California State Assembly

PUBLIC SAFETY

KEVIN MCCARTY
CHAIR

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AGENDA

Tuesday, April 2, 2024
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	AB 1832	Blanca Rubio	Civil Rights Department: Labor Trafficking Task Force.
2.	AB 1888	Arambula	Division of Labor Standards Enforcement: Labor Trafficking Unit.
3.	AB 1896	Dixon	Secure youth treatment facilities.
4.	AB 1978	Vince Fong	Vehicles: speed contests.
5.	AB 2099	Bauer-Kahan	Crimes: reproductive health services.
6.	AB 2138	Ramos	PULLED BY THE AUTHOR.
7.	AB 2142	Haney	Prisons: mental health.
8.	AB 2176	Berman	Juveniles: access to education.
9.	AB 2209	Sanchez	PULLED BY THE AUTHOR.
10.	AB 2215	Bryan	Criminal procedure: arrests.
11.	AB 2419	Gipson	Search warrants: child prostitution.
12.	AB 2483	Ting	Postconviction proceedings.
13.	AB 2609	Ta	Crimes: false reporting.
14.	AB 2621	Gabriel	Law enforcement training.
15.	AB 2709	Bonta	Prison visitation.
16.	AB 2730	Lackey	Sexual assault: medical evidentiary examinations.
17.	AB 2739	Maienschein	Firearms.
18.	AB 2759	Petrie-Norris	Domestic violence protective orders: possession of a firearm.
19.	AB 2818	Mathis	County jail: available social services.
20.	AB 2822	Gabriel	Domestic violence.
21.	AB 2833	McKinnor	Evidence: restorative justice communications.(Urgency)
22.	AB 2882	McCarty	California Community Corrections Performance Incentives.
23.	AB 2913	Gipson	Open unsolved murder: review and reinvestigation.
24.	AB 2923	Jones-Sawyer	Peace officers: public complaints.
25.	AB 2944	Waldron	Murdered or missing indigenous persons.
26.	AB 2974	Megan Dahle	Peace officers: deputy sheriffs.

27.	AB 2985	Hart	Courts: mental health advisement.
28.	AB 3014	Irwin	Restrictions on firearm possession.
29.	AB 3021	Kalra	Criminal procedure: interrogations.
30.	AB 3029	Bains	Controlled substances.
31.	AB 3037	Essayli	Sentencing: dismissal of enhancements.
32.	AB 3042	Stephanie Nguyen	County penalties.
33.	AB 3077	Hart	Criminal procedure: borderline personality disorder.
34.	AB 3088	Friedman	Criminal procedure: writ of habeas corpus.
35.	AB 3092	Ortega	Attorney General: law enforcement agencies: reporting requirements: deaths.
36.	AB 3127	McKinnor	Reporting of crimes: mandated reporters.

Date of Hearing: April 2, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1832 (Blanca Rubio) – As Amended March 4, 2024

SUMMARY: Establishes the Labor Trafficking Task Force (LTTF) within the Civil Rights Department (CRD) and requires the LTTF to coordinate with the Labor Enforcement Task Force (LETF), the Department of Justice (DOJ), and the Division of Labor Standards Enforcement (DLSE). Specifically, **this bill**:

1) Establishes the LTTF within the CRD and requires the LTTF to coordinate with the LETF, the DOJ, and the DLSE within the Department of Industrial Relations (DIR) to take steps to prevent labor trafficking, receive and investigate complaints alleging labor trafficking, and report specified data.

2) Requires LTTF to be comprised of experienced investigators, mediators, attorneys, outreach workers, support staff, and other staff deemed appropriate by the department.

3) Requires LTTF to do all of the following:

   a) Take steps to prevent labor trafficking;

   b) Coordinate with LETF, DOJ, and the DLSE to combat labor trafficking;

   c) Coordinate with both state and local agencies to connect survivors with available services;

   d) Provide information on the legal rights of available to survivors;

   e) Provide a list of pro bono victim's rights attorneys to survivors;

   f) Refer complaints alleging labor trafficking to the department or other agencies, as appropriate, for potential investigation, civil action, or criminal prosecution; and,

   g) Follow protocols to ensure survivors are not victimized by the process of prosecuting traffickers and are informed of the services available to them.

4) Authorizes LTTF to do any of the following:

   a) Coordinate with other relevant agencies to combat labor trafficking, including, but not limited to, the California Victim Compensation Board, the Agricultural Labor Relations Board, the Department of Cannabis Control, and the State Department of Public Health;

b) Coordinate with any of the following when investigation criminal actions related to labor trafficking:

i) Local law enforcement agencies;

ii) Federal law enforcement agencies; or,

iii) District Attorney's offices.

c) Coordinate with state or local agencies to connect survivors with available services.

5) Requires the Division of Occupational Safety and Health within the DIR to notify the task force when, upon investigating businesses under their purview, if there is evidence of labor trafficking.

6) Requires CRD to include all of the following in their annual report, until January 1, 2036:

a) The activities of the LTTF, including, but not limited to, coordination with other agencies;

b) The number of complaints referred to the department;

c) The number of complaints referred to the DOJ and other agencies.

d) The status or outcome of the complaints to CRD, DOJ, and other agencies; and,

e) A discussion of the major challenges to addressing labor trafficking complaints, the ongoing efforts to address those challenges, and options to improve the state's claim process.

7) States that LTTF is not subject to the requirements of the Bagley-Keene Open Meeting Act, as specified.

8) States that these provisions shall only become operative upon appropriation by the Legislature in the annual Budget Act or another measure, as specified.

EXISTING LAW:

1) Provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of human trafficking and shall be punished in the state prison for 5, 8, or 12 years and a fine of not more than $500,000. (Pen. Code, § 236.1, subd. (a).)

2) Provides that a victim of human trafficking may bring a civil action for damages, compensatory damages, punitive damages, injunctive relief, and combination thereof, or any other appropriate relief. (Civ. Code, § 52.5.)

3) Provides that when the Attorney General deems it advisable or necessary in the public interest, or when directed to do so by the Governor, the Attorney General shall assist any

district attorney in the discharge of the district attorney's duties, and may, if deemed necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction. In this respect, the Attorney General has all the powers of a district attorney. (Gov. Code, § 12550.)

4) Authorizes the CRD to receive, investigate, conciliate, mediate, and prosecute complaints alleging, and to bring civil actions for, a violation of the crime of human trafficking, as specified. (Gov. Code, § 12930, subd. (f)(3).)

5) Establishes the LETF under the direction DIR to enforce activities regarding labor, tax, and licensing law violators operating in the underground economy. (Unemp. Ins. Code, §329.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Labor trafficking involves actions such as recruiting, harboring, transporting or providing a person for the purpose of providing labor or services through the use of force, fraud, or coercion. It happens all too often in California, specifically for foreign nationals who are in the U.S. without authorization, while others are lured to the U.S. with promises of legitimate work on valid visas. Labor trafficking must be acknowledged this year. This is why I aim to establish efficient communication and enhanced enforcement for labor trafficking through the Labor Trafficking Unit, while ensuring the survivors are not victimized by the process of prosecuting traffickers and are informed of the services available to them. California does not tolerate exploitation."

2) **Labor Trafficking**: According to the Attorney General's Website: "Labor trafficking involves the recruitment, harboring, or transportation of a person for labor services, through the use of force, fraud, or coercion. It is modern day slavery. Labor trafficking arises in many situations, including domestic servitude, restaurant work, janitorial work, factory work, migrant agricultural work, and construction. It is often marked by unsanitary and overcrowded living and working conditions, nominal or no pay for work that is done, debt bondage, and document servitude. It occurs in homes and workplaces, and is often perpetrated by traffickers who are the same cultural origin and ethnicity as the victims, which allows the traffickers to use class hierarchy and cultural power to ensure the compliance of their victims. Labor traffickers often tell their victims that they will not be believed if they go to the authorities, that they will be deported from the United States, and that they have nowhere to run. Traffickers teach their victims to trust no one but the traffickers, so victims are often suspicious of genuine offers to help; they often expect that they will have to give something in return." (*What is Human Trafficking?*, DOJ, available at: https://oag.ca.gov/human-trafficking/what-is. [As of March 19, 2024].)

3) **Little Hoover Commission Reports:** The Little Hoover Commission released a new report in February 2024, regarding the status of human trafficking in California, along with updated suggestions to their previous reports from 2020. In the fall of 2020 the commission had issued three reports regarding labor trafficking in California. They included: Human Trafficking: Coordinating a California Response, (June 2020); Labor Trafficking: Strategies to Uncover this Hidden Crime, (September 2020); Labor Trafficking: Strategies to Help Victims and Bring Traffickers to Justice, (October 2020). All of these reports had a wide

range of recommendations for California to combat labor trafficking. It is of note, that both sex trafficking and labor trafficking are wide spread in California, but the state's response to labor trafficking has sorely lacked both direction and resources.

The 2024 report states, "Labor trafficking is a form of human trafficking that often is hidden, sometimes in plain sight. It can occur within homes or businesses that might otherwise be legitimate, making it challenging to detect. More often, the onus to report is placed on survivors, who, for a variety of reasons—such as fear of deportation or shame—may be resistant to come forward." ((*Implementation Review: California's Response to Labor Trafficking,* Little Hoover Commission (Feb. 2024), at pp. 7-15. Available at <Report278.pdf (ca.gov)>) [as of Mar. 20, 2024]. "Finding instances of potential labor trafficking, then effectively investigating and building cases to successfully prosecute these crimes is challenging. Detecting labor trafficking can be complicated by the fact that government officials often operate in silos. Law enforcement, for instance, is typically responsible for addressing the criminal aspects of trafficking crimes, but these officials are often unfamiliar with the employment context of labor trafficking and may dismiss potential cases as employment problems. Meanwhile, several state agencies have authority to investigate criminal activities and violations inherent in labor abuses, including trafficking crimes. Yet none has a mandate to specifically investigate labor trafficking complaints." (*Id.* at p. 15)

"To help bring traffickers to justice, the Commission recommended that the state empower the Department of Industrial Relations (DIR) to lead efforts to pursue labor trafficking alongside its other work to combat the underground economy." (*Id.* at p. 15*)*

While the Little Hoover Commission recommends that the best place to establish the LTTF would be within the DIR, this bill would establish the LTTF within the CRD and requires the LTTF to coordinate with the LETF, DOJ, and the DLSE.

4) **Argument in Support**: According to *The Western States Council, Sheet, Metal, Air, and Transportation*, "Labor trafficking takes several forms, including debt bondage, involuntary servitude, domestic servitude, and forced child labor. Victims may be held against their will, may not be allowed to leave the premises, or may be housed in a closed or remote location. They may be forced to work in poor conditions for little or no pay, in urban or rural settings, alongside or within legitimate businesses, behind locked doors or hidden in plain sight.

"Currently, there is no specific California State entity that is responsible for labor trafficking according to state statute. Similarly, there is no agency required to keep data on the number of labor trafficking cases. Labor trafficking affects many industries and is especially prevalent in areas with large populations of minorities and migrants."

5) **Related Legislation**: AB 1888 (Arambula), is substantially similar to this bill, and would establish the Labor Trafficking Unit (LTU) within the Division of Labor Standards Enforcement (DLSE) to receive, investigate, and process complaints alleging labor trafficking and to coordinate these efforts with other state entities. AB 1888 will be heard in this committee today.

6) **Prior Legislation**:

a) AB 235 (B. Rubio), of the 2023-2024 Legislative Session, was substantially similar to this bill and would have established the Labor Trafficking Unit (LTU) within the CRD and requires the LTU to coordinate with the LETF, the DOJ, and the DLSE. AB 235 was held on the Appropriations suspense calendar, and returned to the desk without further action.

b) AB 380 (Arambula), of the 2023-2024 Legislative Session, was substantially similar to AB 1888, and would have established the LTU within the DLSE)and requires the LTU to coordinate with the LETF, the DOJ, and the CRD. AB 380 was held on the Senate suspense calendar.

c) AB 1149 (Grayson), of the 2023-2024 Legislative Session, would have established, until July 1, 2026, the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to review collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking, among other related duties. AB 1149 was held on the Appropriations suspense calendar, and returned to the desk without further action.

d) AB 1820 (Arambula), of the 2021-2022 Legislative Session, was substantially similar to AB 380 (Arambula) and AB 1888 (Arambula) as previously mentioned. AB 1820 was vetoed by the Governor.

e) AB 2553 (Grayson), of 2021-2022 Legislative Session, would have established the California MAST to examine collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking. AB 2553 was held on the Senate Committee on Appropriations suspense file.

f) AB 1684 (Stone), Chapter 63, Statutes of 2016, authorized the DEFH to receive, investigate, mediate, and prosecute civil complaints on behalf of a victim of human trafficking.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Electrical Workers
California State Pipe Trades Council
Coalition to Abolish Slavery and Trafficking
County of Santa Clara
Western States Council Sheet Metal, Air, Rail and Transportation

Opposition

None

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

Date of Hearing: April 2, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1888 (Arambula) – As Amended March 4, 2024

SUMMARY: Establishes the Labor Trafficking Unit (LTU) within the Division of Labor Standards Enforcement (DLSE) and requires the LTU to coordinate with various departments and agencies to investigate and combat labor trafficking. Specifically, **this bill**:

1) Establishes the LTU within the DLSE and requires coordination with the Criminal Investigation Unit, the Labor Enforcement Task Force (LETF), the Department of Justice (DOJ), including the Tax Recovery in the Underground Economy Criminal Enforcement Program investigative teams, the Employment Development Department, including the Joint Enforcement Strike Force on the Underground Economy, and the Civil Rights Department (CRD) to combat labor trafficking.

2) Requires the LTU to receive, investigate, and process complaints alleging labor trafficking and take steps to prevent labor trafficking.

3) Authorizes the LTU to impose a civil penalty for violations of the human trafficking section of the Penal Code, as specified.

4) Requires that any civil penalties collected by LTU be awarded to the person harmed;

5) Allows the LTU to recover costs and attorney's fees incurred when civil penalties are collected.

6) Allows the LTU to refer labor trafficking violations to CRD.

7) Requires the LTU to coordinate with or refer criminal labor trafficking violations to DOJ for potential criminal prosecutions.

8) Allows the LTU to coordinate with state and local law enforcement agencies, tribal law enforcement agencies, and district attorney's offices when investigating criminal actions relating to labor trafficking.

9) States that LTU must follow protocols to ensure that survivors are not further victimized by the process of reporting, investigating, or prosecuting labor traffickers and are informed of the services available to them.

10) Allows the LTU to coordinate with state, tribal, and local entities to connect survivors to available services.

11) Requires the Division of Occupational Safety and Health, members of the Tax Recovery in the Underground Economy Criminal Enforcement Program investigative teams, members of the Joint Enforcement Strike Force on the Underground Economy, and CRD to collaborate with LTU to develop policies, procedures, and protocols to track, record, and report potential labor trafficking activity.

12) Requires all the entities described above to train their investigators who are most likely encounter labor trafficking to recognize warning signs of potential labor trafficking and to report to the unit when, upon investigating businesses under their purview, there is evidence of labor trafficking.

13) Requires the LTU to develop a tracking and reporting system to collect reports from all the aforementioned entities on labor trafficking.

14) Requires the LTU to aggregate and analyze the reports to identify potential complaints to be further investigated or referred for investigation.

15) Defines the following terms, for the purposes of this section:

    a) "Forced labor or services" means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, coercion, or equivalent conduct that would reasonably overbear the will of the person;

    b) "Labor trafficking" means depriving or violating the personal liberty of another person with the intent to obtain forced labor or services; and,

    c) "Unit" mean the Labor Trafficking Unit established within the Division of Labor Standards Enforcement.

16) Requires the LTU to submit a report to the Legislature on or before January 1, 2026, and every year thereafter to include the following information pertaining to the prior calendar year:

    a) The number and type of complaints or referral received, including the source of referrals;

    b) The number and type of complaints or referrals investigated, including, but not limited to population data about those accused of labor trafficking;

    c) The number of complaints referred to the Civil Rights Department;

    d) The number of complaints referred to the DOJ;

    e) The number of referrals and coordinations with state, local, and tribal law enforcement agencies and district attorney's offices;

    f) The outcome of each complaint, regardless of the agency where the complaint was resolved;

g) Population data about confirmed labor trafficking victims correlated with the industry where the trafficking occurred; and,

h) Information about labor trafficking victims who were referred for services correlated with the name of the agencies where the labor trafficking victim was referred for services.

17) Requires the LTU to include in each annual report a discussion of the major challenges to addressing labor trafficking complaints, the ongoing efforts to address those challenges, and options to improve the state's claim process, including preventing further victimization of survivors.

18) Sunsets the reporting requirements on January 1, 2036.

EXISTING LAW:

1) Provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of human trafficking and shall be punished in the state prison for 5, 8, or 12 years and a fine of not more than $500,000. (Pen. Code, § 236.1., subd. (a).)

2) Provides that a victim of human trafficking may bring a civil action for damages, compensatory damages, punitive damages, injunctive relief, and combination thereof, or any other appropriate relief. (Civ. Code, § 52.5.)

3) Provides that when the Attorney General deems it advisable or necessary in the public interest, or when directed to do so by the Governor, the Attorney General shall assist any district attorney in the discharge of the district attorney's duties, and may, if deemed necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction. In this respect, the Attorney General has all the powers of a district attorney. (Gov. Code, § 12550.)

4) Authorizes the CRD to receive, investigate, conciliate, mediate, and prosecute complaints alleging, and to bring civil actions for, a violation of the crime of human trafficking, as specified. (Gov. Code, § 12930, subd. (f)(3).)

5) Establishes the LETF under the direction of Department of Industrial Relations (DIR) to enforce activities regarding labor, tax, and licensing law violators operating in the underground economy. (Unemp. Ins. Code, §329.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Trafficked employees face threats from their employers relating to documentation status, harm to their families, and loss of wages that prevent them from trying to escape and seek help. Traffickers often target vulnerable populations such as foster children, homeless and runaway youth, foreign nationals, and individuals living in poverty. Unfortunately, the current fragmented enforcement structure means that no single entity holds the mandate to specifically investigate and enforce labor trafficking laws. By establishing a dedicated labor trafficking unit within the Department of Industrial Relations (DIR), a department with expertise in labor rights and laws, the state can

take the necessary steps to stop the abuses of workers."

2) **Labor Trafficking**: According to the Attorney General's Website: "Labor trafficking involves the recruitment, harboring, or transportation of a person for labor services, through the use of force, fraud, or coercion. It is modern day slavery. Labor trafficking arises in many situations, including domestic servitude, restaurant work, janitorial work, factory work, migrant agricultural work, and construction. It is often marked by unsanitary and overcrowded living and working conditions, nominal or no pay for work that is done, debt bondage, and document servitude. It occurs in homes and workplaces, and is often perpetrated by traffickers who are the same cultural origin and ethnicity as the victims, which allows the traffickers to use class hierarchy and cultural power to ensure the compliance of their victims. Labor traffickers often tell their victims that they will not be believed if they go to the authorities, that they will be deported from the United States, and that they have nowhere to run. Traffickers teach their victims to trust no one but the traffickers, so victims are often suspicious of genuine offers to help; they often expect that they will have to give something in return." (*What is Human Trafficking?*, DOJ, available at: https://oag.ca.gov/human-trafficking/what-is. [As of March 19, 2024].)

3) **Little Hoover Commission Reports:** The Little Hoover Commission released a new report in February 2024, regarding the status of human trafficking in California, along with updated suggestions to their previous reports from 2020. In the fall of 2020 the commission had issued three reports regarding labor trafficking in California. They included: Human Trafficking: Coordinating a California Response, (June 2020); Labor Trafficking: Strategies to Uncover this Hidden Crime, (September 2020); Labor Trafficking: Strategies to Help Victims and Bring Traffickers to Justice, (October 2020). All of these reports had a wide range of recommendations for California to combat labor trafficking. It is of note, that both sex trafficking and labor trafficking are wide spread in California, but the state's response to labor trafficking has sorely lacked both direction and resources.

The 2024 report states, "Labor trafficking is a form of human trafficking that often is hidden, sometimes in plain sight. It can occur within homes or businesses that might otherwise be legitimate, making it challenging to detect. More often, the onus to report is placed on survivors, who, for a variety of reasons—such as fear of deportation or shame—may be resistant to come forward." ((*Implementation Review: California's Response to Labor Trafficking,* Little Hoover Commission (Feb. 2024), at pp. 7-15. Available at <Report278.pdf (ca.gov)>) [as of Mar. 20, 2024]. "Finding instances of potential labor trafficking, then effectively investigating and building cases to successfully prosecute these crimes is challenging. Detecting labor trafficking can be complicated by the fact that government officials often operate in silos. Law enforcement, for instance, is typically responsible for addressing the criminal aspects of trafficking crimes, but these officials are often unfamiliar with the employment context of labor trafficking and may dismiss potential cases as employment problems. Meanwhile, several state agencies have authority to investigate criminal activities and violations inherent in labor abuses, including trafficking crimes. Yet none has a mandate to specifically investigate labor trafficking complaints." (*Id.* at p. 15)

"To help bring traffickers to justice, the Commission recommended that the state empower the Department of Industrial Relations (DIR) to lead efforts to pursue labor trafficking alongside its other work to combat the underground economy." (*Id.* at p. 15)

This bill would establish the LTU, within the Division of Labor Standards Enforcement, to receive and investigate complaints alleging labor trafficking and subsequently refer them for criminal prosecution by the DOJ or for civil action by the CRD.

4) **Governor's Veto Message:** AB 1820 (Arambula), of 2021-2022 Legislative Session, was substantially similar to this bill and was vetoed. The Governor's veto message stated:

"While I am strongly supportive of efforts to combat labor trafficking, the California Civil Rights Department (CCRD) (formerly DFEH) is the appropriate state entity to take the lead in this effort per the amendments offered by my office. DLSE does not have authority to criminally or civilly prosecute these types of cases nor have the tools and resources necessary to assist labor trafficking survivors. CCRD is already active in this space and could seamlessly expand its efforts to more aggressively combat labor trafficking provided it is given new resources in the budget.

This bill addresses some of the Governor's concerns. It would allow the LTU to refer labor trafficking cases to the Civil Rights Department.

5) **Argument in Support**: According to *The Sunita Jain Anti-Trafficking Initiative (SJI), a project at Loyola Law School*, a sponsor of this bill, "The Sunita Jain Anti-Trafficking Initiative (SJI), a project at Loyola Law School is a proud sponsor of AB 1888 (Arambula) and respectfully requests your support for it. SJI is an evidenced based and survivor-informed think tank that intentionally fills gaps in human trafficking prevention through advocating for systemic change and policy innovation. SJI's team consists of experienced practitioners who have been working directly with survivors of trafficking and on policy initiatives to address and curtail human trafficking for over 20 years.

"California has the highest number of human trafficking cases in the nation reported to the National Human Trafficking Hotline. In the wake of COVID-19 and the accompanying global recession, the number of people vulnerable to human trafficking in the United States has only increased.

"As noted in a RAND report released May 2023, Labor Trafficking remains difficult to study and address because of several reasons including, (1) victims are often not aware of their rights, (2) victims can be undocumented or displaced people whom current state and federal laws might not adequately protect (i.e. fear of deportation if they come forward), (3) lack of centralized reporting mechanism and (4) victims are under identified and undercounted because investigating and prosecuting labor trafficking can be very difficult. AB 1888 seeks to address these difficulties in granting authority to the Department of Industrial Relations (DIR) to investigate and support such claims – claims we are certain they are already coming into contact with based on our on the ground experience with labor trafficking victims who to often are not identified by systems actors.

"The passing of this bill is crucial to safeguarding the rights of all workers in Calfiornia and preventing labor trafficking. For years now, advocates have seen individuals subjected to labor trafficking in a wide number of trades and businesses – from agriculture, factories, construction, janitorial services, domestic work, to jobs where individuals are more "hidden in plain sight" within restaurants, home health care facilities, and the hospitality industry.

While such forced labor and abuse has existed for decades, in 2023, we witnessed an explosion of reports highlighting how pervasive these exploitative practices are, and how quickly this problem is growing even among children. This problem can be seen reflected regionally with the recent investigation uncovering child labor abuse and forced labor within poultry processing plants in Southern California.

"In 2021, the Little Hoover Commission highlighted that California has focused almost exclusively on combating sex trafficking and needs to do more to prevent labor trafficking in our state. Further they concluded based on statewide stakeholder input that California's efforts to prevent labor trafficking are fragmented and a major issue is a lack of a directive to current state agencies to lead efforts to prevent labor trafficking and coordinate with other agencies such as California Department of Justice (DOJ)and Department of Fair Employment and Housing (DFEH) to stop trafficking before it starts. In a recent report released in February 2024, the Commission explicitly concluded that "by empowering the Department of Industrial Relations to take a lead role in investigating allegations of labor trafficking, the state could help gather the information necessary for prosecutions and begin to take steps to proactively target worker outreach efforts in appropriate industries or geographic hotspots."

"AB 1888 (Arambula) - the California Labor Trafficking Prevention Act - seeks to protect California's most vulnerable workers from being taken advantage of by unscrupulous individuals and businesses who force them to work under duress with little to no pay. This bill will provide the DIR with statutory authority to investigate and coordinate work statewide by creating a specialized Labor Trafficking Unit and collect data across state agencies. This is an important first step in properly preventing, investigating, and coordinating state efforts to put a stop to the abuses of workers in our staete, and decades overdue." (citations omitted)

6) **Related Legislation**: AB 1832 (B. Rubio), would establish the Labor Trafficking Task Force (LTTF) within CRD and requires the LTTF to coordinate with the LETF, DOJ, and DLSE. AB 1832 will be heard in this committee today.

7) **Prior Legislation**:

   a) AB 235 (B. Rubio), of the 2023-2024 Legislative Session, is substantially similar to AB 1832 and would have established the LTU within the CRD and requires the LTU to coordinate with LETF, DOJ, and DLSE. AB 235 was held on the Appropriations suspense calendar, and returned to the desk without further action.

   b) AB 380 (Arambula), of the 2023-2024 Legislative Session, is substantially similar to AB 1888, and would have established the LTU within the DLSE and requires the LTU to coordinate with LETF, the DOJ, and CRD. AB 380 was held on the Senate suspense calendar.

   c) AB 1149 (Grayson), of the 2023-2024 Legislative Session, would have established, until July 1, 2026, the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to review collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking, among other related duties. AB 1149 was held on the Appropriations suspense calendar, and

returned to the desk without further action.

d) AB 1820 (Arambula), of the 2021-2022 Legislative Session, was substantially similar to AB 380 (Arambula) and AB 1888 (Arambula) as previously mentioned. AB 1820 was vetoed by the Governor.

e) AB 2553 (Grayson), of 2021-2022 Legislative Session, would have established the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to examine collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking. AB 2553 was held on the Senate Committee on Appropriations suspense file.

f) AB 1684 (Stone), Chapter 63, Statutes of 2016, authorized the DEFH to receive, investigate, mediate, and prosecute civil complaints on behalf of a victim of human trafficking.

REGISTERED SUPPORT / OPPOSITION:

Support
California Federation of Teachers Afl-cio
California Labor Federation, Afl-cio
California Nurses Association
California State Association of Electrical Workers
California State Pipe Trades Council
Community Legal Services in East Palo Alto
Consumer Attorneys of California
Little Hoover Commission
Loyola Law School, the Sunita Jain Anti-trafficking Initiative
Thai Community Development Center
Western States Council Sheet Metal, Air, Rail and Transportation

Opposition

None

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

Date of Hearing: April 2, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

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

SUMMARY: Authorizes a youth's continued commitment to a secure youth treatment facility (SYTF) as a result of subsequent offenses that would not otherwise allow commitment to a SYTF. Specifically, **this bill**:

1) Eliminates the requirement that a minor can only be committed to a STYF if the last offense adjudicated on a juvenile petition is a serious or violent offense enumerated in Welfare and Institutions Code section 707, subdivision (b) (hereinafter "707(b) offense").

2) Allows a prosecutor to file non-707(b) offense charges against a youth who is committed to a SYTF and continue the SYTF commitment, but prohibits a court from increasing the youth's current baseline term of confinement based on those subsequent adjudications.

3) States that before filing a criminal charge based on in-custody conduct, the prosecution may consider the interests of the rehabilitation of the ward, including:

   a) The extent to which the conduct is a manifestation of the needs for which the ward is receiving programming, treatment, and education;

   b) The extent to which the conduct is related to the nature of the in-custody environment and can be addressed by alternative means;

   c) The impact on a potential baseline term reduction at a six-month review hearing;

   d) Modifications to the ward's individual rehabilitation plan that can address the underlying conduct; and,

   e) Returning the youth to a SYTF from a less restrictive program.

4) Requires that six-month progress review hearings, at which the juvenile court is to determine whether the baseline term of confinement should be modified and whether the ward should be assigned to a less restrictive program, be conducted as expeditiously as possible once commenced, if the minor so requests.

5) Requires a hearing on whether a minor should be removed from a SYTF to a less restrictive placement be conducted as expeditiously as possible once commenced, if the minor so requests.

EXISTING LAW:

1) Provides that a juvenile court ward who meets any of the following conditions shall not be committed to the California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (DJJ):

   a) The ward is less than 11 years old;

   b) The ward is suffering from a contagious, infectious, or other disease that would probably endanger the lives or health of the other minors in the facility; or,

   c) The ward's most recent offense is not one a 707(b) offense. (Welf. & Inst. Code, § 733.)

2) States that the DJJ shall close on June 30, 2023. (Welf. & Inst. Code, § 736.5, subd. (e).)

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

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

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

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

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

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

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

7) Provides that for youth transferred from the Division of Juvenile Justice (DJJ) and committed to a SYTF, the baseline term of confinement shall not exceed a youth's projected juvenile parole board date, as defined. (Welf. & Inst. Code, § 875, subd. (b)(2).)

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

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

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

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "There are a series of criteria that must be met in order for a juvenile to be committed to a Secure Youth Treatment Facility (SYTF). Existing law does not allow for a minor to be adjudicated of subsequent violations of the law while committed to a SYTF. AB 1896 is needed to correct this inaccuracy. The addition of §875(b)(3) will not result in an increased number of individuals being committed to SYTF, rather, it will comport with the overall intent of SB 823 fostering positive youth development, promoting public and community safety, and offering fair and flexible terms of commitment."

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

   In 2007, the Legislature passed SB 81 (Committee on Budget), Chapter 175, Statutes of 2007, known as juvenile justice realignment. The premise was that local authorities were

better able than the State to provide rehabilitation for many juvenile offenders. Under this legislation, juvenile courts were prohibited from committing juveniles adjudicated after September 1, 2007, to DJJ unless the adjudication was for certain serious, violent, or sexual offenses.[1] Non-violent offenders housed at DJJ were transferred back to the counties. And in return, counties were provided with funding.

The Governor's January Budget in 2020 proposed to transfer DJJ to a newly created independent department within the Health and Human Services Agency on July 1, 2020. That approach was intended to align the rehabilitative mission of the state's juvenile justice system with trauma-informed and developmentally appropriate services supported by programs overseen by the state's Health and Human Services Agency. The unprecedented impact of COVID-19 resulted in the withdrawal of this proposal. Subsequently, the May Revision of the Budget proposed to expand on previous efforts to reform the state's juvenile justice system by transferring the responsibility for managing all youthful offenders to local jurisdictions.

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

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

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

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

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

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

Importantly, the creation of SYTFs did not create a new loophole in the law disallowing undiscovered or unsolved crimes from being adjudicated, as the requirement that the most recent offense be a 707(b) offense in order to commit a minor to the most secure placement is not a new concept. It has been the law since 2007.

Requiring that the most recent adjudication was for a 707(b) offense is also consistent with the intent of juvenile justice realignment. SB 823 (Committee on Budget and Fiscal Review) Chapter 337, Statutes of 2020 stated, among other things, that the intent of the Legislature and the administration is to "ensure that dispositions are in the least restrictive appropriate environment, … and reduce the use of confinement in the juvenile justice system by utilizing community-based responses and interventions."

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

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

In other words, there is already a process in place to address in-custody violations of law that amount to criminal conduct but which are not 707(b) offenses.

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

This bill provides that notwithstanding the ability to file new petitions on non-707(b) offenses, a court is prohibited from increasing the youth's current baseline term of confinement based on these subsequently adjudicated petitions. So other than using court resources by allowing additional offenses to be adjudicated against a youth already committed to an SYTF for a significant amount of time, it is hard to see what this bill would actually accomplish as it does not increase public safety or promote the youth's rehabilation.

5) **Argument in Support**: According to the *Orange County District Attorney*, the sponsor of this bill, "With the passage of SB 823 (2020), and the resulting closure of the Division of Juvenile Justice, the criteria by which courts could commit youth to a SYTF were borrowed from the existing code sections applicable to DJJ commitments. These criteria were intended to be a procedural mechanism crafted to prevent youth who were otherwise amenable to less restrictive dispositions from exposure to more intense forms of supervision. However, one specific criterion, if not addressed by the addition of §875(b)(3), interferes with the meaningful adjudication and rehabilitation of SYTF eligible youth.

"Specifically, §875(a)(2) stipulates that a youth offender can only be sentenced to a SYTF if their most recent offense is a 707(b) offense, so any offense adjudicated after a commitment has been made cannot be adjudicated without interfering with the minors existing commitment. As a result, a minor offender who commits an offense following their original SYTF commitment, cannot be prosecuted for any of those offenses in order to preserve their original commitment to a SYTF. Additionally, crimes which predate the commitment, but are not discovered or 'solved' prior to the commitment, cannot be meaningfully adjudicated. For instance, a youth who had committed a series of burglaries, which remained unsolved until after their commitment to SYTF had been made, would be expelled from the SYTF as those offenses would not be 'last in time.'

"AB 1896 is needed to correct this inaccuracy. The addition of §875(b)(3) will not result in an increased number of individuals being committed to SYTF, rather, it will comport with the overall intent of SB 823 to foster positive youth development, promote public and community safety, and offer fair and flexible terms of commitment."

6) **Argument in Opposition**: According to *Initiate Justice*, "AB 1896 will permit the filing of charges against SYTF-committed youth under age 18 without those charges causing a disruption to the youth's SYTF commitment. We have been informed that the sponsors' primary issue of concern is that prosecutors currently refrain from filing charges against SYTF-committed youth for non-§707(b) conduct because they believe to do so would interrupt the youth's commitment to SYTF based on the last-adjudicated-offense rule specified in WIC §875(a)(2).

"Current law, Welfare and Institutions Code section 875(e)(2), enacted by SB 823, foresaw concerns that allowing new charges to be filed against committed youth for minor offenses would return to the problematic days when DJJ would impose 'time add-ons' to prolong youths' commitment terms. Section 875(a)(2) therefore explicitly provided that low-level problematic behaviors by youth committed to SYTF be handled within the SYTF disciplinary system and the six-month review process.

"The ward's confinement time, including time spent in a less restrictive program described

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

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

"Although AB 1896 (unlike its former iteration in AB 1582) would not entirely abolish the requirement that a commitment to SYTF be based on the most recent adjudicated petition, it would allow the prosecution to file charges that are not 707(b) offenses while youth are serving a commitment to SYTF, and also allow for the filing of misdemeanors and low-level felonies that occurred prior to an SYTF commitment.

Initiate Justice believes the filing of charges against SYTF-committed youth for low-level behaviors should be exceptionally rare. We believe that the filing of charges against youth at SYTF for less serious (e.g., non-§707(b)) in-custody behaviors is inconsistent with the goals of the Legislature's comprehensive scheme for the commitment and housing of youth adjudicated for serious offenses. AB 1896 has great potential for causing harm by encouraging the filing of new charges in lieu of alternative methods of resolving low-level in-custody behaviors."

7) **Related Legislation**: AB 2840 (Lackey) prohibits a ward from being held in an SYTF beyond 25 years of age. AB 2540 is pending hearing in this committee.

8) **Prior Legislation**:

   a) AB 1582 (Dixon), of the 2023-2024 Legislative Session, was substantially similar to this bill. AB 1582 failed passage in this committee.

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

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

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Orange County District Attorney (Sponsor)
California District Attorneys Association

Opposition

ACLU California Action
California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
California Public Defenders Association
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Initiate Justice
Initiate Justice Action
LA Defensa
Legal Services for Prisoners With Children
Pacific Juvenile Defender Center
Young Women's Freedom Center

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

Date of Hearing: April 2, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1978 (Vince Fong) – As Introduced January 30, 2024

SUMMARY: Authorizes a peace officer to impound a vehicle without taking the driver into custody for aiding and abetting speed contests and exhibitions of speed. Specifically, **this bill**:

1) Allows a peace officer to impound a vehicle if the officer arrests a person driving or in control of the vehicle and the officer does not take the person into custody for the following offenses:

   a) Aiding or abetting in a speed contest;

   b) Aiding or abetting in an exhibition of speed; and,

   c) Obstructing or placing a barricade upon a highway or an offstreet parking facility for the purpose of facilitating or aiding a speed contest or exhibition of speed.

2) States that if a peace officer arrests a person for any of the above-listed offenses, and seizes the vehicle used to commit those offenses, the officer is not required to take the person into custody.

EXISTING LAW:

1) Guarantees the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, and provides that no warrants shall issue, but upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the persons or things to be seized. (U.S. Const., 4th Amend.; Cal. Const. art I., § 13.)

2) States that any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. (Veh. Code, § 22650, subd. (b).)

3) Prohibits peace officers from removing a vehicle from a highway to any other place, except as provided in the Vehicle Code. (Veh. Code, § 22650, subd. (a).)

4) Allows a peace officer to impound a vehicle under specified circumstances, including, among others, if an officer arrests a person driving or in control of a vehicle for an alleged offense, and the officer is, by law, required or permitted to take, and does take, the person into custody. (Veh. Code, § 22651.)

5) Defines "speed contest" as a motor vehicle race against another vehicle, a clock, or other timing device. (Veh. Code, § 23109, subd. (a).)

6) Provides that a person shall not engage in a speed contest on a highway or in an offstreet parking facility. (Veh. Code, §§ 23109, subds. (a).)

7) Allows a peace officer to immediately arrest and take into custody a person engaged in a speed contest, and to remove and impound the vehicle used in the offense for up to 30 days. (Veh. Code, § 23109.2, subd. (a)(2)(A).)

8) Allows a peace officer or to impound a vehicle used by a person who was engaged in a speed contest if the person was arrested and taken into custody for that offense by a peace officer. (Pen. Code, § 22651.6.)

9) Provides that a person shall not aid or abet in any speed contest on a highway or in an offstreet parking facility and shall not, for the purpose of facilitating or aiding or as an incident to any speed contest, in any manner, obstruct or place a barricade or obstruction or assist or participate in placing a barricade or obstruction on a highway or in an offstreet parking facility. (Veh. Code, §§ 23109 subds. (b) & (d).)

10) Defines "exhibition of speed" as accelerating or driving at a rate of speed that is dangerous and unsafe in order to show off or make an impression on someone else. (*People v. Grier* (1964) 226 Cal.App.2d 360, 364.)

11) Provides that a person shall not engage in an exhibition of speed on a highway or in an offstreet parking facility. (Veh. Code, §§ 23109, subd. (c).)

12) Allows a peace officer to immediately arrest and take into custody a person engaged in an exhibition of speed, and to remove and impound the vehicle used in the offense for up to 30 days. (Veh. Code, § 23109.2, subd. (a)(2)(D).)

13) Provides that a person shall not aid or abet in an exhibition of speed on any highway or in an offstreet parking facility, or, for the purpose of facilitating or aiding or as an incident to any exhibition of speed, in any manner, obstruct or place a barricade or obstruction or assist or participate in placing a barricade or obstruction on a highway or in an offstreet parking facility. (Veh. Code, §§ 23109, subds. (c) & (d).)

14) Defines "highway" as a way or place of whatever nature, publicly maintained and open to the public for vehicular travel. Highway includes street. (Veh. Code, § 360.)

15) Defines "offstreet parking facility" as any public or private offstreet facility open to the public for parking vehicles where no fee is charged for the privilege to park. (Veh. Code, § 23109, subd. (l).)

16) Provides that, to make an arrest, a peace officer must have probable cause that the person has committed a public offense in the officer's presence. (Pen. Code, § 836.)

17) Provides that, a peace officer may release from custody a person arrested without a warrant in specified circumstances, including, among others, when the officer is satisfied that there

are insufficient grounds for making a criminal complaint against the person arrested. (Pen. Code, § 849, subd. (b).)

18) Requires, when an arrest is made, the person arrested, if not otherwise released, to, without unnecessary delay, and, within 48 hours after arrest, excluding Sundays and holidays, be taken before the nearest magistrate. (Pen. Code, § 825, subd. (a).)

19) States that when a person is arrested for participating in a speed contest or exhibition of speed, the arrested person shall, in the judgment of the arresting officer, either be given a 10 days' notice to appear, or be taken before a magistrate without unnecessary delay. (Veh. Code, § 40303.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Illegal street racing is on the rise and it is eroding our sense of safety. Street racers take advantage of highways, parking lots, and roads through forcibly blocking other cars from using these roadways. Illegal street racing is not only dangerous, but it often has fatal consequences for participants, pedestrians, commuters, and law enforcement alike. AB 1978 will allow peace officers to seize a vehicle from someone that aids and abets street races without taking the owner of the vehicle into custody. This will ensure that speed exhibitions will not continue in a different location once a street race has been dispersed and will keep roads, pedestrians, and other drivers safe."

2) **This Bill Only Applies to Aiders and Abettors, not Persons Directly Engaged in Exhibition of Speed and Speed Contests**: Pursuant to Vehicle Code section 22651, the legislature has authorized vehicle seizures in a range of different circumstances. Section 22651, subdivision (h)(1), at issue in this bill, authorizes vehicle impoundment if an officer arrests a person driving or in control of a vehicle for an alleged offense, and the officer, by law, is required or permitted to take, and does take, the person into custody. This bill creates an exception to custody requirement for aiders and abettors of speed shows and exhibitions of speed.

   Engaging in speed contests and exhibitions of speed are misdemeanors, punishable by imprisonment in a county jail for not more than 90 days, by a fine up to $500, or by both. (Veh. Code, §§ subds. (a) & (c), 23109.25, & 40000.15.) Existing Vehicle Code sections allow officers to arrest and take a person into custody for directly engaging in speed contests and exhibitions of speed. If a person is taken into custody for these offenses, peace officers can remove and impound the vehicle used in the offense for up to 30 days. (Veh. Code, §§ subds. (a) & (c), 23109.25, & 40000.15.) The vehicle used in the offense can also be impounded upon conviction, if the defendant is the registered owner, for 30 days. (Veh. Code, § 23109, subd. (h).)

   Existing law also punishes those who aid and abet speed contests and exhibitions of speed. (Veh. Code, §§ subds. (b), (c), (d) & (i)(1), 40000.15.) These offenses are misdemeanors, punishable by imprisonment in a county jail for not more than 90 days, by a fine up to $500, or by both. For aiding and abetting, whether the person will be taken into custody, or released and given a notice to appear, is at the discretion of the arresting officer. (Veh. Code, §

40303.) However, unlike those directly engaged, police cannot impound cars solely because they were driven by aiders and abettors.

This bill would authorize an officer to impound a person's vehicle for aiding and abetting a speed contest or exhibition of speed, without booking that person into custody. Notably, this bill would not require that the person be cited with a notice to appear, charged for a crime, or convicted of any criminal offense whatsoever, in order for law enforcement to impound their vehicle. For example, a person could be arrested at the scene of a sideshow, if an officer merely has probable cause[1] that they "aided and abetted," their car could impounded by the officer, and the person could be released on the spot, with no further action taken. Otherwise put, this bill would allow officers to seize property even when an officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested, and even if the person did not drive in the sideshow. This is a draconian penalty that raises constitutional concerns for individuals not directly engaged in speed contests and exhibitions of speed.

3) **The Impoundments Authorized by This Bill are Unlikely to Withstand Constitutional Scrutiny**: The Fourth Amendment guarantees the right against unreasonable searches and seizures, which applies to the states through the Fourteenth Amendment. (*Soldal v. Cook County, Illinois* (1992) 506 U.S. 56, 61; *Verdun v. City of San Diego* (9th Cir. 2022) 51 F.4th 1033, 1036.) It is undisputed that seizures occur when cars are impounded. (*Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 862.) Hence, the seizure of a vehicle, even when authorized by state law, must be reasonable under the Fourth Amendment. (*Ibid.*) A seizure conducted without a warrant is per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions. (*Ibid;* see also *City of Los Angeles v. Patel* (2015) 576 U.S. 409, 419.)

Here, the pertinent exception to the warrant requirement for vehicle impoundments is the Vehicular Community Caretaker Doctrine. The United States Supreme Court in *Cady v. Dombrowski* (1973) 413 U.S. 433, 441, first articulated the vehicular community caretaking exception, which allows police to seize and remove from the streets "vehicles impeding traffic or threatening public safety and convenience". (*Ibid.*) The exception allows for the impoundment of cars actively posing a problem to the community's welfare due to their location. The exception does not justify impoundments that do not address a present need under the vehicular community caretaking exception, courts have consistently emphasized the immediate public needs served thereby. (*Miranda, supra,* 429 F.3d at p. 863.) Thus, the impoundment under the community caretaking function does not depend on whether the officer had probable cause to believe that there was a violation, but on whether the impoundment fits within the authority of police to seize and remove from the streets vehicles presently impeding traffic or threatening public safety and convenience. (*Miranda, supra,* at p. 864.)

Ultimately, the decision to impound a vehicle must be reasonable and in furtherance of public benefit and public safety. This rule has been codified in California law; Vehicle Code

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[1] Under Pen. Code section 836, peace officers need probable cause that the person to be arrested has committed a public offense in the officer's presence. Probable cause to arrest exists if there was a "fair probability" or "substantial chance" that the person committed a crime. (See *Illinois v. Gates* (1983) 462 U.S. 213, 244; *U.S. v. Brooks* (9th Cir. 2004) 367 F.3d 1128, 1133-34.)

section 22650 provides: "A removal [...] is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism." (Veh. Code, § 22650, subd. (b); see also *S. Dakota v. Opperman* (1976) 428 U.S. 364, 369, [noting police will impound automobiles that jeopardize both the public safety and the efficient movement of vehicular traffic]; *see also People v. Williams* (2006) 145 Cal.App.4th 756, 762–763 [tow served no community caretaking function where the car was legally parked, there was no particular possibility that the vehicle would be stolen, broken into, or vandalized, and the car did not pose hazard or impediment to other traffic]; *Miranda*, at p. 866 [an officer cannot reasonably order an impoundment in situations where the location of the vehicle does not create any need for the police to protect the vehicle or to avoid a hazard to other drivers].)

Here, the warrantless impoundments that would be authorized by this bill do not fit in the community caretaking doctrine, and they would be *per se* unreasonable and unconstitutional. If a person is arrested and taken into custody, impoundment could potentially be justifiable because leaving their car on the road could create a hazard to other drivers, or it could be a target of vandalism or theft. Given that this bill would allow for impoundment when the person was aiding and abetting (and not directly engaging in a speed contest or exhibition of speed), and that the person is, in the officer's discretion, safe enough to be released and not taken into custody, it is hard to justify a community care taking rational to impound their car.

Given that the impoundments in this bill does not have a community caretaking justification, it begs the question of whether the impoundments are intended to be purely punitive, punishing a person through the seizure of their property without their first being a conviction for the offense. This is notable given that the *Miranda* court expressly rejected a deterrence rationale as justification for impoundment of a vehicle that was not "actually impeding traffic or threatening public safety and convenience on the streets." (*Miranda, supra*, 429 F.3d at p. 865, *quoting Opperman, supra,* 428 U.S. at p. 369.) As the Ninth Circuit in *Miranda* explained, "While the Supreme Court has accepted a deterrence rationale for civil forfeitures of vehicles that were used for criminal activity, . . . the deterrence rationale is incompatible with the principles of the community caretaking doctrine. Unlike in civil forfeitures, where the seizure of property penalizes someone who has been convicted of a crime, the purpose of the community caretaking function is to remove vehicles that are presently impeding traffic or creating a hazard. ***The need to deter a driver's unlawful conduct is by itself insufficient to justify a tow under the 'caretaker' rationale***." (*Miranda*, at p. 866; *Sandoval v. Cnty. of Sonoma* (9th Cir. 2018) 912 F.3d 509, 516.) The Miranda court also expressed a concern that adopting a deterrence rationale "would expand the authority of the police to impound regardless of the violation, instead of limiting officers' discretion to ensure that they act consistently with their role of caretaker of the streets." (*Miranda, supra*, 429 F.3d at p. 866.)

Further, this bill is also constitutionally suspect because it would allow peace officers to conduct warrantless vehicle searches, including searches of locked portions of the vehicle, like the trunk. (*People v. Benites* (1992) Cal.App.5th Dist. 1992 [the inevitable inventory search following impoundment is also proper].) This affects the guarantees Fourth Amendment, as it allows for warrantless searches and seizures of not only the automobile, but of the property therein. As the court has cautioned "we should not ignore that purported caretaking tows may also conceal a criminal law "investigatory motive." (*People v. Torres* (2010) 188 Cal.App.4th 775, 790.) Indeed, this is not a speculative concern or cautionary tale---it the exact conduct the San Joaquin County Sheriff Patrick Withrow recently boasted

about to CBS News, after 88 people had their cars impounded during a sideshow in Stockton:

> "The 88 people who had their cars impounded during a sideshow operation in Stockton over the weekend may never get them back. [...]
>
> "That is because San Joaquin County Sheriff Patrick Withrow said they just got 88 warrants to search the 88 vehicles that are now securely locked away at the sheriff's office, and they are not just looking for evidence of drivers doing donuts. [...]
>
> "'They are looking in the vehicles to see if there is any contraband. Are there drugs? Are there guns? Is there any evidence of other crimes?' [...]
>
> "This could mean more charges than just misdemeanors. [...]
>
> "It may take days or even weeks before the sheriff's office goes through every single one of the 88 vehicles. They will be video recording each search and may need to take fingerprints in some cases before they determine what each person will be charged with. [...]
>
> "If you went to that sideshow and you ran because you didn't want to get caught by the police, but you left guns in the car or drugs, well, now you're facing possession of a firearm in the vehicle, possession of drugs. [...]
>
> "'Anytime these people come back here again and try to do this, we are going to be waiting for them and we are going to do the exact same thing,' Withrow said. [...]

(CBS Sacramento, *The 88 Cars Seized During Northern California Sideshow May Never Return To Owners* (Feb. 7, 2024). Available at: <https://www.cbsnews.com/sacramento/news/88-cars-seized-during-stockton-sideshow-may-never-return-to-owners/> [as of March 23, 2024]; see also, Fox KTVU, *California Sheriff Seeks To Destroy Cars Seized In Sideshows* (Feb. 7, 2024) Available at: <https://www.ktvu.com/news/california-sheriff-seeks-to-destroy-cars-seized-in-sideshows> [as of March 23, 2024].)

4) **This Bill Lacks Adequate Safeguards for Innocent Registered Owners**: It is critical to recognize that vehicle tows are a significant intrusion on property rights that may seriously impact the lives of the owners. (S*Clement v. City of Glendale* (9th Cir. 2008) 518 F.3d 1090, 1094 ["Normally, of course, removal of an automobile is a big deal, as the absence of one's vehicle can cause serious disruption of life in twenty-first century America."]; *Stypmann v. City & Cnty. of San Francisco* (9th Cir. 1977) 557 F.2d 1338, 1342–1343 ["The private interest in the uninterrupted use of an automobile is substantial. A person's ability to make a living and his access to both the necessities and amenities of life may depend upon the availability of an automobile when needed."].)

There is no requirement in this bill that the car impounded be owned by the person aiding and abetting the speed contest or sideshow. For example, this bill could apply to a family car borrowed by a juvenile. Because impounding a vehicle can have serious detrimental impacts, such as making it difficult for an individual to report to work or school, the seizures authorized by this proposal should be prudently considered.

Further, under existing law, when a car directly engaged in a speed contest or exhibition of speed is impounded, the registered and legal owner, or their agent, must be provided the opportunity for a storage hearing to determine the validity of the storage. (Veh. Code, § 23109.2 subd. (b).) In addition, the impounding agency is required to release the vehicle to the registered owner, if the vehicle is stolen, if the person was not authorized to operate the vehicle at the time of the commission of the offense, if the owner was not the driver or passenger, or was unaware that the car was being used for the offense. (*Ibid.*) This bill contains no such provisions for individuals who would have their vehicle impounded for aiding and abetting. As such, this bill lacks adequate safeguards for innocent registered owners, who have nothing to do with the exhibition of speed or speed contest.

5) **As Drafted, this Bill Does Not Align with the Author's Intent**: According to the author, the intent of this bill is to "ensure that speed exhibitions will not continue in a different location once a street race has been dispersed." However, arresting the driver, taking them into custody, and impounding their car, as is already allowed under existing law, ensures that the person will not be able to continue the street race in a different location, given that they will be physically confined. An officer concerned that someone will continue their lawless behavior after an arrest has other options, namely, booking the person into custody.

6) **Argument in Support**: According to the *California Police Chiefs Association (CPCA)*, "Sideshows can be dangerous for pedestrians, other drivers and law enforcement, and California has seen a dramatic rise in this illegal activity in recent years. Most recently sideshows have escalated from street racing to property damage, violent altercations and even death on certain occasions, so much so that local law enforcement agencies like those in Sacramento and San Joaquin have taken extra measures to crack down on illegal activity.

"One recent sideshow in Stockton saw over 150 people detained and nearly 90 cars towed, but more must be done to curtail this growing problem.

"By allowing peace officers to impound vehicles without taking a person into custody, AB 1978 will provide law enforcement with a practical tool for deterring sideshows, curtailing speed exhibitions and protecting communities."

7) **Argument in Opposition**: According to *American Civil Liberties Union California Action,* "Assembly Bill (AB) 1978, which would give police officers overbroad and unconstitutional authority to tow vehicles as a de facto punishment for anyone who they believe aided or abetted a sideshow or street race.

"AB 1978 harshly punishes people by towing their vehicle without a formal judicial hearing or determination. For low income and working households, the towing of a vehicle is often catastrophic. Retrieving a car after it has been towed is time-consuming and costly, and for many people a tow means total loss of their car. The tow and storage fees are often more than people can afford, and when an individual cannot pay the fees associated with the tow, the vehicle is sold at auction, resulting in the person permanently losing their car. According to a 2018 federal report, 46% of American adults lack the savings necessary to cover an unanticipated expense of $400 or more.1 But a report from the following year found that the average towing and storage fees in California for a vehicle that is held for just 3 days is nearly $500.2 When people lose their cars, they often lose their biggest personal asset, their

ability to get to work, and their ability to meet their basic needs like grocery shopping, taking children to school, or going to medical appointments. Someone in violation of Cal. Veh. Code sections 23109(b-d) can already be cited and fined $500 – adding tow costs and the potential loss of their vehicle based solely on the discretion of a police officer is an outsized and unjust punishment.

"By establishing a blunt, overbroad tool to seize Californians' vehicles, AB 1978 is likely unconstitutional. Courts have made it clear that even if cities are following a state law, if the underlying tow violates the Constitution, cities can be held liable for their unconstitutional actions.3 Under the Fourth Amendment, a warrant is required to tow a vehicle unless the vehicle falls under a limited number of exceptions to the warrant requirement. As written, AB 1978 allows officers to tow vehicles without a warrant, even though the vehicles they would be towing are not excepted from the warrant requirement. AB 1978 opens cities up to resource-intensive litigation and costly liability while encouraging them to violate the most fundamental rights of their citizens.

"Our streets are made safer by implementing human-centered, environmental traffic designs and offering safe, legal places for car shows and racing, not by relying on punitive measures and abrogating people's constitutional rights."

8) **Related Legislation**:

a) AB 2186 (V. Fong) would allow a peace officer to arrest a person and impound a vehicle if the person was engaged in an exhibition of speed that occurs in an offstreet parking facility. AB 2186 is pending hearing in Assembly Transportation Committee.

b) AB 2215 (Bryan) would allow, when an arrest is made, a peace officer to release a person before taking them into custody, if the person is subsequently delivered or referred to a public health organization. AB 2215 is pending hearing in this committee.

c) AB 3085 (Gipson) would increase the criminal penalties for exhibitions of speed and vehicle speed contests, as specified. AB 3095 is pending hearing in Assembly Transportation Committee.

9) **Prior Legislation**:

a) AB 74 (Muratsuchi), of the 2023-2024 Legislative Session, would have provided that a vehicle used in a sideshow or street takeover is a public nuisance which may be subject to forfeiture. AB 74 failed passage in Assembly Transportation Committee.

b) AB 822 (Alanis), of the 2023-2024 Legislative Session, would include engaging in a motor vehicle speed contest or an exhibition of speed as offenses for which a peace officer may impound a vehicle pursuant to a court warrant. The hearing was cancelled at the request of the author in this committee.

c) AB 2546 (Nazarian), of the 2022-2023 Legislative Session, would have expanded the definition of a sideshow to include other public places open to vehicle traffic and private property. AB 2546 failed passage in Senate Public Safety Committee.

d) AB 2000 (Gabriel), Chapter 436, Statutes of 2022, made it a crime for a person to engage in a motor vehicle speed contest in an offstreet parking facility or an exhibition of speed in an offstreet parking facility, or to aid or abet therein.

e) AB 3 (V. Fong), Chapter 611, Statutes of 2021, allows a court to suspend a person's driver's license if they were convicted of a motor vehicle exhibition of speed and that charge stemmed from their participation in a motor vehicle sideshow.

f) AB 1407 (Friedman), of the 2019-2020 Legislative Session, would have required a vehicle that is determined to have been involved in a speed contest to be impounded for 30 days, as specified. AB 1407 was vetoed.

g) AB 410 (Nazarian), of the 2019-2020 Legislative Session, would have allowed a vehicle to be impound based on a declaration submitted by a police officer that a vehicle was involved in a motor vehicle sideshow. AB 410 failed passage in this committee.

h) AB 2876 (Jones-Sawyer), Chapter 592, Statutes of 2018, clarifies that the protections against unreasonable seizures provided by the Fourth Amendment of the U.S. Constitution apply even when a vehicle is removed pursuant to an authorizing statute.

i) AB 2175 (Aguiar-Curry), Chapter 314, Statutes of 2018, among other things, allows impoundment of a vessel when an officer has probable cause to believe it was used in the commission of a crime.

j) AB 353 (Cedillo), Chapter 653, Statutes of 2011, requires law enforcement officers conducting a sobriety checkpoint to make reasonable attempts to identify the registered owner of a vehicle being driven by a person under the influence, and to release the vehicle to the owner or to obtain the owner's consent to release the vehicle to a licensed driver by the end of the checkpoint.

k) SB 67 (Perata), Chapter 727, Statutes of 2007, reenacted provisions that were allowed to sunset that provide for vehicle impoundments when a person is arrested for reckless driving, exhibition of speed, or a speed contest.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association
California State Sheriffs' Association

Opposition

ACLU California Action
California Attorneys for Criminal Justice
Ella Baker Center for Human Rights
Initiate Justice
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoners With Children

Pacific Juvenile Defender Center
Western Center on Law & Poverty, INC.

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

Date of Hearing: April 2, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2099 (Bauer-Kahan) – As Introduced February 5, 2024

SUMMARY: Increases penalties for violations of the California Freedom of Access to Clinics and Church Entrances ("FACCE") Act. Specifically, this bill:

1) Increases the penalty for a misdemeanor offense of posting on the internet or social media, threats of violence with the intent that another person imminently use that information to commit a violent crime against a reproductive health care worker to an alternate misdemeanor-felony[1] punishable by up to one year in the county jail or three years in the county jail.

2) Increases the penalty for posting on the internet or social media threats of violence against a reproductive healthcare worker where it leads to bodily injury from a misdemeanor to a felony punishable by up to three years in the county jail.

3) Increases the penalty from a misdemeanor to an alternate misdemeanor-felony punishably by up to one year in county jail, or up to three years in county jail, for willfully interfering with, injuring, intimidating, oppressing, or threatening, by use of force or threat of force, any person's ability in the free exercise of any right or privilege, ensured by the state and federal constitutional law or statutes because of one or more actual or perceived characteristics.

4) Mandates the court order a defendant to perform a minimum of community service in addition to any criminal sentence for violations of specified crimes related to interference with the exercise of constitutional rights.

5) Increases the penalties for the existing crimes under the FACCE Act, as follows:

   a) Punishes the first violation of the following offenses as an alternate-misdemeanor/felony subject to a penalty of one year in county jail or up to three years in county jail, a fine of up to $10,000, or by both imprisonment and fine:

      i. nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services patient, provider, or assistant.

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[1] See fn. 2, infra, at p. 6.

ii. By nonviolent physical obstruction, or where a person intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.

iii. Within 100 feet of the entrance to, or within, a reproductive health services facility, intentionally videotape, film, photograph, or record by electronic means, a reproductive health services patient, provider, or assistant without that person's consent with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.

iv. Intentionally disclose or distribute a videotape, film, photograph, or recording knowing it was obtained unlawfully with the specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated.

b) Increases the penalty for a second or subsequent violation of the offenses listed above in 5 (a) (i-iv), from an alternate misdemeanor-felony to a straight felony punishable by up to three years in county jail.

c) Increases the penalties for a first violation of the following offenses from a misdemeanor to a straight felony punishable by up to three years in county jail:

i. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.

ii. Intentionally damages or destroys the property of a place of religious worship.

d) Punishes a second or subsequent violation of the following offenses as a felony subject to a penalty of up to three years in county jail, a fine of not more than $50,000, or by both imprisonment and fine:

i. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services patient, provider, or assistant, or in order to intimidate a person or entity, or a class of persons or entities, or from becoming or remaining a reproductive health services patient, provider, or assistant.

ii. Using force, threat of force, or physical obstruction of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.

iii. Intentionally damaging or destroying the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health

services patient, provider, assistant, or facility.

iv. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services patient, provider, assistant, or facility.

v. Intentionally damages or destroys the property of a place of religious worship.

EXISTING LAW:

1) Provides that any reproductive health service provider, employee, volunteer, or patient who is placed in reasonable fear by the posting of their home address and phone number on an Internet website may make a written demand that such information be removed from the website, so long as the demand includes a sworn statement describing the reasonable fear and attesting that the person is a member of the group protected by the statute. Provides injunctive relief. (Govt. Code, § 6281, subd. (b).)

2) Makes it a misdemeanor, punishable by up to 6 months in a county jail, a fine of not more than $2,500, or both that fine and imprisonment, to post the home address, telephone number, or personally identifying information about a provider, employee, volunteer, or patient of a reproductive health service facility or other individuals residing at the same home address with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against that person or entity. If the violation leads to bodily injury of the person, it is a misdemeanor punishable by up to one year in a county jail, a fine of up to $5,000, or both that fine and imprisonment. (Govt. Code, § 6218.01.)

3) Defines "reproductive health care services" to mean health care services relating to the termination of a pregnancy in a reproductive health care services facility. (Govt. Code, § 6218.05, subd. (a).)

4) Defines "reproductive health care services provider, employee, volunteer, or patient" means a person who obtains, provides, or assists, at the request of another person, in obtaining or providing reproductive health care services, or a person who owns or operates a reproductive health care services facility. (Govt. Code, § 6218.05, subd. (b).)

5) Defines "reproductive health care services facility" includes a hospital, an office operated by a licensed physician and surgeon, a licensed clinic or a clinic exempt from licensure, or other licensed health care facility that provides reproductive health care services and includes only the building or structure in which the reproductive health care services are actually provided. (Govt. Code, § 6218.05, subd. (c).)

6) Defines "public post" or "publicly display" as meaning to intentionally communicate or otherwise make available to the general public. (Govt. Code, § 6218.05, subd. (d).)

7) Defines "image" as including, but not limited to, any photograph, video footage, sketch, or computer-generated image that provides a means to visually identify the person depicted. (Govt. Code, § 6218.05, subd. (e).)

8) Defines "crime of violence" as an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another. (Pen. Code, § 423.1, subd. (a).)

9) Defines "interfere with" as meaning to restrict a person's freedom of movement. (Pen. Code, § 423.1, subd. (b).)

10) Defines "intimidate" as meaning to place a person in reasonable apprehension of bodily harm to herself or himself or to another. (Pen. Code, § 423.1, subd. (c).)

11) Defines "nonviolent" as meaning to conduct that would not constitute a crime of violence. (Pen. Code, § 423.1, subd. (d).)

12) Defines "physical obstruction" as rendering ingress to or egress from a reproductive health services facility or to or from a place of religious worship impassable to another person, or rendering passage to or from a reproductive health services facility or a place of religious worship unreasonably difficult or hazardous to another person. (Pen. Code, § 423.1, subd. (e).)

13) Defines "reproductive health services" as meaning reproductive health services provided in a hospital, clinic, physician's office, or other facility and includes medical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy. (Pen. Code, § 423.1, subd. (f).)

14) Defines "reproductive health services client, provider, or assistant" as a person or entity that is or was involved in obtaining, seeking to obtain, providing, seeking to provide, or assisting or seeking to assist another person, at that other person's request, to obtain or provide any services in a reproductive health services facility, or a person or entity that is or was involved in owning or operating or seeking to own or operate, a reproductive health services facility. (Pen. Code, § 423.1, subd. (g).)

15) States "reproductive health services facility" includes a hospital, clinic, physician's office, or other facility that provides or seeks to provide reproductive health services and includes the building or structure in which the facility is located. (Pen. Code, § 423.1, subd. (h).)

16) Provides that every person who, except a parent or guardian acting towards his or her minor child or ward, commits any of the following acts shall be subject to the punishment, as specified (Pen. Code, § 423.2, subds. (a)-(f)):

    a) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or

    b) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious

freedom at a place of religious worship; or

c) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant; or

d) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

e) Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services client, provider, assistant, or facility; or

f) Intentionally damages or destroys the property of a place of religious worship. (Pen. Code, § 423.2.)

17) Makes a first violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed two thousand dollars ($2,000). (Pen. Code, § 423.3, subd. (a).)

18) Makes a second or subsequent violation involving violation involving nonviolent physical obstruction a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed five thousand dollars ($5,000). (Pen. Code, § 423.3, subd. (b).)

19) Makes a first violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed twenty-five thousand dollars ($25,000). (Pen. Code, § 423.3, subd. (c).)

20) Makes a second or subsequent violation involving force, threat of force, or physical obstruction that is a crime of violence or intentional property damage a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed fifty thousand dollars ($50,000). (Pen. Code, § 423.3, subd. (d).)

21) States that this title establishes concurrent state jurisdiction over conduct that is also prohibited by the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), which provides for more severe misdemeanor penalties for first violations and felony-misdemeanor penalties for second and subsequent violations. State law enforcement agencies and prosecutors shall cooperate with federal authorities in the prevention, apprehension, and prosecution of these crimes, and shall seek federal prosecutions when appropriate. (Pen. Code, § 423.3, subd. (f).)

22) Makes it a misdemeanor to, by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten another person in the free exercise or enjoyment of a right or

privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of specified actual or perceived characteristics of the victim, including disability, gender, religion, race, or sexual orientation. (Pen. Code, §§ 422.6, subd. (a) & 422.55, subd. (a).)

23) Makes it a misdemeanor to knowingly deface, damage, or destroy the real or personal property of another person for the purpose of intimidating or interfering with the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part, because of one or more of the same actual or perceived characteristics of the victim. (Pen. Code, §§ 422.6, subd. (b) & 422.55, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author: Since the overturning of Roe vs. Wade, reproductive health clinics like Planned Parenthood have become the very last line for women seeking critical reproductive health care. These vulnerable patients and providers are facing an onslaught of organized harassment, being attacked online and in person. Current penalties are insufficient to deter extremist anti-abortion groups from attacking clinics and providers. AB 2099 updates our state penalties to protect the essential right to reproductive healthcare."

2) **AB 1356 (Bauer-Kahan), Chapter 191, Statutes of 2021**: AB 1356 was enacted in 2021 and provided more protections for those seeking reproductive healthcare assistance and those that provide those services. Specifically, as enacted, it created new crimes under FACCE Act directed at videotaping, photographing, or recording patients or providers within 100 feet of the facility (i.e., the "buffer" zone) or disclosing or distributing those images. It also increased misdemeanor penalties for violations of the FACCE Act and expanded online privacy laws and peace officer trainings relative to anti-reproduction-rights offenses. However, the felony penalties appear in the Senate. This bill creates several new felonies requiring commitment in county jail for up to three years or state prison depending[2] on the defendant's criminal history. (See Pen. Code, § 1170, subd. (h)(3).)

3) **First Amendment:** First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." (U.S. Const, Amend. I, Section 1.) The California Constitution also protects free speech. "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." (Cal. Const. Art. I, § 2.) "[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *(Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.)

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[2] Any defendant who has a prior conviction for a serious or non-violent felony, or any offense required to register as a sex offender, shall be incarcerated in state prison – not county jail – even where the penalty in the statute cites to Penal Code section 1170, subdivision (h), which generally requires commitment in county jail. (Pen. Code, § 1170, subd. (h)(3).)

"To achieve First Amendment protection, a plaintiff must show that [t]he[y] possessed: (1) a message to be communicated; and (2) an audience to receive that message, regardless of the medium in which the message is to be expressed." (*Hurley v. Irish-American Gay, Lesbian & Bisexual Group* (1995) 515 U.S. 557.)

With personal filming devices being commonplace, more and more "news" is being gathered and disseminated by members of the public. The courts have found that freedom of the press applies to citizen journalists and documentarians, not just formal members of the press. (See, e.g., *Glik v. Cunniffe* (1st Cir. 2011) 655 F.3d 78 ["plaintiff was exercising clearly-established First Amendment rights in filming the officers in a public space"].)

Legislation that regulates the content of protected speech is subject to strict scrutiny, sometimes referred to by the courts as "exacting scrutiny" in this context. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2226.) To survive strict scrutiny, state action must be narrowly tailored to address a compelling government interest. (*Ibid.*) However, restrictions on speech around reproductive health care centers have passed constitutional muster as explained below.

4) **The California FACCE Act:** In 2001, the Legislature enacted the California FACCE Act, mirroring the federal FACE Act. The FACCE Act provides state criminal and civil penalties for interference with rights to reproductive health services and religious worship. As stated above, AB 1356 added a 100 ft., buffer zone around reproductive healthcare facilities wherein it is unlawful to "intentionally videotape, film, photograph, or records by electronic means, any reproductive health services patient, provider, or assistant without that person's consent, with specific intent to intimidate the person from becoming or remaining a reproductive health services patient, provider, or assistant, and thereby causes the person to be intimidated."

The enactment of "buffer zones" around reproductive health care facilities were designed to protect reproductive health care services patients and providers from being harassed, photographed, or threatened just for walking in and out of a reproductive health care facility. According to Guttmacher Institute, a leading research and policy organization working to advance sexual and reproductive health and rights worldwide, there are numerous protections around the U.S. for people working at, or seeking the services of, a reproductive healthcare facility.

> States have taken two approaches designed to protect abortion providers. Some states have enacted laws similar to the federal FACE Act that prohibit specific activities such as vandalism or obstruction at clinics. Other states have limited protests aimed at clinic patients by either creating "buffer" zones around clinics that bar protestors entirely or establishing floating "bubble zones" of several feet around a person who is within a specific distance of a clinic; protesters are prohibited from crossing into that "bubble zone" without the person's consent.

> In 2014, the U.S. Supreme Court struck down the Massachusetts law that placed a 35-foot buffer zone around clinic entrances. The impact of this ruling on the New Hampshire law is still to be determined, but the decision did not immediately affect the Court's 2000 ruling that upheld Colorado's floating 'bubble [or buffer] zone' law.
>
> 15 states and the District of Columbia prohibit certain specified actions aimed at abortion providers: 13 of the states and the District of Columbia prohibit blocking the entrance to and egress from clinic facilities; seven of the states and the District of Columbia prohibit threatening or intimidating staff who provide reproductive health services and/or patients entering the clinic; four of the states prohibit property damage to facilities providing reproductive health services; two of the states and the District of Columbia prohibit telephone harassment of staff who provide reproductive health services; six of the states and the District of Columbia prohibit other specified actions, such as creating excessive noise outside the clinic, possessing or having access to a weapon during a demonstration at a medical facility, trespassing, or releasing a substance that produces noxious odor on clinic premises; and four states have established a "bubble zone" around a person within a specific distance of a clinic's entrance or driveway. (Guttmacher Institute (August 31, 2023) Public Policy Office, *Protecting Access to Clinics, Background.*) [3]

The Massachusetts "buffer" zone made it a "crime to knowingly stand on a 'public way or sidewalk' within 35 feet of an entrance or driveway to any 'reproductive health care facility,' defined as 'a place, other than within or upon the grounds of a hospital, where abortions are offered or performed.'" (*McCullen v. Cookley* (2014) 573 U.S. 474.) The U.S. Supreme Court held the law violated the First Amendment. (*Ibid.* [state law creating 35-foot buffer zones around all abortion clinics was not justified by congestion in front of one clinic on Saturday mornings].) However, the Supreme Court declined to hear two challenges to two other buffer zones: in Harrisburg, Pennsylvania and Chicago, Illinois. In those cases, the buffer zone at issue was much lower than 100 feet, and were, at least, tacitly approved by the Court when it denied certiorari. According to one article in the national press coverage,

> On Thursday, one of the two cases the court declined to take up involved an ordinance passed by the city counsel in Harrisburg, Pennsylvania's capital, in 2012 that made it illegal to "congregate, patrol, picket or demonstrate" in a zone 20 feet from a health care facility. Anti-abortion activists sued, arguing that the ordinance violates their free speech rights. Lower courts have upheld the ordinance,

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[3] Located at https://www.guttmacher.org/state-policy/explore/protecting-access-clinics last visited March 26, 2024.

> however, ruling it doesn't apply to "sidewalk counseling," where individuals who oppose abortion offer assistance and information about alternatives to abortion to those entering a clinic.
>
> The second case the court turned away on Thursday involved a Chicago ordinance that regulates the space 50 feet from the entrance of any abortion clinic or other medical facility. In that space, a person cannot come within 8 feet of another person without their consent to hand them information or engage in "oral protest, education, or counseling." The ordinance was modeled on a statute upheld by the Supreme Court in 2000. (Jessica Gresko (July 2, 2020) *"Higher Court won't hear abortion clinic 'buffer zone' cases,"* Associated News Press.)[4]

5) **Jail Operations:** In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata v. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

   AB 109, The Criminal Justice Realignment Act, was implemented in 2011 in response to prison overcrowding. In part, it shifted to county jails the responsibility for incarcerating lower-level offenders previously incarcerated in state prison. (Pen. Code, § 1170, subd. (h).) This, however, increased the pressure on county jails to house larger populations and to make difficult decisions about how to manage their growing jail populations. These pressures manifest differently by county based on a number of factors including jail capacity and whether the county jail system is operating under a court-mandated population cap. Such caps have been in place in some counties long before *Brown v. Plata* addressed state prison overcrowding. (Sarah Lawrence, Court-Ordered Population Caps in California County Jails (Dec. 2014).)[5]

   Recently, CalMatters published an article explaining that jails are facing increasing death rates even as the population may be declining. As the article explains, most of the people who died were pre-trial inmates – meaning they have not been convicted. Aside from natural causes, the two major causes of death for inmates in county jail were suicide, followed by overdoses, particularly fentanyl. The Board of State and Community Corrections ("BSCC") have repeatedly warned about failures in the county jails and refusal by locals to adhere to required state standards. Until recently, BSCC was not even notified about deaths inside the county-run lockups. Nor was the pandemic the driving factor: California in 2022 had the smallest share of deaths due to natural causes in the past four decades. A surge in overdoses

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[4] Located at https://apnews.com/article/31d02c9336e9f3c2a5d9dea4a883e72c
[5] Located at https://law.stanford.edu/search-sls/?q_as=california%20county%20jails [last visited March 26, 2024].

drove the trend of increasing deaths. And almost every person who died was waiting to be tried. A previous CalMatters investigation found that three-quarters of those held in county jails had not been convicted or sentenced, with many awaiting trial more than three years. (Duara and Kimelman, *"California jails are holding thousands fewer people but far more people are dying in them,"* Cal Matters (March 25, 2024).)[6]

While the numbers of incarcerated people may have declined, the amount of death and harm befalling incarcerated people has increased. Increasing the total number of people sentenced to jail will only exacerbate this problem. Is increasing criminal penalties the best way to prevent harassment or violence against those working at, or seeking assistance from, a reproductive healthcare services provider? Given the complications of a First Amendment defense, it is not clear how many people will actually be prosecuted for these crimes. If this does not solve the problem identified by the author, will progressively more severe penalties be proposed? The Legislature enacted AB 1356 in 2021 – is there any evidence that these changes have not stemmed the tide of alleged attacks against those seeking or providing reproductive services? This is, most certainly, an extremely important law to enforce – how aggressively is the FACCE Act enforced by law enforcement? If law enforcement does not arrest anyone for these offenses, escalating penalties may not make a lot of difference.

6) **Argument in Support:** According to *Planned Parenthood Affiliates of California*, "In California, while we continue to work to expand and protect access to sexual and reproductive health care, we still witness the consequences of the national attack on abortion. Extremist lawmakers and their supporters have been transforming incredibly personal health care choices into political battlegrounds, creating dangerous consequences for people across the country. Attacks on reproductive health care, including abortion, contraception, gender-affirming care, and IVF have resulted in patients being denied care, forced to travel out-of-their home states in difficult circumstances, and endangering their health and well-being. These attacks have emboldened anti-abortion extremists.

"Since the Dobbs decision, there has been an increase in violence in abortion protective states like California. According to the National Abortion Federation, there was a disproportionate increase of anti-reproductive health incidents in protective states – stalking increased by 913%, assault and battery increased by 29%, bomb threats increased by 133% and obstruction of clinics increased by 538%.

"While California has existing protections in place under the Freedom to Access Clinic Entrances (FACE) Act, offenses are not always taken seriously and health centers face challenges with enforcement. Acts of violence and harassment have persisted for decades as anti-abortion extremists have faced little retribution for their escalating tactics and cultural complacency has normalized their activity. Violations of the FACE Act include intentionally injuring, intimidating, or obstructing access to a health center, vandalism, and modern forms of harassment such as posting personal information online with the intent to cause harm. According to a Feminist Majority Foundation survey of providers over half of providers face targeted threats and intimidation – often coming from highly organized and well-funded groups. Targeted threats and intimidation includes twelve variables: death threats, stalking, tracking of activities, vandalism of home or personal property, harassing phone calls,

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[6] Located at https://calmatters.org/justice/2024/03/death-in-california-jails/ [last visited March 16, 2024.]

harassing emails/social media posts, pamphlets/leaflets targeting staff and physicians, personal information/pictures posted online, frivolous lawsuits, and threats to family members of staff or physicians.

"Attacks at clinics do not just have a negative impact on the staff and patients, but also contribute to a culture of fear. As more states criminalize reproductive health care, increasing not just safety in accessing care but also stigma, it is more crucial than ever that patients feel safe when seeking care in California. AB 2099 will strengthen the enforcement mechanisms for violations of the FACE Act in California and ensure that patients and providers can access the care they need, provide essential health care, and do so without fearing their safety".

7) **Argument in Opposition:** None on file.

8) **Related Legislation:**

a) AB 254 (Bauer-Kahan), Chapter 254, Statutes of 2023, revises the Confidentiality of Medical Information Act (CMIA) to include reproductive or sexual health application information into the definition of medical information.

b) SB 36 (Skinner) prohibits the issuance of warrants for persons who have violated the laws of another state relating to abortion, contraception, reproductive care, and gender-affirming care that are legally protected in California. SB 36 was held on the Senate Committee on Appropriations suspense file.

c) SB 848 (Rubio), Chapter 724, Statutes of 2023 requires employers, of five or more employees, to provide eligible employees with up to five days of reproductive loss leave following a reproductive loss event defined as a failed adoption, failed surrogacy, miscarriage, stillbirth or an unsuccessful assisted reproduction.

9) **Prior Legislation:**

a) AB 1356 (Bauer-Kahan), Chapter 191, Statutes of 2021, created crimes under the California Freedom of Access to Clinic Act (Act) directed at videotaping, photographing, or recording patients or providers within 100 feet of the facility ("buffer" zone) or disclosing or distributing those images; increases misdemeanor penalties for violations of the Act; and updates and expands online privacy laws and peace officer trainings relative to anti-reproduction-rights offenses.

b) AB 3140 (Bauer-Kahan), of the 2019-2020 Legislative Session, would have created additional crimes under the Act and increased penalties. AB 3140 was not heard in this committee.

c) AB 2330 (Olsen), of the 2011-2012 Legislative Session, would have abolished the Commission on the Status of Women. AB 2330 failed passage in the Assembly Business, Professions, and Consumer Protection Committee.

d) SB 1770 (Padilla), Chapter 206, Statutes of 2008, (1) extended the sunset on the Reproductive Rights Law Enforcement Act from January 1, 2009 to January 1, 2014, (2)

required the Advisory Committee responsible for reporting on the implementation of, and the effectiveness of, the Attorney General plan for Reproductive Rights Law Enforcement Act to submit a second report to the Legislature by December 31, 2011, (3) required POST to prepare guidelines for law enforcement response to anti-reproductive rights crimes, as specified, and (4) amended the existing specifications for law enforcement training on anti-reproductive rights crimes to require that POST distribute training bulletins to law enforcement agencies on this topic, as specified.

e) AB 2251 (Evans), Chapter 486, Statutes of 2006, sought to protect the personal safety of reproductive health care providers, employees, volunteers, and patients by prohibiting the posting of such people's personal information on the Internet under specified circumstances.

f) SB 603 (Ortiz), Chapter 481, Statutes of 2006, required the Commission on the Status of Women to convene an advisory committee that would be responsible for reporting, as specified, to the Legislature and specified agencies on the implementation of the Reproductive Rights Law Enforcement Act and the effectiveness of the plan developed by the Attorney General.

g) SB 780 (Ortiz), Chapter 899, Statutes of 2001, created the California FACCE Act, which provided state criminal and civil penalties for interference with rights to reproductive health services and religious worship

REGISTERED SUPPORT / OPPOSITION:

Support

American College of Obstetricians and Gynecologists District Ix
Planned Parenthood Affiliates of California
Reproductive Freedom for All

Opposition

None Submitted.

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

Date of Hearing: April 2, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2138 (Ramos) – As Introduced February 6, 2024

PULLED BY THE AUTHOR

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

Date of Hearing: April 2, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2142 (Haney) – As Introduced February 6, 2024

SUMMARY: Requires the Department of Corrections and Rehabilitation (CDCR) to establish a three-year pilot program for mental health therapy for incarcerated individuals. Specifically, **this bill**:

1) Provides that the program shall provide access to mental health therapy to incarcerated individuals.

2) Provides that the purpose of the program is to foster growth, mental and emotional wellness, and rehabilitation of incarcerated individuals.

3) Requires the program to provide mental health therapy in either of the following settings:

   a) Virtual therapy, including telepsychiatry, provided by tablet, video conference, or other technologies, in a confidential setting; or

   b) Counseling with licensed or registered mental health providers in a confidential setting.

4) Requires the mental health therapy sessions to be offered at least twice per month, for a minimum of 50 minutes, or as determined by the provider.

5) Provides that communications between an incarcerated person and the mental health provider are confidential pursuant to the privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

6) Requires CDCR to implement the program at two or more institutions, including at least one intuition housing people of each gender.

7) Provides that the following individuals are not eligible to participate in the program:

   a) Individuals in the Correctional Clinical Case Management System (CCCMS);

   b) Individuals in the Enhanced Outpatient Program (EOP); and,

   c) Individuals with acute levels of care, including Psychiatric Inpatient Programs (PIPs) or Mental Health Crisis Bed (MHCB).

8) States that a participant shall not be classified as having a serious mental health disorder because of their enrollment in the program, unless the provider has made a formal

recommendation and the incarcerated person offers express, written permission.

9) Requires CDCR to provide participants with information about community-based treatment programs upon release from custody;

10) Requires CDCR to submit annual reports to the Legislature about the program that include the following information:

   a) The planned capacity of the program at each participating facility;

   b) The number of participants enrolled in the program at each participating facility;

   c) The percentage of participants with positive post-treatment outcomes, which include reduced disciplinary action or write-ups from staff, self-acceptance, self-understanding, and improved interpersonal safety and functioning; and,

   d) The number of participants who are successfully linked to postrelease community-based treatment programs.

11) Makes legislative findings and declarations.

EXISTING LAW:

1) Establishes CDCR to administer the state prison system under the direction of the Secretary. (Pen. Code, § 5000 et seq.)

2) Vests the Secretary of the CDCR with the supervision, management and control of state prisons, including the responsibility for the care, custody, treatment, training, discipline and employment of a person confined in those prisons. (Pen. Code, § 5054.)

3) Provides that the purpose of sentencing for crime is public safety achieved through punishment, rehabilitation, and restorative justice. (Pen. Code, § 1170, subd. (a)(1).)

4) Requires CDCR to expand substance abuse treatment services in prisons to accommodate at least 4,000 additional inmates who have histories of substance abuse. (Pen. Code, § 2694.)

5) Requires CDCR to establish the Case Management Reentry Pilot Program for individuals who are likely to benefit from a case management reentry strategy designed to address homelessness, joblessness, mental disorders, and developmental disabilities among offenders transitioning from prison into the community. The purpose of the pilot program is to implement promising and evidence-based practices and strategies that promote improved public safety outcomes for offenders reentering society after serving a term in state prison and while released to parole. (Pen. Code, § 3016.)

6) Requires, as a condition of parole, an incarcerated person who meets the specified criteria to be provided necessary treatment by the State Department of State Hospitals (DSH). (Pen. Code, § 2962.)

7) States that the treatment shall be inpatient unless the DSH certifies that there is reasonable cause to believe the parolee can be safely and effectively treated on an outpatient basis. (Pen. Code, § 2964.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Most people with trauma benefit from seeing a therapist. Denying incarcerated persons – who arguably can carry the most complex trauma – from seeking therapy does nothing to promote their rehabilitation. This bill is a small step in the right direction in keeping our communities safe from more trauma and harm."

2) **Mental Health Services at CDCR**: CDCR's Mental Health Services Delivery System provides incarcerated individuals access to mental health services. According to CDCR, the primary function of their Statewide Mental Health Program (SMHP) is to ensure patients have ready access to mental health services based on their need. The SMHP operates under a court order reached in the *Coleman v. Newsom* lawsuit filed originally in 1990 as *Coleman v. Wilson*. In 1997, the parties reached agreement on a plan to address constitutional inadequacies by establishing mental health services, including programs and staffing, at multiple levels of care. CDCR's Mental Health Services Delivery System Program Guide provides the policies and procedures that govern delivery of these mental health services. (CDCR, *Mental Health Program (MHP)*. Available at: <https://www.cdcr.ca.gov/dhcs/mental-health-program/> [as of March 25, 2025].)

According to the Mental Health Services Delivery System Program Guide:

> Any inmate can be referred for mental health services at any time. Inmates who are not identified at Reception or upon arrival at an institution as needing mental health services, may develop such needs later. Any staff members that have concerns about an inmate's mental stability are encouraged to refer that inmate for evaluation by a qualified mental health clinician (psychiatrist, psychologist, or clinical social worker).

(CDCR, *Mental Health Services Delivery System Programs Guide.* Available at: <https://cchcs.ca.gov/wp-content/uploads/sites/60/2021-Program-Guide-2.1.22.pdf> [as of March 25, 2025].) An inmate must meet the specific treatment criteria to receive treatment at a specific level of care. CCCMS is the basic, primary level of outpatient mental health care at CDCR. EOP is the highest level of outpatient care. EOP provides more intensive level of outpatient clinical care than CCCMS. MHCB is acute care that provides short-term inpatient treatment for episodes of psychiatric distress or mental disorder. Lastly, PIPs provide treatment that is more intensive for patients who cannot function adequately or stabilize in an outpatient program or shorter-term inpatient program and provide long-term inpatient mental health care. (*Ibid.*)

This bill would establish a three-year pilot program at two or more CDCR institutions that would provide access to virtual and in-person mental health counseling sessions. Individuals

designated by CDCR to receive mental health care, pursuant to the above-described levels of care, would be ineligible, as the intent of this bill is to target populations who may not have a mental health disorder, but, as evidenced by the very circumstance of their incarceration, may still benefit from mental health therapy. Indeed, the psychological impact of prison in and of itself[1] may be adequate justification for ensuring that the incarcerated populations have access to mental health counseling.

3) **Practical Considerations**: This bill would require CDCR to submit a report to the legislature regarding the pilot program. If chaptered, this bill would go into effect Jan 1, 2025. As currently drafted, the first report would come due March 1, 2025. Presumably, the pilot program would end on January 1, 2028. However, the last report would be due March 1, 2027, and the bill would require no further reporting after this date. The reporting deadlines in the bill would not allow the legislature to draw the most useful conclusions about the pilot program.

   In addition, this bill specifies that enrollment in the program cannot lead to a participant being diagnosed as a serious mental health disorder, unless the provider has made a formal recommendation and the incarcerated person offers express, written permission. Some people incarcerated at CDCR with a serious mental health disorder may be civilly committed to DSH for continued treatment after their release date, if they are found to be a danger to others. (CDCR, *Offenders with a Mental Health Disorder*. Available at: <https://www.cdcr.ca.gov/bph/divisions/severe-mental-health-disorder/> [as of March 25, 2025].) There is a need to encourage incarcerated individuals to participate in the program, without fear of being diagnosed with a serious mental disorder, and the potential consequences that may follow. However, the legislature should consider the requirement that a diagnosis cannot be made without the person's written consent. Given that a mental health professional has determined that the person would be a may have a serious mental health disorder, it could be the case that the person may benefit from continued mental health treatment at DSH upon parole.

4) **Argument in Support**: According to *Initiate Justice*, "People with mental health issues are far over-represented in California's prisons, which makes access to consistent mental health therapy even more critical to effectively rehabilitating incarcerated people in California and reducing our recidivism rate. Research has demonstrated that justice-involved people have high levels of trauma and PTSD that lead them to engage in criminogenic behavior as a method of 'survival coping.' According to the Journal of Juvenile Justice, justice-involved youth and young adults are thirteen times more likely to have at least one adverse childhood experience (ACE) and four times more likely to specify four or more ACEs. Further, research on post-traumatic growth indicates that people can heal from trauma.

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[1] See, Prison Policy Initiate, *Research Roundup: Incarceration Can Cause Lasting Damage to Mental Health.* Available at: <https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/> ["The carceral environment can be inherently damaging to mental health by removing people from society and eliminating meaning and purpose from their lives. On top of that, the appalling conditions common in prisons and jails — such as overcrowding, solitary confinement, and routine exposure to violence — can have further negative effects. Researchers have even theorized that incarceration can lead to "Post-Incarceration Syndrome," a syndrome similar to PTSD, meaning that even after serving their official sentences, many people continue to suffer the mental effects."]

"Unfortunately, most incarcerated people do not have access to mental health support to do so. According to the National Alliance on Mental Illness (NAMI), about 3 in 5 people (63%) with a history of mental illness do not receive mental health treatment while incarcerated in state and federal prisons. In 2013, the California Journal of Politics and Policy found that of the majority of incarcerated persons with mental health or substance use issues, less than 10% receive treatment. Often, incarcerated people who would benefit from therapy will deny they have mental health issues, given the stigma surrounding mental health issues in prisons. As a result, they may not feel safe seeking it out.

"It's imperative that incarcerated people receive high quality mental health therapy."

5) **Related Legislation**:

a) AB 2040 (Waldron) would establish the California Reentry Officer, independent of CDCR, to promote state and local efforts to ensure successful reentry services are provided to incarcerated individuals. AB 2040 is pending in Assembly Appropriations Committee.

b) AB 2818 (Mathis) would require county jails to provide incarcerated individuals contact information for social services upon release. AB 2818 is being heard in this Committee today.

6) **Prior Legislation**:

a) AB 857 (Ortega), Chapter 857, Statues of 2023, requires CDCR to provide each incarcerated person, upon release, informational materials about vocational rehabilitation services and independent living programs offered by the Department of Rehabilitation.

b) AB 1104 (Bonta), Chapter 560, Statutes of 2023, provides that effective rehabilitation increases public safety and builds stronger communities, and that the purpose of incarceration is rehabilitation and successful community reintegration through education, treatment, and restorative justice programs.

c) SB 513 (Wiener), of the 2023- 2024 Legislative Session, would have required CDCR to conduct mental health treatment to accomplish specified goals. SB 513 was held under submission in Senate Appropriations Committee.

d) AB 428 (Waldron), of the 2023-2024 Legislative Session, would have established the California Department of Reentry to provide leadership, coordination, and technical assistance to ensure successful reentry services are provided to incarcerated individuals. AB 428 was held under submission in Assembly Appropriations Committee.

e) SB 903, Chapter 821, Statues of 2022, requires California Rehabilitation Oversight Board to examine CDCR's efforts to address the housing needs of incarcerated persons, including those who are identified as having serious mental health needs, who are released to the community as parolees and to include specified data on homelessness in its reports.

f) AB 2250 (Bonta), of the 2021-2022 Legislative Session, would have required CDCR to establish a reentry services pilot program to provide comprehensive, structured reentry services for women released from state prison. AB 2250 was held in the Assembly Appropriations Committee.

g) AB 2730 (Villapudua), of the 2021-2022 Legislative Session, would have created the California Anti-recidivism and Public Safety Act pilot program which would have required CDCR to sponsor a program to help incarcerated persons reintegrate into their communities, reduce recidivism, and increase public safety. AB 2730 was vetoed.

h) AB 620 (Holden), of the 2017-2018 Legislative Session, would have required CDCR to provide meaningful opportunity for successful release of incarcerated persons by offering information about and access to effective trauma focused programming, as specified. AB 620 failed passage in the Assembly Appropriations Committee.

i) AB 2129 (Jones-Sawyer), of the 2013-2014 Legislative Session, would have required CDCR to develop a voluntary reentry program that included access to cognitive behavior therapy. AB 2129 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-recidivism Coalition
California Association of Alcohol and Drug Program Executives, INC.
California Association of Marriage and Family Therapists
California Police Chiefs Association
California Public Defenders Association
California Youth Empowerment Network
Initiate Justice
Mental Health America of California

Opposition

None

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

Date of Hearing: April 2, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2176 (Berman) – As Introduced February 7, 2024

AS PROPOSED TO BE AMENDED IN COMMITTEE

SUMMARY: Provides that juveniles detained in, or committed to, juvenile hall or other specified juvenile facilities cannot be denied access to an equitable education with their peers except in certain circumstances. Specifically, this bill:

1) Makings findings and declarations that education is a fundamental right that may not be abridged absent a compelling governmental interest.

2) Defines a "juvenile," for the purposes of this bill, as any person detained in, or committed to, a juvenile hall, secure youth treatment facility, juvenile ranch, or forestry camp who is 18 years of age or younger and has not obtained a high school diploma or equivalent.

3) Provides that juveniles detained in, or committed to juvenile hall, a secure youth treatment facility, juvenile ranch, camp, or forestry camp, shall not be denied access to an equitable education with their peers, except in limited and temporary circumstances where the juvenile poses an immediate threat to staff or other juveniles.

4) Requires county probation departments, in collaboration with county offices of education, to ensure that juveniles who are temporarily denied access to an equitable education with their peers have access to paper or online coursework that is aligned to grade level standards.

5) Requires the above provisions to be included as part of county probation department's existing responsibility to provide and coordinate services for juveniles to enable juveniles to access their fundamental right to education and to be law-abiding and productive members of their families and communities.

EXISTING LAW:

1) Establishes a fundamental right to education in California. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 589.)

2) States that the purpose of the juvenile court system is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court who are in need of protective services shall receive care treatment and guidance consistent with their best interest and the best interests of the public. (Welf. & Inst. Code, § 202, subds. (a)& (b).)

3) Provides it is the intent of the Legislature that pupils in juvenile court schools have a rigorous curriculum that includes a course of study preparing them for high school graduation and career entry, and fulfilling the requirements for admission to the University of California and

the California State University. (Ed. Code, § 48645.3, subd. (d).)

4) Provides that juvenile halls shall not be deemed to be, nor be treated as, penal institutions and that juvenile halls shall be safe and supportive homelike environments, except for minors detained in adult law enforcement facilities. (Welf. & Inst. Code, § 851.)

5) Defines a "juvenile" as:

   a) A person under 18 years of age;

   b) A person under the maximum age of juvenile court jurisdiction who is not currently an incarcerated adult as specified; or,

   c) A person whose case originated in the juvenile court and is held in secure detention, in a county juvenile facility until the person reaches 25 years of age. (Welf. & Inst. Code, § 208.5., subd. (a).)

6) Defines "juvenile facility" as a local juvenile hall, special purpose juvenile hall, ranch or camp, secure youth treatment facility, or any other juvenile facility that is subject to compliance monitoring by the state administrative agency designated to implement the federal Juvenile Justice and Delinquency Prevention Act of 1974. (Welf. & Inst. Code, § 208.5., subd. (a)(2).)

7) Provides that it is the policy of the state that all youths confined in a juvenile facility have specified rights, including the following rights:

   a) To not be deprived of education;

   b) To receive a rigorous, quality education that complies with law and prepares them for high school graduation, career entry, and postsecondary education;

   c) To attend appropriate level school classes and vocational training;

   d) To have access to postsecondary academic and career technical education courses and programs;

   e) To have access to computer technology and the internet for purposes of education to continue to receive educational services while on disciplinary or medical status;

   f) To have access to information about the educational options available to youth; and,

   g) To access educational information or programming about pregnancy, infant care, parenting, breast-feeding, and child development. (Welf. & Inst. Code, § 224.71, subds. (m), (n) & (o).)

8) Authorizes county board of supervisors to establish public elementary schools or secondary schools in connection with any juvenile hall, juvenile house, day center, juvenile ranch, juvenile camp, or residential or nonresidential boot camp for the education of the children in

those facilities. (Welf. & Inst. Code, § 856).

9) Requires county boards of education to provide for the administration and operation of public schools in any juvenile hall, day center, ranch, camp, regional youth educational facility, or specified Orange County youth correctional center. (Welf. & Inst. Code, § 889; Ed. Code, §§ 48645, 48645.2.)

10) Provides that minors detained in or committed to a juvenile hall, juvenile ranch, camp, or forestry camp shall be provided with access to computer technology and the Internet for purposes of education. However, this does not limit the authority of the chief probation officer to limit or deny access to computer technology or the Internet for safety and security or staffing reasons. (Welf. & Inst. Code, §§ 851.1, 889.1.)

11) Provides that county probation departments, in collaboration with county offices of education, and in partnership with the California Community Colleges or the California State University, or in voluntary partnership with the University of California, shall ensure that juveniles with a high school diploma or California high school equivalency certificate who are detained in, or committed to, a juvenile hall have access to, and can choose to participate in, public postsecondary academic and career technical courses and programs. (Welf. & Inst. Code, § 858, subd. (b)(1).)

12) Provides that boards of supervisors in counties with populations of five million or more may provide and maintain schools at a juvenile ranch or camp or residential or nonresidential boot camp under the control of the probation officer for the purpose of meeting the special educational needs of wards and dependent children of the juvenile court. (Welf. & Inst. Code, § 893, subd. (a).).

13) Provides that education shall be provided to all youth regardless of classification, housing, security status, disciplinary or separation status, including room confinement, except when providing education poses an immediate threat to the safety of self or others. (Cal. Code Regs., tit. 15, § 1370, subd. (b)(7).)

14) Provides that expulsion or suspension from juvenile court school shall be imposed only when other means of correction fail to bring about proper conduct and requires school staff to document other means of correction used prior to imposing expulsion or suspension if an expulsion or suspension is ultimately imposed. . (Cal. Code Regs., tit. 15, § 1370, subds. (b)(7) & (c)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "[c]hildren in California have a constitutional right to an equitable education, but some incarcerated youth are excluded from school because of punishments or policies imposed by officers at the juvenile hall, and thus denied their constitutional right. AB 2176 corrects this injustice and ensures that all children can access an equitable education, even while a ward of the court. Understanding the unique circumstances of juvenile detention, the bill provides reasonable exemptions in limited and temporary circumstances where the juvenile poses an immediate threat to staff or other

juveniles. In light of the significant negative impacts of chronic absenteeism on a student's academic achievement, California must strengthen the rights of incarcerated children to access an equitable education with their peers. No longer can we allow probation and detention facility policy decisions to keep kids out of school."

2) **Background:** California court schools have recently experienced an increase in chronic absenteeism rates – rising from 12.9% in the 2018-2019 school year to 16.8% in the 2021-2022 school year. (Youth Law Center, *Out of Sight, Out of Mind.* (Nov. 15, 2023) p. 3. Available at: <https://www.ylc.org/resource/out-of-sight-out-of-mind/> [As of March 1, 2024].) In both these school years there were a number of court schools where the chronic absenteeism rate exceeded 30%. (*Ibid.*) One court school in 2021-2022 had a 65.2% rate of chronic absenteeism. (*Ibid.*) These numbers should be treated as distinct from public school absenteeism rates, which have also risen, given that students in court schools are almost all incarcerated and under supervision, and do not have places to go other than attending school. (*Ibid.*) Additionally court schools have significantly higher suspension rates as compared to the statewide suspension rate. (*Ibid.*) Absentee rates are frequently connected to discipline and misbehavior. For example, Kern County probation staff "blanketly barred all youths labeled 'high security status' from attending school and required them to receive education services in their living units instead." (*Id.* at p. 22).

3) **Effect of this bill:** Existing law does not establish specific guidance surrounding when, and how long students in juvenile hall and other juvenile facilities can be removed from court school classrooms for disciplinary reasons. Under the Youth Bill of Rights, students generally have a right to access to computer technology and the internet for purposes of education to continue to receive educational services while on disciplinary or medical status. (Welf. & Inst. Code, § 224.71). However, chief probation officers are permitted to deny a minor access to computer technology or the Internet for "safety, security or staffing reasons." (Welf. & Inst. Code, §§ 851.1, 889.1.) Further, state regulations provide that education must be provided to all youth regardless of disciplinary status, including room confinement, except for when providing education would "pose an immediate threat to the safety of self or others." (Cal. Code Regs., tit. 15, § 1370, subd. (b)(7).) State regulations further specify that that expulsion or suspension from juvenile court school shall be imposed "if other means of correction fail to bring about proper conduct…"(Cal. Code Regs., tit. 15, § 1370, subds. (b)(7) & (c)(3).)

AB 2176 seeks to support juvenile rights, under the Youth Bill of Rights, to not to be deprived of education, and to attend appropriate level classes. As amended, it provides that students in juvenile hall and other juvenile facilities shall not be denied access to an "equitable education" with their peers, except in "limited and temporary circumstances" where the juvenile poses an immediate threat to staff or other juveniles. It further requires county probation departments, in collaboration with a county office of education, to ensure that juveniles who are temporarily denied access to an equitable education with their peers have access to paper or online coursework that is aligned to grade levels. This bill, as originally drafted, contains a provision providing that if a juvenile is denied access to an equitable education with their peers for three consecutive school days in a school year, a petition may be filed and a juvenile court shall grant a hearing on the petition on whether the juvenile poses an immediate threat to staff or other juveniles. Committee amendments will remove this mechanism given concerns from the opposition.

As amended, AB 2176 narrows the safety exemption surrounding when students can be denied access to education by clarifying that this can only occur in *limited and temporary circumstances* when the juvenile poses an immediate threat to staff or other juveniles. The committee amendments would also remove the mechanism allowing juveniles to petition to have a hearing to permit them to return to instruction with their peers, the author may consider defining "limited and temporary circumstances" to elaborate on the type of circumstances where a juvenile poses an immediate threat. Alternatively, the author may wish to clarify the meaning of "equitable education with their peers" since it is not clear if this applies to access to course materials aligned with their grade levels more generally (which the bill specifies must be provided even when the student is temporarily denied access to court school classrooms) or if this is a specific reference to in-person attendance of court school classrooms.

4) **Argument in Support**: According to the Association of California School Administrators "Across the state, in many counties, students in court schools are denied access to education for simple infractions or due to a collective punishment that is given to a unit of incarcerated students. It is ironic that education is compulsory for California's children and parents who do not take their children to school can be prosecuted under the law and yet in many court schools, students can be and are regularly denied access to education… Incarcerated youth need access to education in order to successfully return home. AB 2176 will help protect the fundamental rights of students by ensuring that they are not denied access to an equitable education while incarcerated." Given the State's obligation to provide youth in juvenile facilities

5) **Argument in Opposition**: According to the Youth Law Center "[W]e are deeply concerned that AB 2176 proposes language that inadvertently creates a legal process through which probation departments and the juvenile court could certify individual youth as having forfeited their right to an equitable education due to a judgment that the youth poses a threat. The proposed hearing process would result in formalized denials, that could in practice be indefinite, that would be explicitly authorized by statute, where no such process for denial of education existed before, and would undermine the educational rights recently passed in the Youth Bill of Rights (Ting, AB 2417). Such a formalized denial of education would also be in direct conflict with federal disability laws, including the Individuals with Disabilities Education Act and the Americans with Disabilities Act, for the many young people in juvenile detention with disabilities.

"The bill's proposed adversarial hearing process would also open the door for probation departments to introduce information in court that might otherwise have been kept confidential in order to justify its practices–for example, details about disciplinary incidents in the juvenile hall, allegations of gang affiliation, and mental health history could all be fair game in a hearing to establish whether or not a youth is a threat for the purposes of educational exclusion, with little ability for the youth or their counsel to mount an effective defense. Youth defense counsel already struggle to get information about incidents within and operations of juvenile detention facilities for individual clients, and counsel would likely have difficulty procuring records such as staffing patterns or staff disciplinary incidents that might show that the root of the youth's exclusion from education lies in probation practices, rather than in the youth's own actions. A process that subjects youth to additional scrutiny due to failures by probation to provide statutorily mandated education services would only cement the power asymmetry between the probation department and the youth in its custody,

not subvert it."

6) **Related Legislation**:

a) SB 1353 (Wahab), would add to the Youth Bill of Rights the right to not be deprived of mental health resources, including daily access to counselors, therapists, mentors, or any related services necessary for mental well-being, rehabilitation, and the promotion of positive youth development while detained in a juvenile facility. SB 1353 is pending on the Senate Floor.

b) AB 1896 (Dixon), would prohibit a youth, following a youth's commitment to a secure youth facility, from being found ineligible for continued commitment to a secure youth treatment facility as a result of subsequent adjudicated petitions and would prohibit a court from increasing a youth's current baseline term of confinement based on subsequent adjudications. AB 1896 will be heard in this committee today.

7) **Prior Legislation**:

a) AB 2417 (Ting), Chapter 786, Statutes of 2022, makes the Youth Bill of Rights applicable to youth confined in any juvenile facility and youth in juvenile facilities to have access to postsecondary academic and career technical education and programs and access to information regarding parental rights, among other things.

b) SB 716 (Mitchell), Chapter 857, Statutes of 2019, required each county probation department as well as the Division of Juvenile Justice to ensure that youths with a high school diploma or California high school equivalency certificate who are detained in, or committed to, their respective facilities, have access to various public postsecondary academic and career technical courses and programs, as specified.

c) AB 2448 (Gipson), Chapter 997, Statutes of 2018, provided for access to computer technology and the Internet for certain dependents and wards of the court under specified circumstances and for specific purposes.

d) SB 1143 (Leno), Chapter 726, Statutes of 2016, limited the use of room confinement in juvenile facilities, and banned its use for the purposes of punishment, coercion, convenience, or retaliation.

e) SB 518 (Migden), Chapter 649, Statutes of 2007, enacted the Youth Bill of Rights for youths confined at DJJ.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California School Administrators
California County Superintendents
California Federation of Teachers Afl-CIO
Los Angeles County Office of Education
Santa Clara County Office of Education

Oppose

Youth Law Center

Analysis Prepared by: Ilan Zur / PUB. S. / (916) 319-3744

Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2176

Amendment 1
On page 3, strike out lines 3 to 11, inclusive, in line 12, strike out "(d)" and insert:

(c)

Amendment 2
On page 3, in line 17, strike out "(e)" and insert:

(d)

Amendment 3
On page 3, strike out lines 33 to 40, inclusive, on page 4, strike out lines 1 and 2, in line 3, strike out "(d)" and insert:

(c)

Amendment 4
On page 4, in line 8, strike out "(e)" and insert:

(d)

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 2176

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL **No. 2176**

Introduced by Assembly Member Berman

February 7, 2024

An act to add Sections 859 and 889.3 to the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2176, as introduced, Berman. Juveniles: access to education.

Existing law and case law recognize that education is a fundamental right under the state constitution. Existing law, the Arnold-Kennick Juvenile Court Law, states its purpose is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court, and require minors under the jurisdiction of the juvenile court to receive care, treatment, and guidance consistent with their best interests. Existing law requires county boards of education to provide for the administration and operation of public schools in juvenile halls, juvenile ranches, and juvenile camps, among others, known as juvenile court schools.

This bill would prohibit juveniles who are detained in, or committed to, juvenile hall, a secure youth treatment facility, juvenile ranch, camp, or forestry camp from being denied access to an equitable education with their peers, except in limited and temporary circumstances where the juvenile poses an immediate threat to staff or other juveniles. ~~The bill would, if a juvenile is denied access to an equitable education with their peers for 3 consecutive school days in a school year, authorize a petition to be filed and would require the juvenile court to grant a hearing on the petition. The bill would require the county probation~~

~~department to establish, by clear and convincing evidence, that the juvenile poses an immediate threat to staff or other juveniles at juvenile hall, a secure youth treatment facility, juvenile ranch, camp, or forestry camp. The bill would require, if the court determines that the probation department has not met its burden, to order that the juvenile be allowed to return to instruction with the juvenile's peers.~~ The bill would require a county probation department, in collaboration with a county office of education, to ensure that juveniles who are temporarily denied access to equitable education with their peers have access to paper or online coursework that is aligned to grade level standards. To the extent this bill would mandate that a county probation department or county office of education provide a new program or higher level of service, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

Page 2

SECTION 1. The Legislature finds and declares that, as recognized in the California Constitution, in Serrano v. Priest (1971) 5 Cal.3d 584, and Section 202 of the Education Code, education is a fundamental right that may not be abridged absent a compelling government interest.

SEC. 2. Section 859 is added to the Welfare and Institutions Code, to read:

859. (a) Juveniles who are detained in, or committed to, a juvenile hall shall not be denied access to an equitable education with their peers, except in limited and temporary circumstances where the juvenile poses an immediate threat to staff or other juveniles.

(b) A county probation department shall, in collaboration with a county office of education, ensure that juveniles who are temporarily denied access to equitable education with their peers

Page 3

have access to paper or online coursework that is aligned to grade level standards.

~~(c) If a juvenile is denied access to an equitable education with their peers for three consecutive school days in a school year, a petition may be filed and the juvenile court shall grant a hearing on the petition. At that hearing, the county probation department shall have the burden of presenting clear and convincing evidence that the juvenile poses an immediate threat to staff or other juveniles at juvenile hall. If the judge determines that the county probation department has not met its burden, the juvenile shall be allowed to return to instruction with their peers.~~

Amendment 1

~~(d)~~

(c) These provisions shall be considered part of the current responsibilities of the county probation department to provide and coordinate services for juveniles that enable the juveniles to access their fundamental right to an education and to be law-abiding and productive members of their families and communities.

~~(e)~~

Amendment 2

(d) For purposes of this section, "juvenile" means any person detained in, or committed to, a juvenile hall who is 18 years of age or younger and has not obtained a high school diploma or equivalent.

SEC. 3. Section 889.3 is added to the Welfare and Institutions Code, to read:

889.3. (a) Juveniles who are detained in, or committed to, a secure youth treatment facility, juvenile ranch, camp, or forestry camp shall not be denied access to an equitable education with their peers, except in limited and temporary circumstances where the juvenile poses an immediate threat to staff or other juveniles.

(b) A county probation department shall, in collaboration with a county office of education, ensure that juveniles who are temporarily denied access to equitable education with their peers have access to paper or online coursework that is aligned to grade level standards.

~~(c) If a juvenile is denied access to an equitable education with their peers for three consecutive school days in a school year, a petition may be filed and the juvenile court shall grant a hearing on the petition. At that hearing, the county probation department shall have the burden of presenting clear and convincing evidence that the juvenile poses an immediate threat to staff or other~~

Amendment 3

Page 3 39 ~~juveniles at a secure youth treatment facility, juvenile ranch, camp,~~
40 ~~or forestry camp. If the judge determines that the county probation~~
Page 4 1 ~~department has not met its burden, the juvenile shall be allowed~~
2 ~~to return to instruction with their peers.~~
3 ~~(d)~~
\+ *(c)* These provisions shall be considered part of the current
4 responsibilities of the county probation department to provide and
5 coordinate services for juveniles that enable the juveniles to access
6 their fundamental right to an education and to be law-abiding and
7 productive members of their families and communities.
8 ~~(e)~~

Amendment 4

\+ *(d)* For purposes of this section, "juvenile" means any person
9 detained in, or committed to, a secure youth treatment facility,
10 juvenile ranch, camp, or forestry camp who is 18 years of age or
11 younger and has not obtained a high school diploma or equivalent.
12 SEC. 4. If the Commission on State Mandates determines that
13 this act contains costs mandated by the state, reimbursement to
14 local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.

O

Date of Hearing: April 2, 2024
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2209 (Sanchez) – As Introduced February 7, 2024

PULLED BY THE AUTHOR.

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

Date of Hearing: April 2, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2215 (Bryan) – As Introduced February 7, 2024

SUMMARY: Provides that a peace officer may release a person arrested without a warrant from custody, instead of taking the person before a magistrate, by delivering or referring that person to a public health or social service organization that provides services including, but not limited to, housing, medical care, treatment for alcohol or substance use disorders, psychological counseling, or employment training and education, and no further proceedings are desired.

EXISTING LAW:

1) Requires, when an arrest is made without a warrant by a peace officer or private person, the person arrested be taken, without unnecessary delay, before the nearest or most accessible magistrate in the county in which the offense is triable, unless the person is otherwise released. (Pen. Code, § 849, subd. (a).)

2) Requires a complaint stating the charge against the arrested person to be laid before the magistrate. (Pen. Code, § 849, subd. (a).)

3) Authorizes a peace officer to release from custody, instead of taking the person before a magistrate, a person arrested without a warrant in the following circumstances:

   a) The officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested;

   b) The person arrested was arrested for intoxication only, and no further proceedings are desirable;

   c) The person was arrested only for being under the influence of a controlled substance or drug and the person is delivered to a facility or hospital for treatment and no further proceedings are desirable;

   d) The person was arrested for driving under the influence of alcohol or drugs and the person is delivered to a hospital for medical treatment that prohibits immediate delivery before a magistrate; or,

   e) The person was arrested and subsequently delivered to a hospital or other urgent care facility, including, but not limited to, a facility for the treatment of co-occurring substance use disorders, for mental health evaluation and treatment, and no further proceedings are desirable. (Pen. Code, § 849, subd. (b)(1)-(5).)

4) Requires the record of arrest of a person released, as specified, to include a record of release, and that the arrest shall not be deemed an arrest, but a detention only. (Pen. Code, § 849, subd. (c).)

5) Provides that an arrest is taking a person into custody in a case and manner authorized by law, and authorizes peace officers and private persons to make arrests. (Pen. Code, § 834.)

6) Authorizes a peace officer to arrest a person without a warrant in the following circumstances:

   a) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence;

   b) The person arrested has committed a felony, although not in the officer's presence; or,

   c) The office has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed. (Pen. Code, § 836.)

7) Authorizes a private person to arrest an individual in the following circumstances:

   a) For a public offense committed or attempted in their presence;

   b) When the person arrested has committed a felony, although not in their presence; or,

   c) When a felony has been in fact committed, and the person has reasonable cause for believing the person arrested to have committed it. (Pen. Code, § 837.)

8) Requires a private person who has arrested another for the commission of a public offense to, without unnecessary delay, take the person arrested before a magistrate, or deliver the person to a peace officer. (Pen. Code, § 847, subd. (a).)

9) Provides that a public officer or employee, when authorized by ordinance, may arrest a person without a warrant whenever the officer or employee has reasonable cause to believe that the person to be arrested has committed a misdemeanor in the presence of the officer or employee that is a violation of a statute or ordinance that the officer or employee has the duty to enforce. (Pen. Code, § 836.5, subd. (a).)

10) Establishes the Law Enforcement Assisted Diversion (LEAD) pilot program. (Pen. Code, § 1001.85, et seq.)

11) Provides that the purpose of the LEAD program is to improve public safety and reduce recidivism by increasing the availability and use of social service resources while reducing costs to law enforcement agencies and courts stemming from repeated incarceration. (Pen. Code, § 1001.85, subd. (a).)

12) Requires LEAD pilot programs to be consistent with the following principles, implemented to address and reflect the priorities of the community in which the program exists:

a) Providing intensive case management services and an individually tailored intervention plan that acts as a blueprint for assisting LEAD participants;

b) Prioritizing temporary and permanent housing that includes individualized supportive services, without preconditions of drug or alcohol treatment or abstinence from drugs or alcohol;

c) Employing human and social service resources in coordination with law enforcement in a manner that improves individual outcomes and community safety, and promotes community wellness; and,

d) Participation in LEAD services shall be voluntary throughout the duration of the program and shall not require abstinence from drug or alcohol use as a condition of continued participation. (Pen Code, § 1001.85, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Assembly Bill 2215 will amend the Penal Code to explicitly authorize law enforcement to connect individuals they encounter directly to supportive services and treatment if they believe that doing so would be in the best interest of public and community safety. By adding clear and concise language to the penal code, AB 2215 allows law enforcement to exercise all of the tools available to them and codifies their discretionary authority."

2) **Law Enforcement Assisted Diversion (LEAD) Program**: The 2016 public safety budget trailer bill created the LEAD Pilot Program. The program aims "to improve public safety and reduce recidivism by increasing the availability and use of social service resources while reducing costs to law enforcement agencies and courts stemming from repeated incarceration." (Pen. Code, § 1001.85, subd. (a).) LEAD programs fund intensive case management services, housing services, and help coordinate human and social services and law enforcement to improve individual and community public safety outcomes. (Pen Code, § 1001.85, subd. (b)(1)-(3).) In 2020, researches at the California State University Long Beach, School of Criminology submitted a report to the Board of State and Community Corrections (BSCC) on the LEAD Pilot Programs launched in Los Angeles County and San Francisco. According to the researchers:

> LEAD has four core principles: diversion, harm reduction, housing first, and intensive case management. At the point of contact, LEAD police officers exercise discretion in deciding whether to divert an eligible individual (involved in drug offenses or sex work) to community-based services or process them through the criminal justice system (LEAD National Support Bureau, n.d.a). The underlying rationale is that by routing individuals involved in drug offenses and sex work away from jail and into health, social, behavioral, and mental health services, their likelihood of reoffending will decrease, and criminal justice costs will be avoided. The services will allow individuals to address the underlying reasons for their criminal behavior, leading to long-term desistance.
>
> The second core principle of LEAD is harm reduction. Broadly, harm reduction is best

> defined as "a pragmatic yet compassionate set of principles and procedures designed to reduce the harmful consequences of addictive behavior for both drug consumers and for the society in which they live" (Marlatt, 1996, p. 779). In LEAD, harm reduction refers to reducing the harms associated with drug use and sex work and providing individualized intervention plans for participants based on their immediate needs.
>
> LEAD's third core principle is housing first. The housing first models seek to provide stability through the form of housing, specifically permanent housing, without conditional requirements to enroll in drug or mental health treatment (National Alliance to End Homelessness, 2016). By providing housing, clients' lives will be more stable, allowing them to address problems, traumas, and struggles in their life (LEAD National Support Bureau, n.d.a).
>
> The last core principle of LEAD is intensive case management (ICM). ICM essentially services high acuity clients with frequent case manager-client contact (de Vet et al., 2013). The goal of ICM is to improve the clients' quality of life through the development of individualized intervention plans and provisions of services based on assessments of client's needs.

(Malm, Law Enforcement Assisted Diversion (LEAD) External Evaluation, Report to the Legislature, CSU Long Beach (Jan 1. 2020) p. 10 <https://www.bscc.ca.gov/wp-content/uploads/CSULB-LEAD-REPORT-TO-LEGISLATURE-1-15-2020.pdf> [last visited Mar. 26, 2024].)

Although outcome and cost data from Los Angeles County was not made available in time for the report, the researchers noted that the success of the LEAD Pilot Program in San Francisco was particularly pronounced:

> At the 12-month follow-up period, LEAD SF clients had significantly lower rates of misdemeanor and felony arrests, and felony cases. Felony arrests were about two and a half times higher (257%) for individuals in the comparison group. Misdemeanor arrests were over six times higher (623%) for the comparison group. And felony cases were three and a half times higher (360%) for the comparison group. Notably, the significant increase in citations for LEAD clients seen at the 6- month follow-up was not present after a year in the program. These positive findings are likely due to the harmreduction nature of LEAD. LEAD participants' case managers also coordinated with San Francisco public defenders and DAs to assist with active cases as to not compromise LEAD intervention plans.

(*Id.* at p. 8.)

The research concluded that "this evaluation adds to the evidence supporting LEAD as a promising alternative to the criminal justice system as usual." (*Id.* at p. 122.)

This bill would provide that peace officers statewide, not just those participating in LEAD pilot programs, may release a person arrested without a warrant by delivering or referring that person to a public health or social service organization that provides supportive services.

3) **Committee on Revision of the Penal Code Recommendation**: The subject of this bill is based on a recommendation made in the Committee on Revision of the Penal Code's (CRPC) most recent annual report. The CRPC was established to study and recommend statutory reforms to criminal law and procedure relating to, among other things, alternatives to incarceration. (Gov. Code, § 8290.5, subd. (a)(3).) Citing the success of the LEAD Pilot Program at reducing recidivism rates for those who received supportive services under the program, CRPC made the following recommendation: "Update Penal Code § 849 to encourage police officers in all jurisdiction (even those without LEAD programs) to release people arrested for low-level offenses to community-based supportive services in lieu of jail booking and referral to prosecution." (Com. Revision of Pen. Code, 2023 Annual Report and Recommendations (Dec. 2023), p. 13 <http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2023.pdf> [last visited Mar. 26, 2024].) This bill does just that.

4) **Argument in Support**: According to *Californians for Safety and Justice*, the bill's sponsor, "This bill will update the Penal Code to make it clear that police officers in all jurisdictions, even those without Law Enforcement Assisted Diversion (LEAD) programs, connect people arrested for low-level offenses directly to supportive services and treatment if they feel that is in the best interest to public safety.

   "In 2016, California established the LEAD Pilot Program, which allotted $15 million in funding over 2.5 years. San Francisco and Los Angeles received funding, most of which was for housing, case management, and other health services for LEAD participants. In each county, the pilots proved successful in reducing future arrests of people who received LEAD intervention compared to similar people who were arrested and brought to jail.

   "While long term funding may have stalled LEAD programs in some areas, it has not slowed down jurisdictions like Los Angeles County and the City of Long Beach, who have expanded their programs to serve more people. California's Committee on the Revision of the Penal Code highlighted the lower recidivism for LEAD clients in their annual 2023 report.

   "Many states including Colorado, Maryland, New Mexico, and Washington have established state-funded LEAD programs. Other states, including New Jersey, have secured private funding to establish LEAD programs. In Chicago, a program like LEAD allows police officers to connect people arrested for drug possession directly with a substance use counselor. Researchers from the University of Chicago Crime Lab found that over 79% of people who are diverted go on to start treatment, and that nearly half of those who start treatment remain engaged 60 days after with increasingly positive outcomes.

   "Current law is silent on the use of pre-booking diversion by law enforcement, and jurisdictions that have a thriving LEAD program have asked for explicit legislative language codifying the authority their officers are already wielding. AB 2215 will add clear language to the penal code empowering law enforcement with additional pre-booking diversion tools that codify their discretionary authority to connect people to supportive services in the interest of community safety."

5) **Argument in Opposition**: According to the *Los Angeles County Professional Peace Officers Association*, "Releasing individuals without proper judicial oversight could pose risks to public safety. Without proper assessment of the individual's potential threat to society,

there's a possibility that releasing them directly to a health or social service organization could put the community at risk.

"While providing access to health and social services is important, it should not come at the expense of proper legal proceedings. Bringing individuals before a magistrate ensures that they can access rehabilitation programs within the framework of the legal system, potentially leading to more effective outcomes in addressing underlying issues such as substance abuse or mental health disorders."

6) **Related Legislation:**

a) AB 2267 (Jones-Sawyer), would re-establish the Youth Reinvestment Grant Program (YRGP), designating the Office of Youth and Community Restoration (OYCR) to administer it, and would require that a percent of YRGP funds be allocated for youth diversions programs. AB 2267 is currently pending hearing in the Assembly Appropriations Committee.

b) SB 1025 (Eggman), would expand eligibility for the Military Diversion Program to felonies, subject to specified exceptions. SB 1025 is pending hearing in the Senate Appropriations Committee.

c) SB 1282 (Smallwood-Cuevas), would require a court, if diversion is offered, to consider ordering drug treatment for individuals suffering from addiction, and consider a referral to housing services for unhoused individuals. SB 1282 is pending referral in the Senate Rules Committee.

7) **Prior Legislation:**

a) SB 238 (Hertzberg), Chapter 566, Statutes of 2017, re-established peace officer authority to release from custody, instead of taking the person before a magistrate, a person arrested without a warrant by delivering the person to a hospital or other urgent care facility, as specified.

b) SB 843 (Public Safety), Chapter 33, Statutes of 2016, established the LEAD pilot program with the goal of improving public safety and reducing recidivism by increasing the availability and use of social service resources by reducing costs to law enforcement agencies and courts stemming from repeated incarceration.

c) SB 238 (Public Safety), Chapter 499, Statutes of 2015, removed the authority of a peace officer to release from custody, instead of taking the person before a magistrate, a person arrested without a warrant by delivering the person to a hospital or other urgent care facility, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action

California Immigrant Policy Center
Californians for Safety and Justice
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Initiate Justice
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoner With Children
Peace Officers Research Association of California (PORAC)
Prosecutors Alliance of California, a Project of Tides Advocacy
Rubicon Programs
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Steinberg Institute
The Transformative In-prison Workgroup
Uncommon Law
Vera Institute of Justice
Young Women's Freedom Center

Opposition

Los Angeles County Professional Peace Officers Association

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

Date of Hearing: April 2, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2419 (Gipson) – As Introduced February 13, 2024

SUMMARY: Expands the grounds upon which a search warrant may be issued to include when the property or things to be seized consist of evidence that tend to show the crime of communications in furtherance of a solicitation of a minor, as specified, has occurred or is occurring.

EXISTING FEDERAL LAW: 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.)

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) Provides that a search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)

4) Provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)

5) Provides that a search warrant may be issued when, among other reasons, the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, or possession of matter depicting sexual conduct of a person under 18 years of age, as specified. (Pen. Code, § 1524, subd. (a)(5).)

6) Provides that it is a misdemeanor for an individual who solicits, or who agrees to engage in, or who engages in, any 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. (Pen. Code, § 647, subd. (b)(3).)

7) Provides that a person is guilty of sexual exploitation of a child if they knowingly develop, duplicate, print, or exchange any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual exploitation. (Pen. Code, § 311.3, subd (a).)

8) Provides that the punishment for child exploitation is a fine of not more than $2,000 or by imprisonment in county jail for not more than one year, or both, except that a person with a previous conviction for child exploitation shall be punished by imprisonment of 16 months, 2 years, or 3 years in state prison. (Pen. Code, § 311.3, subd (b).)

9) Provides that a person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardward, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manger, any film or filmstrip, the production of which involves the use of a person under 18 years of age, knowing that the matter depicts a person under 18 years of age personally engaging in or simulating sexual conduct, as defined, shall be punished by 16 months, 2 years, or 3 years in state prison, by up to one year in county jail, or by a fine up to $2,500, or by both a fine and imprisonment. (Pen. Code, § 311.11, subd (a).)

10) Provides that a person with a previous conviction of possession or control of child pornography, as specified, shall be punished by imprisonment in state prison for two, four, or six years and shall be required to register as a sex offender. (Pen. Code, § 311.11, subd (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Search warrants are an essential tool for the reduction of crime and safety of our communities, specifically in the ones I represent. By adding this tool to help locate possible trafficking or solicitation of a minor will create an avenue towards combatting the entire ring of human trafficking. AB 2419 is essential towards combatting human trafficking and establishing safer communities."

2) **Effect of the Bill**: Under existing law, law enforcement can secure a search warrant when, among other reasons, the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, or possession of child pornography, as specified. (Pen. Code, § 1524, subd. (a)(5).) Sexual exploitation of child is a misdemeanor subject to imprisonment in county jail for up to one year, by a fine of up to $2,000, or both; but it is a felony punishable by imprisonment in state prison for 16 months, 2 years, or 3 years if the

person has a previous child exploitation conviction. (Pen. Code, § 311.3, subd. (d).) Possession of child pornography, as specified, is punishable either as felony punishable by 16 months, 2 years, or 3 years in state prison; or, punishable as a misdemeanor with up to one year in county jail, a fine of up to $2,500, or both. (Pen. Code, § 311.11, subd. (a).) A person with a previous conviction of possession of child pornography or attempt to commit that offense is punished by 2, 4, 6 or six years in state prison. (Pen. Code, § 311.11, subd. (b).)

This bill would add solicitation of a minor to the list of crimes for which a search warrant may be obtained if the property or things to be seized consist of evidence of the crime. Solicitation of a minor is misdemeanor. (Pen. Code, § 647, subd. (b)(3).) The statute applies not just to an adult soliciting a minor to commit an act of prostitution. A minor violates the statute when they "manifest an acceptance" to engage in an act of prostitution. (*Ibid.*; see e.g., *In re Elizabeth G.* (Cal.App.3d 1975) 53 Cal.App.3d 725.) Indeed, the addition of solicitation of a minor into the search warrant statute is likely to lead disproportionately to searches of minors engaged in prostitution by law enforcement.

Trafficking survivors have reported abusive and even violent and dehumanizing encounters with law enforcement. (Int'l Human Rights Clinic, *Over-Policing Sex Trafficking: How U.S. Law Enforcement Should Reform Operations,"* USC (Nov. 15, 2021) < https://humanrightsclinic.usc.edu/2021/11/15/over-policing-sex-trafficking-how-u-s-law-enforcement-should-reform-operations/> [last visited Mar. 27, 2024].) Survivors often do not cooperate with law enforcement in arresting traffickers because they fear arrest, harassment, violence, and even abuse by police. (*Id.* at p. 6.) Further, one study reported, "When officers use these techniques to deceive and extract information from victims, they often mirror the methods used by traffickers to trick victims into selling sex for the traffickers' monetary gain." (*Id.* at p. 14.) And there seems to be little dispute that members of the LGBTQ+ community and Black, Indigenous, and people of color are at significantly higher risk of being trafficked. (See Micaela Anderson, Child Trafficking Hits Close to Home, UNICEF USA (Jan. 12, 2021) <https://www.unicefusa.org/stories/child-trafficking-hits-close-home> [Feb. 23, 2024].)

Given these experiences, one might reasonably question whether further expanding the capacity of law enforcement to search minors and their property based on probable cause of "communications in furtherance" of a misdemeanor is warranted.

3) **Existing Law Already Authorizes Search Warrants for Human Trafficking**: According to the author, this bill is about "combatting human trafficking." In support of that effort, this bill would expand the grounds upon which a search warrant may issue to include when the property or things to be seized consist of evidence that tend to show the crime of communications in furtherance of a solicitation of a minor has occurred or is occurring.

The Fourth Amendment to the U.S. Constitution protects against unreasonable searches and seizures by the government. 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.)

Existing law authorizes a search warrant, properly issued, when the property or things to be searched were used in the commission of a felony. (Pen. Code, § 1524, subd. (a)(2). Under existing law, human trafficking is a felony—whether the victim is a minor or not. (Pen. Code, § 236.1.) Moreover, beyond search warrants, a judge may issue an ex parte order for a wiretap if there is probable cause to believe that an individual has committed, is committing, or is going to commit human trafficking. (Pen. Code, § 629.52, subd. (a)(5).) That is, law enforcement is not without tools to conduct search people, places, and things that they have probable cause to believe are involved in human trafficking.

4) **Immigration Consequences:** A conviction for any crime where the penalty following conviction is a year or more and specified crimes "of moral turpitude" will likely bar a person from receiving lawful permanent residence status and may result in deportation. (Dadhania, *Deporting Undesirable Women* (2018) 9 U.C. Irvine L.Rev. 53, 56.) Federal law states any person "directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution" may be denied admission, re-admission, or LPR status. (8 U.S.C. § 1182, subd. (a)(2)(D); see generally, *Argot v. Superior Court of San Bernardino County* [People of State of California] (June 8, 2022, No. E075674) ___Cal.App.5th___ [2022 Cal. App. Unpub. LEXIS 3535, at *6-7].)

Congress passed the Victims of Trafficking Violence and Protection Act (VTVPA) in 2000. This law was enacted in the wake of increased awareness of human trafficking, particularly commercial sex trafficking. The VTVPA was multi-faceted legislation targeting human trafficking. It created T and U nonimmigrant statuses for victims of severe forms of human trafficking to allow them to remain in the United States to assist in law enforcement efforts against their traffickers and for victims of serious crimes including human trafficking, respectively. (Dadhania, 9 U.C. Irvine L. Rev., at 73.)

However, U and T visas are frequently denied to trafficking victims unless they participate in a law enforcement investigation – which may risk their lives or even their families' lives. If a trafficking victim makes the decision to protect their family rather than speak to the police, the VTVPA may not provide any remedy. Hence, undocumented Californians may potentially be uniquely penalized because an arrest or conviction for a prostitution-related crime may result in deportation or other serious immigration consequences.

Additionally, if a person is unlawful at entry, they will likely be immediately deported in summary proceedings. According to the American Immigration Council in August of 2021:

> Tens of thousands of migrants and asylum seekers are subjected to criminal prosecution for these crimes every year. Prosecutions for entry-related offenses reached an all-time high of 106,312 in Fiscal Year (FY) 2019, near the end of the Trump administration, before falling to 47,730 in FY 2020 after the government began rapidly expelling most people crossing the border in March 2020 rather than referring them for prosecution. (See Fact Sheet, Prosecuting People for Coming to the United States, American Immigration Council, located at https://www.americanimmigrationcouncil.org/research/immigration-prosecutions.)

Any time an undocumented person interacts with law enforcement, the risk of incarceration and deportation is significant. (Cf. San Ramon, *Orange County Sheriff's cooperation with ICE sees spike in inmate transfers*, L.A. Times (Mar. 26, 2024) <https://www.latimes.com/socal/daily-pilot/entertainment/story/2024-03-26/orange-county-sheriffs-cooperation-with-ice-sees-spike-in-inmate-transfers> [last visited Mar. 29, 2024].) If the goal is protecting against human trafficking, it may make sense to increase the number of asylum visas and provide more trauma-informed serves to people in the sex trade. (See 8 U.S.C. § 1325(a); *United States v. Corrales-Vazquez,* (9th Cir. 2019) 931 F.3d 944, 950.)

5) **Argument in Support**: According to the *Los Angeles City Attorney*, the bill's sponsor, "According to the California Attorney General, 'human trafficking is among the world's fastest growing criminal enterprises and is estimated to be a $150 billion-a-year global industry,' which according to the California Child Welfare Council, involves over 100,000 children in the United States. Within the United States, California consistently ranks number one in the nation in the number of human trafficking cases reported to the National Human Trafficking Hotline and, according to the Federal Bureau of Investigation, Los Angeles ranks near the top of the nation's high intensity child prostitution areas. These statistics highlight the need to do more to protect vulnerable youth and reduce the demand for the sex trafficking of minors.

"Although the law permits a search warrant to be issued when the property or things to be seized constitute evidence showing that a felony has been committed, the law currently deprives law enforcement of that same investigative tool when investigating the solicitation of a minor for an act of prostitution, a misdemeanor violation. This, coupled with the repeal of Penal Code section 653.22 that prohibited loitering with the intent to commit prostitution, has made law enforcement's ability to investigate and deter violations of soliciting a minor for prostitution very difficult.

"The prostitution activity that occurs along the Figueroa Corridor in Los Angeles illustrates this investigative challenge. Over the course of six months, our office led a multi-agency anti-child trafficking task force that resulted in assisting well over 25 minor trafficked victims; nearly three times the number of criminal referrals that our office received involving the solicitation of a minor in the prior three years. This not only demonstrates the prevalence of sex trafficking of minor children, but the difficulty experienced by law enforcement in investigating these crimes.

"AB 2419 recognizes these investigative challenges and provides a critical tool to assist law enforcement in protecting children from prostitution. Expanding the grounds upon which a search warrant may be issued would assist law enforcement in the collection of critical evidence from media devices used by those who solicit prostitution from minors. This will result in more effective prosecutions and help deter the sexual exploitation of children and hold those who prey upon them accountable."

6) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 2419 would amend Penal Code section 1524 to expand the circumstances under which a search warrant may issue to include the misdemeanor 647(b) soliciting a minor for prostitution.

"While we are sympathetic to the sponsor's stated goal of going after child sex traffickers,

AB 2419 does not accomplish that goal. Instead, it would allow police to seize a victim's personal phone and obtain a search warrant to sweep up all their messages, phone calls and emails in a fishing expedition for evidence. Since many minor victims have fled abusive homes or have been disowned for being gay or transexual, these searches could put them at risk of further harm.

"If the actual goal of this legislation is to find evidence against sex traffickers, then we ask that it be amended to address that issue.

' .... evidence in furtherance of sex trafficking of a person under 18 years of age.'

"AB 2419 is unnecessary. Since sex trafficking is a felony, the police can already seek a search warrant for evidence of sex trafficking.

"AB 2419 represents a further erosion of a statute that was narrowly drawn to protect citizens' privacy. The continued amendments to Penal Code section 1524 are an example of how a limiting section, over the years, is continually weakened and expanded beyond its original intent. Not all that long ago, Penal Code section 1524 dealt with warrants issued for felonies and had only 6 categories under subdivision (a) In an example of the observation that if you give law enforcement an inch, they will take a mile (*People v. McKay* (2002) 27 Cal. 4th 601, 628, concurring and dissenting opinion of Brown, J.) this subdivision now has 20 categories covering many more circumstances. This bill adds yet another category related to misdemeanor conduct.

"AB 2419 is also overbroad, potentially opening up every person's cell phone, computer, or other electronic device to a minute search covering well more than the 'communications' found in the amended statute. 'Communications' is not defined and this broad term has no limitation."

7) **Related Legislation**:

a) AB 2034 (Rodriguez), would re-enact, with some changes, the crime of loitering for the purpose of engaging in a prostitution offense which, before it was repealed, criminalized standing or loitering in public in order to engage in sex for compensation. AB 2034 is pending hearing in this committee.

b) AB 2309 (Muratsuchi), would authorize the city attorney of any general law city or chartered city to prosecute any misdemeanor committed within the city arising out of violation of state law, without consent of the district attorney. AB 2309 is currently pending hearing in this committee.

c) AB 2382 (B. Rubio), would increase the punishment for a second or subsequent conviction for soliciting a minor to engage in prostitution from a misdemeanor to a felony punishable in county jail for 16 months, 2 years, or 3 years. AB 2382 is currently pending hearing in this committee.

d) AB 2603 (Low), would authorize issuance of a search warrant on the grounds that the property or things to be seized consists of evidence that tends to show that certain

misdemeanor hate crimes have occurred. AB 2603 is pending hearing in this committee.

e) AB 2646 (Ta), is substantially similar to AB 2034 above. AB 2646 is pending hearing in this committee.

f) SB 1219 (Seyarto), would make it a misdemeanor for an individual to operate a motor vehicle in any public place and repeatedly beckon to, contact, or attempt to contact or stop pedestrians or other motorists, or impede traffic, with the intent to solicit prostitution. SB 1219 will be heard today in the Senate Public Safety Committee.

g) SB 1414 (Grove), would, among other things, increase the penalty for soliciting a minor for the purposes of engaging in a prostitution offense from a misdemeanor to a felony punishable in state prison for up to 4 years and by a fine of up to $25,000. SB 1414 is scheduled to be heard on April 14 in the Senate Public Safety Committee.

8) **Prior Legislation**:

a) AB 1602 (Alvarez), of the 2023-2024 Legislative Session, would have created a new misdemeanor of operating a motor vehicle in a public place with the intent to solicit prostitution. The hearing on AB 1602 was canceled at the request of the author.

b) SB 357 (Wiener), Chapter 86, Statutes of 2022, decriminalized loitering with the intent to solicit prostitution.

c) AB 1970 (Boerner), of the 2021-2022 Legislative Session, would have increased the penalty for misdemeanor solicitation of a minor, making it alternatively punishable as a felony by 16 months, two, or three years in the state prison regardless of whether the defendant knew or should have known the person was a minor. AB 1970 was not heard in this Committee.

d) AB 2828 (Rodriguez), of the 2021- 2022 Legislative Session, would have made it a felony to solicit an act of prostitution in exchange for compensation when the person soliciting the prostitute has been convicted of soliciting, agreeing to engage in, or engaging in prostitution on two prior occasions. AB 2828 was not heard in this Committee at the request of the author.

e) AB 892 (Choi), of the 2021-2022 Legislative Session, would have required a person convicted of misdemeanor solicitation of a minor for prostitution to register as a sex offender if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense. AB 892 failed passage in this Committee.

f) AB 1193 (B. Rubio), of the 2021-2022 Legislative Session, would have increased the penalty for misdemeanor solicitation of a minor, making it alternatively punishable as a felony by 16 months, two, or three years in the state prison regardless of whether the defendant knew or should have known the person was a minor. AB 1193 was not heard in this Committee at the request of the author.

g) AB 2862 (B. Rubio), of the 2019-2020 Legislative Session, was substantially similar to AB 1193. AB 2862 was not heard in this Committee.

h) AB 663 (Cunningham), of the 2019-2020 Legislative Session, would have made the solicitation of, agreement to engage in, or engagement in, an act of prostitution with a minor in exchange for the individual providing compensation, money, or anything of value to the minor, except when the defendant knew or should have known that the person solicited was a minor at the time of the offense, punishable by incarceration in the county jail for up to 6 months, a base fine of up to $2,000, or both the incarceration and fine. AB 663 was held on the Senate Appropriations Committee suspense file.

i) SB 303 (Morrell), of the 2017-2018 Legislative Session, would have made the penalty for solicitation of a minor a wobbler with a penalty of six months to one year in the county jail and/or by a fine not exceeding $15,000, or by imprisonment in the county fail for 2, 3 or 4 years. SB 303 was not heard in the Senate Public Safety Committee at the request of the author.

j) SB 1332 (Mitchell), Chapter 654, Statutes of 2016, decriminalized prostitution and solicitation for individuals under 18 years of age.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles City Attorney's Office
Los Angeles City Council
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
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association

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

Opposition

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association

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

Date of Hearing: April 2, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2483 (Ting) – As Amended April 1st, 2024

SUMMARY: Sets uniform statewide standards for postconviction proceedings. Specifically, **this bill**:

1) Requires the following to apply to all postconviction proceedings, except in cases where there is a conflict with a more specific statute:

   a) Upon receiving a petition to begin a postconviction proceeding, the court shall consider whether to appoint counsel to represent the petitioner;

   b) The court may consider any pertinent circumstances that have arisen since the sentence was imposed and has jurisdiction to modify every aspect of the petitioner's sentence, including if it was imposed after a guilty plea;

   c) Any changes to a sentence shall not be a basis for a prosecutor or court to rescind a plea agreement;

   d) The court shall state on the record the reasons for its decision to grant or deny the initial petition and shall provide notice to the petitioner of its decision;

   e) After ruling on a petition, the court shall advise the petitioner of their right to appeal and the necessary steps and time for taking an appeal;

   f) The parties may waive a resentencing hearing. If the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the petitioner agrees.

   g) If a victim 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.

   h) Upon request from the petitioner's attorney, the CDCR shall promptly make available any institutional records to the attorney that will assist the court's determination in the postconviction proceeding; and,

   i) Requires, when a person has been resentenced and their expected remaining time in custody is less than 30 days, a copy of the order and a Criminal Investigation and Identification (CII) number to be furnished to the executing officer within 24 hours.

2) Requires, on or before March 1, 2025, the presiding judge of each county superior court to convene a meeting to develop a plan for fair and efficient handling of postconviction proceedings.

3) Requires, at a minimum, the meeting to include a representative from the district attorney, the public defender or other representative of indigent defense services, the department of probation, the sheriffs, the Department of Corrections and Rehabilitation (CDCR), and the clerk of the court's office.

4) Provides that, at the meeting, the presiding judge or their designee shall determine how postconviction proceedings will be assigned to individual judges, including whether they will take place before the original sentencing judge or designated judge.

5) Allows the presiding judge to set further meetings at their discretion.

6) Makes Legislative findings and declarations.

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 imprisoned, the court may, within 120 days of the date of commitment on its own motion, or at any time if the sentencing laws changed, as specified, recall the sentence 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 CDCR or the Board of Parole Hearings (BPH) in the case of persons incarcerated in state prison, the county correctional administrator in the case of persons in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General (AG) 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) Requires the court, in recalling and resentencing, to apply the sentencing rules of the Judicial Council and many 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).)

6) 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, and then resentence the defendant to a reduced term of imprisonment, with the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced, or the AG if the DOJ originally prosecuted the case. (Pen. Code, § 1172.1, subd. (a)(3).)

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

8) 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).)

9) States that resentencing may be granted without a hearing upon stipulation of the parties. (Pen. Code, § 1172.1, subd. (a)(7).)

10) Provides that, if a victim 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)(2)(8)(B).)

11) Provides that if a hearing is held, the defendant may appear remotely and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court. (Pen. Code, § 1172.1, subd. (a)(8).)

12) Provides that if a resentencing request is from CDCR, BPH, a county correctional administrator, a district attorney, or the AG, the court must provide notice to the defendant and set a status conference within 30 days after the date that the court received the request and appoint counsel to represent the defendant.. (Pen. Code, § 1172.1, subd. (b).)

13) Requires when a judgment has been pronounced, a copy of the judgment and a CII number to be forthwith furnished to the officer whose duty it is to execute the judgment. (Pen. Code, § 1213, subd. (a).)

14) States that in order to preserve a victims' right to due process and justice, the victim is, among other things, entitled to reasonable notice of all parole or other post-conviction release proceedings, as well as to be present at these proceedings and the right to be heard, upon request, at any proceeding, including sentencing, a post-conviction release decision, or any

proceeding in which a right of the victim is at issue. (Cal. Const., art. I § 28(b)(7)-(8) & (15).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "'Second look' sentencing authorizes courts to revisit criminal sentences. Over the past few years, the CDCR Secretary and District Attorneys have begun using their resentencing authority more frequently, and as we continue to make positive changes to this area of the law, new implementation barriers are presented. For example, there are no general procedures to follow for resentencing — and each new reform comes with its own distinct rules — resulting in wide variation and inefficiency across the state in how resentencing cases are handled. AB 2483 follows the Committee on the Revision of the Penal Code's recommendations by setting statewide guidelines to ensure efficient and equitable resentencing procedures."

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, 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, CDCR, BPH, the county correctional administrator, the district attorney, or the AG can make a recommendation for resentencing at any time. (*Ibid.*) The defendant however is not authorized to file a petition under these revisions. (*Ibid.*)

   When resentencing under the recall statutes, 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).)

   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).)

   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).)

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).)

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).)

3) **Need for this Bill**: This bill would require the presiding judge of each county superior court to convene a meeting to plan for fair and efficient handling of postconviction proceedings. According to background materials submitted by the author, "Over the past few years, the CDCR Secretary and District Attorneys have begun using their resentencing authority more frequently, and as we continue to make positive changes to this area of the law, new implementation barriers are presented. For example, there are no general procedures to follow for resentencing — and each new reform comes with its own distinct rules — resulting in wide variation and inefficiency across the state in how resentencing cases are handled."

   In addition, the Committee on the Revision of the Penal Code's 2023 Annual Report provided recommendations to help give courts standardized guidelines, creating consistency across the state with the implementation of resentencing laws. (Committee on the Revision of the Penal Code, *2023 Annual Report*, at p. 23. Available at: <http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2023.pdf>.) This bill adopts some of the recommendations of the Committee on the Revision of the Penal Code, such as requiring the appointment of counsel, and allowing resentencing of convictions by guilty pleas.

4) **Argument in Support**: According to *Initiate Justice*, a sponsor of this bill, "Over the past decade, California has passed several ameliorative reforms that have allowed thousands of incarcerated people to return to court to have their sentences reconsidered. However, each new reform carried different or undefined procedural rules that has resulted in variation and inefficiency across the state in how these resentencings are handled. To avoid unnecessary litigation and delay, minimum procedures should apply to all resentencings.

   "Under AB 2483 (Ting), stakeholders including judges, public defenders, and members of law enforcement would be required to collaborate and develop a plan to efficiently handle resentencings. The creation of collaborative workgroups lead to greater consistency and efficiency in the implementation of Proposition 36 in San Diego county. This approach will save costs and allow the spirit of ameliorative laws to be implemented soundly.

"CDCR can greatly improve the efficiency of resentencings by promptly providing institutional records needed to assist court's determinations in these hearings. Attorneys rely on CDCR to provide necessary records including information on an incarcerated persons's behavior and progress while in prison. Resentencings in federal courts have operated more smoothly despite encountering similar problems to state courts like California in part because of assistance from prison administrators in obtaining critical records.

"Other key provisions of the bill include ensuring that cases resolved by plea bargaining are expressly allowed under resentencings, and requiring abstracts of judgments are promptly transmitted to CDCR and acted upon. To be clear, AB 2483 (Ting) does not make resentencings automatic and it does not prohibit prosecutors from making arguments in court. The bill simply streamlines resentencings by establishing minimum procedures that will reduce costs and ensure uniformity in resentencings."

5) **Argument in Opposition**: According to the *California District Attorneys Association (CDAA)*, "This bill through proposed Penal Code section 1171 seeks to impose a generalized framework as to any ameliorative post-conviction statute potentially creating greater inconsistency, inefficiencies, and confusion where there already exist distinct mechanisms for relief under these statutes. This bill also removes the ability for the DA and the Court to rescind a plea agreement in all ameliorative resentencings."

6) **Related Legislation**:

   a) AB 1809 (Rodriguez) would roll back resentencing provisions for an incarcerated person convicted of first-degree murder of a peace officer ineligible for recall and resentencing. AB 1809 is pending in Assembly Appropriations Committee.

   b) 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 to seek a recall of their sentence and be resentenced to a lesser sentence. SB 94 has been ordered to the inactive file.

7) **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 88 (Sanchez), Chapter 795, Statutes of 2023, requires a victim who wishes to be heard regarding resentencing to notify the prosecution of their request for a hearing within 15 and would require the court to provide an opportunity for the victim to be heard.

   c) AB 124 (Kamlager), Chapter 695, Statutes of 2021, 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.

d) 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 creates a presumption favoring recall and resentencing, as specified, when the recommendation has been made by one of these agencies.

e) 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.

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

All of Us or None Bakersfield
Alliance for Boys and Men of Color
California Public Defenders Association
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Empowering Women Impacted by Incarceration
Famm
Felony Murder Elimination Project
Initiate Justice
Initiate Justice Action
Legal Services for Prisoners With Children
Prosecutors Alliance of California, a Project of Tides Advocacy
Rubicon Programs
Smart Justice California, a Project of Tides Advocacy
Young Women's Freedom Center

2 Private Individuals

Opposition

California District Attorneys Association

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

Date of Hearing: April 2, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2609 (Ta) – As Introduced February 14, 2024

SUMMARY: Increases the punishment for "swatting" from a misdemeanor to a wobbler. Specifically, **this bill**:

1) Provides that a person who reports an "emergency" to a government entity, knowing that the report is false, is guilty either of a misdemeanor punishable by up to one year in county jail, by a fine of up to $1,000, by both imprisonment and a fine, or of a felony punishable by 16 months, 2 years, or 3 years in county jail.

2) Provides that a person who telephones or uses an electronic communication device to contact 911 with the intent to annoy or harass another person is guilty either of a misdemeanor punishable by up to six months in county jail, by a fine of up to $1,000, by both imprisonment and a fine, or of a felony punishable by 16 months, 2 years, or 3 years in county jail.

EXISTING LAW:

1) Makes reporting to a government agency that an emergency exists, knowing that the report is false, a misdemeanor punishable by imprisonment in county jail for up to one year, a fine of up to $1,000, or both. (Pen. Code, § 148.3, subd. (a).)

2) Makes knowingly making a false report of an emergency to a government agency, knowing that the response to the report is likely to cause death or great bodily injury, and great bodily injury or death results, a felony punishable by imprisonment in county jail for 16 months, 2 years, or 3 years. (Pen. Code, § 148.3, subd. (b).)

3) Provides that a person who telephones or uses an electronic communication device to initiate communication with the 911 emergency system with the intent to annoy or harass another person is guilty of a misdemeanor punishable by a fine of up to $1,000, by imprisonment in a county jail for up to six months, or both. (Pen. Code, § 653x, subd. (a).)

4) Provides that an intent to annoy or harass is established by proof of repeated calls or communications over a period of time, however short, that are unreasonable under the circumstances. (Pen. Code, § 653x, subd. (b).)

5) Provides that an individual is liable to a public agency for the reasonable costs of the emergency response by that public agency when convicted of knowingly making a false report or calling 911 with the intent to annoy or harass another person. (Pen. Code, § 148.3, subd. (e); Pen. Code, § 653x, subd. (c).)

6) Makes knowingly allowing the use of or using the 911 emergency system for any reason other than an emergency an infraction, as specified. (Pen. Code, § 653y, subd. (a).)

7) Makes knowingly allowing the use of or using the 911 emergency system for the purpose of harassing another punishable by a fine of $250 or a misdemeanor punishable by up to six months in county jail, by a fine of up to $1,000, or both; a second or subsequent offense is a misdemeanor punishable by up to six months in county jail, by a fine of up to $1,000, or both. (Pen. Code, § 653y, subd. (b).)

8) Makes knowingly allowing the use of or using the 911 emergency system for the purpose of harassing another person, and that act is a hate crime or violation of a condition of probation, a misdemeanor punishable by up to one year in county jail, by a fine of between $500 and $2,000, or both. (Pen. Code, § 653y, subd. (c).)

9) States that every person who files a petition for a GVRO knowing the information in the petition to be false or with the intent to harass, is guilty of a misdemeanor. (Pen. Code, § 18200.)

10) Makes it a misdemeanor to file a report with law enforcement that that a felony or misdemeanor has been committed, knowing the report to be false. (Pen. Code, § 148.5, subd. (a)

11) Defines "emergency" as any condition that results in, or could result in, the response of a public official in an authorized emergency vehicle, aircraft, or vessel, any condition that jeopardizes or could jeopardize public safety and results in, or could result in, the evacuation of any area, building, structure, vehicle, or of any other place that any individual may enter, or any situation that results in or could result in activation of the Emergency Alert System, as specified. (Pen. Code, § 148.3, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Any person, including public servants, can easily be a target of swatting regardless of position or partisanship. This serious crime wastes public resources, leads to property damage, causes undue stress for the victims, including elected officials and staffers, and risks serious injury or death. Swatting is more than just a threat to the safety of individuals, including our public officials and their families – it's an affront to democracy."

2) **'Swatting'**: According to one security expert, "Swatting involves people making fraudulent 911 calls reporting serious-level criminal threats or violent situations like bomb threats, hostages, killing, etc. to fool the police into raiding the house or business of somebody who is not actually committing a crime." (Ward, *The FBI has formed a national database to track and prevent 'swatting'*, NBCNews.com (June 29, 2023) <https://www.nbcnews.com/news/us-news/fbi-formed-national-database-track-prevent-swatting-rcna91722> [last visited Mar. 27, 2024].)

There have been numerous high-profile swatting instance in recent years. (See e.g., Cadelago, *California lieutenant governor 'swatted' after push to boot Trump from ballot*, Politico.com (Jan. 4, 2024) <https://www.politico.com/news/2024/01/04/california-lieutenant-governor-swatted-after-push-to-boot-trump-from-ballot-00133952> [last visited Mar. 27, 2024].) According to Politico, "A broad range of politicians and other public figures have been targeted by swatting calls for a variety of reasons that aren't always tied to Trump. The pranks are designed to fool unsuspecting police into responding with force, sometimes with their arms drawn. Callers have reported fake incidents at the homes of Boston Mayor Michelle Wu, a Democrat, and Republican Rep. Majorie Taylor Greene of Georgia has claimed multiple incidents, criticizing the FBI while lauding local police for their response." (*Ibid.*)

The FBI recently launched a "Virtual Command Center" in partnership with state and local law enforcement to help track and prevent swatting incidents. (Ward, *supra.*) "The initiative allows police and intelligence fusion centers to share details of swatting incidents taking place within their jurisdictions, providing authorities nationwide with a "common operating picture" regarding the nature of the threat, and can assist in identifying whether the same perpetrator is responsible for multiple incidents." (Campbell, *High-profile political figures are the targets in latest wave of 'swatting' incidents. Why the trend is so alarming*, CNN.com (Jan. 15, 2024) <https://www.cnn.com/2024/01/14/us/swatting-incidents-trend-explained/index.html> [last visited Mar. 37, 2024].)

3) **This Bill is Inconsistent with Other Provisions of Law**: This bill would increases the punishment for "swatting" from a misdemeanor to a wobbler. However, allowing for an alternate misdemeanor-felony in swatting cases is arguably inconsistent with provisions of law intended to prohibit similar conduct and prevent similar harms.

For example, AB 1775 (Jones-Sawyer), Chapter 327, Statutes of 2020, made a number of changes in criminal and civil law to discourage individuals from using 911 or other communications with law enforcement to harass people. That bill was an explicit response to a number of media reports on people calling 911 and making false claims to harass others, in part because the target individuals were members of a protected class. (See e.g., North, *Amy Cooper's 911 call is part of an all-too-familiar pattern*, Vox.com (May 26, 2020) <https://www.vox.com/2020/5/26/21270699/amy-cooper-franklin-templeton-christian-central-park> [last visited Mar. 27, 2024].) The threat posed by such reports is likely greater to communities of color, and particularly to Black men. (Cf. Premkumar, *Police Use of Force and Misconduct in California*, PPIC (Oct. 2021) <https://www.ppic.org/publication/police-use-of-force-and-misconduct-in-california/> [last visited Mar. 27, 2024].)

Under existing law, it is a misdemeanor punishable by up to one year in county jail to use the 911 emergency system to harass another person if the conduct qualifies as a hate crime, as specified. (Pen. Code, § 653y, subd. (c).) Where no evidence of hate crime exists, knowingly using the 911 emergency system for the purpose of harassing another is an alternate infraction-misdemeanor for a first offense, and a straight misdemeanor for a second of subsequent offense. In these circumstances, a misdemeanor for a first offense would carry possible imprisonment in county jail for up to six months, whereas a second or subsequent offense carries a punishment of up to one year in county jail. (Pen. Code, § 653y, subd. (b)(1)

& (2).)

Similarly, existing law makes it a misdemeanor to knowingly file a false police report (Pen. Code, § 148.5, subd. (a)); to file a petition for a gun violence restraining order knowing that the information in the petition is false or with the intent to harass (Pen. Code, § 18200); and, to willfully and maliciously sound a false alarm of fire (Pen. Code, § 148.4, subd. (a)). Like 'swatting,' these acts all require agencies to divert resources from legitimate duties to handle false reports; and, in many cases, these acts could cause potentially volatile interactions between emergency responders and those targeted by a false report.

Finally, existing law already provides for up to 3 years in county jail for 'swatting' when the false report results in death or great bodily injury if the person knew or should have known that that result was likely. (Pen. Code, § 148.3, subd. (b); see also Pen. Code, § 148.4, subd. (b) [false fire alarm resulting in serious bodily injury or death].) This bill would allow for felony punishment of up to 3 years for swatting even when there was no injury. As a result, a person convicted of swatting when no injury results could receive the same, or even longer, sentence as another person whose conduct resulted in great bodily injury or death.

4) **Deterrence**: Research shows that increasing the severity of the punishment does little to deter the crime. According to the National Institute of Justice, laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not "chasten" individuals convicted of crimes, and prisons may exacerbate recidivism. Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs. (National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [as of Feb. 15, 2023].)

5) **Argument in Support**: According to the *California District Attorneys Association*, "Swatting, and other false emergencies and misuse of the 911 system, are on the rise and are increasing in seriousness. These incidents have the very real potential for deadly consequences and are a threat to public safety. By permitting a felony to be charged in appropriate cases, judges will have the authority to impose punishment that fits the crime. A report of a fake emergency that results in a response by law enforcement, especially a special weapons and tactics team (SWAT) should not be chargeable as a misdemeanor only."

6) **Argument in Opposition**: According to *Ella Baker Center for Human Rights*, "Existing law currently provides two levels of punishment for the crime of making an emergency report to a government or government agency, knowing that such a report is false. The level of punishment is dependent on whether the person making the false report knows or should know that the response to the report is likely to cause death or great bodily injury, and great bodily injury or death is sustained by any person as a result of the false report. Current law makes this distinction because the level of punishment connected to a crime should be proportional to the seriousness of the crime. This bill seeks to turn that principle of punishment on its head by making a crime of lower level consequences (false report) punishable to the same degree as a crime of false report that results in great bodily injury. The lower level crimes which are the subject of this bill are appropriately classified as misdemeanors and should remain as such.

"Extensive research proves that overly long sentences, and the threat of such sentences do not reduce or prevent crime. People do not calculate the number of years in prison before acting. In 2014, the National Academy of Sciences published a 444-page review of studies of sentencing policies and their positive and negative effects on crime rates and community safety. Among their conclusions were:

> 'Given the small crime prevention effects of long prison sentences and the possibly high financial, social, and human costs of incarceration, federal and state policy makers should revise current criminal justice policies to significantly reduce the rate of incarceration in the United States. In particular, they should re-examine policies regarding mandatory prison sentences and long sentences.'

"Wasting taxpayers' precious funds on policies that increase sentencing when the state is facing a massive budget deficit is shortsighted and bad public policy. California already spends too much money on mass incarceration, having built far more prisons than universities in the last 30 years. And the harms done to families and communities undermine the very intent of law to protect and enhance public safety.

"Additionally, a 2015 report by the Ella Baker Center for Human Rights, Forward Together, and Research Action Design *Who Pays, The True Cost of Incarceration on Families* details how incarceration destabilizes entire families and communities. Many people who return from incarceration face extreme barriers to finding jobs and housing and reintegrating into society. Family members of incarcerated people also struggle with overwhelming debt from court costs, visitation and telephone fees, and diminished family revenue. The longer the sentence, the more severe these problems."

7) **Related Legislation**: SB 970 (Ashby), would provide that the use of video or voice cloning technology with the intent to impersonate another is deemed to be false impersonation. SB 970 is pending hearing in the Senate Judiciary Committee.

8) **Prior Legislation**:

   a) AB 1775 (Jones-Sawyer), Chapter 327, Statutes of 2020, made a number of changes in criminal and civil law to discourage individuals from using 911 or other communications with law enforcement to harass a person because that person belongs to a protected class.

   b) AB 1695 (R. Bonta), Chapter 47, Statutes of 2016, expanded the existing misdemeanor of making a false report to law enforcement to include that a firearm has been lost or stolen, and institutes a 10-year ban on owning a firearm for those convicted of making a false report.

   c) AB 1769 (Rodriguez) Chapter 96, Statutes of 2016, prohibited contacting the 911 system via electronic communication -such as texting- for the purpose of annoying, harassing, or any purpose other than an emergency.

   d) SB 333 (Lieu) Chapter 284, Statutes of 2013, made a person convicted of filing a false emergency report liable for the costs of the emergency response.

e) AB 538 (Juan Arambula), of the 2009-2010 Legislative Session, would have authorized agencies that provide emergency medical services to report misuse of the 911 system to the public safety entity that originally received the call. Governor Brown vetoed AB 538.

f) AB 1976 (Benoit), Chapter 89, Statutes of 2008, increased the penalties for knowingly using the 911 system for any reason other than an emergency.

g) AB 2225 (Mountjoy), Chapter 227, Statutes 2006, added activation of the Emergency Alert System to the definition of "emergency" for which an individual making a knowingly false report is guilty of misdemeanor.

h) AB 911 (Longville), Chapter 295, Statutes of 2004, created a new infraction for using the 911 telephone system for purposes other than an emergency, as defined.

i) SB 2057 (O'Connell), Chapter 521, Statutes of 2002, required the felony offense of knowingly making a false emergency report to public officials that results in great bodily injury or death to include knowledge that great bodily injury or death was likely.

j) AB 2741 (Cannella), Chapter 262, Statutes of 1994, made it a misdemeanor to telephone the 911 emergency system with the intent to annoy or harass another person.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California District Attorneys Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
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

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Ella Baker Center for Human Rights
Initiate Justice
Initiate Justice Action
Legal Services for Prisoner With Children
Smart Justice California, a Project of Tides Advocacy

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

Date of Hearing: April 2, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2621 (Gabriel) – As Amended March 11, 2024

AS PROPOSED TO BE AMENDED IN COMMITTEE

SUMMARY: Adds new requirements in the hate crimes guidelines and course of instruction that the Commission on Peace Officer Standards and Training (POST) provides to peace officers, and revises the policies and standards that law enforcement agencies (LEAs) must adopt pertaining to gun violence restraining orders (GVROs). Specifically, this bill:

1) Modifies the hate crimes guidelines, course of instruction, and training that POST provides to law enforcement officers employed as peace officers, and officers enrolled in a training academy for law enforcement officers, as follows:

   a) Expands the existing requirement that the POST course of instruction include preparation for, and response to anti-Arab/Middle Eastern, and anti-Islamic and any other future hate crime waves that the Attorney General (AG) determines are likely, to also include anti-LGBTQ, anti-Black, anti-Native American, anti-immigrant, anti-Asian American and Pacific Islander, and anti-Jewish hate crime waves; and,

   b) Specifies that the POST course of instruction shall include instruction pertaining to identifying when a GVRO may be an appropriate tool for preventing hate crimes and the procedures for seeking a GVRO.

2) Modifies the policies and standards that police departments, county sheriffs, the Department of the California Highway Patrol, and the University of California and California State University police departments must adopt relating to GVROs, as follows:

   a) Specifies that such policies and standards shall be updated, as necessary, to incorporate changes in the law governing GVROs;

   b) Specifies that officers shall be instructed on the use of GVROs in appropriate situations to prevent future violence involving a firearm and shall encourage the use of de-escalation practices for officer and civilian safety when responding to incidents involving a firearm;

   c) Specifies that officers shall be instructed on the types of evidence a court considers in determining whether grounds exist for the issuance of a GVRO;

   d) Specifies that such policies and standards should inform officers about the different procedures and protections afforded by different types of firearm-prohibiting emergency protective orders that are available to law enforcement petitioners and provide examples of situations in which each type of emergency protective order is most appropriate;

e) Expands when an officer should consider whether a GVRO is necessary to include: 1) when an officer responds to any residence and one of the involved parties expresses an intent to acquire a firearm; and 2) during a contact with a person exhibiting mental health issues (including suicidal thoughts, statements, or actions) and that person expresses an intent to acquire a firearm;

f) Specifies that officers should be encouraged to provide information about mental health referral services during a contact with a person exhibiting mental health issues;

g) Specifies that the above policies should include standards and procedures for:

   i) Requesting and serving a temporary emergency GVRO, including standards and procedures for determining prior to the expiration of a temporary emergency GVRO whether the subject of the temporary emergency GVRO presents an ongoing increased risk for violence so that a GVRO issued after notice and hearing may be necessary;

   ii) Requesting and serving an ex parte GVRO, including standards and procedures for determining prior to the expiration of an ex parte GVRO whether the subject of the ex parte GVRO presents an ongoing increased risk for violence so that a GVRO issued after notice and hearing may be necessary;

   iii) Storing firearms surrendered pursuant to a GVRO;

   iv) Returning firearms upon the termination of a GVRO, including verification that the respondent is not otherwise legally prohibited from possessing firearms; and,

   v) Addressing violations of a GVRO.

h) Specifies that the above policy's requirement that officers attend GVRO hearings, also includes the responsibility to diligently participate in the evidence presentation process;

i) Specifies that the above standards and policies must be made available to all officers; and,

j) Expands the list of entities that law enforcement agencies are encouraged to consult with, when developing and updating these policies, to include domestic violence services providers, and other community-based organizations.

EXISTING LAW:

1) Defines "hate crime" as a criminal act committed, in part or in whole, because of actual or perceived characteristics of the victim, including: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of the previously listed actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a).)

2) Specifies that "hate crime" includes a violation of statutes prohibiting interference with a person's exercise of civil rights because of the actual or perceived characteristics, as listed

above. (Pen. Code, § 422.55, subd. (b).)

3) Requires POST, in consultation with subject matter experts, to develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. (Pen. Code, § 13519.6, subd. (a).)

4) States that the above hate crimes course of instruction shall make the maximum use of audio and video communication and other simulation methods, and shall include instruction in each of the following:

   a) Indicators of hate crimes;

   b) The impact of these crimes on the victim, the victim's family and the community, and the assistance and compensation available to the victims;

   c) Knowledge of laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes;

   d) Law enforcement procedures, reporting, and documentation of hate crimes;

   e) Techniques and methods to handle incidents of hate crimes in a non-combative manner;

   f) Multi-mission criminal extremism, which means the nexus of certain hate crimes, antigovernment extremist crimes, anti-reproductive-rights crimes, and crimes committed in whole or in part because of the victim's actual or perceived homelessness;

   g) The special problems inherent in some categories of hate crimes, including gender-bias crimes, disability-bias crimes, including those committed against homeless persons with disabilities, anti-immigrant crimes, and anti-Arab, and anti-Islamic crimes, and techniques and methods to handle these special problems; and,

   h) Preparation for, and response to, future anti-Arab/middle Eastern and anti-Islamic hate crime waves that the AG determines is likely. (Pen. Code, § 13519.6, subds. (a)-(c).)

5) Provides that the guidelines developed by POST shall incorporate the items required to be included in POST's hate crimes course of instruction, and shall include a model hate crimes policy framework for use by law enforcement agencies that includes, but is not limited to:

   a) A message from the law enforcement agency's chief executive officer to the agency's officers and staff concerning the importance of hate crime laws and the agency's commitment to enforcement;

   b) The definition of hate crime, as specified;

   c) References to hate crime statutes, as specified;

d) A title-by-title specific protocol that agency personnel are required to follow, including, but not limited to, the following:

i) Preventing and preparing for likely hate crimes by, among other things, establishing contact with persons and communities who are likely targets, and forming and cooperating with community hate crime prevention and response networks;

ii) Responding to reports of hate crimes, including reports of hate crimes committed under the color of authority;

iii) Accessing assistance, by, among other things, activating the Department of Justice (DOJ) hate crime rapid response protocol when necessary;

iv) Providing victim assistance and follow up, including community follow up;

v) Reporting;

vi) A list of all requirements that law enforcement agencies must include in its hate crime policy. (Pen. Code, § 13519.6., subd. (c))

6) Specifies that the course of training leading to the basic certificate issued by POST shall include the above hate crime guidelines and course of instruction. (Pen. Code, § 13519.6, subd. (d)(1).)

7) Requires state and local law enforcement agencies, by July 1, 2024, to adopt a hate crimes policy that includes specified components. (Pen. Code § 422.87 (a).)

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

9) Provides that a petition for a GVRO shall describe the number, types, and locations of any firearms and ammunition presently believed by the petitioner to be in the possession or control of the subject of the petition. (Pen. Code, § 18107.)

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

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

12) Requires each municipal police department, county sheriffs' department, the Department of California Highway Patrol, and the UC and CSU Police Departments, by January 1, 2021, to develop, adopt, and implement written policies and standards related to GVROs and encourages such departments to train their officers on such standards and procedures and to consult with gun violence prevention experts and mental health professionals in developing such policies and procedures. Such policies and standards shall:

a) Instruct officers to consider the use of a GVRO during a domestic disturbance response to any residence which is associated with a firearm registration or record, during a response in which a firearm is present or in which one of the involved parties owns or possesses a firearm;

b) Encourage the use of a GVRO in appropriate situations to prevent future violence involving a firearm;

c) Consider the use of a GVRO during a contact with a person exhibiting mental health issues, including suicidal thoughts, statements, or actions, if that person owns or possesses a firearm;

d) Encourage officers encountering situations in which there is reasonable cause to believe that the person poses an immediate and present danger of causing personal injury to themselves or another person by having custody or control of a firearm to consider obtaining a mental health evaluation of the person by a medically trained professional or to detain the person for mental health evaluation, as specified;

e) Be consistent with any GVRO training administered by POST;

f) Include standards and procedures for:

i) Requesting and serving a temporary emergency GVRO, ex parte GVRO, a GVRO issued after notice and hearing;

ii) Seizing firearms and ammunition at the time of issuance of a temporary emergency GVRO;

iii) Verifying the removal of firearms and ammunition from the subject of a GVRO;

iv) Obtaining and serving a search warrant for firearms and ammunition;

v) The responsibility of officers to attend GVRO hearings;

vi) Requesting renewals of expiring GVROs. (Pen. Code, § 18108.)

13) Specifies that municipal police departments, county sheriff's departments, the Department of the California Patrol, and the UC and CSU police departments are encouraged to train officers on the standards and procedures. (Pen. Code, § 18108, subd. (e).)

14) Specifies that policies and standards related to GVROs shall be made available to the public upon request. (Pen. Code, § 18108, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "With hate crimes on the rise, the Legislature must ensure that law enforcement officers know of all the tools available to prevent an

escalation in hate-based violence. AB 2621 will ensure that our first responders are aware of the steps they can take to prevent hate-based tragedies from occurring by issuing a GVRO in response to hate crimes. It will also require them to update their policies and procedures around GVROs whenever the laws are changed going forward."

2) **Hate Crimes:** Although hate crimes make up a small percentage of total reported crimes, the number of reported hate crimes in California has increased. In 2021 the DOJ reported "hate crime events" reported to law enforcement "increased 32.6 percent from 1,330 in 2020 to 1,763 in 2021," and "hate crime offenses increased 42.1 percent from 1,563 in 2020 to 2,221 in 2021." (DOJ, 2021 *Hate Crime in California* (2021). Available at: <https://oag.ca.gov/system/files/attachments/press-docs/Hate Crime In CA 2021 FINAL.pdf> [as of Mar. 26, 2024].) Specifically, the DOJ found that "[v]iolent [hate] crime offenses increased 47.4 percent from 1,088 in 2020 to 1,604 in 2021." (*Ibid.*) In 2022, the DOJ found hate crime events increased 16.6% percent from 2,221 in 2021 to 2,589 in 2022. (DOJ, 2022 *Hate Crime in California* (2022). Available at: <https://oag.ca.gov/system/files/attachments/press-docs/Hate%20Crime%20In%20CA%202022f.pdf> [as of Mar. 26, 2024].)

   Hate crimes severely impact victims. The emotional effect can be significant, with victims experiencing "more psychological distress than victims of other violent crimes." (California State Auditor, *Hate Crimes in California* (May 2018) at p. 11. Available at: <https://www.auditor.ca.gov/pdfs/reports/2017-131.pdf> [last visited Mar. 15, 2022]) Experts have observed that "[e]xperiences of hate are associated with poor emotional well-being such as feelings of anger, shame, and fear. Moreover, victims tend to experience poor mental health, including depression, anxiety, posttraumatic stress, and suicidal behavior." (Cramer et al., Hate-Motivated Behavior: Impacts, Risk Factors, and Interventions, Health Affairs (Nov. 9, 2020) <https://www.healthaffairs.org/do/10.1377/hpb20200929.601434/> [last visited Mar. 8, 2023].) The physical health of victims also suffers. The "impacts include poor overall physical health, physical injury, stress, and difficulty accessing medical care." (Cramer et al., supra.)

   In an effort to combat an increase in the rise of hate crimes, this bill expands the current hate training that POST provides to peace officers to include the role that GVROs can play in preventing hate crimes. Specifically it requires the POST course of instruction to identify when a GVRO may be an appropriate tool to prevent a hate crime, and the specific procedures for seeking a GVRO. Given the documented instances of GVROs being used to prevent violence, this is an important *addition* to the POST hate crimes training materials, which may incentivize the use of an effective law enforcement tool to prevent future hate-based violence.

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

   The statutory scheme establishes three types of GVRO's: a temporary emergency GVRO, an ex parte GVRO, and a GVRO issued after notice and hearing. A law enforcement officer

may seek a temporary emergency GVRO by submitting a written petition to or calling a judicial officer to request an order at any time of day or night.

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

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

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

As reflected below there have been many recent legislative changes to the laws on GVROs. This bill would require law enforcement agencies to update their policies and standards, as necessary, to incorporate changes in the law governing gun violence restraining orders.

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

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

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

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

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

Notably, this bill would expand the factors that local law enforcement officers should consider, when determining if a GVRO is necessary, to apply to a law enforcement response in which one of the involved parties person "expresse[s] an intent to acquire a firearm." The bill would apply this same consideration when officers are in contact with a person exhibiting mental health issues. This means that local law enforcement GVRO policies and standards must instruct officers to consider the use of a GVRO when responding to a residence if that person expresses interest in purchasing a firearm, regardless of whether that person poses any threat or risk of violence. This appears inconsistent with the imminent danger standards incorporated into other Penal Code provisions establishing when GVROs can be issued (*See* e.g., Pen. Code, § 18125, subd. (a).) [requiring that there is reasonable cause to believe the subject of the petition poses an immediate and present danger of personal injury due to a firearm and there are no less restrictive alternatives in order to issue a temporary emergency GVRO]; Pen. Code, § 18150, subd. (b) [requiring a substantial likelihood the subject of the petition poses a significant danger in the near future due to a firearm and there are no less restrictive alternatives or such alternatives are inadequate for the circumstances to issue an ex parte GVRO].) Given the uncertainty surrounding the constitutionality of California's GVRO laws while *Rahimi* is pending, it may be prudent for this bill to clarify that an officer should not be required to consider the necessity of a GVRO when responding to a residence, purely by virtue of a person expressing interest in purchasing a firearm.

5) **Argument in Support**: According to the Office of the San Diego City Attorney, "Preventing hate crimes with GVROs has been particularly effective in cities that otherwise have strong uptake of GVROs at the local level, like San Diego, San Francisco, and Sacramento. However, this tool may be left underutilized precisely at a time when threats of hate-based violence are rising rapidly due to inconsistent implementation… AB 2621 will ensure that existing law enforcement hate crimes training will properly prepare officers to identify situations where a GVRO can prevent a hate-related threat or tragedy. It will also ensure that local law enforcement agencies' written policies and standards on GVROs reflect the most up-to-date best practices for utilizing this life-saving tool to support effective implementation."

6) **Argument in Opposition**: None

7) **Related Legislation**:

a) AB 3014 (Irwin), of the 2023-2024 Legislative Session would authorize a district attorney to petition for an ex parte GVRO, a GVRO after notice and a hearing, and a renewal of a GVRO. AB 3014 will be heard in this committee today.

b) AB 667 (Maienschein), of the 2023-2024 Legislative Session, would require a court to issue a gun violence restraining order (GVRO) lasting the maximum time of five years if the subject of the petition displayed an extreme risk of violence within the prior 12 months. AB 667 is pending referral in Senate Rules

c) AB 2917 (Zbur), of the 2023-2024 Legislative Session would require a court, when determining if grounds for a GVRO exist, to consider evidence of a recent threat of violence or act of violence, a past history of those threats or acts in the last 12 months, the reckless use, display, or brandishing of a firearm, evidence of stalking, evidence of cruelty to animals, or evidence of the respondent's threats of violence to advance a political objective. AB 2917 is pending hearing in this committee.

8) **Prior Legislation**:

a) AB 449 (Ting), Chapter 524, Statutes of 2023, requires state or local law enforcement agencies to adopt a hate crime policy by July 1, 2024, report that policy to the DOJ, and requires POST to update its model hate crimes policy framework.

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

c) AB 57 (Gabriel), Chapter 691, Statutes of 2021, requires the basic peace officer course curriculum to include instruction on the topic of hate crimes, which shall incorporate a specified hate crimes video developed by POST.

d) AB 2235 (Gabriel), of the 2019-2020 Legislative Session, was similar to this bill in that it would have required DOJ to carry out various duties related to documenting and responding to hate crimes, including conducting reviews of all law enforcement agencies every three years to evaluate the accuracy of hate crime data reported. AB 2235 was not heard by this committee due to Covid-19 restrictions

e) AB 2236 (Gabriel), of the 2019-2020 Legislative Session, would have required POST to develop a peace officer in-service hate crimes refresher course to be taken every five years. AB 2236 was held on the Assembly Appropriations suspense file.

f) AB 12 (Irwin), Chapter 724, Statutes of 2019, extended the duration of GVROs and their renewals to a maximum of five years.

g) AB 165 (Gabriel), of the 2019-2020 Legislative Session, would have required POST to develop and implement a training course on GVROs and for its incorporation into basic training for law enforcement officers, as specified. AB 165 was held in Senate Appropriations Committee.

h) AB 339 (Irwin), Chapter 727, Statutes of 2019, requires each municipal police department, county sheriff's department, the Department of California Highway Patrol, and the UC and CSU Police Departments to develop and adopt written policies and standards regarding the use of GVROs on or before January 1, 2021.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Brady California
Brady Campaign
California Public Defenders Association
Equality California
Everytown for Gun Safety Action Fund
Giffords Law Center to Prevent Gun Violence
March for Our Lives Action Fund
San Diego City Attorney's Office
San Francisco City Attorney's Office

Opposition:

None.

Analysis Prepared by: Ilan Zur / PUB. S. / (916) 319-3744

Nonsubstantive

AMENDMENTS TO ASSEMBLY BILL NO. 2621
AS AMENDED IN ASSEMBLY MARCH 11, 2024

Amendment 1
On page 3, in line 4, strike out "subjectmatter" and insert:

subject-matter

Amendment 2
On page 3, in line 14, strike out "subjectmatter" and insert:

subject-matter

- 0 -

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 2621

AMENDED IN ASSEMBLY MARCH 11, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL No. 2621

Introduced by Assembly Member Gabriel

February 14, 2024

An act to amend Sections 13519.6 and 18108 of the Penal Code, relating to law enforcement training.

LEGISLATIVE COUNSEL'S DIGEST

AB 2621, as amended, Gabriel. Law enforcement training.

Existing law defines a "hate crime" as a criminal act committed, in whole or in part, because of actual or perceived characteristics of the victim, including, among other things, race, religion, disability, and sexual orientation. Existing law requires the Commission on Peace Officer Standards and Training, in consultation with specified ~~subjectmatter~~ *subject-matter* experts, to develop a course of instruction that trains law enforcement on, among other things, indicators of hate crimes and techniques, responses to hate crime waves against certain groups, including Arab and Islamic communities, and methods to handle incidents of hate crimes in a noncombative manner.

This bill would require instruction to include identifying when a gun violence restraining order is appropriate to prevent a hate crime and the procedure for seeking a gun violence restraining order. The bill would additionally require instruction on responses to hate crime waves against specified groups, including the LGBTQ and Jewish communities.

Existing law allows a court to issue a gun violence restraining order prohibiting and enjoining a named person from having custody or control

of any firearms or ammunition if the person poses a significant danger of causing personal injury to themselves or another by having custody or control of a firearm or ammunition. Existing law establishes a civil restraining order process to accomplish that purpose, including authorizing the issuance of an ex parte order, as specified.

Existing law requires specified law enforcement agencies to develop, adopt, and implement policies and standards relating to gun violence restraining orders. Existing law requires these policies to include, among other things, standards and procedures for requesting and serving an ex parte gun violence restraining order or procedures on the responsibility of officers to attend gun violence restraining order hearings.

This bill would revise the above-described policies and standards to include, among other things, an officer's obligation to diligently participate in the evidence presentation process at hearings and the procedure for storing firearms surrendered in compliance with a gun violence restraining order. The bill would require law enforcement agencies, as specified, to make information about the standards and policies available to all officers. By imposing additional duties on local agencies, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

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SECTION 1. Section 13519.6 of the Penal Code is amended to read:

13519.6. (a) (1) The commission, in consultation with ~~subjectmatter~~ *subject-matter* experts, including, but not limited to, law enforcement agencies, civil rights groups, and academic experts, and the Department of Justice, shall develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy

Amendment 1

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for law enforcement officers, addressing hate crimes. "Hate crimes," for purposes of this section, has the same meaning as in Section 422.55.

(2) The commission shall consult with the ~~subjectmatter~~ *subject-matter* experts in paragraph (1) if the guidelines or course of instruction are updated.

Amendment 2

(3) The guidelines and course of instruction developed pursuant to this section are not regulations as that term is used in the Administrative Procedure Act (Chapter 3.5 commencing with Section 11340 of Part 1 of Division 3 of the Government Code). This paragraph is declaratory of existing law.

(b) The course shall make maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following:

(1) Indicators of hate crimes.

(2) The impact of these crimes on the victim, the victim's family, and the community, and the assistance and compensation available to victims.

(3) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes.

(4) Law enforcement procedures, reporting, and documentation of hate crimes.

(5) Techniques and methods to handle incidents of hate crimes in a noncombative manner.

(6) Multimission criminal extremism, which means the nexus of certain hate crimes, antigovernment extremist crimes, anti-reproductive-rights crimes, and crimes committed in whole or in part because of the victims' actual or perceived homelessness.

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(7) The special problems inherent in some categories of hate crimes, including gender-bias crimes, disability-bias crimes, including those committed against homeless persons with disabilities, anti-immigrant crimes, and anti-Arab and anti-Islamic crimes, and techniques and methods to handle these special problems.

(8) Preparation for, and response to, anti-Arab/Middle Eastern and anti-Islamic, anti-LGBTQ, anti-Black, anti-Native American, anti-immigrant, anti-Asian American and Pacific Islander, and anti-Jewish hate crime waves, and any other future hate crime waves that the Attorney General determines are likely.

(9) Identifying when a gun violence restraining order may be an appropriate tool for preventing hate crimes and the procedures for seeking a gun violence restraining order.

(c) The guidelines developed by the commission shall incorporate the procedures and techniques specified in subdivision (b) and shall include the model hate crimes policy framework for use by law enforcement agencies in adopting a hate crimes policy pursuant to Section 422.87. The elements of the model hate crimes policy framework shall include, but not be limited to, all of the following:

(1) A message from the law enforcement agency's chief executive officer to the agency's officers and staff concerning the importance of hate crime laws and the agency's commitment to enforcement.

(2) The definition of "hate crime" in Section 422.55.

(3) References to hate crime statutes including Section 422.6.

(4) A title-by-title specific protocol that agency personnel are required to follow, including, but not limited to, the following:

(A) Preventing and preparing for likely hate crimes by, among other things, establishing contact with persons and communities who are likely targets, and forming and cooperating with community hate crime prevention and response networks.

(B) Responding to reports of hate crimes, including reports of hate crimes committed under the color of authority.

(C) Accessing assistance, by, among other things, activating the Department of Justice hate crime rapid response protocol when necessary.

(D) Providing victim assistance and followup, including community followup.

(E) Reporting.

(5) A list of all requirements that Section 422.87 or any other law mandates a law enforcement agency to include in its hate crime policy.

(d) (1) The course of training leading to the basic certificate issued by the commission shall include the course of instruction described in subdivision (a).

(2) Every state law enforcement and correctional agency, and every local law enforcement and correctional agency to the extent that this requirement does not create a state-mandated local program cost, shall provide its peace officers with the basic course

of instruction as revised pursuant to the act that amends this section in the 2003–04 session of the Legislature, beginning with officers who have not previously received the training. Correctional agencies shall adapt the course as necessary.

(e) (1) The commission shall, subject to an appropriation of funds for this purpose in the annual Budget Act or other statute, for any basic course, incorporate the November 2017 video course developed by the commission entitled "Hate Crimes: Identification and Investigation," or any successor video, into the basic course curriculum.

(2) The commission shall make the video course described in paragraph (1) available to stream via the learning portal.

(3) Each peace officer shall, within one year of the commission making the course available to stream via the learning portal, be required to complete the November 2017 video facilitated course developed by the commission entitled "Hate Crimes: Identification and Investigation," the course identified in paragraph (4), or any other commission-certified hate crimes course via the learning portal or in-person instruction.

(4) The commission shall develop and periodically update an interactive course of instruction and training for in-service peace officers on the topic of hate crimes and make the course available via the learning portal. The course shall cover the fundamentals of hate crime law and preliminary investigation of hate crime incidents, and shall include updates on recent changes in the law, hate crime trends, and best enforcement practices.

(5) The commission shall require the course described in paragraph (3) to be taken by in-service peace officers every six years.

(f) As used in this section, "peace officer" means any person designated as a peace officer by Section 830.1 or 830.2.

SEC. 2. Section 18108 of the Penal Code is amended to read:

18108. (a) Each municipal police department and county sheriff's department, the Department of the California Highway Patrol, and the University of California and California State University Police Departments shall, on or before January 1, 2021, develop, adopt, and implement written policies and standards relating to gun violence restraining orders. The policies and standards shall be updated, as necessary, to incorporate changes in the law governing gun violence restraining orders.

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(b) (1) The policies and standards shall instruct officers on the use of gun violence restraining orders in appropriate situations to prevent future violence involving a firearm and shall encourage the use of deescalation practices for officer and civilian safety when responding to incidents involving a firearm.

(2) The policies and standards shall instruct officers on the types of evidence a court considers in determining whether grounds exist for issuance of a gun violence restraining order pursuant to Section 18155.

(3) The policies and standards shall instruct officers to consider whether a gun violence restraining order may be necessary during a response to any residence that is associated with a firearm registration or record, during a response in which a firearm is present, or during a response in which one of the involved parties owns or possesses a firearm, or expressed an intent to acquire a firearm. The policies and standards should also inform officers about the different procedures and protections afforded by different types of firearm-prohibiting emergency protective orders that are available to law enforcement petitioners and provide examples of situations in which each type of emergency protective order is most appropriate.

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(4) The policies and standards should also instruct officers to consider whether a gun violence restraining order may be necessary during a contact with a person exhibiting mental health issues, including suicidal thoughts, statements, or actions, if that person owns or possesses a firearm or expressed an intent to acquire a firearm. The policies and standards shall encourage officers encountering situations in which there is reasonable cause to believe that the person poses an immediate and present danger of causing personal injury to themselves or another person by having custody or control of a firearm to consider obtaining a mental health evaluation of the person by a medically trained professional or to detain the person for mental health evaluation pursuant to agency policy relating to Section 5150 of the Welfare and Institutions Code. The policies and standards should reflect the policy of the agency to prevent access to firearms by persons who, due to mental health issues, pose a danger to themselves or to others by owning or possessing a firearm. The policies and standards should encourage officers to provide information about

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mental health referral services during a contact with a person exhibiting mental health issues.

(c) The written policies and standards developed pursuant to this section shall be consistent with any gun violence restraining order training administered by the Commission on Peace Officer Standards and Training, and shall include all of the following:

(1) Standards and procedures for requesting and serving a temporary emergency gun violence restraining order, including standards and procedures for determining prior to the expiration of a temporary emergency gun violence restraining order whether the subject of the temporary emergency gun violence restraining order presents an ongoing increased risk for violence so that a gun violence restraining order issued after notice and hearing may be necessary.

(2) Standards and procedures for requesting and serving an ex parte gun violence restraining order, including standards and procedures for determining prior to the expiration of an ex parte gun violence restraining order whether the subject of the ex parte gun violence restraining order presents an ongoing increased risk for violence so that a gun violence restraining order issued after notice and hearing may be necessary.

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(3) Standards and procedures for requesting and serving a gun violence restraining order issued after notice and hearing.

(4) Standards and procedures for the seizure of firearms and ammunition at the time of issuance of a temporary emergency gun violence restraining order.

(5) Standards and procedures for verifying or ensuring the removal of firearms and ammunition from the subject of a gun violence restraining order.

(6) Standards and procedures for obtaining and serving a search warrant for firearms and ammunition.

(7) Responsibility of officers to attend gun violence restraining order hearings and diligently participate in the evidence presentation process.

(8) Standards and procedures for requesting renewals of expiring gun violence restraining orders.

(9) Standards and procedures for storing firearms surrendered pursuant to a gun violence restraining order.

(10) Standards and procedures for returning firearms upon the termination of a gun violence restraining order, including

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verification that the respondent is not otherwise legally prohibited from possessing firearms.

(11) Standards and procedures for addressing violations of a gun violence restraining order.

(d) Municipal police departments, county sheriff's departments, the Department of the California Highway Patrol, and the University of California and California State University Police Departments are encouraged, but not required by this section, to train officers on standards and procedures implemented pursuant to this section, and may incorporate these standards and procedures into an academy course, preexisting annual training, or other continuing education program. Municipal police departments, county sheriff's departments, the Department of the California Highway Patrol, and the University of California and California State University police departments shall make information about standards and policies implemented pursuant to this section available to all officers.

(e) In developing and updating these policies and standards, law enforcement agencies are encouraged to consult with gun

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violence prevention experts, mental health professionals, domestic violence service providers, and other community-based organizations.

(f) Policies developed pursuant to this section shall be made available to the public upon request.

SEC. 3. 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: April 2, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2709 (Bonta) – As Introduced February 14, 2024

SUMMARY: Prohibits a person sentenced to imprisonment in a state prison or in a county jail for a felony offense from being prevented from receiving personal visits. Specifically, **this bill**:

1) States that a person sentenced to state prison or imprisonment in the county jail for a felony shall not be prevented from receiving in person visits, including noncontact, contact and family visits, unless such deprivation is necessary and narrowly tailored to further legitimate security interests.

2) Allows a personal visit to be restricted only if it arises from conduct that poses a clear and imminent risk of physical violence in visiting areas during visiting hours, or due to the following conduct occurring:

   a) Possession of contraband while in or exiting the visiting area;

   b) Engaging in any sexual conduct with a minor;

   c) Engaging in sexual conduct with adults outside of a family visit;

   d) Committing physical violence during a visit or the visitor screening process;

   e) Escaping or aiding an escape or attempting to commit these acts; and,

   f) Pursuant to reasonable uniformly enforced regulations, communicated to the public with adequate and timely notice, related to identification, dress, intoxication, search procedures, and authorization for visits by minors that are consistent with these provisions.

3) Establishes the right of family members, as defined, and intimate partners, as defined, to visit an incarcerated person, and prohibits the denial of this right unless the incarcerated person freely withholds consent or as necessary and narrowly tailored to further legitimate security interests.

4) Requires all Department of Corrections and Rehabilitation (CDCR) facilities to provide at least three days of in-person visiting per week, with a minimum of seven visiting hours per day.

5) Provides that all in-person noncontact and contact visits, including family visits, shall not be denied or restricted by CDCR for any of the following reasons:

a) As a disciplinary sanction against an incarcerated person except, as specified;

b) Because of a visitor's criminal, juvenile delinquency, or other history of involvement with law enforcement or the criminal justice system, whether or not it resulted in a criminal conviction, other than a specified conviction;

c) Because of a visitor's current status of being under supervision, including, but not limited to, parole, postrelease community supervision, probation, or informal probation supervision;

d) Because of a visitor's previous incarceration, including incarceration in the facility where the visit will take place;

e) Because of a visitor's pending criminal charges other than for a specified offense; or,

f) Because of a visitor's outstanding unpaid fines, fees, or restitution;

6) States that, in the case of a denial of a request for a visit, both the visitor and the incarcerated person shall receive written notice of the denial within three days of such a decision being made, as specified.

7) Provides that an incarcerated person shall not be required to withhold consent to a visit as a disciplinary sanction, as a means of avoiding a disciplinary sanction, or as a condition of participating in or enjoying any privilege or program while incarcerated.

8) Prohibits CDCR from conduct strip searches, visual body cavity searches, and physical body cavity searches of visitors.

9) Specifies that the prohibition on strip searches does not include any search of a visitor by a state, local, or federal law enforcement officer not employed by CDCR, conducted pursuant to an arrest.

10) Provides that, if a visitor is unable to or does not consent to search by a metal detector, body scanner, or similar contactless screening method, or if the visitor requires further screening after undergoing such a search, CDCR shall, with the written consent of the visitor, conduct a pat down or thorough clothing search of the individual. A thorough clothing search shall not require the removal of any clothing except outerwear such as jackets or coats.

11) Makes legislative findings and declarations.

EXISTING LAW:

1) States that incarcerated persons shall not be prohibited from family visits based solely on the fact that they were sentenced to life without the possibility of parole. (Pen. Code, § 6404.)

2) Requires that regulations adopted by CDCR which may impact the visitation of incarcerated persons, among other things, consider the important role of visitation in establishing and maintaining a meaningful connection with family and community. (Pen. Code, § 6400.)

3) Requires that any amendments to existing regulations and any future regulations adopted by CDCR which may impact the visitation of incarcerated persons do all of the following:

   a) Recognize and consider the value of visiting as a means to improve the safety of prisons for both staff and incarcerated persons;

   b) Recognize and consider the important role of visitation in establishing and maintaining a meaningful connection with family and community; and,

   c) Recognize and consider the important role of visitation in preparing an incarcerated person for successful release and rehabilitation. (Pen. Code, § 6400.)

4) Provides that whenever a person is sentenced to the state prison for violating a specified sex offense and the victim of the offense is a child under the age of 18 years, the court shall prohibit all visitation between the defendant and the child victim. (Pen. Code, § 1202.05)

5) Prohibits incarcerated persons from denial of family visits based solely on the fact that the incarcerated person is sentenced to life without the possibility of parole or is sentenced to life and is without a parole date. (Pen. Code, § 6404.)

6) States that every person who, without the permission of the warden or other officer in charge of any state prison, or any jail, communicates with any prisoner or person detained therein, is guilty of a misdemeanor. (Pen. Code, § 4570.5.)

7) Requires emergency in-person contact visits and video calls to be made available whenever an incarcerated person is hospitalized due to a serious or critical medical condition, including imminent danger of dying. When the incarcerated person is in imminent danger of dying, CDCR must allow up to four visitors at one time to visit the incarcerated person. (Pen. Code, § 6401, subd. (c).)

8) Defines "strip search," "physical body cavity search," and "visual body cavity search" as follows:

   a) "Body cavity" means the stomach or rectal cavity of a person, and vagina of a female person;

   b) "Physical body cavity search" means physical intrusion into a body cavity for the purpose of discovering any object concealed in the body cavity;

   c) "Strip search" means a search which requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person; and,

   d) "Visual body cavity search" means visual inspection of a body cavity. (Pen. Code, § 4030, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2709 prioritizes the fundamental rights and familial connections of incarcerated individuals in our state prisons and county jails. This bill aims to strike a balance between ensuring institutional security and recognizing the importance of maintaining familial relationships and support networks for those who are incarcerated. Further, this bill upholds the dignity of incarcerated individuals by acknowledging their humanity. This legislation underscores the significance of family bonds in the rehabilitation and successful reintegration of individuals into society upon release.

   "Moreover, this bill establishes clear guidelines for the Department of Corrections and Rehabilitation to follow, ensuring that visitation policies are fair, transparent, and consistent across facilities. By mandating minimum visitation hours and prohibiting intrusive searches on visitors, we are promoting a more humane and respectful environment within our correctional institutions.

   "I believe that by enacting these measures, we can foster positive outcomes for both incarcerated individuals and their families, ultimately contributing to safer communities and a more equitable criminal justice system."

2) **Positive Impacts of In-Person Visitation**: Decades of research has shown that in-person visitation is beneficial, particularly when it comes to reducing recidivism. One study found that any visit reduced the risk of recidivism by 13 percent for felony reconvictions and 25 percent for technical violation revocations, which reflects the fact that visitation generally had a greater impact on revocations. The findings further showed that more frequent and recent visits were associated with a decreased risk of recidivism. A 1972 study on visitation that followed 843 people on parole from California prisons found that those who had no visitors during their incarceration were six times more likely to be reincarcerated than people with three or more visitors. Visitation is also correlated with adherence to prison rules. A 2019 study found that one additional visit per month would reduce misconduct by 14 percent. According to another study, misconduct tended to decrease in the three weeks before a visit. This may explain why more frequent visits lead to more consistent good behavior, better overall outcomes and post-release success. Research has also found that visitation is linked to better mental health, including reduced depressive symptoms for incarcerated persons. (Prison Policy Imitative, *Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and Their Families* (Dec. 21, 2021) <https://www.prisonpolicy.org/blog/2021/12/21/family_contact/> [as of March 25, 2024].)

   This bill would specify that incarcerated persons have the right to personal visits, including non-contact and family visits. Any restriction or deprivation of access to personal visiting, including family visits, shall be deemed necessary and for legitimate security interests only if it arises from specified conduct occurring within visiting areas during visiting hours or conduct that poses a clear and imminent risk of physical violence within visiting areas during visiting hours.

3) **Applicable Agencies**: This bill would apply to both state prisons and local correctional facilities, with respect to in-person visits.[1] These provisions would only apply to a person who is serving a felony sentence in a state prison or county facility, not a lesser sentence.

   The remaining provisions in this bill regulating the rules and regulations for visitations are only applicable to CDCR, leaving county jails broader discretion as to how to implement visitation rights.

   Limiting the requirements of this bill to only incarcerated persons who are serving felony sentences raises equal protection concerns. The Equal Protection Clause requires that all persons who are similarly situated be treated alike. (U.S. Const., 14th Amend; *City of Cleburne v. Cleburne Loving Center, Inc.* (1985) 473 U.S. 432, 439.) An equal protection claim may be established by proving that government officials intentionally discriminated against the incarcerated person where "similarly situated" incarcerated persons were intentionally treated differently, without a rational relationship to a legitimate governmental purpose. (*Village of Hallowbrook v. Olech* (2000) 528 U.S. 562, 564.) Thus, the Legislature should consider whether there is a legitimate purpose to treat individuals serving sentences in county jails for felonies different from those incarcerated in county jails for misdemeanor offenses.

4) **Current Visitation Regulations at Local Correctional Facilities**: The Board of State and Community Corrections (BSCC) regulations on local correctional facilities require facility administrators at all local detention facilities to develop and implement written policies and procedures on visitation. (Cal. Code Regs., tit., 15, § 1062.)

   Visiting programs at local correctional facilities must provide for: (1) as many in-person visits and visitors as facility schedules, space, and number of personnel will allow; (2) a publicly posted schedule of facility visiting hours, and if practicable, visiting hours should be made available on weekends, evenings, or holidays; (3) no fewer than two visits totaling at least one hour per incarcerated person each week. (Cal. Code Regs., tit., 15, § 1062, subd. (a).) The policies and procedures must include a schedule to assure that non-sentenced detainees are afforded a visit no later than the calendar day following arrest. (*Ibid.*) Further, visits may not be cancelled unless a legitimate operational or safety and security concern exists. (Cal. Code Regs., tit., 15, § 1062, subd. (b).) All cancelled visits must be documented and reviewed by a facility manager. (*Ibid.*) The regulations allow video visitation to be used to supplement existing visitation programs, but not be used to fulfill the requirements if in-person visitation is requested by an incarcerated person. (Cal. Code Regs., tit., 15, § 1062, subd. (c).) Also, facilities cannot charge for visitation when visitors are onsite and participating in either in-person or video visitation. (Cal. Code Regs., tit., 15, § 1062, subd. (e).)

5) **Existing CDCR Policies on Visitation**: There are three types of visits in CDCR institutions: contact visits, no-contact visits, and family visits. Most incarcerated individuals housed in a general population setting may receive contact visits, which are not limited in duration except

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[1] Sections 2 and 3 of this bill, relating to in-person visitation, would amend a chapter of the Penal Code relating to all prisoners. The other sections of this bill would amend the chapter of the Penal Code regarding the admiration of state prisons.

for normal visiting hours or terminations caused by overcrowding to allow other visits to begin. Incarcerated individuals who are still in reception or segregated from the general population (e.g., administrative segregation) are restricted to non-contact visits, which occur with a glass partition in between the incarcerated person and the visitor and are limited in time. Finally, some incarcerated individuals are eligible for family visits, which take place in private, apartment-like facilities on prison grounds and last approximately 30-40 hours. (CDCR, *Visiting Guidelines* <https://www.cdcr.ca.gov/visitors/inmate-visiting-guidelines/> [as of March 25, 2024].)

According to CDCR's Department Operations Manual (DOM), it is CDCR's policy to "encourage inmates to develop and maintain healthy family and community relationships." (DOM § 54020.1.) CDCR considers it a "privilege for inmates to have personal contact visits while confined in CDCR institutions and facilities" not a right. (*Ibid.*) "Visiting in CDCR institutions and facilities shall be conducted in as accommodating a manner as possible in keeping with the need to maintain order, the safety of persons, the security of the institution/facility, and the requirements of prison activities and operations."

CDCR regulations require all institutions to provide visiting for no less than 12 hours per week. Any reduction of an institution/facility visiting schedule below 12 hours shall require the prior approval of the Secretary or designee. (Cal. Code Regs., tit., 15 § 3172.2.) All adults seeking to visit an incarcerated person are required to provide a completed visiting questionnaire and obtain institution/facility approval before they may be permitted to visit. (Cal. Code Regs., tit., 15 § 3172.) The visiting approval application process includes an inquiry of personal, identifying, and the arrest history information of the prospective visitor sufficient to complete a criminal records clearance and a decision by the institution/facility designated staff to approve or disapprove based upon the information provided. (*Ibid.*) Visits with an incarcerated person may, without prior notification, be terminated, temporarily suspended, or modified in response to an institution emergency as determined by the institution head or designee. (Cal. Code Regs., tit. 15, § 3170, subd. (c).)

CDCR regulations provide the following non-exhaustive list of reasons for the disapproval of a prospective visitor:

- The prospective visitor has outstanding arrests or warrants, including a Department of Motor Vehicles Failure to Appear notice with no disposition from the court.

- The prospective visitor has one felony conviction within the last three years, two felony convictions within the last six years, or three or more felony convictions during the last ten years.

- The prospective visitor has any one conviction of the following types of offenses: distributing a controlled substance into or out of a state prison, correctional facility, or jail; transporting contraband, including weapons, alcohol, escape and drug paraphernalia, and cell phones or other wireless communication devices, in or out of a state prison, correctional facility, or jail; aiding or attempting to aid in an escape or attempted escape from a state prison, correctional facility, or jail; or the prospective visitor is a co-offender of the incarcerated individual.

- The prospective visitor was previously incarcerated in prison and has not received the prior written approval of the institution head or designee.

- The prospective visitor is a supervised parolee, probationer, or on civil addict outpatient status and has not received written permission of his or her case supervisor and/or the prior approval of the institution head.

- The identity of the prospective visitor or any information on the visiting questionnaire, is omitted or falsified. (Cal. Code Regs., tit. 15, § 3172.1, subd. (b).)

This bill would require that any amendments to existing regulations and any future regulations adopted by CDCR that impact the visitation of incarcerated persons recognize and consider the constitutional right of association of an incarcerated person's family member and the rehabilitative and ameliorative essentiality of personal visits, as specified.

1) **AB 990 (Santiago) Veto Message**: AB 990 (Santiago), of the 2021-2022 Legislative Session, was substantially similar to this bill. In vetoing AB 990, the Governor stated:

> My Administration has made it a priority to reform our state's rehabilitation processes, including visitation rights. In fact, this year's budget added a third day of weekly in-person visitation at all CDCR institutions and included funding to provide visitors with free transportation on select days throughout the year to all prisons. While I am in strong support of expanding and increasing visitation opportunities, the heightened standard in this legislation is likely to result in extensive and costly litigation from individuals denied visitation for what may be valid and serious safety and security concerns. I urge the author to work with CDCR to find a solution that expands access to visitation in a manner that protects all parties.

Like AB 990, this bill includes a heightened standard, allowing visitation "unless such deprivation is necessary and narrowly tailored to further legitimate security interest," which could result in costly litigation.

7) **Strip Searches**: This bill would prohibit using certain intrusive strip and body cavity searches for visitors at CDCR. Specifically, the bill would prohibit CDCR officials from conducting these searches, but would still allow state, local and federal law enforcement officers to conduct strip and cavity searches pursuant to an arrest.

An unclothed body search is a security procedure that involves visual inspection of a person's body with all of their clothing removed and a thorough inspection of the person's clothing for the purpose of detecting contraband. This procedure may be conducted with the visitor's consent when there is a reasonable suspicion that the visitor is carrying contraband and when no less intrusive means are available to conduct the search. (Cal. Code Regs., tit. 15, § 3173.2.) Additional screening will occur when an individual sets off the alarm of the metal detector, an individual is selected for additional screening, or an individual has provided documentation to substantiate a condition that precludes successful screening by metal detector. (*Ibid.*)

CDCR currently has pending proposed changes to Title 15 Regulations pertaining to strip searches. The proposed changes would clarify that "the visitor's body will not be touched by staff during the unclothed body search" but say nothing about the visitor being instructed to touch their own body. (CDCR, *2nd Notice of Change to Text as Originally Proposed* (Jan. 25, 2024). Available at: <https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2024/01/2nd-Re-Notice-NCR-23-05-Visiting.-MST.pdf> [as of March 256, 2024].)

Under existing regulations, "Visitors who refuse to submit to an unclothed body search, where probable cause exists, shall have their visiting privileges denied for that day. Future visits may be conditioned upon the visitor's willingness to submit to an unclothed body search prior to being allowed to visit." (Cal. Code Regs., tit. 15, § 3176.) CDCR's proposed regulations would change the current "probably cause standard" to a lesser "reasonable suspicion" standard. (CDCR, *2nd Notice of Change to Text as Originally Proposed* (Jan. 25, 2024). Available at: <https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2024/01/2nd-Re-Notice-NCR-23-05-Visiting.-MST.pdf> [as of March 256, 2024].)

In background materials, the author of this bill points out, "Incarcerated individuals are explicitly classified as a 'vulnerable community,' alongside 'women, racial or ethnic groups, low-income individuals and families' [...] Given that certain racial and ethnic groups, as well as low-income demographics, are disproportionately represented within the prison system, it follows that visitors to these facilities often mirror these demographic trends. Moreover, women, children, and LGBTQIA + individuals [...] are particularly susceptible to distressing experiences, especially during strip search procedures as delineated in [this bill]."

8) **Argument in Support**: According to *Initiate Justice Action (IJ Action),* "AB 2709 addresses the current institutional barriers that impede these connections by:

1. Prohibiting the denial of visits as a form of discipline for conduct unrelated to visiting.

2. Requiring the California Department of Corrections and Rehabilitation (CDCR) to rely on a Department of Justice criminal background report, rather than self-reported information, to determine a visitor's law enforcement history.

3. Ensuring that visits are not denied based on a visitor's law enforcement history unless it directly relates to a serious violation of visiting rules.

4. Mandating that CDCR provides specific written reasons for any denial of visiting.

5. Establishing a minimum of three in-person visiting days per week for individuals serving felonies in state prisons and jails with in-person visit access.

6. Prohibiting CDCR from mandating a strip search as a condition for a visit.

"The impact of these measures cannot be overstated. They are not only about enabling visits but also about upholding the dignity and humanity of all individuals, including those who are incarcerated, and their families. We firmly believe that AB 2709 aligns with the core principles of rehabilitation, successful reintegration, and community well-being. It builds upon the Legislature's recognition of the rehabilitative value of personal visits during

incarceration and takes necessary steps to ensure that these visits are accessible and meaningful."

9) **Argument in Opposition**: According to the *Riverside Sheriff's Association*, "AB 2709 makes jail visits a protected right and codifies a modified 'strict scrutiny' (necessary/narrowly-tailored) test to determine when this right may be impacted. In doing so, AB 2709 eliminates the long-recognized 'rational basis' standard, along with decades of state and U.S. Supreme Court jurisprudence relating to incarceration. Current regulations and policies concerning the visitation processes at correctional facilities are based on a number of factors including facility design, staffing abilities, infrastructure issues, behavior of inmates and behavior of visitors outside the visiting rooms. These issues are 'reasonably related to legitimate penological interests,' the current test used to determine the constitutionality of a governmental restriction of a right.

"If enacted, this bill will cost the state and local governments untold millions to expand visitation areas, hire additional staff, equipment purchases, etc. and AB 2709 provides no funding for CDCR and county jails to ensure compliance with its mandates. These and other concerns led to the defeat last year of a similar measure AB 958, preceded by Governor Newsom's veto of a nearly identical bill, AB 990, in 2021.

"Our law enforcement associations remain supportive of evidence-based efforts to reduce recidivism as long as the safety of the public, the facility, staff, inmates and visitors is not compromised. However, Under AB 2709, county jails would be barred from denying a prisoner a visit if other issues or emergencies arise but which may later be determined to be unrelated to furthering 'security interests of the government.'

10) **Related Legislation**: AB 2740 (Waldron), would, among other things, require CDCR to expedite a family visitation application process for incarcerated pregnant persons in order to prevent delays for visitation for the incarcerated mother and newborn child following delivery and prohibit limiting family visitation for incarcerated mothers to see their newborn child. AB 2740 is pending in Assembly Appropriations Committee.

11) **Prior Legislation**:

a) AB 1226 (Haney), Chapter 98, Statutes of 2023, requires CDCR to place incarcerated persons in the correctional facility that is located nearest to the primary place of residence of their child to facilitate increased contact between the incarcerated person and their child.

b) AB 958 (Santiago) of the 2023-2024 Legislative Session, was substantially similar to AB 990. AB 958 was held in Senate Appropriations Committee.

c) AB 990 (Santiago), of the 2021-2022 Legislative Session, would have made personal visits a civil right for incarcerated people. AB 990 was vetoed.

d) SB 1008 (Becker), Chapter 827, Statutes of 2022, requires CDCR to provide voice communication services to incarcerated persons free of charge.

e) SB 1139 (Kamlager) Chapter 837, Statutes of 2022, requires, among other things, emergency in-person contact visits and video calls to be made available whenever an incarcerated person is hospitalized or moved to a medical unit within the facility and the incarcerated person is in a critical or more serious medical condition.

f) AB 964 (Medina), of the 2019-2020 Legislative Session, would have required all local detention facilities to offer in-person visitation. AB 964 was held on the Assembly Appropriations suspense file.

g) SB 843 (Committee on Budget), Chapter 33, Statutes of 2016, bars prohibiting incarcerated persons from family visits based solely on the fact that the incarcerated person is sentenced to life without the possibility of parole or is sentenced to life and is without a parole date.

h) SB 1157 (Mitchell), of the 2015-2016 Legislative Session, would have prohibited local correctional facilities and juvenile facilities from replacing in-person visits with video or other types of electronic visitation. SB 1157 was vetoed.

i) SCR 20, Chapter 88, Statutes of 2009, encourages correctional facilities to distribute the Children of Incarcerated Parents Bill of Rights to children of incarcerated parents, and to use the bill of rights as a framework for analysis and determination of procedures when making decisions about services for these children.

j) AB 2133 (Goldberg), Chapter 238, Statutes of 2002, requires that any amendments to regulations adopted by CDCR which may impact the visitation of incarcerated persons recognize and consider the value of visitation as a means of increasing safety in prisons, maintaining family and community connections, and preparing inmates for successful release and rehabilitation.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Reentry Project
ACLU California Action
Alliance for Boys and Men of Color
California Families Against Solitary Confinement
California for Safety and Justice
California Immigrant Policy Center
California Public Defenders Association
Californians United for A Responsible Budget
Center on Juvenile and Criminal Justice
Children's Defense Fund - CA
Communities United for Restorative Youth Justice (CURYJ)
Community Works
Empowering Women Impacted by Incarceration
Felony Murder Elimination Project
Fresh Lifelines for Youth
Grip Training Institute

Initiate Justice
Initiate Justice Action
Jesse's Place Org
LA Defensa
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Power in Unity Fellowship
Prison Ftio
Root & Rebound (UNREG)
San Francisco Public Defender
Uncommon Law
United Core Alliance
Young Women's Freedom Center
Youth Alive!

31 Private Individuals

Opposition

California State Sheriffs' Association
Deputy Sheriffs' Association of Monterey County
Los Angeles County Professional Peace Officers Association
Placer County Deputy Sheriffs' Assocation
Riverside Sheriffs' Association

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

Date of Hearing: April 2, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2730 (Lackey) – As Amended March 13, 2024

SUMMARY: Clarifies that in order for a nurse midwife to perform a sexual assault exam, they must be certified. Specifically, **this bill:**

1) Adds "certified" to the criteria a nurse midwife must have in order to perform a sexual assault exam in consultation with a physician or surgeon currently licensed, as specified.

2) Makes technical changes for physicians and surgeons working with a physician assistant who performs sexual assault exams.

EXISTING LAW:

1) Requires OES, along with the advisory committee above, to establish a protocol for the examination and treatment of victims of sexual assault and attempted sexual assault, including child molestation, and the collection and preservation of evidence therefrom, which includes recommended methods for meeting the standards, as specified. (Pen. Code, § 13823.5 (a).)

2) Requires OES to develop guidelines containing general reference information on evidence collection and examination of, and psychological and medical treatment for, victims of sexual assault and attempted sexual assault, including child abuse. (Pen. Code, § 13823.5 (b)(1).)

3) States that OES when developing protocols and informational guidelines, shall seek the assistance and guidance of organizations assisting victims of sexual assault, qualified health care professionals, sexual assault forensic examiners, criminalists, and administrators who are familiar with emergency room procedures; victims of sexual assault; and law enforcement officials. (Pen. Code, § 13823.5 (b)(2).)

4) Permits only a "qualified health care professional," as specified, to conduct an examination for evidence of a sexual assault or an attempted sexual assault, including child molestation, use the standard form or forms adopted as specified. (Pen. Code, § 13823.5 (c)(2).)

5) Defines a "qualified health care professional" to mean any of the following:

   a) A physician and surgeon currently licensed, as specified in the Business and Professions Code;

   b) A nurse, nurse pracitioner, or nurse-midwife currently licensed, as specified in the Business and Professions Code, and working in consultation with a physician and

surgeon; or,

c) A physician assistant currently licensed, as specified in the Business and Professions Code, and working in consultation with a physician and surgeon who conducts examinations or provides treatment in a general acute care hospital or in a physician and surgeon's office. (Pen. Code, § 13823.5 (e)(1).)

6) States that "Sexual assault forensic examiner" or "SAFE" means a qualified health care professional who has been trained on the standardized sexual assault forensic medical curriculum, as specified. (Pen. Code, § 13823.5 (e)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "For years in California, the majority of sexual assault forensic exam teams have been performing exams using local resources, including experienced non-physician forensic examiners (nurses) and a variety of physicians with varied forensic experience. High-level forensic expertise has always been available to law enforcement and the criminal justice system from experts who are RNs, PAs, NPs, and physicians who have been qualified by courts throughout California. The degree of physician involvement must be a local decision based on available resources. To continue to provide access for victims to receive local expert care, this code needs to be clarified to limit confusion on the qualified healthcare provider language and ensure programs remain open."

2) **Qualified Health Care Professionals:** Under existing law, OES is responsible for establishing protocol for the sexual assault forensic medical examination (SAFME) and treatment for the victims of sexual assault and attempted sexual assault. OES was required to establish an advisory committee, which OES works with to establish a protocol for the examination and treatment of victims of sexual assault and attempted sexual assault, including child molestation, and the collection and preservation of evidence therefrom. (Pen. Code, § 13823.5(a).) As part of these protocols, existing law provides that only a "qualified health care professional," may conduct a SAFME. (Pen. Code, § 13823.5(e).) The health care professionals who are qualified to perform sexual assault exams has been carefully expanded over the last two decades to include a nurse, nurse practitioner, nurse-midwife, and a physician assistant.

   According the California Medical Board, "The profession of midwifery also has another designation, that of 'certified nurse-midwife' (CNM). CNMs are licensed by the California Board of Registered Nursing. CNMs are registered nurses who acquired additional training in the field of obstetrics and are certified by the American College of Nurse Midwives (ACNM). They commonly work in hospitals and birthing centers that are also licensed by the state." (https://www.mbc.ca.gov/Licensing/Licensed-Midwives/ [as of Mar. 26, 2024].)

   This bill would make changes to who is considered a "qualified health care professional", by requiring a nurse-midwife be *certified*. This bill would also make a technical revision with regards to who is considered a licensed physician and surgeon to be in parity with other sections of the code.

3) **Argument in Support**: According to *The California Chapter of the American College of Emergency Physicians,* "When victims of sexual assault seek care there are standardized procedures that must occur for the collection of medical evidence, including a list of qualified providers. AB 2730 will amend the existing law to expand the physicians allowed to supervise nurses performing these exams.

   "Expanding the list types of physicians who can supervise these critical exams will increase accessibility, easing the burden on patients who have already experienced trauma."

4) **Prior Legislation**: AB 538 (Berman), Chapter 714, Statutes of 2019, permits a nurse practitioner and a physician assistant to perform a medical evidentiary examination for evidence of sexual assault; and updates terminology, documentation procedures, and training curriculum for medical evidentiary examinations in cases of sexual assault.

REGISTERED SUPPORT / OPPOSITION:

Support

Board of Registered Nursing
California Chapter of The American College of Emergency Physicians

Opposition

None

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

Date of Hearing: April 2, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2739 (Maienschein) – As Introduced February 15, 2024

SUMMARY: Requires a firearm, as specified, that is used in the commission of a crime, to be surrendered to law enforcement even where the defendant is granted diversion, if the crime would require the firearm to be surrendered if the defendant had been convicted of the crime. Specifically, **this bill**:

1) States any loaded firearm carried in public is a nuisance and shall be surrendered to law enforcement, except as follows:

   a) Any firearm in the possession of the Department of Fish and Wildlife.

   b) Any firearm used in violation of the Fish and Game Code or any regulation related to the Fish and Game Code.

   c) Any firearm used to kill, injure, or capture a person or an animal, in violation of the Public Resource Code.

2) States any unloaded handgun openly carried in public is a nuisance and shall be surrendered to law enforcement, except as follows:

   a) Any firearm in the possession of the Department of Fish and Wildlife.

   b) Any firearm used in violation of the Fish and Game Code or any regulation related to the Fish and Game Code.

   c) Any firearm used to kill, injure, or capture a person or an animal, in violation of the Public Resource Code.

EXISTING LAW:

1) States any person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city, city and county, or in any public place or on any public street in a prohibited area of an unincorporated area of a county or city and county. (Pen. Code, § 25850, subd. (a).)

2) States any weapon, used in the commission of a crime, whether a misdemeanor or felony, shall be surrendered to one of the following:

   a) The sheriff of a county.

   b) The chief of police or other head of a municipal police department of any city or city and county.

   c) The chief of police of any campus of the University of California or the California State University.

   d) The Commissioner of the California Highway Patrol. (Pen. Code, § 18000, subd. (a).)

3) Clarifies that a finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of surrendering a firearm to law enforcement. (Pen. Code, § 18000, subd. (c).)

4) Provides that any officer to whom a weapon is surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, shall destroy that weapon and, if applicable, submit proof of its destruction to the court. (Pen. Code, § 18005, subd. (a).)

5) Makes concealed carry of an explosive substance other than fixed ammunition, a nuisance subject to surrender of a firearm. (Pen. Code, § 19190.)

6) Makes the unlawful carrying of a concealed dirk or dagger a nuisance, subject to surrender to law enforcement. (Pen. Code, § 21390.)

7) States any firearm owned or possessed by a felon, as specified, or used in the commission of any misdemeanor, any felony, or an attempt to commit any misdemeanor or any felony, is a nuisance and must be surrendered to law enforcement. (Pen. Code, § 29800, subd. (a)(1).)

8) States a judge in the superior court in which a misdemeanor is being prosecuted may, at the judge's discretion, and over the objection of a prosecuting attorney, offer diversion to a defendant. (Pen. Code, § 1001.95, subd. (a).)

9) States if the defendant has complied with the imposed terms and conditions, at the end of the period of diversion, the judge shall dismiss the action against the defendant. (Pen. Code, § 1001.95, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Longstanding California law has established a precedent- if a gun is carried illegally, that gun cannot remain on the streets. The law states

that, if a person carries a concealed firearm illegally, that firearm must be surrendered and destroyed. However current law does not apply equally to other violations such as carrying a loaded firearm in public or openly carrying an unloaded handgun in public. AB 2739 seeks to treat all illegally carried firearms the same way and require all illegal firearms to be surrendered and destroyed. This bill will help increase public safety by cracking down on irresponsible gun ownership and removing illegally carried weapons from our streets."

2) **Surrender of a Firearm upon Conviction:** According to information provided by the Author's Office:

> California law places restrictions on carrying weapons in public without a valid permit: **Penal Code §25850-** makes it illegal to carry a loaded firearm in public either on the person or in a vehicle. **Penal Code §26350-** makes it illegal to openly carry an unloaded handgun in a public place. **Penal Code §25400-** makes it illegal to carry a concealed firearm within a vehicle or upon the person. (Emphasis retained.) Additionally, current law deems carrying a concealed firearm (in violation of PEN §25400) a nuisance (PEN § 25700) and requires the illegally carried firearm to be surrendered and destroyed (PEN §1800-1805). However, the same rules do not exist for loaded or unloaded firearms (PEN§25850 and PEN §26350) carried in public in violation of the law. Lastly, a loophole exists for defendants granted misdemeanor diversion. Firearms carried illegally pursuant to §25400 must be surrendered and destroyed, however if a defendant is granted diversion there is no mechanism for the court to order the illegally carried firearm to be surrendered. AB 2739 focuses on irresponsible gun ownership-specifically on the firearms that are carried in violation of state law. The bill does not interfere with a defendant's ability to be granted diversion and it does not create additional crimes. AB 2739 builds upon the statutory precedent that does not allow guns carried illegally to remain on the streets by ensuring all illegally carried firearms are treated the same under the law. There has been a documented increase in the history of violent crime in California involving firearms. In 2022 guns were used in 71% of homicides and 22% of assaults, which is an increase in both statistics over pre-pandemic levels. (See LA Times Article, *"More violent crimes are being committed with guns in California,"* Los Angeles Times (June 10, 2023).[1]

Penal Code section 18000 requires the surrender of all firearms deemed to be a nuisance, and section 29300, subdivision (a), states that any weapon possessed, owned or controlled by a

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[1] https://www.latimes.com/california/story/2023-10-06/a-troubling-trend-in-california-more-violent-crimes-are-being-committed-with-guns-even-as-restrictions-tighten

convicted felon constitutes a nuisance. Under prior law, persons convicted of a felony were automatically required to surrender all weapons to law enforcement following their conviction.

However, the Legislature modified the statute in 2003 to provide an alternative to automatic surrender. Specifically, section 29300, subdivision (c), provides: "[a] firearm is not a nuisance pursuant to this section if the firearm owner disposes of the firearm pursuant to Section 29810."

Section 29810 provides that in a felony case, a defendant must be advised at the time judgment is rendered of the prohibition against owning a firearm, and must be given a form to facilitate transfer of any firearms they own or possesses. In other words, when a defendant is convicted of a felony and is, going forward, prohibited from owning firearms, they must be given the opportunity to avoid violating section 29300, subdivision (a), by transferring the firearms to a third person, including law enforcement, at the time judgment is rendered. That person, as an agent for the defendant, may then transfer title to the firearms or facilitate their sale.

3) **Firearms as Nuisance:** Penal Code section 18000 requires that any firearm used in the commission of an offense for which a defendant is convicted must surrender the firearm to law enforcement. In most cases, that weapon will be destroyed, or ordered destroyed by the court. (Pen. Code, § 18005, subd. (a).) This bill expands the existing nuisance law by requiring any person who is granted diversion to surrender their firearm if, short of the diversion, they would have been convicted of a felony or misdemeanor.

Either a public or a private nuisance may be enjoined because harm is threatened that would be significant if it occurred, and that would make the nuisance actionable, although no harm has yet resulted. Thus the threat of communication of smallpox to a single person may be enough to constitute a public nuisance because of the possibility of an epidemic; and a fire hazard to one adjoining landowner may be a public nuisance because of the danger of a conflagration. (*In re Firearm Cases* (2005) 126 Cal.App.4th 959, 988.)
The elements of a cause of action for ***public nuisance*** include the existence of a duty and causation." (*Ibid.*.)

"Public nuisance liability 'does not hinge on whether the defendant owns, possesses or controls the property, nor on whether he is in a position to abate the nuisance; ***the critical question is whether the defendant created or assisted in the creation of the nuisance." Emphasis added.)*** (See *City of Modesto Redevelopment Agency v. Superior Court* (2004) 119 Cal.App.4th 28, 38.) The elements of public nuisance are: (1) a nuisance that served as an obstruction of the free use of property so as to interfere with the comfortable enjoyment of life or property; (2) the nuisance affected a substantial number of people; (3) an ordinary person would be unreasonably annoyed or disturbed by the nuisance; (4) the seriousness of the harm occasioned by the nuisance outweighed its social utility; (5) plaintiffs did not consent to the nuisance; (6) plaintiffs suffered harm as a result of the nuisance that was different from the type of harm suffered by the general public; and (7) the nuisance was a substantial factor in causing the plaintiffs' harm. (*Department of Fish & Game v. Superior Court* (2011) 17 Cal.App.4th 1323, 1352.) On a claim for public nuisance, the plaintiffs must

"prove a substantial number of people were harmed and the plaintiffs suffered harm that was different from that suffered by the general public."

However, a firearm, is private property, and "without a hearing, proceeding, or other forum in which the determination can be made that a weapon was in fact "used in the commission of" an underlying crime (i.e., that it meets the statutory requirements for being declared a confiscable weapon), the confiscation and destruction of the property would be an unconstitutional deprivation of property without due process of law." (*People v. Beck* (1994) 25 Cal.App.4th 1095, 1103.)

4) **Diversion:** This bill would allow the removal and possible destruction of a firearm for any person granted misdemeanor diversion. Court-initiated misdemeanor diversion pursuant to Penal Code section 1001.95, was enacted in 2020 to reduce the number of people convicted of low level charges that may have catastrophic societal consequences and reduce court costs. Most diversion statutes require the district attorney's approval, but not in cases where the court orders diversion. If a person completes diversion, in most cases, the arrest is voided and no conviction results.

   Completion of a successful diversion and subsequent erasure of the arrest requires: (a) completion of all conditions ordered by the court; (b) making full restitution (but a defendant's inability to pay restitution due to indigence shall not be grounds for denial of diversion or a finding that the defendant has failed to comply with the terms of diversion); and (c) complying with a court-ordered protective order, stay-away order, or order prohibiting firearm possession, if applicable. Is it fair to require surrender and possible destruction of personal property where the person successfully finished diversion and did not suffer any arrest or conviction? The point of diversion is to give first time offenders and other non-violent misdemeanants a chance to turn things around. Given a person subject to diversion does not suffer a conviction, does the automatic forfeiture of their firearms seem appropriate?

5) **Argument in Support**: According to the *California District Attorney's Office*: AB 2739 would also expand the requirements for the surrender of illegally carried firearms to eligible crimes that are resolved through misdemeanor diversion. Currently, the crime of carrying a concealed firearm in violation of Penal Code section 25400 requires the firearm to be surrendered and destroyed as a nuisance. However, violations of Penal Code sections 25850 and 26350 do not require surrender and destruction of the firearm as a nuisance. AB 2739 would close this disparity in consequences for firearm violations. Existing law requires some weapons deemed to be nuisances to be surrendered to law enforcement upon conviction or a juvenile court finding. AB 2739 would also require the surrender and destruction of weapons when the defendant is granted misdemeanor diversion pursuant to PC 1001.95 for a crime that otherwise would require surrender and destruction upon conviction.

6) **Argument in Opposition**: None on file.

7) **Related Legislation**:

   a) AB 732 (Min), Chapter 240, reduces the amount of time a defendant who does not remain in custody has to relinquish a firearm following a conviction, and requires the

Department of Justice (DOJ) to provide local law enforcement agencies and district attorneys access through an electronic portal to information identifying persons who have not relinquished their firearms as required by law.

b) AB 29 (Gabriel), would have required DOJ to develop an Internet-based platform to allow California residents to voluntarily add their own name to the California Do Not Sell List for firearms, which prohibits an individual from purchasing a firearm. AB 29 was held on the Assembly Appropriations Committee suspense file.

c) AB 36 (Gabriel) would have prohibit any person subject to a civil or criminal protective order issued on or after July 1, 2024, from owning, possessing, purchasing, or receiving a firearm or ammunition within three years after expiration of the order. AB 36 was held on the Assembly Appropriations Committee suspense file.

d) AB 303 (Davies), Chapter 161, Statutes of 2023, requires the Attorney General to provide local law enforcement agencies enumerated information related to armed and prohibited persons in the APPS database. AB 303 is pending hearing in the Assembly Appropriations Committee.

8) **Prior Legislation**:

a) AB 178 (Ting), Chapter 45, Statutes of 2022, allocates $40 million to the Judicial Council to support a court-based firearm relinquishment program to ensure the consistent and safe removal of firearms from individuals who become prohibited from owning or possessing firearms and ammunition pursuant to court order.

b) AB 1594 (Ting), Chapter 98, Statutes of 2022, authorizes DOJ, local governments and survivors of gun violence to file a civil action in a California court for damages against a gun manufacturer, importer or dealer that violates firearm industry standards of conduct, as specified.

c) SB 129 (Skinner), Chapter 69, Statutes of 2021, allocates funds to DOJ to disburse to local sheriffs' departments for APPS enforcement operations, and outlined reporting requirements for participating sheriffs' departments.

d) SB 94 (Committee on Public Safety), Chapter 25, Statutes of 2019, requires DOJ to send an annual report to the Legislature detailing information related to APPS including the number of individuals in the database, firearms removed, number of staff enforcing APPS, and information regarding collaborative task forces with local law enforcement agencies.

e) SB 140 (Leno), Chapter 2, Statutes of 2013, appropriates $24 million to step up efforts to reduce the number of pending cases in the APPS backlog.

f) AB 809 (Feuer), Chapter 745, Statutes of 2011, requires the DOJ to collect and retain firearm transaction information for all types of firearms, including long guns.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Police Chiefs Association
City of San Diego

Opposition

None Submitted.

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

Date of Hearing: April 2, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2759 (Petrie-Norris) – As Introduced February 15, 2024

SUMMARY: Revises the exemption in existing law pertaining to the issuance of a protective order or restraining order and the relinquishment of a firearm to clarify and expand standard in making determinations as to sown peace officers carrying a firearm either on or off duty. Specifically, **this bill**:

1) States a court may grant a firearms relinquishment exemption when considering or issuing a protective order where the person is not otherwise prohibited from owning or possessing a firearm under state or federal law *and* the following conditions apply:

   a) If the person subject to the protective order is a *sworn peace officer, and they seek to carry a firearm* ***both on and off duty****, the peace officer must demonstrate*:

      i. To carry on duty, that they are required, as a condition of employment, to carry a firearm and their employer cannot reassign the person to another position where a firearm is not necessary.

      ii. If a peace officer seeks to possess a firearm or ammunition ***off duty***, the peace officer must show, by a preponderance of evidence, the peace officer's personal safety depends on the ability to carry that firearm or ammunition outside of scheduled work hours; ***and*** by a preponderance of evidence, the peace officer does not pose an additional threat of harm to a protected party or the public by having access to the firearm or ammunition, including whether the peace officer might use the firearm for a purpose other than for the reasons of employment and personal safety.

   b) If the person subject to the protective order is *not a sworn peace officer, the person must demonstrate:*

      i. The person is required to carry a firearm as a condition of employment and their employer cannot reassign the person to another position where a firearm is not necessary, ***and***

      ii. The court finds, by a preponderance of evidence, in writing or on the record, that the person does not pose an additional threat of harm to a protected party or the public by having access to a firearm for any employment related purpose. A civilian may not possess a firearm except during the course of their

employment.

2) Mandates that prior to making a finding that a ***peace officer*** is entitled to an exemption to the relinquishment order, the court must order a psychological evaluation of the peace officer by a licensed mental health professional with domestic violence expertise.

3) Requires a court to consider the results of the evaluation and may require the ***peace officer*** to enter into counseling or another remedial treatment program to deal with a propensity for domestic violence.

4) States that if the court grants an exemption to a ***non-peace officer***, it may, but is not required to, order a psychological evaluation by a license mental professional with domestic violence expertise.

5) States if a court orders any exemption to a firearms relinquishment order for a ***non-peace officer***, it shall restrict the exemption to physical possession only during scheduled work hours.

6) States if a court grants a relinquishment exemption during the pendency of determining whether to issue a restraining order, and the court subsequently issues a restraining order, the court must review and make findings, in writing, or on the record, as to whether the exemption remains appropriate in light of the issuance of the order after a hearing.

7) Requires if an exemption is granted following the issuance of a restraining order, and the court subsequently renews the initial restraining order at the request of the protected party, the court must review and make a finding, in writing or on the record, as to whether the exemption remains appropriate in light of the renewal.

8) Authorizes a court to terminate or modify an exemption at any time if the respondent demonstrates a need to modify the particular firearm or ammunition included in the exception or if the respondent no longer meets the requirements for an exemption, or otherwise violates the restraining order.

EXISTING LAW:

1) Authorizes a court, as part of the relinquishment order, to grant an exemption from the relinquishment requirements in existing law pertaining to issuing a protective order for a particular firearm or ammunition if the respondent can show that a particular firearm or ammunition is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm or ammunition is unnecessary. (Fam. Code, § 6389, subd. (h).)

2) States that if an exemption is granted, the order shall provide that the firearm or ammunition shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from the place of employment. When a peace officer is required, as a

condition of employment, to carry a firearm or ammunition and whose personal safety depends on the ability to carry a firearm or ammunition a court may allow the peace officer to continue to carry a firearm or ammunition, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence. (Fam. Code, § 6389, subd. (h).)

3) Punishes any intentional and knowing violation of a ***protective order***, as a misdemeanor punishable by a fine of not more than $1,000, or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. (Pen. Code, § 273.6, subd. (a).)

4) States a court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating, falsely personating, harassing, telephoning, including, but not limited to, making annoying telephone calls, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members. (Fam. Code, § 6320, subd. (a).)

5) Provides that on a showing of good cause, the court may include in a protective order a grant to the petitioner of the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent. The court may order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal. (Fam. Code, § 6320, subd. (b).)

6) Requires any person who knowingly and without consent credibly impersonates another actual person through or on an internet web site or by other electronic means for purposes of harming, intimidating, threatening, or defrauding another person is guilty of a public offense and shall be sentenced to up to one year in county jail, by a fine not exceeding $1,000, or both imprisonment or fine. (Pen. Code, § 528.5, subd. (a) and (d).)

7) Punishes any person who falsely impersonates another in their private or official capacity, and in that assumed character does any of the following, by imprisonment in the county jail for up to one year, or as a felony punishable by up to three years in the county jail, or by fine of not more than $1,000 or by both imprisonment or fine, if they engage in any of the following:

   a) Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take that bail or surety.

b) Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, or used as true.

c) Does any other act whereby, if done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person.

8) Provides any person who, with intent to annoy, telephones or makes contact by means of an electronic communication device with another and addresses to or about the other person any obscene language or addresses to the other person any threat to inflict injury to the person or property of the person addressed or any member of his or her family, is guilty of a misdemeanor; however, this does not prohibit telephone calls or electronic contacts made in good faith. (Pen. Code, § 653m, subd. (a).)

9) States a court may, as part of the relinquishment order, grant an exemption from the relinquishment requirements of this section for a particular firearm if the respondent can show that a particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary. If an exemption is granted pursuant to this subdivision, the order shall provide that the firearm shall be in the physical possession of the respondent only during scheduled work hours and during travel to and from his or her place of employment. In any case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence. (Code Civ. Proc., § 527.9, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Under existing California law, the vast majority of persons subject to a domestic violence restraining order must surrender all firearms and ammunition they own or possess. There is, however, a state exemption to this law. Family Code section 6389(h) permits peace officers or others whose professional duties require them to carry a particular firearm to continue to do so under certain circumstances. The exemption is limited in scope so that those subject to a domestic violence civil restraining order who can safely perform their job duties may continue to do so where appropriate, which can support ongoing financial stability for domestic violence victims and their families. Unfortunately, the exemption for those whose continued employment requires they have a firearm is generally unclear, vague, limited, and contradictory. This increases the possibility that someone receives an exemption who should not have one, putting victims and the public at risk.

AB 2759 proposes several changes to make the law fairer, more consistent, and offer better protection to survivors of domestic violence and the public at-large. For instance, this bill clarifies that the exemption is only valid while the respondent's employment status doesn't change, and should the restraining order need to be renewed, the court must review and determine if the exemption remains appropriate. Furthermore, this bill clarifies that these exemptions may only be granted if the person is not otherwise prohibited from having a firearm under any state or federal law, and also ensures that those with the exemption cannot purchase any additional firearms and must surrender any additional firearms or ammunition in their possession.

2) **Difference between a Restraining Order and Protective Order:** Protective orders and restraining orders are, in the outcome, very similar – both are orders issued or approved by a court that prevents a person from contacting another person under specific circumstances and may also restrict other conduct to prevent harassment, threats, or violence. (See generally, Fam. Code, § 6218, subd. (a)-(c).)

However, there are a couple of differences, at least in a practical sense. According to the California Courts, Self Help Guide, the ***police*** may ask for an emergency (which includes instances of domestic violence) protective order (EPO) to protect the victim of a crime, usually when the victim calls the police or 911 for help.

If the defendant (the person accused of committing the crime) is arrested and charged, a judge can issue a criminal protective order (CPO) to protect victims and witnesses, particularly during the pendency of the case. EPOs and CPOs are protective orders. Protective orders and "temporary restraining orders" are often used interchangeably. A victim may also be able to file their own moving papers to request a restraining order. A restraining order can include some of the same orders as an EPO or CPO, like ordering the defendant to stay away from the victim. But in restraining order cases ***filed by a victim*** (instead of law enforcement), additional protections may be available. A victim can have a restraining order and an EPO or CPO at the same time as one is issued on an emergency basis and one is issued for a longer period of time. (See Fam. Code, § 6320, subd. (a); Judicial Branch of California, California Courts Self-Help Guide, Guide to Protective Orders, p. 1-2.)[1]

An EPO can include orders that the defendant: (a) not contact people protected by the order; (b) not harass, stalk, threaten or hurt people protected by the order; (c) stay a certain distance away from people protected by the order or places they live or go regularly; (d) move out from a home that is shared with the protected person; or (e) not have guns, firearms, or ammunition. An EPO only lasts a short time, usually 5-7 days. If the person protected by the EPO needs protection that lasts longer or wants to ask for other orders, they can apply for a restraining order.

This bill refers to a provision of law that refers to both protective orders and restraining orders. A ***protective order*** may be issued for a short period of time without service on the

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[1] Located at https://selfhelp.courts.ca.gov/protective-orders, last visited March 21, 2024.

alleged wrongdoer (ex parte) so the victim may be protected while the court calendars a hearing on the order and the alleged wrongdoer may be served a more formalized notice. In some cases, law enforcement will seek a protective order even after the alleged wrongdoer was already arrested. In cases of a ***restraining order***, where a person may be enjoined from contacting someone for a longer period of time, the alleged victim may seek a civil order barring a person from coming within a certain distance, but, may not have resulted from any police intervention against the person being restrained. A person may be the subject of a protective order or a restraining order even if they are not facing a criminal charges and are never convicted of any criminal act.

3) **Family Code section 6389:** Family Code section 6389 generally prohibits any person who is the subject of a protective order, from owning or possessing a firearm or ammunition while the protective order is in place. (Fam. Code, § 6389, subd. (a).) Family Code section 6389 pertains to protective orders, which, as explained above, are usually requested by law enforcement to protect the victim of a crime, including the victim of domestic violence. This prohibition applies whether a person is a peace officer or not, or whether the person is required to carry a firearm in the course of employment.

   When the court issues a protective or restraining order, it ordinarily must order the respondent to relinquish any firearm or any ammunition in their possession, custody, or control. This prohibition stays in place during the pendency of the protective or restraining order. The firearm must be either safely transferred to law enforcement or sold to a licensed dealer at the time a restraining order is served. (Fam. Code, § 6389, subd. (c)(2).) If a person is ordered to relinquish their firearm and law enforcement has not secured it, the person must provide proof the firearm was relinquished within 48 hours of being served with the protective order. (Fam. Code, § 6389, subd. (c)(2)(A-B).) Law enforcement must return the relinquished firearm within five days of the expiration of order, unless: (a) the firearm has been stolen, or (b) the person is a prohibited person and is included on the Armed and Prohibited Persons (APPS) list. (Fam. Code, § 6389, subd. (g).)

   Existing law allows a court to grant an exemption from the relinquishment order if the respondent is able to demonstrate a particular firearm is necessary as a condition of continued employment and the current employer is unable to reassign the recipient of the protective order to another position where a firearm is unnecessary. (Fam. Code, § 6389, subd. (h).) This section is not specific to just peace officers, but applies to ***any person*** who may be subject to protective or restraining order. If a peace officer is able to demonstrate that possession of an ***off duty*** firearm is necessary for their own personal safety, a court may allow the officer to carry off duty if it finds, by a preponderance of evidence, that the officer does not pose a threat of harm. (*Id.*) Prior to making this finding, the court must require a psychological evaluation and may require the peace officer to enter counseling or remedial treatment to deal with a propensity for domestic violence. (*Id.*) However, existing law states that a peace officer may carry a firearm "on or off duty" – it does not make a clear distinction between the standards for possession on or off duty, resulting in confusion. It is possible the Legislature simply assumed a peace officer may have to carry on or off duty because they are peace officers and conflated both into one standard. This bill seeks to clarify that.

This bill undertakes to clarify and slightly expand this section as it pertains to peace officers and civilians and involves circumstances pertaining to firearms possession ***really off duty***. However, the law still generally mandates a person relinquish their firearm regardless of profession when they are the subject of a protective or restraining order, pursuant to Family Code section 6218 and Code of Civil Procedure 527.6. This bill requires that if a peace officer seeks to possess a firearm or ammunition off duty, the peace officer must show, by a preponderance of evidence, the peace officer's personal safety depends on the ability to carry that firearm or ammunition outside of scheduled work hours; ***and*** by a preponderance of evidence, the peace officer does not pose an additional threat of harm to a protected party or the public by having access to the firearm or ammunition, including whether the peace officer might use the firearm for a purpose other than for the reasons of employment and personal safety. This is a more robust determination that aims to ensure law enforcement officers do not continue to possess a firearm even if their employment requires it unless they can prove it is necessary for safety off duty; and there is no evidence the peace officer will misuse the firearm or present a threat to others including the alleged victim of domestic violence.

4) **Confusion in the Law:** As noted above, existing Family Code section 6389 conflates relinquishment exceptions for peace officers and non-peace officers and is, admittedly, confusing. The standard for granting an exemption is slightly different for peace officers because in some circumstances, a peace officer may have a need to carry a firearm off duty to protect themselves. The author proposes to clarify and tighten language related to when, and under what circumstances, a court may grant a peace officer or a civilian an exemption when they are required to carry a firearm. This bill creates separate sections pertaining to peace officers and civilians – which makes more sense since the standards are different. The author is continuing to work with the committee to clarify a few different technical confusions.

   First, subdivision (h), which in existing law, conflates peace officer and civilian standards into one provision, is amended to require that a court may issue an exemption to a firearms relinquishment order where the person facing a protective order is not otherwise prohibited from possessing a firearm and "under ***either*** of the following conditions."[2] However, the language is not reduced to two conditions. As drafted, a new provision is added specific to peace officers, but contains at least two separate standards on when a court may issue a firearm to a peace officer off duty. It is not clear which two conditions the court may consider (as suggested by the term "either"). However, it appears the goal is for the court to require a peace officer demonstrate the following:

   (a) ***To lawfully possess a firearm and ammunition on duty***, that they are required to demonstrate that they must carry on duty as a condition of employment, and their employer cannot reassign them to another position where a firearm is not necessary;

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[2] Existing law already prohibits any person who is ***convicted*** of a misdemeanor or felony domestic violence offense from possessing a firearm for at least ten years, or in some cases, life. (Pen. Code, § 29805, subd. (a)(1).)

(b) ***To lawfully possess a firearm and ammunition off duty***, a peace office must show:

i. By a preponderance of evidence, the peace officer's personal safety depends on the ability to carry that firearm or ammunition outside of scheduled work hours; ***and***

ii. By a preponderance of evidence, the peace officer does not pose an additional threat of harm to a protected party or the public by having access to the firearm or ammunition, including whether the peace officer might use the firearm for a purpose other than for the reasons of employment and personal safety.

Also, existing law and this bill make clear that any determination related to threat to safety only occurs after the initial showing that the person is not otherwise prohibited from possessing a firearm, and they are required to carry a firearm as a condition of employment. Additionally, existing law requires a court to make a safety determination by a preponderance of evidence. (Fam. Code, § 6389, subd. (h).) Where a court is required to make a factual determination, it usually takes testimony either in writing or in person. (*Kelly v. Stamps.com Inc.* (2005) 135 Cal.App.4th 1088, 1097–1098.)

As noted above, it appears the *a priori* issue is whether the respondent – either a peace officer or a civilian - is able to demonstrate they are not otherwise ineligible to possess a firearm and they are required to carry a firearm as a condition of employment and cannot be reassigned. Those requirements are the same for both peace officers and non-peace officers and do not require additional evidence. At that point, the court rules, by a preponderance of evidence, on whether the respondent poses a threat to others if allowed to retain their firearm. It may make sense to separate the sections to better inform the court of their required determinations.

5) **Domestic Violence Rates among Law Enforcement:** There is some evidence that members of law enforcement may suffer a higher rates of domestic violence incidents mostly attributed in the literature to job-related stress rather than a permissive police culture of abuse. According to a summary of research prepared by the Digital Commons at the University of South Florida, Graduate and Program,

> "The most recent research in police domestic violence has shown officers may perpetrate domestic violence at a higher rate than the general population, 28% versus 16%, respectively. Traditional police sub-culture has been identified, in several studies, as contributing to higher work stress, and using force on the job. This research, however, has not fully examined the link between adherence to the traditional police sub-culture and officer involvement in domestic violence." (Blumenstein, et al., "*Domestic Violence within Law Enforcement Families: The Link between Traditional Police Subculture and Domestic Violence among*

> *Police"* (2009) USF Tampa Graduate Theses and Dissertations, p. iv (hereinafter "Blumenstein summary.).[3]

According to the Blumenstein summary:

> "It is important to identify factors that may make officers prone to commit violent acts against their significant others, as well as ascertain the differences between officers who engage in domestic violence and those who do not. (Internal citation omitted)."

It makes sense to improve the clarity of this section given the risk to a third party when a person retains a firearm despite a protective order in place. This bill also requires a court to re-consider the exemption if, during the pendency of a protective order, the court ultimately issues a restraining order. In that case, a court may find that the person poses a threat to another person.

6) **Argument in Support**: According to the *California Partnership to End Domestic Violence,* "Firearm safety is a long-standing priority for our coalition. When firearms are present in a situation where domestic violence is being perpetrated, a survivor is more likely to experience an increase in severe physical abuse, and more likely to end up killed than in situations where firearms are not present. A person who causes harm's access to a firearm poses a serious threat to victims, making it five times more likely that a survivor will be killed. In total, a firearm is used in over half of domestic violence homicides nationwide. Within these devastating statistics are significant racial disparities. Black women are twice as likely to be shot and killed by an intimate partner in comparison to white women.

"Our work includes collaboration with partners in the movement to prevent gun violence to strengthen California's legal protections to reduce the presence of firearms in these dangerous situations. Our support of AB 2759 is in line with our past work on these issues. As you know, gun violence is a public health crisis in this country, and in particular, the nexus of guns and domestic violence puts victims at tremendous risk. Women in the United States are 21 times more likely to be killed with a gun than women in other high-income countries and the risk of homicide increases by at least 500% when a firearm is present in the home during an incident of domestic violence. Under existing California law, the vast majority of persons subject to a domestic violence restraining order (the respondent) must surrender all firearms and ammunition they own or possess.

"There is, however, an exemption allowed for peace officers or others whose professional duties require them to carry a particular firearm to continue to do so under certain circumstances. This exemption is limited in scope so that those subject to a domestic violence civil restraining order who can safely perform their job duties may continue to do so where appropriate, which can support ongoing financial stability for domestic violence victims and their families. Unfortunately, the current exemption is generally unclear, limited, and contradictory. This increases the possibility that someone receives an exemption who should not have one, putting victims and the public at risk. AB 2759 proposes several

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[3] Located at https://digitalcommons.usf.edu/etd/1862 last visited on March 21, 2024.

changes that will make the law fairer, more consistent, and better protect survivors of domestic violence and the public at large."

7) **Argument in Opposition**: None on file.

8) **Related Legislation**:

   a. AB 2024 (Pacheco) seeks to eliminate delays in getting DVPO protection forms to the judicial officer due to relatively minor errors or omissions. AB 2024 is pending referral in the senate.

   b. AB 2621 (Gabriel) requires the Commission on Peace Officer Standards and Training (POST) instruction to include identifying when a gun violence restraining order is appropriate to prevent a hate crime and the procedure for seeking a gun violence restraining order and require instruction on responses to hate crime waves against specified groups, including the LGBTQ and Jewish communities.

9) **Prior Legislation**:

   a) AB 1143 (Berman) Chapter 156, Statutes of 2021 provides that in lieu of personal service of a petition for a civil harassment restraining order, if a respondent's address is unknown, the court may authorize another method of service that is reasonably calculated to give actual notice to the respondent, if the court determines that a petitioner made a diligent effort to accomplish service, and may prescribe the manner in which proof of service must be made.

   b) SB 538 (Rubio), Chapter 686, Statutes of 2021 facilitates the filing of a DVRO and gun violence restraining order (GVRO) by allowing petitions to be submitted electronically and hearings to be held remotely.

REGISTERED SUPPORT / OPPOSITION:

Support

Women's Foundation of California, Dr. Beatriz Maria Solis Policy Institute (SPI) (Sponsor)
California District Attorneys Association
California Partnership to End Domestic Violence
Family Assistance Program
Family Violence Appellate Project
Fresno Building Healthy Communities
Giffords
Legislative Coalition to Prevent Child Abuse
Lumina Alliance
Partners Against Violence, INC.

Opposition

None Submitted.

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