California State Assembly

PUBLIC SAFETY

AGENDA

Tuesday, March 12, 2024
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	AB 1788	Quirk-Silva	Mental health multidisciplinary personnel team.
2.	AB 1809	Rodriguez	Recall and resentencing.
3.	AB 1874	Sanchez	Crimes: disorderly conduct.
4.	AB 1877	Jackson	Juveniles: sealing records.
5.	AB 1892	Flora	Interception of electronic communications.
6.	AB 1896	Dixon	Secure youth treatment facilities.
7.	AB 1956	Reyes	Victim services.
8.	AB 1982	Mathis	Firearm safety certificate: exemptions.
9.	AB 1986	Bryan	State prisons: banned books.
10.	AB 2018	Rodriguez	Controlled substances: fenfluramine.
11.	AB 2021	Bauer-Kahan	Crimes: selling or furnishing tobacco or related products and paraphernalia to underage persons.
12.	AB 2035	Joe Patterson	Sexually violent predators: conditional release.
13.	AB 2055	Reyes	Criminal procedure: expungement of records.
14.	AB 2267	Jones-Sawyer	Youth Reinvestment Grant Program.
15.	AB 2280	Jones-Sawyer	Jails: confidential calls.

Date of Hearing: March 12, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1788 (Quirk-Silva) – As Amended March 4, 2024

SUMMARY: Allows counties to establish a mental health multidisciplinary personnel team. Specifically, **this bill**:

1) Allows a county to establish a mental health multidisciplinary personnel team with the goal of facilitating the expedited identification, assessment, and linkage of justice-involved persons diagnosed with a mental illness to supportive services within that county while incarcerated and upon release from county jail and to allow provider agencies and members of the personnel team to share confidential information for the purpose of coordinating supportive services to ensure continuity of care.

2) Defines the following terms:

   a) "Justice-involved person" as "an individual who is currently incarcerated within a county jail or who has been incarcerated in an county jail";

   b) "Mental health multidisciplinary personnel team" as "any team of two or more persons who are trained in the identification and treatment of individuals with mental illness, and who are qualified to provide a broad range of services related to mental health." The team may include, but not be limited to, all of the following:

      i) Mental health and substance abuse services personnel and practioners or other trained counseling personnel;

      ii) Medical personnel with sufficient training to provide health services;

      iii) Social services workers with experience or training in the provision of services to adults with mental illness and eligibility for services; and,

      iv) Case managers or case coordinators responsible for referral, linkage, or coordination of care and services provided to adults

   c) "Provider agency" as "any governmental or other agency that has, as one of its purposes, the identification, assessment, and linkage of housing or supportive services to individuals with mental illness. The provider agencies serving adults that may share information under this section include, but are not limited to, all of the following entities or service agencies":

      i) Social services;

ii) Health services;

iii) Mental health services;

iv) Substance abuse services;

v) Probation;

vi) Law enforcement;

vii) Legal counsel for the adult or family representing them in a criminal matter;

viii) Veterans services and counseling; and,

ix) Homeless services.

3) Allows members of a mental health multidisciplinary personnel team to disclose and exchange information and writings with one another that relate to any information that may be designated as confidential under state law if the member of the team reasonably believes it is generally relevant to the identification of mental illness and the provision of services.

4) Provides that any discussion between team members, is confidential and, notwithstanding any other law, testimony concerning that discussion is not admissible in any criminal, civil, or juvenile court proceeding.

5) Provides that the disclosure and exchange of information of the multidisciplinary personnel team may occur telephonically and electronically if there is adequate verification of the identity of the mental health multidisciplinary personnel who are involved in that disclosure or exchange of information.

6) Requires that the disclosure and exchange of information of the multidisciplinary personnel team not be made to anyone other than members of the mental health multidisciplinary personnel team, and designated persons qualified to receive information by the team.

7) Allows a multidisciplinary personnel team to designate persons qualified to be a member of the team for a particular case.

8) Allows a person designated as a team member to receive and disclose relevant information and records, subject to confidentiality provisions, as specified.

9) Requires the sharing of information permitted, as specified, to be governed by protocols developed in each county describing how and what information may be shared by the mental health multidisciplinary personnel team to ensure that confidential information gathered by the team is not disclosed in violation of state or federal law.

10) Requires a copy of the protocols be distributed to each participating agency and to persons in those agencies who participate in the multidisciplinary personnel team, and be posted on the county's website within 30 days of adoption.

11) Requires each participating county to provide a copy of its protocols to the State Department of Social Services.

12) States that the sharing of information by mental health multidisciplinary personal team shall not be construed to require the department to review or approve any multidisciplinary personnel team county protocols it receives.

13) Requires a protocol developed in a county, as specified, to include, but not be limited to, all of the following:

    a) The items of information or data elements that will be shared;

    b) The participating agencies;

    c) A description of how the information shared will be used by the mental health multidisciplinary personnel team only for the intended purposes as specified;

    d) The information retention schedule that participating agencies shall follow;

    e) A requirement that no confidential information or writings be disclosed to persons who are not members of the multidisciplinary personnel team except to the extent required or permitted under applicable law;

    f) A requirement that participating agencies develop uniform written policies and procedures that include security and privacy awareness training for employees who will have access to information pursuant to this protocol;

    g) A requirement that all persons who have access to information shared by participating agencies sign a confidentiality statement that includes, at a minimum, general use, security safeguards, acceptable use, and enforcement policies;

    h) A requirement that participating agencies employ security controls that meet applicable federal and state standards, including reasonable administrative, technical, and physical safeguards to ensure data confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure; and,

    i) A requirement that participating agencies take reasonable steps to ensure information is complete, accurate, and up to date to the extent necessary for the agency's intended purposes and that the information has not been altered or destroyed in an unauthorized manner.

14) Subjects every member of the mental health multidisciplinary personnel team who receives information or records regarding a justice-involved person in that member's capacity as a member of the team to be under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records.

15) Requires the information obtained to be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

16) Provides that these provisions shall not be construed to restrict guarantees of confidentiality provided under state or federal law.

17) Requires information and records communicated or provided to the team members by all providers and agencies to be deemed private and confidential and to be protected from discovery or disclosure by all applicable statutory and common law protections.

18) States that existing civil and criminal penalties shall apply to the inappropriate disclosure of information held by the team members.

EXISTING LAW:

1) Defines "multidisciplinary personnel" as any team of three or more persons who are trained in the prevention, identification, management, or treatment of child abuse or neglect cases, and who are qualified to provide a broad range of services related to child abuse or neglect, and may include but not be limited to psychiatrists, police officers, medical personnel, and social workers, among others. (Welf. & Inst. Code, § 18951 subd. (d).)

2) Provides that each county may use a children's advocacy center to implement a coordinated multidisciplinary response to investigate reports involving child physical or sexual abuse, exploitation, or maltreatment and sets forth standards that a children's advocacy center must meet. (Pen. Code, § 11166.4.)

3) Allows a city, county, city and county, or community-based nonprofit organization to establish a domestic violence multidisciplinary personnel team consisting of two or more persons who are trained in the prevention, identification, management, or treatment of domestic violence cases and who are qualified to provide a broad range of services related to domestic violence (Pen. Code, § 13752 subd. (a).)

4) States that a domestic violence multidisciplinary team may include, but need not be limited to, any of the following: law enforcement personnel, medical personnel, domestic violence counselors, an other personnel as specified.

5) Allows an area agency on aging or a county, or both, to establish an aging multidisciplinary personnel team with the goal of facilitating the expedited identification, assessment, and linkage of older adults to services and to allow provider agencies and members of the personnel team to share confidential information for the purpose of coordinating services. (Welf. & Inst. Code, § 9450 subd. (a)(1).)

6) States that if a city within the service area of an area agency on aging or a county that has established an aging multidisciplinary personnel team pursuant to this section requests to participate in that team, participation of appropriate city personnel shall be allowed, as determined by the area agency on aging or county, unless the area agency on aging or county determines that participation by the city would hinder compliance with the requirements and obligations set forth in this section or would otherwise conflict with the goals and objectives of the area agency on aging or county. (Welf. & Inst. Code, § 9450 subd. (a)(2).)

FISCAL EFFECT: Unknown

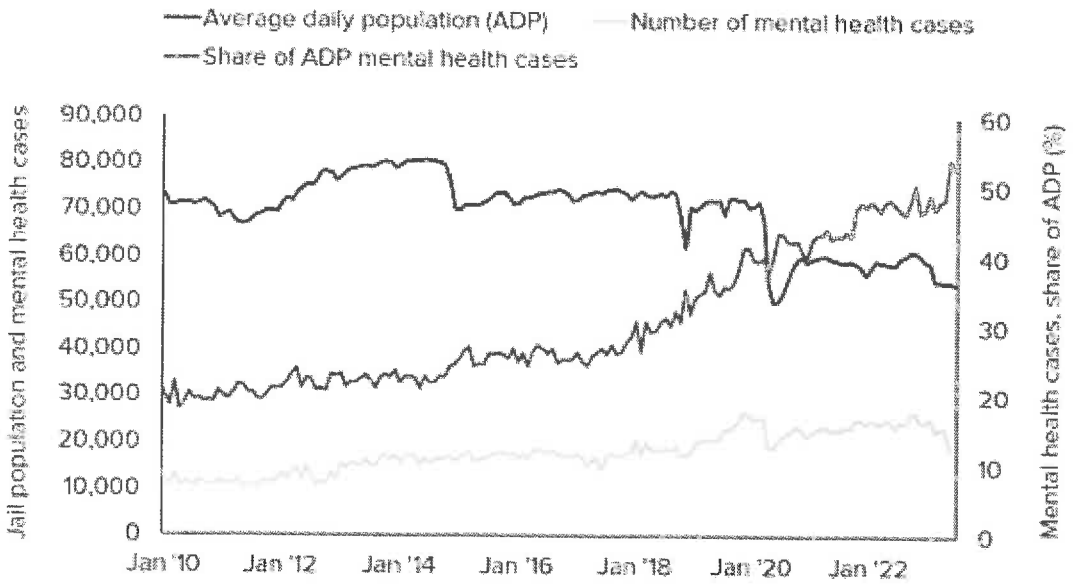
COMMENTS:

1) **Author's Statement**: According to the author, "In the Orange County jail system alone, 45% of the justice-involved population grapples with mental health needs. This legislation empowers counties to establish multidisciplinary teams, facilitating the exchange of confidential information to streamline mental health service assessments. By prioritizing mental well-being and improving communication channels, we can create a foundation for targeted care, ensuring effective rehabilitation, adequate mental health treatment, and reducing the likelihood of recidivism within our justice-involved community in Orange County and beyond."

2) **The Need for Mental Health Services in the Justice System:** According to the California Public Policy Institute, "The number of inmates with mental health needs has increased steadily over the past decade and currently represents more than half of the total jail population.

   "Following the pandemic-era drop in the overall jail population, the number of inmates with mental health needs also declined and is now around 19, 000- still much higher than pre-alignment levels. Additionally, the percentage of inmates with mental needs has continued to climb, from around 20% in January 2010 to a staggering 53% in June 2023." (County Jails House Fewer Inmates, but Over Half Face Mental Health Issues - Public Policy Institute of California (ppic.org) [as of Mar. 1, 2024]

More than half of inmates in California's county jails have mental health needs



SOURCE: Authors' calculation based on the California's Board of State Community Corrections Jail Profile Survey (JPS), January 2010–June 2023.
NOTES: Mental health cases refer to the number of mental health cases open the last day of the month. The share of mental health cases is calculated based on only the ADP of counties that reported both ADP and mental health case numbers in a given month. This ADP may be less than the ADP in the figure (blue line) given non-reporting in certain months.
FROM: PPIC Blog, October 2023.

Information provided to this committee by the author's office presents study after study that supports the idea that individuals with mental health issues who intersect with the criminal justice world are in dire need of help and resources at all levels.

Individuals experiencing mental illness are likely to remain incarcerated longer than their peers. On average, individuals with mental illnesses receive sentences that are 12 percent longer than individuals convicted of the same crimes but without mental health diagnoses.[1]

It is expensive to incarcerate individuals with mental illnesses since jails in the United States are improperly equipped for treatment. Correctional health care professionals are constantly constrained by limited or improper resources and large caseloads. Community mental health treatment is less costly and more effective than incarceration. (Jail_MentalHealth_JPSReport_02-03-2020 (calhps.com) [as of Mar 7, 2024] The annual cost of incarcerating an average jail inmate in California is estimated at $30,000, not including mental health care costs, while the cost of treating a person with mental illness in the community is approximately $20,000. (https://www.courts.ca.gov/documents/Mental_Health_Task_Force_Report_042011.pdf) [as

[1]Stanford Justice Advocacy Project. "The Prevalence and Severity of Mental Illness Among California Prisoners." 2017

of Mar. 7. 2024]. Considering that this report was published 15 years ago, the cost of incarceration and inflation, these costs have risen considerably.

3) **Multidisciplinary Team Models in Other Areas**: Under current law, collaboration through a multidisciplinary team model is permitted in the areas of elder abuse and child abuse. The theories behind these models are to allow multiple service providers and government agencies to act in a collaborative fashion to help meet the needs of the community as well as parties involved. The model has been used for cases of child abuse and elder abuse because the parties involved have had to interact with multiple agencies and interests, and the victims are often viewed as coming from a vulnerable community. As in the case of child abuse and elder abuse, persons diagnosed with mental illness who become involved in the justice setting are similarly situated. There is a natural intersection between the need for social services and the criminal justice system in these situations.

   This bill would allow counties to set up mental multidisciplinary personnel to assist mentally individuals diagnosed with a mental condition in the justice system.

4) **Truth in Evidence:** Generally, all relevant evidence is admissible in criminal proceedings unless it must be excluded under federal law, or the court may exclude the evidence if it will cause unnecessary delay, or create a danger of undue prejudice, confusion of the issues, or misleading the jury.

   Proposition 8 of 1982 introduced the "Right to Truth in Evidence" to the California Constitution. It states ,"Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post-conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court." (Cal. Const. art. I, § 28, subd. (f)(2).)

   Given that the bill exempts disclosure of information in any criminal, civil, or juvenile court proceeding, should this bill's vote threshold be keyed 2/3 vote?

5) **Argument in Support**: According to *the California Academy of Child and Adolescent Psychiatry* (CALACAP), "The integration of mental health services with the justice system is a critical step towards addressing the complex needs of individuals with mental health conditions who find themselves entangled in the criminal justice system. By facilitating a collaborative approach among mental health professionals, social services workers, medical personnel, and legal representatives, AB 1788 aims to ensure that justice-involved persons receive the comprehensive and continuous care necessary for their rehabilitation and reintegration into society.

   "The establishment of mental health multidisciplinary personnel teams, as outlined in AB 1788, aligns with CALACAP's commitment to improving mental health outcomes for all Californians, particularly those who are most vulnerable. The bill's provisions for the secure sharing of confidential information among team members are essential for coordinating effective supportive services while respecting the privacy and rights of individuals.

   "Furthermore, the bill's requirements for county protocols ensure that the collaborative efforts are standardized, transparent, and accountable, enhancing the overall efficacy of

mental health interventions for justice-involved populations. This approach not only benefits the individuals directly involved but also has the potential to reduce recidivism rates, alleviate the burden on our correctional system, and improve community safety and well-being."

6) **Related Legislation**: AB 1948 (Rendon), would remove the sunset date of a pilot program in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Clara, and Ventura that allows homeless adult and family multidisciplinary teams (MDTs) established in these counties to have the goal of facilitating expedited identification, assessment, and linkage of individuals at risk of homelessness to housing and supportive services, and the goal of facilitating the expedited prevention of homelessness for those individuals. AB 1948 is pending hearing in the Assembly Committee on Human Services Committee.

7) **Prior Legislation**:

   a) AB 785 (Rivas), of the 2023-2024 Legislative Session, would have established Mental Health Response and Treatment Challenge Grant Pilot Program, which would have provided grants to cities, counties, cities and counties, and other local government agencies, for the purpose of providing mental health treatment to people in the justice system, among other services. AB 785 was never heard in committee.

   b) AB 728 (Santiago), Chapter 337, Statutes of 2019, establishes, until January 1, 2025, a pilot program in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Clara, and Ventura that allows homeless adult and family multidisciplinary teams (MDTs) established in these counties to have the goal of facilitating expedited identification, assessment, and linkage of individuals at risk of homelessness to housing and supportive services, and the goal of facilitating the expedited prevention of homelessness for those individuals.

   c) AB 998 (Grayson), Chapter 802, Statutes of 2018, authorized a city, county, city and county, or a nonprofit organization to establish domestic violence and human trafficking multidisciplinary personnel teams trained in the prevention, identification, management, or treatment of those cases

   d) AB 210 (Santiago), Chapter 514, Statutes of 2017, allows counties to develop a homeless adult, child, and family multidisciplinary team in order to facilitate identification and assessment of homeless individuals, and link homeless individuals to housing and supportive services, and to allow service providers to share confidential information to ensure continuity of care.

   e) SB 1342 (Bates), Chapter 621, Statutes of 2022, allows a county or Area Agency on Aging (AAA) to establish an aging multidisciplinary team (MDT) with the goal of facilitating the expedited identification, assessment, and linkage of older adults to services, and allows provider agencies and members of the MDT to share confidential information for the purposes of coordinating services. This bill requires a county or AAA that establishes an aging MDT to adhere to a number of protocols surrounding the privacy, security, and confidentiality of the information and records shared

REGISTERED SUPPORT / OPPOSITION:
Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Academy of Child and Adolescent Psychiatry
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
Orange County Sheriff's Department
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

None

Analysis Prepared by: Elizabeth Potter / PUB. S. / (916) 319-3744

Date of Hearing: March 12, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1809 (Rodriguez) – As Introduced January 9, 2024

As Proposed to be Amended in Committee

SUMMARY: Makes an incarcerated person convicted of first-degree murder of a peace officer ineligible for recall and resentencing under the provision permitting the court to recall and resentence a defendant convicted of a felony offense in the interests of justice, unless there is evidence of a constitutional violation or other evidence undermining the integrity of the conviction or sentence.

EXISTING LAW:

1) Provides that the purpose of sentencing for crime is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. (Pen. Code, § 1170, subd. (a)(1).)

2) Provides that when a defendant has been sentenced to be incarcerated on a felony, the court may, on its own motion, within 120 days of the date of commitment or at any time if the applicable sentencing laws have subsequently changed, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced. (Pen. Code, § 1172.1, subd. (a)(1).)

3) Authorizes the court also to recall and resentence at any time upon the recommendation of the Secretary of the California Department of Corrections or the Board of Parole Hearings (BPH) in the case of state prison inmates, the county correctional administrator in the case of county jail inmates, the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice (DOJ) initially prosecuted the case. (Pen. Code, § 1172.1, subd. (a)(1).)

4) Provides that the new sentence cannot be greater than the initial sentence. (Pen. Code, § 1172.1, subd. (a)(1).)

5) Makes recall and resentencing applicable whether or not the person is still in custody. (Pen. Code, § 1172.1, subd. (a)(1).)

6) Requires the court, in recalling and resentencing, to apply the sentencing rules of the Judicial Council and any changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity and to promote uniformity of sentences. (Pen. Code, § 1172.1, subd. (a)(2).)

7) States the resentencing court may, in the interest of justice and regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:

   a) Reduce a defendant's term of imprisonment by modifying the sentence; or,

   b) Vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, with the concurrence of the defendant, and then resentence the defendant to a reduced term of imprisonment. (Pen. Code, § 1172.1, subd. (a)(3).)

8) Prohibits the court, if it has recalled the sentence on its own motion, from imposing a judgment on any necessarily included lesser offense or lesser related offense if the conviction was a result of a plea bargain without the concurrence of both the defendant and the district attorney, or the Attorney General if the DOJ originally prosecuted the case. (Pen. Code, § 1172.1, subd. (a)(4).)

9) Requires the court to consider post-conviction factors, including, but not limited to, the defendant's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that the defendant's continued incarceration is no longer in the interest of justice. (Pen. Code, § 1172.1, subd. (a)(5).)

10) States that evidence that the defendant's incarceration is no longer in the interest of justice includes, but is not limited to, evidence that the defendant's constitutional rights were violated in the proceedings related to the conviction or sentence at issue, and any other evidence that undermines the integrity of the underlying conviction or sentence. (Pen. Code, § 1172.1, subd. (a)(5).)

11) Requires the court, to consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a youth, as defined, at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense. (Pen. Code, § 1172.1, subd. (a)(5).)

12) Requires credits to be given for time served. (Pen. Code, § 1172.1, subd. (a)(6).)

13) Requires the court to state on the record the reasons for its decision to grant or deny recall and resentencing. (Pen. Code, § 1172.1, subd. (a)(7).)

14) States that resentencing may be granted without a hearing upon stipulation of the parties. (Pen. Code, § 1172.1, subd. (a)(8)(A).)

15) Provides, however, that if a victim of a crime wishes to be heard the victim shall notify the prosecution of their request to be heard within 15 days of being notified that resentencing is being sought and the court shall provide an opportunity for the victim to be heard. (Pen. Code, § 1172.1, subd. (a)(8)(B).)

16) Defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187, subd. (a).)

17) Defines first degree murder, in part, as any other kind of willful, deliberate, and premeditated killing, or that is committed in the perpetration of, or attempt to perpetrate, specified felonies (felony murder rule). (Pen. Code, § 189.)

18) Limits the felony-murder rule to cases in which the defendant was either the actual killer, aided and abetted the actual killer in the commission of first degree murder, or was a major participant in the underlying felony and acted in a manner that was recklessly indifferent to human life. (Pen. Code, § 189, subd. (e).)

19) Allows, however, a defendant to be convicted of first degree murder if the victim is a peace officer who was killed in the course of duty, where the defendant was a participant in one of specified felonies and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of their duty. (Pen. Code, § 189, subd. (f).)

20) Prescribes the penalty for first degree murder as death, LWOP, or imprisonment in the state prison for a term of 25 years to life, as provided. (Pen. Code, § 190, subd. (a).)

21) Provides that when a prosecutor charges a special circumstance and it is found true, a person found guilty of first degree murder shall be punished by death or LWOP. (Pen. Code, §§ 190.2, 190.4.)

22) Enumerates special circumstances, including where the victim was a peace officer who was intentionally killed while performing their duties and the defendant knew or should have known that; or the peace officer/former peace officer was intentionally killed in retaliation for performing their duties. (Pen. Code, § 190.2, subd. (a)(7).)

23) Prohibits a judge from striking or dismissing any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or court. (Pen. Code, § 1385.1.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Law enforcement officers answer the call of duty every day with selflessness and dedication. They place themselves at risk to make their communities safer for all residents. Dreadfully, seven officers in California made the ultimate sacrifice last year in the line of duty. At least four of these officers were feloniously murdered. These violent offenders must be held accountable.

   "AB 1809 would prohibit an incarcerated person convicted of murdering a peace officer from seeking a reduced sentence. This bill aligns with the previous legislative intent of holding these violent offenders accountable for their actions against law enforcement officers. For example, existing law already prevents these offenders from receiving a reduced sentence under compassionate release despite being medically incapacitated and terminally ill. These offenders are also ineligible for medical parole at a health care facility in the community. Given the serious nature of their crime, the state must close a loophole in statute that allows

an opportunity for offenders who murder a peace officer to be eligible for a reduced sentence."

2) **Recall and Resentencing Provisions – Second Look Sentencing:** As a general matter, a court typically loses jurisdiction over a sentence when the sentence begins. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 455.) Once the defendant has been committed on a sentence pronounced by the court, the court no longer has the legal authority to increase, reduce, or otherwise alter the defendant's sentence. (*Ibid.*)

However, the Legislature has created limited statutory exceptions allowing a court to recall a sentence and resentence the defendant. (*Dix, supra*, 53 Cal.3d at p. 455; see e.g., Pen. Code, § 1172.1, subd. (a).) Specifically, within 120 days of commitment, the court has the ability to resentence the defendant as if it had never imposed sentence to begin with. (Pen. Code, § 1172.1, subd. (a).) In addition, the Secretary of the California Department of Corrections and Rehabilitation (CDCR), the Board of Parole Hearings (BPH), the county correctional administrator, the district attorney, or the Attorney General can make a recommendation for resentencing at any time. (*Ibid.*)

AB 600 (Ting), Chapter 446, Statutes of 2023, recently amended this provision and authorized the court to also recall and resentence, on its own motion, at any time, as opposed to within 120 days, if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law.

When resentencing under the recall statute, the court is required to "apply any changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity in sentencing." (Pen. Code, § 1172.1, subd. (a)(2).) Additionally, where the recall request is initiated by CDCR, BPH, a county correctional administrator, a district attorney, or the Attorney General, the court must apply a presumption in favor of recall that can be overcome only by a finding that the defendant currently poses an unreasonable risk to public safety, as defined. (Pen. Code, §§ 1170.18, 1172.1, subd. (b)(2).)

Resentencing may generally be granted without a hearing if the parties stipulate. However, the court must provide a crime victim an opportunity to be heard under Marsy's law or any applicable law, if they make a timely request. (Pen. Code, § 1172.1, subd. (a)(8).)

At resentencing, the court must consider postconviction factors, including the defendant's disciplinary record and record of rehabilitation while incarcerated, evidence reflecting whether age, time served, and diminished physical condition have reduced the defendant's risk of future violence, and evidence of changed circumstances reflecting that incarceration is no longer in the interests of justice. Evidence that incarceration is no longer in the interests of justice includes the defendant's constitutional rights having been violated in proceedings related to the conviction or sentence and any other evidence undermining the integrity of the conviction or sentence. (Pen. Code, § 1172.1, subd. (a)(5).) As stated, in part, in the legislative findings and declaration of AB 600, "Consistent with the California Racial Justice Act, it is the intent of the Legislature to provide remedies that ameliorate discriminative practices in the criminal justice system, including discrimination in seeking or obtaining convictions or imposing sentences." (See Pen. Code, § 745 ["The state shall not seek or obtain a criminal conviction or seek, obtain, or impose a sentence on the basis of race,

ethnicity, or national origin."].)

Additionally, at resentencing, the court must consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is or was under 26 years of age at the time of the commission of the offense. If any of these circumstances is present, the court must then consider whether they were a contributing factor in the commission of the offense. (Pen. Code, § 1172.1, subd. (a)(5).)

In resentencing, the court is not bound by the terms of an earlier plea agreement. (*People v. Pillsbury* (2021) 69 Cal.App.5th 776, 787-788.) However, the new sentence cannot be greater than the initial sentence. (Pen. Code, § 1172.1, subd. (a)(1).) If it's in the interests of justice, the resentencing court can reduce the defendant's sentence. Alternatively, the court can vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not it was charged, provided the defendant concurs. (Pen. Code, § 1172.1, subd. (a)(3).) Importantly, however, if the court has recalled the sentence on its own motion, it cannot impose judgment on any necessarily included lesser offense or lesser related offense if the conviction was a result of a plea bargain, unless both the defendant and the prosecution concur. (Pen. Code, § 1172.1, subd. (a)(4).)

As introduced, this bill would prohibit recall and resentencing where the individual was convicted of first-degree murder of a peace officer. The Legislature has excluded classes of people from eligibility for relief under other resentencing provisions. For example, as the author points out, existing law prevents individuals incarcerated for first degree murder of a peace officer from receiving a reduced sentence under compassionate release despite being medically incapacitated and terminally ill. (Pen. Code, § 1172.2.)

However, the general recall and resentencing provision at issue here is distinguishable from compassionate release. Importantly, unlike recall and resentencing under the general resentencing provision, compassionate release does not seek to redress constitutional violations or other circumstances undermining the integrity of the underlying conviction or sentence, for example violations of the Racial Justice Act or limitations to the felony murder rule. Rather, compassionate release is a resentencing and release process based on compassion for the person's terminal medical condition.

"A basic requirement of due process is that a defendant be accorded a fair trial in a fair tribunal." (*Turner v. Louisiana* (1965) 379 U.S. 466, 472–473.) Further, the Fourteenth Amendment to the United States Constitution and article I, section 7 of the California Constitution guarantee all persons the equal protection of the laws." (*People v. Edwards* (2019) 34 Cal.App.5th 183, 195.) "The concept of equal protection recognizes that persons who are similarly situated with respect to a law's legitimate purposes must be treated equally. (*People v. Brown* (2012) 54 Cal.4th 314, 328 [citation omitted].)

In light of these constitutional principles, the committee amendments would make the recall and resentencing prohibition inapplicable if there is evidence that the incarcerated person's constitutional rights were violated in the proceedings related to the conviction or sentence at issue, or if there is any other evidence that undermines the integrity of the underlying conviction or sentence. While there may be other avenues to obtain relief on these grounds

like direct appeal and habeas, these proceedings are typically lengthier and may not be as efficient in providing relief to the individual as recall and resentencing. These proceedings can also be fraught with procedural bars to relief. As amended in committee, this bill would still prohibit recall and resentencing in all other circumstances if the individual was convicted of first-degree murder of a peace officer.

"The constitutional guaranty of equal protection of the laws has been judicially defined to mean that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes *in like circumstances* in their lives, liberty and property and in their pursuit of happiness. The concept recognizes that persons similarly situated with respect to the legitimate purpose of the law receive like treatment, but it does not require absolute equality. To prevail on an equal protection claim, the proponent must show that the state has imposed a classification which affects two or more *similarly situated groups*. The constitutional guaranty of equal protection does not mandate uniform laws with respect to different persons or classes. Instead, …the Legislature may make a reasonable classification of persons and pass special legislation applying to certain classes. The classification cannot be arbitrary, but must be based on some difference in the classes having a substantial relation to a legitimate objective to be accomplished. The presumption is in favor of the classification, which will not be rejected unless plainly arbitrary. (*People v. Eddy* (1995) 32 Cal.App.4th 1098, 1108-1109 [citations and quotations omitted; italics in original].)

According to the author's statement, this bill is intended to align with the previous legislative intent of holding this class of persons accountable for their violent actions against law enforcement officers. To the extent this bill as amended in committee would still deny this avenue of resentencing relief to one class of persons, even where it would otherwise be in the interests of justice, is this a reasonable classification of persons sufficient to pass constitutional muster?

3) **Argument in Support**: According to *the California District Attorneys Association*, "This bill reasonably limits use of the wide-open discretion provided under section 1172.1 to ensure that individuals who commit first degree murder of a peace officer when they are aware (or should be aware) they are killing an officer engaged in the performance of their duties are not eligible for resentencing. The same moral and philosophical concerns that underlie the current version of Penal Code section 1170.02 (enacted by SB 6 in 2016) limiting early release of offenders underlie your proposed amendment to section 1170.02. As stated in the analysis of Senate Bill 6: 'The honorable work that our men and women in law enforcement perform on a daily basis is crucial to ensuring that our neighbors and families live in safe communities. Senate Bill 6 is necessary to guarantee that individuals convicted of these heinous crimes serve their entire sentences given to them by a jury of their peers.'

"Moreover, it is consistent with the reasoning behind the current limitation on resentencing of persons under section 1172.2 as that limitation exists even when the person being resentenced has an advanced illness with an end-of-life trajectory or is permanently medically incapacitated with a medical condition or functional impairment.

"Finally, the legislature is entitled to decide who is or is not eligible for recall and resentencing based on the nature and severity of the crime committed. Drawing such distinctions does not violate equal protection or require judges to ignore evidence of

constitutional violations in convictions or sentences. And this bill has no impact on a defendant's ability to challenge their conviction on grounds their constitutional rights were violated either by way of appeal (see Pen. Code, § 1237) or a habeas petition in state court (see Pen. Code, § 1473), or via a habeas petition in federal courts (see 28 USCA § 2254)."

4) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 1809 would amend Penal Code section 1170.02 to render completely ineligible for recall or resentencing pursuant to Penal Code section 1172.1, an incarcerated person convicted of first-degree murder of a peace officer, no matter who recommended such action, the district attorney, the prison, or the sentencing court and no matter for what reason, including constitutional violations.

   "The Legislative Counsel's Digest for this bill incorrectly understates the bill's effect. The Digest states that the bill would 'prohibit an incarcerated person convicted of first-degree murder of a peace officer from seeking recall and resentencing under [Penal Code section 1172.1].' That is incorrect because Penal Code section 1172.1 already does that: Subdivision (c) states that [a] defendant is not entitled to file a petition seeking relief from the court . . . . If a defendant requests consideration . . . the court is not required to respond.' (Emphasis added.) In other words, the defendant cannot seek recall and resentencing, only 'the secretary (CDCR) or the Board of Parole Hearings in the case of a defendant incarcerated in state prison, the county correctional administrator in the case of a defendant incarcerated in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General....' or the court can seek recall and resentencing.

   "CPDA understands the sentiment and pain motivating singling out murderers of peace officers and making them ineligible for many types of relief. Indeed, as the Legislative Counsel's Digest points out Penal Code section 1170.02 already singles them out and makes them ineligible for compassionate end of life relief that may be granted to all other prisoners."

5) **Related Legislation**: SB 94 (Cortese), of the 2023-2024 Legislative Session, would have created a process for a person who has been sentenced to life imprisonment without the possibility of parole (LWOP) before June 5, 1990, and had served at least 25 years in custody, to seek a recall of their sentence and be resentenced to a lesser sentence. Would have been inapplicable under specified circumstances, including where the individual was convicted of first degree murder of a peace. SB 94 has been ordered to the inactive file.

6) **Prior Legislation**:

   a) AB 600 (Ting), Chapter 446, Statutes of 2023, allows a court to recall a sentence at any time if applicable sentencing laws are subsequently changed due to new statutes or case law, and makes changes to the procedural requirements to be followed when requests for recall are made.

   b) AB 124 (Kamlager), Chapter 695, Statutes of 2021, in relevant part, requires courts to consider whether specified trauma to a defendant and other factors contributed to the commission of an offense when making sentencing and resentencing determinations.

c) AB 1540 (Ting), Chapter 719, Statutes of 2021, requires the court to provide counsel for the defendant when there is recommendation from CDCR, the BPH, the sheriff, or the prosecuting agency, to recall an inmate's sentence and resentence that inmate to a lesser sentence. AB 1540 also created a presumption favoring recall and resentencing, as specified, when the recommendation has been made by one of these agencies.

d) AB 2942 (Ting), Chapter 1001, Statutes of 2018, allows the district attorney of the county where a defendant was convicted and sentenced to make a recommendation that the court recall and resentence the defendant.

e) SB 6 (Galgiani), Chapter 886, Statutes of 2016, exempts from medical parole and compassionate release eligibility an incarcerated individual convicted of first-degree murder of a peace officer and applied the prohibition retroactively.

f) AB 1156 (Brown), Chapter 378, Statutes of 2015, provides, in pertinent part, that when a defendant is sentenced to the county jail under the 2011 Realignment Act, the court may, within 120 days of the date of commitment on its own motion, or upon the recommendation of the county correctional administrator, recall the sentence previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, provided the new sentence, if any, is no greater than the original sentence.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
City of Turlock, Office of the Mayor
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 School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers 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

Opposition

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Californians United for a Responsible Budget
Communities United for Restorative Youth Justice
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
La Defensa
Legal Services for Prisoners With Children
San Francisco Public Defender
Uncommon Law
Young Women's Freedom Center

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

Amended Mock-up for 2023-2024 AB-1809 (Rodriguez (A))

Mock-up based on Version Number 99 - Introduced 1/9/24
Submitted by: Sandy Uribe, Assembly Public Safety Committee

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

SECTION 1. Section 1170.02 of the Penal Code is amended to read:

1170.02. (a) Except as provided in subdivision (b), ~~An~~ **an** incarcerated person is not eligible for ~~resentence or recall~~ **recall and resentencing** pursuant to Section 1172.1 or 1172.2 if they were convicted of first-degree murder, if the victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed while engaged in the performance of their duties, and the individual knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of their duties, or the victim was a peace officer or a former peace officer under any of the above-enumerated sections and was intentionally killed in retaliation for the performance of their official duties.

(b) An incarcerated person, as specified in subdivision (a), is not ineligible for recall and resentencing pursuant to Section 1172.1 if there is evidence that their constitutional rights were violated in the proceedings related to the conviction or sentence at issue, or there is any other evidence that undermines the integrity of the underlying conviction or sentence.

Date of Hearing: March 12, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1874 (Sanchez) – As Introduced January 22, 2024

As Proposed to be Amended in Committee

SUMMARY: Increases the penalty for a second or subsequent offense of secretly recording or photographing a minor in full or partial undress without their consent in prescribed locations from a misdemeanor to a wobbler. Specifically, **this bill**:

1) Provides that secretly recording or photographing an identifiable person who is a minor at the time of the offense, without their knowledge or consent, who may be in a state of full or partial undress in a specified place or one where that person has a reasonable expectation of privacy, and with intent to invade that person's privacy, is punishable by fine of up to $2,000, by imprisonment in county jail for up to one year, by imprisonment in county jail 16 months, 2 years, or 3 years, or by both a fine and imprisonment.

2) Provides that increased punishment for a second or subsequent offense involving a minor shall not apply to a person who was under 18 years old when he or she committed the offense.

EXISTING LAW:

1) Provides that a person who commits any of the following acts is guilty of disorderly conduct:

   a) Using any instrumentality to look through a hole or opening into, or otherwise view, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of the person inside.

   b) Secretly videotaping, filming, photographing, or recording by electronic means with a concealed device, another identifiable person, as defined, under or through the clothing being worn by that other person, for the purpose of viewing their body or the undergarments worn by them, without their consent or knowledge and with the intent to arouse, appeal to, or gratify the one's own lust, passions, or sexual desires and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.

   c) Secretly videotaping, filming, photographing, or recording by electronic means with a concealed device, another identifiable person, as defined, who may be in a state of full or partial undress, for the purpose of viewing their body or the undergarments worn by them, without their consent or knowledge, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to

invade the privacy of that other person.

d) Intentionally distributing or causing to be distributed the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an specified sexual acts, under circumstances in which the persons engaged in those acts agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress. (Pen. Code, § 647, subd. (j)(1)-(4).)

2) Provides that disorderly conduct is a misdemeanor punishable by up to six months in county jail, a fine not exceeding $1,000, or both. (Pen. Code, §§ 647, subd. (a), 19.)

3) Provides that, if the victim was a minor at the time of the offense, a conviction for the any above conduct is a misdemeanor punishable by imprisonment in county jail not exceeding one year, a fine not exceeding $2,000, or both. (Pen. Code, § 647, subd. (k)(2).)

4) Provides that a second or subsequent conviction for the above conduct, regardless of whether the victim is a minor, is a misdemeanor punishable by imprisonment in county jail not exceeding one year, a fine not exceeding $2,000, or both. (Pen. Code, § 647, subd. (k)(1).)

5) Provides that every person who, with intent to place another person in reasonable fear for their safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, is guilty of a misdemeanor punishable by up to one year in the county jail and/or a fine not exceeding $1,000. (Pen. Code, § 653.2, subd. (a).)

6) Provides that every person who sends, brings, possesses, prepares, publishes, produces, develops, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct, as defined, with the intent to distribute, exhibit, or exchange such material, is guilty of either a misdemeanor punishable by imprisonment in the county jail for up to one year, and/or a fine not to exceed $1,000, or guilty of a felony punishable by imprisonment in the state prison, and/or a fine not exceeding $10,000. (Pen. Code, § 311.1, subd. (a).)

7) Specifies that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct, as defined, for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for two, three, or six years and a fine up to $100,000. (Pen. Code, § 311.2, subd. (b).) A person convicted of this offense is subject to sex offender registration for 10 years. (Pen. Code, § 290 subds. (c) & (d)(1).)

8) Establishes a private cause of action against a person who intentionally distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent when all of the following conditions are satisfied:

a) The person knew that the other person had a reasonable expectation that the material would remain private;

b) The distributed material exposes an intimate body part of the other person, or shows the other person engaging in an act of intercourse, oral copulation, sodomy, or other act of sexual penetration; and,

c) The other person suffers general or special damages, as defined. (Civ. Code, § 1708.85, subds. (a) & (b).)

9) Provides that a depicted individual has a cause of action against a person who does either of the following:

a) Creates and intentionally discloses sexually explicit material and the person knows or reasonably should have known the depicted individual in that material did not consent to its creation or disclosure; or,

b) Intentionally discloses sexually explicit material that the person did not create, and the person knows the depicted individual in that material did not consent to the creation of the sexually explicit material. (Civ. Code, § 1708.86, subd. (b).)

10) Defines "sexually explicit material" as "any portion of audiovisual work that shows the depicted individual performing in the nude or appearing to engage in, or being subjected to, sexual conduct. (Civ. Code, § 1708.86, subd. (a)(14).)

11) Defines "depicted individual" as "an individual who appears, as a result of digitization, to be giving a performance they did not actually perform or to be performing in an altered depiction." (Civ. Code, § 1708.86, subd. (a)(4).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "I introduced AB 1874 to ensure that criminals who repeatedly record children in intimate settings face serious consequences. Our children deserve every protection possible, and when existing law does too little to discourage these pedophiles from continuing this illicit behavior, we must increase the penalties."

2) **Effect of the Bill**: Existing law makes it a misdemeanor to secretly record or photograph an identifiable person, without their knowledge or consent, in a place where that person has a reasonable expectation of privacy, and with intent to invade that person's privacy. (Pen. Code, § 647, subd. (j)(3)(A).) An "identifiable person" means a person "capable of identification, or capable of being recognized, meaning that someone, including the victim, could identify or recognize the victim." (*Ibid.*; *People v. Johnson* (2015) 234 Cal.App.4th 1432, 1436.) The person recorded need not have been in a state of full or partial undress. (Pen. Code, § 647, subd. (j)(3)(B)(ii).)

The statute applies to secretly recording the victim in the interior of a bedroom, bathroom,

changing room, fitting room, dressing room, tanning booth, or the interior of any other area in which they have a reasonable expectation of privacy. (Pen. Code, § 647, subd. (j)(3)(A).) Whether a person has a "reasonable expectation of privacy" in a place is an inquiry that takes into account the specific circumstances surrounding the intrusion, societal understanding about the place where the intrusion occurred, and the severity of the intrusion. (See e.g., *Trujillo v. City of Ontario* (9th Cir. 2006) 428 F.Supp.2d 1094, 1103; *Hill v. Nat'l Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 36-37.)

The penalty for a violation when the victim is not a minor is punishment of up to six months in county jail, a fine of up to $1,000, or both. (Pen. Code, § 647; Pen. Code, § 19.) Any subsequent offense is subject to a punishment of up to one year in county jail, a fine of up to $2,000, or both. (Pen. Code, § 647, subd. (k)(1).)

The penalty for an initial violation doubles when the victim was a minor at the time of the offense—up to one year in county jail, a fine of up to $2,000, or both. (Pen. Code, § 647, subd. (k)(2).) The statute does not state that the defendant must know that the person they recorded was a minor. Existing law does not provide for harsher punishment for a second or subsequent offense when the victim was a minor at the time of the offense.

This bill would increase the penalty for a second or subsequent violation from a misdemeanor to a wobbler when the person recorded was a minor, with punishment by a fine of up to $2,000, by imprisonment in county jail for up to one year or imprisonment in county jail 16 months, 2 years, or 3 years, or by both a fine and imprisonment. The increased penalty would not apply to a person who was under 18 years old when he or she committed the offense.

3) **Argument in Support**: According to the *Orange County Sheriff's Department*, the bill's sponsor, "Under current law it is a misdemeanor to secretly record another identifiable person in an area where a person has a reasonable expectation of privacy. Surprisingly there is not additional consequence for those who repeatedly commit this crime. At the minimum, a person who is convicted of 2nd or subsequent offense should face the prospect of felony punishment. As technology develops and devices to record become easier to conceal, it is important that the law recognize the impact on those who are victims of being secretly recorded.

"For example, a suspect was arrested in 2023 after being caught secretly taking inappropriate videos of others at the Irvine Spectrum. The individual has a history of committing this and other crimes violating a person's privacy. Had the proposed law been in place, the individual could face a more significant consequence for his actions at the Irvine Spectrum. Another Orange County man was caught in 2023 with over 500 videos of unsuspecting females' personal areas found on his phone. The suspect had three arrests over the past ten years for similar conduct. Had the proposed change in law been in place there is a likelihood he would have been serving a sentence preventing him from committing his most recent offense.

"What concerns me most about these crimes is the potential for long-term harm to victims. Advances in technology have made it much easier to manipulate photos, send them to others, or post them on internet sites. In an instant an innocent victim loses their privacy and faces the wellknown trauma associated with these very personal violations. The Legislature must provide these victims with an opportunity for justice and send a strong message that those

who victimize others and violate one's privacy will be met with consequence."

4) **Argument in Opposition**: According to *California Public Defenders Association*, "AB 1874 is bad public policy since it is not based on any evidence that increasing the penalty for what is commonly referred to as a "peeping tom" a form of disorderly conduct will deter the behavior or provide any benefit. To the contrary, research has shown that excessive supervision and punishment can lead to higher recidivism rates.

"As a felony it would create a substantial bar to employment and various other impediments to a person's ability to have a productive future. Certainly, "peeping" is a crime and not condoned by our organization. The consequences that attached to an individual when they become a convicted felon, however, are overly severe for the offense of disorderly conduct.

"Even disorderly conduct that invades another person's privacy is a non-violent and non-serious offense. Though annoying, by itself, it does not rise to the level of felonious conduct. Should someone commit other offenses, then the person could be charged accordingly, frequently with felonies. However, the act of this form of disorderly conduct should not brand someone a felon preventing them from gainful employment, public assistance and other sanctions reserved for serious criminal offenders in our state."

5) **Related Legislation**:

   a) AB 1856 (Ta), would make it a crime to intentionally distribute deepfakes, as defined, of the intimate body part of another person or of another person engaged in specified sexual conduct without the consent of the depicted individual and knowledge that the distribution will cause serious emotional distress, and the person depicted suffers such distress. AB 1856 is pending hearing in this committee.

   b) SB 1219 (Seyarto), would add to the definition of disorderly conduct the operation of a motor vehicle in any public place and repeatedly beckoning to, contacting, or attempting to contact or stop pedestrians or other motorists, or impeding traffic, with the intent to solicit prostitution. SB 1219 is pending hearing in the Senate Public Safety Committee.

6) **Prior Legislation**:

   a) AB 1380 (Berman), of the 2023-2024 Legislative Session, would have expanded the crime of "revenge porn" to include the distribution of specified images obtained without the authorization of the person depicted or by exceeding authorized access from the property, accounts, messages, files, or resources of the person depicted. AB 1380 was held in suspense in the Assembly Appropriations Committee.

   b) AB 1721 (Ta), of the 2023-2024, would make it a crime to knowingly distribute deepfakes of sexual conduct without the consent of the depicted individual. The hearing for AB 1721 in this committee was canceled at the request of the author.

   c) SB 23 (Rubio), Chapter 483, Statutes of 2021, extended the statute of limitations for the crime of revenge porn to allow prosecution to commence within one year of the discovery of the offense, but not more than four years after the image was distributed.

d) AB 2065 (Lackey), of the 2019-2020 Legislative Session, would have made the distribution of an intimate image of another person a felony offense punishable in state prison and requiring registration as a sex offender, and would have created new and separate misdemeanor crime prohibiting the distribution and threatened distribution of such images. AB 2065 was not heard in this Committee.

e) AB 602 (Berman), Chapter 491, Statutes of 2019, created a private right of action for a "depicted individual" against a person who either creates or intentionally discloses sexually explicit material without the consent of the depicted person.

f) AB 2643 (Wieckowski), Chapter 859, Statutes of 2014, created a private right of action against a person who intentionally or recklessly distributes a sexually explicit photograph or other image or recording of another person, without the consent of that person.

g) SB 1255 (Cannella), Chapter 863, Statutes of 2014, expanded the elements of the misdemeanor offense which prohibits the unlawful distribution of a consensually-taken image of an identifiable person's intimate body parts.

h) SB 255 (Cannella), Chapter 466, Statutes of 2013, created a new misdemeanor for the distribution of an image of an identifiable person's intimate body parts which had been taken with an understanding that the image would remain private.

i) SB 1484 (Ackerman), Chapter 666, Statutes of 2004, expanded the crime of disorderly conduct to include the use of a concealed instrumentality to secretly videotape another fully or partially undressed person for the purpose of viewing that person's body or undergarments without the consent while that person is inside a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or in any other area in which that other person has a reasonable expectation of privacy, with the intent to invade that person's privacy.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen
California District Attorneys Association
California State Sheriffs' Association
Orange County Sheriff's Department
Peace Officers Research Association of California (PORAC)

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association
Debt Free Justice California

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

Amended Mock-up for 2023-2024 AB-1874 (Sanchez (A))

Mock-up based on Version Number 99 - Introduced 1/22/24
Submitted by: Andrew Ironside, Assembly Public Safety Committee

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

SECTION 1. Section 647 of the Penal Code is amended to read:

647. Except as provided in paragraph (5) of subdivision (b) and subdivision (k), every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) An individual who solicits anyone to engage in or who engages in lewd or dissolute conduct in a public place or in a place open to the public or exposed to public view.

(b) (1) An individual who solicits, or who agrees to engage in, or who engages in, an act of prostitution with the intent to receive compensation, money, or anything of value from another person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by another person to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(2) An individual who solicits, or who agrees to engage in, or who engages in, an act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by another person who is 18 years of age or older to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution.

(3) An individual who solicits, or who agrees to engage in, or who engages in, an act of prostitution with another person who is a minor in exchange for the individual providing compensation, money, or anything of value to the minor. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, the individual manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation was made by a minor who also possessed the specific intent to engage in an act of prostitution.

(4) A manifestation of acceptance of an offer or solicitation to engage in an act of prostitution does not constitute a violation of this subdivision unless some act, in addition to the manifestation of

acceptance, is done within this state in furtherance of the commission of the act of prostitution by the person manifesting an acceptance of an offer or solicitation to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(5) Notwithstanding paragraphs (1) to (3), inclusive, this subdivision does not apply to a child under 18 years of age who is alleged to have engaged in conduct to receive money or other consideration that would, if committed by an adult, violate this subdivision. A commercially exploited child under this paragraph may be adjudged a dependent child of the court pursuant to paragraph (2) of subdivision (b) of Section 300 of the Welfare and Institutions Code and may be taken into temporary custody pursuant to subdivision (a) of Section 305 of the Welfare and Institutions Code, if the conditions allowing temporary custody without warrant are met.

(c) Who accosts other persons in a public place or in a place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about a toilet open to the public for the purpose of engaging in or soliciting a lewd or lascivious or an unlawful act.

(e) Who lodges in a building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(f) Who is found in a public place under the influence of intoxicating liquor, a drug, controlled substance, toluene, or a combination of an intoxicating liquor, drug, controlled substance, or toluene, in a condition that they are unable to exercise care for their own safety or the safety of others, or by reason of being under the influence of intoxicating liquor, drug, controlled substance, toluene, or a combination of an intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of a street, sidewalk, or other public way.

(g) If a person has violated subdivision (f), a peace officer, if reasonably able to do so, shall place the person, or cause the person to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force authorized to effect an arrest for a misdemeanor without a warrant. A person who has been placed in civil protective custody shall not thereafter be subject to criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision does not apply to the following persons:

(1) A person who is under the influence of a drug or under the combined influence of intoxicating liquor and a drug.

(2) A person who a peace officer has probable cause to believe has committed a felony or who has committed a misdemeanor in addition to subdivision (f).

(3) A person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of an inhabited building or structure, without visible or lawful business with the owner or occupant.

(j) (1) A person who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, motion picture camera, camcorder, mobile phone, electronic device, or unmanned aircraft system, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision does not apply to those areas of a private business used to count currency or other negotiable instruments.

(2) A person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy. For the purposes of this paragraph, "identifiable" means capable of identification, or capable of being recognized, meaning that someone, including the victim, could identify or recognize the victim. It does not require the victim's identity to actually be established.

(3) (A) A person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person. For the purposes of this paragraph, "identifiable" means capable of identification, or capable of being recognized, meaning that someone, including the victim, could identify or recognize the victim. It does not require the victim's identity to actually be established.

(B) Neither of the following is a defense to the crime specified in this paragraph:

(i) The defendant was a cohabitant, landlord, tenant, cotenant, employer, employee, or business partner or associate of the victim, or an agent of any of these.

(ii) The victim was not in a state of full or partial undress.

(4) (A) A person who intentionally distributes or causes to be distributed the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.

(B) (i) A person intentionally distributes an image described in subparagraph (A) when that person personally distributes the image.

(ii) A person intentionally causes an image described in subparagraph (A) to be distributed when that person arranges, specifically requests, or intentionally causes another person to distribute the image.

(C) As used in this paragraph, the following terms have the following meanings:

(i) "Distribute" includes exhibiting in public or giving possession.

(ii) "Identifiable" has the same meaning as in paragraphs (2) and (3).

(iii) "Intimate body part" means any portion of the genitals, the anus and, in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or clearly visible through clothing.

(D) It shall not be a violation of this paragraph to distribute an image described in subparagraph (A) if any of the following applies:

(i) The distribution is made in the course of reporting an unlawful activity.

(ii) The distribution is made in compliance with a subpoena or other court order for use in a legal proceeding.

(iii) The distribution is made in the course of a lawful public proceeding.

(iv) The distribution is related to a matter of public concern or public interest. Distribution is not a matter of public concern or public interest solely because the depicted individual is a public figure.

(5) This subdivision does not preclude punishment under any section of law providing for greater punishment.

(k) (1) Except as provided in paragraph (3), a second or subsequent violation of subdivision (j) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment.

(2) Except as provided in paragraph (3), if the victim of a violation of subdivision (j) was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment.

(3) If the victim of a violation of paragraph (3) of subdivision (j) was a minor at the time of the offense, a second or subsequent violation of paragraph (3) of subdivision (j) is punishable ~~by imprisonment in the state prison for two, three, or four years and by a fine not exceeding ten thousand dollars ($10,000).~~ **by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both a fine and imprisonment. This paragraph shall not apply to a person who was under 18 years of age at the time that he or she committed the offense.**

(l) (1) If a crime is committed in violation of subdivision (b) and the person who was solicited was a minor at the time of the offense, and if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail for not less than two days and not more than one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both that fine and imprisonment.

(2) The court may, in unusual cases, when the interests of justice are best served, reduce or eliminate the mandatory two days of imprisonment in a county jail required by this subdivision. If the court reduces or eliminates the mandatory two days' imprisonment, the court shall specify the reason on the record.

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

Date of Hearing: March 12, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1877 (Jackson) – As Introduced January 22, 2024

As proposed to be amended in committee

SUMMARY: Requires a county probation officer to petition a court to seal the records of any person previously adjudicated a ward of the court, who has reached the age of 18, and who is no longer under the jurisdiction of the juvenile court. Specifically, **this bill**: >

1) Requires a court to seal juvenile records upon the filing of a petition if the person has not been convicted of a felony or any misdemeanor involving moral turpitude.

2) Requires county probation to notify the person of record and their counsel within 30 days of petitioning to seal records.

3) Mandates a probation department notify a person in writing that their juvenile record was sealed or if they do not qualify for automatic sealing of records, the reasons for not sealing the records.

4) Prohibits sealing records in the following cases:

   a) Where a person is transferred to adult criminal court;

   b) Where a person was convicted of a serious or violent offense, as specified in Welfare and Institutions Code section 707, subdivision (b) after turning 14 years old;

   c) Where a person was convicted of an offense as a juvenile that required the person to register as a sex offender.

5) Allows a person to petition the court to inspect sealed juvenile records for which they are the subject and authorizes the court to grant that petition.

6) Grants a prosecutor the authority to access or inspect sealed juvenile records in order to meet their statutory or constitutional obligation to disclose exculpatory evidence pursuant to *Brady v. Maryland.*

7) Exempts the Department of Motor Vehicles ("DMV") records of juvenile Vehicle Code convictions from sealing records unless a court orders a case record to be sealed and DMV maintains a public record of the conviction.

8) States DMV may only allow access to juvenile records to the person of record or a properly designed insurer with a valid requestor code using the information to determine eligibility for insurance coverage and rates.

9) Requires a court to order the destruction of records upon ordering sealing:

   a) Five years after the records were sealed;

   b) When the person of record reaches 38 years of age unless the person was alleged or adjudicated to have committed a serious or violent crime, as defined by section 707(b) after turning 14 years of age.

10) Prohibits a court from denying a petition to seal a petition because there is an unfulfilled restitution order or fine.

11) States relief may not be granted to a person of record unless the prosecutor receives at least 15 days' notice of the petition for sealing.

12) Requires county probation to notify the prosecutor when it files a petition. States if a prosecutor does not appear or object to the petition and received 15 days' notice, they may not move to set aside or otherwise appeal the order to grant the petition.

13) Authorizes a court to order fulfillment of juvenile restitution orders and states a person is not relieved from an obligation to pay victim restriction, restitution orders, and court-imposed fines and fees because their record was sealed.

14) Requires DOJ, for any person cited or arrested on or after January 1, 1973, to review the statewide criminal database to identify those cited or arrested before 18 years of age and meets the following conditions;

   a) The citation or arrest was for a misdemeanor that was dismissed;

   b) The citation or arrest was for a misdemeanor, there is no delinquency or criminal proceedings initiated; at least one calendar year has passed since the arrest, no adjudication occurred, or the person was acquitted.

   c) The arrest was for a felony, there are no delinquency or criminal proceedings initiated, at least three calendar years have passed since the date of arrest, and no adjudication occurred, or the person was acquitted of the any charges arising from that arrest.

   d) The arrest was for a serious or violent felony, as defined in Section 707(b), after the person has attained 14 years of age if there is no petition, delinquency proceeding, or criminal proceeding initiated; at least six years has passed since the date of arrest, and no adjudication occurred, or the person was acquitted of any charges arising from the arrest.

   e) The person successfully completed any of the following, relating to that arrest:

i. A pre-filing diversion program in lieu of a referral to probation or the district attorney; or

ii. A pre-filing diversion program administered by probation in lieu of a referral to the district attorney, as specified.

15) Requires the DOJ to grant relief to any person eligible for relief pursuant to the terms of this bill without requiring a petition or motion for relief.

16) Mandates that probation notify the arresting law enforcement agency and DOJ to seal the arrest records, as specified, and DOJ must seal records in their custody no later than 60 days from the date of notification by probation.

17) States that within 30 days of receipt of notification by the arresting law enforcement agency and the DOJ that records have been sealed, county probation must notify the person of record that their record has been sealed. States if the records are not sealed, written notice from the probation department shall inform the person of record of their right to petition the court directly to seal their arrest record.

EXISTING LAW:

1) Subjects a minor between 12 and 17 years of age, inclusive, who violates any federal, state, or local law or ordinance, and a minor under 12 years of age who is alleged to have committed murder or a specified sex offenses, to the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court. (Welf. & Inst. Code, § 602.)

2) Authorizes the district attorney to make a motion to transfer a minor from juvenile court to a court of criminal jurisdiction in a case in which a minor is alleged to have committed a felony when the minor was 16 years of age or older, or in a case in which a specified serious offense is alleged to have been committed by a minor when the minor was 14 or 15 years of age, but the minor was not apprehended prior to the end of juvenile court jurisdiction. (Welf. & Inst. Code, § 707.)

3) Requires the court to order the probation officer to submit a report on the behavioral patterns and social history of the minor when a prosecutor makes a motion to transfer a juvenile case to adult criminal court. (Welf. & Inst. Code § 707, subd. (a)(1).)

4) Authorizes a county probation officer or juvenile adjudged a ward of the court, or any person cited to appear before a probation officer, or if a minor is taken before any law enforcement officer to file a petition to seal juvenile records in the following circumstances:

a) If a petition was filed against the juvenile, five years or more after the end of the juvenile court's jurisdiction;

b) If there was no petition filed against the juvenile, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer or law enforcement agency; or,

c) At any time in any case after the person has reached the age of 18 years of age, or, in any case at any time after the person has reached 18 years of age, petition the court for sealing of the records. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)

5) Requires a court to seal a juvenile record, whether after arrest or adjudication, in any case: (a) where a person has been terminated from juvenile court jurisdiction; (b) has not been convicted of any felony or misdemeanor of moral turpitude since being terminated from juvenile court jurisdiction; and (c) the court is satisfied the person has attained rehabilitation. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)

6) Mandates a court direct any agency named in the order as possessing juvenile records to seal the records and advise the court of its compliance. (Welf. & Inst. Code, § 781, subd. (a)(1)(B)).)

7) Requires a court to dismiss a petition and seal the records where a juvenile completes probation. The court shall order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, and the Department of Justice. (Welf. & Inst. Code, § 786, subd. (a).)

8) Requires county probation or prosecutor to seal arrest and other records related to a juvenile's arrest and referral and participation in either a probation or prosecution diversion or supervision program following a person's satisfactory completion of diversion or supervision. (Welf. & Inst. Code, § 786.5, subd. (a)(1-2).)

9) Authorizes a court to seal a juvenile record for a major felony, as defined by Welfare and Institutions Code section 707, subdivision (b), committed by a person 14 years of age or older, only in the following circumstances:

   a) Where a person is sentenced to the California Department of Corrections and Rehabilitation ("CDCR"), Division of Juvenile Facilities ("DJF"); is 21 years of age or older; and completed probation after release from juvenile court;

   b) Where a person is not sentenced to DJF, is 18 years of age or older; and has completed probation related to that offense imposed by the court. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(i)(I-II).)

10) Authorizes the probation officer to destroy all records and papers in the proceedings concerning a minor after five years from the date on which the jurisdiction of the juvenile court over the minor is terminated. (Welf. & Inst. Code, § 826, subd. (a).)

11) Prohibits a case file that is covered by, or included in, an order of the court sealing a record pursuant to Section 781 or 786 from being inspected, except as specified by those provisions of law. (Welf. & Inst. Code, § 827, subd. (g).)

12) Provides that any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, including a school district police or security department, or to any person or agency that has a legitimate need for the information for purposes of official disposition of a case, except as limited by

sealing statutes. Requires the disposition of a taking into custody to be included with any information disclosed if available. (Welf. & Inst. Code, § 828.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author: "Current law does not seem to consider the cost or associability for a former juvenile (or current juvenile/youth) to seek out the funds, access to an attorney, or the capacity to navigate obtaining an attorney to file a petition to seal their records. For example, in a 2014, San Jose State University published a cost benefit analysis on expungement of criminal records, while using their own data from a University program assisting the low-income earners, the average costs for expungement was $3,412 per client (in 2014 dollars).

   As citied in the news article by Vox News, an overwhelming majority of employers, landlords, and colleges may screen for criminal records. The data clearly shows that by just having criminal record ability to find a home or job significantly decreases. As California is facing a historic housing and affordability crises, it seems both necessary and sufficient to find effective policy alternatives and pathways to build a life and thrive as adults, especially doing this here in California. Again as noted by the San Jose State Study, 'The average respondent reported an increase in yearly income of $6,190 after record clearance.'"

2) **Sealing Juvenile Records:** Existing law contains several provisions governing the circumstances in which a person may seek to seal juvenile records. These statutes are often unwieldy and apply to several different circumstances depending on the nature of the underlying charges, whether probation or diversion was granted, and whether the juvenile completed probation. Additionally, in some instances, the law grants a person of record the right to file a petition to seal records, and in other cases, the law mandates a court order juvenile records to be sealed.

   Welfare and Institutions Code section 781 generally authorizes a petition to seal juvenile records in any case where juvenile jurisdiction is terminated or dismissed. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).) Welfare and Institutions Code section 786 *authorizes* a court to seal records where a wardship petition is dismissed after successful completion of probation or informal supervision. (Welf. & Inst. Code section 786, subd. (a).) Welfare and Institutions Code section 786.5, on the other hand, *mandates* a court seal records upon satisfactory completion of diversion. (Welf. & Inst. Code, § 786.5, subd. (a).)

   In cases where a juvenile successfully completes diversion, county probation must, within 60 days of successful completion, determine whether the juvenile "satisfactorily completed" diversion, and if so, it must seal any records in its custody and notify the arresting law enforcement agency to seal the arrest records within their custody within 60 days. (Welf. & Inst. Code, 786.5, subd. (d).)

   Welfare and Institutions Code 781 also specifies a petition to seal records is generally requested by either the county probation department or the person of record. County probation or the person of record may petition the court to seal records in the following cases: **(a)** five years after the termination of the court's jurisdiction; **(b)** where no petition or

charges are filed against the juvenile; and **(c)** any time after the person turns 18 years of age. (Welf. & Inst. Code, § 781, subd. (a)(1)(B-D).) Existing law *requires* a court and law enforcement to seal juvenile records where a petition is dismissed, without exception. (See *In re Dean W.* (2017) 16 Cal.App.5th 970, 976.)

However, a court *may not* seal a record or dismiss a petition if the petition was *sustained* based on the commission of a serious or violent felony, as specified in Welfare and Institutions Code section 707, subdivision (b) (hereinafter referred to as "707(b) offenses") and the person was 14 years of age or older unless the section 707, subdivision (b) offense was dismissed or reduced to a lesser offense not listed in section 707, subdivision (b). (Welf. & Inst. Code, § 786, subd. (d).)

As a general matter, juvenile court records must be destroyed when the person of record reaches the age of 38 unless good cause is shown for maintaining those records. (Welf. & Inst. Code, § 826, subd. (a).) The person of record may also petition to have records retained by other agencies destroyed, and the request must be granted unless good cause is shown for retention of the records. (Welf. & Inst. Code, § 826, subd. (b).) When records are destroyed pursuant to these provision, the proceedings "shall be deemed never to have occurred." (Welf. & Inst. Code, § 826, subd. (a).) Courts have interpreted the phrase "never to have occurred" to mean that the juvenile proceeding is deemed not to have existed. (*Parmett v. Superior Court (Christal B.)* (1989) 212 Cal.App.3d 1261, 1267.)

Juvenile records that are ineligible for automatic record sealing via Welfare and Institutions Code section 786, may be sealed pursuant to Welfare and Institutions Code section 781. Under section 781, a person may petition the court to seal records related to a non-707(b) offense if the person is at least 18 years old, or it has been at least 5 years since the case was closed or the person's last contact with probation, and the court finds that the person has been rehabilitated. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)

If the person of record was convicted of a 707(b) offenses, the petitioner must either be 21 years of age and have completed supervision by the DJF, **or** 18 years of age and have completed probation supervision. (Welf. & Inst. Code, § 781, subd. (a)(1)(D).) Records related to a 707(b) offense committed after the petitioner attained 14 years of age and for which the person is required to register as a sex offender pursuant to Penal Code section 290.008 are *prohibited* from being sealed. (Welf. & Inst. Code, § 781, subd. (a)(1)(F).)

3) **This Bill and Existing Law:** This bill *requires* county probation to petition a juvenile court to seal juvenile records when the person of record **has a petition filed against them or is otherwise adjudicated a ward of the court and is over the age of 18.** The intent of the author is to mandate county probation petition to seal juvenile records because juveniles, even long after they turn 18, may not know they are entitled to seal their records. Furthermore, even when records must be automatically sealed, records are often not sealed or never destroyed. Additionally, this bill proposes to increase opportunities for automatic record clearing in a manner that is similar to what is offered for adults.

4) **Amendments:** The author has agreed to amend this bill to clarify the circumstances in which county probation must petition the court to seal juvenile records if a person has a petition filed against them in juvenile court. The amendments clarify that probation is only obligated to petition the court to seal records if: (a) a petition is actually filed against the person in

juvenile court (removing language pertaining to people that were not charged in juvenile court); (b) the person has turned 18 years of age; (c) the person has not been charged with a 707(b) offense after turning 14 years of age (assuming the charge was not reduced to non-707(b) offense or a misdemeanor); (d) and is not charged with a sex offense requiring registration.

The amendments also state that a court must seal the records if a person has not been convicted of felony or misdemeanor involving moral turpitude since termination of juvenile jurisdiction. The proposed amendments also clarify that when probation seeks to petition the court to seal records pursuant to this section, probation must notify the juvenile and their counsel at least 30 days prior to filing the petition. This will allow the juvenile's counsel to determine if the person is actually eligible for this relief. The amendments also adopt language that mirrors notice requirements in Welfare and Institutions Code section 781 and 786 pertaining to the prosecutor's obligations pursuant to *Brady v. Maryland* (1963) 373 U.S. 83.

5) **Collateral Consequences of Juvenile Convictions:** Welfare and Institutions Code section 827 authorizes specific entities to inspect juvenile case files. A juvenile case file is defined as "a petition filed in a juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making the probation officer's report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer." (Welf. & Inst. Code, § 827, subd. (e).) While existing law generally seeks to protect the confidentiality of juvenile court records, it does provide for limited exceptions to "to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse." (Welf. & Inst. Code, § 827, subd. (b)(1).)

To that end, current law provides that any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, including a school district police department, or to any person or agency that has a legitimate need for the information for purposes of official disposition of a case.

6) **Arguments in Support**: According to *Oakland Privacy:* "AB 1877 focuses on the automation of sealing juvenile records - a process which can be cumbersome and time-consuming, and even court-initiated or automatic sealing processes still contain gaps. This bill bolsters the philosophy of focusing on juvenile rehabilitation rather than utilizing punishment, which in turn removes barriers youth may face in attaining education, employment and housing, among other things. While there have been great strides in improving record sealing in the last decade, this bill will help close loopholes in the process of having records sealed, as many bills before it have done:

SB 504 (2015) waived sealing record related fees for applicants under 26 years of age, however the burden still fell on the ward of the court to petition for their record to be sealed and navigate that court process.

AB 666 (2015) established an automated process for sealing records by the courts for youth who completed probation and met certain requirements.

AB 1945 (2016) clarified in what instances courts must order records to be sealed and added a requirement on probation to initiate sealing records for youth who completed non-court diversion programs and met certain requirements.

AB 2425 (2020) The Youth Police Records Act helped close the gap on the confidentiality of records in instances of law enforcement referrals to diversion programs.

However, the process to petition for juvenile records to be sealed is still difficult to navigate - or in some instances the information on how to do so is completely lacking. For example, the Los Angeles County probation website has a very informative web page about how to go about requesting and obtaining juvenile records, and includes a robust FAQ section, states relevant law, provides a link to the application form and contact information.5 Contrast that with the same website's informational page on sealing records which does not include anything besides stating that yes, records can be sealed, and provides an email address to contact.6 And, while the application to apply to seal your records may not have a fee, it may still require a petitioner to take time off school, work, or caring for others to handle a petition to request for records to be sealed with the court system.

This bill does not modify or expand the eligibility regarding which juvenile records can be sealed. It simply makes the process automatic and hassle-free for the juvenile. While the passage of AB 1877 will incur nominal administrative costs to probation departments, overall it is a cost-savings measure as more juveniles who qualify to have their juvenile records sealed will complete that process and be afforded the opportunity to be able to better care for themselves and their families."

7) **Prior Legislation:**

a) AB 666 (Stone), Chapter 368, Statutes of 2015 requires records in the custody of law enforcement agencies, the probation department, or the Department of Justice, to also be sealed, in a case where a court has ordered a juvenile's records to be sealed, as specified.

b) AB 2425 (Stone), Chapter 330, Statutes of 2020, prohibits the release of information by a law enforcement, social worker, or probation agency when a juvenile has participated in or completed a diversion program.

c) SB 504 (Lara) Chapter 388, Statutes of 2015, limits certain cost liabilities related to sealing juvenile records to persons over the age of 26, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Public Defenders Association
Children's Defense Fund - CA
Communities United for Restorative Youth Justice (CURYJ)

Felony Murder Elimination Project
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
LA Defensa
Legal Services for Prisoners With Children
Milpa Collective
Oakland Privacy
Pacific Juvenile Defender Center
Santa Cruz Barrios Unidos
The W. Haywood Burns Institute
Young Women's Freedom Center

Opposition

None Submitted.

Analysis Prepared by: Kimberly Horiuchi / PUB. S. / (916) 319-3744

SECTION 1. Section 787 of the Welfare and Institutions Code is amended to read:

787. (a) Notwithstanding any other law, a record sealed pursuant to Section 781, 786, 786.5, or 788 may be accessed by a law enforcement agency, probation department, court, the Department of Justice, or other state or local agency that has custody of the sealed record for the limited purpose of complying with data collection or data reporting requirements that are imposed by other provisions of law. However, no personally identifying information from a sealed record accessed under this subdivision may be released, disseminated, or published by or through an agency, department, court, or individual that has accessed or obtained information from the sealed record.

(b) Notwithstanding any other law, a court may authorize a researcher or research organization to access information contained in records that have been sealed pursuant to Section 781, 786, 786.5, or 788 for the purpose of conducting research on juvenile justice populations, practices, policies, or trends, if both of the following are true:

(1) The court is satisfied that the research project or study includes a methodology for the appropriate protection of the confidentiality of an individual whose sealed record is accessed pursuant to this subdivision.

(2) Personally identifying information relating to the individual whose sealed record is accessed pursuant to this subdivision is not further released, disseminated, or published by or through the researcher or research organization.

(c) For the purposes of this section "personally identifying information" has the same meaning as in Section 1798.79.8 of the Civil Code.

(PU Amended by Stats. 2018, Ch. 1002, Sec. 2. (AB 2952) Effective January 1, 2019.)

~~SEC. 2. Section 788 is added to the Welfare and Institutions Code, to read:~~

~~788. (a) Notwithstanding Section 781, if a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court, if a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 626, or if a minor is taken before any officer of a law enforcement agency, the county probation officer shall, once the person has reached 18 years of age, petition the court for sealing of the records, including records of arrest, relating to the person's case, in the custody of the juvenile court,~~

~~probation officer, and any other agencies, including law enforcement agencies and public or private agencies operating diversion programs, entities, and public officials as the probation officer alleges, in the petition, to have custody of the records.~~

~~(b) If the court finds that since the termination of jurisdiction or action pursuant to Section 626, as the case may be, the person has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers, and exhibits in the person's case in the custody of the juvenile court sealed, including the juvenile court record, minute book entries, and entries on dockets, and any other records relating to the case in the custody of the other agencies, entities, and officials as are named in the order.~~

~~(c) The court shall send a copy of the order to each agency, entity, and official named in the order, directing the agency or entity to seal its records. Each agency, entity, and official shall seal the records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that the agency, entity, or official received.~~

~~(d) Once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, the records of which are ordered sealed.~~

~~(e) The following shall not be sealed pursuant to this section:~~

~~(1) A person's juvenile court records for an offense where the person is convicted of that offense in a criminal court pursuant to the provisions of Section 707.1.~~

~~(2) A person's juvenile court record or records relating to an offense listed in subdivision (b) of Section 707 that was committed after attaining 14 years of age.~~

~~(3) A person's juvenile court record relating to an offense for which the person is required to register pursuant to Section 290.008 of the Penal Code.~~

~~(f) The probation department shall notify a person in writing that their record has been sealed pursuant to the provisions of this section. The probation department shall notify in writing a person who does not qualify for sealing of their records under this section of the reason or reasons for not sealing the record.~~

~~(g) The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may order the inspection of the records. Except as provided in subdivision (h), the records shall not be open to inspection.~~

~~(h) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other~~

~~person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.~~

~~(i) (1) This section does not apply to Department of Motor Vehicles records of any convictions for offenses under the Vehicle Code or any local ordinance relating to the operation, stopping and standing, or parking of a vehicle where the record of any such conviction would be a public record under Section 1808 of the Vehicle Code. However, if a court orders a case record containing any such conviction to be sealed under this section, and if the Department of Motor Vehicles maintains a public record of such a conviction, the court shall notify the Department of Motor Vehicles of the sealing and the department shall advise the court of its receipt of the notice.~~

~~(2) Notwithstanding any other law, subsequent to the notification, the Department of Motor Vehicles shall allow access to its record of convictions only to the subject of the record and to insurers which have been granted requestor code numbers by the department. Any insurer to which a record of conviction is disclosed, when the conviction record has otherwise been sealed under this section, shall be given notice of the sealing when the record is disclosed to the insurer. The insurer may use the information contained in the record for purposes of determining eligibility for insurance and insurance rates for the subject of the record, and the information shall not be used for any other purpose nor shall it be disclosed by an insurer to any person or party not having access to the record.~~

~~(j) (1) Unless for good cause the court determines that the juvenile court record shall be retained, the court shall order the destruction of a person's juvenile court records five years after the record was ordered sealed.~~

~~(2) Any other agency in possession of sealed records may destroy its records five years after the record was ordered sealed.~~

~~(3) If a record contains a sustained petition rendering the person ineligible to own or possess a firearm until 30 years of age pursuant to Section 29820 of the Penal Code, then the date the sealed records shall be destroyed is the date upon which the person turns 33 years of age.~~

~~(k) (1) This section does not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution obtained pursuant to Section 730.6. A person is not relieved from the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees because their records are sealed.~~

~~(2) A victim or a local collection program may continue to enforce victim restitution orders, restitution fines, and court-ordered fines and fees after a record is sealed. The juvenile court shall have access to any records sealed pursuant to this section for the limited purposes of enforcing a civil judgment or restitution order.~~

SEC. 2. Section 781.2 is added to the Welfare and Institutions Code, to read:

781.2. (a) (1) On a monthly basis, the Department of Justice shall review the records in the statewide criminal justice databases and based on information in the state summary criminal history repository, shall identify persons who were cited or arrested before they attained 18 years of age with records of citation or arrest that meet the criteria set forth in paragraph (2) and are eligible for record relief.

(2) A person is eligible for relief pursuant to this section, if the arrest occurred on or after January 1, 1973, and meets any of the following conditions:

(A) The citation or arrest was for a misdemeanor offense and the charge was dismissed.

(B) The arrest was for a misdemeanor offense, there is no indication that juvenile delinquency or criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no adjudication occurred, or the arrestee was acquitted of any charges that arose, from that arrest.

(C) The arrest was for a felony offense not listed in subdivision (b) of Section 707, there is no indication that juvenile delinquency or criminal proceedings have been initiated, at least three calendar years have elapsed since the date of the arrest, and no adjudication occurred, or the arrestee was acquitted of any charges arising, from that arrest.

(b) The department shall grant relief to a person identified pursuant to subdivision (a), without requiring a petition or motion by a party for that relief if the relevant information is present in the department's electronic records. If the department grants record sealing relief pursuant to this section, it shall seal its records in the same manner as described in Section 781.

(c) A citation or arrest for which record sealing relief has been granted pursuant to this section shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events.

(d) The department shall annually publish on the OpenJustice Web portal, as described under Section 13010 of the Penal Code, statistics for each county regarding the total number of arrests granted relief pursuant to this section and the percentage of arrests for which the state summary criminal history information does not include a disposition.

(e) If the department grants record sealing relief pursuant to this section, it shall notify the arresting law enforcement agency, relevant probation department, and prosecuting agency, and the arresting law enforcement agency, relevant probation department, and prosecuting agency shall seal the records in their custody relating to the citation or arrest no later than 60 days from the date of notification by the department. Upon sealing, the law enforcement agency, probation department, and prosecuting agency shall notify the department that the records have been sealed.

(f) Records sealed pursuant to this section shall be destroyed within one year of sealing.

SEC. 3. Section 786.5 of the Welfare and Institutions Code is amended to read:

786.5. (a) Notwithstanding any other law, the probation department shall seal the arrest and other records in its custody relating to a juvenile's arrest and referral and participation in a diversion or supervision program under both of the following circumstances:

(1) Upon satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the probation officer in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision pursuant to Section 654.

(2) Upon satisfactory completion of a program of diversion or supervision to which a juvenile is referred by the prosecutor in lieu of the filing of a petition to adjudge the juvenile a ward of the juvenile court, including a program of informal supervision pursuant to Section 654.

(b) The probation department shall notify the arresting law enforcement agency *and the Department of Justice* to seal the arrest records described in subdivision (a), and the arresting law enforcement agency *and the Department of Justice* shall seal the records in ~~its~~ *their* custody relating to the arrest no later than 60 days from the date of notification by the probation department. Upon sealing, the arresting law enforcement agency *and the Department of Justice* shall notify the probation department that the records have been sealed. Within 30 days from receipt of notification by the arresting law enforcement agency *and the Department of Justice* that the records have been sealed pursuant to this section, the probation department shall notify the minor in writing that their record has been sealed pursuant to this section. If records have not been sealed pursuant this section, the written notice from the probation department shall inform the minor of their ability to petition the court directly to seal their arrest and other related records.

(c) Upon sealing of the records pursuant to this section, the arrest or offense giving rise to any of the circumstances specified in subdivision (a) shall be deemed not to have occurred and the individual may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought.

(d) (1) For the records relating to the circumstances described in subdivision (a), the probation department shall issue notice as follows:

(A) The probation department shall notify a public or private agency operating a diversion program to which the juvenile has been referred under these circumstances to seal records in the program operator's custody relating to the arrest or referral and the participation of the juvenile in the diversion or supervision program, and the operator of the program shall seal the records in its custody

relating to the juvenile's arrest or referral and participation in the program no later than 60 days from the date of notification by the probation department. Upon sealing, the public or private agency operating a diversion program shall notify the probation department that the records have been sealed.

(B) The probation department shall notify the participant in the supervision or diversion program in writing that their record has been sealed pursuant to the provisions of this section based on their satisfactory completion of the program. If the record is not sealed, the probation department shall notify the participant in writing of the reason or reasons for not sealing the record.

(2) An individual who receives notice from the probation department that the individual has not satisfactorily completed the diversion program and that the record has not been sealed pursuant to this section may petition the juvenile court for review of the decision in a hearing in which the program participant may seek to demonstrate, and the court may determine, that the individual has met the satisfactory completion requirement and is eligible for the sealing of the record by the probation department, the arresting law enforcement agency, and the program operator under the provisions of this section.

(e) Satisfactory completion of the program of supervision or diversion shall be defined for purposes of this section as substantial compliance by the participant with the reasonable terms of program participation that are within the capacity of the participant to perform. A determination of satisfactory or unsatisfactory completion shall be made by the probation department within 60 days of completion of the program by the juvenile, or, if the juvenile does not complete the program, within 60 days of determining that the program has not been completed by the juvenile.

(f) (1) Notwithstanding subdivision (a), the probation department of a county responsible for the supervision of a person may access a record sealed by a probation department pursuant to this section for the sole purpose of complying with subdivision (e) of Section 654.3. The information contained in the sealed record and accessed by the probation department under this paragraph shall in all other respects remain confidential and shall not be disseminated to any other person or agency. Access to, or inspection of, a sealed record authorized by this paragraph shall not be deemed an unsealing of the record and shall not require notice to any other agency.

(2) (A) Any record, that has been sealed pursuant to this section may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation.

(B) (i) A prosecuting attorney shall not use information contained in a record sealed pursuant to this section for any purpose other than those provided in subparagraph (A).

(ii) Once the case referenced in subparagraph (A) has been closed and is no longer subject to review on appeal, the prosecuting attorney shall destroy any records obtained pursuant to this subparagraph.

(PU Amended by Stats. 2020, Ch. 330, Sec. 1. (AB 2425) Effective January 1, 2021.)

SEC. 4. Section 788 is added to the Welfare and Institutions Code, to read:

788. (a) Notwithstanding Section 781, or Section 1203.47 of the Penal Code, if a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court, the county probation officer shall do either of the following once the person has reached 18 years of age:

(1) If the person will not remain under the juvenile court's delinquency jurisdiction, the county probation officer shall petition the court to seal the records relating to the person's case that are in the custody of the juvenile court, probation officer, law enforcement agency, or any other private or public agency. The probation officer shall provide a copy of the petition to the minor and their counsel at least 30 days prior to the filing of the petition.

(2) If the person will remain under the juvenile court's delinquency jurisdiction, the county probation officer shall petition the court as specified in paragraph (1) no later than one year after the termination of the juvenile court's delinquency jurisdiction.

(b) The following shall not be sealed pursuant to this section:

(1) A person's juvenile court records relating to a case that was transferred from juvenile court to a court of criminal jurisdiction under Section 707.1 if the person was convicted in the court of criminal jurisdiction.

(2) A person's juvenile court records relating to an offense listed in subdivision (b) of Section 707 that was committed when the person was 14 years of age or older, unless that offense was dismissed or reduced to a misdemeanor or a lesser offense that is not listed in subdivision (b) of Section 707.

(3) A person's juvenile court records relating to an offense for which the person is required to register pursuant to Section 290.008 of the Penal Code.

(c) If the court finds that the person has not been convicted of a felony or a misdemeanor involving moral turpitude after the juvenile court's jurisdiction was terminated, it shall order sealed all records, papers, and exhibits in the person's case that are in the custody of the juvenile court, law enforcement agency, probation department, Department of Justice, or any other private or public agency, including the juvenile court record, minute book entries, docket entries, and arrest records. The person's defense counsel shall not be ordered to seal their

records. The court shall send a copy of the order to each agency named in the order. Each agency shall seal the records in its custody as directed by the order, send a notice to the court that it has complied with the order, and seal the copy of the court's order the agency received.

(d) If the court has ordered the person's records sealed, the proceedings of the sealed case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events.

(e) In any case in which the probation officer does not file a petition pursuant to this section, the probation officer shall notify in writing the person and their counsel of the reason for not filing the petition.

(f) (1) A record that has been ordered sealed by the court under this section may be accessed, inspected, or utilized only under any of the following circumstances:

(A) If the person who is the subject of the sealed records petitions the court to permit inspection of the records and the court grants inspection.

(B) By the court for the limited purpose of verifying the prior jurisdictional status of a ward who is petitioning the court to resume its jurisdiction pursuant to subdivision (e) of Section 388.

(C) (i) By the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation. The prosecuting attorney shall submit a request to the juvenile court to access information in the sealed record for this purpose. The request shall include the prosecutor's rationale for believing that access to the information in the record may be necessary to meet the disclosure obligation and the date by which the records are needed. The juvenile court shall notify the subject of the sealed records and their attorney of the prosecutor's request and provide them with the opportunity to respond, in writing or by appearance, to the request. The court shall approve the prosecutor's request if, upon review of the relevant records, it determines that access to a specific sealed record or portion of a sealed record is necessary to enable the prosecuting attorney to comply with the disclosure obligation. If the juvenile court approves the prosecuting attorney's request, the court shall state on the record appropriate limits on the access, inspection, and utilization of the sealed records in order to protect the confidentiality of the subject of the sealed records. A court ruling allowing disclosure of information pursuant to this subdivision does not affect whether the information is admissible in a criminal or juvenile proceeding.

(ii) This subparagraph does not impose any additional discovery obligations on a prosecuting attorney.

(iii) This subparagraph does not apply to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300.

(2) Access to, or inspection of, a sealed record authorized by this subdivision is not considered an unsealing of the record and does not require notice to any other agency.

(h) (1) This section does not apply to records in the custody of the Department of Motor Vehicles relating to a conviction for an offense under the Vehicle Code or any local ordinance relating to the operation, stopping and standing, or parking of a vehicle if the record of the conviction would be a public record under Section 1808 of the Vehicle Code. However, if a court orders the record containing this conviction to be sealed under this section, and the department maintains a public record of the conviction, the court shall notify the department of the sealing.

(2) Notwithstanding any other law, if the department is notified by the court of a sealing pursuant to this subdivision, the department shall allow access to its record of conviction only to the subject of the record and to insurers which have been granted requestor code numbers by the department. An insurer that has been given access to a record of conviction shall be given notice of the sealing when the record is disclosed. The insurer may use the information contained in the record for purposes of determining eligibility for insurance and insurance rates for the subject of the record. The insurer shall not use the information for any other purpose and shall not disclose it to any other person or agency.

(i) A petition for sealing shall not be denied due to an unfulfilled order of restitution or restitution fine.

(j) (1) This section does not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution obtained pursuant to Section 730.6. A person is not relieved from the obligation to pay victim restitution, a restitution fine, or a court-ordered fine because their records are sealed.

(2) The juvenile court shall have access to any records sealed pursuant to this section for the limited purpose of enforcing a civil judgment or restitution order.

(k) A court shall not grant relief under this section unless the prosecuting attorney has been given 15 days' notice of the petition for sealing. The probation officer shall notify the prosecuting attorney when a petition is filed. If the prosecuting attorney fails to appear or object to the petition after receiving notice, the prosecuting attorney shall not move to set aside or otherwise appeal the grant of that petition.

(l) Unless the court determines there is good cause to retain the juvenile court record, the court shall order the destruction of a person's juvenile court records that are sealed pursuant to this section.

(1) If the subject of the record was alleged or adjudged to be a person described by Section 601, the court shall order the destruction five years after the record was ordered sealed.

(2) If the subject of the record was alleged or adjudged to be a person described by Section 602, the court shall order the destruction when the subject reaches 38

years of age. If the subject was found to be a person described in Section 602 because of the commission of an offense listed in subdivision (b) of Section 707 and was 14 years of age or older at the time of the offense, the records shall not be destroyed.

(3) The court shall order any other agency in possession of sealed records to destroy its records five years after the records were ordered sealed.

(m) The relief provided in this section does not preclude any other relief provided by law.

SEC. 5. Section 827.95 of the Welfare and Institutions Code is amended to read:

827.95. (a) (1) Notwithstanding Section 827.9, a law enforcement agency in this state shall not release a copy of a juvenile police record if the subject of the juvenile police record is any of the following:

(A) A minor who has been diverted by police officers from arrest, citation, detention, or referral to probation or any district attorney, and who is currently participating in a diversion program or has satisfactorily completed a diversion program.

(B) A minor who has been counseled and released by police officers without an arrest, citation, detention, or referral to probation or any district attorney, and for whom no referral to probation has been made within 60 days of the release.

(C) A minor who does not fall within the jurisdiction of the juvenile delinquency court under current state law.

(2) A law enforcement agency shall release, upon request, a copy of a juvenile police record described in paragraph (1) to the minor who is the subject of the juvenile police record and their parent or guardian only if identifying information pertaining to any other juvenile, within the meaning of subdivision (d), has been removed from the record.

(b) (1) The law enforcement agency in possession of the juvenile police record described in subdivision (a) shall seal the applicable juvenile police record and all other records in its custody relating to the minor's law enforcement contact or referral and participation in a diversion program as follows:

(A) Any juvenile police record created following a law enforcement contact with a minor described in subparagraph (A) of paragraph (1) of subdivision (a) shall be considered confidential and deemed not to exist while the minor is completing a diversion program, except to the law enforcement agency, the service provider, the minor who is the subject of the police record, and their parent or guardian. The diversion service provider shall notify the referring law enforcement agency of a minor's satisfactory completion of a diversion program within 30 days of the minor's satisfactory completion. The law enforcement agency shall seal the juvenile police record no later than 30 days from the date of notification by the

diversion service provider of the minor's satisfactory completion of a diversion program.

(B) Any juvenile police record created following a law enforcement contact with a minor described in subparagraph (B) of paragraph (1) of subdivision (a) shall be sealed no later than 60 days from the date of verification that the minor has not been referred to probation or any district attorney. Verification shall be completed within six months of the decision to counsel and release the minor.

(C) Any juvenile police record created following a law enforcement contact with a minor described in subparagraph (C) of paragraph (1) of subdivision (a) shall be sealed immediately upon verification that the minor does not fall within the jurisdiction of the juvenile delinquency court under current state law.

(D) Upon sealing of the records under this subdivision, the offense giving rise to the police record shall be deemed to not have occurred and the individual may respond accordingly to any inquiry, application, or process in which disclosure of this information is requested or sought.

(2) A law enforcement agency that seals a juvenile police record pursuant to subparagraph (A) of paragraph (1) shall notify the applicable diversion service provider *and the Department of Justice* immediately upon sealing of the record. Any records in the diversion service provider's custody relating to the minor's law enforcement contact or referral and participation in the program shall not be inspected by anyone other than the service provider, and shall be released only to the minor who is the subject of the record and their parent or guardian, as described in subdivision (c).

(3) If the minor is a dependent of the juvenile court, the law enforcement agency shall notify the minor's social worker that the juvenile police records have been sealed and that any such records in the social worker's custody relating to the minor's law enforcement contact or referral and participation in a diversion program shall also be sealed.

(4) (A) A law enforcement agency shall notify a minor in writing that their police record has been sealed pursuant to paragraph (1). If the law enforcement agency determines that a minor's juvenile police record is not eligible for sealing pursuant to paragraph (1), the law enforcement agency shall notify the minor in writing of its determination.

(B) An individual who receives notice from a law enforcement agency that they are not eligible for sealing under paragraph (1) may request reconsideration of the law enforcement agency's determination by submitting to the law enforcement agency a petition to seal a report of a law enforcement agency and any documentation supporting their eligibility for sealing under paragraph (1). For purposes of this subparagraph, a sworn statement by the petitioner shall qualify as supporting documentation.

(5) Police records sealed under paragraph (1) shall not be considered part of the "juvenile case file," as defined in subdivision (e) of Section 827.

(6) (A) Any police record that has been sealed pursuant to this section may be accessed, inspected, or utilized by the prosecuting attorney in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecuting attorney has reason to believe that access to the record is necessary to meet the disclosure obligation.

(B) (i) A prosecuting attorney shall not use information contained in a record sealed pursuant to this section for any purpose other than those provided in subparagraph (A).

(ii) Once the case referenced in subparagraph (A) has been closed and is no longer subject to review on appeal, the prosecuting attorney shall destroy any records obtained pursuant to this subparagraph.

(c) (1) Diversion service provider records related to the provision of diversion services to a minor described in subparagraph (A) of paragraph (1) of subdivision (a) shall not be considered part of a "juvenile case file," as defined in subdivision (e) of Section 827, and shall be kept confidential except to the minor who is the subject of the record or information and their parent or guardian. This section does not require the release of confidential records created, collected, or maintained by diversion service providers in the course of diversion service delivery.

(2) (A) If any other state or federal law or regulation grants access to portions of, or information relating to, the contents of a diversion service provider record related to diversion, the requirements of that state or federal law or regulation governing access to the record or portions thereof shall prevail.

(B) The release of any diversion service provider records related to diversion by any party with access under applicable California state or federal laws shall be governed by those applicable state or federal laws, and shall otherwise be prohibited.

(3) Diversion service providers shall release diversion service provider records to the minor who is the subject of the record, or their parent or guardian, upon receiving a signature authorization by the minor, parent, or guardian and using existing internal confidentiality procedures of the service provider.

(d) For purposes of this section, the following definitions apply:

(1) "Juvenile police record" refers to records or information relating to the taking of a minor into custody, temporary custody, or detention.

(2) With respect to a juvenile police record, "any other juvenile" refers to additional minors who were taken into custody or temporary custody, or detained and who also could be considered a subject of the juvenile police record.

(3) "Diversion" refers to an intervention that redirects youth away from formal processing in the juvenile justice system, including, but not limited to, counsel and release or a referral to a diversion program as defined in Section 1457.

(4) "Diversion service provider" refers to an agency or organization providing diversion services to a minor.

(5) "Diversion service provider record" refers to any records or information collected, created, or maintained by the service provider in connection to providing diversion program services to the minor.

(6) "Satisfactory completion" refers to substantial compliance by the participant with the reasonable terms of program participation that are within the capacity of the participant to perform, as determined by the service provider.

(e) On or before January 1, 2022, the Judicial Council, in consultation with the California Law Enforcement Association of Record Supervisors (CLEARS), shall develop forms for distribution by law enforcement agencies to the public to implement this section. Those forms shall include, but are not limited to, the Petition to Seal Report of Law Enforcement Agency. The material for the public shall include information about the persons who are entitled to a copy of the juvenile police record described in subdivision (a) and the specific procedures for requesting a copy of the record if a petition is necessary.

(PU Added by Stats. 2020, Ch. 330, Sec. 3. (AB 2425) Effective January 1, 2021.)

~~SEC. 3.~~

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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Date of Hearing: March 12, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1892 (Flora) – As Introduced January 22, 2024

As Proposed to be Amended in Committee

SUMMARY: Adds specified offenses related to obscene materials involving minors to the list of crimes for which law enforcement may obtain an ex parte order for a wiretap. Specifically, **this bill**: Authorizes a judge, upon receipt of a valid application to issue an ex parte order authorizing interception of wire or electronic communications initially intercepted within the territorial jurisdiction of the judge's court if there is probable cause to believe that an individual is committing, has committed, or is about to commit a felony related to child pornography.

EXISTING FEDERAL LAW:

1) Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U.S. Const., Amend. IV.)

2) Establishes a procedure for the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense, when such interception may provide or has provided evidence of specified felonies, including those related to obscenity. (18 U.S.C. § 2516, et. seq.)

3) Authorizes, if granted such authority by state statute, the principal prosecuting attorney of any state, or any political subdivision thereof, to make application to a state court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications by law enforcement when the interception may provide or has provided evidence of the commission of specified offenses, including child sexual exploitation and child pornography production. (18 U.S.C. § 2516, subd. (2).)

EXISTING STATE LAW:

1) Provides that all people have an inalienable right to privacy. (Cal. Const., art. I, § 1.)

2) Provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. (Cal. Const., Art. I, § 13.)

3) Requires each application for an order authorizing the interception of a wire or electronic communication to be made in writing upon the personal oath or affirmation of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law

Division, or of a district attorney, or the person designated to act as district attorney in the district attorney's absence, to the presiding judge of the superior court or one other judge designated by the presiding judge. (Pen. Code, § 629.50, subd. (a).)

4) Requires that the application include a statement of facts and circumstances, including the offense that is being, has been, or is about to be committed, the place where the communication is to be intercepted, that conventional investigative techniques are unlikely to succeed, the type of communication that is to be intercepted, the identity, if known, of the person whose communications are to be intercepted, and a statement of the period of time for which the interception is required to be maintained. (Pen. Code, § 629.50, subd. (a)(4)-(5).)

5) Authorizes a judge, upon application, to enter an ex parte order, as requested or modified, authorizing interception of wire or electronic communications initially intercepted within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

   a) There is probable cause to believe that an individual is committing, has committed, or is about to commit specified crimes;

   b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception, including, but not limited to, communications that may be utilized for locating or rescuing a kidnap victim;

   c) There is probable cause to believe that the facilities from which, or the place where, the wire or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted; and,

   d) Normal investigative procedures have been tried and have failed or reasonably appear either unlikely to succeed if tried or too dangerous. (Pen. Code, § 629.52, subds. (a)-(d).)

6) Requires each order authorizing the interception of any wire or electronic communication to specify all of the following:

   a) The identity, if known, of the person whose communications are to be intercepted, or if the identity is not known, then that information relating to the person's identity known to the applicant;

   b) The nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

   c) A particular description of the type of communication sought to be intercepted, and a statement of the illegal activities to which it relates;

   d) The identity of the agency authorized to intercept the communications and of the person making the application; and,

e) The period of time during which the interception is authorized including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained. (Pen. Code, § 629.54, subds. (a)-(e).)

7) Permits the judge to grant oral approval for an emergency interception without an order as specified. Approval for an oral interception shall be conditioned upon filing with the court, within 48 hours of the oral approval, a written application for an order. (Pen. Code, § 629.56.)

8) Provides that no order shall authorize the interception of a wire or electronic communication for a period longer than necessary to achieve the objective of the authorization, nor longer than 30 days. (Pen. Code, § 629.58.)

9) Defines "wire communication" as any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of a like connection in a switching station), furnished or operated by any person engaged in providing or operating these facilities for the transmission of communications. (Pen. Code, § 629.51, subd. (a)(1).)

10) Defines "electronic communication" as any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. (Pen. Code, § 629.51, subd. (a)(2).)

11) Makes it felony subject to imprisonment in state prison for 2, 3, or 6 years, or by a fine not exceeding $100,000, to engage in in either of the following for commercial purposes:

a) Knowingly sending or bringing child pornography into this state for purposes of sale or distribution with the intent to distribute, exhibit, or exchange it others and knowing that the material depicts a person under 18 years old engaging in or personally simulating sexual conduct, as specified.

b) Knowingly possessing, producing, or publishing child pornography with the intent to distribute, exhibit, or exchange it with others and knowing that the material depicts a person under 18 years old engaging in or personally simulating sexual conduct, as specified. (Pen. Code, § 311.2, subd. (b).)

12) Establishes a felony for the above conduct when not for commercial consideration, where the offender intended to distribute or exhibit child pornography to, or to exchange with, a person under 18 years of age, subject to imprisonment in state prison for 16 months, 2 years, or 3 years. Provides that this felony does not require proof that the material involved an obscene matter. (Pen. Code, § 311.2, subd. (d).)

13) Makes it a felony for a person to knowingly promote, employ, use, persuade, or induce a minor under 18 years old, when that person knows or reasonably should know that the person is a minor, to engage in or assist others to engage in preparing child pornography for commercial purposes by posing or modeling alone or with others, subject to imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code, § 311.4, subd. (b).)

14) Provides that the above conduct, when not for commercial purposes, is a felony subject to imprisonment in state prison for 16 months, 2 years, or 3 years. (Pen. Code, § 311.4, subd. (c).)

15) Defines "obscene matter" as "matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value." (Pen. Code, § 311, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Child pornography offenses are insidious and inflict devastating psychological harms on the victim. Existing law does not allow law enforcement agencies to use wiretapping or interception of electronic communication to combat it. That needs to change. Law enforcement needs to use all available legal means to investigate and prosecute these crimes. These tools will allow faster detection that these crimes are occurring and identify more guilty offenders. If we can use these warrants to solve drug and gang crimes, we should be just as willing to use them to prevent sexual exploitation of children."

2) **Effect of the Bill:** Under existing law, a judge may issue an ex parte order for the interception of wire and electronic communications if there is probable cause to believe that 1) an individual has committed, is committing, or is going to commit a specified crime; 2) the communication relates to the illegal activity; 3) the communication device will be used by the person whose communications are to be intercepted; and, 4) normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed or be too dangerous. (Pen. Code, § 629.52; *People v. Leon* (2007) 40 Cal.4th 376, 384.)] The crimes for which a wiretap may be obtained include drug trafficking offenses, murder or solicitation to commit murder, a felony involving a destructive device or weapons of mass destruction, human trafficking, active participation in a street gang, and attempt or conspiracy to commit any of these crimes. (Pen. Code, § 629.52, subd. (a)(1)-(6).)

   This bill would expand the statute to include crimes of obscenity involving a minor, including the sale, production, distribution, or exhibition of child pornography; sexual exploitation of a child; employment of a minor in the sale or distribution of child pornography; advertising obscene matters depicting minors; and possession or control of child pornography.

3) **Probable Cause**: The Fourth Amendment to the U.S. Constitution protects against unreasonable searches and seizures by the government. "[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." (*Kyllo v. U.S.* (2001) 533 U.S. 27, 33; *California v. Ciraolo* (1986) 476 U.S. 207, 211.) The U.S. Supreme Court has held that the interception of private communications is a search within the meaning of the Fourth Amendment. (See *Berger v. New York* (1967) 388 U.S. 41 and *Katz v. U.S.* (1967) 389 U.S. 347; cf. *People v. Roberts* (2010) 184 Cal.App.4th 1149, 1160 [California's wiretap statute allows for "the judicially authorized intrusion into a constitutionally protected zone of privacy"].)

Subject to limited exceptions, a search is reasonable if it is supported by probable cause. Probable cause sufficient to justify a search generally requires showing that "there is a fair probability that contraband or evidence of a crime will be found in a particular place" to be searched. (*Illinois v. Gates* (1983) 462 U.S. 213, 238.) Whether justification for a search exists is based on the totality of the circumstances known to law enforcement at the time of submitting an affidavit for a search warrant. (See e.g., *Illinois v. Gates*, supra, 462 U.S. at 238; *U.S. v. Buckner* (9th Cir. 1999) 179 F.3d 834, 837.)

4) **Ex Parte Orders for Interception of Wire and Electronic Communications:** Electronic intercepts are legally sanctioned surveillance of electronic and wire communications for law enforcement purposes. According to the Department of Justice (DOJ), court-authorized electronic interceptions are a vital law enforcement tool. (DOJ, California Electronic Interceptions Report: Annual Report 2022, <https://oag.ca.gov/system/files/media/annual-rept-legislature-2022.pdf> [as of Mar. 4, 2024] at p. 1.) Due to the fact that dangerous individuals and criminal entities, such as drug trafficking organizations and criminal street gangs frequently use telecommunications to advance their criminal objectives, electronic interceptions are critical in identifying, disrupting, and preventing crimes. (*Ibid.*) In 2022, California judges approved 468 interception orders out of 468 applications submitted, a roughly 13 percent increase from the previous year and the most since 2017 (*Id.* at pp. 1-2) Authorized interceptions led to 250 total arrests; these arrests were predominantly for murder (151), narcotics offenses (89), and gang-related offenses (6). (*Id.* at 2.) The interceptions resulted in only 15 convictions, 12 of which were for gang-related offenses.[1] (*Id.* at p. 6.)

   An ex parte order is a limited order that a court may issue without providing the subject of the order the usual notice prescribed by law. Such orders are justified on the grounds that informing the targeted individual of law enforcement efforts to monitor their communications would jeopardize law enforcement's investigation—the individual could simply cease communicating specifically about the suspect criminal activity or use an alternate means of communication. (Cf. *People v. Roberts* (2010) 184 Cal.App.4th 1149, 1160.)

   In interpreting a state wiretap scheme, the courts may look for guidance to cases under the Federal Wiretap Act of 1968, which "provides a 'comprehensive scheme for the regulation of wiretapping and electronic surveillance.'" (*People v. Otto* (1992) 2 Cal.4th 1088, 1097.) "The [Federal Wiretap Act], in effect, establishes minimum standards for the admissibility of evidence procured through electronic surveillance; state law cannot be less protective of privacy than the federal Act." (*Id.* at p. 1098.) California law generally is stricter than federal law, with a presumption that wiretapping is prohibited. (*People v. Leon* (2007) 40 Cal.4th 376, 383.) "California's wiretap law subjects the authorization of electronic surveillance to a much higher degree of scrutiny than a conventional search warrant." (*People v. Roberts*, 184 Cal. App. 4th 1149, 1166.) The purpose of the state's wiretap laws is to protect the privacy of wire and oral communications and to delineate a uniform basis of the circumstances and conditions under which the interception of wire and oral communications may be authorized. (*Halpin v. Superior Court* (1972) 6 Cal.3d 885, 898.)

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[1] The DOJ's report indicates that discrepancies between the numbers of arrests and the number of convictions could be attributable to prosecution delays or on-going investigations. (*Id.* at p. 6, fn. 2.)

Existing state law authorizes ex parte orders for the interception and recording of wire an electronic communications in limited circumstances. (See Pen. Code, § 629.52.) Unlike a search warrant, the application for authorization to intercept wire or electronic communications must come from the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney. (Pen. Code, § 629.50, subd. (a).) The application must attest to the facts and circumstance justifying the application, including the details of the offense being investigated; the investigative techniques employed by law enforcement and why those techniques are unlikely to be successful; the nature and location of the facilities or place where the communication is to be intercepted; a description of the communications law enforcement expects to intercept; and the identity, if known, of the person being investigated and whose communications are to be intercepted. (Pen. Code, § 629.50, subd. (a)(4).) The application must also specify the period of time it will maintain the interception. (Pen. Code, § 629.50, subd. (a)(5).) And, an extension of the period of time for intercepting communications requires a request for an extension of the order. (Pen. Code, § 629.58.)

Nevertheless, the potential for abuse exists despite these safeguards. As a one court recently observed:

> "In 2014, a single Riverside County Superior Court judge signed 602 orders authorizing wiretaps. To put that in perspective, all other judges in the state authorized 245 wiretaps that year. And the 602 wiretaps that year comprised approximately 17 percent of all the wiretaps authorized by all the state and federal courts in the nation. The next year, that same judge and one other authorized 640 wiretaps, the rest of the state authorized 505, and the 640 wiretaps comprised roughly 15 percent of all wiretaps in the country…
>
> In 2014 and 2015, two Riverside County judges authorized over 1,200 wiretaps that have since been the subject of public scrutiny and consternation. One federal judge has stated that 'the sheer volume of wiretaps applied for and approved in Riverside County suggests that constitutional requirements cannot have been met…' (*U.S. Mattingly* (W.D.Ky. 2016) 2016 U.S. Dist. Lexis 86489, p. 27), and journalists have reported that the wiretaps 'allowed investigators… to intercept more than 2 million conversations involving 44,000 people' (Heath and Kelman, *Justice officials fear nation's biggest wiretap operation my not be legal*, USA Today (Nov. 11, 2015) https://www.usatoday.com/story/news/2015/11/11/dea-wiretap-operation-riverside-california/75484076/ [as of Oct. 21, 2020]; see also *Ibid.* [reporting that federal prosecutors 'have mostly refused to use the results in federal court because they have concluded the state court's eavesdropping orders are unlikely to withstand a legal challenge'].)"

(*Guerrero v. Hestrin* (2020) 56 Cal.App.5th 172, 181.)

5) **Argument in Support**: According to *California Association of Highway Patrolmen*, "Technological advancements have given predators easier, more secure access to vulnerable

children and allowed people who demonstrate a sexual interest in children to build global networks and communities to discuss their predilections. Unfortunately, investigating such criminal activities can be slow, inefficient, and resource intensive.

"When there is a child at risk, there should be limited room for delay in initiating a legal process. This legislation gives law enforcement additional tools to detect, investigate, and combat child sexual exploitation offenses."

6) **Argument in Opposition**: According to *California Attorneys for Criminal Justice*, "Penal Code § 629.50 et seq now permit a judge issue an order allowing law enforcement officers to wiretap an individual's home phone, cellular phone etc. upon only a showing of probable cause to believe a crime may have been committed. Those statutes only permit the authorization of a wiretap for a very limited number of crimes, detailed in section 629.52.

"A wiretap is the most intrusive form of investigation on the privacy of individuals. Virtually all criminal investigative techniques, such as surveillance, interviewing witnesses and laboratory analysis, focus solely on the target of an investigation. By contrast, while a wiretap may target a particular individual, every person who speaks to the targeted individual - including their family members, children, grandparents, employers, government officials – has their privacy invaded and their statements examined and reviewed by law enforcement officers and prosecutors. It does not matter that the targeted person's conversation with another person involves matters completely unrelated to the criminal investigation. Everything said is recorded, whether the participants in the call discuss matters of family intimacy, a friend's mental deterioration, financial struggles, political preferences, serious medical issues, etc.

"AB 1892 proposes to expand that grave violation of the privacy of countless innocent individuals if the target of the investigation is suspected, not proven, to have possessed child pornography as defined in Penal Code §§ 311.1 et seq. Such a significant expansion of the law is particularly unwarranted for two reasons.

"First, law enforcement officers almost always learn of the suspected possession of child pornography as a result of an investigation regarding the internet searches or communication by the targeted individual. That is, law enforcement officers learn that a particular IP address has downloaded or shared suspected child pornography or communicated by message or email with another person or website. With that knowledge, officers commonly secure search warrants first for the location and identifying information about that IP address, and then to search that location to seize electronic devices and other items that may show the illegal possession of child pornography or a related crime. A wiretap on the suspect merely permits the needless violation of the privacy of innocent others.

"Second, it is very common for the suspect in a child pornography case to possess such forbidden items without the knowledge of his family or roommates, if the IP address appears to be a residence, or his fellow employees, employer and subordinates, if the IP address appears to be a workplace. A wiretap on that person's home or residence phone, or personal or work cellular phone, will grossly intrude on the privacy of family members, friends, roommates and work colleagues who are entirely innocent and ignorant of the suspect's possible crimes. The cost to cherished privacy of many is very high for the marginal value of this intrusive investigative tool.

"Many Californians are deeply troubled by over-reaching by government officials, particularly law enforcement officers. Our intent to expose and punish crime should not lead the Legislature to enact laws that further diminish our cherished and constitutionally protected privacy. This amendment is both unnecessary in this context and will certainly lead to a significant loss of privacy by many Californians."

7) **Related Legislation**:

a) AB 1804 (Jim Patterson), would lower the requisite amount of fentanyl to support probable cause to obtain a wiretap order. AB 1804 is currently pending hearing in the Assembly Appropriations Committee.

b) AB 1814 (Ting), would prohibit law enforcement and peace officers from using a facial recognition technology (FRT) as the sole basis for probable cause for an arrest, search, or affidavit for a warrant. AB 1814 is currently pending hearing in the Assembly Committee on Privacy and Consumer Protection.

8) **Prior Legislation**:

a) AB 793 (Bonta), of the 2023-2024 Legislative Session, would have prohibited a government entity from seeking or obtaining information from a reverse-location demand or a reverse-keyword demand, and prohibits any person or government entity from complying with a reverse-location demand or a reverse-keyword demand. The hearing on AB 793 in the Senate Judiciary Committee was cancelled at the request of the author.

b) SB 514 (Archuleta), Chapter 488, Statutes of 2023, extended the sunset date on California's wiretapping law until January 1, 2030.

c) AB 1242 (Bauer-Kahan), Chapter 627, Statutes of 2022, prohibits the issuance of, among other things, an ex parte order authorizing interception of wire or other electronic communication or a trap and trace devise for purpose of investigating or recovering evidence arising out of the lawful abortion services.

d) AB 304 (Jones-Sawyer), Chapter 607, Statutes of 2019, extended the sunset provision for communication interceptions to January 1, 2025.

e) SB 439 (Umberg), Chapter 645, Statutes of 2019, expanded the ability for prosecuting agencies to use intercepted communications related to additional crimes captured during the lawful execution of a wiretap in court, as specified, and states that an agency that employs peace officers may use intercepted communications in an administrative or disciplinary hearing against a peace officer if the evidence relates to any crime involving a peace officer.

f) AB 1948 (Jones-Sawyer), Chapter 294, Statutes of 2018, added fentanyl to the list of controlled substances for which interception of wire or electronic communications may be ordered.

g) AB 1924 (Low), Chapter 511, Statutes of 2016, required an order or extension order authorizing or approving the installation and use of a pen register or a trap and trace device direct that the order be sealed until the order, including any extensions, expires, and would require that the order or extension direct that the person owning or leasing the line to which the pen register or trap and trace device is attached not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person.

h) SB 178 (Leno), Chapter 651, Statutes of 2015, prohibits a government entity from compelling the production of, or access to, electronic-communication information or electronic-device information without a search warrant or wiretap order, except under specified emergency situations.

i) SB 741 (Hill) Chapter 741, Statutes of 2015, required local agencies to publicly approve or disclose the acquisition of cellular communications interception technology.

j) SB 35 (Pavley), Chapter 745, Statutes of 2014, extended the sunset date on California's wiretapping law until January 1, 2020.

k) SB 61 (Pavley), Chapter 663, Statutes of 2011, extended the sunset date on California's wiretapping law until January 1, 2015.

l) AB 569 (Portantino), Chapter 391, Statutes of 2007, extended the sunset date on California wiretap law until January 1, 2012.

m) AB 74 (Washington), Chapter 605, Statutes of 2002, extended the sunset date on California wiretap law until January 1, 2008.

n) AB 2343 (Pacheco), of the 2001-2002 Legislative Session, would have deleted the sunset date of the current wiretap law, expanded the definition of "wire communication" to authorize the interception of information sent through e-mail media, and created the emergency authority to expand an existing interception order. AB 2343 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen
California State Sheriffs' Association

Opposition

California Attorneys for Criminal Justice

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

Amended Mock-up for 2023-2024 AB-1892 (Flora (A))

Mock-up based on Version Number 99 - Introduced 1/22/24
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 629.52 of the Penal Code is amended to read:

629.52. Upon application made under Section 629.50, the judge may enter an ex parte order, as requested or modified, authorizing interception of wire or electronic communications initially intercepted within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

(a) There is probable cause to believe that an individual is committing, has committed, or is about to commit, one of the following offenses:

(1) Importation, possession for sale, transportation, manufacture, or sale of controlled substances in violation of Section 11351, 11351.5, 11352, 11370.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with respect to a substance containing heroin, cocaine, PCP, methamphetamine, fentanyl, or their precursors or analogs where the substance exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.

(2) Murder, solicitation to commit murder, a violation of Section 209, or the commission of a felony involving a destructive device in violation of Section 18710, 18715, 18720, 18725, 18730, 18740, 18745, 18750, or 18755.

(3) A felony violation of Section 186.22.

(4) A felony violation of Section 11418, relating to weapons of mass destruction, Section 11418.5, relating to threats to use weapons of mass destruction, or Section 11419, relating to restricted biological agents.

(5) A violation of Section 236.1.

(6) A felony violation of ~~Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, Section 311.4, Section 311.10, or Section 311.11~~ **subdivision (b) or (d) of Section 311.2, or subdivision (b) or (c) of Section 311.4**.

(7) An attempt or conspiracy to commit any of the above-mentioned crimes.

(b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception, including, but not limited to, communications that may be utilized for locating or rescuing a kidnap victim.

(c) There is probable cause to believe that the facilities from which, or the place where, the wire or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

(d) Normal investigative procedures have been tried and have failed or reasonably appear either unlikely to succeed if tried or too dangerous.

(e) Notwithstanding any other provision in this section, no magistrate shall enter an ex parte order authorizing interception of wire or electronic communications for the purpose of investigating or recovering evidence of a prohibited violation, as defined in Section 629.51.

Date of Hearing: March 12, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1896 (Dixon) – As Amended March 6, 2024

PULLED BY THE AUTHOR

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

Date of Hearing: March 12, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1956 (Reyes) – As Amended March 4, 2024

SUMMARY: Requires, if the grant funding from the federal Victims of Crime Act (VOCA) awarded to the Office of Emergency Services (CalOES) is 10% lower than the amount awarded the prior year, CalOES to allocate funds, upon appropriation by the Legislature, to fill the gap. Specifically, **this bill**:

1) Requires CalOES to allocate funds to victim services, upon appropriation by the Legislature, if VOCA funding falls below 10% of the amount awarded in the previous year.

2) States that the funds must be used to supplement, not supplant, funds that the victim assistance programs receive from other sources.

3) Requires CalOES to ensure that the funds are administered in a unified process with VOCA funds.

4) Provides that programs that receive funding from CalOES shall provide services to victims of crime as authorized by VOCA and related regulations.

5) Requires CalOES to regularly consult, collaborate with, and consider the recommendations regarding the allocation of funding from the VOCA Steering Committee.

6) States that the purpose of these provisions is to provide for the development, support, and continuity of victim services programs, provide trauma-informed, high-quality services for victims of crime, and to stabilize funding and support for victim services programs by supplementing federal funding for victim services programs when VOCA funding fluctuates.

7) Makes Legislative findings and declarations.

EXISTING FEDERAL LAW:

1) Establishes the Office for Victims of Crime (OVC) in the United States Department of Justice. (34 U.S.C. § 20111.)

2) Enacts the Victims of Crime Act of 1984 (VOCA) which established the Crime Victims Fund from fines and fees collected from persons convicted of federal crimes. (34 U.S.C. § 20101.)

3) Requires the OVC to administer the Crime Victims Fund. (34 U.S.C. § 20111.)

4) Requires specified amounts in the Crime Victims Fund to be allocated each fiscal year for grants to states for eligible victim compensation and victim assistance programs. (34 U.S.C.,

§§ 20102, 20103, 20107 & 20108.)

5) Requires states to certify that grants will not be used to supplant state funds otherwise available to provide crime victim compensation. (34 U.S.C. § 20103.)

EXISTING STATE LAW:

1) Establishes CalOES within the office of the Governor. (Gov. Code, § 8585.)

2) Transfers the responsibilities of the now-defunct Office of Criminal Justice Planning to CalOES. (Pen. Code, § 13820.)

3) Establishes a Victim-Witness Assistance Fund in the State Treasury and provides that the funds appropriated thereto shall be dispensed to CalOES exclusively for services that supports victims and witness of crime. (Pen. Code, § 1385.7.)

4) Establishes the Spousal Abuser Prosecution Program in the Department of Justice (DOJ) to administer financial and technical assistance to prosecutor's offices and encourages the DOJ to utilize VOCA funds to implement the program. (Pen. Code, §§ 273.81 & 273.87.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Especially given our budgetary constraints, how we prioritize spending in California is a reflection of our values. The current short fall in federal funding through the Victims of Crime Act and the associated Crime Victims Fund, puts critical programing and services that impact survivors of domestic violence, sexual assault, human trafficking and child abuse at risk. AB 1956 requires the Legislature, upon appropriation, to fill the gap in federal funding when a reduction is 10% or more lower than the amount awarded the previous year. States like Maryland have adopted similar legislation to ensure the safety and well-being of these survivors."

2) **The Crime Victims Fund**: The federal VOCA established the Crime Victims Fund, which has become a major funding source for crime victim services throughout the nation. (34 U.S.C. § 20101.) Federal criminal fines, forfeitures, and special assessments on federal convictions primarily fund the Crime Victims Fund. The federal OVC administers the fund and disburses monies to the states through formula-based and discretionary grants. (CalOES, *Victim Services in California: A Recommendation for Combining the State's Victims' Programs*, (2018). Available at: <https://www.caloes.ca.gov/wp-content/uploads/Grants/Documents/Consolidation-Report-2018.pdf> [as of Feb. 28, 2024].)

   Congress places annual caps on funds available for distribution. These annual caps are intended to maintain the Crime Victims Fund as a stable source of support for future victim services. From 2000 to 2018, the amount of the annual cap varied from $500 million to $4 billion. The cap was set at $2.015 billion in 2021, $2.6 billion in 2022, and $1.9 billion in 2023. Allocations from the Crime Victim Fund vary by state and are determined by several factors, starting with the obligation cap set by Congress. The annual cap set by Congress has a direct impact on the allocation process. For example, trend data indicates state victim

assistance grant allocations fluctuate correspondingly to the cap. (OVC, *FY 2007 – FY 2023 State Victim Assistance Formula Allocations*, (April 2023). Available at: <https://ovc.ojp.gov/about/crime-victims-fund/state-victim-assistance-allocations.pdf> [as of Feb. 28, 2024].)

Federal statute sets forth the allocation process of VOCA funds as follows:

- Congress establishes the annual funding cap.
- First, 5% percent of the fund is allocated to tribal victim services.
- Next, a maximum of $20 million is distributed from the fund pursuant to the federal Children's Justice Act.
- Then, federal prosecutors and the FBI receive funding to support victim-witness coordination.
- Finally, OVC awards grants to states, which are comprised of the 5% remaining in funds: From this amount, OVC awards 47.5 percent of the remaining balance to states for reimbursement for victim compensation programs; and OVC then awards victim assistance grants to states, which consist of the remaining 45.7% of the balance plus any funds not needed to reimburse states for victim compensation programs.

(34 U.S.C. § 20102; see also OVC, *Crime Victims Fund*, (Feb. 2024). Available at: <https://ovc.ojp.gov/about/crime-victims-fund#allocation-process> [as of Feb. 28, 2024].) OVC administers two different victim grant programs to the states from the Crime Victims Fund: victim compensation and victim assistance. While the federal government allocates grant funds evenly between victim compensation (47.5%) and victim assistance (47.5%), each half is distributed differently. (CalOES, *supra*, *Victim Services in California: A Recommendation for Combining the State's Victims' Programs*, (2018).)

Victim compensation grants provide funding to supplement state victim compensation programs that provide financial assistance and reimbursement to victims for crime-related out-of-pocket expenses, including medical and dental care, counseling, funeral and burial expenses, and lost wages and income. OVC makes annual grants from the Crime Victims Fund to eligible crime victim compensation programs totaling 75% of the amount the state paid out in eligible victim compensation claims during the preceding fiscal year. For example, in 2021, California reported a payout of $34,327,958 for crime victim compensation, accordingly, the California Victim Compensation Board received $25,746,000 from the Crime Victim Fund in 2023 for victim compensation grant award. (OVC, *Formula Grants* (May 2023). Available at: <https://ovc.ojp.gov/funding/types-of-funding/formula-grants> [as of Feb. 28, 2024]; see also. OVC, *OVC Formula Chart: FY 2023 Crime Victims Fund Compensation Allocation*. Available at: <https://ovc.ojp.gov/funding/fy-2023-voca-compensation-allocation.pdf> [as of Feb. 28, 2024].)

Victim assistance grants support victim assistance programs. States provide subgrants to local community-based organizations and public agencies that provide services directly to victims, such as crisis counseling, shelter, therapy, and training of victim service advocates. Federal victim assistance funds cannot be used to supplant state and local public funds that

would otherwise be available for crime victim assistance or for administering the state victim assistance program. (34 U.S.C. §§ 20103, subd. (a)(2) & 20110, subd. (h).) Each state grantee receives a base amount of $500,000. Any remaining funds are distributed to each state, based on the state's population in relation to all other states, as determined by current census data. Applications for grants must be by the state agency designated by the Governor to administer the victim compensation and assistance program. (OVC, *Formula Grants* (May 2023). Available at: <https://ovc.ojp.gov/funding/types-of-funding/formula-grants> [as of Feb. 28, 2024].)

Programs that receive victim assistance grants are required to submit an annual state performance report to OVC which includes information on all grants active during the fiscal year. (OVC, *supra*, *FY 2007 – FY 2023 State Victim Assistance Formula Allocations*, (April 2023)].) A number of local and statewide victim service programs in California receive victim assistance grants. Victim assistance funds are typically competitively awarded by the State of California to local community-based organizations that provide direct services to crime victims. In 2023, California received $153,789,867 for victim assistance. (OVC, *OVC FY 2023 VOCA Victim Assistance Formula Grant*, (Aug. 2023). Available at: <https://ovc.ojp.gov/funding/awards/15povc-23-gg-00432-assi> [as of Feb. 28, 2024]; see also, OVC, *OVC Formula Chart: FY 2023 Crime Victims Fund Assistance Allocation.* Available at: <https://ovc.ojp.gov/funding/fy-2023-voca-assistance-allocation.pdf> [as of Feb. 28, 2024].)

Among many other responsibilities, CalOES administers the VOCA victim assistance grant program. CalOES must apply for this program annually. (OVC, *Crime Victims Fund*, (Feb. 2023). Available at: <https://ovc.ojp.gov/about/crime-victims-fund> [as of Feb. 28, 2024]; see also, CalOES, *Joint Legislative Budget Committee Report, Grants Management Victim Services Programs*, (2023). Available at: <https://www.caloes.ca.gov/wp-content/uploads/Grants/Documents/2023_JLBC.pdf> [as of Feb. 28, 2024].)

This bill would require CalOES to allocate additional state funds, upon appropriation by the Legislature, to victim assistance services, if funding from the federal government awarded to CalOES is 10% or lower than the prior year.

3) **Anticipated Reductions in Federal VOCA Funds**: This bill states that its purpose is to provide for the development, support, and continuity of victim services programs, provide trauma-informed, high-quality services for victims of crime, and to stabilize funding and support for victim services programs by supplementing federal funding for victim services programs when the federal VOCA funding fluctuates.

According to background materials from the author, "current law does not indicate any state responsibility to step in should federal funds dip below sustainable levels. [...] Currently, programs are only able to sustain about a 10% cut in funding." Although the State provides some level of funding for victims' services, federal funds authorized by VOCA is a major source of funding. (CalOES, *supra*, *Victim Services in California: A Recommendation for Combining the State's Victims' Programs*, (2018).)

California is dependent on federal funding to provide its broad array of services to crime victims and survivors throughout the state. CalOES balances a number of unpredictable, sometimes volatile, sources of federal and state funding in order to provide steady support to local victim service providers. However, VOCA funding is subject to change and it can, and

has, changed substantially from year to year. (CalOES, *supra, Victim Services in California: A Recommendation for Combining the State's Victims' Programs*, (2018).)

For example, the VOCA distribution cap increased more than six-fold from $705 million from 2011 to $4.4 billion in 2018. The significant increase in the cap resulted in unprecedented growth in victim assistance programs around the country. However, recent proposals regarding cuts to the fund would lead to considerable shortfalls. (CalOES, *supra, Victim Services in California: A Recommendation for Combining the State's Victims' Programs*, (2018).)

In 2021, Congress passed the VOCA Fix Act, which allows monetary recoveries from federal deferred prosecutions and non-prosecution agreements to replenish the balance of the Crime Victims Fund. However, the VOCA Fix Act has proven to be insufficient. (National Association of Attorneys General (NAAG), *Letter to Congress, Re: Support Bridge Funding for VOCA Fund*, (Feb. 6, 2024). Available at: <https://www.naag.org/wp-content/uploads/2024/02/VOCA-Funding-_-Finale.pdf> [as of Feb. 28, 2024]; see also, NAAG, *56 Attorneys General Urge Congress to Adopt Key Changes to VOCA*, (Aug. 4, 2020). Available at: <https://www.naag.org/press-releases/56-attorneys-general-urge-congress-to-adopt-key-changes-to-the-victims-ofcrime-act-voca/> [as of Feb. 28, 2024].)

Based on the current balance of the Crime Victim Fund and the appropriations bills under consideration in Congress, the United States Department of Justice's Office for Victims of Crime estimates that, as compared to 2023 funding, the 2024 funding for victim services grants will be 41 percent lower. Nationwide, the anticipated below-average deposits into the VOCA Fund place the projected fiscal year 2024 awards at $700 million below fiscal year 2023 amounts. (United States Department of Justice, *Summary of Requirements for Office of Justice Programs*, Available at: <https://www.justice.gov/d9/2023- 03/3._ojp_fy_24_pb_technical_exhibits_mandatory_accounts_final_to_jmd_cleared_3.17.23.pdf> [as of Feb. 28, 2024]; see also, OVC, *FY 2004 – FY 2024 Crime Victims Fund End of Year Balance ($ millions)* Available at: <https://ovc.ojp.gov/about/crime-victims-fund/fy-2007-2024-cvf-balance.pdf> [as of Feb. 28, 2024].)

Additionally, California is anticipating a reduction in VOCA funding to the state of around $170 million, or approximately 40% due to projected cuts in federal funding. However, the most recent state budget proposal does not include support for crime victim services that are facing gaps in essential federal funding. (California Budget and Policy Center, *First Look: Understanding the Governor's 2024-25 State Budget Proposal*, (Jan. 2024). Available at: <https://calbudgetcenter. org/resources/first-look-understanding-the-governors-2024-25-state-budget-proposal/> [as of Feb. 28, 2024]; see also, Governors 2024-25 Budget, *Office of Emergency Services Program 0385 – Victim Services, Local Assistance*. Available at: <https://ebudget.ca.gov/2024-25/pdf/GovernorsBudget/0010/0690_fig2f.pdf> [as of Feb. 28, 2024].)

This bill would provide that if grant funding from VOCA awarded to CalOES is 10% lower than the amount awarded the prior year, the office shall allocate funds to fill the gap. This obligation would be contingent upon an appropriation by the Legislature. Consistent with federal law, this bill would prohibit funds for the victim services provided by the state to fill the gap from being used to supplant funds received from VOCA and other sources. The funds must be administered in accordance with the VOCA requirements and the corresponding

federal regulations.

4) **VOCA Steering Committee**: This bill would require CalOES to regularly consult, collaborate with, and consider recommendations regarding the allocation of funding with the VOCA Steering Committee. The VOCA Steering Committee was established by CalOES to identify additional victim service needs, including training needs for those who work with crime victims, and to assist CalOES in developing a strategic plan for victim assistance in California. The VOCA Steering Committee also has the responsibility of receiving comments and testimony from the public and to provide advice on the distribution of grants. (CalOES, *Task Forces, Committee & Councils* Available at: <https://www.caloes.ca.gov/office-of-the-director/policy-administration/finance-administration/grants-management/victim-services/task-forces-committee-councils/> [as of Feb. 28, 2024]; see also, Assembly Public Safety Analysis for AB 2177 (Maienschein), of the 2015-2016 Legislative Session.)

5) **Argument in Support**: According to *VALORUS*, a sponsor of this bill, "VOCA, through the Crime Victims Fund, is the largest federal funding source for victim service providers. VOCA funds essential services for crime victims, such as rape crisis centers, domestic violence shelters, child abuse programs, court appointed special advocates, legal assistance, human trafficking services, and more. VOCA is at the center of California's response to supporting victims of crime, supporting nearly 400 organizations that provide counseling, housing services, crisis response, and direct legal services, along with a range of other responses to address trauma and support their healing. Due to shifting prosecution styles, the Crime Victims Fund has slowly depleted over the past decade, jeopardizing funding for local direct service providers.

"VALOR is a California-based, national anti-sexual violence organization and California's sexual assault coalition. We represent the 84 rape crisis center programs across the state who serve survivors of sexual violence and support them through their unique healing and recovery journeys. In FY21-22, California rape crisis centers served 46,461 survivors of sexual violence.

"California rape crisis centers heavily rely on federal crime victim services funding and with these steep anticipated cuts, survivors of sexual violence, especially those in rural and low-income communities, will feel the disproportionate impacts of this gap in funding. Should the State not pass AB 1956, rape crisis centers will have to look at turning survivors away when they are showing up in the midst of trauma to receive services, increase wait times to access counseling, or sever ties with community-based partners who support survivors of sexual assault.

"Cuts to service providers across California have already begun and will continue until action is taken. Should the State not step in to support these services, thousands of survivors needs will go unmet, they will face increased wait times and fewer available services, many service providers will be forced to lay off staff and some will be forced to close their doors entirely. The reductions put survivor's safety and well-being at risk who deserve consistent, reliable access to healing services."

6) **Prior Legislation**:

a) AB 502 (Waldron), of the 2017-2018 Legislative Session, would have created and allocated VOCA funds to the San Diego County Elder or Dependent Adult Financial Abuse Crime Victim Compensation Pilot Program. AB 502 was held under submission in Assembly Appropriations Committee.

b) AB 1754 (Waldron), of the 2015-2016 Legislative Session, was substantially similar to AB 502. AB 1754 was held under submission in Senate Appropriations Committee.

c) AB 2177 (Maienschein), of the 2015-2016 Legislative Session, would have established a Victims of Crime Act Funding Advisory Committee within OES to make recommendations regarding the distribution of VOCA funds. AB 2177 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

3strands Global Foundation
Asian Americans Advancing Justice Southern California
Asian Women's Shelter
Beloved Survivors Trauma Recovery Center
Bet Tzedek Legal Services
Bill Wilson Center
Calico Center
California Advocates for Nursing Home Reform
California Coalition for Youth
California District Attorneys Association
California Elder Justice Coalition (CEJC)
California Partnership to End Domestic Violence
California State Association of Counties (CSAC)
California State Sheriffs' Association
Californians for Safety and Justice
Californians United for A Responsible Budget
Catalyst Domestic Violence Services
Center for Community Solutions
Center for Domestic Peace
Central California Family Crisis Center, INC.
Child Guidance Center, INC.
Children's Advocacy Centers of California
Children's Assessment Center
Children's Legacy Center
City of Kerman, CA
Coalition to Abolish Slavery & Trafficking (CAST)

Community Resource Center
Community Solutions
Contra Costa Senior Legal Services
County of Fresno
County of Kern
County of Kings
County of Santa Clara
Crime Victims Alliance
Culturally Responsive Domestic Violence Network (CRDVN)
Debt Free Justice California
Downtown Women's Center
Empower Yolo
Family Assistance Program
Family Healing Center
Family Violence Appellate Project
Family Violence Law Center
Free to Thrive
Friends Committee on Legislation of California
Futures Without Violence (UNREG)
Glendale Ywca
Haven Hills, INC.
Healthy Alternatives to Violent Environments
House of Ruth, INC.
Human Options, INC.
Humboldt Domestic Violence Services
Initiate Justice
Interface Children & Family Services
Jenesse Center, INC.
Jewish Family Service of Los Angeles (UNREG)
Korean American Family Services, INC (KFAM)
LA Defensa
Lassen Family Services, INC.
Laura's House
Law Foundation of Silicon Valley
Legal Aid Association of California
Legal Aid of Marin
Live Violence Free
Los Angeles Center for Law and Justice
Los Angeles County District Attorney's Office
Los Angeles Lgbt Center
Lumina Alliance
Madera County
Marjaree Mason Center

Modoc County Victim Services
Modoc Crisis Center
Napa County District Attorney's Office
Neighborhood Legal Services of Los Angeles County
News
Next Door Solutions to Domestic Violence
Partners Against Violence
Partners Against Violence, INC.
Prevail (formerly Women's Center - Youth & Family Services)
Prosecutors Alliance of California, a Project of Tides Advocacy
Public Law Center
Rady Children's Hospital
Rainbow Services, Ltd.
Rape Trauma Services: a Center for Healing and Violence Prevention
Rural County Representatives of California
Sacramento Lgbt Community Center
Safe Alternatives to Violent Environments
San Francisco Domestic Violence Consortium
San Francisco Public Defender
San Luis Obispo County Child Abuse Prevention Council Dba: Center for Family Strenghtening
Senior Advocacy Network-senior Law Project
Sheedy Consulting, LLC
Siskiyou Domestic Violence & Crisis Center
Smart Justice California, a Project of Tides Advocacy
Stand Up Placer INC.
Standing Together to End Sexual Assault
Stanislaus Family Justice Center
Strong Hearted Native Women's Coalition, INC.
The Children's Advocacy Center for Child Abuse Assessment and Treatment
The Lgbtq Center Long Beach
The People Concern
The University Corporation Dba Strength United
Urban Counties of California (UCC)
Valorcalifornia / Valorus
Valorus
Ventura County Office of The District Attorney
Victims Empowerment Support Team
Waymakers
Weave
Wild Iris Family Counseling & Crisis Center
Woman INC
Women's Transitional Living Center, INC.

Women's & Children's Crisis Shelter INC.
Yolo County District Attorney
Yolo County Mdic
Ywca Golden Gate Silicon Valley
Ywca Monterey County

15 Private Individuals

Opposition

None submitted.

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

Date of Hearing: March 12, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1982 (Mathis) – As Amended February 15, 2024

As Proposed to be Amended in Committee

SUMMARY: Adds specified offenses related to obscene materials involving minors to the list of crimes for which law enforcement may obtain an ex parte order for a wiretap. Specifically, **this bill**: Authorizes a judge, upon receipt of a valid application to issue an ex parte order authorizing interception of wire or electronic communications initially intercepted within the territorial jurisdiction of the judge's court if there is probable cause to believe that an individual is committing, has committed, or is about to commit a felony related to child pornography.

EXISTING FEDERAL LAW:

1) Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U.S. Const., Amend. IV.)

2) Establishes a procedure for the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense, when such interception may provide or has provided evidence of specified felonies, including those related to obscenity. (18 U.S.C. § 2516, et. seq.)

3) Authorizes, if granted such authority by state statute, the principal prosecuting attorney of any state, or any political subdivision thereof, to make application to a state court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications by law enforcement when the interception may provide or has provided evidence of the commission of specified offenses, including child sexual exploitation and child pornography production. (18 U.S.C. § 2516, subd. (2).)

EXISTING STATE LAW:

1) Provides that all people have an inalienable right to privacy. (Cal. Const., art. I, § 1.)

2) Provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. (Cal. Const., Art. I, § 13.)

3) Requires each application for an order authorizing the interception of a wire or electronic communication to be made in writing upon the personal oath or affirmation of the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law

Division, or of a district attorney, or the person designated to act as district attorney in the district attorney's absence, to the presiding judge of the superior court or one other judge designated by the presiding judge. (Pen. Code, § 629.50, subd. (a).)

4) Requires that the application include a statement of facts and circumstances, including the offense that is being, has been, or is about to be committed, the place where the communication is to be intercepted, that conventional investigative techniques are unlikely to succeed, the type of communication that is to be intercepted, the identity, if known, of the person whose communications are to be intercepted, and a statement of the period of time for which the interception is required to be maintained. (Pen. Code, § 629.50, subd. (a)(4)-(5).)

5) Authorizes a judge, upon application, to enter an ex parte order, as requested or modified, authorizing interception of wire or electronic communications initially intercepted within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

   a) There is probable cause to believe that an individual is committing, has committed, or is about to commit specified crimes;

   b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception, including, but not limited to, communications that may be utilized for locating or rescuing a kidnap victim;

   c) There is probable cause to believe that the facilities from which, or the place where, the wire or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted; and,

   d) Normal investigative procedures have been tried and have failed or reasonably appear either unlikely to succeed if tried or too dangerous. (Pen. Code, § 629.52, subds. (a)-(d).)

6) Requires each order authorizing the interception of any wire or electronic communication to specify all of the following:

   a) The identity, if known, of the person whose communications are to be intercepted, or if the identity is not known, then that information relating to the person's identity known to the applicant;

   b) The nature and location of the communication facilities as to which, or the place where, authority to intercept is granted;

   c) A particular description of the type of communication sought to be intercepted, and a statement of the illegal activities to which it relates;

   d) The identity of the agency authorized to intercept the communications and of the person making the application; and,

e) The period of time during which the interception is authorized including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained. (Pen. Code, § 629.54, subds. (a)-(e).)

7) Permits the judge to grant oral approval for an emergency interception without an order as specified. Approval for an oral interception shall be conditioned upon filing with the court, within 48 hours of the oral approval, a written application for an order. (Pen. Code, § 629.56.)

8) Provides that no order shall authorize the interception of a wire or electronic communication for a period longer than necessary to achieve the objective of the authorization, nor longer than 30 days. (Pen. Code, § 629.58.)

9) Defines "wire communication" as any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of a like connection in a switching station), furnished or operated by any person engaged in providing or operating these facilities for the transmission of communications. (Pen. Code, § 629.51, subd. (a)(1).)

10) Defines "electronic communication" as any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. (Pen. Code, § 629.51, subd. (a)(2).)

11) Makes it felony subject to imprisonment in state prison for 2, 3, or 6 years, or by a fine not exceeding $100,000, to engage in in either of the following for commercial purposes:

a) Knowingly sending or bringing child pornography into this state for purposes of sale or distribution with the intent to distribute, exhibit, or exchange it others and knowing that the material depicts a person under 18 years old engaging in or personally simulating sexual conduct, as specified.

b) Knowingly possessing, producing, or publishing child pornography with the intent to distribute, exhibit, or exchange it with others and knowing that the material depicts a person under 18 years old engaging in or personally simulating sexual conduct, as specified. (Pen. Code, § 311.2, subd. (b).)

12) Establishes a felony for the above conduct when not for commercial consideration, where the offender intended to distribute or exhibit child pornography to, or to exchange with, a person under 18 years of age, subject to imprisonment in state prison for 16 months, 2 years, or 3 years. Provides that this felony does not require proof that the material involved an obscene matter. (Pen. Code, § 311.2, subd. (d).)

13) Makes it a felony for a person to knowingly promote, employ, use, persuade, or induce a minor under 18 years old, when that person knows or reasonably should know that the person is a minor, to engage in or assist others to engage in preparing child pornography for commercial purposes by posing or modeling alone or with others, subject to imprisonment in the state prison for 3, 6, or 8 years. (Pen. Code, § 311.4, subd. (b).)

14) Provides that the above conduct, when not for commercial purposes, is a felony subject to imprisonment in state prison for 16 months, 2 years, or 3 years. (Pen. Code, § 311.4, subd. (c).)

15) Defines "obscene matter" as "matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value." (Pen. Code, § 311, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Child pornography offenses are insidious and inflict devastating psychological harms on the victim. Existing law does not allow law enforcement agencies to use wiretapping or interception of electronic communication to combat it. That needs to change. Law enforcement needs to use all available legal means to investigate and prosecute these crimes. These tools will allow faster detection that these crimes are occurring and identify more guilty offenders. If we can use these warrants to solve drug and gang crimes, we should be just as willing to use them to prevent sexual exploitation of children."

2) **Effect of the Bill:** Under existing law, a judge may issue an ex parte order for the interception of wire and electronic communications if there is probable cause to believe that 1) an individual has committed, is committing, or is going to commit a specified crime; 2) the communication relates to the illegal activity; 3) the communication device will be used by the person whose communications are to be intercepted; and, 4) normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed or be too dangerous. (Pen. Code, § 629.52; *People v. Leon* (2007) 40 Cal.4th 376, 384.)] The crimes for which a wiretap may be obtained include drug trafficking offenses, murder or solicitation to commit murder, a felony involving a destructive device or weapons of mass destruction, human trafficking, active participation in a street gang, and attempt or conspiracy to commit any of these crimes. (Pen. Code, § 629.52, subd. (a)(1)-(6).)

   This bill would expand the statute to include crimes of obscenity involving a minor, including the sale, production, distribution, or exhibition of child pornography; sexual exploitation of a child; employment of a minor in the sale or distribution of child pornography; advertising obscene matters depicting minors; and possession or control of child pornography.

3) **Probable Cause**: The Fourth Amendment to the U.S. Constitution protects against unreasonable searches and seizures by the government. "[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." (*Kyllo v. U.S.* (2001) 533 U.S. 27, 33; *California v. Ciraolo* (1986) 476 U.S. 207, 211.) The U.S. Supreme Court has held that the interception of private communications is a search within the meaning of the Fourth Amendment. (See *Berger v. New York* (1967) 388 U.S. 41 and *Katz v. U.S.* (1967) 389 U.S. 347; cf. *People v. Roberts* (2010) 184 Cal.App.4th 1149, 1160 [California's wiretap statute allows for "the judicially authorized intrusion into a constitutionally protected zone of privacy"].)

Subject to limited exceptions, a search is reasonable if it is supported by probable cause. Probable cause sufficient to justify a search generally requires showing that "there is a fair probability that contraband or evidence of a crime will be found in a particular place" to be searched. (*Illinois v. Gates* (1983) 462 U.S. 213, 238.) Whether justification for a search exists is based on the totality of the circumstances known to law enforcement at the time of submitting an affidavit for a search warrant. (See e.g., *Illinois v. Gates*, supra, 462 U.S. at 238; *U.S. v. Buckner* (9th Cir. 1999) 179 F.3d 834, 837.)

4) **Ex Parte Orders for Interception of Wire and Electronic Communications:** Electronic intercepts are legally sanctioned surveillance of electronic and wire communications for law enforcement purposes. According to the Department of Justice (DOJ), court-authorized electronic interceptions are a vital law enforcement tool. (DOJ, California Electronic Interceptions Report: Annual Report 2022, <https://oag.ca.gov/system/files/media/annual-rept-legislature-2022.pdf> [as of Mar. 4, 2024] at p. 1.) Due to the fact that dangerous individuals and criminal entities, such as drug trafficking organizations and criminal street gangs frequently use telecommunications to advance their criminal objectives, electronic interceptions are critical in identifying, disrupting, and preventing crimes. (*Ibid.*) In 2022, California judges approved 468 interception orders out of 468 applications submitted, a roughly 13 percent increase from the previous year and the most since 2017 (*Id.* at pp. 1-2) Authorized interceptions led to 250 total arrests; these arrests were predominantly for murder (151), narcotics offenses (89), and gang-related offenses (6). (*Id.* at 2.) The interceptions resulted in only 15 convictions, 12 of which were for gang-related offenses.[1] (*Id.* at p. 6.)

   An ex parte order is a limited order that a court may issue without providing the subject of the order the usual notice prescribed by law. Such orders are justified on the grounds that informing the targeted individual of law enforcement efforts to monitor their communications would jeopardize law enforcement's investigation—the individual could simply cease communicating specifically about the suspect criminal activity or use an alternate means of communication. (Cf. *People v. Roberts* (2010) 184 Cal.App.4th 1149, 1160.)

   In interpreting a state wiretap scheme, the courts may look for guidance to cases under the Federal Wiretap Act of 1968, which "provides a 'comprehensive scheme for the regulation of wiretapping and electronic surveillance.'" (*People v. Otto* (1992) 2 Cal.4th 1088, 1097.) "The [Federal Wiretap Act], in effect, establishes minimum standards for the admissibility of evidence procured through electronic surveillance; state law cannot be less protective of privacy than the federal Act." (*Id.* at p. 1098.) California law generally is stricter than federal law, with a presumption that wiretapping is prohibited. (*People v. Leon* (2007) 40 Cal.4th 376, 383.) "California's wiretap law subjects the authorization of electronic surveillance to a much higher degree of scrutiny than a conventional search warrant." (*People v. Roberts*, 184 Cal. App. 4th 1149, 1166.) The purpose of the state's wiretap laws is to protect the privacy of wire and oral communications and to delineate a uniform basis of the circumstances and conditions under which the interception of wire and oral communications may be authorized. (*Halpin v. Superior Court* (1972) 6 Cal.3d 885, 898.)

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[1] The DOJ's report indicates that discrepancies between the numbers of arrests and the number of convictions could be attributable to prosecution delays or on-going investigations. (*Id.* at p. 6, fn. 2.)

Existing state law authorizes ex parte orders for the interception and recording of wire an electronic communications in limited circumstances. (See Pen. Code, § 629.52.) Unlike a search warrant, the application for authorization to intercept wire or electronic communications must come from the Attorney General, Chief Deputy Attorney General, or Chief Assistant Attorney General, Criminal Law Division, or of a district attorney. (Pen. Code, § 629.50, subd. (a).) The application must attest to the facts and circumstance justifying the application, including the details of the offense being investigated; the investigative techniques employed by law enforcement and why those techniques are unlikely to be successful; the nature and location of the facilities or place where the communication is to be intercepted; a description of the communications law enforcement expects to intercept; and the identity, if known, of the person being investigated and whose communications are to be intercepted. (Pen. Code, § 629.50, subd. (a)(4).) The application must also specify the period of time it will maintain the interception. (Pen. Code, § 629.50, subd. (a)(5).) And, an extension of the period of time for intercepting communications requires a request for an extension of the order. (Pen. Code, § 629.58.)

Nevertheless, the potential for abuse exists despite these safeguards. As a one court recently observed:

> "In 2014, a single Riverside County Superior Court judge signed 602 orders authorizing wiretaps. To put that in perspective, all other judges in the state authorized 245 wiretaps that year. And the 602 wiretaps that year comprised approximately 17 percent of all the wiretaps authorized by all the state and federal courts in the nation. The next year, that same judge and one other authorized 640 wiretaps, the rest of the state authorized 505, and the 640 wiretaps comprised roughly 15 percent of all wiretaps in the country…
>
> In 2014 and 2015, two Riverside County judges authorized over 1,200 wiretaps that have since been the subject of public scrutiny and consternation. One federal judge has stated that 'the sheer volume of wiretaps applied for and approved in Riverside County suggests that constitutional requirements cannot have been met…' (*U.S. Mattingly* (W.D.Ky. 2016) 2016 U.S. Dist. Lexis 86489, p. 27), and journalists have reported that the wiretaps 'allowed investigators… to intercept more than 2 million conversations involving 44,000 people' (Heath and Kelman, *Justice officials fear nation's biggest wiretap operation my not be legal*, USA Today (Nov. 11, 2015) https://www.usatoday.com/story/news/2015/11/11/dea-wiretap-operation-riverside-california/75484076/ [as of Oct. 21, 2020]; see also *Ibid.* [reporting that federal prosecutors 'have mostly refused to use the results in federal court because they have concluded the state court's eavesdropping orders are unlikely to withstand a legal challenge'].)"

(*Guerrero v. Hestrin* (2020) 56 Cal.App.5th 172, 181.)

5) **Argument in Support**: According to *California Association of Highway Patrolmen*, "Technological advancements have given predators easier, more secure access to vulnerable

children and allowed people who demonstrate a sexual interest in children to build global networks and communities to discuss their predilections. Unfortunately, investigating such criminal activities can be slow, inefficient, and resource intensive.

"When there is a child at risk, there should be limited room for delay in initiating a legal process. This legislation gives law enforcement additional tools to detect, investigate, and combat child sexual exploitation offenses."

6) **Argument in Opposition**: According to *California Attorneys for Criminal Justice*, "Penal Code § 629.50 et seq now permit a judge issue an order allowing law enforcement officers to wiretap an individual's home phone, cellular phone etc. upon only a showing of probable cause to believe a crime may have been committed. Those statutes only permit the authorization of a wiretap for a very limited number of crimes, detailed in section 629.52.

"A wiretap is the most intrusive form of investigation on the privacy of individuals. Virtually all criminal investigative techniques, such as surveillance, interviewing witnesses and laboratory analysis, focus solely on the target of an investigation. By contrast, while a wiretap may target a particular individual, every person who speaks to the targeted individual - including their family members, children, grandparents, employers, government officials – has their privacy invaded and their statements examined and reviewed by law enforcement officers and prosecutors. It does not matter that the targeted person's conversation with another person involves matters completely unrelated to the criminal investigation. Everything said is recorded, whether the participants in the call discuss matters of family intimacy, a friend's mental deterioration, financial struggles, political preferences, serious medical issues, etc.

"AB 1892 proposes to expand that grave violation of the privacy of countless innocent individuals if the target of the investigation is suspected, not proven, to have possessed child pornography as defined in Penal Code §§ 311.1 et seq. Such a significant expansion of the law is particularly unwarranted for two reasons.

"First, law enforcement officers almost always learn of the suspected possession of child pornography as a result of an investigation regarding the internet searches or communication by the targeted individual. That is, law enforcement officers learn that a particular IP address has downloaded or shared suspected child pornography or communicated by message or email with another person or website. With that knowledge, officers commonly secure search warrants first for the location and identifying information about that IP address, and then to search that location to seize electronic devices and other items that may show the illegal possession of child pornography or a related crime. A wiretap on the suspect merely permits the needless violation of the privacy of innocent others.

"Second, it is very common for the suspect in a child pornography case to possess such forbidden items without the knowledge of his family or roommates, if the IP address appears to be a residence, or his fellow employees, employer and subordinates, if the IP address appears to be a workplace. A wiretap on that person's home or residence phone, or personal or work cellular phone, will grossly intrude on the privacy of family members, friends, roommates and work colleagues who are entirely innocent and ignorant of the suspect's possible crimes. The cost to cherished privacy of many is very high for the marginal value of this intrusive investigative tool.

"Many Californians are deeply troubled by over-reaching by government officials, particularly law enforcement officers. Our intent to expose and punish crime should not lead the Legislature to enact laws that further diminish our cherished and constitutionally protected privacy. This amendment is both unnecessary in this context and will certainly lead to a significant loss of privacy by many Californians."

7) **Related Legislation**:

a) AB 1804 (Jim Patterson), would lower the requisite amount of fentanyl to support probable cause to obtain a wiretap order. AB 1804 is currently pending hearing in the Assembly Appropriations Committee.

b) AB 1814 (Ting), would prohibit law enforcement and peace officers from using a facial recognition technology (FRT) as the sole basis for probable cause for an arrest, search, or affidavit for a warrant. AB 1814 is currently pending hearing in the Assembly Committee on Privacy and Consumer Protection.

8) **Prior Legislation**:

a) AB 793 (Bonta), of the 2023-2024 Legislative Session, would have prohibited a government entity from seeking or obtaining information from a reverse-location demand or a reverse-keyword demand, and prohibits any person or government entity from complying with a reverse-location demand or a reverse-keyword demand. The hearing on AB 793 in the Senate Judiciary Committee was cancelled at the request of the author.

b) SB 514 (Archuleta), Chapter 488, Statutes of 2023, extended the sunset date on California's wiretapping law until January 1, 2030.

c) AB 1242 (Bauer-Kahan), Chapter 627, Statutes of 2022, prohibits the issuance of, among other things, an ex parte order authorizing interception of wire or other electronic communication or a trap and trace devise for purpose of investigating or recovering evidence arising out of the lawful abortion services.

d) AB 304 (Jones-Sawyer), Chapter 607, Statutes of 2019, extended the sunset provision for communication interceptions to January 1, 2025.

e) SB 439 (Umberg), Chapter 645, Statutes of 2019, expanded the ability for prosecuting agencies to use intercepted communications related to additional crimes captured during the lawful execution of a wiretap in court, as specified, and states that an agency that employs peace officers may use intercepted communications in an administrative or disciplinary hearing against a peace officer if the evidence relates to any crime involving a peace officer.

f) AB 1948 (Jones-Sawyer), Chapter 294, Statutes of 2018, added fentanyl to the list of controlled substances for which interception of wire or electronic communications may be ordered.

g) AB 1924 (Low), Chapter 511, Statutes of 2016, required an order or extension order authorizing or approving the installation and use of a pen register or a trap and trace device direct that the order be sealed until the order, including any extensions, expires, and would require that the order or extension direct that the person owning or leasing the line to which the pen register or trap and trace device is attached not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person.

h) SB 178 (Leno), Chapter 651, Statutes of 2015, prohibits a government entity from compelling the production of, or access to, electronic-communication information or electronic-device information without a search warrant or wiretap order, except under specified emergency situations.

i) SB 741 (Hill) Chapter 741, Statutes of 2015, required local agencies to publicly approve or disclose the acquisition of cellular communications interception technology.

j) SB 35 (Pavley), Chapter 745, Statutes of 2014, extended the sunset date on California's wiretapping law until January 1, 2020.

k) SB 61 (Pavley), Chapter 663, Statutes of 2011, extended the sunset date on California's wiretapping law until January 1, 2015.

l) AB 569 (Portantino), Chapter 391, Statutes of 2007, extended the sunset date on California wiretap law until January 1, 2012.

m) AB 74 (Washington), Chapter 605, Statutes of 2002, extended the sunset date on California wiretap law until January 1, 2008.

n) AB 2343 (Pacheco), of the 2001-2002 Legislative Session, would have deleted the sunset date of the current wiretap law, expanded the definition of "wire communication" to authorize the interception of information sent through e-mail media, and created the emergency authority to expand an existing interception order. AB 2343 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen
California State Sheriffs' Association

Opposition

California Attorneys for Criminal Justice

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

Amended Mock-up for 2023-2024 AB-1892 (Flora (A))

Mock-up based on Version Number 99 - Introduced 1/22/24
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 629.52 of the Penal Code is amended to read:

629.52. Upon application made under Section 629.50, the judge may enter an ex parte order, as requested or modified, authorizing interception of wire or electronic communications initially intercepted within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

(a) There is probable cause to believe that an individual is committing, has committed, or is about to commit, one of the following offenses:

(1) Importation, possession for sale, transportation, manufacture, or sale of controlled substances in violation of Section 11351, 11351.5, 11352, 11370.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with respect to a substance containing heroin, cocaine, PCP, methamphetamine, fentanyl, or their precursors or analogs where the substance exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.

(2) Murder, solicitation to commit murder, a violation of Section 209, or the commission of a felony involving a destructive device in violation of Section 18710, 18715, 18720, 18725, 18730, 18740, 18745, 18750, or 18755.

(3) A felony violation of Section 186.22.

(4) A felony violation of Section 11418, relating to weapons of mass destruction, Section 11418.5, relating to threats to use weapons of mass destruction, or Section 11419, relating to restricted biological agents.

(5) A violation of Section 236.1.

(6) A felony violation of ~~Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, Section 311.4, Section 311.10, or Section 311.11~~ **subdivision (b) or (d) of Section 311.2, or subdivision (b) or (c) of Section 311.4**.

(7) An attempt or conspiracy to commit any of the above-mentioned crimes.

(b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception, including, but not limited to, communications that may be utilized for locating or rescuing a kidnap victim.

(c) There is probable cause to believe that the facilities from which, or the place where, the wire or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

(d) Normal investigative procedures have been tried and have failed or reasonably appear either unlikely to succeed if tried or too dangerous.

(e) Notwithstanding any other provision in this section, no magistrate shall enter an ex parte order authorizing interception of wire or electronic communications for the purpose of investigating or recovering evidence of a prohibited violation, as defined in Section 629.51.