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California State Assembly

PUBLIC SAFETY

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AGENDA

Tuesday, January 9, 2024
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	AB 667	Maienschein	Firearms: gun violence restraining orders.
2.	AB 797	Weber	Local government: police review boards.
3.	AB 977	Rodriguez	Emergency departments: assault and battery.
4.	AB 1039	Rodriguez	Sexual activity with detained persons.
5.	AB 1047	Maienschein	Firearms purchase notification registry.
6.	AB 1725	McCarty	Law enforcement settlements and judgments: reporting.

VOTE ONLY

7.	AB 15	Dixon	Public records: parole calculations and inmate release credits.
8.	AB 329	Ta	Theft: jurisdiction.
9.	AB 758	Dixon	Firearms.
10.	AB 1260	Joe Patterson	Parole: notice of release date.
11.	AB 1582	Dixon	Secure youth treatment facilities.
12.	AB 1746	Hoover	Inmate firefighters: credits.

COVID FOOTER

SUBJECT:

All witness testimony will be in person; there will be no phone testimony option for this hearing. You can find more information at www.assembly.ca.gov/committees.

Date of Hearing: January 9, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 667 (Maienschein) – As Amended January 3, 2024

SUMMARY: Requires a court to issue a gun violence restraining order (GVRO) lasting the maximum time of five years if the subject of the petition displayed an extreme risk of violence within the prior 12 months. Specifically, **this bill**:

1) Provides that when issuing a gun violence restraining order, the court must set it at the maximum period of five years if the court finds evidence of an extreme risk of violence in the 12 months prior to the petition being filed.

2) States that a finding of extreme risk of violence may be supported by repeated and egregious instances of the following factors:

   a) Recent threats or acts of violence towards self or others;

   b) Violations, or history of violations, of specified restraining or protective orders;

   c) A conviction for certain misdemeanor offenses which resulted in the person being prohibited from possessing a firearm for a period of 10 years;

   d) A pattern of violence within the past year;

   e) The unlawful and reckless use or display of a firearm;

   f) History of use, attempted use, or threatened use of force;

   g) Prior arrests for a felony offense;

   h) Documentary evidence showing ongoing alcohol or controlled substance abuse; and,

   i) The recent acquisition of firearms and ammunition.

EXISTING LAW:

1) Defines a GVRO as an order in writing, signed by the court, prohibiting and enjoining a named person from having in their custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. (Pen. Code, § 18100.)

2) Requires a petition for a GVRO to describe the number, types, and locations of any firearms and ammunition that the petition believes the subject of the petition possesses. (Pen. Code, §

18107.)

3) Requires the court to notify the Department of Justice (DOJ) when a GVRO is issued, renewed, dissolved, or terminated. (Pen. Code, § 18115.)

4) Prohibits a person that is subject to a GVRO from having in their custody or control any firearms or ammunition while the order is in effect. (Pen. Code, § 18120, subd. (a).)

5) Requires the court to order the restrained person to surrender all firearms and ammunition in their control. (Pen. Code, § 18120, subd. (b)(1).)

6) States that an officer serving a GVRO shall immediately request the surrender of all firearms and ammunition. Alternatively, if law enforcement does not make a surrender request, the person must surrender them within 24 hours of being served with the GVRO, as specified. (Pen. Code, § 18120, subd. (b)(2).)

7) Allows law enforcement to seek a temporary GVRO if the officer asserts, and the court finds, that there is reasonable cause to believe the following:

   a) The subject of the petition poses an immediate and present danger of causing injury to himself or another by possessing a firearm; and

   b) A temporary GVRO is necessary to prevent personal injury to the subject of the order or another because less restrictive alternatives have been tried and been ineffective or have been determined to be inadequate under the circumstances. (Pen. Code, § 18125, subd. (a).)

8) States that a temporary GVRO shall expire 21 days from the date it is issued and requires the court to hold a specified hearing to determine whether to issue an extended GVRO. (Pen. Code, §§ 18125, subd. (b), & 18148.)

9) Allows an immediate family member, an employer, a coworker, an employee or teacher of a secondary or post-secondary school, law enforcement officer, a roommate, an individual who has a dating relationship or a child in common with the subject of the petition to file a petition requesting that the court issue an ex parte GVRO enjoining a person from possessing, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18150, subd. (a)(1).)

10) Allows a court to issue an ex parte GVRO if there is a substantial likelihood that the subject of the petition poses a significant risk of injury to themselves, or to another by having under their custody and control, owning, purchasing, possessing, or receiving a firearm as determined by balancing specified factors, and that the order is necessary to prevent personal injury to the subject of the petition or to others. (Pen. Code, §§ 18150, subd. (b), & 18155.)

11) States that an ex parte GVRO shall expire 21 days from the date the order is issued and requires the court to hold a hearing to determine whether to issue an extended GVRO. (Pen. Code, §§ 18155, subd. (c), & 18165.)

12) States that at the hearing, the petitioner has the burden to establish by clear and convincing evidence that the person poses a significant danger of causing injury to themselves or to another by possessing, owning, purchasing, possessing, or receiving a firearm and that the order is necessary to prevent injury. (Pen. Code, § 18175, subd. (b).)

13) Enumerates factors which the court must consider in making a determination that grounds for a GVRO exist:

    a) A recent threat or act of violence toward themselves or another;

    b) A violation of an emergency stalking or emergency domestic violence restraining order, as specified;

    c) A recent violation of a domestic violence restraining order, criminal protective order, civil harassment restraining order, a restraining order regarding juveniles that are either dependents or wards of the court, or a restraining order regarding an elder or dependent adult, as specified;

    d) A conviction of certain misdemeanor offenses that result in a person losing their ability to possess a firearm for a period of 10 years; and,

    a) A pattern of violent acts or threats within the past 12 months. (Pen. Code, §§ 18155, subd. (b)(1), & 18175, subd. (a).)

14) Permits a court to consider any other evidence of an increased risk for violence, including:

    a) The unlawful or reckless use or display of a firearm;

    b) A history of use, attempted use, or threatened use of physical force against another person;

    c) A prior arrest for a felony offense;

    d) A history of violating emergency stalking or emergency domestic violence restraining orders;

    e) A history of violating a domestic violence restraining order, criminal protective order, a civil harassment restraining order, a restraining order regarding juveniles who are either dependents or wards of the court, or a restraining order regarding an elder or dependent adult, as specified;

    f) Documentary evidence demonstrating involvement with alcohol or controlled substances; or,

    g) Recent acquisition of a firearm, ammunition, or other deadly weapon, or the acquisition of body armor. (Pen. Code, §§ 18155, subd. (b)(1), & 18175, subd. (a).)

15) Provides that the court shall issue a GVRO for a period between one to five years, subject to termination and renewal. (Pen. Code, § 18175, subd. (e)(1).)

16) Requires the court to consider the length of time that the subject poses a significant danger of causing injury to self or others and the time it is necessary to prevent injury because less restrictive alternatives have either been tried and found to be ineffective or are inadequate or inappropriate under the circumstances. (Pen. Code, § 18175, subd. (e)(2).)

17) Allows a restrained person to file one written request per year for a hearing to terminate the order. (Pen. Code, §18185.)

18) Allows a request for renewal of a GVRO at any time within three months of its expiration. (Pen. Code, § 18190, subd. (a)(1).)

19) Makes a violation of a GVRO a misdemeanor. (Pen. Code, § 18205.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California has proved that it is possible to reduce gun violence through legislative action. In the last decade, we have passed nearly 100 laws aimed at reducing gun violence, and these efforts have kept us below the national average of gun deaths. Still, too many individuals find themselves in situations where legal protections are necessary. Gun violence restraining orders serve as a useful tool for law enforcement and families across the state to help keep firearms out of the hands of individuals who pose a risk to either themselves or others. AB 667 furthers current protections for victims by having a court-issued gun violence restraining order for a mandatory five years if the court finds evidence of extreme risk of violence and repeated offenses within a one-year period."

2) **Gun Violence Restraining Orders**: California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. A GVRO will prohibit the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

   The statutory scheme establishes three types of GVRO's: a temporary emergency GVRO, an ex parte GVRO, and a GVRO issued after notice and hearing. A law enforcement officer may seek a temporary emergency GVRO by submitting a written petition to or calling a judicial officer to request an order at any time of day or night.

In contrast, an immediate family member[1], an employer, a coworker[2], an employee or teacher of a secondary or post-secondary school[3], law enforcement officer, a roommate, an individual who has a dating relationship or a child in common[4] with the subject of the petition can petition for either an ex parte GVRO or a GVRO after notice and a hearing.

An ex parte GVRO is based on an affidavit filed by the petitioner which sets forth the facts establishing the grounds for the order. The court will determine whether good cause exists to issue the order. If, the court issues the order, it can remain in effect for 21 days. Within that time frame, the court must provide an opportunity for a hearing. At the hearing, the court can determine whether the firearms should be returned to the restrained person, or whether it should issue a more permanent order.

Finally, if the court issues a GVRO after notice and hearing has been provided to the person to be restrained, this more permanent order can last for up to five years. To balance the due process rights of the individual restrained the person is allowed to request a hearing for termination of the order on an annual basis.

In determining for how long to issue the GVRO the court will be required to consider two things: (1) the length of time that a person poses a significant danger of causing injury to self or others by owning, purchasing, or possessing a firearm; and (2) that the GVRO is necessary to prevent that injury because less restrictive alternatives either have been tried and been ineffective, or are inadequate or inappropriate for the circumstances. (Pen. Code, § 18175, subds. (b)(1) & (2).) When making the determination, the court must consider certain evidence, such as whether the subject of the petition has committed a recent threat or act of violence, violated specified court protective orders, has been convicted of misdemeanors which would result in firearm prohibitions, or has demonstrated a pattern of violent acts or threats within the prior 12 months. (Pen. Code, §§ 18175, subd. (a) & 18155, subd. (b)(1).) In addition, court may also consider any other evidence of an increased risk for violence, such as whether the subject of the petition unlawfully and reckless used or displayed a firearm, has a history of violating specified protective orders, has recently been using controlled substances or alcohol, and other enumerated factors. (Pen. Code, §§ 18175, subd. (a) & 18155, subd. (b)(2).)

This bill does not change the maximum duration of an original GVRO; original GVROs after notice and a hearing remain capped at up to five years. However, this bill would require that the GVRO be issued for the longest possible term of five years if the court finds evidence of

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[1] "Immediate family member" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any person related by consanguinity or affinity within the fourth degree who has had substantial and regular interactions with the subject for at least one year. (Pen. Code, § 18150, subd. (a)(3).)

[2] A coworker must have had substantial and regular interactions with the subject for at least one year and have obtained the approval of the employer. (Pen. Code, § 18150, subd. (a)(1)(C)).

[3] The subject of the petition must have attended in the last six months. (Pen. Code, § 18150, subd. (a)(1)(D)).

[4] An individual who has a child in common with the subject of the petition must have had substantial and regular interactions with the subject for at least one year. (Pen. Code, § 18150, subd. (a)(1)(H)).

an extreme risk of violence, which includes repeated and egregious instances of the evidence listed directly above. Arguably, this bill will help create more uniform GVRO durations and will ensure that those individuals who demonstrate the greatest risk to public safety are unable to possess a firearm or ammunition for a longer period of time.

3) **Pending Litigation on Validity of Firearm Prohibition based on Court Order**: In *N.Y. State Rifle & Pistol Ass'n v. Bruen* (2022) 142 S.Ct. 2111 (hereafter *Bruen*), the United States Supreme Court established a new test for determining whether a government restriction on carrying a firearm violates the Second Amendment:

> "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" (*Id.* at 2126.)

Based on *Bruen*, the Fifth Circuit Court of Appeals invalidated a federal statute prohibiting a defendant from possessing a firearm pursuant to a domestic violence court order, even after the defendant was involved in five shootings over the course of approximately one month. (*U.S. v. Rahimi* (2023) 61 F.4th 443.) The court examined several different historical statutes to see if there were any analogues which prohibited firearm possession based on civil proceedings alone. (*Id.* at 455-460.) Ultimately, the court found that there were no such relevantly similar historical laws and found that the firearm prohibition was an, "'an outlier that our ancestors would never have accepted.'" (Id. at 461.)

The United States Supreme Court is now reviewing the case. (certiorari granted *United States v. Rahimi* (2023) 143 S.Ct. 2688.) This is the first case taken up by the Supreme Court after its decision in *Bruen*. The government argues that the Second Amendment allows Congress to disarm persons who are not law-abiding, responsible citizens. Rahimi counters that there is no historical tradition of any similar restriction, and so the prohibition is unconstitutional. On November 7, 2023, the Court heard oral arguments in the case. The justices's questioning seemed to suggest that they would uphold the law. (See Amy Howe, Justices appear wary of striking down domestic-violence gun restriction, SCOTUSblog (Nov. 7, 2023, 5:47 PM), https://www.scotusblog.com/2023/11/justices-appear-wary-of-striking-down-domestic-violence-gun-restriction)

Although the *Rahimi* case deals with domestic violence restraining orders, the inquiry principally revolved around prohibiting firearm possession based on a civil proceeding, which means that the decision will likely impact the validity of California's gun violence restraining order laws.

4) **Argument in Support**: No longer applicable.

5) **Argument in Opposition**: No longer applicable.

6) **Prior Legislation:**

   a) AB 301 (Bauer-Kahan), Chapter 234, Statutes of 2023, provides that, in determining whether grounds for issuing a GVRO exist, the court may consider evidence of the acquisition of body armor.

   b) AB 2870 (Santiago), Chapter 974, Statutes of 2022, further expanded the category of persons that may file a petition requesting a court to issue a GVRO.

   c) AB 12 (Irwin), Chapter 724, Statutes of 2019, extended the duration of gun violence restraining orders (GVRO) and their renewals to a maximum of five years.

   d) AB 61 (Ting), Chapter 725, Statutes of 2019, expanded the persons who could petition for a GVRO to include an employer, a coworker, as specified, and an employee or teacher of a secondary school, or postsecondary school, as specified.

   e) AB 1014 (Skinner), Chapter 872, Statutes of 2014, allowed the court to issue a GRVO and established the process by which the orders can be obtained.

REGISTERED SUPPORT / OPPOSITION:

Support

California Catholic Conference
California District Attorneys Association

Oppose

National Rifle Association - Institute for Legislative Action

2 Private Individuals

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

Date of Hearing: January 9, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 797 (Weber) – As Amended January 3, 2024

SUMMARY: Requires cities and counties to establish independent community-based commission to investigate excessive force complaints against law enforcement officers. Specifically, **this bill**:

1) Requires the governing body of each city and county to create an independent community-based commission on law enforcement officer practices by January 15, 2026.

2) Requires each commission to be comprised of an executive director, independent investigators, independent legal counsel, commissioners, and support staff.

3) Requires the executive director to recruit and recommend selection of independent investigators, legal counsel, and support staff to the governing body of each city and county.

4) Prohibits the appointed independent legal counsel from concurrently representing in other legal matters the governing body that has employed or contracted with the law enforcement officer under investigation by the commission.

5) Authorizes independent commissions on law enforcement practices to do all of the following:

   a) Conduct independent investigations of complaints against a police officer or sheriff alleging physical injury to a person, including injury resulting in a person's death; and,

   b) Issue and enforce compliance of subpoenas compelling production of all evidence and testimony of witnesses a commission may require in the course of its investigations.

6) Requires each commission to prepare a report after an investigation and to include the results of the investigation and a recommended course of action, if any, to be taken by the governing body regarding the law enforcement officer investigated by the commission.

EXISTING LAW:

1) Authorizes a county to create a sheriff oversight board, either by action of the board of supervisors or through a vote of county residents, comprised of civilians to assist the board of supervisors to supervise the official conduct of all county officers. (Gov. Code, § 25303.7, subd. (a)(1).)

2) Requires the board of supervisors to appoint the members of the sheriff oversight board. (Gov. Code, § 25303.7, subd. (a)(2).)

3) Requires the board of supervisors to designate one member of the oversight board to serve as the chairperson. (Gov. Code, § 25303.7, subd. (a)(2).)

4) States that each law enforcement agency shall make a record of any investigations of misconduct involving a peace officer in their general personnel file or a separate file designated by the department or agency. (Pen. Code, § 832.12, subd. (a).)

5) Authorizes a peace officer who has reasonable cause to believe that a person to be arrested has committed a public offense to use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. (Pen. Code, § 835a, subd. (b).)

6) Authorizes a peace officer to use deadly force when the officer believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

   a) To defend against an imminent threat of death or serious bodily injury to the officer or to another person; or,

   b) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Pen. Code, § 835a, subd. (c)(1)(A) & (B).)

7) Prohibits a peace officer from using deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person. (Pen. Code, § 835a, subd. (c)(2).)

8) Defines "deadly force" as any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm. (Pen. Code, § 835a, subd. (e)(1).)

9) Provides that an arrest is made by an actual restraint of the person, or by submission to the custody of an officer, and that the person arrested may be subjected to such restraint as is reasonable for their arrest and detention. (Pen. Code, § 835.)

10) Permits a peace officer who is authorized to make an arrest and who has stated their intention to do so, to use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists. (Pen. Code, § 843.)

11) Requires peace officers to immediately report all uses of force by the officer to the officer's department or agency. (Pen. Code, § 832.13.)

12) Requires that each law enforcement agency maintain a policy that provides a minimum standard on the use of force. (Gov. Code, § 7286, subd. (g).)

13) Requires the Commission on Peace Officers Standards and Training (POST) to implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force and to develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for use of force. (Pen. Code, § 13519.10, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "This bill will remedy inadequate, non-transparent review of complaints against law enforcement actions taken against individuals and eliminate ineffective or non-existent disciplinary recommendations even when such complaints are justified. Many California counties and cities currently have no community based commissions to review and make such recommendations; or the commissions that have been established are ineffective, as they lack sufficient resources to adequately review such complaints and make effective disciplinary recommendations when such complaints are justified. Community distrust of internal law enforcement review of its own personnel's actions against individuals creates unnecessary tension between the communities and law enforcement, leads to costly civil unrest, and unfortunately sometimes creates unnecessary and avoidable damages and losses to individuals and to the business community during protests. By creating independent, community based commissions to review complaints against law enforcement actions taken against individuals, this bill will restore community confidence in the integrity of the review and recommendation process regarding these complaints."

2) **Civilian Oversight Commissions:** This bill would require cities and counties to establish independent community-based commissions to investigate physical injury complaints against law enforcement officers. According to one report:

   Variously referred to as citizen oversight, civilian review, external review and citizen review boards, this form of police accountability is often focused on creating a framework that allows non-police actors to provide input into police department operations, with a historical—and often primary—focus on the citizen complaint process. Civilian oversight may be defined as one or more individuals outside the sworn chain of command of a police department whose work focuses on holding that department and its officers and employees accountable. In some jurisdictions, members of the public review, audit or monitor complaint investigations that were conducted by police internal affairs investigators. In other jurisdictions, civilians conduct independent investigations of allegations of misconduct lodged against sworn law enforcement officers. Civilian oversight can also be accomplished through the creation of oversight mechanisms that are authorized to review and comment on police policies, practices, training and systemic conduct. Some mechanisms involve a combination of systemic analysis and complaint handling or review.

   Civilian oversight mechanisms are usually implemented based on the assumption that members of the community do not have faith in the ability of a police or sheriff's department to police itself. When the public believes that officers are not being held accountable for violating the law or department policy, then a consensus may develop

> that misconduct allegations can be more effectively handled by a civilian organization external to the police. Underlying this view is the belief that having non-police actors play a role within the process for handling complaints can lead to more thorough, complete and impartial investigations and findings. A second common assumption is that involving non-sworn individuals in the oversight of the police has the potential to increase public confidence and trust in the police, or at least trust in local government more generally.

(De Angelis et al., *Civilian Oversight of Law Enforcement: Assessing the Evidence*, National Association for Civil Oversight of Law Enforcement (Sept. 2016) p. 13.)

Generally, there are three models of civilian oversight of law enforcement—investigation-focused models, review-focused models, and auditor/monitor-focused models:

> *Investigation-focused Models.* A form of oversight that operates separately from the local police or sheriff's department. While the structure, resources and authority of these types of agencies can vary among jurisdictions, these agencies are tied together by their ability to conduct independent investigations of allegations of misconduct against police officers.
>
> *Review-focused Models.* A type of oversight that focuses its work on reviewing the quality of completed internal affairs investigations. Many review agencies take the form of volunteer review boards or commissions and are designed around the goal of providing community input into the internal investigations process. Instead of conducting independent investigations, review agencies may evaluate completed internal affairs investigations, hear appeals, hold public forums, make recommendations for further investigation and conduct community outreach.
>
> *Auditor/monitor-focused Agencies.* One of the newest forms of police oversight. While there can be variation in the organization structure of this type of civilian oversight, auditor/monitor agencies tend to focus on promoting large-scale, systemic reform of police organizations while often also monitoring or reviewing individual critical incident or complaint investigations.

(De Angelis et al., *supra*, at p. 7.) The type of oversight body may impact how often law enforcement agencies accept the body's recommendations. "Some models of oversight may be more effective at getting recommendations implemented. Almost all of the oversight agencies reported that police executives listened carefully to the recommendations made by oversight staff (78 percent). However, auditor/monitor agencies were much more likely to report that police or sheriff's agencies implemented their recommendations frequently or very frequently (72 percent) as compared to investigative (42 percent) and review agencies (34 percent)." (*Id.* at p. 10)

This bill would require all California cities and counties to adopt an investigation-focused model. To that end, this bill would require commissions to have both independent investigators and independent legal counsel. It also would grant commissions subpoena power to compel the production of all evidence and testimony of witnesses when investigating use-of-force complaints.

3) **Argument in Support**: According to the *Caalifornia Association of Black Lawyers*, the bill's sponsor, "A.B. 797 would require the governing body of each city and county, by January, 2025, to create an independent, community-based commission on law enforcement officer practices. Each community-based commission would be authorized to:

   (1) Conduct independent investigations of complaints against a police officer or sheriff alleging physical injury to a person, including injuries resulting in a person's death.

   (2) Issue and enforce compliance of subpoenas compelling production of all evidence and testimony of witnesses a commission may require in the course of its investigations.

   "A.B. 797 would assist in decreasing unnecessary tension created between communities and law enforcement. This is particularly evident based on well-documented community distrust of law enforcement agencies' internal investigations of complaints against their own personnel, and where there is either ineffective and even non-existent independent, community-based review of complaints against law enforcement officers.

   "This bill would also strengthen existing independent, community-based commissions by providing adequate resources to enable them to be effective. This would include the hiring of an executive director, who shall recruit and recommend selection of independent investigators, independent legal counsel, and support staff to the governing body, mayor or the chair of the board of supervisors. This bill would thus promote and strengthen community – law enforcement relationships throughout California in a manner never before experienced by either side. It would promote sorely needed community trust in the integrity of investigation of any person's complaint involving serious physical injury or death, while at the same time providing an authorized and effectively functioning commission structure advised by independent counsel to ensure fairness and due process to the law enforcement officers named in any such complaint.

   "All commissioners would be chosen only pursuant to local governing bodies' procedures adopted in the context of their own unique needs and priorities. Each commission would prepare a report after an investigation and include the results of the investigation and a recommended course of action, if any, to be taken by the governing body regarding the law enforcement officer investigated by the commission. This recommended course of action, if any, is to be seriously and carefully considered, but is non-binding on the governing body."

4) **Arguments in Opposition**:

   a) According to the *City of Chino*, "The Chino Police Department has taken significant efforts to work collaboratively with the Chino community. The Chino Police Department believes it cannot effectively police and protect Chino residents without the trust and understanding of the community. To that end, the Chino Police Department commits time and resources to build valuable programs that support collaborative, community policing…

      "Beyond public outreach programs, the Chino Police Department takes pride in holding its personnel to the highest standards of professionalism and integrity. In the rare moments where the Chino Police Department has been made aware of its employees falling below this standard, the response has been swift, transparent, and decisive.

Although the bill intends to increase transparency, it does not consider the trust that may already exist between a community and its police department. Rather, it appears to unfortunately be a wholesale reaction to the decisions of other police departments that has no bearing on the Chino Police Department and its commitment to the Chino community."

b) According to the *California State Sheriff's Association*, "AB 797 ignores the significant oversight of law enforcement that is already in place. In addition to the opportunities for oversight provided to voters in electing the sheriff, significant oversight of the sheriff's office already exists. The state and federal Departments of Justice, the Board of State and Community Corrections, state and federal courts, county grand juries, district attorneys, and civilian review entities, including the sheriff oversight boards and inspector general offices created as a result of AB 1185 of 2020, all exercise oversight authority related to the office of the sheriff.

"AB 797 is also duplicative of existing law in terms of the charge of the commissions contemplated by this bill. Every law enforcement agency is required by current law to establish a procedure to investigate complaints by members of the public against law enforcement personnel. If the complainant is unsatisfied by the outcome of that process and the complaint involves an alleged criminal act, the complainant can seek redress from the district attorney. If neither of those paths are satisfactory, the complainant can file a complaint with the state Attorney General's Office. In terms of subpoenas, AB 1185 allows sheriff oversight boards and inspector general offices to issue subpoenas to compel testimony and the production of evidence, and county counsels and grand juries already hold subpoena powers.

"This bill is an unnecessary, duplicative, and unfunded mandate."

5) **Related Legislation**: AB 1725 (McCarty), requires cities and counties to post financial details about law enforcement use-of-force settlements and judgments on their internet websites, including how much each settlement cost and how the state and municipalities will pay for each settlement. AB 1725 will be heard in this committee today.

6) **Prior Legislation**:

   a) AB 807 (McCarty), of the 2023-2024 Legislative Session, would have required a state prosecutor to investigate incidents in which the use of force by a peace officer results in the death of a civilian. AB 807 was held on the Assembly Appropriations Committee Suspense File.

   b) SB 838 (Menjivar), of the 2023-2024 Legislative Session, would have revised the definition of "crime" for purposes of the Victim Compensation Program to include an incident in which an individual sustains serious bodily injury or death as the result of a law enforcement officer's use of force and make changes to eligibility factors as they would apply to these types of claims. SB 838 was held in the Senate Appropriations Committee Suspense File.

   c) AB 26 (Holden), Chapter 403, Statutes of 2021, requires use of force policies for law enforcement agencies to include the requirement that officers immediately report

potential excessive force, and specifies the requirement to "intercede" if another officer uses excessive force.

d) SB 2 (Bradford), Chapter 409, Statutes of 2021, grants new powers to POST by creating a process to investigate and determine the fitness of a person to be a peace officer, and to decertify peace officers who are found to have engaged in "serious misconduct." Makes changes to the Tom Bane Civil Rights Act by eliminating specified immunity provisions.

e) AB 1022 (Holden), of the 2019-2020 Legislative Session, would have clarified and strengthened policies related to law enforcement officers' duty to intervene when excessive force is used. AB 1022 was held on the Senate Appropriations Suspense File.

f) SB 731 (Bradford), of the 2019-2020 Legislative Session, would have created a process for decertification of police officers. SB 731 was never heard on the Assembly Floor.

g) AB 1022 (Holden), of the 2019-2020 Legislative Session, would have disqualified a person from being a peace officer if they have been found by a law enforcement agency that employees them to have either used excessive force that resulted in great bodily injury or death or to have failed to intercede in that incident as required by a law enforcement agency's policies. AB 1022 was held on the Senate Appropriations Suspense File.

h) SB 230, (Caballero), Chapter 285, Statutes of 2019, requires each law enforcement agency to maintain a policy that provides guidelines on the use of force, utilizing de-escalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents, among other things.

i) AB 1506 (McCarty), Chapter 326, Statutes of 2020, requires a state prosecutor to investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian, as defined.

j) AB 2327 (Quirk), Chapter 966, Statutes of 2018, requires a peace officer seeking employment with a law enforcement agency to give written permission for the hiring law enforcement agency to view his or her general personnel file and any separate disciplinary file. Requires each law enforcement agency to make a record of any investigations of misconduct involving a peace officer in his or her general personnel file or a separate file designated by the department or agency.

k) AB 619 (Weber), of the 2015-2016 Legislative Session, would have required law enforcement agencies to report use of force incidents to the Attorney General (AG) and would have required the AG to annually issue a report containing this information. AB 619 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Black Lawyers
California Public Defenders Association
Center for Policing Equity
Earl B. Gilliam Bar Association
National College Players Association
Oakland Privacy
San Diegans for Justice
San Jose State University Black Student Athlete Association
The San Diego Black American Political Association
Wiley Manuel Bar Association

5 Private Individuals

Opposition

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California Peace Officers Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
City of Chino
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles County Professional Peace Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744

Date of Hearing: January 9, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 977 (Rodriguez) – As Amended March 15, 2023

As Proposed to be Amended in Committee

SUMMARY: Makes an assault or a battery committed against a physician, nurse, or other healthcare worker of a hospital engaged in providing services within the emergency department punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding $2,000, or by both that fine and imprisonment. Specifically, **this bill**:

1) Makes an assault or battery committed against a physician, nurse, or other healthcare worker of a hospital engaged in providing services within the emergency department, when the person committing the offense knows or reasonably should know that the victim a physician, nurse, or other healthcare worker of a hospital engaged in providing services within the emergency department, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding $2,000, or by both.

2) Redefines "nurse" for purposes of these offenses, as specified, and expands the definition to include a nurse of a hospital engaged in providing services within the emergency department.

3) Defines "healthcare worker" as a person who in the course and scope of employment performs duties directly associated with the care and treatment rendered by the hospital's emergency department or the department's security.

4) Redefines "emergency medical technician" as specified.

5) Allows a health facility, as specified, to post a notice in a conspicuous place in the emergency department stating substantially the following:

> "WE WILL NOT TOLERATE any form of threatening or aggressive behavior toward our staff. Assaults and batteries against our staff are crimes and may result in a criminal conviction. All staff have the right to carry out their work without fearing for their safety."

EXISTING LAW:

1) Defines "assault" as an unlawful attempt, coupled with a present ability, to inflict a violent injury upon another person, and makes the offense punishable by up to six months in the county jail, by a fine not exceeding $1,000, or by both. (Pen. Code, §§ 240 & 241, subd. (a).)

2) Defines "battery" as the willful and unlawful use of force or violence upon another person, and makes the offense punishable by up to six months in the county jail, by a fine not to

exceed $2,000, or by both. (Pen. Code, §§ 242 & 243, subd. (a).)

3) States that when a battery is committed upon any person and serious bodily injury is inflicted upon that person, the offense is punishable as a "wobbler" with a possible sentence of up to one year in the county jail, or for two, three, or four years in the county jail. (Pen. Code, § 243, subd. (d).)

4) Provides that any person who commits an assault upon another by any means of force likely to produce great bodily injury shall be punished by imprisonment in a county jail for up to one year, or in the state prison for two, three, or four years, or by a fine not exceeding $10,000, or by both the fine and imprisonment. (Pen. Code, § 245, subd. (a)(4).)

5) States that when an assault is committed against a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of their duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the perpetrator knows or reasonably should know that the victim is member of one of the specified professions engaged in the performance of their duties, or rendering emergency medical care (whichever is applicable to the profession), the assault is punishable by a fine of up to $2,000, or by imprisonment in a county jail not exceeding one year, or by both. (Pen. Code, § 241, subd. (c).)

6) States that when a battery is committed against a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of their duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the perpetrator knows or reasonably should know that the victim is member of one of the professions listed above engaged in the performance of their duties, or rendering emergency medical care (whichever is applicable to the profession) the battery is punishable by a fine of up to $2,000, or by imprisonment in a county jail for up to one year, or by both. (Pen. Code, § 243, subd. (b).)

7) Specifies that when a battery is committed on a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the perpetrator knows or reasonably should know that the victim is a member of one of these professions and the battery causes injury, it is punishable as a "wobbler", with a possible sentence of imprisonment in a county jail for up to one year, or by imprisonment for 16 months, or two or three years in the county jail, or by a fine of up to $2,000, or by both the fine and imprisonment. (Pen. Code, § 243, subd. (c)(1).)

8) States that any person who personally inflicts great bodily injury on any person other than an accomplice in the commission, or attempted commission, of a felony shall be punished by an additional and consecutive term of imprisonment for three years. (Pen. Code, § 12022.7, subd. (a).)

9) Defines "great bodily injury" as "a significant or substantial physical injury." (Pen. Code, § 12022.7, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "As a career first responder, I experienced firsthand how the constant threat of workplace violence (WPV) creates a dangerous and volatile environment in the emergency department (ED). Healthcare workers in this field experience burnout, stress, and trauma, which affects their ability to treat patients. Studies have shown that experiencing workplace violence inside the emergency department can cause PTSD, depression, and a lower quality of professional life. Workplace violence lowers patient-physician trust and drives poor health outcomes. Unfortunately, many think workplace violence is a part of the job, and many healthcare workers may not even report WPV. However, there should be zero tolerance for verbal or physical abuse to those dedicated to improving patients' lives. One-third of emergency nurses have considered leaving due to WPV, and 85% of emergency physicians believe WPV in the ED has increased over the past five years. Two-thirds of emergency physicians have reportedly been assaulted, and one-third of those assaults have led to an injury. The COVID-19 pandemic only worsened this trend and further strained desperately needed healthcare staff.

   "There is no reason why penalties for assaulting or committing battery against an emergency healthcare worker inside an emergency department should be weaker than those working outside an emergency department. AB 977 will provide parity on crimes in and out of an ED while also sending a message to ED staff that their work is valued and their safety is our priority. This bill will also authorize EDs to post a message that assault and battery against healthcare staff is a crime—sending a message to patients that workplace violence (WPV) is unacceptable."

2) **Background**: An assault is "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another." (Pen. Code, § 240.) A battery is "any willful and unlawful use of force or violence upon the person of another." (Pen. Code, § 242.) Assault is essentially attempted battery. "Simple assault" is included in the offense of battery, and a conviction of the latter would subsume the assault. By definition one cannot commit battery without also committing a "simple" assault which is nothing more than an attempted battery. (*People v. Fuller* (1975) 53 Cal. App. 3d 417.) An example of an assault would be if a person swung at another person without hitting them, whereas if the person did strike the other person, the conduct would become a battery.

   Existing laws specifically address assault and battery on physicians and nurses engaged in rendering emergency medical care outside of a hospital, clinic or other health care facility. Whereas a simple assault or battery is punishable by up to six months in jail, if a simple assault or battery is committed on a physician or nurse while outside a hospital and while rendering medical care, the perpetrator faces the possibility of an additional six months in jail, for a maximum sentence of up to one year in jail. (See Pen. Code, §§ 241, subds. (a) &

(c); 243, subds. (a) & (b).)[1] In addition, if the battery on the physician or nurse rendering emergency medical care outside of the results in any injury, the conduct can be punished either as a misdemeanor or as a felony. The permissible felony sentence is imprisonment in the county jail for 16 months, or two, or three years. (Pen. Code, § 243, subd. (c)(1).)

This bill would expand the scope of the crime of simple assault or battery (i.e. without causing injury) on physicians and nurses. The enhanced maximum six-month penalty would apply to those physicians and nurses providing services within a hospital emergency department.

This bill would also expand the scope of persons covered to all health care workers within the emergency department. Specifically, it would include employees who perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the department's security.[2]

Proponents of the bill argue that there is no reason to treat medical personnel outside of the hospital differently than those inside the emergency department.

While all hospital employees should be protected from workplace violence, arguably one reason to treat assaults and batteries outside the hospital differently than those occurring inside the hospital, whether it be the emergency department or elsewhere, is because the likelihood that the personnel will have the back up of security or other employees is greater within the facilities than if they are outside.

3) **Recent Governor's Veto on Particularization of Crimes**: Recently Governor Newsom vetoed SB 596 (Portantino), of the 2023 Legislative Session, a bill similar to this one in that it sought to create a new crime with increased penalties for abusive conduct targeting school officials. In his veto message the Governor said:

   "Credible threats of violence and acts of harassment - whether directed against school officials, elected officials, or members of the general public - can already be prosecuted as crimes. As such, creating a new crime is unnecessary….

   No school official should be subject to threats or harassment for doing their job, period. I encourage school officials to work closely with local law enforcement to use the laws already on the books to ensure the safety and security of our community's educators and governing board members, both while carrying out their school duties on school premises and while away from school sites."

   The same rationale applies to this bill.

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[1] For a simple assault vs. assault on a physician or nurse rendering emergency medical care outside the hospital, the fines also differ by $1,000.

[2] The proposed committee amendments remove volunteers from the definition of healthcare workers that are to be covered by this bill.

4) **Veto by Former Governor Brown**: AB 172 (Rodriguez), of the 2015-2016 Legislative Session, was identical to this bill. It was vetoed by former Governor Brown. The veto message said:

"This bill would increase from six months to one year in county jail the maximum punishment for assault or battery of a healthcare worker inside an emergency department.

"Emergency rooms are overcrowded and often chaotic. I have great respect for the work done by emergency room staff and I recognize the daunting challenges they face every day. If there were evidence that an additional six months in county jail (three months, once good-time credits are applied) would enhance the safety of these workers or serve as a deterrent, I would sign this bill. I doubt that it would do either.

"We need to find more creative ways to protect the safety of these critical workers. This bill isn't the answer."

5) **Annual Report on Violent Incidents at Hospitals:** The Division of Occupational Safety and Health (Cal/OSHA) issues an annual report on incidents of violence committed against hospital staff. (Labor Code, § 6401.8, subd. (c).) Hospitals are required to submit reports to Cal/OSHA regarding any incident involving either of the following:

(A) The use of physical force against an employee by a patient or a person accompanying a patient that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury;

(B) An incident involving the use of a firearm or other dangerous weapon, regardless of whether the employee sustains an injury. (Cal. Code Regs., tit. 8, § 3342, subd. (g).)

According to Cal/OSHA's report covering the period starting on October 1, 2020, through September 30, 2021 (the most recent report available online), there were 10,005 incidents of violence reported by hospitals.[3] (*Workplace Violent Incidents at Hospitals: October 1, 2020 through September 20, 2021*, March 25, 2022, at pp. 2, 5, available at: https://www.dir.ca.gov/dosh/Reports/Annual-Report-WPV-Incidents-2020-2021.pdf)

6) **Other Possible Solutions**: While violence in health care settings is a continuing problem, evidence suggests that increasing the penalties for assaults and batteries on health care workers is not an effective solution.

The National Institute of Justice (NIJ) has looked into the concept of improving public safety through increased penalties. (https://nij.ojp.gov/about-nij.) As early as 2016, the NIJ has been publishing its findings that increasing punishment for given offenses does little to deter

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[3] Through September of 2018, CalOSHA's reports covered the types of assaults and batteries, who was the aggressor, and where in the hospital the conduct occurred. This information is no longer provided in the annual report. Labor Code section 6401.8 only requires CalOSHA to provide the following: the total number of reports, and which specific hospitals filed reports, the outcome of any related inspection or investigation, the citations levied against a hospital based on a violent incident, and recommendations of the division on the prevention of violent incidents at hospitals.

criminals from engaging in that behavior. ("Five Things About Deterrence," NIJ, May 2016, available at: https://www.ojp.gov/pdffiles1/nij/247350.pdf].) The NIJ has found that increasing penalties are generally ineffective and may exacerbate recidivism and actually reduce public safety. (*Ibid.*) These findings are consistent with other research from national institutions of renown. (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine, April 2014, at pp. 130 -150 available at: https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs, [as of Feb. 25, 2022].) Rather than penalty increases, the NIJ, advocates for polices that "increase the perception that criminals will be caught and punished" because such perception is a vastly more powerful deterrent than increasing the punishment. ("Five Things About Deterrence," *supra.*)

Lack of deterrence seems particularly likely in this scenario. When a person is seeking medical attention in an emergency room or hospital, it is often because that person is in some type of distress. As noted in an article by the Association of American Medical Colleges (AAMC) reasons for "aggression vary: patients' anger and confusion about their medical conditions and care; grief over the decline of hospitalized loved ones; frustration while trying to get attention amid staffing shortages, especially in nursing; delirium and dementia; mental health disorders; political and social issues; and gender and race discrimination." (*Threats Against Health Care Workers are Rising. Here's How Hospitals are Protecting Their Staffs*, P. Boyle, Aug. 18, 2022, https://www.aamc.org/news-insights/threats-against-health-care-workers-are-rising-heres-how-hospitals-are-protecting-their-staffs [as of March 12, 2023].) While violence is not excusable in these situations, it seems unlikely that a person in these conditions will be deterred because they face an additional length of incarceration.

The AAMC notes that hospitals are increasingly taking steps to de-escalate potentially violent circumstances. One such method is the use of de-escalation teams, comprising of providers trained in mental health care and de-escalation techniques. U.C. Davis employs such a team, called the Behavioral Escalation Support Team. (*Threats Against Health Care Workers are Rising. Here's How Hospitals are Protecting Their Staffs*, *supra.*) Some hospitals, such as Boston Medical Center are using flagging systems in their medical records to alert if a patient has been aggressive with staff in the past. Such an alert gives staff several options, such as, "maintain a greater distance than usual from the person, be particularly aware of physical or verbal cues of aggression, call security to check someone for drugs or weapons, put extra limits on the visitor's access, or place the patient in areas of the hospital where staff who specialize in de-escalation are readily available. (*Ibid.*)

This bill would allow hospitals to post signs in the emergency department advising patients and visitors that they could be prosecuted for a criminal act if they commit violence against emergency room staff. Arguably legislation is not necessary to do this. Nevertheless, it aligns with the advice of the NIJ that increasing the perception that perpetrators will be caught and punished is more of a deterrent than an increase in criminal penalties.

7) **Argument in Support**: According to the *California Hospitals Association*, "Health care workers in hospitals across California are increasingly subject to violent threats and attacks. The federal Bureau of Labor Statistics reports that health care workers are five times more likely to experience workplace violence than employees in other sectors. In fact, a 2021 study found that 44% of nurses reported being subject to physical violence, while 68% reported

verbal abuse — troubling numbers that were exacerbated by the COVID-19 pandemic. A 2022 study of one hospital emergency department supported these findings, demonstrating that incidences of workplace violence increased during the pandemic and were directly associated with the COVID-19 case rate.

"California's health care workers must be better protected while they care for others and save lives. For these reasons, the California Hospital Association, on behalf of more than 400 hospitals and health systems, supports Assembly Bill 977, which would extend the penalties for violence committed against first responders to include all health care workers who provide services within emergency departments.

"Under current law, violence against health care workers inside an emergency department is penalized differently depending on the category of health care worker and the location of the attack. AB 977 is an important step toward providing health care workers with the same protections whether they are inside a hospital emergency department or elsewhere. It would ensure that those committing assault and battery against any hospital employee in an emergency department are subject to the same penalties they would be if the crime occurred anywhere else.

"Hospital health care workers perform their duties in a high-risk environment, as many patients and visitors experience high stress when suffering an emergency medical condition that can at times lead to aggressive behavior....

"Hospitals are doing their part to protect their employees — the most critical component of our health care delivery system — but California's penal code has fallen behind. AB 977 will deliver important safeguards for all workers in hospital emergency departments to better protect them from violence.

"Additionally, this penalty extension should apply to workers throughout the entire hospital building — health care workers in emergency departments are not the only ones experiencing increased rates of violence. Health care workers should be protected from violence regardless of where they work in a hospital."

8) **Argument in Opposition**: According to the *California Public Defenders Association*, "CPDA recognizes the problem of violence and the specific challenges it poses to healthcare facilities and healthcare workers. CPDA opposes this bill because it increases the pool of potential victims, the locations of the prohibited conduct, and the potential punishment for offenses that are largely committed by individuals in crisis.

"The World Health Organization and countless other organizations have recognized that almost all violence in hospitals occurs between staff and patients or their families. Patients are often combative, either through intoxication, stress, or mental illness. Often the families are under a great deal of stress because of receiving bad news about their loved ones and reacting poorly to the news. This is not to say that such behavior should be excused, only that increased incarceration and fines for these individuals is not in the public interest, nor likely to be an effective deterrent to such behavior.

"AB 977 is unnecessary. Existing law covers the situations that the proposed law purports to

address. While simple assault or battery is currently a misdemeanor, there is a broad spectrum of assaultive conduct that can be, and usually is, charged as felonies.

"Doctors, nurses, and other hospital health care workers have a right to do their jobs without being harmed. The current laws, and sentencing structure, accomplish that goal. Doctors, nurses, and other hospital health care workers have a right to do their jobs without being harmed. The current laws, and sentencing structure, accomplish that goal.

"CPDA members frequently work with individuals in need of medical assistance that are taken to healthcare facilities. Frequently these people are mentally ill, on drugs/medication, or the victims of violent assaults themselves. Often their distressed family members come to see or support them. If an assault or battery occurs, healthcare facilities usually have security and police close at hand to remove such individuals and safeguard healthcare workers. Punishing those either seeking medical assistance, or their loved ones, more harshly will not add to public safety or aid in the rendering of medical aid."

9) **Prior Legislation**:

a) AB 26 (Rodriguez), of the 2019-2020 Legislative Session, would have required an emergency ambulance provider to provide each emergency ambulance employee, who drives or rides in the ambulance, with body armor and safety equipment to wear during the employee's work shift. AB 26 was not heard by the Assembly Labor and Employment Committee.

b) AB 329 (Rodriguez), of the 2019-2020 Legislative Session, when heard in the Assembly, would have created a new crime for assault on hospital property punishable by up to one year in the county jail, a fine of up to $2,000 or by both imprisonment and the fine. AB 329 was gutted and amended in the Senate to an unrelated subject matter.

c) AB 172 (Rodriguez), of the 2015-2016 Legislative Session, would have increased the penalties for assault and battery committed against a physician, nurse, or other health care worker engaged in performing services within the emergency department, if the person committing the offense knows or reasonably should know that the victim is a physician, nurse, or other health care worker engaged in performing services within the emergency department. AB 172 was vetoed.

d) AB 1959 (Rodriguez), of the 2015-2016 Legislative Session, would have increased the felony state prison punishment for assault on an emergency medical technician. AB 1959 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Adventist Health
Alliance of Catholic Health Care, INC.
American College of Surgeons Joint Advocacy Committee

California Chapter of The American College of Emergency Physicians
California College and University Police Chiefs Association
California District Attorneys Association
California Emergency Nurses Association
California Hospital Association
California Medical Association
California State Sheriffs' Association
Cedars Sinai
Cottage Health
Dignity Health
El Camino Health
Emergency Nurses Association, California State Council
Loma Linda University Adventist Health Sciences Center and Its Affiliated Entities
Providence
Rady Children's Hospital
Sacramento County Sheriff Jim Cooper
San Diego County District Attorney's Office
San Diego Regional Chamber of Commerce
San Francisco District Attorney Brooke Jenkins
Scripps Health
Sharp Healthcare
Stanford Engineering
Stanford Health Care
Sutter Health

3 Private Individuals

Oppose

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Drug Policy Alliance
Initiate Justice (UNREG)
San Francisco Public Defender
Sister Warriors Freedom Coalition

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

Amended Mock-up for 2023-2024 AB-977 (Rodriguez (A))

Mock-up based on Version Number 98 - Amended Assembly 3/15/23
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 1317.5a is added to the Health and Safety Code, to read:

1317.5a. A health facility licensed under this chapter that maintains and operates an emergency department may post a notice in a conspicuous place in the emergency department stating substantially the following:

WE WILL NOT TOLERATE any form of threatening or aggressive behavior toward our staff. Assaults and batteries against our staff are crimes and may result in a criminal conviction. All staff have the right to carry out their work without fearing for their safety.

SEC. 2. Section 241 of the Penal Code is amended to read:

241. (a) An assault is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

(b) When an assault is committed against the person of a parking control officer engaged in the performance of their duties, and the person committing the offense knows or reasonably should know that the victim is a parking control officer, the assault is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

(c) When an assault is committed against the person of a peace officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of their duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, or a physician, nurse, or other health care worker of a hospital engaged in providing services within the emergency department, and the person committing the offense knows or reasonably should know that the victim is a peace officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of their duties, or a physician or nurse engaged in rendering emergency medical care, or a physician, nurse, or other health care worker of a hospital engaged in providing services within the emergency department, the assault

is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(d) As used in this section, the following definitions apply:

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

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

(3) "Nurse" means a person who possesses a valid certificate or license under the standards of Chapter 6 (commencing with Section 2700) or 6.5 (commencing with Section 2840) of Division 2 of the Business and Professions Code or a nurse of a hospital engaged in providing services within the emergency department.

(4) "Lifeguard" means a person who is:

(A) Employed as a lifeguard by the state, a county, or a city, and is designated by local ordinance as a public officer who has a duty and responsibility to enforce local ordinances and misdemeanors through the issuance of citations.

(B) Wearing distinctive clothing which includes written identification of the person's status as a lifeguard and which clearly identifies the employing organization.

(5) "Process server" means any person who meets the standards or is expressly exempt from the standards set forth in Section 22350 of the Business and Professions Code.

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

(7) "Animal control officer" means any person employed by a county or city for purposes of enforcing animal control laws or regulations.

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

(B) "Code enforcement officer" also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and

welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(9) "Parking control officer" means any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances relating to parking.

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

(11) "Health care worker" means a person who, in the course and scope of employment~~ or as a volunteer~~, performs duties directly associated with the care and treatment rendered by the hospital's emergency department or the department's security.

SEC. 3. Section 243 of the Penal Code is amended to read:

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

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

(c) (1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of their duties, whether on or off duty, or a nonsworn employee of a probation

department engaged in the performance of their duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a nonsworn employee of a probation department, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of their duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars ($2,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

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

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

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

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

(A) That the defendant make payments to a domestic violence shelter-based program, up to a maximum of five thousand dollars ($5,000).

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

For any order to pay a fine, make payments to a domestic violence shelter-based program, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a domestic violence shelter-based program be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of their spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

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

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

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

(f) As used in this section:

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

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

(3) "Nurse" means a person who possesses a valid certificate or license under the standards of Chapter 6 (commencing with Section 2700) or 6.5 (commencing with Section 2840) of Division 2 of the Business and Professions Code or a nurse of a hospital engaged in providing services within the emergency department.

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

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

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

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

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

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

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

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

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

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

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

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

(15) "Health care worker" means a person who, in the course and scope of employment~~ or as a volunteer~~, performs duties directly associated with the care and treatment rendered by the hospital's emergency department or the department's security.

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

SEC. 4. 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: January 9, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1039 (Rodriguez) – As Amended January 3, 2024

SUMMARY: Increases the penalty for specified sexual activity with a "consenting" detained person from a misdemeanor to an alternative felony-misdemeanor. Specifically, this **bill**:

1) Increases the penalty for "sexual touching" with a consenting adult who is confined in a detention facility from a misdemeanor to an alternative felony-misdemeanor. The offense is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year, or as a felony by a term of imprisonment in a county jail for 16 months, or 2 or 3 years, or by a fine of not more than ten thousand dollars $10,000, or by both.

2) Expands the definition of "sexual touching" to include rubbing or touching of anus, groin, or buttocks of another or touching these parts of oneself in the presence of another.

3) Provides that a person convicted of this offense, who is employed by, a public entity detention facility, or a public entity health facility, shall be terminated and shall not be eligible to be rehired or reinstated.

EXISTING LAW:

1) Provides that any employee, officer, agent, staff, or volunteer of a detention facility, and any peace officer who engages in sexual activity with a consenting adult who is confined in a detention facility is guilty of a public offense. (Pen. Code, § 289.6, subd. (a)(2).)

2) Provides that any employee with a department, board, or authority under the Department of Corrections and Rehabilitation (CDCR) or a facility under contract with a department, board, or authority under CDCR, who, during the course of their employment directly provides treatment, care, control, or supervision of incarcerated persons, wards, or parolees, and who engages in sexual activity with a consenting adult who is an incarcerated person, ward, or parolee, is guilty of a public offense. (Pen. Code, § 289.6, subd. (a)(3).)

3) Provides that consent by a confined person or parolee to sexual activity proscribed by this offense is not a defense. (Pen. Code, § 289.6, subd. (e).)

4) Defines "sexual activity" for purposes of this offense as sexual intercourse, sodomy, oral copulation, sexual penetration, and the rubbing or touching of the breasts or sexual organs of another, or of oneself in the presence of and with knowledge of another, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of oneself or another. (Pen. Code, § 289.6, subds. (d)(1)-(5).)

5) States that a person who commits this offense by rubbing or touching of the breasts or sexual organs of another, or of oneself in the presence of and with knowledge of another, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of oneself or another, is guilty of a misdemeanor. (Pen. Code, § 289.6, subd. (g).)

6) States that a person who commits this offense by committing sexual intercourse, sodomy, oral copulation, sexual penetration, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year, or of a felony punishable by imprisonment in the state prison, or by a fine of not more than $10,000, or by both. (Pen. Code, § 289.6, subd. (h).)

7) Provides that any person previously convicted of a violation of this offense shall, upon a subsequent violation, be guilty of a felony. (Pen. Code, § 289.6, subd. (i).)

8) Provides that anyone convicted of a felony violation of this offense who is employed by a department, board, or authority within CDCR shall be terminated and shall not be eligible to be hired or reinstated by a department, board, or authority within CDCR. (Pen. Code, § 289.6, subd. (j).)

9) Provides that every public officer who, under color of authority, without lawful necessity, assaults or beats any person is guilty of an alternative felony-misdemeanor. This offense is punishable as a misdemeanor by a $10,000 fine, by imprisonment in a county jail not exceeding one year, or by both, or as a felony by imprisonment by a term of imprisonment in a county jail for 16 months, or two or three years. (Pen. Code, § 149.)

10) States that any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding 6 months, or by both. "Touches" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (Pen. Code, § 243.4, subd. (e)(1).)

11) States that 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 is guilty of a felony, punishable by imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code, § 289.)

12) Provides that rape is an act of sexual intercourse against person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another. (Pen. Code, § 261, subd. (a)(2).)

13) Provides that rape is an act of sexual intercourse 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. (Pen. Code, § 261, subd. (a)(6).)

14) Provides that rape is an act of sexual intercourse 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. (Pen. Code, § 261, subd. (a)(7).)

15) Provides that rape is a felony, punishable by imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code, § 264, subd. (a).)

16) Provides that any person who induces any other person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when their consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the person's free will, and does cause the victim to so act, is guilty of an alternative felony-misdemeanor, punishable by imprisonment in a county jail for not more than one year or in the state prison for 2, 3, or 4 years. (Pen. Code, § 266c.)

17) Establishes a statewide process to decertify officers who have been fired for serious misconduct, including but not limited to sexual assault. For purposes of this decertification, the propositioning for or commission of any sexual act while on duty is considered a sexual assault. (Pen. Code, § 832.7, subd. (b)(1)(B)(ii).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "No person in a detention facility should fear sexual assault, especially from a superior. Inmates rely on officers for their daily needs, including food, clothing, and medication. Refusing sexual advances risks retaliation and deprivation of necessities. To better address the abuse of power by officers, this bill would allow for punishment as a felony, should the situation warrant it."

2) **Prohibition on Staff Sexual Activity with Incarcerated Persons**: The Legislature enacted Penal Code section 289.6 for the purpose of "prohibiting peace officers or employees of a law enforcement agency to engage in sexual activity with a prisoner housed in a detention facility." (See *People v. Bojorquez* (2010) 183 Cal.App.4th 407, 426.) In this context, consent is not a legal defense to the offense due to the inherent power imbalance. (Pen. Code, § 289.6, subd. (e).) Thus, any employee who engages in sexual activity with a detained person is guilty, even if the detained person "consents." "Sexual activity" includes sexual intercourse, sodomy, oral copulation, sexual penetration, and rubbing or touching of the breasts or sexual organs of another, or of oneself in the presence of and with knowledge of another, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of oneself or another (i.e., sexual touching). (Pen. Code, § 289.6, subd. (d)(1)-(5).)

   The penalties for this offense depend on the type of sexual activity conducted by the officer. The offense is an alternative felony-misdemeanor for acts of sexual intercourse, sodomy, oral copulation, and sexual penetration. (Pen. Code, § 286.9, subd. (h).) In contrast, if the acts involve sexual touching, the conduct is a misdemeanor, punishable by imprisonment in a county jail not exceeding 6 months. (Pen. Code, §§ 19, 286.9, subd. (g).) In addition, under existing law, an employee of CDCR who is convicted of a felony violation of this provision, must be terminated and cannot be rehired by CDCR. (Pen. Code, § 289.6, subd. (j).)

This bill would expand the crime by changing the definition of sexual touching to also include the touching of the anus, groin, or buttocks. This bill would also increase penalties for staff who participate in sexual touching with a detained person. Specifically, this bill would increase the penalty for sexual touching, from a misdemeanor to an alternative felony-misdemeanor. Sexual touching could be punishable as a misdemeanor by imprisonment in a county jail not exceeding one year, or as a felony by a term of imprisonment in a county jail for 16 months, or 2 or 3 years, or by a fine of up to $10,000 or by both. This bill also provides that a person convicted of this offense, who is employed by CDCR, a public entity detention facility, or a public entity health facility, shall be terminated and shall not be eligible to be rehired or reinstated, without regard as to whether the conviction is a felony or a misdemeanor.

Notably, this bill applies to all employees, officers, agents, contractors, staff and volunteers of the detention facility that engage in sexual activity with the confined adult. As an example, a maintenance worker, or rehabilitative program provider, could be convicted of a felony under this bill.

3) **Impetus for this Bill**: Recently an Orange County Sheriff's Deputy was "accused of establishing an inappropriate relationship with two female inmates incarcerated at the Theo Lacy Facility, including sexually assaulting the incarcerated women on multiple occasions by touching them over their jail uniforms and showing them pornographic videos of himself while they were in their housing locations." (Orange County District Attorney, *Orange County Sheriff's Deputy Charged with Sexually Assaulting Female Inmates, Showing Pornographic Videos of Himself* (Jan. 4, 2023) <https://orangecountyda.org/press/orange-county-sheriffs-deputy-charged-with-sexually-assaulting-female-inmates-showing-pornographic-videos-of-himself/> [as of April 7, 2023].) Based on the misdemeanor charges brought by the Orange County District Attorney, the deputy "faces a maximum sentence of 18 months in the Orange County Jail if convicted on all counts." (*Ibid.*) The Orange County District Attorney "is seeking a change to state law to allow prosecutors to charge the behavior as a felony or a misdemeanor." (*Ibid.*)

4) **Increased Penalties Do Not Deter Crime**: This bill would increase penalties for officers and corrections staff who participate in sexual touching with a detained person. Longer sentences are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands. (*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018).) Increasingly punitive sentences add little to the deterrent effect of the criminal justice system; and mass incarceration diverts resources from program and policy initiatives that hold the potential for greater impact on public safety. (*Ibid.*)

   Research shows that increasing the severity of the punishment does little to deter the crime. According to the National Institute of Justice, laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not "chasten" individuals convicted of crimes, and prisons may exacerbate recidivism. Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs. (National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [as

of Feb. 15, 2023].) These findings are consistent with other research from national institutions of renown. (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine (April 2014) at pp. 130 -150 <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs>.) "Policymakers and judges should be cognizant of the evidence to support any particular goal of sentencing. If the length of a prison term has little deterrent value, it may be time to forego the rationale of 'sending a message.' " (*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018).)

5) **Other Options for Prosecuting Staff Sexual Abuse**: Advocates of this bill content that existing law allows law enforcement officers to "use their positions of power to sexually abuse inmates with minimal potential punishment." To the extent that this bill is aimed at increasing penalties for staff sexual abuse of incarcerated persons, there are several options currently available to prosecutors under existing law.

   Every public officer who, under color of authority, without lawful necessity, assaults or beats any person is guilty of an alternative felony-misdemeanor. (Pen. Code, § 149.) This offense is punishable as a misdemeanor by a $10,000 fine, by imprisonment in a county jail not exceeding one year, or by both, or as a felony by imprisonment by a term of imprisonment in a county jail for 16 months, or 2 or 3 years. (*Ibid.*) For this offense, an officer is guilty if they touch an incarcerated person in a harmful or offensive manner. "The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind." (CALCRIM No. 908.) Thus, an officer who sexually assaults an incarcerated person by touching them could be punished under this statute. (See e.g., *People v. Alford* (1991) 235 Cal.App.3d 799, 804-805 [officer convicted of sexually assaulting an arrestee was properly convicted of both sexual battery and assault under color of authority].)

   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 is guilty of a felony, punishable by imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code, §§ 289; § 261, subd. (a)(2), 264, subd. (a).) Rape can also be accomplished 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 and by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim. (Pen. Code, § 261, subd. (a)(6) -(7).) Also, any person who induces another person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when their consent is procured by a pretense made with the intent to create fear, is guilty of an alternative felony-misdemeanor, punishable by imprisonment in a county jail for not more than one year or in the state prison for 2, 3, or 4 years. (Pen. Code, § 266c.)

   Additionally, a person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding 6 months, or by both. (Pen. Code, § 243.4, subd. (e)(1).)

Further, if an officer commits sexual intercourse, sodomy, oral copulation, and sexual penetration, whether or not the incarcerated person consents, the officer can be charged with a felony, punishable by imprisonment in a state prison, or by a fine of up to $10,000 or by both. (Pen. Code, § 289.6, subd. (h).) The officer can also be charged with misdemeanor for this offense, punishable by imprisonment in a county jail not exceeding one year. (Pen. Code, § 289.6, subd. (h).)

Finally, SB 2 (Bradford), Chapter 409, Statutes of 2021 established a statewide process to automatically decertify officers who have been fired for serious misconduct including sexual assault. For the purposes of officer decertification, the propositioning for or commission of "any sexual act" while on duty is considered a sexual assault. (Pen. Code, § 832.7.) For example, as noted above, a person who is a peace officer and is convicted of committing this offense is subject to termination. They would also be subject to possible decertification.

6) **Regulations on Staff Sexual Misconduct**: Title 15 Regulations strictly prohibit sexual behavior by a departmental employee, volunteer, agent or individual working on behalf of CDCR, which involves, or is directed toward, an incarcerated person or parolee. (15 Cal. Code Regs., § 3401.5.) The Regulations specify that the legal concept of "consent" does not exist between departmental staff and incarcerated persons or parolees; any sexual behavior between them constitutes sexual misconduct and "shall subject the employee to disciplinary action and/or to prosecution under the law." (15 Cal. Code Regs., § 3401.5.) Title 15 regulations further specify that a grievance brought by an incarcerated person at CDCR containing allegations of staff-on-inmate sexual misconduct or sexual harassment shall be immediately reviewed and a response must be provided within 48 hours. The incarcerated person shall not be required to attempt to resolve the incident with staff and there is no time limit for allegations of staff sexual misconduct. (15 Cal. Code Regs., § 3084.)

   Any CDCR employee who observes, or who receives information from any source concerning staff sexual misconduct, is required to immediately report the information or incident directly to the hiring authority, unit supervisor, or highest-ranking official on duty. (15 Cal. Code Regs., § 3401.5.) Failure to accurately and promptly report any incident, information or facts which would lead a reasonable person to believe sexual misconduct has occurred may subject the employee who failed to report it to disciplinary action. (*Ibid.*) All allegations of staff sexual misconduct are required to be subject to investigation, which may lead to disciplinary action or criminal prosecution. (*Ibid.*)

   CDCR's regulations additionally provide that alleged victims who report criminal staff sexual misconduct shall be advised that their identity may be kept confidential, upon their request. (15 Cal. Code Regs., § 3401.5.) The regulations state, "retaliatory measures against employees who report incidents of staff sexual misconduct shall not be tolerated and shall result in disciplinary action and/or criminal prosecution." Such retaliatory measures include, but are not limited to, unwarranted denials of promotions, merit salary increases, training opportunities, or requested transfers; involuntary transfer to another location/position as a means of punishment; or unsubstantiated poor performance reports. (*Ibid.*) Likewise, retaliatory measures against incarcerated persons and parolees who report incidents of staff sexual misconduct "shall not be tolerated and shall result in disciplinary action and/or criminal prosecution." (*Ibid.*) Such retaliatory measures include, but are not limited to, coercion, threats of punishment, or any other activities intended to discourage or prevent an

inmate/parolee from reporting sexual misconduct. (*Ibid.*)

CDCR is also required to consider multiple protection measures to protect incarcerated victims who report staff sexual misconduct or cooperate with staff sexual misconduct investigations including, but not limited to, housing changes or transfers, removal of alleged staff from contact with victims, and emotional support services for incarcerated persons or staff who fear retaliation for reporting staff sexual misconduct or sexual harassment or for cooperating with investigations. (15 Cal. Code Regs., § 3401.5.)

Facility administrators at local detention facilities are required to develop and publish a manual of policy and procedures, made available to all employees that address emergency procedures, including "zero tolerance in the prevention of sexual abuse and sexual harassment." (15 Cal. Code Regs., § 1029, subd. (a)(7).) Further, each facility administrator shall, at least annually, review, evaluate, and make a record of security measures. The review and evaluation shall include internal and external security measures of the facility including security measures specific to prevention of sexual abuse and sexual harassment. (15 Cal. Code Regs., § 1029, subd. (a)(6).) Facilities are required to provide for, multiple internal ways for incarcerated people to privately report sexual abuse and sexual harassment, retaliation by other incarcerated persons or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. (15 Cal. Code Regs., § 1029, subd. (e)(1).) Facilities are also required to provide a method for uninvolved incarcerated persons, family, community members, and other interested third parties to report sexual abuse or sexual harassment, which shall be publicly posted at the facility. (15 Cal. Code Regs., § 1029, subd. (e)(2).)

7) **Argument in Support**: According to the *California District Attorneys Association* (CDAA), "Under existing law, it is a misdemeanor for an employee or officer of a CDCR or public detention facility to engage in certain sexual activity with a consenting adult who is confined therein. Sexual activity between a custodial officer and an inmate is always non-consensual. There is an inherent power imbalance that prevents inmates from exercising free will. Inmates rely on officers for their daily needs, including food, clothing, and medication. Refusing sexual advances risks retaliation and deprivation of necessities. This creates an opportunity for law enforcement officers to use their positions of power to sexually abuse inmates with minimal potential punishment. For example, in January 2023, an Orange County Sheriff's Deputy faced only misdemeanor charges for sexually assaulting two female inmates over a period of eight months."

8) **Argument in Opposition**: According to the *California Public Defenders Association* (CPDA), "While it is good public policy to discourage consensual sexual contact between employees and patients or inmates in these facilities; making sexual contact between *consenting* adults a felony is draconian. This bill would subject an employee who has minor sexual contact e.g. rubbing someone's buttocks, with a consenting patient or inmate to a potential prison term. This bill would elevate the penalty for such consensual sexual conduct to be comparable to the penalty for the same *nonconsensual* sexual contact in the general population.

"Longer potential prison sentences will not make state mental facilities or prisons safer for patients or inmates. Better training and oversight of employees would be more useful in addressing the problem. A potential prison sentence for such behavior would just contribute to the ongoing mass incarceration problem in California and divert limited resources from

true public goods such as mental health, housing and education. Wasting taxpayers' precious funds to incarcerate people who engaged in consensual sexual conduct when the state is facing a $68 billion deficit is shortsighted."

9) **Prior Legislation**:

a) SB 2 (Bradford), Chapter 409, Statutes of 2021, established a statewide process to decertify officers who have been fired for serious misconduct such as, but not limited to, sexual assault.

b) AB 2078 (Nielsen), Chapter 123, Statutes of 2012, clarified that peace officers are prohibited from engaging in consensual sex with a person in a detention facility or being transported after arrest to a detention facility.

c) SB 377 (Polanco), Chapter 806, Statutes of 1999, increased the penalty for a detention facility employee convicted of engaging in sexual intercourse with a consenting adult confined in the facility, from a misdemeanor to an alternative felony-misdemeanor.

d) AB 685 (Wayne), Chapter 209, Statutes of 1997, added to the definition of "detention facility," for purposes of the statute, a health facility in which the victim has been detained involuntarily.

e) AB 1568 (Solis), Chapter 499, Statutes of 1994, created the crime of consensual sexual activity with a confined adult.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Orange, Through its Office of The District Attorney/public Administrator (Sponsor)
California District Attorneys Association

Opposition

ACLU California Action
California Public Defenders Association (CPDA)

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: January 9, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1047 (Maienschein) – As Amended January 3, 2024

SUMMARY: Requires the Department of Justice (DOJ) to develop and maintain a website where California residents can place themselves on a registry to notify a licensed behavior health clinician if the person attempts to purchase a firearm. Specifically, **this bill**:

1) Requires the DOJ to create a website where a California resident can add their name to a registry and provide the email address of a licensed behavioral health clinician to be notified if the registrant attempts to purchase a firearm.

2) Mandates that the DOJ ensure the website is easy to find, credibly verifies the identity of the resident registering or requesting removal, and prevents unauthorized disclosure of the registrant.

3) States that if the registrant attempts to purchase a firearm, the DOJ must send an email during the firearm purchase 10-day waiting period notifying the clinician of the attempted purchase.

4) States that if the registrant fails to provide an email address for a licensed behavioral health clinician, the DOJ must send the notice to the registrant's local county office of behavioral health.

5) Requires the DOJ to provide the following information in the email notification:

   a) That the registrant is in the process of purchasing a firearm;

   b) That the registrant voluntarily added their name so the recipient of the email would be notified; and,

   c) That the registry's purpose is for a third party to possibly intervene and prevent the registrant from completing the purchase.

6) States that if the registrant requests to have their name removed from the registry, the DOJ must do so within 10 days.

7) Protects the confidentiality of a registrant and prohibits disclosure except as authorized by law.

8) States that it is unlawful for a person or entity to:

   a) Unlawfully obtain access to the website;

b) Disclose the fact that the registrant is on the list; or,

c) Take any adverse action against the registrant based on their participation in the registry, including for actions relate to health care, employment, education, housing, insurance benefits, and contracting. Exempts the immunity-from-liability law regarding psychotherapists.

9) Makes disclosure or adverse action lawful with the registrant's consent, or if such disclosure or adverse action was pursuant to a good faith belief that not doing so would constitute an undue risk to public safety.

EXISTING LAW:

1) Prohibits persons convicted of felonies and certain violent misdemeanors from owning or possessing a firearm. (Pen. Code, §§ 29800 & 29805.)

2) Prohibits individuals subject to specified restraining orders from possessing or owning a firearm. (Pen. Code, § 29825.)

3) Prohibits a person from owning a firearm for up to a lifetime period based on certain mental-health related behavior, including being placed under a conservatorship, being found mentally incompetent to stand trial, being found not guilty by reason of insanity, or being placed in a "5150" or related hold. (Welf. & Inst. Code, § 8103.)

4) Prohibits persons who know or have reasonable cause to believe that a person is prohibited from having firearms and ammunition to supply or provide the prohibited person with firearms or ammunition. (Pen. Code, §§ 27500, 30306; & Welf. & Inst. Code, § 8101.)

5) Requires the DOJ, upon submission of firearm purchaser information, to examine its records to determine if the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm. (Pen. Code, §§ 28200 *et seq.*)

6) Prohibits a firearms dealer from delivering a firearm within 10 days after the application to purchase or after notice by the DOJ that the applicant is not ineligible to possess a firearm, as specified, whichever is later. Peace officers, among other specified persons, are exempted. (Pen. Code, §§ 26815; 26950 *et seq.*)

7) Requires, in connection with any sale, loan or transfer of a firearm, a licensed dealer to provide the DOJ with specified personal information about the seller and purchaser, as well as the name and address of the dealer. A copy of the dealer's record of safe (DROS), containing the buyer and seller's personal information, must be provided to the buyer or seller upon request. (Pen. Code, §§ 28160, 28210, & 28215.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "While California has been a national leader in our gun violence prevention efforts, there are still far too many people dying from gun violence- especially by suicides involving a firearm. A study by the New England Journal of Medicine found the risk of suicide by firearm among handgun owners peaked immediately after the first acquisition of a firearm, showing that individuals can be seeking to purchase handguns during a time of personal crisis. AB 1047 will give individuals an opportunity to voluntarily put their names on a list to request to have their designated behavioral health clinician alerted in the event they attempt to purchase a firearm. If someone does not have a designated licensed behavioral health clinical, the county of behavioral health that this person resides in will be notified and contact this individual. This notification will enable the licensed providers to check in with individuals and assist them if they are in crisis, and hopefully prevent a tragedy."

2) **Firearms and Mental Health Interventions**: According to statistics gathered from the Centers for Disease Control and Prevention (CDC) in 2021, there were 48,830 gun-related deaths in the United States, of those, 26,328 were suicides. (Pew Research Center. *What the data says about gun deaths in the U.S.* (hereafter *Pew Gun Death Data*) (Apr. 26, 2023.) <https://www.pewresearch.org/short-reads/2023/04/26/what-the-data-says-about-gun-deaths-in-the-u-s/>.) Although there is no difference in the rate of mental illness or suicidal ideation in households with and without firearms, the risk of completed suicide is especially high for people in firearm-owning households. (Gibbons et al. *Legal Liability for Returning Firearms to Suicidal Persons Who Voluntarily Surrender Them in 50 States.* (hereafter *Legal Liability for Returning Firearms*) (May 2020) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7144456/>.) Some studies have noted that the increased risk for suicide is due to the availability of a particularly lethal method of suicide, such as a firearm. (*Ibid.*) As a result, helping people survive periods of suicidal ideation by reducing their access to a lethal method, such as a firearm, can likely help many people survive. (*Ibid.*) This type of restriction could possibly apply in other gun-violence scenarios, such as mass shootings.

   This bill seeks to reduce that risk of harm by alerting a mental health provider, or a local county office of behavioral health, that the individual has purchased a firearm. Although this bill does not require the mental health provider to act upon the information, presumably the mental health provider would reach out to the individual. One important thing to note regarding the possible addition of information for county offices of behavioral health is that the offices are facing significant workforce challenges. (County Behavioral Health Directors Association. *2023 Workforce Report.* (hereafter *Workforce Report*) (Feb. 13, 2023) <https://www.cbhda.org/021323_workforcereport>.) Most offices report difficulty recruiting and retaining sufficient numbers of behavioral health professionals, a problem exacerbated by COVID-19. (*Id.* at 59.)

3) **Argument in Support**: None received.

4) **Argument in Opposition**: According to *Peace Officers' Research Association of California* (PORAC) "AB 1047 is unnecessary bill. This bill, like others, does not address the issue of gun laws we already have, that are not being enforced. This year it's voluntary and there will be a follow-up next year to make it mandatory. Until we start focusing on those breaking the law, we will oppose laws directed at law abiding gun owners."

5) **Prior Legislation**:

   a) AB 29 (Gabriel), of the 2023-2024 Legislative Session, would have required the DOJ to develop and launch an Internet-based platform to allow California residents to voluntarily add their own name to the California Do Not Sell List for firearms, which prohibits an individual from purchasing a firearm. AB 29 would have also authorized California residents to voluntarily list up to five electronic email addresses with the registry to be notified that the person has voluntarily added their name to the registry or that the person requested that their name be removed from the registry. AB 29 was held under submission in the Assembly Appropriations Committee.

   b) AB 1927 (Bonta), of the 2017-2018 Legislative Session, would have required the DOJ to develop and launch an Internet-based platform to allow California residents to voluntarily add their name to the California Do Not Sell List for firearms, which would have prohibited an individual from purchasing a firearm. The governor vetoed a substantially amended version of the bill.

REGISTERED SUPPORT / OPPOSITION:

Support

None received.

Opposition

Peace Officers Research Association of California (PORAC)

2 Private Individuals

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

Date of Hearing: January 9, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1725 (McCarty) – As Amended January 3, 2024

SUMMARY: Requires cities and counties to post financial details about law enforcement use-of-force settlements and judgments on their internet websites, including how much each settlement cost and how the state and municipalities will pay for each settlement. Specifically, **this bill**:

1) Requires each municipality, on or before February 1 of each year, to post on its internet website law enforcement settlements and judgments of $50,000 or more during the previous year resulting from allegations of improper police conduct, including, but not limited to, claims involving the use of force, assault and battery, malicious prosecution, or false arrest or imprisonment, broken down by individual settlement or judgment.

2) Requires the municipality to post all of the following information:

   a) The court in which the action was filed;

   b) The name of the law firm representing the plaintiff;

   c) The name of the law firm or agency representing each defendant;

   d) The date the action was filed;

   e) Whether the plaintiff alleged improper police conduct, including, but not limited to, claims involving use of force, assault and battery, malicious prosecution, or false arrest or imprisonment; and,

   f) If the action has been resolved, the date on which it was resolved, the manner in which it was resolved, and whether the resolution included a payment to the plaintiff by the city, and, if so, the amount of the payment.

3) Requires each municipality, on or before February 1, of each year, to post on its internet website all of the following:

   a) The total number of settlements and judgments related to improper police conduct during the previous year irrespective of the settlement or judgment amount;

   b) The total amount of money paid for cases of improper police conduct;

   c) The estimated costs budgeted in the current budget for law enforcement misconduct settlements and judgments, if these costs are included in the municipality's budget; and,

d) The actual amount of money paid for law enforcement misconduct settlements and judgements in the fiscal year immediately prior to the budget year.

4) Requires the municipality, if any such settlements or judgments are paid for using municipal bonds, to post on its internet website the amount of the bond, the time it will take the bond to mature, interest and fees paid on the bond, and the total future cost of the bond.

5) Requires the municipality to post on its internet website any such settlements or judgments that were paid by insurance, broken down by individual settlement or judgment, and the amount of any premiums paid by the municipality for insurance against settlements or judgments resulting from allegations of improper police conduct, as specified.

6) Provides that posting requirements shall not be construed to prohibit or interfere with a person from obtaining documents under the California Public Records Act (CPRA).

7) Defines "municipality" as a city, county, or city and county with a police department or a sheriff's department.

8) Includes legislative findings and declarations.

EXISTING LAW:

1) Provides that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., Art. I, § 3, subd. (b)(1).)

2) Defines "public records" to include any writing containing information relating to the conduct of the public's business, prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code, § 7920.530.)

3) States that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 7921.000.)

4) Provides general categories of documents or information that are exempt from disclosure, essentially due to the character of the information, and unless it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information, the exempt information may be withheld by the public agency with custody of the information. (Gov. Code, § 7930.100 et seq.)

5) Exempts from disclosure, under the CPRA, disclosure of investigations conducted by the office of the Attorney General and the Department of Justice, the Office of Emergency Services, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 7923.600, subd. (a).)

6) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the CPRA, or that on the facts of a particular

case the public interest served by not disclosing the record clearly outweighs the public interest served by its disclosure. (Gov. Code, § 7922.000.)

7) Requires the public agency, when a member of the public requests to inspect a public record or obtain a copy of a public record, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, to do all of the following, to the extent reasonable under the circumstances:

   a) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

   b) Describe the information technology and physical location in which the records exist; and,

   c) Provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 7922.600, subd. (a)(1)-(3).)

8) Provides that, unless otherwise specified, the personnel records of peace officers and custodial officers and records maintained by a state or local agency, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding, except as specified. (Pen. Code, § 832.7, subd. (a).)

9) Provides that a record relating to the report, investigation, or findings of any of the following are discoverable under the CPRA:

   a) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer;

   b) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury;

   c) A sustained finding involving a complaint that alleges unreasonable or excessive force; and,

   d) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive. (Pen. Code, § 832.7, subd. (b)(1)(A).)

10) Authorizes an agency to redact a record of police misconduct, including personal identifying information, where on the facts of the particular case the public interest served by not disclosing the information clearly outweighs the public interest serve by disclosure of the information. (Pen. Code, § 832.7, subd. (b)(7).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "For far too long, cities and counties have spent taxpayer dollars on settlements in police misconduct and excessive use of force cases

without public disclosure. In order for the public to obtain information about these law enforcement cases, they must file public records act requests. The onus should not be on citizens to get this information. Shining a light on all government spending is not only the right thing to do, it is critical to increase public understanding about law enforcement practices, will improve police accountability for misconduct, and outcomes."

2) **Background on the CPRA**: Under the CPRA, the public is granted access to public records held by state and local agencies. (Gov. Code, § 7921.000.) "Modeled after the federal Freedom of Information Act (5 U.S.C. § 552 et seq.), the [CPRA] was enacted for the purpose of increasing freedom of information by giving members of the public access to records in the possession of state and local agencies. Such 'access to information concerning the conduct of the people's business,' the Legislature declared, 'is a fundamental and necessary right of every person in this state.'" (*Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 290 [internal citations omitted].) The purpose of the CPRA is to prevent secrecy in government and to contribute significantly to the public understanding of government activities. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.)

   In light of these dual concerns of privacy and disclosure, the CPRA includes a number of disclosure exemptions. (Gov. Code, § 7930.100 et seq.) Agencies may refuse to disclose records that are exempted or prohibited from public disclosure pursuant to federal or state law. But, even if a specific exception does not exist, an agency may refuse to disclose records if on balance, the interest of nondisclosure outweighs disclosure. (Govt. Code, § 7922.000.) "The specific exceptions of section [7930.100, et seq.] should be viewed with the general philosophy of section [7922.000] in mind; that is, that records should be withheld from disclosure only where the public interest served by not making a record public outweighs the public interest served by the general policy of disclosure." (53 Ops.Cal.Atty.Gen. 136 (1970).)

   The California Supreme Court has found a policy favoring disclosure especially salient when the subject is law enforcement. (See *Long Beach Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59, 74, see also *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 297.) In *Commission on Peace Officer Standards*, the Supreme Court observed:

> The public's legitimate interest in the identity and activities of peace officers is even greater than its interest in those of the average public servant. "Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers." [Citation.] "It is indisputable that law enforcement is a primary function of local government and that the public has a far greater interest in the qualifications and conduct of law enforcement officers, even at, and perhaps especially at, an 'on the street' level than in the qualifications and conduct of other comparably low-ranking government employees performing more proprietary functions. The abuse of a patrolman's office can have great potentiality for social harm …."

(*Commission on Police Officer Standards*, *supra*, 42 Cal.4th at pp. 297–298, fn. omitted; cf. Pen. Code, § 832.7, subd. (b)(1) [authorizing disclosure of reports, investigations, and

findings that contain peace officer personnel records if they pertain to use of force incidents].)

The disclosures required under this bill are narrower than those that have found general support by the Supreme Court and the Legislature. This bill would require municipalities to post on their websites information about the where and when an action alleging law enforcement misconduct was filed, the type of misconduct alleged, and information relating to the resolution of the action. Municipalities would also have to post information about the number of settlements and judgments related to police misconduct in the previous year and the costs of those actions.

3) **Governor's Veto Message to AB 603 (McCarty):** In 2021, the legislature passed AB 603 (McCarty), which was similar to this bill. Despite near unanimous legislative support, the Governor vetoed it. His veto message said:

> I am returning Assembly Bill 603 without my signature.
>
> This bill would require municipalities to annually post on their internet websites specified information relating to settlements and judgments resulting from allegations of improper police conduct. The information will include amounts paid, broken down by individual settlement and judgment, and information on bonds used to finance use of force settlement and judgment payments.
>
> The vast majority of the information that this legislation would require to be posted on department websites is already available through a Public Records Act request or in court records. Given this, I am concerned that this legislation is not only unnecessary, but that it will also have potentially significant General Fund costs associated with the imposition of a state-reimbursable mandate on local law enforcement agencies.

There are several important differences between AB 603 and this bill. First, while AB 603 required municipalities to post on their websites information about settlements or judgments for police misconduct in any amount, this bill would require disclosure of only those settlements or judgments that exceed $50,000. Second, this bill would require municipalities to post information on the previous year's settlements and judgements, the total amount paid for those actions, the estimated costs of police misconduct budgeted for in the municipality's current budget, and the actual amount of money spent from the previous budget on misconduct settlements and judgments. AB 603 did not require municipalities to post this information. Third, this bill would eliminate the provision in AB 603 requiring the California State Transportation Agency to post information on settlements and judgments against the California Highway Patrol.

Finally, requiring cities and counties to post financial details about law enforcement use-of-force settlements and judgments on their internet websites arguably would reduce costs related to responding to CPRA requests.

4) **Police Use of Force Statistics:** The California Department of Justice collects information on use of force incidents that result in serious bodily injury or death or involved the discharge of a firearm. According to the 2021 use of force incident reporting, there were 660 civilians involved in police use of force incidents that involved the discharge of a firearm or use of

force resulting in serious bodily injury or death. (DOJ, *2021 Use of Force Incident Reporting* (2022), p. 2, see https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/USE%20OF%20FORCE%202021.pdf [as of Dec. 29, 2023].) Of those, 349 resulted in serious bodily injury and 149 resulted in death. (*Id.* at p. 43.) Demographics of the civilians were 50.6 percent (334) Hispanic, 25.5 percent (168) white, and 16.7 percent (110) black. (*Id.* at p. 2.)

The report showed that 1,462 officers were involved in the use of force incidents. (*Id.* at p. 3.) Of the 1,462 officers, 43.6 percent (638) did not receive force from a civilian, 18.9 percent (277) received force during physical contact with a civilian, and 17.5 percent (256) received force by the discharge of a firearm from a civilian. (*Ibid.*) Demographics of officers were 49.6 percent (725) white, 38.3 percent (560) Hispanic, 6.0 percent (88) Asian/Pacific Islander, and 4.0 percent (58) black. (*Ibid.*)

5) **Argument in Support**: According to the *Policing Project at NYU School of Law*, "Over the last decade, the 25 largest law enforcement agencies in the country have made more than 40,000 payouts on behalf of police who have been accused of misconduct, costing taxpayers upwards of $3.2 billion. New York City alone spends more than $170 million annually on police misconduct settlements and judgments. In 2020-21, LA County paid $79 million in settlements and judgments against the Sheriff's department and another $59 million in litigation fees. Municipalities frequently finance these settlements and judgments through general obligation bonds, which carry fees and high interest rates. Indeed, LA taxpayers will spend $18 million in interest and fees to repay the $71.4 million in bonds taken out to finance settlements and judgments in 2010 alone.

   "Citizens have the right to know how their city and county are spending hard-earned tax dollars, especially when such massive amounts of money are at stake. By requiring municipalities to publicly post financial details of law enforcement use of force settlements, AB 1725 is a step towards transparency and accountability for government spending and law enforcement practices. This transparency will give legislators a clear picture of the costs of police misconduct, providing some crucial information needed to craft appropriate policing policy."

6) **Argument in Opposition**: None submitted.

7) **Prior Legislation**:

   a) AB 807 (McCarty), of the 2023-2024 Legislative Session, would have required a state prosecutor to investigate incidents in which the use of force by a peace officer results in the death of a civilian. AB 807 was held in the Assembly Appropriations Committee.

   b) SB 400 (Wahab), of the 2023-2024 Legislative Session, would have provided that a law enforcement agency that formerly employed a peace officer or custodial officer is not prohibited from disclosing to the public the termination for cause of that officer. AB 400 was placed on the inactive file in the Assembly.

   c) SB 838 (Menjivar), of the 2023-2024 Legislative Session, would revise the definition of "crime" for purposes of the Victim Compensation Program to include an incident in which an individual sustains serious bodily injury or death as the result of a law

enforcement officer's use of force and make changes to eligibility factors as they would apply to these types of claims. SB 838 was held in the Senate Appropriations Committee.

d) AB 603 (McCarty), of the 2021-2022 Legislative Session, was identical to this bill. The Governor vetoed AB 603.

e) AB 1314 (McCarty), of the 2019-2020 Legislative Session, was substantially similar to this bill. AB 1314 did not receive a hearing in the Senate Public Safety Committee.

f) SB 16 (Skinner), Chapter 402, Statutes of 2021, expands the categories of personnel records of peace officers and custodial officers that are subject to disclosure under the CPRA, imposes certain requirements regarding the time frames and costs associated with CPRA requests, and prohibits assertion of the attorney-client privilege to limit disclosure of factual information and billing records.

g) SB 978 (Bradford), Chapter 978, Statutes of 2018, requires law enforcement agencies to post online all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request was made pursuant to the CPRA.

h) SB 1421 (Skinner), Chapter 988, Statutes of 2018, subjects specified personnel records of peace officers and correctional officers to disclosure under the CPRA.

i) SB 1286 (Leno), of the 2015-2016 Legislative Session, would have provided greater public access to peace officer and custodial officer personnel records and other records maintained by a state or local agency related to complaints against those officers. SB 1286 was held in the Senate Appropriations Committee.

j) AB 1648 (Leno), 2007 of the 2007-2008 Legislative Session, as introduced, would have overturned the California Supreme Court decision in *Copley-Press, Inv. v. Superior Court* (2006) 39 Cal.4th 1272, and restored public access to peace officer records. AB 1648 failed passage in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Oakland Privacy
Policing Project at NYU Law School
San Francisco Public Defender

Opposition

None

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744

Date of Hearing: January 9, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 15 (Dixon) – As Amended January 3, 2024

VOTE ONLY

SUMMARY: States that California Department of Corrections and Rehabilitation (CDCR) records pertaining to an inmate's release date and what an inmate did to earn release credits are public records subject to disclosure under the California Public Records Act (CPRA), except as specified. Specifically, **this bill**:

1) States that CDCR records pertaining to an inmate's release date and what the inmate did to earn any release credits are public records subject to disclosure under CPRA.

2) Requires disclosure to be sufficiently detailed and include the number of days of credit that were based on each of the following categories:

   a) Good behavior;

   b) Rehabilitation and education program participation; and,

   c) Pretrial release credits.

3) Requires disclosure to include the types of rehabilitative and education programs that the inmate participated in and completed.

4) Provides that CDCR is not required to disclose records that are subject to the privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPPA).

5) Provides that CDCR is not required to disclose information on early release credits earned by an in-custody informant, as defined, for providing exception assistance in maintaining the safety and security of a prison.

6) Defines "in-custody informant as a person, other than a codefendant, percipient witness, accomplice, or coconspirator whose testimony is based upon statements made by the defendant while both the defendant and the informant are held within a correctional institution.

7) States that these provisions do not constitute a change in, but is declaratory of, existing law.

EXISTING LAW:

1) Provides that all people are by nature free and independent and have inalienable rights, including privacy. (Cal. Const., Art. I, § 1.)

2) Provides that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., Art. I, § 3, subd. (b)(1).)

3) Defines "public records" to include any writing containing information relating to the conduct of the public's business, prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code, § 7920.530.)

4) Declares that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 7921.000.)

5) Provides that the inalienable right to privacy under the California Constitution may exempt certain records, or portions thereof, from disclosure under the California Public Records Act. (Gov. Code, § 7930.000.)

6) Provides that Penal Code sections 11076 and 13202 may operate to exempt criminal offender record information, or portions thereof, from disclosure. (Gov. Code, § 7930.130.)

7) Defines "criminal offender record information" as records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release. (Pen. Code, § 13102.)

8) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of CPRA, or that on the facts of a particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 7922.000.)

9) Provides for a right of access to criminal offender record information by any person or public agency authorized by law. (Pen. Code, § 13200.)

10) Provides that the right of access to criminal offender record information does not authorize access of any person or public agency to such information unless such access is otherwise authorized by law. (Pen. Code, § 13201.)

11) Provides that every public agency or bona fide research institution concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders may be provided with criminal offender record information, including criminal court records, as required for the performance of its duties, including the conduct of research. (Pen. Code, § 13202.)

12) Provides that criminal offender record information shall be disseminated, whether directly or through any intermediary, only to such agencies as are, or may subsequently be, authorized access to such records by statutes. (Pen. Code, § 11076.)

13) Requires CDCR to establish written guidelines for accessibility of records, to post those guidelines in a conspicuous public place at CDCR offices, and to make a copy of the guidelines available upon request free of charge to any person requesting them. (Gov. Code, § 6253.4, subd. (b)(5).)

14) Provides that any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right to inspect or receive a copy of any public record or class of public records. (Gov. Code, § 7923.)

15) Requires CDCR to establish written guidelines for accessibility of records. (Gov. Code, § 7922.635, subd. (a)(6).)

16) Provides that an inmate, unless otherwise precluded, is eligible to receive good conduct, rehabilitation, and/or education credits to advance the inmate's release date if sentenced to a determinate term or to advance an inmate's initial parole hearing date if sentenced to an indeterminate term with the possibility of parole. (Pen. Code, §§ 2931, 2933 & 2933.05; see also 15 CCR § 3043.4, *et. seq.*)

17) Provides that, in addition to other specified limitations, the only inmate or parolee data which may be released without a valid written authorization from the inmate or parolee to the media or to the public includes that inmate's or parolee's:

a) Name;

b) Age;

c) Race and/or ethnicity;

d) Birthplace;

e) County of last legal residence;

f) Commitment offense;

g) Date of admission to CDCR and CDCR number;

h) Facility assignments and a general description of behavior;

i) Patient health condition given in short and general terms that do not communicate specific medical information about the individual, such as good, fair, serious, critical, treated and released, or undetermined;

j) Manner of death as natural, homicide, suicide, accidental, or executed; and,

k) Sentencing and release actions, including month and year of current parole eligibility date. (15 CCR § 3261.2(e)(1)-(11).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In recent news, we have seen cases of violent, convicted felons who were released early from their prison sentences, and who then went on to commit more violent felony offenses against the public. In many of these cases, the Department of Corrections and Rehabilitation (CDCR) has refused to disclose information as to how those inmates obtained their early release credits. It is vital to the creation of a fair and just system for all Californians, that we have a transparent criminal justice system. AB 15 will provide that CDCR records pertaining to an inmate's early release date and how they earned their early release credits are available to the public, and are subject to disclosure under the California Public Records Act. AB 15 will create more transparencies to ensure that CDCR is properly applying the law, to help Californian's feel safe in their communities and to create just outcomes for all."

2) **Proposition 57:** On November 8, 2016, Californians voted on whether to increase rehabilitation services and decrease the state's prison population by approving Proposition 57. Known as The Public Safety and Rehabilitation Act of 2016, Proposition 57 proposed, among other things, to authorize CDCR to award sentence credits for rehabilitation, good behavior, and education. It required CDCR to pass regulations to that effect. (https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf.) Voters approved Proposition 57 by a margin of nearly 30 points. (https://ballotpedia.org/California_Proposition_57,_Parole_for_Non-Violent_Criminals_and_Juvenile_Court_Trial_Requirements_(2016).)

   As required, CDCR has since issued regulations to effectuate the proposition's purpose. (Cal. Const., Art. I, § 32, subd. (b); 15 CCR § 3043, *et seq.*) Awarding credits is based on several different eligibilities including Good Conduct, Milestone Completion, Rehabilitative Achievement, Educational Merit, and Extraordinary Conduct. (https://www.cdcr.ca.gov/proposition57/.)

3) **California Public Records Act (CPRA):** The CPRA provides that every person or entity in California has a right to access information concerning the conduct of the people's business. (Gov. Code, §7921.000; Cal. Const., Art. I, § 3, subd. (b)(1).) Despite the public's fundamental right to access public records, the California Constitution also provides people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., Art. I, § 1.) The CPRA provides that the inalienable right to privacy under California Constitution may exempt certain records, or portions thereof, from disclosure under the Act. (Gov. Code, §7930.000.) It specifically states that Penal Code sections 11076 and 13202 may operate to exempt criminal offender record information, or portions thereof, from disclosure. (Gov. Code, § 7930.130.)

   If an agency rejects a public records request, the CPRA requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of CPRA, or that on the facts of a particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Civ. Code, § 7922.000.) Any person may challenge an agency's rejection of a CPRA request by instituting proceedings for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right to inspect or receive a copy of

any public record or class of public records. (Gov. Code, § 7923.)

CDCR has issued regulations governing the disclosure of information relating to an incarcerated person. Specifically, CDCR regulations state, "[T]he only inmate or parolee data which may be released without a valid written authorization from the inmate or parolee to the media or to the public" includes their name, age, race and/or ethnicity, birthplace, count of last legal residence, commitment offense, date of admission, facility assignment, a general description of behavior, a short and general description of an inmate's health or manner of death, and the month and year of their release. (15 CCR § 3261.2(e)(1)-(11).)

This bill would make records pertaining to an inmate's release date, and what an inmate did to earn release credits, public records subject to disclosure under the CPRA.

4) **Institutional Safety at CDCR Facilities:** This bill would make "[CDCR] records pertaining to an inmate's release date and what the inmate did to earn any release credits…subject to disclosure" under the CPRA. This bill provides limited exceptions to, or restrictions on, disclosure. It does not limit who can request an incarcerate person's records. Nor does it exempt from disclosure an incarcerated person's release credit information before that person's release date has been set. Even if the date has been set, an incarcerated person is not immediately released upon receiving that date. In either case, a person could request information on an incarcerated person's rehabilitative efforts and then communicate that information to another incarcerated person within the same institution.

   For example, an incarcerated person may receive "up to twelve months of Extraordinary Conduct Credit" for "provid[ing] exceptional assistance in maintaining the safety and security of a prison." (Pen. Code, § 2935; 15 CCR § 3043.6, subd. (a).) Disclosure that an incarcerated person assisted corrections staff may put that person at risk from other incarcerated persons, particularly if the provided information resulted in consequences for other incarcerated persons. Given the ongoing efforts by CDCR to manage security threat groups ("gangs") and other security threats within its institutions, there may be reason for concern that such broad disclosures would threaten institutional safety and the safety of the people in CDCR's care. Similarly, it could also put the individual in immediate risk from persons who are not incarcerated, such as members of rival gangs, once they are released from prison.

   The amendments to this bill would require disclosure of all categories of credit earned except "early release credits earned by an in-custody informant for providing exceptional assistance in maintaining the safety and security of a prison." However, exempting disclosure of only extraordinary conduct credits would result in a discrepancy between the total credits earned and the release date, highlighting that the incarcerated person had received credits for conduct exempted from disclosure. The omission of the credits would serve only to highlight that the credits had been earned in service to CDCR. As such, the amendments do not resolve the potential security risk resulting from detailed disclosure of earned credits.

5) **A Disincentive to Participate in Rehabilitative Programming:** As mentioned above, this bill provides broad disclosure on what an incarcerated person did to earn release credits before that person has been released from CDCR, which may place that person at risk. Moreover, this bill requires disclosure of "the types of rehabilitative and education programs that the inmate participated in and completed." This likely would require the disclosure of

information about any rehabilitation credits an incarcerated person earns for participation in self-help and peer support groups, such as Narcotics Anonymous and/or Alcoholics Anonymous among others. If earning credits could result in disclosure of an incarcerated person's personal information or might threaten their personal safety, will they be disincentivized to participate in rehabilitative programming?

6) **Vague Language:** This bill provides that "[a] disclosure…shall be sufficiently detailed and include the number of days of credit…," but it does not provide guidance to CDCR on the records, or the portions of records, that would be required to meet that standard. Given that the bill requires that disclosures be both "sufficiently detailed *and* include the number of days of credit…," disclosure would have to go beyond a cursory calculation of the total credit days an incarcerated person has earned. But what level of detail is "sufficient" to comply with this bill's mandate?

7) **Positive Correlation between Rehabilitation Programs and Reduced Recidivism Rates**: Available research indicates a positive correlation between rehabilitation programs and reduced recidivism rates. One of the most notable interventions is access to higher education opportunities in state prisons that equip inmates with the necessary tools to compete in the job market. Since 2014, all state prisons have offered associate degrees. A handful of bachelor's programs are also offered, mostly through Cal State Universities. Recently, UC Irvine developed the Leveraging Inspiring Futures through Educational Degrees (LIFTED) program. It is the first bachelor's degree completion program in the University of California system for persons incarcerated in prison. Piloted at UC Irvine, LIFTED enables incarcerated individuals to apply to transfer in as juniors and earn a bachelor's degree while serving their sentence. Soon, building on recent admission successes and support from the Legislature, the LIFTED program will be replicated at UC Campuses throughout the state. According to Keramet Reiter, a professor of criminology, law and society and director of the program, "We know that people who earn a college degree in prison have a recidivism rates approaching zero…." (https://www.google.com/search?q=leveraging+inspiring+futures+through+educational+degrees&rlz=1C1GCEA_enUS991US991&oq=leveraging+inspiring+futures+through+educational+degrees&aqs=chrome..69i57j33i160i395l2.20016j1j4&sourceid=chrome&ie=UTF-8; https://lifted.uci.edu.)

There are also programs through the California Prison Industry Authority (CALPIA), a self-funded state entity that aims to provide real-world job skills to over 6,500 individuals incarcerated in prison. Those who participate and graduate from the program can also receive credits. CALPIA recently held a graduation ceremony for inmates at the Avenal State Prison who received job certificates. Avenal has poultry, egg production, general fabrication, furniture, laundry and healthcare facility maintenance. Avenal also has administrative, warehouse and maintenance and repairs support functions. By allowing inmates to learn new trades and skill sets, they will also be able to better compete in the job market, similar to those in educational credit programs. "CALPIA proudly reported that individuals who participate in their programs have lower rates of recidivism, compared to those who were qualified to, but did not participate." (https://hanfordsentinel.com/news/local/inmates-at-avenal-state-prison-celebrate-job-certifications-with-calpia-program/article_49742698-c828-539e-8c35-edc45f608f23.html.)

CALPIA also operates a dive school for inmates at the California Institute for Men in Chino.

It is a six to 18 month program offering classes of roughly 15 inmates multiple certifications in commercial diving. The school has proven to reduce recidivism rates below 6%, indicating that rehabilitative programs have a positive correlation to recidivism reductions. (https://abc7.com/calpia-dive-school-chino-inmate-corrections/12910029/.)

Moreover, to the extent someone does, in fact, recidivate after participation in one of these programs, the cause(s) could be varied and nuanced circumstances beyond the post-release support programs they receive or racial inequality. Recidivism could be influenced by circumstances as varied and personal as one's family and other social support, etc.

8) **Argument in Support**: According to the *California District Attorneys Association*: "As you well know, the California Department of Corrections and Rehabilitation has been releasing large numbers of inmates early, potentially endangering Californians. CDAA is very concerned that the process through which this is done remains, in many cases, a mystery. Your bill will help us all understand better what is happening."

9) **Argument in Opposition**: According to the *Transformative In-Prison Workgroup*: "We believe California has made significant progress enacting progressive reforms to reduce wasteful prison spending, and expanding rehabilitation and other alternatives that have proven to effectively reduce and prevent crime in a more cost-efficient manner. These reforms were in response to a steady rise in incarceration rates and the undeniable presence of racial, gender, and socio-economic disparities. Specifically, Proposition 57, entitled "Public Safety and Rehabilitation Act" empowered the CDCR to increase prison credits earned by incarcerated people for completing rehabilitative programs. This proposition was overwhelmingly supported by Californians. First, because Californians want safer communities and neighbors. Second, because as a recent survey from Californians United for Safety and Justice illustrates, the majority of survivors of crime say the state should be more focused on rehabilitating people who commit crimes versus punishment. Lastly, because no life sentenced incarcerated person is automatically released or entitled to release from prison under Proposition 57. To be granted parole, all life sentenced incarcerated people must demonstrate that they are rehabilitated and do not pose a danger to the public to earn their release through the parole board hearing process.

"Sound rehabilitative programming is empirically proven to reduce recidivism, increase public safety, and improve reentry outcomes. Rehabilitative programming in California prisons provides the incarcerated population with reentry support, skills and workforce development, as well as trauma healing and restorative justice programs, AB 15 (Dixon) dangerously suggests that this programming is inadequate.

"We are also extremely troubled by the obvious underlying intent of AB 15 (Dixon), which appears to be nothing more than seeking to capitalize on tragedy and instill fear in the public. These are the failed approaches to crime and imprisonment that Californians have rejected. It would be a massive mistake to move backwards into the demagoguery and grandstanding that helped to create the system of mass incarceration."

10) **Related Legislation**: AB 1260 (Joe Patterson), would require CDCR to make an initial determination of the minimum eligible parole date for an inmate based on the sentence of the court, any credits awarded, and the good conduct credit rate, as specified. AB 1260 failed passage in this committee, was granted reconsideration, and will be voted on in this

committee today.

11) **Prior Legislation**:

a) SB 359 (Umberg), of the 2023-2024 Legislative Session, would have required CDCR to compile data related to credits awarded to incarcerated persons, as specified, and to submit an annual report to the Legislature on or before January 1, 2025. SB 359 failed passage in this committee.

b) SB 345 (Bradford), of the 2017-2018 Legislative Session, would have required CDCR, among others, to the extent not prohibited by the CPRA, to conspicuously post on their Internet website, in a searchable manner, all current standards, policies, practices, operating procedures, and education and training materials. Governor Brown vetoed SB 345.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Licensed Investigators
California Coalition of School Safety Professionals
California District Attorneys Association
California News Publishers Association
California Police Chiefs Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Crime Victims United
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

1 Private Individual

Opposition

ACLU California Action
California Attorneys for Criminal Justice
California for Safety and Justice
Communities United for Restorative Youth Justice (CURYJ)
Drug Policy Alliance
Ella Baker Center for Human Rights
Initiate Justice
Initiate Justice Action
Oakland Privacy
San Francisco Public Defender
The Transformative In-prison Workgroup
Uncommon Law

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744

Date of Hearing: January 9, 2024
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 329 (Ta) – As Amended March 13, 2023

Vote Only

SUMMARY: Adds cargo theft to the expanded territorial jurisdiction under which the Attorney General can prosecute specified theft offenses related to retail theft and associated offenses connected together in their commission. Specifically, **this bill**:

1) Adds cargo theft to the expanded territorial jurisdiction which authorizes the Attorney General to prosecute theft, organized retail theft, and receiving stolen property offenses to include the county where the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense.

2) Adds cargo theft to the expanded territorial jurisdiction that authorizes the Attorney General to prosecute multiple offenses of theft, organized retail theft, or receipt of stolen property, that all involve the same defendant or defendants and the same merchandise or the same scheme or substantially similar activity, and occur in multiple jurisdictions, in any of those jurisdictions.

3) Adds cargo theft to the extended territorial jurisdiction that authorizes the Attorney General to prosecute all associated offenses connected together in their commission to the underlying theft offenses.

EXISTING LAW:

1) Provides that generally the territorial jurisdiction (or venue) of a criminal offense is in any competent court in the county where the offense was committed. (Pen. Code, § 777.)

2) Provides that when a criminal offense is committed partially in one county and partially in another, then jurisdiction is proper in either county. (Pen. Code, § 781.)

3) Provides that when a criminal offense is committed on the boundary of two or more counties, or within 500 yards thereof, territorial jurisdiction is proper within either county. (Pen. Code, § 782.)

4) Expands the territorial jurisdiction for a criminal action brought by the Attorney General for theft, organized retail theft, receipt of stolen property to include the county where the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense. (Pen. Code, § 786.5.)

5) Provides that when multiple offenses of theft, organized retail theft, or receipt of stolen property that all involve the same defendant or defendants and the same merchandise, or all involving the same defendant or defendants and the same scheme or substantially similar activity, occur in multiple jurisdictions, then any of those jurisdictions are a proper venue for all of the offenses. (Pen. Code, § 786.5.)

6) Extends jurisdiction to all associated offenses connected together in their commission to the underlying theft offenses. (Pen. Code, § 786.5.)

7) Establishes a number of special territorial jurisdictional rules for specified criminal offenses. (Pen. Code, § 783 *et. seq.*)

8) States that every person who steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates property which has been entrusted to them, or who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or real or personal property, is guilty of theft. (Pen. Code, § 484, subd. (a).)

9) Creates the crime of organized retail theft which is defined as:

   a) Acting in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value;

   b) Acting in concert with two or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen;

   c) Acting as the agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of a plan to commit theft; or,

   a) Recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake these acts of theft. (Pen. Code, § 490.4, subd. (a).)

10) States that any person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained is guilty of receiving or concealing stolen property. (Pen. Code, § 496, subd. (a).)

11) Provides that every person who steal, takes, or carries away cargo of another, if the value of the cargo taken exceeds $950, is guilty of grand theft. (Pen. Code, § 487h, subd. (a).)

12) Defines "cargo" as any goods, wares, products or manufactured merchandise that has been loaded into a trailer, railcar, or cargo container, awaiting or in transit. (Pen. Code § 487h, subd. (b).)

13) Defines "cargo container" as a receptacle with strong enough for repeated use, designed to facilitate the carriage of goods, fitted for handling from one mode of transport to another,

designed to be easy to fill and empty, and having a cubic displacement of 1,000 cubic feet or more. (Pen. Code, § 458.)

14) Provides that every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, floating home, railroad car, locked or sealed cargo container, house car, inhabited camper, locked vehicle, aircraft, or mine with attempt to commit theft or any felony is guilty of burglary. (Pen. Code, § 459.)

15) Establishes a procedure for charging more than one count or offense in a single accusatory pleading. (Pen. Code, § 954.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 329 would assist California businesses frustrated with organized cargo theft's impacts. Whether burglaries happen at transportation truck yards or driver giveaways, where a driver participates in the conspiracy to steal a loaded rig, grab and run, often used by theft groups targeting trucks loaded with high-tech equipment or warehouse stolen cargo.

   "AB 329 gives the tools to the Attorney General to stop this sophisticated cargo theft that is destroying our California businesses which are hurting the most from the global pandemic that we're all trying to recover from. This bill also reduces the need for multiple trials by allowing the Attorney General the ability to consolidate cases involving conduct in multiple counties."

2) **Cargo Theft:** During the Covid-19 pandemic, cargo thefts from railyards made headlines.[1] Cargo theft can also apply to theft from cargo trucks.

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[1] Notably, Union Pacific's (UP) train thefts started right around the time it laid off thousands of workers. According to UP's annual reports to the federal Surface Transportation Board, the company ended 2019 with 23,096 employees. In 2020, that number fell to 20,334. And that number fell again to 18,408 in the third quarter of 2021. (*Quarterly Wage A&B Data*, Surface Transportation Board. <https://www.stb.gov/reports-data/economic-data/quarterly-wage-ab-data/>.) According to the Los Angeles Times, former UP employees and police say budgetary issues have slashed the ranks of the company's force, leaving as few as half a dozen in the region. *('Like A Third World Country': Gov. Newsom Decries Rail Thefts amid Push to Beef up Enforcement,* Los Angeles Times (Jan. 20, 2022) <https://www.latimes.com/california/story/2022-01-20/los-angeles-rail-theft-supply-chain-crunch-limited-security>.) "Union Pacific from Yuma, Ariz., to L.A. has six people patrolling…" and "thefts started about seven months ago as the police presence ebbed." (*Ibid.*) UP's employment numbers remain low, despite record profits for the rail operator. UP reported a net income of $6.5 billion for 2021. (*Union Pacific Reports Fourth Quarter and Full Year 2021 Results,* UP (Jan. 2022) <https://www.up.com/media/releases/4q21-earnings-nr210120.htm>.)

In January of 2023, a representative from CargoNet stated that cargo theft numbers were starting to return to pre-Covid levels but had seen a recent uptick. The representative noted, however, there had been a shift in focus from rail-car theft which targeted consumer electronic products to thefts of food and beverages. (https://www.claimsjournal.com/news/national/2023/01/30/315034.htm.)

3) **Territorial Jurisdiction and Vicinage**: Territorial jurisdiction is the location in which a case may be brought to trial. Ordinarily, the territorial jurisdiction of a superior court is the county in which it sits. (Pen. Code, § 691, subd. (b).) The general rule of territorial jurisdiction is stated in section 777: "except as otherwise provided by law the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed." When the Legislature creates an exception to the rule of section 777, the statute is remedial and is construed liberally to achieve the legislative purpose of expanding criminal jurisdiction. (*Price v. Superior Court* (2001) 25 Cal.4th 1046, 1055.)

   Vicinage is the right to trial by a jury drawn from residents of the area where the offense was committed. Venue and vicinage are closely related, as a jury pool is selected from the area in which the trial is to be held. Vicinage is not a necessary feature to the right of a jury trial as guaranteed by the Sixth Amendment to the United States Constitution because it "does not serve the purpose of protecting a criminal defendant from government oppression and is not necessary to ensure a fair trial." (*Price, supra,* 25 Cal. 4th 1046, 1065-1069.) This does not mean that a state has the right to try a defendant anywhere it chooses. Rather, the right of vicinage in California is derived from the right to jury trial as guaranteed in the California Constitution. (*Id.* at p. 1071.) As the Supreme Court explained, the right to a trial by a jury of the vicinage, as guaranteed by the California Constitution, requires trial in a county that has a reasonable relationship to the offense or to other crimes committed by the defendant against the same victim. Thus, the Legislature's power to designate the place for trial of a criminal offense is limited by the requirement that there be a reasonable relationship or nexus between the place designated for trial and the commission of the offense. (*Id.* at p. 1075.)

   This bill would expand jurisdiction to prosecute cargo theft offenses for criminal actions brought by the Attorney General, extending a jurisdictional provision in current law that is directed at organized and repeated retail theft.

4) **Previous Expansion of Jurisdiction for Organized Retail Theft**: AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, among other things, created the crime of organized retail theft and expanded jurisdictional rules for theft offenses. AB 1065 had a sunset date of January 1, 2021. AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, re-established the crime of organized retail theft through 2025, but the jurisdictional provisions of AB 1065 were specifically not included.

   Last year, AB 1613 (Irwin), Chapter 949, Statutes of 2022, once again expanded jurisdiction to prosecute theft offenses, but only for criminal actions brought by the Attorney General. In particular, AB 1613 expanded the territorial jurisdiction for a criminal action brought by the Attorney General for the crimes of theft, organized retail theft, or receipt of stolen property. It allowed for trial in any county where the theft or receipt of the stolen merchandise occurred, the county in which the merchandise was recovered, or the county where any act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense. It also expanded jurisdiction to any one of the counties in which multiple theft

offenses occurred involving the same defendant(s) and same merchandise, or the same defendant(s) and the same scheme or substantially similar activity. And it applied the expanded jurisdiction to any associated offenses connected together in their commission to the underlying theft offenses. (Pen. Code, § 786.5.)

The extended jurisdiction in AB 1613 was intended to cover the limited circumstances of organized and repeated thefts from retailers. This bill would further expand the jurisdiction in which the Attorney General can prosecute theft cases, by amending Penal Code section 786.5 to include cargo theft offenses. The supply chain is not a retailer.

Further, under this jurisdictional provision, the court is not required to consider the location and complexity of the evidence, the rights of the defendant, the convenience of, or hardship to, the victim(s) and witnesses, or the racial composition of the county in which the cases will be consolidated (the jury pool). (See *United States v. Salinas* (2004) 373 F.3d 161, 163 [resultant safety net from proper venue and vicinage ensures that a criminal defendant cannot be tried in an "unfriendly forum solely at the prosecutor's whim."]; see also Lisa E. Alexander, *Vicinage, Venue, and Community Cross-Section: Obstacles to a State Defendant's Right to a Trial by a Representative Jury*, 19 Hastings Const. L.Q. 261, 290 (1991) ["Venue and vicinage define the community against which courts will assess the minority representation in the jury pool for constitutional purposes."].)

5) **Attorney General's Expanded Role in Combatting Organized Retail Theft**: In December 2021, Governor Newsom announced a proposal to combat organized retail theft. Part of the plan included $18 million to support the creation of a dedicated investigative team within the state Attorney General's office focusing on retail theft that crosses jurisdictional lines. (https://www.gov.ca.gov/2021/12/17/governor-newsom-unveils-public-safety-plan-to-aggressively-fight-and-prevent-crime-in-california/)

   The Governor's 2022-2023 budget allocated $11 million annually for three years and $5.5 million ongoing for the Department of Justice to continue leading anti-crime task forces around the state. This funding also support regional task forces combatting organized retail theft and prosecution of retail theft cases that span multiple jurisdictions. (https://ebudget.ca.gov/budget/publication/#/e/2022-23/BudgetSummary.)

   AB 1613 was consistent with these efforts, as it specifically authorized the Attorney General's office to prosecute theft and retail theft crimes that span multiple jurisdictions in any one of those counties.

6) **The California Constitution Authorizes the Attorney General to Prosecute Criminal Actions:** The Attorney General is the state's top prosecutor and is authorized to initiate prosecutions at his discretion. "Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office." (Cal. Const., Art. V, Sec. 13.)

   The Attorney General currently has the authority to prosecute cargo theft.

7) **Rail Theft Enforcement and Prosecution:** In December 20, 2021, UP sent a letter to Los Angeles County District Attorney George Gascón, regarding train thefts and security concerns and urging more aggressive prosecution. (https://www.up.com/cs/groups/public/@uprr/@newsinfo/documents/up_pdf_nativedocs/pdf_up_la_district_atty_211221.pdf.) Los Angeles District Attorney George Gascón responded, as follows:

> "In response to your letter, we conducted a thorough review of cases submitted for filing consideration over the last three years in which UP is listed as a victim. In order to appropriately respond to your concerns, we wanted to know the actual data behind your claims, so we can address the issues. Here are the numbers: In 2019, 78 cases were presented for filing. In 2020, 56 cases were presented for filing. And in a sharp decline, in 2021, 47 such cases were presented for filing consideration, and over 55% were filed by my Office. The charges filed included both felony and misdemeanor offenses alleging burglary, theft, and receiving stolen property. Of the 20 cases that were declined for filing, 10 were not filed due to the insufficiency of the evidence presented to prove the case beyond a reasonable doubt, which is our ethical standard to file a criminal case. The other 10 declined matters involved offenses such as allegations of unhoused individuals within 20 feet of the railroad tracks and simple possession of drugs for personal use—not allegations of burglary, theft, or tampering. Although homelessness is a serious issue, it is not one that we can fix through expending resources of the criminal legal system.
>
> "To be clear, felony and misdemeanor cases are filed where our Office is presented with enough evidence to prove that a crime was committed. We understand how vital the rail system is to Los Angeles County and the entire nation and want to work with you in a productive manner to ensure that those who tamper with or steal from UP are held accountable. As more Americans engage in e-commerce and rely on our transportation infrastructure to receive goods, it is important that our work to ensure the safety of this system is collaborative. Part of this collaboration involves taking preventative steps to ensure that cargo containers are secure or locked. Furthermore, UP has its own law enforcement officers who are responsible for patrolling and keeping areas safe. However, according to LAPD Deputy Chief Al Labrada, UP does little to secure or lock trains and has significantly decreased law enforcement staffing. It is very telling that other major railroad operations in the area are not facing the same level of theft at their facilities as UP. We can ensure that appropriate cases are filed and prosecuted; however, my Office is not tasked with keeping your sites secure and the District Attorney alone cannot solve the major issues facing your organization."

(https://da.lacounty.gov/sites/default/files/pdf/Letter-to-Union-Pacific-012122.pdf.) As discussed above, if the Attorney General disagrees with District Attorney Gascon's assessment of these cases, he is authorized to have his office prosecute them.

8) **Argument in Support**: According to the *California Trucking Association*, "California consumers, truck drivers, and businesses will benefit from extended protections under the Attorney General. This bill expands the Attorney General's jurisdiction to bring criminal action against anyone who steals cargo over $950 from a trailer, railcar, or cargo container. Safe and secure cargo transportation is important to our economy, and this bill will play a crucial role in protecting the rights and interests of truckers and shipping companies.

   "Cargo theft is a serious problem that has been on the rise in recent years. According to the National Insurance Crime Bureau, cargo theft costs the United States economy billions of dollars every year and California has the highest amount of reported cargo theft. Cargo theft not only harms businesses financially, but it also endangers the safety of truck drivers who are often the victims of these crimes." (citations omitted)

9) **Argument in Opposition**: According to the *American Civil Liberties Union California Action*, "[W]e must respectfully oppose your AB 329, which would include the crime of cargo theft into the jurisdiction of a criminal action brought by the Attorney General for theft, organized retail theft, or receipt of stolen property."

10) **Prior Legislation**:

    a) AB 523 (Fong), would have expanded the crime of organized retail theft to include merchandise stolen from a merchant's cargo. AB 523 was not heard in this committee at the author's request.

    b) AB 806 (Maienschein), Chapter 666, Statutes of 2023, expanded the scope of domestic violence offenses occurring in multiple jurisdictions that are subject to joinder.

    c) AB 1613 (Irwin), Chapter 949, Statutes of 2022, expanded the territorial jurisdiction in which the Attorney General can prosecute specified theft offenses and associated offenses connected together in their commission to those theft offenses.

    d) AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, re-established the crime of organized retail theft until to January 1, 2026, but did not include the expanded jurisdictional provisions.

    e) SB 304 (Hill), Chapter 206, Statutes of 2019, allowed specified elder and dependent adult abuse offenses that occur in different jurisdictions to be consolidated in a single trial if all district attorneys in the counties with jurisdiction agree.

    f) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft, established a property crimes task force, and expanded jurisdictional provisions for theft offenses.

    g) AB 1746 (Cervantes), Chapter 962, Statutes of 2018, added sexual battery and unlawful sexual intercourse to the list of offenses that may be consolidated in a single trial in any county where at least one of the offenses occurred, if the defendant and the victim are the same for all of the offenses.

h) AB 368 (Muratsuchi), Chapter 379, Statutes of 2017, added felony sexual intercourse, sodomy, oral copulation or sexual penetration with a child 10 years of age or younger occurring in two or more jurisdictions to the list of applicable offenses that may be consolidated in a single trial.

i) SB 939 (Block), Chapter 246, Statutes of 2014, permitted the consolidation of human-trafficking-related charges occurring in different counties to be joined in a single trial if all the district attorneys agree.

j) AB 2252 (Cohn), Chapter 194, Statutes of 2002, amended territorial jurisdiction of sex crimes to remove the requirement that consolidated offenses involve a single victim, and added specified crimes to the list of applicable charges.

k) AB 2734 (Pacheco), Chapter 302, Statutes of 1998, permitted jurisdiction for specified offenses, such as spousal abuse and stalking, occurring in two or more jurisdictions in any jurisdiction where at least one offense occurred, if the defendant and the victim were the same for all the offenses.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen
California Trucking Association
National Insurance Crime Bureau

Opposition

ACLU California Action
Californians for Safety and Justice
Communities United for Restorative Youth Justice (CURYJ)
Defy Ventures
Drug Policy Alliance
Initiate Justice
Initiate Justice Action
Last Prisoner Project
Miracles Counseling Center
Rubicon Programs
San Francisco Public Defender
Santa Cruz Barrios Unidos INC.
Seeds for Youth Development
Starting Over, INC.
Universidad Popular

2 Private Individuals

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

Date of Hearing: January 9, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 758 (Dixon) – As Introduced February 13, 2023

VOTE ONLY

SUMMARY: Creates sentencing enhancements for persons who in the commission, or attempted commission, of a felony are armed with, or personally use, a ghost gun, and for specified persons who are prohibited from possessing firearms who possess ghost guns. Specifically, **this bill**:

1) Provides that any principal in a crime who is armed with a firearm that does not have a valid serial number or mark of identification during the commission, or attempted commission, of a felony shall be punished by an additional and consecutive two years in the county jail, unless arming is an element of the offense.

2) Provides that person who personally uses a firearm that does not have a valid serial number or mark of identification during the commission, or attempted commission, of a felony shall be punished by an additional and consecutive three years in the state prison.

3) States that this additional punishment shall be imposed notwithstanding the provision that a court shall dismiss an enhancement if it is in the furtherance of justice and does not endanger public safety.

4) States that this additional punishment may be imposed notwithstanding the limitation on imposing more than one enhancement for being armed or using a firearm in the commission of a single offense.

5) Provides that any person who is prohibited from possessing a firearm by virtue of having a prior felony conviction or a mental disorder, as specified, shall be punished by an additional year in the county jail if the firearm in their possession does not have a valid serial number or mark of identification.

6) States that this additional punishment shall be imposed notwithstanding the provision that a court shall dismiss an enhancement if it is in the furtherance of justice and does not endanger public safety.

7) States that this additional punishment may be imposed notwithstanding the limitation on imposing more than one enhancement for being armed or using a firearm in the commission of a single offense.

EXISTING LAW:

1) Imposes an additional term of imprisonment of one year for committing or attempting to commit a felony while *armed* with a firearm. If the firearm is an assault weapon, a machine gun, or a .50 BMG rifle, then the additional term is three year. (Pen. Code, § 12022, subd. (a).)

2) Imposes an additional term of 3, 4, or 10 years for *personally using* a firearm in the commission or attempted commission of a felony, unless the use of a firearm is an element of the offense for which he or she is convicted. A person who personally uses an assault weapon or machine gun during the commission, or attempted commission, of a felony is subject to an additional consecutive term of 5, 6 or 10 years in state prison. (Pen. Code, § 12022.5, subds. (a) & (b).)[1]

3) Imposes an additional term of imprisonment of three, four, or five years for committing or attempting to commit specified drug offenses while armed with a firearm (Pen. Code, § 12022, subd. (c).)

4) Imposes an additional term of imprisonment of one, two, or three years for carrying a loaded or unloaded firearm during the commission or attempted commission of a street gang crime. If the perpetrator also has a detachable magazine, the additional term is of imprisonment is two, three, or four years. (Pen. Code, § 12021.5, subds. (a) & (b).)

5) Imposes an additional term of imprisonment of one, two, or five years for committing, or attempting to commit, specified sex offenses while armed with a firearm. If the perpetrator uses the firearm, the additional punishment is 3, 4, or 10 years. (Pen. Code, § 12022.3.)

6) Imposes an additional term of imprisonment of one, two, or three years for furnishing, or offering to furnish, a firearm to another for purposes of aiding, abetting, or enabling the commission or attempted commission of a felony. (Pen. Code, § 12022.4.)

7) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses[2] is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in great bodily injury (GBI) or death, the defendant is subject to an additional, consecutive term of

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[1] The firearm need not be operable or loaded. (*People v. Nelums* (1982) 31 Cal.3d 355, 360; see *People v. Steele* (1991) 235 Cal.App.3d 788, 791–795.) Someone personally uses a firearm if he or she intentionally displays the firearm in a menacing manner, hits someone with the firearm, or fires the firearm. (*People v. Bland* (1995) 10 Cal.4th 991, 997; *People v. Johnson* (1995) 38 Cal.App.4th 1315, 1319–1320; see also Pen. Code, § 1203.06, subd. (b)(2).)

[2] The felonies which trigger the enhancements under the 10-20-life firearm law are: murder; mayhem, kidnapping; robbery; carjacking; assault with intent to commit a specified felony; assault with a firearm on a peace officer or firefighter; specified sex offenses; assault by a life prisoner; assault by a prisoner; holding a hostage by a prisoner; any felony punishable by death or life imprisonment; and any attempt to commit one of these crimes other than assault. (Pen. Code, § 12022.53, subd. (a).)

25-years-to-life in prison.[3] (Pen. Code, § 12022.53, subds. (b)-(d).)

8) Provides that if the offense is gang-related, the 10-20-life firearm enhancements shall apply to every principal in the commission of the offense. An enhancement for participation in a criminal street gang shall not be imposed in addition to an enhancement under this provision, unless the person personally used or personally discharged a firearm in the commission of the specified offense. (Pen. Code, § 12022.53, subds. (e)(1) & (e)(2).)

9) Provides that only one additional term of imprisonment under the 10-20-life firearm law shall be imposed per person per crime. An enhancement for use of a firearm shall not be imposed on a person in addition to an enhancement under this provision. (Pen. Code, § 12022.53, subd. (f).)

10) Imposes an additional term of imprisonment for discharging a firearm from a motor vehicle in the commission or attempted commission of a felony (Pen. Code, § 12022.55.)

11) Imposes an additional term of punishment for the improper transfer of a firearm which is subsequently used in the commission of a felony offense resulting in conviction. (Pen. Code, § 27590, subd. (d).)

12) States that notwithstanding any other law, a person who commits another crime with while violating the assault weapons ban, shall receive an additional and consecutive one-year enhancement. (Pen. Code, § 30615.)

13) States that when two or more enhancements may be imposed for being armed with or using a a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. (Pen. Code, § 1170.1, subd, (f).)

14) Provides that any person who changes, alters, removes, or obliterates the name of the maker, model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice (DOJ), on any pistol, revolver, or any other firearm, without first having secured written permission from the department to make that change, alteration, or removal is guilty of a felony punishably by imprisonment in the county jail. (Pen. Code, § 23900.)

15) Provides that any person who buys, sells, receives, or possesses a firearm knowing that the serial number or other mark of identification has been changed, altered, or removed, is guilty of a misdemeanor. (Pen. Code, § 23920.)

16) Requires, beginning July 1, 2018, a person manufacturing or assembling a firearm to apply to the DOJ for a unique serial number or other mark of identification for that firearm. Punishes the failure to obtain a serial number from DOJ as a misdemeanor. (Pen. Code, § 29180.)

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[3] The felonies which trigger the 25-to-life enhancement also include discharge of a firearm at an inhabited dwelling and willfully and maliciously discharging a firearm from a motor vehicle. (Pen. Code, § 12022.53, subd. (d).)

17) States that, notwithstanding any other law, the sentencing court "shall dismiss" an enhancement "if it is in the furtherance of justice to do so" except if dismissal of that enhancement is prohibited by any initiative statute. (Pen. Code, § 1385, subd. (c)(1).)

18) Instructs the court to consider specified factors in determining whether it is in the interests of justice to dismiss an enhancement, and requires the court to consider and afford great weight to evidence offered by the defendant to prove that any of the mitigating circumstances are present. (Pen. Code, § 1385, subd. (c)(2)-(3).)

19) States that proof of the presence of one or more of those mitigating circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would "endanger public safety," meaning that there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others. (Pen. Code, § 1385, subd. (c)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 758 will create an additional enhancement for the possession of an unserialized or unregistered 'ghost' guns at the time a felony is committed. A felony committed by a person possessing a firearm that does not have a registered serial number as stated by Section 17312 will be subject to consecutive additional imprisonment: two years if the firearm is in possession during the felony and three years if the firearm is used in the commission of a felony or attempted felony. In addition, because of the lack of identification of ghost guns, it makes it nearly impossible to trace these guns back to an individual dealer or purchaser. Enhanced sentencing for individuals who use ghost guns while committing unlawful acts will deter serious crime in our communities."

2) **Need for this Bill**: The stated need for the increased penalties proposed by this bill is the proliferation of ghost guns and their use in committing crimes.

   As the author recognizes, recovery of a ghost gun is usually in connection with the commission of another crime. Moreover, possessing a firearm that does not have a valid serial number or mark of identification is a separate offense which can also be charged. (Pen. Code, § 23920, subd. (b).) And changing, altering, removing, or obliterating the identification markers on a firearm, whether assigned by the DOJ or placed there by the manufacturer, is another distinct crime. (Pen. Code, § 23900.)

   Besides these stand-alone offenses related to ghost guns, the conduct addressed by this bill can often be further enhanced by any number of existing sentence enhancements. The punishments can range from one year for committing a felony while armed with a firearm to a life term for committing specified felonies and intentionally discharging a firearm resulting in great bodily injury or death. (See e.g., Pen. Code, §§ 12022, subd. (a), & 12022.53, subd. (d).) "Often the enhancement for gun use is longer than the sentence for the crime itself. For example, in the case of second-degree robbery, a person could serve a maximum of five years for the robbery and an extra 10 years for brandishing a gun during the robbery, even if the gun was unloaded or otherwise inoperable." (California Budget and Policy Center (2015) *Sentencing in California: Moving Toward a Smarter, More Cost-Effective Approach.*)

Thus, in the event that a person who possesses a ghost gun uses it in the commission of another crime, that person will already face punishment for that other more serious crime as well as likely face punishment for a gun-use enhancement. Accordingly, the proposed increased criminal penalties for use of a ghost gun during the commission of a crime are unlikely to have the desired impact.

According the U.S. Department of Justice, "Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not 'chasten' individuals convicted of crimes, and prisons may exacerbate recidivism." (National Institute of Justice, U.S. Department of Justice, Five Things About Deterrence (June 5, 2016) https://nij.ojp.gov/topics/articles/five-things-about-deterrence [as of Dec. 28, 2023]) As such, increasing the penalty for ghost gun possession is unlikely to deter criminal conduct or reduce the prevalence of ghost guns in our communities.

3) **Judicial Discretion to Strike Enhancements**: Penal Code section 1385 specifies that a judge may, in furtherance of justice, order an action to be dismissed. That provision has been interpreted to allow courts broad discretion to strike enhancements in order to provide individualized sentencing to a defendant. "Section 1385 has long been recognized as an essential tool to enable a trial court 'to properly individualize the treatment of the offender.'" (*People v. Tanner* (1979), 24 Cal.3d 514, 530.) "It was designed to alleviate 'mandatory, arbitrary or rigid sentencing procedures [which] invariably lead to unjust results.'" (*People v. Dorsey* (1972), 28 Cal.App.3d 15, 18.) "Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case. Only the trial judge has the knowledge, ability and tools at hand to properly individualize the treatment of the offender." (*People v. Williams* (1970) 30 Cal.3d 470, 482, citation and internal quotation marks omitted.) One of the purposes of Section 1385 is to ensure that sentences are proportional to a defendant's conduct.

   Effective January 1, 2022, SB 81 (Skinner) Chapter 721, Statutes of 2021, Penal Code section 1385, subdivision (c) provides that a court "shall dismiss" an enhancement if it is in the furtherance of justice to do so, unless any initiative statute prohibits such action, and unless dismissal endangers public safety. (See *People v. Mendoza* (2023) 88 Cal.App.5th 427 [section 1385, subdivision (c)(2)(C) does not mandate dismissal of an enhancement that could result in a sentence over 20 years where the trial court finds dismissal would endanger public safety].)

   In exercising discretion under section 1385, subdivision (c), the court must give great weight to evidence offered by the defendant to prove any of mitigating circumstances, unless the court finds that dismissal would endanger public safety. Examples of mitigating circumstances include: where the enhancement would result in discriminatory racial impact; where multiple enhancements are alleged in a single case; where the enhancement could result in a sentence exceeding 20 years; and where the enhancement is based on a prior conviction that is over five years old.

   This bill eliminates judicial authority under Penal Code section 1385, subdivision (c) to dismiss the proposed ghost gun enhancement. This bill specifies that the ghost gun enhancements must be imposed notwithstanding any discretion the trial court has to dismiss

the enhancements under the provision of law.

4) **Limitations on Imposition of Firearm Enhancements**: Two statutes limit the imposition of more than one firearm enhancement when two or more enhancements for being armed with, or using, a firearm have been plead and proven in conjunction with commission of a single offense, and require the sentencing judge to impose sentence on the firearm enhancement with the longer sentence. First, there is a general limitation on enhancements for being armed with or using a dangerous or deadly weapon or a firearm in the commission of most offenses (See Pen. Code, § 1170.1, subds. (f).) Second, there is a similar limitation in the "Use of a Gun and You're Done" Law which applies only to the offenses covered by that law. (Pen. Code, § 12022.53, subd. (f).)

   Despite this longstanding rule of sentencing, this bill would allow the court to stack the punishment for firearm enhancements due to the fact that the firearm does not have a serialized number. Specifically, this bill states that notwithstanding Penal Code section 1170.1, subdivision (f), the ghost gun use enhancements may be imposed in addition to other enhancements for being armed with or using a dangerous or deadly weapon or firearm. However, because the bill does not specifically exclude the limitation in the "Use of a Gun and You're Done" Law, the ghost gun use enhancement could not be stacked when a section 12022.53 enhancement is imposed.

5) **Penal Code Section 654 Limitation on Double Punishment**: Penal Code section 654 provides, in relevant part, that "[a]n act or omission that is punishable in different ways by different provisions of law may be punished under either of such provisions, but in no case shall the act or omission be punished under more than one provision."

   Penal Code section 654 was enacted to prohibit double punishment of a single act that violates multiple statutes. The prohibition is on double punishment, not double conviction. (*People v. Johnson* (1966) 242 Cal.App. 2d 870, 876.) The prohibition applies even if the punishments were to be run concurrently. (*People v. Diaz* (1967) 66 Cal.2d 801, 807.)

   In *People v. Ahmed* (2011) 53 Cal.4th 156, the California Supreme Court addressed the question of whether Penal Code section 654 prohibits imposition of more than one enhancement for the same underlying criminal act. The court noted that "enhancements are different from substantive crimes" in that they often "focus on aspects of the criminal act that are not always present and warrant additional punishment." (*People v. Ahmed*, *supra*, 53 Cal.4th at p. 163, fn. omitted.) This difference "affects how section 654 applies to enhancements." (*Ibid.*) The court explained how to determine whether any of multiple sentence enhancements for a single crime must be stayed.

   As a preliminary matter, the court noted that there are two types of enhancements: those which enhance a sentence due to the defendant's status, and those which arise from the circumstances of the crime. (*People v. Ahmed*, *supra*, 53 Cal.4th at p. 161.) The court reiterated its prior holding in *People v. Coronado* (1995) 12 Cal.4th 145, that section 654 does not apply to the first type of enhancement—those that go to the nature of the offender. (*Id.* at p. 162.)

   With regards to enhancements concerning the circumstances of the crime, the court observed that "often the sentencing statutes themselves will supply the answer whether multiple

enhancements can be imposed." (*People v. Ahmed*, *supra*, 53 Cal.4th at p. 163.) Only if the specific statute itself does not provide the answer, should the court turn to section 654." (*Ibid.*) The court held that "as a default, section 654 does apply to enhancements when the specific statutes do not provide the answer." The court reasons that section 654's language states that it applies to "provisions of law" under which an "act or omission" is "punishable," and this language would encompass enhancements. (*Ibid.*)

When applying section 654 to enhancements, the court found it significant that while substantive crimes define criminal acts, enhancements focus on different aspects of the criminal acts. (P*eople v. Ahmed*, *supra*, 53 Cal.4th at pp. 163-164.) The court held that "when applied to multiple enhancements for a single crime, section 654 bars multiple punishment for enhancements the same *aspect* of a criminal act." (*Id.* at p. 164.) The court noted as an example of separate enhancements that focus on the same aspect of a criminal act numerous weapons enhancements, and specifically cited to several firearm-use enhancements. (*Ibid.*)

Thus, under the Supreme Court's holding in *Ahmed*, *supra*, 53 Cal.4th 156, Penal Code section would prohibit the imposition of one of the newly created ghost-gun-use enhancement and another firearm-use enhancement because otherwise that would result in multiple punishment for the same aspect of the criminal act- using a firearm.

6) **Enhancements and Proposition 57**: Proposition 57, the Public Safety and Rehabilitation Act of 2016, created a process for parole consideration for eligible people convicted of nonviolent crimes. Those who demonstrate that their release would not pose an unreasonable risk of violence to the community may be eligible for release upon serving the full term of their primary offense when an alternative sentence has been imposed. This effectively means that people who are eligible for consideration for parole release under Proposition 57 may be released prior to serving the time added by a sentence enhancement if they do not present a risk to public safety.

   Proposition 57 adopted California Constitution, Article I, section 32, which states:

   > (a)(1) Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.
   > (A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.
   > ....
   > (b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

Nonviolent offender parole eligibility is based on a person's current convictions. (*In re Gadlin* (2020) 10 Cal.5th 915, 943.) CDCR regulations define a "violent felony" for purposes of early parole consideration as a crime or enhancement listed in Penal Code section 667.5, subdivision (c). (Cal. Code Regs., tit. 15, § 3490, subd. (c)). The ballot materials provide support for this interpretation. (See *In re Mohammad* (2022) 12 Cal.5th

518, 542.) In its classification of "violent felony," Penal Code 667.5 includes "any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of [Penal Code] Section 12022.3, or Section 12022.5 or 12022.55." (Pen. Code, § 667.5, subd. (c)(8).)

This bill creates new enhancements which, while related to being armed with or using a firearm, would not render an offense a violent felony under Penal Code section 667.5. So, as a practical matter, a person committing a non-violent felony would be eligible for Proposition 57 non-violent offender parole and would not necessarily serve the sentence for the enhancement despite their mandatory nature.

7) **Frequency of Imposition of Firearm Enhancements**: According to the 2020 Annual Report by the Committee on the Revision of the Penal Code, over 80% of the people sentenced to state prison are serving a sentence lengthened by an enhancement, with some of the most common enhancements including firearm-use enhancements. (See Annual Report and Recommendations 2020, Committee on Revision of the Penal Code, at p. 37-38, http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf [as of Dec. 29, 2023].)

More recent research conducted by the California Policy Lab at the University of California and the Committee on Revision of the Penal Code, as of July 2022, shows that individuals incarcerated at CDCR were serving the following numbers of the most common firearm enhancements:

PC 12022(a)	Armed with a Firearm	3,364
PC 12022.5(a)	Use of a Firearm	15,231
PC 12002.53(b)	Use of a Firearm	11,745
PC 12002.53(c)	Discharge of a Firearm	3,908
PC 12002.53(d)	Discharge Causing Great Bodily Injury or Death	8,168

(See M. Bird et al., *Sentence Enhancements in California*, March 2023, p. 50. Table B-2, https://www.capolicylab.org/sentence-enhancements-in-california/ [as of Dec. 28, 2023].)

"Sentence enhancements are more likely to be applied to men. Black people and American Indian individuals are the most likely to be receive enhanced sentences, followed by Hispanic people, White people, and Asian or Pacific Islander people." (*Id.* at p. 3.)

8) **Argument in Support**: According to the *California State Sheriffs' Association*, "Commencing on January 1, 2024, individuals in California will be prohibited from using or possessing firearms without a valid state or federal serial number or mark of identification, otherwise known as "ghost guns." Currently, California has a number of statutes that provide sentence enhancements for defendants who are convicted of possessing a firearm in the

commission of certain felonies.

"AB 758 ensures that individuals found in possession of "ghost guns" in the commission of a felony receive a similar penalty to those who commit a felony with a registered, serialized firearm."

9) **Argument in Opposition**: According to the *California Public Defenders Association*, "While eliminating so called 'ghost guns' is a worthy endeavor, imprisoning more Californians is not the solution. We have already seen what mass incarceration has done to black and brown Californians and their families. Resources were diverted to imprison people, while California schools, health care and housing went wanting for adequate funding.

   "Adopting a public health approach to the pandemic of guns in our state would be more cost effective and humane. California has reduced smoking by a combination of taxes on cigarettes, bans on smoking in public spaces and education. Such a multi-pronged strategy should be employed to reduce the number of ghost guns in California.

   "Also, the Legislature should consider allowing individuals to bring public nuisance lawsuits against individuals and companies who manufacture ghost guns or ghost gun manufacturing equipment. Serious financial penalties are more likely to deter these individuals and their companies than criminal penalties against the unwitting individual who possesses such a weapon.

   "AB 758 is not needed. There are already sufficient penalties for any individual who commits a crime while armed with any kind of firearm or using a firearm. These penalties range from an addition year in county jail or state prison to 25 years to life in state prison depending on the seriousness of the offense."

10) **Prior Legislation**:

    a) AB 27 (Ta), of the 2023-2024 Legislative Session, would have exempted specified firearm enhancements from the provision of law that states a court shall dismiss an enhancement if it is in the furtherance of justice and does not endanger public safety. AB 27 failed passage in this committee.

    b) AB 97 (Rodriguez), Chapter 233, Statutes of 2023, requires the DOJ to report data on arrests and prosecutions of specified misdemeanor offenses related to unserialized firearms.

    c) AB 328 (Essayli), of the 2023-2024 Legislative Session, would have prohibited the court from dismissing an enhancement for personal use of a firearm in the commission of certain violent crimes, except when the person did not personally use or discharge the firearm or when the firearm was unloaded. AB 328 failed passage in this committee and reconsideration was refused.

    d) AB 1509 (Lee), of the 2021-2022 Legislative Session, would have repealed several firearm enhancements, reduced the penalty for using a firearm in the commission of specified crimes from 10 years, 20 years, or 25-years-to-life to one, two or three years, and authorized recall and resentencing for a person serving a term for these

enhancements. AB 1509 was held in the Assembly Appropriations Committee.

e) SB 620 (Bradford), Chapter 682, Statutes of 2017, allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles County Professional Peace Officers Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Oppose

California Public Defenders Association
Drug Policy Alliance
Ella Baker Center for Human Rights
Initiate Justice Action
San Francisco Public Defender
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy

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

Date of Hearing: January 9, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1260 (Joe Patterson) – As Amended April 6, 2023

Vote Only

As Proposed to be Amended in Committee

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to determine the minimum eligible parole date for an incarcerated person and to make a new determination whenever the awarding, denying, or revoking of credits would result in an incarcerated person's minimum eligible parole date changing by more than six months. Specifically, **this bill**:

1) Requires CDCR to make an initial determination of the minimum eligible parole date for an incarcerated person based on the sentence of the court, any credits awarded, and the good conduct credit rate established under Proposition 57.

2) Requires CDCR to make a determination of the new release date if, after the initial determination by the department, the department additionally awards to, denies to, or revokes from an incarcerated person the credits, or makes a change in the good conduct credit rate under Proposition 57 and the award denial, revocation, or change would result in an incarcerated person's minimum eligible parole date changing more than six months.

3) Requires CDCR to post the new release date on the public inmate locator system.

EXISTING LAW:

1) Provides that any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for their primary offense. (Cal. Const. art. I, § 32, subd. (a)(1).)

2) Defines "full term for the primary offense" as the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence. (Cal. Const. art. I, § 32, subd. (a)(1)(A).)

3) Authorizes the CDCR to award credits earned for good behavior and approved rehabilitative or education achievements. (Cal. Const. art. I, § 32, subd. (a)(2).)

4) States that CDCR shall adopt regulations in furtherance of these provisions, and the Secretary of CDCR shall certify that these regulations protect and enhance public safety. (Cal. Const. art. I, § 32. subd. (b).)

5) Provides that an incarcerated person, unless otherwise precluded, is eligible to receive good conduct, rehabilitation, and/or education credits to advance the incarcerated person's release date if sentenced to a determinate term or to advance an incarcerated person's initial parole hearing date if sentenced to an indeterminate term with the possibility of parole. (Pen. Code, §§ 2931, 2933 & 2933.05; see also 15 CCR § 3043, et seq.)

6) Provides that for every six months of continuous state prison custody, an incarcerated person shall be awarded credit reductions from their term of confinement of six months. (Pen. Code, § 2933, subd. (b).)

7) Specifies that credit should be awarded pursuant to regulations adopted by the Secretary of CDCR, but that under no circumstances shall any incarcerated person receive more than six months' credit reduction for any six-month period. (Pen. Code, § 2933, subd. (b).)

8) Authorizes CDCR to award an incarcerated person program credit reductions from their terms of confinement. (Pen. Code, § 2933.05, subd. (a).)

9) Prohibits an incarcerated person from having their term of imprisonment reduced by more than six weeks for program credits awarded during any 12-month period of continuous confinement. (Pen. Code, § 2933.05, subd. (a).)

10) Provides that program credit is a privilege, not a right, but that incarcerated persons shall have a reasonable opportunity to participate in program credit qualifying assignments in a manner consistent with institutional security and available resources. (Pen. Code, § 2933.05, subd. (b).)

11) States that, notwithstanding any other law, any person who is convicted of a violent felony offense, as specified, shall accrue no more than 15 percent of worktime custody credit. (Pen. Code, § 2933.1, subd. (a).)

12) Specifies that for defendants sentenced to state prison with a strike prior the total amount of credits awarded shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison. (Pen. Code, § 667, subd. (c)(5).)

13) Authorizes the Secretary of CDCR to grant up to 12 additional months of reduction of the sentence to an incarcerated person who has performed a heroic act in a life-threatening situation, or who has provided exceptional assistance in maintaining the safety and security of a prison. (Pen. Code, § 2935; 15 CCR § 3043.6, subd. (a), et seq.)

14) Specifies that, for each four-day period in which a incarcerated person is confined in or committed to a facility, as specified, one day shall be deducted from the incarcerated person's period of confinement unless it appears by the record that the incarcerated person has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp. (Pen. Code, § 4019, subd. (b).)

15) Specifies that for each four-day period in which a incarcerated person is confined in or committed to a facility, as specified, one day shall be deducted from the incarcerated person's period of confinement unless it appears by the record that the incarcerated person

has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp. (Pen. Code, § 4019, subd. (c).)

16) Provides that incarcerated persons who comply with CDCR regulations and rules and perform the duties assigned to them shall be eligible to earn Good Conduct Credit, as specified. (15 CCR § 3043, subd. (a).)

17) Provides, that unless otherwise precluded, all inmates who participate in approved rehabilitative programs and activities, including inmates housed in restricted housing units or in other restricted housing, shall be eligible and have a reasonable opportunity, as specified, to earn Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit, as specified. The award of these credits, as well as Extraordinary Conduct Credit, shall advance an inmate's release date if sentenced to a determinate term, or advance an inmate's initial parole hearing date if sentenced to an indeterminate term with the possibility of parole. (15 CCR § 3043, subd. (a); 15 CCR § 3043, subd. (b).)

18) Provides that inmates who do not comply with CDCR regulations and rules or who do not perform the duties assigned to them shall be subject to credit forfeiture, as specified. (15 CCR § 3043, subd. (a).)

19) Provides that no credit shall be awarded for incomplete, partial, or unsatisfactory participation in the credit earning programs or activities, nor shall credit be awarded for diplomas, degrees, or certificates that cannot be verified after due diligence by CDCR staff. (15 CCR §3043, subd. (b).)

20) Provides that, from April 13, 2017 until April 30, 2019, under no circumstance was a determinately sentenced inmate to be awarded credit or have credit restored by CDCR which advances their release to a date less than 60 calendar days from the date the award or restoration of such credit is entered into CDCR's information technology system, except pursuant to a court order. (15 CCR § 3043, subd. (c)(1).)

21) Provides that, commencing on May 1, 2019, under no circumstance shall a determinately sentenced inmate be awarded credit or have credit restored by CDCR which advances their release to a date less than 15 calendar days from the date the award or restoration of such credit is entered into CDCR's information technology system, except pursuant to a court order or unless the inmate has been convicted of specified offenses, in which case the restriction shall instead be 45 instead of 15 calendar days. (15 CCR § 3043, subd. (c).)

22) Provides that the award of Good Conduct Credit requires that an inmate comply with CDCR regulations and local rules of the prison and perform the duties assigned on a regular and satisfactory basis. (15 CCR § 3043.2, subd. (a), et seq.)

23) Provides for Milestone Completion Credit for achievement of a distinct objective of approved rehabilitative programs, including academic programs, social life skills programs, Career Technical Education programs, Cognitive Behavioral Interventions (CBI) programs, Enhanced Outpatient Program group module treatment programs, or other approved programs with similar demonstrated rehabilitative qualities. (15 CCR § 3043.3, subd. (a), et

seq.)

24) Provides for Rehabilitative Achievement Credit for verified attendance and satisfactory participation in approved group or individual activities which promote the educational, behavioral, or rehabilitative development of the person. To qualify for credit, the purpose, expected benefit, program materials, and membership criteria of each proposed activity, as well as any affiliations with organizations or individuals outside of CDCR, must be pre-approved by the institution. (15 CCR § 3043.4, subd. (a), et seq.)

25) Provides for Educational Merit Credit for achievement of a significant academic accomplishment, specifically the achievement of an accredited high school diploma (or high school equivalency), a collegiate degree (at the associate, bachelor, or post-graduate level), or a professional certificate as an Alcohol and Drug Counselor. (15 CCR § 3043.5, subd. (a), et seq.)

26) Provides that, in addition to other specified limitations, the sentencing and release actions, including the month and year of current parole eligibility date, be released by CDCR without a valid written authorization from the incarcerated person or parolee to the media or to the public. (15 CCR § 3261.2, subd. (e)(11).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Proposition 57 gave incredible latitude to CDCR when it comes to 'good conduct' credits. By regulation, CDCR is able to change they [sic] way it calculates 'good conduct' credits and provides them with immense flexibility on releasing inmates. In some instances, inmates are released from prison to the surprise of District Attorneys and victims. This is what happened with a recent mass shooting and murder in Sacramento, right around the corner from the Capitol.

   "Despite a website outlining current regulations pertaining to the calculation of credits, District Attorneys have told my office that they are unable to replicate CDCR's calculations and CDCR will not disclose to DAs or victims how 'good conduct' credits are awarded in individual cases.

   "DAs, victims and policy makers deserve to know how these credits are being calculated. While an argument could be made that this information should be available via a public records request, AB 1260 is narrowly tailored to provide this information to the people who have a right to know."

2) **Need for this Bill:** This bill would require CDCR to make an initial determination of the minimum eligible parole date for an incarcerated person based on the sentence of the court, any credits awarded, and the good conduct credit rate established under Proposition 57. It also would require CDCR to make a determination of the new release date if, after the initial determination by the department, the department additionally awards to, denies to, or revokes from an incarcerated person the credits, or makes a change in the good conduct credit rate under Proposition 57 and the award denial, revocation, or change would result in an incarcerated person's minimum eligible parole date changing more than six months. Further,

as proposed to be amended, this bill also would require CDCR to post the new release date on the public inmate locator system.

3) **Public Disclosure of Incarcerated Person Data Under CPRA**: On November 8, 2016, Californians voted on whether to increase rehabilitation services and decrease the state's prison population by approving Proposition 57. Known as The Public Safety and Rehabilitation Act of 2016, Proposition 57 proposed, among other things, to authorize CDCR to award sentence credits for rehabilitation, good behavior, and education. It required CDCR to pass regulations to that effect. (https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf.) Voters approved Proposition 57 by a margin of nearly 30 points.(https://ballotpedia.org/California_Proposition_57,_Parole_for_Non-Violent_Criminals_and_Juvenile_Court_Trial_Requirements_(2016).) And, as required, CDCR has since issued regulations to effectuate the proposition's purpose. (Cal. Const., Art. I, § 32, subd. (b); 15 CCR § 3043, *et seq.*)

   The CPRA provides that every person or entity in California has a right to access information concerning the conduct of the people's business. (Gov. Code, §7921.000; Cal. Const., Art. I, § 3, subd. (b)(1).) Despite the public's fundamental right to access public records, the California Constitution also provides people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., Art. I, § 1.) The CPRA provides that the inalienable right to privacy under California Constitution may exempt certain records, or portions thereof, from disclosure under the Act. (Gov. Code, §7930.000.) It specifically states that Penal Code sections 11076 and 13202 may operate to exempt criminal offender record information, or portions thereof, from disclosure. (Gov. Code, § 7930.130.)

   CDCR has issued regulations governing the disclosure of information relating to an incarcerated person. Specifically, CDCR regulations state, "[T]he only inmate or parolee data which may be released without a valid written authorization from the inmate or parolee to the media or to the public" includes their name, age, race and/or ethnicity, birthplace, count of last legal residence, commitment offense, date of admission, facility assignment, a general description of behavior, a short and general description of an inmate's health or manner of death, and the month and year of their release. (15 CCR § 3261.2(e)(1)-(11).)

   As noted above, as amended, this bill would require CDCR to update on the public inmate locator system the month and year of current parole eligibility date whenever an incarcerated person's release date has changed by more than six months, which does not conflict with existing regulations.

4) **Notice of Release for Victims of Crime:** Proponents of the bill claim, "In some instances, inmates are released from prison to the surprise of…victims." Under California's Victims' Bill of Rights, victims have the right "[t]o be informed, upon request, of…the scheduled release date of the defendant, and the release of or the escape by the defendant from custody." Accordingly, CDCR permits victims of crime to request notification when there is a change of custody status of an offender, including when an offender is released, is scheduled for a parole hearing, or is discharged on parole. (https://www.cdcr.ca.gov/victim-services/application/) Under certain circumstances, a victim is entitled to request input into special conditions of parole, such as requesting that a parolee not be allowed to live within 35 miles of the victim's residence or that the parolee be prohibited from contacting the victim. (*Ibid.*) The committee has not received any information indicating that victims have not been

notified of changes to an offender's status when a request for such notification has been made.

5) **Argument in Support**: Letters no longer applicable.

6) **Argument in Opposition**: Letters no longer applicable.

7) **Related Legislation**: AB 15 (Dixon), would provide that CDCR records pertaining to an incarcerated persons release date and what an incarcerated person did to earn release credits are public records subject to disclosure under the CPRA. AB 15 failed passage in this committee, but was granted reconsideration. It will be heard in committee today.

8) **Prior Legislation**:

   a) SB 359 (Umberg), of the 2023-2024 Legislative Session, would have required CDCR to compile data related to credits awarded to incarcerated persons, as specified, and to submit an annual report to the Legislature on or before January 1, 2025. SB 359 failed passage in this committee.

   b) SB 345 (Bradford), of the 2017-2018 Legislative Session, would have required CDCR, among others, to the extent not prohibited by the CPRA, to conspicuously post on their Internet website, in a searchable manner, all current standards, policies, practices, operating procedures, and education and training materials. Governor Brown vetoed SB 345.

REGISTERED SUPPORT / OPPOSITION:

Support

(EM)power + Resilience Project
Arcadia Police Officers' Association
Be the Solution (BTS) Commission
Burbank Police Officers' Association
California District Attorneys Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Placer County District Attorney's Office
Pomona Police Officers' Association

Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

ACLU California Action
California for Safety and Justice
California Public Defenders Association
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Initiate Justice
Initiate Justice Action
San Francisco Public Defender
The Transformative In-prison Workgroup
Uncommon Law
Young Women's Freedom Center

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Amended Mock-up for 2023-2024 AB-1260 (Joe Patterson (A))

Mock-up based on Version Number 98 - Amended Assembly 3/13/23
Submitted by: Andrew Ironside, Assembly Public Safety Committee

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

SECTION 1. Section 2937 is added to the Penal Code, to read:

2937. (a) ~~(1)~~ The department shall make an initial determination of the minimum eligible parole date for an inmate based on the sentence of the court, any credits awarded, and the good conduct credit rate established pursuant to this article and regulations promulgated pursuant to Section 32 of Article I of the California Constitution.

~~(2) The department shall post on its internet website all of the following:~~

~~(A) The length of the sentence imposed by the court.~~

~~(B) The amount of time the sentence was changed by each category of credit awarded or by a change in the good conduct credit rate established pursuant to this article or regulations promulgated pursuant to Section 32 of Article I of the California Constitution.~~

~~(C) The percentage of the length of the sentence that the inmate is expected to serve compared to the original sentence.~~

~~(D) The expected minimum eligible parole date pursuant to paragraph (1).~~

(b) (1) If, after the initial determination by the department, the department additionally awards to, denies to, or revokes from an inmate the credits, or makes a change in the good conduct credit rate pursuant to this article or regulations promulgated pursuant to Section 32 of Article I of the California Constitution and the award, denial, revocation, or change would result in an inmate's minimum eligible parole date changing more than six months, the department shall make a determination of the new release date.

(2) The department shall post the new release date on the public inmate locator system.

~~(2) The department shall notify the district attorney and law enforcement in the county in which the inmate was convicted and the county in which the inmate is expected to be released, if the county in which the inmate is expected to be released is known by the department of, all of the following:~~

~~(A) The length of the sentence imposed by the court.~~

~~(B) The length of time the sentence was changed by each category of credit awarded, denied, or revoked, or by a change in the good conduct credit rate pursuant to this article or regulations promulgated pursuant to Section 32 of Article I of the California Constitution.~~

~~(C) The percentage of the length of the sentence that the inmate is expected to serve compared to the original sentence.~~

~~(D) The expected minimum eligible parole date pursuant to paragraph (1).~~

~~**SEC. 2.** Section 3003 of the Penal Code, as added by Section 2 of Chapter 826 of the Statutes of 2022, is amended to read:~~

~~**3003.** (a) Except as otherwise provided in this section, an inmate who is released on parole or postrelease community supervision as provided by Title 2.05 (commencing with Section 3450) shall be returned to the county that was the last legal residence of the inmate prior to the inmate's incarceration. An inmate who is released on parole or postrelease community supervision as provided by Title 2.05 (commencing with Section 3450) and who was committed to prison for a sex offense for which registration is required pursuant to Section 290, shall, through all efforts reasonably possible, be returned to the city that was the last legal residence of the inmate prior to incarceration or a close geographic location in which the inmate has family, social ties, or economic ties and access to reentry services, unless return to that location would violate any other law or pose a risk to the inmate's victim. For purposes of this subdivision, "last legal residence" shall not be construed to mean the county or city wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.~~

~~(b) Notwithstanding subdivision (a), an inmate may be returned to another county or city if that would be in the best interests of the public. If the Board of Parole Hearings imposing conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county or city, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:~~

~~(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.~~

~~(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.~~

~~(3) The verified existence of a work offer, or an educational or vocational training program chosen by the inmate in another county.~~

~~(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.~~

~~(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960 in the county of last legal residence.~~

~~(6) The existence of a housing option in another county, including with a relative or acceptance into a transitional housing program of choice.~~

~~(c) (1) The Department of Corrections and Rehabilitation, in determining an out-of-county commitment pursuant to this section, shall give priority to the safety of the community and any witnesses and victims.~~

~~(2) Absent evidence that parole transfer would present a threat to public safety, the inmate shall be released to the county in the location of a verified existence of a postsecondary educational or vocational training program of the inmate's choice, or of a verified existence of a work offer, the inmate's family, outpatient treatment, or housing. The burden of verifying the existence of an educational or vocational training program or a work offer shall be on the person on parole. The Department of Corrections and Rehabilitation shall complete the parole transfer process prior to release and ensure the person is released from prison directly to the county where the postsecondary educational or vocational training program chosen by the inmate, or the work offer, the inmate's family, outpatient treatment, or housing is located. This paragraph shall not apply to placement and participation in a transitional housing program during the first year after release pursuant to a condition of parole imposed by the Board of Parole Hearings upon granting parole at a hearing conducted under Article 3 (commencing with Section 3040).~~

~~(3) Absent evidence that travel outside of the county of commitment would present a threat to public safety, a person on parole shall be granted a permit to travel outside the county of commitment to a location where the person has postsecondary educational or vocational training program opportunities, including classes, conferences, or extracurricular educational activities, an employment opportunity, or inpatient or outpatient treatment. A parole agent shall provide a written response of their decision within 14 days after receiving the request for a travel permit. If the parole agent denies the request for an out-of-county travel permit, they shall include in writing the reasons the travel would present a threat to public safety.~~

~~(4) Absent evidence that transfer to a county outside the county of commitment would present a threat to public safety, a person on parole shall be granted approval of an application to transfer residency and parole to another county where the person has a verified existence of a postsecondary educational or vocational training program chosen by the inmate, or a verified existence of a work offer, the person's family, inpatient or outpatient treatment, or housing. The burden of verifying the existence of an educational or vocational training program or a work offer shall be on the person on parole. A parole agent shall provide a written response of their decision within 14 days after receiving the request for the transfer application. If the parole agent denies the application for a transfer of parole to another county, they shall include in writing the reasons~~

~~the transfer would present a threat to public safety. This paragraph shall not apply to placement and participation in a transitional housing program during the first year after release pursuant to a condition of parole imposed by the Board of Parole Hearings upon granting parole at a hearing conducted under Article 3 (commencing with Section 3040).~~

~~(5) The department and probation officers may extend paragraphs (2) through (4), inclusive, to individuals released on postrelease community supervision. The Legislature finds and declares that the department and probation officers are strongly encouraged to apply this paragraph to individuals released on postrelease community supervision.~~

~~(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall release the inmate to the county where the joint venture program employer is located if that employer states to the paroling authority that the employer intends to employ the inmate upon release.~~

~~(e) (1) When a person is scheduled to be paroled or placed on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450), the Department of Corrections and Rehabilitation shall, no later than 30 days prior to the scheduled parole date of the inmate, send to the local law enforcement agencies and the district attorney in both the county in which the inmate was convicted and in which the inmate is scheduled to be released all of the following information regarding the person:~~

~~(A) Last, first, and middle names.~~

~~(B) Birth date.~~

~~(C) Sex, race, height, weight, and hair and eye color.~~

~~(D) Date of parole or placement on postrelease community supervision and discharge.~~

~~(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.~~

~~(F) California Criminal Information Number, FBI number, social security number, and driver's license number.~~

~~(G) County of commitment.~~

~~(H) A description of scars, marks, and tattoos on the inmate.~~

~~(I) Offense or offenses for which the inmate was convicted that resulted in parole or postrelease community supervision in this instance.~~

~~(J) Address, including all of the following information:~~

~~(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.~~

~~(ii) City and ZIP Code.~~

~~(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.~~

~~(K) Contact officer and unit, including all of the following information:~~

~~(i) Name and telephone number of each contact officer.~~

~~(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.~~

~~(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.~~

~~(M) A geographic coordinate for the inmate's residence location for use with a Geographical Information System (GIS) or comparable computer program.~~

~~(N) Information regarding the term of imprisonment, including all of the following:~~

~~(i) The length of the sentence imposed by the court.~~

~~(ii) The amount of time the sentence was changed by each category of credit awarded, denied, or lost, or by changes in the good conduct credit rate pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 or regulations promulgated pursuant to Section 32 of Article I of the California Constitution.~~

~~(iii) The percentage of the length of the sentence that the inmate has served compared to the original sentence.~~

~~(2) Unless the information is unavailable, the Department of Corrections and Rehabilitation shall electronically transmit to the county agency identified in subdivision (a) of Section 3451 the inmate's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto postrelease community supervision pursuant to Section 3450, for the purpose of identifying the medical and mental health needs of the individual. All transmissions to the county agency shall be in compliance with applicable provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191), the federal Health Information Technology for Economic and Clinical Health Act (HITECH) (Public Law 111-005), and the implementing of privacy and security regulations in Parts 160 and 164 of Title 45 of the Code of Federal Regulations. This paragraph shall not take effect until the Secretary of the United States Department of Health and Human Services, or the secretary's designee, determines that this provision is not preempted by HIPAA.~~

~~(3) Except for the information required by paragraph (2), the information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.~~

~~(4) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.~~

~~(5) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.~~

~~(f) Notwithstanding any other law, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of the victim or witness, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, any of the following crimes:~~

~~(1) A violent felony as defined in paragraphs (1) to (7), inclusive, and paragraphs (11) and (16) of subdivision (c) of Section 667.5.~~

~~(2) A felony in which the defendant inflicts great bodily injury on a person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9.~~

~~(3) A violation of paragraph (1), (3), or (4) of subdivision (a) of Section 261, subdivision (f), (g), or (i) of Section 286, subdivision (f), (g), or (i) of Section 287 or of former Section 288a, or subdivision (b), (d), or (e) of Section 289.~~

~~(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of the inmate's parole, within one-half mile of a public or private school including any or all of kindergarten and grades 1 to 12, inclusive.~~

~~(h) Notwithstanding any other law, an inmate who is released on parole or postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim's or witness' actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole or postrelease community supervision, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the supervising county agency, as applicable, finds that there is a need to protect the life, safety, or well being of the victim. If an inmate who is released on postrelease community supervision cannot be placed in the inmate's county of last legal residence in compliance with this subdivision, the supervising county agency may transfer the inmate to another county upon approval of the receiving county.~~

~~(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.~~

~~(j) An inmate may be paroled to another state pursuant to any other law. The Department of Corrections and Rehabilitation shall coordinate with local entities regarding the placement of inmates placed out of state on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450).~~

~~(k) (1) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e). County agencies supervising inmates released to postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) shall provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison. This information may include the issuance of warrants, revocations, or the termination of postrelease community supervision. On or before August 1, 2011, county agencies designated to supervise inmates released to postrelease community supervision shall notify the department that the county agencies have been designated as the local entity responsible for providing that supervision.~~

~~(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.~~

~~(l) In addition to the requirements under subdivision (k), the Department of Corrections and Rehabilitation shall submit to the Department of Justice data to be included in the supervised release file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision. The data required by this subdivision shall be provided via electronic transfer.~~

~~(m) This section shall become operative on January 1, 2024.~~

Date of Hearing: January 9, 2024
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1582 (Dixon) – As Amended January 3, 2024

Vote Only

SUMMARY: Prohibits a youth who is already committed to a secure youth treatment facility (SYTF) from being found ineligible for continued commitment to a SYTF as a result of subsequent adjudicated petitions, but prohibits a court from increasing the youth's current baseline term of confinement based on the subsequent adjudications.

EXISTING LAW:

1) Defines "secure youth treatment facility" as a secure facility that is operated, utilized, or accessed by the county of commitment to provide appropriate programming, treatment, and education for wards having been adjudicated for specified offenses. (Welf. & Inst. Code, § 875, subd. (g)(1).)

2) Provides that, commencing July 1, 2021, the court may order that a ward who is 14 years of age or older be committed to a secure youth treatment facility if the ward meets all of the following criteria:

   a) The juvenile is adjudicated and found to be a ward of the court based on a 707(b) offense that was committed when the ward was 14 years of age or older;

   b) The 707(b) offense is the most recent offense for which the juvenile has been adjudicated; and,

   c) The court has made a finding on the record that a less restrictive alternative disposition for the ward is unsuitable. (Welf. & Inst. Code, § 875, subd. (a).)

3) Requires the court, in making its order of commitment, to set a baseline term of confinement for the ward that is based on the most serious recent offense for which the ward has been adjudicated. (Welf. & Inst. Code, § 875, subd. (b)(1).)

4) Specifies that the baseline term of confinement shall represent the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community and is to be determined according to offense-based classifications that are approved by the Judicial Council, as specified. (Welf. & Inst. Code, § 875, subd. (b)(1).)

5) Provides that for youth transferred from DJJ and committed to a secure youth treatment facility, the baseline term of confinement shall not exceed a youth's projected juvenile parole

board date, as defined. (Welf. & Inst. Code, § 875, subd. (b)(2).)

6) Requires the court, in making its order of commitment, to additionally set a maximum term of confinement for the ward based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the court and as deemed appropriate to achieve rehabilitation. (Welf. & Inst. Code, § 875, subd. (c).)

7) Provides that during the term of commitment, the court must schedule and hold a progress review hearing for the ward not less frequently than once every six months. (Welf. & Inst. Code, § 875, subd. (e)(1)(A).)

8) Allows the court, at the conclusion of each review hearing, to order that the ward remain in custody for the remainder of the baseline term or order that the ward's baseline term or previously modified baseline term be modified downward by a reduction of confinement time not to exceed six months for each review hearing. The court may additionally order that the ward be assigned to a less restrictive program, as provided. (Welf. & Inst. Code, § 875, subd. (e)(1)(A).)

9) Prohibits the ward's confinement time, including time spent in a less restrictive program, to be extended beyond the baseline confinement term, or beyond a modified baseline term, for disciplinary infractions or other in-custody behaviors. (Welf. & Inst. Code, § 875, subd. (e)(2).)

10) Mandates that any infractions or behaviors be addressed by alternative means, which may include a system of graduated sanctions for disciplinary infractions adopted by the operator of a secure youth treatment facility and subject to any relevant state standards or regulations that apply to juvenile facilities generally. (Welf. & Inst. Code, § 875, subd. (e)(2).)

11) States that the court shall, at the conclusion of the baseline confinement term, including any modified baseline term, hold a probation discharge hearing for the ward. At the conclusion of the hearing, the court shall order that the ward be discharged to a period of probation supervision in the community under conditions approved by the court, unless the court finds that the ward constitutes a substantial risk of imminent harm to others in the community if released. (Welf. & Inst. Code, § 875, subd. (e)(3).)

12) Provides that if the court finds the ward constitutes a substantial risk of imminent harm to others in the community, the ward may be retained in custody in a SYTF for up to one additional year of confinement, subject to the review hearing and probation discharge hearing provisions and subject to the maximum term of confinement. (Welf. & Inst. Code, § 875, subd. (e)(3).)

13) Requires the court, if the ward is discharged to probation supervision, to determine the reasonable conditions of probation that are suitable to meet the developmental needs and circumstances of the ward and to facilitate the ward's successful reentry into the community. (Welf. & Inst. Code, § 875, subd. (e)(4).)

14) Requires the court to periodically review the ward's progress under probation supervision and make any additional orders deemed necessary to modify the program of supervision in order to facilitate the provision of services or to otherwise support the ward's successful

reentry into the community. (Welf. & Inst. Code, § 875, subd. (e)(4).)

15) Provides that if the court finds that the ward has failed materially to comply with the reasonable orders of probation, the court may order that the ward be returned to a juvenile facility or less restrictive program for a period not to exceed either the remainder of the baseline term or six months, whichever is longer, and in any case not to exceed the maximum confinement limits. (Welf. & Inst. Code, § 875, subd. (e)(4).)

16) Enumerates 30 serious and violent offenses which permit a juvenile to be transferred to adult court, or be admitted to a SYTF, and previously to DJJ. These include: murder, arson, robbery, specified sex crimes committed by force, specified forms of kidnapping, attempted murder, carjacking, aggravated mayhem, voluntary manslaughter, a felony offense in which the minor personally used a weapon, and others. (Welf. & Inst. Code, § 707, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Juveniles committed to Secure Youth Treatment Facilities (SYTF) cannot be adjudicated of subsequent petitions without interfering with their existing commitment and Individual Rehabilitation Plan. The amendment to AB 1582 would ensure that a minor's commitment to a SYTF cannot be interrupted by subsequent adjudications. The proposed amendment will not result in an increased number of individuals being committed to SYTF, may actually reduce the number of youths subjected to 707(b) transfer hearings, and comports with the overall intent of SB 823 fostering positive youth development, promoting public and community safety and offering fair and flexible terms of commitment."

2) **Juvenile Justice Realignment in California**: Historically CDCR's DJJ housed the majority of the state's juvenile offenders with the number of juveniles housed in these facilities exceeding 15,000 in the 1990's. In 2003, plaintiffs filed a lawsuit, *Farrell v. Hickman* (originally *Farrell v. Harper*), alleging that CDCR was providing inadequate care for minors housed in its facilities. In January 2005, the state and plaintiffs entered into an agreement which committed reforming the state's juvenile justice system to a rehabilitative model.

   In 2007, the Legislature passed SB 81, Chapter 175, Statutes of 2007, known as juvenile justice realignment. The premise was that local authorities were better able than the State to provide rehabilitation for many juvenile offenders. Under this legislation, juvenile courts were prohibited from committing juveniles adjudicated after September 1, 2007, to DJJ unless the adjudication was for certain serious, violent, or sexual offenses.[1] Non-violent offenders housed at DJJ were transferred back to the counties. And in return, counties were provided with funding.

   The Governor's January Budget in 2020 proposed to transfer DJJ to a newly created independent department within the Health and Human Services Agency on July 1, 2020. That approach was intended to align the rehabilitative mission of the state's juvenile justice

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[1] These offenses are referred to as 707(b) offenses because that is the statute in which they are listed.

system with trauma-informed and developmentally appropriate services supported by programs overseen by the state's Health and Human Services Agency. The unprecedented impact of COVID-19 resulted in the withdrawal of this proposal. Subsequently, the May Revision of the Budget proposed to expand on previous efforts to reform the state's juvenile justice system by transferring the responsibility for managing all youthful offenders to local jurisdictions.

SB 823 (Committee on Budget), Chapter 337, Statutes of 2020, included intent language to establish a secure youth treatment facility as a commitment option for youth adjudicated for DJJ eligible offenses by March 1, 2021. SB 823 closed intake at the Division of Juvenile Justice (DJJ) on July 1, 2021.

Effective July 1, 2023, all DJJ facilities have closed. (https://www.cdcr.ca.gov/juvenile-justice/#:~:text=All%20Division%20of%20Juvenile%20Justice,%2C%202023%2C%20per%20SB%20823.&text=The%20Board%20of%20Juvenile%20Hearings,are%20no%20longer%20being%20accepted)

3) **Secure Youth Treatment Facilities (SYTFs)**: SYTFs were created as local custodial options for the custody and care of juveniles who would have previously been sent to DJJ but can longer be committed there because of its closure. A minor can only be committed to an SYTF upon adjudication for a 707(b) offense committed at age 14 or older. As under prior law with regards to DJJ commitments, that 707(b) offense must be the most recent offense for which the minor has been adjudicated. (See Welf. & Inst, Code, §§ 875, subd. (a)(2) & 733.)

   In committing a ward to an SYTF, the court must set a baseline term of confinement "based on the most serious recent offense for which the ward has been adjudicated. The baseline term of confinement shall represent the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community." (Welf. & Inst, Code, § 875, subd. (b)(1).) For youth transferred from DJJ and committed to an SYTF, the baseline term of confinement cannot exceed the youth's projected juvenile parole board date. (Welf. & Inst, Code, § 875, subd. (b)(2).) In making the SYTF commitment, the court must also "set a maximum term of confinement ...based upon the facts and circumstances of the matter or matters that brought or continued the ward under the jurisdiction of the court and as deemed appropriate to achieve rehabilitation." (Welf. & Inst, Code, § 875, subd. (c).) The maximum term of confinement is the longest term a ward may serve, as specified. (*Ibid.*)

   This bill would prohibit a youth who is already committed to an SYTF from being found ineligible for continued commitment to an SYTF as a result of subsequently adjudicated petitions. Presumably, this is directed at non-707(b) offenses, as a subsequent 707(b) adjudication does not render a youth ineligible for an SYTF commitment.

   According to the author's background sheet, "Crimes which predate the commitment but are not discovered or 'solved' prior to the commitment cannot be meaningfully adjudicated. For instance, a youth commits a series of burglaries which remain unsolved until after the commitment to SYTF has been made. The adjudication of the burglaries would necessarily be last in time thereby conflicting with current law and would result in the youth being expelled from the SYTF. Simply adjudicating a non-707(b) offense should not result in the

otherwise needs based commitment to SYTF."

Importantly, the creation of SYTFs did not create a new loophole in the law, as the requirement that the most recent offense be a 707(b) offense in order to commit a minor to the most secure placement is not a new concept. It has been the law since 2007. Moreover, when a minor commits subsequent offenses that are not 707(b) offenses, a prosecutor can move to dismiss the lesser charges to maintain the SYTF commitment pursuant to Welfare and Institutions Code section 782. (See *In re J.B.* (2022) 75 Cal.App.5th 410; see also *In re Greg F.* (2012) 55 Cal.4th 393.)

Allowing the subsequent adjudication of non-707(b) offenses for youth already committed to an SYTF raises concerns it would encourage prosecution of minor offenses that are better dealt with via the internal disciplinary process. In particular, as outlined by the Legislature in Welfare and Institutions Code section 875, subdivision (e)(2), this process prohibits extending the baseline confinement time for disciplinary infractions or other in-custody behaviors. "Any infractions or behaviors shall be addressed by alternative means, which may include a system of graduated sanctions for disciplinary infractions adopted by the operator of a secure youth treatment facility and subject to any relevant state standards or regulations that apply to juvenile facilities generally." (*Ibid.*)

Further, under current law, the SYTF baseline term is subject to change at six-month review hearings, when the court may order either that the ward remain in custody for the remainder of the baseline term, modify the term downward, or order that the ward be assigned to a less restrictive program. (Welf. & Inst. Code, § 875, subd. (e)(1).) At the conclusion of the baseline confinement term, the court is required to hold a probation discharge hearing, at which the court reviews the ward's progress toward meeting their rehabilitation goals. The court "shall order that the ward be discharged to a period of probation supervision . . ., *unless the court finds that the ward constitutes a substantial risk of imminent harm to others in the community if released," in which case the court may retain the ward in custody for an additional year.* (Welf. & Inst. Code, § 875, subd. (e)(3) [emphasis added].)

In other words, there is already a process in place to address behavioral issues. And if the new offense is another 707(b) offense, adjudicating it does not make the youth ineligible for an SYTF commitment.

This bill would also prohibit a court from increasing the youth's current baseline term of confinement based on these subsequently adjudicated petitions. So other than allowing additional offenses to be adjudicated against a youth already committed to an SYTF for a significant amount of time, it is hard to see what this bill would actually accomplish.

4) **Argument in Support**: According to the *District Attorney of Orange County*, the sponsor of this bill, "With the passage of SB 823 (2020) and the closure of the Division of Juvenile Justice, many of the criteria by which courts can commit youth adjudicated of offenses to a SYTF - a 707(b) offense - were simply moved over from the code section that was applicable to DJJ, and one does not make sense for placement in a SYTF. The criteria are intended to be a procedural mechanism crafted to prevent youth who are otherwise amenable to less restrictive dispositions from exposure to more intense forms of supervision. However, one specific criteria is not needed for SYTF commitment and otherwise interferes with the meaningful adjudication and rehabilitation of SYTF eligible youth.

Specifically, the requirement stipulates that a youth offender can only be sentenced to a SYTF if their most recent offense is a 707(b) offense, so any offense committed after that cannot be filed to secure a commitment to a SYTF. A minor offender who commits a series of offenses including a 707(b) offense cannot be prosecuted for any of those offenses that occur after in order to preserve a commitment to a SYTF. Crimes which predate the commitment but are not discovered or "solved" prior to the commitment cannot be meaningfully adjudicated. For instance, a youth commits a series of burglaries which remain unsolved until after the commitment to SYTF has been made. The adjudication of the burglaries would necessarily be last in time thereby conflicting with current law and would result in the youth being expelled from the SYTF.

AB 1582 is needed to correct this inaccuracy. The elimination of § 875(a)(2) will not result in an increased number of individuals being committed to SYTF; rather, it will comport with the overall intent of SB 823 fostering positive youth development, promoting public and community safety, and offering fair and flexible terms of commitment."

5) **Argument in Opposition**: According to the *Pacific Juvenile Defender Center*, "PJDC was pleased to have had a candid conversation with the sponsors of AB 1582 over a month ago, when the current amendments were being contemplated. We appreciate the sponsors and the author's office amending the bill to more narrowly address the sponsors' issue of concern: that youth already committed to SYTF should not have a subsequently-adjudicated while the bill laudably has a narrower focus at this time, we believe in its current form it is unnecessary; inconsistent with the goals of the Legislature's comprehensive scheme for the commitment and housing of youth adjudicated for serious offenses; and fails to address closely related issues relevant to the treatment of youth housed at SYTFs.

   First, it is not clear to us that this bill is necessary. None of our members throughout the state have reported that a client has been *removed* from an SYTF and placed in a less restrictive setting due to an adjudication for a non-§707(b) offense committed while in SYTF custody. One might suggest that that is because prosecutors have declined to file such charges due to the concern that to do so would result in a vacating of the SYTF commitment. But it is not remotely clear that if an adjudication for a non-§707(b) offense were to occur, it would result in the removal of the youth from SYTF. Such a result is counter-intuitive, not required by the statutory scheme, and would find no favor with juvenile bench officers.

   Second, even in amended form, the bill causes harm by encouraging the filing of new charges in lieu of alternative methods of resolving low-level in-custody behaviors. Section 875(e)(2) of the Welfare and Institution Code clearly expresses the Legislature's intent that lower-level problematic behaviors by youth committed to SYTF be handled within the SYTF disciplinary system and the six-month review process.

   The ward's confinement time, including time spent in a less restrictive program described in subdivision (f), shall not be extended beyond the baseline confinement term, or beyond a modified baseline term, for disciplinary infractions or other in-custody behaviors. Any infractions or behaviors shall be addressed by alternative means, which may include a system of graduated sanctions for disciplinary infractions adopted by the operator of a secure youth treatment facility and subject to any relevant state standards or regulations that apply to juvenile facilities generally.

(Welf. & Inst. Code, §875, subd. (e)(2).) In addition to this clear and recent expression of legislative intent, the six-month review process codified in section 875(e)(1) and rule 5.807(c) of the California Rules of Court also provides robust, regular opportunities for the juvenile court to evaluate a youth's in-custody behavior and to deny reductions of the baseline term if the youth has been involved in problematic behaviors while at SYTF, including non-§707(b) criminal behaviors such as getting into a fight. This amendment would instead *encourage* the formal prosecution of such low-level offenses.

Third, AB 1582 fails to address a related issue which, based on reports from our members, is quite real: the filing of *criminal* charges against SYTF youth who are over 18 and who engage in low-level behaviors that can be prosecuted in adult court. We have heard reports of prosecutors in some jurisdictions filing low-level criminal charges against SYTF youth instead of allowing that misconduct to be handled within the SYTF disciplinary system. For example, a fight can result in an adult misdemeanor battery charge, which causes the youth to be removed from SYTF and placed in county jail, thereby disrupting the rehabilitative SYTF commitment. Our current statutory scheme would greatly benefit from clarification that a judicial officer could order a youth remain at SYTF even if the youth has been charged with a criminal offense. This bill does not address that issue, only focusing on youth *under* 18 – a fraction of the youth at SYTFs statewide -- who commit prosecutable offenses while in custody.

As stated, we appreciated meeting with AB 1582's sponsors and sharing our concerns. We also believe there are opportunities for robust collaboration around improvement of the SYTF framework. Unfortunately, we do not believe AB 1582 is the appropriate vehicle to do so."

6) **Prior Legislation**:

   a) SB 92 (Committee on Budget and Fiscal Review), Chapter 18, Statutes of 2021, closes DJJ on June 30, 2023, and allows counties to establish SYTFs for certain youth who are 14 years of age or older and found to be a ward of the court based on an offense that would have resulted in a commitment to DJJ.

   b) SB 823 (Committee on Budget and Fiscal Review), Chapter 337, Statutes of 2020, transferred the responsibility for managing all youthful offenders to local jurisdictions and closed DJJ intake on July 1, 2021, subject to certain exceptions. SB 823 also stated legislative intent to establish a separate, long-term local dispositional track for higher-need youth.

   c) SB 439 (Mitchell), Chapter 1006, Statutes of 2018, prohibited the prosecution of children under the age of 12 years in the juvenile court, except when a minor is alleged to have committed murder or specified sex offenses.

   d) SB 1021 (Committee on Budget and Fiscal Review), Chapter 41, Statutes of 2012, prohibited the extension of a ward's parole consideration date and authorized CDCR to promulgate regulations establishing a process for granting wards who have successfully responded to disciplinary sanctions a reduction of any time acquired for disciplinary

matters.

e) SB 81 (Committee on Budget and Fiscal Review), Chapter 175, Statutes of 2007, known as juvenile justice realignment, limited the juvenile offenders who could be committed to state youth correctional facilities.

REGISTERED SUPPORT / OPPOSITION:

Support

Orange County District Attorney (Sponsor)
California District Attorneys Association (Co-Sponsor)
Chief Probation Officers' of California (CPOC)
Riverside County District Attorney

Opposition

ACLU California Action
Anti Recidivism Coalition
Asian Prisoner Support Committee
California Attorneys for Criminal Justice
California Public Defenders Association
Center for Juvenile Law and Policy, Loyola Law School
Center on Juvenile and Criminal Justice
Children's Defense Fund - CA
Commonweal Juvenile Justice Program
Communities United for Restorative Youth Justice (CURYJ)
Criminal Justice Clinic, UC Irvine School of Law
Ella Baker Center for Human Rights
Equal Justice Society
Fresno Barrios Unidos
Fresno County Public Defender's Office
Funding the Next Generation
Haywood Burns Institute
Human Rights Watch
Initiate Justice Action
Instituto Familiar De LA Raza
Milpa (motivating Individual Leadership for Public Advancement)
Occupational Therapy Training Program (OTTP-SF)
Pacific Juvenile Defender Center
Public Counsel
San Diego Public Defender
San Francisco Public Defender
San Mateo County Bar Association, Private Defender Program
Santa Cruz Barrios Unidos INC.
Sigma Beta Xi, INC. (sbx Youth and Family Services)
Smart Justice California, a Project of Tides Advocacy
Young Community Developers
Youth Justice Education Clinic, Center for Juvenile Law and Policy, Loyola Law School

3 Private Individuals

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

Date of Hearing: January 9, 2024
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1746 (Hoover) – As Amended March 20, 2023

Vote Only

SUMMARY: Provides that a person convicted of specific child endangerment or abuse crimes resulting in death of the child is ineligible to earn enhanced credits for participation as an inmate firefighter or after completing inmate firefighting training. Specifically, **this bill**:

1) Provides that a person incarcerated in state prison, who was convicted of child endangerment resulting in death or assault of a child under eight years of age resulting in death, is ineligible to earn two days of credit for every one day of service (two-for-one credits) at a California Department of Corrections and Rehabilitation (CDCR) conservation camp or after completing training for assignment to a conservation camp or to a correctional facility as an inmate firefighter.

2) Provides that a person incarcerated in the county jail, who was convicted of these offenses, is similarly ineligible to earn two-for-one credits for this service or training.

EXISTING LAW:

1) Allows for work time credits towards a state prison term to be earned, as specified. (Pen. Code, § 2933, subd. (a).)

2) Provides that for every six months of continuous incarceration, except as specified, a person incarcerated in state prison may earn a six-month work-time credit reduction from their term of confinement (one-for-one post-sentence credit). (Pen. Code, § 2933, subd. (b).)

3) Provides that a person who is assigned to a CDCR conservation camp and is eligible to receive one day of work-time credit for every one day of incarceration (one-for-one credits) shall instead receive two-for-one credits. The service performed must be after January 1, 2003. (Pen. Code, § 2933.3, subd. (a).)

4) Provides that a prisoner who has completed training for assignment to a conservation camp or to a correctional institution as an inmate firefighter or who is assigned to a correctional institution as an inmate firefighter and is eligible to earn one-for-one credits shall receive two two-for-one credits. Application is limited to prisoners who are eligible after July 1, 2009. (Pen. Code, § 2933.3, subd. (b).)

5) Allows an incarcerated person who has successfully completed training for a firefighter assignment to also receive a credit reduction from their confinement pursuant to regulations adopted by the secretary. Application is limited to prisoners who are eligible after July 1,

2009. (Pen. Code, § 2933.3, subd. (c).)

6) Provides that for time spent in the county jail, a term of four days will be deemed to have been served for every two days spent in actual custody. (Pen. Code, § 4019.)

7) Provides that a county jail inmate assigned to a conservation camp by a sheriff and who is eligible to earn day-for-day credits shall instead earn two-for-one credits. (Pen. Code, § 4019.2, subd. (a).)

8) Provides that a county jail inmate who has completed training for assignment to a conservation camp or to a state or county facility as an inmate firefighter or who is assigned to a county or state correctional institution as an inmate firefighter and who is eligible to earn day-for-day credits shall instead earn two-for-one credits. Application is limited to eligible inmates after October 1, 2011. (Pen. Code, § 4019.2, subd. (b).)

9) Allows county jail inmates who have successfully completed training for firefighter assignments to also receive a credit reduction from their term of confinement. Application is limited to eligible inmates after October 1, 2011. (Pen. Code, § 4019.2, subd. (d).)

10) States that a person convicted of a violent felony may not use work-time credits to reduce their term by more than 15%. (Pen. Code, § 2933.1.)

11) Prohibits a person convicted of murder from accruing work-time or program credit reductions. (Pen. Code, § 2933.2.)

12) Provides that any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where their person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years. (Pen. Code, § 273a, subd. (a).)

13) Provides that any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where their person or health may be endangered, is guilty of a misdemeanor. (Pen. Code, § 273a, subd. (b).)

14) Provides that any person convicted of child endangerment, who under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or injury that results in death, or having the care or custody of any child, under circumstances likely to produce great bodily harm or death, willfully causes or permits that child to be injured or harmed, and that injury or harm results in death, shall receive a four-year enhancement for each violation, in addition to the sentence provided for that conviction. This does not affect the applicability of murder or manslaughter laws. This section shall not apply unless the allegation is included within an accusatory pleading and admitted by the defendant or found to be true by the trier of fact. (Pen. Code, § 12022.95.)

15) Provides that any person, having the care or custody of a child who is under eight years of age, who assaults the child by means of force that to a reasonable person would be likely to produce great bodily injury, resulting in the child's death, shall be punished by imprisonment in the state prison for 25 years to life. This does not affect the applicability of murder or manslaughter laws. (Pen. Code, § 273ab, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Child abuse is always heartbreaking but when it results in death it is the worst kind of tragedy. Unfortunately, child abuse happens far too frequently in our country and usually at the hands of a parent or caretaker. Under California law, child abuse is considered a 'non-serious, non-violent' offense. That means when an individual is found guilty of this crime, the offender qualifies for early release programs. That is also true even when the abuse results in a child's death. This bill would prohibit a person whose abuse causes a child's death from being eligible to serve in a conservation/fire camp, which is the state's most generous early release program. Killing a child is a horrific crime and should be treated as such."

2) **Conservation (Fire) Camps:** According to CDCR's website: "The primary mission of the Conservation (Fire) Camp Program is to support state, local and federal government agencies as they respond to emergencies including fires, floods, and other natural or disasters Additionally, hand crews respond to rescue efforts in local parks or flood suppression.

   "CDCR, in cooperation with the California Department of Forestry and Fire Protection (CAL FIRE) and the Los Angeles County Fire Department (LACFD), jointly operates 35 conservation camps, commonly known as fire camps, located in 25 counties across California. All camps are minimum-security facilities and staffed with correctional staff." (https://www.cdcr.ca.gov/facility-locator/conservation-camps/)

   The conservation camp can be a vital part of a person's rehabilitation. "Just as in every CDCR prison, every conservation camp offers rehabilitative and educational services, including substance abuse programs, religious programs, and GED and college courses." (https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program/)

   The participants are volunteers and must have "minimum custody" status – i.e., the lowest classification for an incarcerated person based on behavior and following rules while in prison and when participating in rehabilitative programing. Additionally, minimum custody status notwithstanding, certain convictions automatically make a person ineligible for a conservation camp assignment. (https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program/)

   Persons are excluded from fire camp based on any of the following: a conviction requiring sex offender registration; a life sentence; a sentence for escape within the last 10 years; an arson conviction; a felony hold; validated active or inactive prison gang membership or association; a public interest case; current or prior convictions of murder, rape, or kidnap (violent felonies); or a pattern of excessive misconduct or disruption of the orderly operations

of the institution. (https://www.cdcr.ca.gov/facility-locator/conservation-camps/fire_camp_expungement/)

This bill would provide that incarcerated persons in state prison, who have been convicted of specified child endangerment and abuse offenses resulting in the child's death, may not earn enhanced credits for their service as an inmate firefighter or after completing inmate firefighting training. Anyone convicted of assault of a child under eight years of age resulting in death is currently excluded from participation in Conservation (Fire) Camp by virtue of the life sentence. (See Pen. Code, § 273ab.) If the death of the child results in a murder conviction, the incarcerated person is also excluded.

3) **Constitutional Authority to Award Credits Given to CDCR in Proposition 57**: Proposition 57 was passed by the electorate (Ballot Pamp., Gen. Elec. Nov. 8, 2016) and implemented as Article I, section 32 of the California Constitution. Section 32, subdivision (a)(2) of Article I states: "Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements." Thus Proposition 57 gave CDCR the authority to create its own credit rules. (See https://www.capolicylab.org/wp-content/uploads/2022/08/Three-Strikes-in-California.pdf at p. 8.)

   Under current CDCR regulations, full-time conservation workers and people training for these jobs may earn credits at a rate of 66.6% (two-for-one credits). However, if the person has a violent felony conviction, they may only earn credits at a rate of 50% (one-for-one credits). (https://www.cdcr.ca.gov/proposition57/)

   This bill would arguably not affect CDCR's authority to nonetheless grant enhanced credits for an inmate's post-sentence participation in these programs or training, pursuant to Proposition 57. "By its plain terms, article I, section 32, subdivision (a)(2) authorizes the Department to award—or to not award—conduct credits as it sees fit." (*In re Canady* (2020) 57 Cal.App.5th 1022, 1034, citing *Brown v. Superior Court* (2016) 63 Cal.4th 335, 359, 361 (dis. opn. of Chin, J.) "The broad and permissive language of article I, section 32, subdivision (a)(2) suggests that the voters intended for the Department to have substantial discretion in determining how credits are applied to early parole consideration…." (*In re Canady, supra,* 57 Cal. App.5th at p. 1034.)

4) **Sheriff Fire Camp Programs:** Under Penal Code section 4019.2, persons incarcerated in a county jail may similarly earn credits for participation in a sheriff's conservation camp or successful completion of training for assignment to a conservation camp or as an inmate firefighter. An inmate eligible to earn one day of credit for every day of incarceration (one-for-one credits) would instead be able to earn two days of credit for every one day served (two-for-one credits).

   The use of such programs, as well as standards and training, can vary by county. For example, the San Diego County Sheriff's Department, in recognizing the usefulness of reentry services, offers a fire camp program collaboratively administered by Cal Fire and CDCR. To be eligible, the incarcerated person must be sentenced under realignment (Pen. Code, § 1170, subdivision (h)). (https://www.sdsheriff.gov/bureaus/detention-services-bureau/county-parole-and-alternative-custody) Realignment, as passed by California voters in 2011, diverts defendants convicted of less serious felonies to serve their time in local

county jail rather than in state prison. Persons are excluded from realignment if they have suffered a serious or violent felony conviction, aggravated theft conviction, or are required to register as a sex offender. (Pen. Code, § 1170, subd. (h)(3).)

This bill would prohibit persons convicted of specified child endangerment and abuse offenses resulting in death of the child from earning enhanced credits for their service as an inmate firefighter or after completing inmate firefighting training. Anyone convicted of assault of a child under eight years of age resulting in death is currently excluded from realignment by virtue of the state prison sentence attendant to the offense, and thus wouldn't be eligible to participate in, for example, the San Diego Sheriff's fire camp program. (See Pen. Code, § 273ab.)

5) **Argument in Support**: According to the *Peace Officers' Research Association of California*, "This bill, Ryla's Law, would make a person convicted of specific child abuse crimes ineligible to earn 2 days of credit for every one day served as an inmate firefighter or after completing inmate firefighting training. By reducing the amount of credits an inmate sentenced to county jail can earn, this bill would create a state-mandated local program."

6) **Argument in Opposition**: According to *Californians for Safety and Justice*, "Fire camp programming within CDCR is an intense physically and mentally strenuous program where wildland firefighters are called upon to respond to various emergency situations throughout the state. While its main purpose is to support fire departments in times of active fire, many incarcerated workers are often put at the frontline of these wildfires in life-threatening conditions. Reports of incarcerated wildland firefighter deaths and injuries are a testament to the grueling conditions that individuals are subject to. During the off-season, the work of these incarcerated workers does not cease. Fire camps provide labor for various state and municipal departments to prevent threats of fire through brush clearance and maintenance, which can be equally as demanding as an active fire incident.

   "In 2016, Proposition 57 was passed with 64% of the vote. It included credits for fire campers as a way to recognize the hard labor that incarcerated residents are put through while completing the program. It is not an 'easy out,' but a transactional exchange from both the state and the individual. Incarcerated individuals accept these arduous working conditions as a service to their community, in the name of justice.

   "AB 1746 undermines the purpose of Proposition 57 and unreasonably discriminates against someone who may be eligible for such transformative programming, and lacks justification as to why this bill serves the public's interest. Prohibiting individuals convicted of child abuse crimes from fire camp does not promote justice, rehabilitation, nor accountability for the individual."

7) **Prior Legislation**:

   a) AB 945 (Reyes), of the 2023-2024 Legislative Session, would have required courts to report specified data to the Judicial Council regarding petitions for expungement relief filed on the basis of having successfully participated as an incarcerated fire camp member or at an institutional firehouse. AB 945 was vetoed by the Governor.

b) AB 17 1st Ext. (Blumenfield), Chapter 12, Statutes of 2011, Criminal Justice Realignment of 2011, as relevant here, conformed county jail custody credits to the equivalent state prison inmate custody credits, including fire camp.

c) AB 3000 (Budget Committee), Chapter 1124, Statutes of 2002, as relevant here, provides that any inmate assigned to a conservation camp shall earn two days of work-time credit for every day of service.

REGISTERED SUPPORT / OPPOSITION:

Support

Peace Officers Research Association of California (PORAC)

Opposition

ACLU California Action
Anti Recidivism Coalition
California for Safety and Justice
California Public Defenders Association
Ella Baker Center for Human Rights
Initiate Justice
Initiate Justice Action

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