide funding for local law enforcement agencies, as specified, to combat metal theft and related recycling crimes. AB 2313 failed passage on the Senate floor.
- b) AB 909 (Gray), of the 2013-2014 legislative session, would have created a MTTF Program substantially similar to this bill but delegated establishment and oversight of the program to the Department of Justice. AB 909 was vetoed by the Governor.
- c) SB 1023 (Committee on Budget and Fiscal Review), Chapter 43, Statutes of 2012, among other provisions, deleted the provisions repealing the authorization for the Central Valley Rural Crime Prevention Program and Central Coast Rural Crime Prevention Program, thereby making the programs operative indefinitely.
- d) AB 2298 (Ma), Chapter 823, Statutes of 2012, prior to its chaptered version, was substantially similar to this bill but delegated the establishment and oversight of the MTTF Program to the Board of State and Community Corrections. AB 2298 was amended completely to address a different topic.
- e) AB 2768 (Poochigian), Chapter 327, Statutes of 1996, created the Rural Crime Prevention Program, which authorized the County of Tulare to enter into a joint-powers agreement to share resources, personnel hours, and information regarding rural crimes, including metal theft.
- f) AB 374 (Matthews), Chapter 719, Statutes of 2002, extended the operation of the Rural Crime Prevention Program to July 1, 2005, and renamed the program the Central Valley Rural Crime Prevention Program.
- g) SB 44 (Denham), Chapter 18, Statutes of 2003, authorized the counties of Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, and San Benito, until July 1, 2010, to develop the Central Coast Rural Crime Prevention Programs modeled on the Central Valley Rural Crime Prevention Programs, to be administered by the county sheriff's office in Monterey County and by the district attorney's office in each of the other four counties.

REGISTERED SUPPORT / OPPOSITION:**Support**

Air Conditioning Sheet Metal Association
Air Conditioning & Refrigeration Contractors Association
California Chapters of National Electrical Contractors Association (NECA)
California Legislative Conference of Plumbing, Heating and Piping Industry
Finishing Contractors Association of Southern California
Liberty Mutual Insurance
PacifiCorp
United Contractors
Western Line Constructors

Opposition

None

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Date of Hearing: April 7, 2015
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Bill Quirk, Chair

AB 1134 (Mark Stone) – As Introduced February 27, 2015

SUMMARY: Authorizes the sheriff of a county in which a city is located to enter into an agreement with the chief or other head of the municipal police agency in that city for the chief or head of that municipal police agency to process all applications for licenses to carry a concealed handgun upon the person, renewal of those licenses, and amendments to those licenses.

EXISTING LAW:

- 1) Provides a county sheriff or municipal police chief may issue a license to carry a handgun capable of being concealed upon the person upon proof of all of the following.
 - a) The person applying is of good moral character (Pen.Code, §§ 26150, 26155, subd. (a) (1).);
 - b) Good cause exists for the issuance (Pen. Code, §§ 26150, 26155, subd. (a) (2).);
 - c) The person applying meets the appropriate residency requirements (Pen. Code, §§ 26150, 26155, subd. (a) (3).); and,
 - d) The person has completed the appropriate training course, as specified. (Pen. Code, §§ 26150, 26155, subd. (a) (4).
- 2) States that a county sheriff or a chief of a municipal police department may issue a license to carry a concealed handgun in either of the following formats:
 - a) A license to carry a concealed handgun upon his or her person (Pen. Code, §§ 26150, 26155, subd. (b) (1).); or,
 - b) A license to carry a loaded and exposed handgun if the population of the county, or the county in which the city is located, is less than 200,000 persons according to the most recent federal decennial census. (Pen. Code, §§ 26150, 26155, subd. (b) (2).
- 3) Provides that a chief of a municipal police department shall not be precluded from entering into an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses, or renewal of licenses, to carry a concealed handgun upon the person. (Pen. Code, § 26155, subd. (b) (3).)

- 4) Provides that a license to carry a concealed handgun is valid for up to two years, three years for judicial officers, or four years in the case of a reserve or auxiliary peace officer. (Pen. Code, § 26220.)
- 5) Provides that a license may include any reasonable restrictions or conditions that the issuing authority deems warranted, which shall be listed on the license. (Pen. Code, § 26200.)
- 6) Provides that the fingerprints of each applicant are taken and submitted to the Department of Justice. Provides criminal penalties for knowingly filing a false application for a concealed weapon license. (Pen. Code, §§ 26180, 26185.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "I agree with the California State Sheriffs' Association in that the police chief, whose department may be more familiar with city residents than a county sheriff, can be better positioned to make a determination that a person should be granted a concealed carry weapons (CCW) permit. In these cases, I believe the sheriff and the police chief should be allowed to enter into an agreement just as a police chief currently can enter into an agreement with the sheriff so that the sheriff can handle and process all CCW permits from a city.
- 2) **Background:** Existing law allows the sheriff of a county or the chief of a municipal police department to grant a license to carry a concealed handgun. In addition, existing law allows a police chief to enter into an agreement with the sheriff that allows the sheriff to process all applications for a license to carry a concealed handgun within a city. However, there is nothing in the law that allows a sheriff to enter into an agreement with a police chief allowing the police chief to process all applications from within the city.

The Los Angeles County Sheriffs' Department (LASD) instituted a policy requiring that applications for licenses to carry a concealed handgun apply with the police chief in the city in which the person resides rather than the sheriff. In 2013, the Los Angeles Superior Court held that the existing law did not, specifically, provide for that option and ordered the LASD to process all applications filed with the LASD. (*LU v. County of Los Angeles*, BC480493). This bill will give the LASD the option to enter into an agreement with the chief of police of a city within the county

- 3) **Argument in Support:** The *Los Angeles County Sheriff's Department* states, "Existing law authorizes the sheriff of a county, or the chief or other head of a municipal police department, upon proof that the person applying is of good moral character, that good cause exists, and that the person applying satisfies certain conditions, to issue a license for the person to carry a concealed handgun, as specified. Existing law provides that the chief or other head of a municipal police department is not precluded from entering into an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses for a person to carry a concealed handgun, renewal of those licenses, and amendments to those licenses.

"This bill would provide that the sheriff of the county in which the city is located is not precluded from entering into an agreement with the chief or other head of a municipal police department to process all applications for licenses for a person to carry a concealed handgun, renewals of those licenses, and amendments to those licenses."

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs Association (Sponsor)
Los Angeles County Sheriff's Department
Law Center to Prevent Gun Violence

Opposition

None

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