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California State Assembly

PUBLIC SAFETY



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AGENDA

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

ANALYSES PACKET PART II

(AB 2818 Mathis – AB 3127 McKinnor)

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2818 (Mathis) – As Amended March 12, 2024

SUMMARY: Requires county jails to provide incarcerated individuals contact information for social services upon release. Specifically, **this bill:**

- 1) Requires, commencing January 1, 2026, county jails to, at a minimum, provide each incarcerated person the contact information for all of the following:
 - a) The local social services agency;
 - b) A local alcohol or drug abuse resource;
 - c) Local homeless shelters;
 - d) Local mental health resources for counseling or therapy; and,
 - e) The State Department of Social Services (DSS).
- 2) Requires the information to be provided on paper or other physical document, unless the person provides necessary contact information to allow the information to be provided by email or text message.

EXISTING LAW:

- 1) Allows the sheriff to temporarily release a person incarcerated in county jail to prepare for their return to the community for a period of not more than three days. (Pen. Code, § 4018.6.)
- 2) Provides that the sheriff may discharge any incarcerated person from the county jail on the last day the person may be confined, as the sheriff shall consider to be in the best interests of the person. (Pen. Code, § 4024, subd. (a).)
- 3) Allows the sheriff to offer a voluntary program to a person incarcerated in county jail upon completion of their sentence that would allow them to stay in the custody for up to 16 additional hours so that they can be discharged to a treatment center or during daytime hours. (Pen. Code, § 4024, subd. (b)(1).)
- 4) Allows the sheriff or other official in charge of county correctional facilities to provide for the vocational training and rehabilitation of incarcerated persons confined in the county jail. (Pen. Code, § 4018.5.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author’s Statement:** According to the author, “It is time for California to seriously address the issue of crime, and the reasons our citizens are committing these crimes. We must take this step forward together to support Californians struggling to stay out of the justice system in finding a better a life.”
- 2) **Need for this Bill:** According to the National Institute of Corrections (NIC), individuals incarcerated in jails have diverse risks and complex human service needs. Many people released from jails lack community connections to treatment and organizations to address their reintegration issues. (NIC, *Transition from Jail to Community*. Available at: <https://nicic.gov/resources/resources-topics-and-roles/topics/transition-jail-community-tjc>>[as of March 25, 2024].) Justice-involved individuals who have spent time in jails are at higher risk for poor health outcomes, injury, and death than the general public. They disproportionately risk trauma, violence, overdose, and suicide. (California Department of Health Care Services, *Transformation of Medi-Cal: Justice-Involved*. Available at: <https://www.dhcs.ca.gov/CalAIM/Documents/CalAIM-JI-a11y.pdf>> [as of March 25, 2023].)

The Steinberg Institute recently reported that, “Too many Californians with significant behavioral health needs find themselves languishing in our jails while their illness is left untreated. Counties report that 53 percent of people in county jails have an open mental health case, a figure that has more than doubled since 2010. While state-level information on substance use disorder prevalence is limited, national estimates find that over 60 percent of incarcerated people have a substance use disorder. These figures likely underestimate the true prevalence of behavioral health conditions among incarcerated individuals due to a lack of standardization in data tracking and reporting.” (The Steinburg Institute, *Misaligned: California’s Local Public Safety Funding Doesn’t Meet Today’s Needs*. Available at: <https://steinberginstitute.org/misaligned-californias-local-public-safety-funding-doesnt-meet-todays-needs/>> [as of March 25, 2023].)

Reducing recidivism and improving reentry outcomes require that jails collaborate with local organizations to meet the needs of incarcerated individuals upon their release. The NIC claims that it is imperative that jurisdictions “use an effective case management process that includes a strong community handoff component, particularly at the moment of release, and that ensures continuity of care between in-jail and community-based programs and services.” (NIC, *Case Management Strategies for Successful Jail Reentry*. Available at <https://s3.amazonaws.com/static.nicic.gov/Library/026912.pdf>>[as of March 25, 2023].)

Consistent with these recommendations, this bill would require county jails to provide each incarcerated person the contact information for the local social services agency, an alcohol or drug abuse resource, local homeless shelters, local mental health resources for counseling or therapy, and DSS.

- 3) **Argument in Support:** According to the *Transformative in-Prison Workgroup (TPW)*, “While recidivism most outwardly negatively affects both those committing harm and their families in a deep and destructive way, it also costs the State billions of dollars. A 2021-22

Legislative Analyst's Office report found that it costs an average of \$106,131 per incarcerated person per year. Given the State's current budget deficit, the state cannot afford to continue on its current track and must make every attempt possible to keep Californians out of prisons and jails.

"From our perspective, this is a bill long overdue. It is simple commonsense to provide released individuals with all of the available information to assist them in their reentry back into society. Many of our member organizations also provide services to their former in-prison participants, and we have come to learn of the lack of information provided. Rehabilitation is a process that continues after the person is released, and we strongly encourage the State to make every effort to enhance the likelihood of success. It is in everyone's best interests."

4) **Related Legislation:**

- a) AB 2142 (Haney) would establish a mental health pilot program at the California Department of Corrections and Rehabilitation (CDCR), that, among other things, would require CDCR to provide program participants with information about community-based treatment programs upon release from prison. AB 2142 is being heard by this Committee today.
- b) 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.
- c) SB 1254 (Becker) would require DSS to partner with CDCR and county jails to enroll applicants in the CalFresh program so that their benefits may begin before the reentry into the community from the state prison or county jail. SB 1254 is pending in Assembly Human Services Committee.

5) **Prior Legislation:**

- a) AB 857 (Ortega), Chapter 857, Statutes 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 3073 (Wicks), Chapter 225, Statutes of 2020, required DSS to issue an all-county letter with methods for county human services agencies to partner with CDCR and county jails to enroll incarcerated persons in the CalFresh program.
- c) AB 683 (E. Garcia), Chapter 45, Statutes of 2017, authorized specified counties to implement pilot programs to provide reentry services for individuals scheduled to be released from county jail.
- d) SB 833 (Liu), Chapter 90, Statutes of 2014, authorizes the sheriff to offer a voluntary program to a prisoner, upon completion of a sentence served or a release ordered by the court to be effected the same day, that would allow the prisoner to stay in the custody facility for up to 16 additional hours or until normal business hours, in order to offer the

prisoner the ability to be discharged to a treatment center or during daytime hours.

- e) AB 720 (Skinner), Chapter 646, Statutes of 2013, authorizes boards of supervisors, in consultation with county sheriffs, to designate entities to assist county jail inmates to apply for a health insurance affordability program.

REGISTERED SUPPORT / OPPOSITION:

Support

Defy Ventures
Transformative Programming Works (TPW)

Opposition

None submitted.

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 2822 (Gabriel) – As Amended March 11, 2024

SUMMARY: Requires a law enforcement officer to make a notation in a domestic violence incident report if they remove a firearm or other deadly weapon.

EXISTING LAW:

- 1) States that any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim is guilty of a felony punishable by imprisonment in state prison for two, three, or four years, or in county jail for not more than one year, or by a fine of up to \$6,000, or by both fine and imprisonment. (Pen. Code, § 273.5, subd. (a)).
- 2) Defines a “victim” as one or more of the following:
 - a) The offender’s spouse or former spouse;
 - b) The offender’s cohabitant or former cohabitant;
 - c) The offender’s fiancé or fiancée, or someone with the offender has or previously had, an engagement or dating relationship; and,
 - d) The mother or father of the offender’s child. (Pen. Code, § 273.5, subd. (b)).
- 3) States that battery against a spouse, a person with whom the defendant is cohabitating with, a person who is the defendant’s child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or previously had, a dating or engagement relationship, is punishable by a fine not exceeding \$2,000, or by imprisonment in county jail for a period of not more than one year, or by both fine and imprisonment. (Pen. Code, § 243, subd. (e)(1)).
- 4) Requires a law enforcement officer at the scene of a domestic violence incident involving a threat to human life or physical assault to take temporary custody of any firearm or deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. (Pen. Code, § 18250)
- 5) Requires law enforcement agencies to develop a system for recording domestic-violence-related calls made to the department, including whether weapons, strangulation, or suffocation were part of the incident. All domestic violence-related calls shall be supported with a written incident report. (Pen. Code, § 13730, subd. (a).)
- 6) Requires local law enforcement agencies to report and submit on a monthly basis the number of domestic violence calls received and the number of cases of involving weapons,

strangulation, or suffocation to the Attorney General. (Pen. Code, § 13730, subd. (a).)

- 7) States that the Attorney General will report annually to the Governor, the Legislature, and the public the total number of domestic-violence-related calls received by law enforcement, the number of cases involving weapons, the number of cases involving strangulation or suffocation, and a breakdown of calls received by agency, city, and county. (Pen. Code, § 13730, subd. (b).)
- 8) Requires law enforcement agencies to develop an incident report that includes a domestic violence identification code. The report shall be written and identified as a domestic violence incident and should include all of the following notations:
 - a) Whether the officer or officers who responded to the call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance;
 - b) Whether the officer or officers who responded to the call determined if any law enforcement agency has previously responded to a call at the same address involving the same alleged abuser and victim;
 - c) Whether the officer or officers who responded to the call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of the firearm or other deadly weapon; and,
 - d) Whether there were indications that the incident involved strangulation or suffocation. (Pen. Code, § 13730, subd. (c)(1)-(4).)
- 9) Requires DOJ to do all of the following to comply with criminal statistics:
 - a) Collect all data necessary for the work of the department from all persons and agencies;
 - b) Prepare and distribute to all those persons and agencies cards, forms, or electronic means used in reporting data, and in addition include items of information needed by federal bureaus or departments;
 - c) Recommend the form and content of records that must be kept by those persons and agencies;
 - d) Instruct those persons and agencies in the installation, maintenance, and use of those records;
 - e) Process, tabulate, analyze, and interpret the data collected;
 - f) Supply federal bureaus or departments engaged in the collection of national criminal statistic data at their request;
 - g) Make available to the public, through the department's OpenJustice Web portal, information relating to criminal statistics, to be updated at least once a year. The Attorney

General may approve reports on special aspects of criminal statistics;

- h) Periodically review the requirements of units of government using criminal justice statistics, and to make recommendations for changes; and,
 - i) Evaluate, on an annual basis, the progress of California's transition from summary crime reporting to incident based reporting. (Pen. Code, § 13010.)
- 10) Provides that any person who is convicted, on or after January 1, 2019 of a misdemeanor violation of domestic abuse and who subsequently, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, punishable by imprisonment in a county jail or in a state prison not exceeding one year, by a fine not exceeding \$1,000, or by both imprisonment and fine. (Pen. Code, § 29805, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2822 is a common-sense measure to address the all-too-often deadly intersection of domestic violence and gun violence by requiring law enforcement to note if they have removed a gun from the scene, as required by existing law. More than a million acts of domestic violence occur in the United States every year, and the presence of a firearm vastly increases the chance that violence will escalate to homicide. This bill will help ensure that we are keeping guns out of the hands of abusive partners and reducing incidents of gun violence and intimate partner violence."
- 2) **Domestic Violence Guidelines - California Commission on Peace Officer Standards and Training (POST):** In 2022 POST revised their guidelines for law enforcement officers when dealing with domestic violence incidents. The original publication on this topic was produced and provided to law enforcement in 1988.

The guidelines cover both what law enforcement officers are required to do by statute and best practices on how to approach these highly volatile situations. They cover, among other things, law enforcement arrests, weapons, children, and victim resources.

In their guidelines for deadly weapons, which includes firearms, they outline the following protocols:

WEAPONS

GUIDELINE 11 Weapons

- 1. Officers at the scene of a domestic violence incident involving a threat to human life or a physical assault shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search, as necessary for the protection of the officers or persons present (PC Section 18250).
- 2. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the

firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon (PC Section 18255).

3. If the weapon is not kept as evidence or contraband, and it can be lawfully possessed by the person in possession, officers shall keep the weapon for no less than 48 hours, nor more than five business days, after the seizure unless a civil action is to be filed (PC Section 18265).

4. If officers believe the return of the weapon or other deadly weapons taken pursuant to these provisions would likely result in endangering the victim or the person reporting the assault or threat, the officers or their agency may initiate a petition in Superior Court to determine if a firearm or other deadly weapon should be returned.

5. Officers should document the necessity, for the protection of the peace officer and/or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation [PC Section 13730 (c) (3)].

A person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provision of a temporary restraining, protective, or gun violence restraining order as defined in PC Section 136.2, FC Section 6218, or Code of Civil Procedure Sections 527.6, 527.8 or 527.85 shall be punished under PC Section 29825(a).

(https://post.ca.gov/Portals/0/post_docs/publications/Domestic_Violence.pdf) [on p. 14 as of Mar. 28, 2024]

- 3) **Data Collection, DOJ, and the OpenJustice Portal:** The California Department of Justice collects data on domestic-violence related calls for assistance directly from local law enforcement agencies. (See <[State of California Department of Justice - OpenJustice](#)>.) [as of Mar. 25, 2024]. Domestic violence calls that involved the use, or threat to use, of a firearm, knife or cutting instrument or other dangerous weapon are reported according to the type of weapon used regardless of the outcome or injury. There is also a separate category for the use of a personal weapon such as hands, fists, or feet if it is considered an aggravated assault under Uniform Crime Reporting (UCR) guidelines. An aggravated assault is an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury, such as broken bones, internal injuries, or cuts requiring stitches. Additionally, law enforcement must report if a domestic violence incident involved strangulation.

The total number of domestic violence related calls, which includes firearms, weapons, or strangulation and suffocation throughout the state has averaged 160,000 or more over the last five years. The portal also reports that there was an average of 2,200 domestic violence calls that involved firearms over the last three years. (<[State of California Department of Justice - OpenJustice](#) See 2013-2022 chart) [as of Mar. 25. 2024] It must be noted that while the DOJ strives for 100 percent accuracy, this is not always possible. Because different law enforcement agencies vary in their interpretation of “domestic violence”, the data collected

can have wide disparities.

This bill would require an officer or officers to make a notation in a domestic violence incidence report whether a firearm or other deadly weapon was removed. This data would presumably be included in future data on the OpenJustice website.

- 4) **Argument in Support:** According to *The California Partnership to End Domestic Violence*, “Since 1986, California has required law enforcement agencies to collect data pertaining to domestic violence calls, including whether weapons are involved. Every month, the data from this collection process is reported to the Attorney General. The Attorney General then produces an annual report to the Governor, Legislature, and public on domestic-violence related calls received by California’s law enforcement agencies.

“Unfortunately, existing law does not require law enforcement officers to note whether they have removed the firearm or other deadly weapon from the location of the domestic violence call. As a result, no state agency can track what happens to firearms if they are found at the scene. There is concern that some may not be collected right away, despite statutory requirements.

“According to the most recent data made available by the California Department of Justice in November, there has been an increase in domestic violence calls involving firearms since before the pandemic. However, advocates and law enforcement lack available data to discern whether or not firearms have indeed been removed in cases where they are involved.

“AB 2822 would address this problem by requiring law enforcement to record when they have removed a firearm or deadly weapon from the scene of a domestic violence call. This change will improve data tracking and accountability around existing firearm relinquishment efforts, and ensure this critical data is up to date.”

- 5) **Related Legislation:** AB 2759 (Petrie Norris), would revise the exemption in existing law pertaining to the issuance of a domestic violence protective order (“DVPO”) and the relinquishment of a firearm to clarify the court’s obligations in making determinations as to sworn peace officers carrying a particular firearm both on or off duty. AB 2759 is pending hearing in this committee today.
- 6) **Prior Legislation:**
- a) AB 1977 (Lackey), of the 2021-2022 Legislative Session, would have required local law enforcement agencies to specify whether a child was present during a domestic violence incident. AB 1977 was held on the Assembly Appropriations Suspense calendar, and subsequently returned to the desk without further action.
 - b) SB 40 (Roth), Chapter 331, Statutes of 2017, requires the domestic violence policies of local law enforcement agencies to include a statement informing the victim that strangulation may cause internal injuries and the victim should seek medical attention. SB 40 also requires law enforcement agencies to report if strangulation or suffocation were involved in domestic violence-related calls.

- c) AB 469 (Cohn), Chapter 483, Statutes of 2001, requires an officer or officers who respond to a domestic violence incident who finds it necessary for the safety of the peace officer or other persons present to inquire of the victim, the abuser, or both, as to whether a firearm or other deadly weapon is present at the location, and to make a notation on the incident report.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady California
Brady Campaign
California Partnership to End Domestic Violence
Giffords
March for Our Lives Action Fund

Opposition

None

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2833 (McKinnor) – As Introduced February 15, 2024

As Proposed to be Amended in Committee

SUMMARY: Establishes that an individual's participation in and communications related to restorative justice processes are inadmissible in civil and criminal proceedings. Specifically, **this bill:**

- 1) Provides that an individual's participation or nonparticipation in a restorative justice process and any restorative justice communication are not admissible or subject to disclosure, and disclosure cannot be compelled in any arbitration, administrative adjudication, civil action, criminal action, juvenile action, or other proceeding regardless of completion or outcome of the process.
- 2) Provides a restorative justice communication is not made inadmissible by this section if:
 - a) The participants in a facilitated dialogue under a restorative justice process all provide written consent that all or part of the communication may be disclosed, provided that such consent was knowing, intelligent, free of coercion, and voluntary. Where participants consent to a limited part of the communication, only that specific communication is subject to disclosure. Where a participant is deceased or cannot be located after reasonable efforts, their written consent is not required;
 - b) A participant, including, but not limited to, a mandated reporter, or other individual who is otherwise required by law to disclose the substance of the communication; or,
 - c) During the restorative justice process, a participant commits battery resulting in serious bodily injury or criminal threats, as specified, in which case only the parts of a restorative justice communication that are limited to that conduct are subject to disclosure.
- 3) Provide that evidence that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because it was discussed or used in a restorative justice process.
- 4) Provides that the provisions of this bill apply to restorative justice communications that occurred prior to the bill's enactment where the proceeding at which the admission is sought occurs after the bill's effective date.
- 5) Defines "restorative justice communication" as either of the following:

- a) All communications, written or oral, that are made as part of any phase of the restorative justice process, including referral, preparation, pre-enrollment, enrollment, post-enrollment, a facilitated dialogue, and post-dialogue phases of the process; or
 - b) All memoranda, work products, documents, and other materials that are prepared for or submitted in the course of, or in connection with, any phase of a restorative justice process, including referral, preparation, pre-enrollment, enrollment, post-enrollment, a facilitated dialogue, and post-dialogue phases of the process.
- 6) Defines “restorative justice process” as a facilitated, community-based process in which parties who have caused harm or who have been harmed and community members collectively gather to identify and repair harm to the extent possible. Restorative justice processes focus on accountability, hearing, and safety and on the harms, needs and obligations of all parties involved through a participatory process and may or may not include a dialogue between participants. This definition is not intended to include general restorative justice programming that is primarily focused on teaching and practicing restorative justice principles.
 - 7) Defines “participant” as a person who participates in a restorative justice program, including a facilitator, a person accused of or responsible for causing harm, a person who has been harmed, or participating community members.
 - 8) Includes legislative findings and declarations.

EXISTING LAW:

- 1) Provides that, except as provided hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post-conviction motions and hearings, or in any trial of a juvenile for a criminal offense, whether heard in juvenile or adult court. (Cal. Const., art. I, § 28, subd. (f), par. (3).)
- 2) Defines “relevant evidence” as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210.)
- 3) Provides that it is the public policy of this state that the principal goals of sentencing for hate crimes includes restorative justice for immediate victims of the hate crimes and for the classes of persons terrorized by the hate crimes. (Pen. Code, § 422.86, subd. (a)(3).)
- 4) Requires the “Victim Protections and Resources” card law enforcement is required to distribute to victims of crime to include information on the availability of community-based restorative justice programs and processes available to them, including those available in carceral settings. (Pen. Code, § 679.027, subd. (b)(3)(J).)
- 5) Requires money held in the California Department of Corrections and Rehabilitation’s Inmate Welfare Fund for the benefit of incarcerated people to be used for, among other things, funding for innovative programming by nonprofit organizations offering programs that have demonstrated success and focus on offender responsibility and restorative justice

principles. (Pen. Code, § 5006, subd. (a)(1)(D).)

- 6) Requires CDCR to establish the California Reentry and Enrichment Grant program to provide grants to community based organizations that provide rehabilitative services, including those that provide insight-oriented restorative justice and offender accountability programs. (Pen. Code, § 5007.3, subd. (a)(2)(B).)
- 7) Establishes the Second Chance Program and requires the committee formed by the Board of Community Corrections that makes recommendations on guidelines for the submission of grant proposals that, among other things, prioritizes proposals that advance principles of restorative justice while demonstrating a capacity to reduce recidivism. (Pen. Code, §§ 6046 & 6046.3, subd. (b)(2).)
- 8) Provides that when a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail of up to one year or by imprisonment in county jail for 2, 3, or 4 years. (Pen. Code, § 243, subd. (d).)
- 9) Provides that any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison. (Pen. Code, § 422, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2833 would provide comprehensive admissibility and confidentiality protections for all Restorative Justice processes that occur within the state. This would make clear that any information shared in the preparation for, in the course of, or pursuant to the Restorative Justice process is confidential and inadmissible in any future court proceeding."
- 2) **Restorative Justice:** This bill provides that an individual's participation or nonparticipation in a restorative justice process and any restorative justice communication are not admissible or subject to disclosure, and disclosure cannot be compelled in any legal proceeding.
According to one expert:

Unlike traditional criminal justice, restorative justice focuses on the accountability of the person who caused the harm, the needs of the wronged party, and the reintegration of both into society. Restorative processes seek to account for the needs of the person who caused the harm, the person or persons harmed, and the community, with the ultimate goal of repairing relationships and reducing recidivism. Through dialogue, the offending party can express accountability or remorse, and the victimized party may be able to

speed the process of healing through understanding and restitution.

One of the most common RJ processes is victim/offender mediation or conferencing, which is a process in which the wronged party and offending party meet together to discuss the event and determine the best resolution. Early versions of these programs used the term "victim/offender" mediation, focusing on the categorization of the parties as if they were in criminal court. Today many programs today use terminology such as the "person who caused harm" or the "victimized party" to emphasize the relationship between the two, as opposed to their procedural labels. Whatever the program is called, during the in-person meeting, the parties generally have three conversations, each from their own perspective: 1) What happened? 2) What are the effects of the incident? And 3) How can the situation be made better? Successful conferences usually result in reparation agreements, which might include apologies, restitution, community service, or other terms agreed on by the parties.

Intake processes determine whether cases are eligible for RJ. Some programs, for example, require a participant to admit fault or responsibility as a condition of participating. Using RJ is a challenge when an alleged offending party maintains innocence, although some programs allow participation if that party acknowledges accountability but not true remorse. Intake is also an excellent time to learn whether all the parties are interested in participating in the process and whether they can have a conversation and sit together.

Some parties may be willing to attend only if they can participate from different rooms, as happens in a caucus-based mediation. In other instances, a party, usually the wronged party, may not be willing to participate in a conference at all, as happened with Alyssa. Sometimes the wronged party has experienced trauma from the incident or is simply afraid of sitting in a room with the person responsible for the original harm. Occasionally, the person who was harmed may not appreciate the process, as Alyssa indicated, and its potential value to both parties. In cases involving youth-on-youth incidents, the underlying relationships may be complicated, as they were with Janie and Alyssa, with some level of fault or responsibility on both sides. Even if a party does not participate in the conference, during the intake process the facilitator can still determine what the person who was harmed would like to see out of the process - such as restitution, an apology letter, or other terms that are satisfactory to all concerned.

When the person who was harmed refuses to participate, the use of a victim surrogate allows an offending party to participate in the process - and gain from its benefits. A victim surrogate stands in the shoes of *but does not role-play as* the person who was harmed. The most effective victim surrogates are those who have lived through a situation similar to the case at hand. In the case of Janie and Alyssa, a good surrogate would be someone around their age who has endured bullying or a hateful act. The victim surrogate participates in the conference by sharing the surrogate's own story and how it affected the surrogate. The surrogate will know in advance the type of remedy that the person who was harmed is seeking and will be authorized to agree to a resolution on that person's behalf.

Even with a stranger sitting in the chair of the person who was harmed, the person who caused the harm can still realize many of the benefits of the RJ process. The offending

party must still account for his or her actions leading up to the incident and must listen to the surrogate's story about being the victim of a crime. In listening, the offending party may be able to empathize with the surrogate's situation and draw comparisons to his or her own past experience. Because the surrogate has authority to agree to a reparation agreement, the person who caused the harm will still be accountable to the harmed party and attempt to make that person whole.

(Blankley, *Expanding Options for Restorative Justice*, ABA Dispute Resolution Magazine (Mar. 31, 2020)

https://www.americanbar.org/groups/dispute_resolution/publications/dispute_resolution_magazine/2020/dr-magazine-criminal-justice-reform/expanding-options-for-restorative-justice/ [last visited Mar. 26, 2024].)

3) **Proposition 8 (Victim’s Bill of Rights) Requires Relevant Evidence to be Admitted:**

Proposition 8 was passed by the voters in 1982. Proposition 8 included a provision referred to as “Truth in Evidence.” The “Truth in Evidence” provision of Prop. 8 requires that all relevant information be admitted during a criminal trial. Courts cannot exclude any “relevant evidence” even if gathered in a manner that violates the rights of the accused. Courts are still required to exclude evidence if such exclusion is required by the U.S. Constitution.

Any statutory change by the Legislature which limits the introduction of relevant evidence must be passed by a two-thirds vote. This bill would make an individual’s participation in and communications related to restorative justice processes inadmissible in civil and criminal proceedings. As such, this bill requires a two-thirds vote of the Legislature.

- 4) **Argument in Support:** According to *Initiate Justice*, one of the bill’s co-sponsors, “Survivors and victims of harm often do not feel their needs are met, or that they have a meaningful opportunity to be heard, in traditional criminal and juvenile legal processes. Only 14% of California survivors surveyed in 2019 reported feeling ‘very supported’ by the criminal legal system after their experience of harm. Restorative Justice is a model that centers the needs of people who have been harmed and is rooted in indigenous practices. It is a community-based, non-punitive process that provides victims/survivors and their loved ones the opportunity to ask questions, share about the impact of harm, and engage in dialogue with the person who caused them harm. Restorative Justice processes have resulted in higher rates of satisfaction for victims and survivors than going through the criminal legal system. Victims and survivors have also reported reduced feelings of fear, anger, post-traumatic stress symptoms, and depression after going through a Restorative Justice process.

“Restorative Justice programs are effective tools for addressing conflict and harm within communities, an impact recognized this January 2024 in the results of a randomized control trial of San Francisco’s Make It Right program featured in peer-reviewed *Econometrica*. However, as noted in a recent R Street Institute policy paper, the ability for participants to speak freely without fear of repercussion is essential for the success of these processes. Currently, the absence of clear legal protections leaves individuals hesitant to engage fully in Restorative Justice, undermining its potential for healing and restoration.

“AB 2833 aims to remedy this situation by establishing comprehensive protections for all Restorative Justice processes in California to ensure that information shared in Restorative

Justice processes is inadmissible in future legal proceedings.”

5) Prior Legislation:

- a) AB 60 (Bryan), Chapter 513, Statutes of 2023, established the statutory right of victims of crimes to be informed that community-based restorative justice programs are available to them.
- b) AB 1165 (McCarty), Chapter 22, Statutes of 2023, would require a pupil in grades 4-12 who is suspended or recommended for expulsion from school for participating in hate violence, as defined, to participate in a restorative justice program provided by the school. AB 1165 is pending hearing the Assembly Education Committee.
- c) AB 1691 (Ortega), of the 2023-2024 Legislative Session, would have established the Community-Based Restorative Justice Grant Program to fund the implementation and operation of restorative justice programs that focus on individuals who have committed hate violence and the victims. AB 1691 was referred to, but did not receive a hearing in, this committee.
- d) AB 2167 (Kalra), Chapter 775, Statutes of 2022, requires a court presiding over a criminal matter to consider alternatives to incarceration, including restorative justice.
- e) AB 2598 (Weber), Chapter 914, Statutes of 2022, requires the Department of Education to develop evidence-based practices for restorative justice practice implementation in schools.
- f) AB 886 (Chiu), of the 2021-2022 Legislative Session, is substantially similar to AB 1691 (Ortega) above. AB 886 was held on suspense in the Assembly Appropriations Committee.
- g) AB 1670 (Bryan), of the 2021-2022 Legislative Session, would have created the Commission on Alternatives to Incarceration within the California Health and Human Services Agency to research, among other things, restorative justice practices and opportunities. AB 1670 was held on suspense in the Assembly Appropriations Committee.
- h) AB 160 (Committee on Budget), Chapter 771, Statutes of 2022, requires CDCR, if the victim has submitted a request for notice that an offender is being released from CDCR custody, to provide information to the victim about opportunities for victims or their family members to engage in restorative justice programs.
- i) SB 993 (Skinner), of the 2021-2022 Legislative Session, was substantially similar to AB 160 (Committee on Budget). SB 993 died on the inactive file in the Assembly.
- j) SB 678 (Glazer), of the 2019-2020 Legislative Session, would have established the Restorative Justice Pilot Program and required a report to the Legislature on the effectiveness of the program. SB 678 was held in suspense in the Senate Appropriations Committee.

- k) AB 2590 (S. Weber), Chapter 696, Statutes of 2016, revised existing legislative declarations concerning the purpose of punishment to instead state that the purpose of sentencing is public safety achieved through accountability, rehabilitation, and restorative justice, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Community Works (Co-Sponsor)
ACLU California Action
All of Us or None Bakersfield
Alliance for Boys and Men of Color
American Friends Service Committee
Bend the Arc California
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Public Defenders Association
Californians for Safety and Justice (CSJ)
Californians United for A Responsible Budget
Centinela Youth Services
Children's Defense Fund - CA
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Crime Survivors for Safety and Justice
Critical Resistance, Los Angeles
Ella Baker Center for Human Rights
Ensuring Opportunity Campaign
Felony Murder Elimination Project
Freedom 4 Youth
Freedom Within Project
Fresh Lifelines for Youth
Friends Committee on Legislation of California
Grip Training Institute
Healing Dialogue and Action
Indivisible CA Statestrong
Initiate Justice
Initiate Justice Action
James Morehouse Project
Law Enforcement Action Partnership
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoners With Children
Milpa Collective
National Youth Justice Network
Peace Anger Love
Rubicon Programs
Ryse Center
Sacred Purpose LLC

Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
Strawberry Creek Monthly Meeting, Peace, Earthcare and Social Witness Committee
Transformative Programming Works (TPW)
University of San Diego, Center for Restorative Justice
University of San Francisco School of Law | Racial Justice Clinic
Valorus
Young Women's Freedom Center
Youth Alive!
Youth Leadership Institute
Youth Will

1 Private Individual

Opposition

None

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

Amended Mock-up for 2023-2024 AB-2833 (McKinnor (A))

**Mock-up based on Version Number 99 - Introduced 2/15/24
Submitted by: Staff Name, Office Name**

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

SECTION 1. The Legislature finds and declares all of the following:

(a) According to the National Association of Community and Restorative Justice, “restorative justice” refers to a broad umbrella of practices that, at their core, are centered on victims, survivors, and accountability. Restorative justice processes are community based, nonpunitive, and voluntary. Using a restorative justice approach encourages accountability, healing, and repair amongst participants. While there are a wide variety of definitions for restorative justice, these core elements are present in restorative justice processes.

(b) As practiced by organizations like the California Conference for Equality and Justice, restorative justice processes progress through a series of skillfully facilitated meetings. Each process is approached intentionally, tailored to the individuals in the process, and seeks to avoid additional harm from being caused while empowering the participants to engage in collective problem solving. Thus, facilitators take their time building trust and relationships with all participants in order to create the safest environment possible for healing and accountability to occur.

(c) The Legislature has previously acknowledged the importance of a restorative approach when harm has occurred. See, e.g., Section 17.2 of the Penal Code. These processes provide extraordinary benefits to participants. They have resulted in lowering rates of future harm, often termed “recidivism,” and high rates of victim or survivor satisfaction.

(d) According to Robert Yazzie, Chief Justice Emeritus of the Navajo Nation, an integral part of restorative justice processes is for all participants to reflect, speak, and share freely. Survivors or victims can experience healing and restoration from hearing a person who caused harm share freely about what they did, the reasons for their actions, and what they are going to do to make things right. The benefits of restorative justice may be negated if participants are concerned that their statements may be used against them in a future court action.

SEC. 2. Section 1155.5 is added to the Evidence Code, to read:

1155.5. (a) For purposes of this section, the following terms have the following meanings:

(1) “Facilitator” means a person who facilitates a restorative justice process.

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(2) "Participant" means a person who participates in a restorative justice process, and may include a facilitator, a person accused of or responsible for causing harm, a person who has been harmed, or any participating community members.

~~(3) "Restorative justice communication" means either of the following:~~

~~(A) All communications, written or oral, that are made in the course of, or in connection with, any phase of a restorative justice process, including referral, preparation, preenrollment, enrollment, postenrollment, a facilitated dialogue, and post-dialogue phases of the process.~~

~~(B) All memoranda, work products, documents, and other materials that are prepared for or submitted in the course of, or in connection with, any phase of a restorative justice process, including referral, preparation, preenrollment, enrollment, postenrollment, a facilitated dialogue, and post-dialogue phases of the process.~~

(3) "Restorative justice communication" means either of the following:

(A) All communications, written or oral, that are made as part of any phase of a restorative justice process, including referral, preparation, preenrollment, enrollment, postenrollment, a facilitated dialogue, and post-dialogue phases of the process.

(B) All memoranda, work products, documents, and other materials that are prepared for or submitted in the course of, or in connection with, any phase of a restorative justice process, including referral, preparation, preenrollment, enrollment, postenrollment, a facilitated dialogue, and post-dialogue phases of the process.

(4) "Restorative justice process" means a facilitated, community-based process that focuses on accountability, healing, and safety. It may or may not include a dialogue between participants. It may also include other forms of communication, both written and oral. **in which parties who have caused harm or who have been harmed and community members collectively gather to identify and repair harm to the extent possible. Restorative justice processes focus on accountability, healing, and safety and on the harms, needs and obligations of all parties involved through a participatory process and may or may not include a dialogue between participants. This definition is not intended to include general restorative justice programming that is primarily focused on teaching and practicing restorative justice principles.**

(b) Except as provided in this section, an individual's participation or nonparticipation in a restorative justice process and any restorative justice communication are not admissible or subject to discovery, and disclosure shall not be compelled, in any arbitration, administrative adjudication, civil action, criminal action, juvenile action, or other proceeding regardless of completion or outcome of the process.

(c) A restorative justice communication is not made inadmissible by this section if:

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(1) The participants in a ~~facilitated dialogue under~~ a restorative justice process all provide written consent that all or part of the communication may be disclosed, provided that such consent was knowing, intelligent, free of coercion, and voluntary. Where participants consent to a limited part of the communication, only that specific communication is subject to disclosure. Where a participant is deceased or cannot be located after reasonable efforts, their written consent is not required.

(2) A ~~participant~~ **participant, including but not limited to, a mandated reporter, or other individual who** is otherwise required by law to disclose the substance of the communication.

(3) During the restorative justice process, a participant engages in conduct described in subdivision (d) of Section 243 or Section 422 of the Penal Code. Where a participant engages in conduct described in this ~~paragraph,~~ **paragraph against another participant,** only the parts of a restorative justice communication that are limited to that conduct are subject to disclosure.

(d) Evidence that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because it was discussed or used in a restorative justice process.

(e) This section applies to restorative justice communications that occurred prior to enactment of this section, where the arbitration, administrative adjudication, civil action, criminal action, juvenile action, or other proceeding at which admission is sought occurs after the effective date of this section.

~~SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~In order to ensure the consistent handling of restorative justice communications in ongoing proceedings occurring throughout the state as soon as possible, it is necessary that this act take effect immediately.~~

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2882 (McCarty) – As Introduced February 15, 2024

SUMMARY: Requires the participation of the heads of a county’s department of social services and department of mental health, as well as the head of the county alcohol and substance abuse programs, on each county’s Community Corrections Partnership executive committee of the local Community Corrections Partnership (CCP); and requires the CCP to submit the approved local plan for the implementation of the 2011 public safety realignment to the Board of State and Community Corrections (BSCC). Specifically, **this bill:**

- 1) Adds to the list of required participants on a local CCP a representative of a Medi-Cal managed care plan, as defined, that provides the Enhance Care Management benefit and a representative of a community-based organization with experience in successfully providing behavior health treatment services to person who have been convicted of a criminal offense.
- 2) Requires the plan to include an analysis and recommendations of how criminal justice resources may be spent as matching funds for other sources, including, but not limited to, Medi-Cal federal financial participation.
- 3) Expands the parties voting on a county plan for the implementation of the 2011 public safety realignment to include, the head of the county department of social services, the head of the county department of mental health, and the head of the county alcohol and substance abuse programs.
- 4) Provides that, in counties where one or more of the departments for social services, mental health, or alcohol and substance abuse programs are consolidated, the department head shall have the number of votes equivalent to the number of departments they represent.
- 5) Requires the local CCP to submit the accepted county plan annually to the BSCC.
- 6) Requires each county’s board of supervisors to attest that the plan has been accepted and is accurate before submitting it to BSCC.
- 7) Make the inclusion in the plan of recommendations to maximize the effective investment of criminal justice resources obligatory, rather than permissive, and requires the those recommendations to include recommendations regarding investment in housing services.
- 8) Requires the plan to include an analysis and recommendations of how criminal justice resources may be spent as matching funds for other sources, including, but not limited to, Medi-Cal federal financial participation.

- 9) Requires the plan to include quantifiable goals for improving the community corrections system, including, but not limited to, all of the following:
 - a) Reducing the daily jail population;
 - b) Reducing jail bookings;
 - c) Reducing the average length of jail stay;
 - d) Increasing postrelease connections to community-based behavioral health services for persons with a serious mental illness or substance use disorder; and,
 - e) Reducing rates of recidivism.
- 10) Requires county goals to include specific targets for reducing disparities for populations disproportionately represented in the community corrections system, including, but not limited to, individuals with a serious mental illness or substance use disorder, Black, Indigenous, people of color, and LGBTQ+ people.
- 11) Requires each county to submit the County Community Corrections Outcomes, Accountability, and Transparency report, as prescribed, annually to the BSCC.
- 12) Requires the report to include all of the following data and information:
 - a) The county's annual allocation of state and federal public safety funds, including for behavioral health care, by category;
 - b) The county's annual expenditure of state and federal public safety funds, including for behavioral health care, by category;
 - c) The amounts of annual and cumulative unspent state and federal public safety funds, including funds in a reserve account, by category;
 - d) The county's annual expenditure of county general funds and other funds, by category, on public safety, including for behavioral health care;
 - e) All administrative costs associated with community corrections, by category;
 - f) All contracted services, including behavioral health services, and the cost of those contracted services, by category;
 - g) The number of behavioral health calls for services received by 911 dispatch;
 - h) The number of jail bookings, including the number of people who screened positive for a serious mental illness or substance use disorder according to a validated behavioral health screening conducted when booked into jail, and the number of people who were confirmed as having serious mental illness or substance use disorder through a clinical assessment at the jail or as a result of data matching with state or local behavioral health

systems;

- i) Length of jail stay;
 - j) The number of people who have a serious mental illness or substance use disorder who are connected to community-based treatment and support upon release from jail or completion of community supervision, by release type;
 - k) The number of people enrolled in Medi-Cal prior to release from jail or completion of community supervision, by release type;
 - l) The number of people who have a serious mental illness or substance use disorder on community supervision, by release type; and,
 - m) The number of persons who are convicted of a new felony or misdemeanor committed within three years of release from custody or committed within three years of placement on supervision for a previous criminal conviction.
- 13) Requires county's board of supervisors to verify that the report is complete and accurate before it is submitted to the BSCC.
- 14) Requires the BSCC to create an accessible Community Corrections Outcomes, Accountability, and Transparency dashboard on its website that includes the following:
- a) Each county's plans, as specified; and,
 - b) The spending and outcomes data, as required, displayed so that changes in rates can be compared year over year and between counties.
- 15) Requires BSCC to ensure definitions, form, and manner of the data and information submitted, as specified, are consistent so that spending and outcomes data can be compared across counties.

EXISTING LAW:

- 1) Authorizes each county to establish in its treasury a Community Corrections Performance Incentives Fund (CCPIF). (Pen. Code, § 1230, subd. (a).)
- 2) Requires, in any fiscal year for which a county receives moneys to be expended for the implementation of this chapter, the moneys, including any interest, to be made available to the county's chief probation officer, within 30 days of the deposit into the fund, for the implementation of the community corrections program authorized by this chapter. (Pen. Code, § 1230, subd. (b).)
- 3) Requires the community corrections program to be developed and implemented by probation and advised by a local CCP, which is to be comprised of specified members. (Pen. Code, § 1230, subd. (b)(1) & (2).)

- 4) Requires funds allocated to probation to be used to provide supervision and rehabilitative services for adult felony offenders subject to local supervision, and to be spent on evidence-based community corrections practices and programs, as specified. (Pen. Code, § 1230, subd. (b)(3).)
- 5) Requires, despite broad discretion, the chief probation officer to devote at least 5 percent of all funding received to evaluate the effectiveness of programs and practices implemented with the allocated funds, except as specified. (Pen. Code, § 1230, subd. (b)(4).)
- 6) Requires each county local CCP to recommend a local plan to the county board of supervisors for the implementation of the 2011 public safety realignment. (Pen. Code, § 1230.1, subd. (a).)
- 7) Requires the plan to be voted on by an executive committee of each county's Community Corrections Partnership consisting of the chief probation officer as chair, the chief of police, the sheriff, the District Attorney, the Public Defender, the presiding judge of the superior court, or their designee, and one department representative as designated by the county board of supervisors for purposes related to the development and presentation of the plan. (Pen. Code, § 1230.1, subd. (b).)
- 8) Requires the plan to be deemed accepted by the county board of supervisors unless the board rejects the plan by a vote of four-fifths of the board, in which case the plan goes back to the Community Corrections Partnership for further consideration. (Pen. Code, § 1230.1, subd. (c).)
- 9) Permits, consistent with local needs and resources, the plan to include recommendations to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and programs, including, but not limited to, day reporting centers, drug courts, residential multiservice centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs. (Pen. Code, § 1230.1, subd. (d).)
- 10) Provides that it shall be the duty of the BSCC to collect and maintain available information and data about state and community correctional policies, practices, capacities, and needs, including, but not limited to, prevention, intervention, suppression, supervision, and incapacitation, as they relate to both adult corrections, juvenile justice, and gang problems. The board shall seek to collect and make publicly available up-to-date data and information reflecting the impact of state and community correctional, juvenile justice, and gang-related policies and practices enacted in the state, as well as information and data concerning promising and evidence-based practices from other jurisdictions. (Pen. Code, § 6027.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2882 will improve transparency and accountability of how we spend our county public safety funding. Doing so will ensure we use every dollar to its fullest potential and reach our goals of reduced recidivism."

- 2) **California Community Corrections Performance Act of 2009:** Existing law requires Judicial Council to submit an annual comprehensive report to the Governor and the Legislature on the implementation of the California Community Corrections Performance Act of 2009. (Pen. Code, § 1232.) In its most recent report, Judicial Council summarizes the act and its outcomes as follows:

The California Community Corrections Performance Incentives Act of 2009 (Sen. Bill 678) was designed to alleviate state prison overcrowding and save state General Fund monies by reducing the number of adult felony probationers sent to state prison—and to meet these objectives without compromising public safety. The SB 678 program allocates a portion of state savings from reduced prison costs to county probation departments that implement evidence-based supervision practices and achieve a reduction in the number of locally supervised felony offenders revoked to state prison. The program has been successful in supporting probation departments' increased use of evidence-based practices (EBPs) and lowering the percentage of individuals returned to custody without evident negative impact to public safety.

By lowering the number of supervised offenders sent to state prison through the SB 678 performance-based funding mechanism, the program has resulted in allocations to county probation departments ranging from \$88.6 million to \$138.3 million per fiscal year (FY), for a total of \$1.3 billion—including \$122.8 million in FY 2022–23 alone. In addition, in each of the years since the start of the SB 678 program, the state's overall revocation rate has been lower than the original baseline rate of 7.9 percent. And although the number of offenders revoked has decreased, California's crime rates have remained below the 2008 baseline levels, with no evidence to suggest that public safety has been negatively affected by the SB 678 program.

A fundamental component of SB 678 is the implementation of EBPs by county probation departments. SB 678 defines evidence-based practices as “supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.” Although no probation department in the state has fully implemented EBPs in all facets of supervision, findings from an annual survey indicate that the SB 678 program has been highly successful in increasing the levels of EBP implementation throughout the state. All components of EBPs measured in the survey are substantially higher than they were at baseline. The most significant advancements in EBP implementation occurred in the earliest stages of the program and have stabilized over time. Given these positive outcomes, the state and the counties have an interest in sustaining and expanding on the effectiveness of the SB 678 program.

(Judicial Council, *Report on the California Community Corrections Performance Act of 2009: Findings from the SB 678 Program* (2023) (Aug. 9, 2023) <[lr-2023-CA_Community_Corrections_Performance_Incentives_Act_2009_Penal-Code-1232.pdf](#)> [last visited Mar. 28, 2024].)

The Legislative Analyst's Office (LAO) also recently analyzed the effectiveness of the SB 678 program. Despite initial success, the LAO determined that it was “unclear whether the program continues to achieve its goals,” largely because of the difficulty proportioning the success between the SB 678 program and other policy changes. (*Achieving the Goals of the*

SB 678 County Probation Grant Program, LAO (Oct. 2023) p. 3
<<https://lao.ca.gov/reports/2023/4806/SB-678-Funding-Formula-101023.pdf>> [last visited Mar. 28, 2024].) The LAO recommended creating a new funding formula for the program, specifically one portion based on direct measures of performance and state savings and another portion designed to pay for specific evidence-based practices. (*Ibid.*) As to the latter portion, LAO recommended identifying EBPs to be funded; estimating the level of savings and award amounts for each EBP; establishing total amount for grants for EBPs; and establishing oversight on the use of EBPs. (*Id.* at pp. 19-20.)

This bill would require each county to submit a County Community Corrections Outcomes, Accountability, and Transparency report to BSCC on, among other things, the allocation and expenditure of public safety funds, the services with which it contracts, and specified data on outcomes of people participating in the program. This reporting requirement arguably would support the LAOs recommendation by providing information needed to determine how allocated funds can be spent most effectively.

- 3) **Criminal Justice Realignment:** This bill would require the participation of the heads of a county's department of social services and department of mental health, as well as the head of the county alcohol and substance abuse programs, on each county's Community Corrections Partnership executive committee. The committee votes on the county's local plan for implementation of Criminal Justice Realignment.

AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted Criminal Justice Realignment which, among other things, limited which felons could be sent to state prison, required that more felons serve their sentences in county jails, and affected parole supervision after release from custody. The purposes of Criminal Justice Realignment include reducing recidivism by facilitating the reintegration of low-level offenders into society, and managing incarcerated person more cost-effectively. (See Pen. Code, § 17.5, subd. (a)(5).) However, although not stated in the legislation, one of the main underlying reasons for realignment was concerns for prison overcrowding. (See LAO report: *Refocusing CDCR After the 2011 Realignment*, Feb. 23, 2012, p.3, <https://lao.ca.gov/analysis/2012/crim_justice/cdcr-022312.pdf> [last visited Mar. 28, 2024].)

To this end, realignment did two things: it changed the custodial setting where many persons convicted of a felony would serve their sentence, and it changed the repercussions for violations of supervision after release from custody. As a result, changes were made to how the California Community Corrections Performance Act of 2009 is funded. (Judicial Council, *supra*, at p. 1-2.)

Among other things, this bill would require the CCP to submit its plan for the implementation of the 2011 public safety realignment to the BSCC.

- 4) **Argument in Support:** According to the *Center on Juvenile and Criminal Justice*, "California has successfully decreased its reliance on incarceration, with the combined jail and prison population decreasing by 41% since 2007. However, those housed in county jails are increasingly in need of mental health care. The share of people incarcerated in California county jails with mental health needs has been steadily increasing in recent decades. Today, 53% of county inmates have mental health needs – up from approximately 20% in 2010.

“Local budgets have not adjusted to meet the needs of the new jail population. 46 counties spend less than 15% of Public Safety Realignment funding on behavioral health, according to an analysis conducted by the Steinberg Institute. 36 counties spend less than 10% of funding on behavioral health.

“Research consistently demonstrates that addressing the behavioral health needs of our justice-involved population reduces recidivism. If local budgets do not reflect the growing behavioral health needs of our jail population, we will not see improvement in reducing recidivism and our overreliance on incarceration.

“In 2011, California shifted responsibility for lower-level felony convictions from state prison and parole to county jail and probation. This major policy shift, known as public safety realignment, tasked counties with reducing recidivism through evidence-based programs, including behavioral health treatment. In exchange, counties received state funds—\$2 billion in fiscal year 2022-23—to carry out this work. Counties determine how annual public safety realignment funds are spent through a stakeholder process known as the Community Corrections Partnership (CCP). A subset of CCP members in each county vote on the final plan that guides how dollars are spent.

“Since public safety realignment, the mental health needs of California’s jail population have sharply risen. At the same time, the state has undertaken major behavioral health reforms intended to support this population and make improvements to how behavioral health data is reported. The largest of these reforms include: (1) the California Advancing and Innovating Medi-Cal (CalAIM) initiative enacted by the Department of Health Care Services (DHCS), including criminal justice components, and (2) Proposition 1, which, if approved by voters on the March 2024 ballot, will include justice-involved people as one focus population for billions of dollars in behavioral health funding.

“Currently, public safety realignment spending and outcomes data do not align with our behavioral health reforms, creating a knowledge gap that prevents California from leveraging every available dollar to meet our statewide goals of reducing recidivism and improving public safety. California now has the opportunity to leverage, expand, and coordinate services that will be invaluable for counties and, more importantly, clients.

“AB 2882 updates the public safety spending process to include broader stakeholder engagement, goal setting, and outcomes tracking. In so doing, this bill will ensure counties have the information to leverage every dollar and meet our statewide goals of reducing recidivism and improving the life outcomes of the community corrections population.”

- 5) **Argument in Opposition:** According to *Rural County Representatives of California*, “The objective of AB 2882 appears to seek reprioritization of an existing community corrections revenue stream to address the behavioral health treatment needs of justice-involved individuals. However, we are concerned that the measure focuses on the oversight and planning associated with a single subaccount in isolation, without considering (1) that the justice-involved population realigned to counties pursuant to AB 109 in 2011 has many needs, including but not limited to behavioral health treatment needs, (2) other revenue sources brought to bear in supporting the populations in counties’ care, and (3) other important policy changes that took place concurrent to 2011 Realignment, as well as more

recent initiatives that fundamentally revise behavioral health funding and service delivery at the local level.

“Our associations agree that the state and counties together must continue exploration of how best to improve behavioral health care for those in our communities, including justice-involved individuals. However, we have a number of specific concerns related to the approach contemplated in AB 2882.”

6) Prior Legislation:

- a) AB 1080 (Ta), Chapter 96, Statutes of 2023, requires the Legislative Analyst’s Office (LAO) to prepare a report evaluating the results of the Criminal Justice Realignment Legislation over the previous ten years.
- b) AB 1783 (Gallagher), of the 2017-2018 Legislative Session, as introduced, would have required the BSCC to collect and analyze data regarding recidivism rates of all persons who receive a felony sentence punishable by imprisonment in a county or who are placed on PRCS, as specified. AB 1783 was amended into an unrelated subject matter.
- c) AB 152 (Gallagher) of the 2017-2018 Legislative Session, would have required, commencing July 1, 2018, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2018, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2019. AB 1870 was held on the Assembly Committee on Appropriations' Suspense File.
- d) AB 1870 (Gallagher) of the 2015-16 Legislative Session, would have required, commencing July 1, 2017, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2017, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2018. AB 1870 was held on the Assembly Committee on Appropriations' Suspense File.
- e) AB 602 (Gallagher), of the 2013-14 Legislative Session, would have required, commencing July 1, 2016, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2016, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2017. AB 602 was held on the Assembly Committee on Appropriations' Suspense File.
- f) AB 2521 (Hagman), of the 2013-14 Legislative Session, would have required, commencing July 1, 2015, BSCC, in consultation with specified stakeholders, to collect and analyze data regarding recidivism rates of all persons who are sentenced and released on or after July 1, 2015, pursuant to 2011 realignment, as specified. This bill would have required the data to be posted quarterly on the BSCC website beginning September 1, 2016. AB 2521 was held on the Senate Committee on Appropriations' Suspense File.
- g) AB 109 (Committee on Budget), Chapter 15, Statutes of 2011, enacted Criminal Justice Realignment which, among other things, limited which felons could be sent to state

prison, required that more felons serve their sentences in county jails, and created PRCS.

- h) SB 678 (Leno), Chapter 608, Statutes of 2009, created the California Community Corrections Performance Incentives Act of 2009 which would establish a system of performance-based funding to support evidence-based practices relating to the supervision of adult felony probationers.

REGISTERED SUPPORT / OPPOSITION:

Support

Anti Recidivism Coalition
California Alliance for Youth and Community Justice
California State Association of Psychiatrists (CSAP)
Californians for Safety and Justice
Californians United for A Responsible Budget
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice (CURYJ)
Felony Murder Elimination Project
Friends Committee on Legislation of California
Initiate Justice
LA Defensa
Nami Contra Costa
Rubicon Programs
Santa Cruz Barrios Unidos
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
Steinberg Institute
The Miles Hall Foundation
Vera Institute of Justice
Young Women's Freedom Center

1 Private Individual

Opposition

California State Sheriffs' Association
Chief Probation Officers' of California (CPOC)
CSAC
Rural County Representatives of California
Urban Counties of California (UCC)

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Kevin McCarty, Chair

AB 2913 (Gipson) – As Introduced February 15, 2024

SUMMARY: Requires a law enforcement agency (“LEA”), as specified, to perform a review of any open homicide investigation case file, upon written application by a designated person, as defined, to determine if reinvestigation would result in probative investigative leads.

Specifically, **this bill:**

- 1) States any LEA must review an open unsolved homicide case file to determine if a reinvestigation would result in probative investigative leads, when requested pursuant to a written application by a designated person, as specified.
- 2) Requires a LEA case file review to include all of the following:
 - a) An analysis of the investigative steps or follow-up steps that may have been missed in the initial investigation;
 - b) An assessment of whether witnesses should be interviewed or re-interviewed;
 - c) An examination of physical evidence to see if all appropriate forensic testing and analysis was performed in the first instance or if additional testing might produce information relevant to the investigation; and
 - d) An update of the case file to bring it up to current investigative standards to the extent doing so would help develop probative leads.
- 3) Mandates any person performing the case review may not be a person that previously investigated the murder.
- 4) Requires the applicable LEA to confirm receipt of a request to perform a case review and provide the applicant notice of their rights.
- 5) States that only one case review may be undertaken at any one time with respect to the same open unsolved murder victim.
- 6) Mandates if more than one investigative agency is involved in a homicide investigation, each investigative agency shall coordinates its case file review such that there is only one case file review at a time.

- 7) States no later than 90 days after the receipt of the written application for a case review, the applicant agency is required to conclude its case file review and reach a conclusion whether reinvestigation is warranted.
- 8) Provides that a LEA may extend the 90 day time limit for a period not to exceed 45 days if the LEA makes a finding that the number of case files to be reviewed makes it impracticable to comply with said limits without unreasonably taking resources from other law enforcement activities.
- 9) States for cases wherein the 90-day time limit is extended, the LEA shall provide notice and an extension of its reasoning to the designated person who filed the written application.
- 10) Mandates each LEA develop a written application for a designated person to request a case file for review.
- 11) Requires each agency to assign a person or a department responsible for receiving and processing applications for case file reviews and ensuring that the agency meets all deadlines and obligations generated by the application receipt.
- 12) Requires any LEA to conduct a reinvestigation of the open unsolved murder at issue if the review of the case file determines a reinvestigation of an open unsolved murder would result in probative investigative leads.
- 13) Provides that a reinvestigation must include analyzing all evidence regarding the open unsolved murder at issue for the purpose of developing probative investigative leads as to the suspect or suspects.
- 14) States the applicable agency shall consult with the designated person who filed the written application and provide them with periodic updates during the case file review and reinvestigation.
- 15) Requires the LEA to meet with the designated person and discuss the evidence to explain to the designated person who filed the written application the agency's decision on whether or not to engage in a reinvestigation at the conclusion of the case file review.
- 16) States if a case file is completed and the conclusion is not to conduct a investigation, no additional case file review shall be undertaken for a period of five years, unless there is newly discovered, materially significant evidence.
- 17) Provides that a LEA may continue an investigation absent a designated person's application for a new case file review.
- 18) States if a reinvestigation is done and a suspect is not identified at its conclusion, no additional case file review or reinvestigation needs to be conducted for a period of five years, unless there is newly discovered, materially significant new evidence.

19) Defines the following terms:

- a) "Agency" means any LEA in California.
- b) "Applicable Agency" means any LEA that is investigating or has investigated the murder of the victim.
- c) "Designated person" means any immediate family member or similarly situated person, or their designed legal representative who is a member in good standing with the State Bar of California.
- d) "Immediate family member" means a parent, parent-in-law, legal guardian, grandparent, grandparent-in-law, sibling, spouse, child, or stepchild of a murder victim or any person who exercised in loco parentis over a victim under 18 years of age.
- e) "Murder" is defined as any violation of Penal Code section 187.
- f) "Open unsolved murder" means a murder that meets the following requirements:
 - i. The murder was committed more than a year prior to the date of the application for a case review by a designated person, as specified.
 - ii. All probative investigative leads have been exhausted.
 - iii. No suspect has been identified;
 - iv. The Murder was committed after January 1, 1990.
- g) "Victim" means the person against whom an open homicide murder was committed.

EXISTING LAW:

- 1) Defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187, subd. (a).)
- 2) States the definition of murder does not apply to any person who commits an act that results in the death of a fetus if any of the following apply:
 - a) Any action that complies with the former Therapeutic Abortion Act or the Reproductive Privacy Act;
 - b) The action was committed by a holder of a physician's and surgeon's certificate, as defined in the Business and Professions Code, in a case where, to a medical certainty, the result of childbirth would be death of the person pregnant with the fetus or where the pregnant person's death from childbirth, although not medically certain, would be

substantially certain or more likely than not.

- c) It was an act or omission by the person pregnant with the fetus or was solicited, aided, abetted, or consented to by the person pregnant with the fetus.
- 3) Defines “express malice” as any time when there is manifested a deliberate intention to unlawfully take away the life of a fellow creature. (Pen. Code, § 188, subd. (a)(1).)
- 4) Defines “implied malice” as when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. (Pen. Code, § 188, subd. (a)(2).)
- 5) States that if it is shown that the killing resulted from an intentional act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite that awareness is included within the definition of malice. (Pen. Code, § 188, subd. (b).)
- 6) States that the Public Records Act does not require disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the California Office of Emergency Management (Cal OES), and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 7923.600, subd. (a).)
- 7) Establishes in Cal OES, a program of financial assistance to provide for statewide programs of education, training, and research for local public prosecutors and public defenders and all funds made available to Cal OES for the programming offered to prosecutors and public defenders shall be administered and distributed by the Director of Cal OES. (Pen. Code, § 11501.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2913, the California Homicide Victims' Families' Right Act, would create a procedure for family members of homicide victims to request that law enforcement conduct a review of an open unsolved homicide case file to determine whether a full reinvestigation would result in new, probative investigative leads. This legislation is essential for the countless families that have lost a loved one to unlawful violence."

“California law does not contain uniform rights for families of homicide victims to request review of open unsolved homicide cases. Currently, when a family member of a murder victim reaches out to law enforcement to inquire about an open unsolved case, there is no

uniform process for law enforcement to respond to and engage with those inquiries. There is no requirement that law enforcement review the case file to determine whether additional investigation might uncover new probative leads. There is also no requirement to reopen a case file for reinvestigation if a review of the initial investigation findings by a person other than the initial investigator determines that reinvestigation is warranted.

“Solving gun crimes can be an important part of preventing gun violence, particularly retaliatory gun violence, and it can help provide closure to victims’ families. The absence of uniform statewide rights for families of homicide victims can harm communities and may be an exacerbating factor in case clearance rate disparities around the state. Many of California’s cities that are being hit the hardest by increases in gun violence also have homicide clearance rates well below the state average. Grieving families often want more information about the status of their loved one’s case, but there is no uniform process around the state for families to request further review of an unsolved case.

“AB 2913 also brings a critical component of communication between law enforcement and homicide victims’ family members by requiring that the agency consult with the family member who requests a case file review, provide periodic updates to them, and meet with them to discuss the evidence and decision regarding whether to conduct a full reinvestigation. While communication touchpoints and transparency may be routine in some jurisdictions, there is no assurance they will occur in areas where there is mistrust between law enforcement and the community. This bill seeks to improve inequities in case clearance rates and the experiences of grieving families.

- 2) **Requirements of Disclosure of Law Enforcement Investigation Records:** Enacted in 1968, the California Public Records Act (CPRA) grants public access to public records held by state and local agencies. (Gov. Code, § 7920.000 *et seq.*)

“Modeled after the federal Freedom of Information Act (5 U.S.C. § 552 *et seq.*), the [CPRA] was enacted for the purpose of increasing freedom of information by giving members of the public access to records in the possession of state and local agencies. [Citation.] Such ‘access to information concerning the conduct of the people’s business,’ the Legislature declared, ‘is a fundamental and necessary right of every person in this state.’”

(Castañares v. Superior Court (City of Chula Vista) (2023) 98 Cal.App.5th 295, 304, citing Los Angeles County Bd. of Supervisors v. Superior Court (ACLU of Southern California) (2016) 2 Cal.5th 282, 290)

The CPRA generally prohibits disclosure of police investigation records unless the investigation is *closed*. (See Gov. Code, § 7923.600, subd. (a); former Gov. Code, § 6254, subd. (f).) A closed investigation is not the same as an investigation that may be slow or even cold. A closed investigation often means the suspect was identified and the police have passed that information on to the district attorney or the suspect was arrested and tried to resolution.

The CPRA police records provision requires LEAs to provide certain information derived from investigative records *and* permits the withholding of information wherein disclosure: (a) would endanger the safety of a witness or other person, (b) would endanger the successful completion of an investigation, or (c) reflects the analysis or conclusions of investigating officers. (*Williams v. Superior Court [Freedom Newspapers, Inc.]* (1993) 5 Cal.4th 337, 349.)

This bill does not require disclosure of police investigative records, but it does require the police to provide details about the investigation as part of the rights granted to the designated person. As a general matter, that may include the “analysis or conclusions of investigating officers.” Therefore, it is unclear what effect, if any, this bill would have on the CPRA exemption for police investigation files.

- 3) **Public Law 117-164:** In 2021, despite massive gridlock in Congress, a fairly non-controversial bill was signed into law – the Homicide Victims’ Families’ Rights Act. (See 34 U.S.C. § 60901.) Public Law 117-164 requires a federal LEA to review a *cold* case file upon written application by a designated person. This bill appears modeled on the federal law; although there are some important differences.

First, the federal law states any review must be of a “cold case.” (See 34 U.S.C. § 60901, subd. (a).) “Cold case” is defined in the law as: (a) committed more than *three* years prior to the application for case review; (b) previously investigated by federal law enforcement; (c) for which all probative investigative leads have been exhausted; and (d) for which no likely perpetrator has been identified. (See 34 U.S.C. § 60911, subd. (6)(A-D).) Second, the federal law contains an exception depending on the status of the case. Specifically, section 60901, subdivision (c) states:

“In any case in which a written application for review has been received under this Act by the agency, review shall be unnecessary where the case does not satisfy the criteria for a cold case murder. In such a case, the head of the agency shall issue a written certification, with a copy provided to the designed person that made the application under subsection (a), stating that final review is not necessary because all probative investigative leads have been exhausted or that a likely perpetrator will not be identified.”

This bill states that a person may demand a case review for any “open unsolved homicide” meaning: (a) the murder was committed more than one year prior to the date of the application for a case review; (b) the murder was previously investigated by an agency; (c) all probative investigative leads have been exhausted; (d) no suspect has been identified; and (e) the murder was committed after January 1, 1990. (See proposed Penal Code section 11484, subd. (f).)

It is not clear in this bill whether a designated person is entitled to the specifics of a case file or records from the case file. However, proposed section 11488, subdivision (a) requires the LEA to discuss the evidence with the designated person. As noted above, the CPRA prevents

disclosure of police investigation records where it: (a) would endanger the safety of a witness or other person, (b) would endanger the successful completion of an investigation, or (c) reflects the analyses or conclusions of investigating officers. Presumably, the LEA could simply reject the application as a violation of the CPRA if the discussion resulting from a case review involved details from records that are not otherwise subject to disclosure. (See generally, *Fredericks v. Superior Court [City of San Diego]* (2015) 233 Cal.App.4th 209, 217.)

- 4) **Possible Unintended Consequences:** This bill is laudable in its intent – but there may be unintended consequences that may require further amendments to avoid. Most certainly, Black, Indigenous, and People of Color face unprecedented failure rates in solving homicides. Indigenous women and girls and Trans women of color suffer the highest rates of homicide and one of the lowest solve rates.¹ However, it is not clear from this bill how those homicides will receive more attention and resources in order to close those cases and bring a perpetrator to justice.

Furthermore, this bill allows a case review for any case that has not been solved in a year. That is a short period of time for most LEAs depending on the nature of the homicide. For instance, homicides that occur during the commission of other criminal activity often require cooperation from people that either have no incentive to speak to a LEA or have an affirmative motive not to cooperate with a LEA for a host of reasons. As a result, it may take time to gather enough information sufficient to prosecute a defendant for the homicide when the LEA or the District Attorney has sufficient leverage to get people to share what they know.

On the other hand, singular stranger homicides may be very difficult to solve and require days, weeks, even months of painstaking work to bring to a resolution. This bill requires a LEA to review a file after a year and where there is no “identified suspect.” However, in many cases, homicide detectives may have identified a “person of interest” who has become the focus of the investigation, but they do not yet have enough information to seek a search warrant or arrest warrant for the person. For instance, in the case of New York real estate mogul Robert Durst, he ultimately admitted he killed multiple people after many years of being the NYPD’s and LAPD’s top person of interest in the killing of Durst’s first wife, Kathleen McCormack Durst and friend Susan Berman.² If this bill means to track the federal legislation, it should consider whether a review is only appropriate where there is no person of interest identified and only after several years. As noted above, the federal law allows a case review after three years.

¹ See Sanctuary for Families (2023), “*The Silent Epidemic of Femicide in the United States*,” located at <https://sanctuaryforfamilies.org/femicide-epidemic/#:~:text=Trans%20women%20and%20women%20of%20color%20face%20a%20disproportionate%20risk&text=For%20indigenous%20women%20and%20girls,for%2094%25%20of%20those%20homicides>.

² McFadden, “*Robert Durst, Real Estate Scion Convicted as Killer, Dies at 78*,” *New York Times*, p. A1 (Jan. 11, 2022).

Additionally, it is not clear how a LEA may respond if the designated person requesting a case review is a person of interest in the homicide – or at the very least has not been eliminated as a potential suspect. For instance, in many cases wherein a spouse is murdered, the other spouse is usually a person of interest that police seek to include or exclude early in the investigation. If a spouse is a person of interest, that person may seek a case review to determine how much progress law enforcement has made in solving the crime they themselves committed. Could that affect the integrity of the investigation if the spouse is ultimately arrested later? The author may wish to consider a more narrow approach that focuses on cases that are five or more years old and have clearly become cold cases. It may also make sense to instead fund more conviction integrity units and LEA cold case squads to reinvestigate cases that may benefit from newer scientific methods or more up to date investigation practices.

Also, this bill allows a designated person that is an “immediate family member or a *similarly situated person*” to request a case review. It is unclear whether who a “similarly situated person” is, but both this bill and the federal statute further define immediate family member. Therefore, “similarly situated person” may be interpreted as any person who had an immediate family member die by homicide since they are similarly situated in that respect. The author may wish to provide further detail on that language to ensure LEAs are not required to do case review for people who are not immediate family members, as defined.

- 5) **Argument in Support:** According to *Everytown for Gun Safety*: AB 2913 creates a straightforward process to improve homicide case clearance rates. AB 2913 allows a homicide victim’s family member to request a case file review of their loved one’s open unsolved homicide case in specific circumstances. The bill requires law enforcement to provide a “fresh set of eyes” to unsolved cases by ensuring that the person who conducts a case file review is not the same person who initially investigated the case. The review must include: an analysis of what investigative leads may have been missed in the initial investigation, an assessment of whether witnesses should be interviewed or re-interviewed, an examination of physical evidence to confirm all appropriate forensic testing and analysis was performed, and an update to the case file to bring it up to current investigative standards (to the extent doing so would help develop probative leads). If, and only if, the officer conducting a case file review determines that a reinvestigation of the open unsolved homicide case would result in probative investigative leads, the agency must conduct a full reinvestigation of the unsolved case.

AB 2913 centers trauma-informed transparency and equitable access to justice. Facing barriers to getting basic information about the status of a loved one’s case compounds grief and sorrow. The lasting and damaging impact of grieving families’ negative interactions with law enforcement has been described in a U.C. Berkeley School of Law report based on in-depth interviews with family members of murder victims in Oakland, California. The report described “widespread awareness among community-based advocates that OPD is typically unresponsive to family members’ requests for information about an investigation” and cites the experience of many family members for whom “interaction with law enforcement was a frustrating, painful, or humiliating experience.” Additional research indicates that family members in unsolved cases may fear for their safety, lose faith in the legal system, and conclude that their loved one was not valued. 2 AB 2913 will increase transparency and

communication between law enforcement and homicide victims' family members by requiring that the law enforcement agency consult with the family member who requests a case file review.

The bill also requires law enforcement to provide the family member with periodic updates during the case file review process and, if applicable, during the reinvestigation of the unsolved case. Additionally, law enforcement agencies must meet with the family member who requested a case file review to discuss the evidence and explain the agency's decision regarding whether to conduct a full reinvestigation. Notably, while building in these interaction points between law enforcement and the victims' family, AB 2913 acknowledges that certain cases may require particular details to be excluded from those communication touchpoints. The bill specifically states that it does not require an agency to provide information that would (1) endanger the safety of any person, (2) unreasonably impede an ongoing investigation, (3) violate a court order, or (4) violate a legal obligation regarding privacy.

Solving gun crimes is an important component of preventing gun violence. By creating a process to review unsolved cases and improve clearance rates, AB 2913 activates an intervention point in the criminal justice process which may help break cycles of gun violence. Low case clearance rates are a unique feature of America's gun violence crisis: homicides committed with guns take longer to solve and are solved less often. 4 Homicides involving firearms are 22.1% less likely to be solved than homicides with other weapons. 5 California's statewide case clearance rate for homicides has been at or under 65% for the last decade, meaning that over 1/3 of homicides go unsolved statewide. 6 Many of California's cities and counties with disproportionately high gun violence rates have homicide clearance rates below the state average. Research also consistently shows that when the victim of gun violence is Black, cases are less likely to be solved. This trend is true both at the individual and broader geographic levels. Areas with higher proportions of Black residents have lower homicide clearance rates than areas with higher proportions of white residents. In California, where Black people are twelve times more likely to die by gun homicide than white people, 10 there is an inequitable impact of law enforcement's difficulty solving gun homicide cases. AB 2913 offers new tools to begin repairing these inequities by creating a uniform process for victims' families to communicate with law enforcement investigators, provide information about unsolved cases, and ensure that the most up-to-date investigative methods have been used.

The failure to solve cases, or to reliably interact with victims' families, can exacerbate community mistrust in law enforcement. This mistrust, in turn, impedes law enforcements' ability to solve gun crimes. Taking steps to improve homicide case clearance rates by solving more gun crimes can increase community trust in law enforcement and break cycles of gun violence, including retaliatory violence.

AB 2913 brings important pathways towards transparency and healing to grieving families in California, and will ensure open unsolved homicide cases receive robust and modernized investigation."

- 8) **Argument in Opposition:** According to the *Peace Officers Research Association (PORAC)*: AB 2913 would require an applicable law enforcement agency to review the casefile regarding an open unsolved murder upon written application by a designated person to

determine if a reinvestigation would result in probative investigative leads. The bill would define an open unsolved murder as a murder committed more than one year prior to the date of the application for case review, that was investigated by a law enforcement agency, was committed after January 1, 1990, where all probative investigative leads have been exhausted, and for which no suspect has been identified. If the review determines a reinvestigation would result in probative investigative leads, this bill will require a reinvestigation. AB 2913 would also prohibit a reinvestigation from being conducted by a person who previously investigated the homicide at issue and would allow only one reinvestigation to be undertaken at any one time with respect to the same victim.

PORAC is opposed to AB 2913 because Cold Case Unit managers are best positioned to allocate their investigative resources, prioritizing cases that can be solved with new tactics, training, and technology. This bill allows the public to reprioritize Cold Case work without any of that requisite knowledge.

Also, this bill's definitions, requirements, parameters, and time frames are arbitrary, vague, and problematic. For example, it defines an open unsolved murder as "No suspect has been identified." Frequently the family, the community, and the investigators "know" who did it, but the evidence is not at a point where anyone can be arrested.

AB 2913 does not understand the extensive amount of time and dedication applied to homicide cases. For example, in January 2024, San Diego Police made an arrest on an October 2021 case. That's three years after the case was opened. Since the murder, the assigned Homicide team had worked on this case continuously.

Lastly, this bill will have many negative consequences. This bill requires meeting with the requestor and discussing evidence. That is an appalling concept that destroys the integrity of investigations. Many Cold Cases are solved because law enforcement was able to go back and obtain information from a suspect that was never made public. The investigation and arrest are credible only because information was protected. By discussing evidence, we are essentially torpedoing cases that future technology might allow us to solve!"

- 6) **Related Legislation:** AB 2944 (Waldron) authorizes the Governor to appoint a Red Ribbon Panel to address the murdered or missing indigenous persons (MMIP) crisis, and require the panel to produce and submit, by January 1, 2026, a study with recommendations to address the MMIP crisis to tribes, California's federal elected officials, the Legislature, counties, cities, and federal, tribal, state, county, and local law enforcement agencies. AB 2944 is pending hearing in this committee.

7) **Prior Legislation:**

- a) SB 16 (Skinner), Chapter 402, Statutes of 2021, expands the categories of police personnel records that are subject to disclosure under the CPRA and modifies existing provisions regarding the release of records subject to disclosure.

- b) SB 1421 (Skinner), Chapter 988, Statutes of 2018, permits inspection of specified peace and custodial officer records related to officer involved misconduct pursuant to the CPRA.

REGISTERED SUPPORT / OPPOSITION:

Support

Equality California
Keyz 2 the Future
Lucas Frerichs – Yolo County Supervisor
March for Our Lives Action Fund
Moms Demand Action
Motivated 2 Help Others
Smart Justice California, a Project of Tides Advocacy
Youth Alive!

Opposition

California State Sheriffs Association
Peace Officers Research Association of California (PORAC)

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

Date of Hearing: April 2, 2024

Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Kevin McCarty, Chair

AB 2923 (Jones-Sawyer) – As Introduced February 15, 2024

SUMMARY: Raises the standard under which a person who files an allegation of misconduct against a peace officer can be charged for a misdemeanor for making false statements, and amends peace officer complaint forms to inquire whether the complaint includes an allegation of racial or identity profiling. Specifically, **this bill:**

- 1) Provides that a person who files an allegation of misconduct against a peace officer, who knowingly and intentionally makes a false statement that is material and is made with the intent that the false statement will be used as a basis to punish a peace officer, is guilty of a misdemeanor.
- 2) Provides that statements made by a person filing an allegation of misconduct against a peace officer that are in dispute shall not be the basis for prosecution.
- 3) Modifies the written advisory that must be provided to complainants by law enforcement agencies receiving an allegation of misconduct against peace officers as follows:
 - a) States that the law enforcement agency may find, after investigation, that there is sufficient evidence supporting the complaint and the department is required to take action and provide the complainant with notice of their decision.
 - b) States that the complainant will not be punished or penalized for making a complaint.
 - c) States that it is against the law to make a complaint that contains material false statements if the person knows the statements to be false and intentionally makes the false statements with the intent to improperly take action against the peace officer.
 - d) Provides that the prohibition against making false statements does not include a statement of facts that the complainant, in good faith believed to be true, but is disputed by the officer.
- 4) Requires peace officer complaint forms to include a provision inquiring whether the complaint includes an allegation of racial or identity profiling and a space to describe the allegation.
- 5) Requires each department or agency to develop a process whereby a member of the public may submit a concern about a policy, procedure, or practice of the department including, but not limited to, that the policy or procedure may violate a legal right of an individual, or may result in harm to an individual.

- 6) Specifies that if the department or agency investigating the policy or procedure discovers conduct that could be a basis for a complaint by a member of the public against a peace officer employed by such department, the investigator shall report this conduct to a supervisor, and the issue shall be tracked and separately investigated. Concerns submitted pursuant to this process are not “complaints”.
- 7) Defines a “complaint” to mean “a report, given either in writing or verbally, that brings to the attention of a department or agency an incident during which the complainant perceives that a department or agency employee engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or a violation of any law, rule, policy, or regulation of the department or agency.”

EXISTING LAW:

- 1) Prohibits peace officers from engaging in racial or identity profiling. (Pen. Code, § 13519.4, subd. (f).)
- 2) Defines “racial or identity profiling” as the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. (Pen. Code, § 13519.4., subd. (e).)
- 3) Provides that a person who files an allegation of misconduct against any peace officer, knowing the allegation to be false, is guilty of a misdemeanor. (Pen. Code, § 148.6, subd. (a)(1).)
- 4) Provides that a law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign an advisory that states the following:

“You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate civilians’ complaints. You have a right to a written description of this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Civilian complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.

It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.

I have read and understood the above statement.” (Pen. Code, § 148.6, subd. (a)(2).)

- 5) Requires the above advisory to be available in multiple languages. (Pen. Code, § 148.6, subd. (a)(3).)
- 6) Provides that person who files a civil claim against a peace officer or a lien against their property based on actions arising in the course and scope of the officer's duties, knowing it to be false and with the intent to harass or dissuade the officer from carrying out their official duties, is guilty of a misdemeanor. (Pen. Code, § 148.6, subd. (b).)
- 7) Requires a department or agency employing peace officers or custodial officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public. (Pen. Code, § 832.5, subd. (a).)
- 8) Mandates a department or agency to release to the complaining party a copy of the complaining party's own statements at the time the complaint is filed. (Pen. Code, § 832.7, subd. (c).)
- 9) Requires the law enforcement agency to provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition. (Pen. Code, § 832.7, subd. (f)(1).)
- 10) Requires the complaints and any reports or findings relating to these complaints to be retained for a period of at least five years for records where there was not a sustained finding of misconduct and for at least 15 years where there was a sustained finding of misconduct. (Pen. Code, § 832.5, subd. (b).)
- 11) Provides all complaints may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency, as specified. (Pen. Code, § 832.5, subd. (b).)
- 12) States that a record of a civilian complaint, or the investigations, findings, or dispositions of that complaint, shall not be released if the complaint is frivolous or the complaint is unfounded. (Pen. Code, § 832.7, subd. (b)(9).)
- 13) Provides that complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the CPRA. (Pen. Code, § 832.5, subd. (c).)
- 14) States that except as specified, peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or any agency or department that employ these officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office. (Pen. Code, § 832.7, subd. (a).)

15) Provides that the following peace officer or custodial officer personnel records maintained by a state or local agency are not confidential and shall be made available for public inspection pursuant to the California Public Records Act (CPRA):

- a) Records relating to the report, investigation, or findings of any of the following:
 - i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.
 - iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.
 - iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.
- b) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency:
 - i) That a peace officer or custodial officer engaged in sexual assault of a member of the public.
 - ii) Involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime;
 - iii) That a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
 - iv) That the peace officer made an unlawful arrest or conducted an unlawful search. (Pen. Code, § 832.7, subd. (b).)

16) Defines “unfounded” to mean that the investigation clearly established that the allegation is not true. (Pen. Code, § 832.5, subd. (d)(2).)

17) Defines “exonerated” to mean that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy. (Pen. Code, § 832.5, subd. (d)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The civilian complaint process is meant to serve as a tool for law enforcement accountability. Under current law, this complaint form includes an advisory describing the potential of retaliation or other adverse action against a member of the public for filing a complaint. Rather than serving as a mechanism for accountability, this form may trigger fear in people and serve as a deterrent for reports against police officers. In order to ensure a procedurally fair complaint process, AB 2923 updates state law to make clear that a person will not be prosecuted for filing a false complaint unless the false statement is material to the underlying incident, and the individual intended to falsely accuse a law enforcement officer."
- 2) **Racial Profiling:** Although racial profiling is prohibited, studies show that racial profiling by law enforcement does occur. According to the Public Policy Institute of California (PPIC), the first wave of RIPA data reflects that Black individuals are "notably overrepresented in police stops." (<https://www.ppic.org/blog/african-americans-are-notably-overrepresented-in-police-stops/> [as of March 22, 2022].) In this first wave of data, eight agencies reported regarding stops between July 1, and December 31, 2018. The PPIC analyzed the RIPA data and found "[w]hile African Americans make up roughly 6% of the population in the [reported] jurisdictions, they made up slightly more than 15% of all stops. Those perceived to be Middle Eastern or South Asian make up about 1.8% of the population but represented 4.4% of all stops. In contrast, the state's two largest racial/ethnic groups—Latinos and whites— were slightly underrepresented, as they make up about 41% and 35% of the population, respectively, but around 40% and 33% of all stops. Asian Americans were even more underrepresented: they are roughly 12% of the population, but made up about 5.5% of all stops." (*Ibid.*) For African Americans, the racial inequities were the greatest, and existed among all eight of the agencies reporting. (*Ibid.*)
- 3) **The Racial and Identity Profiling Act (RIPA):** AB 953 (Weber), Chapter 466, Statutes of 2015, enacted RIPA. Among other things, RIPA requires law enforcement agencies employing peace officers to report their stop data annually to the Attorney General. RIPA guidelines define a "stop" as "any detention by a peace officer of a person or any peace officer interaction with a person in which the officer conducts a search. (Cal. Code Regs., tit. 11, § 999.224., subd. (a)(20).) The data elements are outlined by the regulations underlying RIPA and require officers to record their perception of the identity characteristics pertaining to each stopped person including their perceived race or ethnicity, gender, lesbian, gay bisexual or transgender (LGBT) status, age, English fluency, disability, and unhoused status, among other data requirements. (Cal. Code Regs., tit. 11, § 999.226.) Officers are prohibited from asking the person stopped to self-identify these characteristics (*Ibid.*)
- 4) **Civilian Complaints:** "RIPA agencies reported 10,088 complaints in total, and 10,490 complaints reached a disposition in the 2021 calendar year. (RIPA Board, Annual Report 2023), at p. 19. Available at: <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf> [as of March 27, 2024].) Of the complaints that reached a disposition, 992 (9.5%) were sustained, 1,076 (10.3%) were not sustained, 3,496 (33.3%) were exonerated, and 4,926 (47%) were unfounded. (*Ibid.*) RIPA agencies reported 1,426 complaints alleging an element or elements of racial or identity profiling, constituting 14.1 percent of the total complaints reported by RIPA agencies in 2021. (*Ibid.*) Within those 1,426 complaints, there were 1,647 allegations of identity profiling. (*Ibid.*) This is because some civilians alleged more than one type of identity profiling, such as profiling based on both their nationality and religion.

Complaints alleging race and ethnicity profiling constituted approximately 77 percent of the 1,647 allegations of identity profiling.” (*Ibid.*)

- 5) **Effect of this Bill:** Among other things, AB 2923 strengthens the standard under which a person who files an allegation of misconduct against a peace officer can be charged for a misdemeanor for making false statements. The bill would change the standard by requiring that the false statement be material and requiring intent that the false statement be used to punish the officer. Under existing law, and as noted on the advisory, complainants must read when alleging peace officer misconduct, a person is guilty of a misdemeanor if they “know[] the allegation to be false” (Pen. Code, § 148.6, subd. (a)(1).) AB 2923 clarifies that a person must not only know that the allegation is false but that they intentionally make a false statement that is material and is made with the intent that the false statement will be used as a basis to punish a peace officer, is guilty of a misdemeanor.

The additional intent language added by this bill is consistent with separate Penal Code provisions addressing false claims against peace officers. (*See* (Pen. Code, § 148.6, subd. (b.) [providing a person who files a civil claim against a peace officer or a lien against their property based on actions arising in the course and scope of the officer’s duties, knowing it to be false and with *the intent to harass or dissuade the officer from carrying out their official duties*, is guilty of a misdemeanor] (emphasis added).) AB 2923 creates clarity surrounding when a person can be charged with a misdemeanor for making a false claim. Considering the bill’s additional clarification that statements in dispute are not a basis for prosecution, AB 2923 may encourage legitimate claims against peace officer misconduct from persons who are otherwise concerned that their disagreement with law enforcement’s account of an incident could result in retaliation or criminal consequences.

Further, this bill requires agencies employing peace officers, to include, as part of their complaint process against peace officers, a form inquiring whether the complaint includes an allegation of racial or identity profiling and a space to describe the allegation. By clarifying to potential complainants that instances of such profiling are a legitimate basis for a complaint, AB 2923 will encourage legitimate complaints from persons who have experienced racial or identity profiling from police officers, as prohibited by Penal Code Section 13519.4.

The Los Angeles County Professional Peace Officers Association has expressed concerns that opening the complaint process to include allegations of racial bias could lead to an increase in frivolous complaints that could strain resources and “undermine the morale of officers who may feel unfairly targeted.” As identified above, clarifying that racial and identity profiling is a legitimate basis for a complaint may increase the number of complaints against peace officers. This being said, the Penal Code already establishes a clear process for addressing, and shielding officers, from frivolous complaints. (*See* Pen. Code, § 832.7, subd. (b)(9) [providing records of civilian complaints shall not be released if the complaint is frivolous or unfounded]; *Pen. Code, § 832.5, subd. (c) [providing that frivolous complaints shall not be maintained in an officers personnel file.]*.) *Given that racial profiling by peace officers is prohibited, but well-documented, this bill can reasonably be expected to encourage legitimate complaints of racial and identity profiling, which may improve police practices by deterring such behavior.*

The author may wish to reference definitions provided in other Penal Code sections for clarity purposes. Specifically, the use of the term “racial or identi[t]y” profiling in Section 2 of the bill is currently undefined, although the term is defined elsewhere in the Penal Code (*See Pen. Code, § 13519.4., subd. (e)* [defining racial or identity profiling” as the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description.].) Second, the author should consider replacing the references to “identify profiling” with “identity profiling.”

The bill also provides helpful clarity surrounding the definition of a “complaint” for purposes of Penal Code provisions addressing complaints of peace office misconduct.

- 6) **Argument in Support:** According to Oakland Privacy “AB 2923 refines the misdemeanor charge for filing a false complaint against a law enforcement agency to ensure that such charges can only be filed against a complainant when the report is knowingly and intentionally false and not when the facts are simply in dispute. We have seen many accounts of incidents when, for example, law enforcement claims that a weapon was present or was raised or pointed, while victims and witnesses claim that nothing of the kind occurred, and no factual adjudication has yet occurred. No one should ever be subject to a misdemeanor charge just because they disagree with an official law enforcement account of an incident. The integrity of any complaint process depends on a complainant being able to freely, without fear or favor, detail their account of an incident without worrying about criminal consequences if their account turns out to be partially mistaken. In the court system, we penalize, plaintiffs when their lawsuit complaints are frivolous, not when they are wrong. The law enforcement complaint process should use the same standards.

Members of the public often conclude that filing complaints against the police is useless, even as complaints continue to pour in. These sentiments are highly prevalent among the Black and Brown communities that have suffered the brunt of mass incarceration policies. Refining complaint procedures to try to make them work more effectively is a worthwhile effort and is consistent with the state’s efforts to remove bad police officers and to make reparations to the descendants of chattel slavery.”

- 7) **Argument in Opposition:** According to the Los Angeles Professional Peace Officers Association “Law enforcement agencies already accept public complaints and are required by law to document detailed information about, and investigate as appropriate, public complaints. Opening the formal process for public complaints to include allegations of racial profiling could lead to a flood of frivolous or malicious complaints against law enforcement officers. This could not only strain resources but also undermine the morale of officers who may feel unfairly targeted.”
- 8) **Related Legislation:** None.
- 9) **Prior Legislation:**

- a) SB 16 (Skinner), Chapter 402, Statutes of 2021, expands the categories of police personnel records that are subject to disclosure under the CPRA and modifies existing provisions regarding the release of records subject to disclosure.
- b) SB 776 (Skinner), of the 2019-2020 Legislative Session, sought to expand the categories of police personnel records that are subject to disclosure under the CPRA. SB 776 died on the Senate inactive file.
- c) AB 1428 (Low), of the 2017-2018 Legislature Session, would have required specified information to be posted by district attorneys' offices and law enforcement agencies related to serious use of force by peace officers, as specified, and would require an agency to provide complaint status notifications, as specified. AB 1428 was held in the Senate Appropriations Committee.
- d) AB 2040 (Diaz), Chapter 391, Statutes of 2002, authorizes agencies and departments employing custodial officers to establish a procedure for the investigation of complaints by the public against those custodial officers.
- e) AB 2133 (Polanco), Chapter 289, Statutes of 2000, requires the advisory statement informing citizens that filing a false complaint against a peace officer is a misdemeanor to be available in multiple languages.
- f) AB 2637 (Bowler), Chapter 586, Statutes of 1996, makes it a misdemeanor to file a civil action against any peace officer or a lien against their property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out their official duties.

REGISTERED SUPPORT / OPPOSITION:**Support**

Center for Policing Equity (Sponsor)
California Attorneys for Criminal Justice
California Public Defenders Association
Oakland Privacy

Oppose

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
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles County Professional Peace Officers Association

Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2944 (Waldron) – As Introduced February 16, 2024

SUMMARY: Creates the Red Ribbon Panel to address the murdered or missing indigenous persons (MMIP) crisis. Specifically, **this bill:**

- 1) Allows the Governor to appoint a Red Ribbon Panel to address the murdered or missing indigenous persons (MMIP) crisis with the panel being composed of the following members:
 - a) Four tribal leaders from Norther California;
 - b) Four tribal leaders from central California;
 - c) Four tribal leaders from southern California;
 - d) A chairperson, selected from the 12 tribal leaders;
 - e) The Tribal Affairs Secretary;
 - f) A representative from the Department of the California Highway Patrol;
 - g) A representative from the State Department of Social Services;
 - h) A representative from the Office of Emergency Services;
 - i) A representative from the Attorney General’s office;
 - j) The Superintendent of Public Instruction;
 - k) Three representatives of counties;
 - l) Three representatives of cities;
 - m) A representative of federal law enforcement agencies;
 - n) A representative of tribal law enforcement agencies;
 - o) A representative of county law enforcement agencies;
 - p) A representative of city law enforcement agencies;

- q) A Senator;
 - r) A Member of the Assembly;
 - s) Two representatives from tribal courts;
 - t) Three victims' rights advocates; and,
 - u) A representative from the Bureau of Indian Affairs.
- 2) Requires the panel to produce and submit a study with recommendations to address the MMIP crisis to tribes, California's elected officials, the Legislature, counties, cities, and federal, tribal, state, county, and local law enforcement agencies by January 1, 2026.
 - 3) Makes findings and declarations.

EXISTING FEDERAL LAW:

- 1) Defines "Indian Country" as:
 - a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
 - b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and,
 - c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (18 U.S.C. § 1151)
- 2) Provides concurrent California and Tribal jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country, as specified. (18 U.S.C. § 1162.):
- 3) Provides California limited jurisdiction over civil offenses that occur within Indian country. (25 U.S.C. § 1322, subds. (a) & (c).)

EXISTING STATE LAW:

- 1) States that murder is the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187, subd. (a).)
- 2) States that malice is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. (Pen. Code, § 188, subd. (a)(2).)
- 3) Requires that all local police and sheriffs' departments shall accept any report, by any party, including any telephonic report, of a missing person, including runaways, without delay and shall give priority to the handling of these reports over the handling of reports relating to

crimes involving property. (Pen. Code, § 14211, subd. (a).)

- 4) States that in cases of reports involving missing persons, including, but not limited to, runaways, the local police or sheriff's department shall immediately take the report and make an assessment of reasonable steps to be taken to locate the person by using the report forms, checklists, and guidelines, as specified. (Pen. Code, § 14211, subd. (c).)
- 5) Establishes the "feather alert", a notification system designed to issue and coordinate alerts with respect to endangered indigenous people, specifically indigenous women or indigenous people, who are reported missing under unexplained or suspicious circumstances. (Gov. Code, § 8594.13 subd. (a).)
- 6) States that if a person is reported missing to a law enforcement agency and that agency determines that specified requirements are met, the law enforcement agency may request the Department of the California Highway Patrol to activate a Feather Alert. (Gov. Code, § 8594.13 subd. (b)(1).)
- 7) Establishes the Rural Indian Crime Prevention Program. (Pen. Code, § 13847, subd. (a).)
- 8) Requires the Rural Indian Crime Prevention Program to target the relationship between law enforcement and Native American communities to encourage and to strengthen cooperative efforts and to implement crime suppression and prevention programs. (Pen. Code, § 13847, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "California has the largest population of Native Americans than any other state in the nation. Our state is home to a diverse array of Indigenous communities, consisting of 109 federally recognized tribes, more than 60 tribes seeking federal recognition, and hundreds of thousands Indigenous people from across the country, each with unique cultures, histories, and challenges. Structural and systemic failures make it difficult to accurately determine the total number of missing or murdered indigenous people. Although the data that has been collected, is underreported and has revealed that Indigenous people experience higher rates of violence and victimization compared to any other ethnic group.

"The Missing or Murdered Indigenous Persons (MMIP) crisis deeply affects Indigenous communities, especially in California, where cases often go unresolved. AB 2944 aims to address the MMIP crisis by establishing a Red Ribbon Panel led by tribal leaders and stakeholders to study and recommend actions by 2026. This bill acknowledges the disproportionate impact on Indigenous communities in California and seeks to address the systemic issues contributing to MMIP cases, prioritizing the safety and well-being of Indigenous individuals. A California-centric study on MMIP, involving all relevant stakeholders is needed to develop meaningful recommendations to identify, prioritize, and address the root causes of the MMIP crisis and take effective steps towards ensuring the safety and well-being of Indigenous communities in California."

- 2) **Murdered or Missing Indigenous Persons (MMIP) in California and throughout the U.S.:** The problem of MMIP reaches across state lines. In 2018, the Urban Indian Health Institute (UIHI) published a study addressing MMIP titled *Missing and Murdered Indigenous Women & Girls, A snapshot of date from 71 urban cities in the United States*. (Available at: <https://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf> [as of Mar. 26, 2024].) They state in part, “the National Crime Information Center reports that, in 2016, there were 5,712 reports of missing American Indian and Alaska Native women and girls, though the US Department of Justice’s federal missing persons database, NamUs, only logged 116 cases.” (*Missing and Murdered Indigenous Women & Girls, supra, at p. 2.*) The lack of information, underreporting, and misinformation on MMIPs leads to various discrepancies as to how local, state, and federal agencies responded to this ongoing crisis.

The UIHI tried, repeatedly, to gather information from various sources including, but not limited to, law enforcement agencies, state and national databases, and media coverage regarding MMIP. Some sources either did not respond or found it to be laborious to produce or provide information for MMIP.

In their report, the UIHI states, “As demonstrated by the findings of this study, reasons for the lack of quality data include underreporting, racial misclassification, poor relationships between law enforcement and American Indian and Alaska Native communities, poor record-keeping protocols, institutional racism in the media, and a lack of substantive relationships between journalists and American Indian and Alaska Native communities. In an effort to collect as much case data as possible and to be able to compare the five data sources used, UIHI collected data from Freedom of Information Act (FOIA) requests to law enforcement agencies, state and national missing persons databases, searches of local and regional news media online archives, public social media posts, and direct contact with family and community members who volunteered information on missing or murdered loved ones.” (*Missing and Murdered Indigenous Women & Girls, supra, at p. 4.*)

According to a memo produced by the Yurok Tribe in Partnership with Strong Hearted Native Women’s Coalition, provided to this committee by the author, *Recommendations for Federal and State Leaders Addressing the Crisis of Missing and Murdered Indigenous People*, “California has over 109 federally recognized native tribes, and has the largest population of Native Americans of any state in the United States and the fifth largest caseload of Missing and Murdered Indigenous People (MMIP).” The report gives direct insight into the needs of indigenous groups who live and reside in California. The memo makes recommendations specifically for California, including the creation of a Red Ribbon Panel to address MMIP.

This bill would allow the Governor to create a Red Ribbon Panel to produce a report on recommendations for addressing the MMIP crisis.

- 3) **Savannah’s Law:** In 2019, U.S. Senator, Lisa Murkowski, from the State of Alaska introduced proposed legislation to address the problem of MMIP. Signed in 2020, Public Law 116-165, also known as Savannah’s Law, was enacted to direct the federal Department of Justice (DOJ) to review, revise, and develop law enforcement and justice protocols to address missing or murdered Native Americans.

The legislation requires DOJ to:

- provide training to law enforcement agencies on how to record tribal enrollment for victims in federal databases;
- develop and implement a strategy to educate the public on the National Missing and Unidentified Persons System;
- conduct specific outreach to tribes, tribal organizations, and urban Indian organizations regarding the ability to publicly enter information through the National Missing and Unidentified Persons System or other non-law enforcement sensitive portal;
- develop regionally appropriate guidelines for response to cases of missing or murdered Native Americans;
- provide training and technical assistance to tribes and law enforcement agencies for implementation of the developed guidelines; and
- report statistics on missing or murdered Native Americans.

Tribes may submit their own guidelines to DOJ that respond to cases of missing or murdered Native Americans.

Additionally, the bill authorizes DOJ to provide grants for the purposes of (1) developing and implementing policies and protocols for law enforcement regarding cases of missing or murdered Native Americans, and (2) compiling and annually reporting data relating to missing or murdered Native Americans.

Federal law enforcement agencies must modify their guidelines to incorporate the guidelines developed by DOJ.

Finally, the Federal Bureau of Investigation must include gender in its annual statistics on missing and unidentified persons published on its website.

(<https://www.congress.gov/bill/116th-congress/senate-bill/227>) [as of Mar. 25, 2024]

While this federal legislation is an important step to address the continuing problem of MMIP's, the collaboration and implementation of these guidelines is not clear in this state.

- 4) **Practical Considerations:** While this bill allows the governor to create a Red Ribbon Panel (panel) to address the problem of MMIP, this bill does not currently have any framework in place for when and how often the panel should meet. And, while the panel is required to produce a report, there are no guidelines as to what should be included in the report. The need for this panel is long overdue, but may benefit from guidance and structure within the panel as to how to best achieve their goals.
- 5) **Argument in Support:** According to "Strong Hearted Native Women's Coalition, Inc. (SHNWC) states, "SHNWC works to restore healthy families and communities by bringing awareness to and prevention education on domestic violence, sexual assault, trafficking, stalking, dating violence, and MMIP. The purpose of our coalition is to enhance the capacity of tribes, survivors, advocates, victim organizations, and victim services providers to end violence against American Indian and Alaskan Native people. Our organization aims to enhance accessibility for improving systemic and community response to victims.

"MMIP refers to the disproportionately high rates of disappearance and murder among

Indigenous individuals, particularly women, girls, and two-spirit people, whose cases often go uninvestigated or unresolved. MMIP is a crisis plaguing Indigenous communities in the United States and the state of California, specifically. California has the largest population of Indigenous people than any other state in the nation and has the fifth largest caseload of MMIP.

“Structural and systemic failures make it difficult to accurately attain the total number of missing or murdered indigenous people. However, the data that has been collected and is intuitively underreported, reveals shocking disparities that Indigenous people experience higher rates of violence and victimization compared to any other ethnic group. Furthermore, the historical context of colonization, genocide, and ongoing marginalization exacerbates the vulnerability of Indigenous communities, manifesting in high rates of poverty, lack of housing, child welfare issues, educational performance challenges, and involvement in the criminal justice system, among others, all of which are contributing factors to the crisis of MMIP.

“MMIP is a complex and urgent issue that demands a comprehensive, collaborative, and interdisciplinary response. At the federal and state levels, initial steps have been taken, but generally, these efforts are piecemeal, disjointed, and fall short of addressing the multifaceted challenges comprehensively. AB 2944 calls for a California-centric study on the MMIP crisis to establish a comprehensive action plan to enhance the safety and well-being of Indigenous peoples in California.”

- 6) **Related Legislation:** AB 1863 (Ramos), would make changes to the “Feather Alert” including, but not limited to, application of the “Feather Alert” to a missing indigenous person and urging the Governor to declare a state of emergency on MMIP. AB 1863 is pending hearing in the Emergency Management Committee.
- 7) **Prior Legislation:**
 - a) AB 1574 (Waldron), of the 2023-2024 Legislative Session, was substantially similar to this bill, but was never heard by a policy committee, and subsequently returned to the desk.
 - b) AB 1314 (Ramos), Chapter 476, Statutes of 2022, established the Feather Alert system, to aid in the location of an Indigenous person who has gone missing under suspicious circumstances, been abducted or kidnapped.
 - c) AB 3099 (Ramos), Chapter 170, Statutes of 2020, requires the Department of Justice (DOJ), upon funding, to provide technical assistance relating to tribal issues to local law enforcement agencies, as specified, and tribal governments with Indian lands. It also requires DOJ, upon funding, to study and report on how to increase state criminal justice protective and investigative resources for reporting and identifying missing Native Americans in California, particularly women and girls.
 - d) AB 1653 (Frazier), of the 2019-2020 Legislative Session, would have created the Missing and Murdered Indigenous Women Task Force to consult with California’s Indian tribes to ensure resources are used effectively to investigate cases of missing and murdered indigenous persons in the state and would have also required the task force to submit a

report to the Legislature on or before January 1, 2022. AB 1653 was held on the Assembly Appropriations suspense file, and subsequently returned to the desk.

- e) AB 2761 (Hauser), Chapter 132, Statutes of 1990, established the Rural Crime Prevention Program to work with Native American communities and law enforcement, to implement crime suppression and prevention programs, among other duties, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

California Tribal Business Alliance
Habematolel Pomo of Upper Lake
Strong Hearted Native Women's Coalition, INC.

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 2974 (Megan Dahle) – As Introduced February 16, 2024

SUMMARY: Grants peace officer status to custodial officers employed by Modoc County. Specifically, **this bill:** Adds the county of Modoc to the list of counties that employ deputy sheriffs to perform duties exclusively or initially related to custodial assignments, including the custody, care, supervision, security, movement, and transportation of incarcerated persons, but are considered peace officers whose authority extends to any place in the state only while engaged in the performance of duties related to their employment.

EXISTING LAW:

- 1) Provides that a deputy sheriff of the counties of Butte, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Madera, Mariposa, Mendocino, Merced, Mono, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of incarcerated persons, is a peace officer whose authority extends to any place in California only while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of employment relating to custodial assignments, or when performing other duties directed by their employing agency during a local state of emergency. (Pen. Code, § 830.1, subd. (c).)
- 2) Defines a “custodial officer” as a public officer, but not a peace officer, employed by a law enforcement agency for a city or county who has the authority and responsibility for maintaining order in local detention facilities. (Pen. Code, § 831, subd. (a).)
- 3) States that custodial officers do not have the right to carry or possess firearms in the performance of their duties; however, they may use reasonable force to establish and maintain custody of incarcerated persons and may make arrests for misdemeanors and felonies pursuant to a warrant. (Pen. Code, § 831, subs. (b) & (f).)
- 4) States that law enforcement agencies in the counties of San Diego, Fresno, Kern, Stanislaus, Riverside, Santa Clara, and Napa, and in counties with a population of 425,000 or less, employ custodial officers with “enhanced powers.” These custodial officers are empowered to serve warrants, writs, or subpoenas within the custodial facility and, as with regular custodial officers, use reasonable force to establish and maintain custody of incarcerated persons. (Pen. Code, § 831.5, subd. (a).)

- 5) Allows enhanced-powers custodial officers to carry firearms but only while under the direction of the sheriff or chief of police and while fulfilling specified job-related duties such as while transporting incarcerated persons, guarding incarcerated persons who are hospitalized, or suppressing jail riots, escapes, or rescues. (Pen. Code, § 831.5, subd. (b).)
- 6) Requires a peace officer to be present in a supervisory capacity whenever 20 or more custodial officers are on duty. (Pen. Code, § 831.5, subd. (d).)
- 7) Allows enhanced-powers custodial officers to make warrantless arrests within the facility and to release misdemeanants on citation to appear in lieu of or after booking. (Pen. Code, § 831.5, subd. (f).)
- 8) Authorizes custodial officers employed by the Santa Clara County, Napa County, and Madera Departments of Correction to perform the following additional duties in the facility:
 - a) Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce;
 - b) Search property, cells, incarcerated persons, or visitors;
 - c) Conduct strip or body cavity searches of incarcerated persons, as specified;
 - d) Conduct searches and seizures pursuant to a duly issued warrant;
 - e) Segregate incarcerated persons; and,
 - f) Classify incarcerated persons for the purpose of housing or participation in supervised activities. (Pen. Code, § 831.5, subd. (g)-(i).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 2974 (M. Dahle) adds the County of Modoc to PC 830.1(c), which authorizes the county to utilize its correctional officers as peace officers under certain circumstance. The flexibility authorized under Penal Code Section 830.1(c) would assist Modoc County to relieve significant local law enforcement staffing shortages. The Modoc County Sheriff's office continues to have difficulty filling deputy sheriff vacancies. Allowing a limited number of correctional officers to be included in the definition of peace officer in Modoc County will lead to increasing effectiveness of public safety in the community."
- 2) **Effect of Designating Custodial Deputy Sheriffs as Peace Officers:** Penal Code section 830.1 subdivision (c), custodial deputy sheriffs classification, is part of a continuum of classifications of custodial officers in county jails and other local detention facilities. Custodial officers under Penal Code sections 831 and 831.5 are not peace officers, whereas a section 830.1 subdivision (c) custodial deputy sheriff is a peace officer, "who is employed to

perform duties exclusively or initially relating to custodial assignments.” (Pen. Code, § 830.1, subd. (c).) One of the most significant differences between the section 830.1 subdivision (c) custodial deputy sheriffs and section 831 and 831.5 custodial officers is that as “peace officers” the section 830.1, subdivision (c) custodial deputy sheriffs are granted all the rights and protections contained in the Public Safety Officers Procedural Bill of Rights (POBOR). (See Gov. Code, § 3301 et seq.)

This bill would add custodial deputy sheriffs in Modoc County to that classification.

- 3) **Peace Officer Bill of Rights (POBOR):** The POBOR provides peace officers with procedural protections relating to investigation and interrogations of peace officers, self-incrimination, privacy, polygraph exams, searches, personnel files, and administrative appeals. *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, explains:

[T]he Act: (1) secures to public safety officers the right to engage in political activity, when off duty and out of uniform, and to seek election to or serve as a member of the governing board of a school district; (2) prescribes certain protections which must be afforded officers during interrogations which could lead to punitive action; (3) gives the right to review and respond in writing to adverse comments entered in an officer’s personnel file; (4) provides that officers may not be compelled to submit to polygraph examinations; (5) prohibits searches of officers’ personal storage spaces or lockers except under specified circumstances; (6) gives officers the right to administrative appeal when any punitive action is taken against them, or they are denied promotion on grounds other than merit; and (7) protects officers against retaliation for the exercise of any right conferred by the Act. (*Id.* at p. 1805, fn. 5, citations omitted.)

In *County of Riverside v. Superior Court (Madrigal)* (2002) 27 Cal.4th 793, 799, the California Supreme Court summarized the purpose of the Act:

[POBOR] declares “that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers.” Among other things, the Act guarantees public safety officers the right to view any adverse comment placed in their personnel files and to file, within 30 days, a written response, which will be attached to the adverse comment. These provisions reflect the public’s interest in good relations between peace officers and their employers, including protecting peace officers from unfair attacks on their character. Peace officers, in particular, must confront the public in a way that may lead to unfair or wholly fabricated allegations of misconduct from disgruntled citizens. Law enforcement agencies must take these citizen complaints seriously but at the same time ensure fairness to their peace officer employees. The Bill of Rights Act therefore gives officers a chance to respond to allegations of wrongdoing. (*Id.* at p. 799, citations omitted.)

Under current law, the custodial officers of Modoc County are not included in scope of POBOR. This bill would give them POBOR protections.

- 4) **Prior Governor’s Veto Message and Subsequent Legislation:** AB 524 (Bigelow), of the 2019-2020 Legislative Session, would have provided peace officer status to deputy sheriffs

employed by the Counties of Del Norte, Mono, and San Mateo. However, Governor Newsom vetoed that measure. His veto message said:

I understand these counties' desire to add additional capacity to their law enforcement efforts, but these discussions merit additional scrutiny in a more comprehensive manner. A number of bills have been enacted over recent decades—and several in recent years—applying this bill's provisions to specific counties, but this is a piecemeal approach that I cannot support.

Nevertheless, deputy sheriffs in the counties of Del Norte, Madera, Mono, and San Mateo and Merced subsequently have been added to the list of custodial officers who are considered peace officers. (See AB 779 (Bigelow), Chapter 558, Statutes of 2021, and AB 2735 (Gray), Chapter 416, Statutes of 2022.) Therefore, it appears that concerns about a piecemeal approach are no longer applicable.

- 5) **Argument in Support:** According to the *California State Sheriffs' Association*, “Existing law, Penal Code Section 830.1(c), provides that any deputy sheriff in 37 specified counties who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency.

“AB 2974 adds the County of Modoc to PC 830.1(c) to give them more flexibility to address their custodial supervision needs.”

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

7) **Prior Legislation:**

- a) AB 2735 (Gray), Chapter 416, Statutes of 2022, provided peace officer status to deputy sheriffs employed in Merced County.
- b) AB 779 (Bigelow), Chapter 558, Statutes of 2021, provided peace officer status to deputy sheriffs employed by the Counties of Del Norte, Madera, Mono, and San Mateo.
- c) AB 524 (Bigelow), of the 2019-2020 Legislative Session, would have provided peace officer status to deputy sheriffs employed by the Counties of Del Norte, Mono, and San Mateo. AB 524 was vetoed by the Governor.
- d) SB 1254 (La Malfa), Chapter 66, Statutes of 2012, provided peace officer status to deputy sheriffs in Trinity and Yuba Counties employed to provide custodial care and supervision of inmates in the county jail and related facilities.

- e) SB 490 (Maldonado), Chapter 52, Statutes of 2009, extended the same status and protections to deputy sheriffs in San Luis Obispo and Colusa Counties.
- f) AB 2215 (Berryhill), Chapter 15, Statutes of 2008, extended the same status and protections to deputy sheriffs in Lake, Calaveras, Mariposa, and San Benito Counties.
- g) AB 151 (Berryhill), Chapter 84, Statutes of 2007, extended the same status and protections to deputy sheriffs in Glenn, Lassen, and Stanislaus Counties.
- h) AB 272 (Parra), Chapter 127, Statutes of 2006, extended the same status and protections to deputy sheriffs in Inyo, Kings, and Tulare Counties.
- i) AB 1931 (La Malfa), Chapter 516, Statutes of 2004, extended the same status and protections to deputy sheriffs in Butte and Tuolumne Counties.
- j) AB 1254 (La Malfa), Chapter 70, Statutes of 2003, and SB 570 (Chesbro), Chapter 710, Statutes of 2003, extended the same status and protections to deputy sheriffs in Shasta and Solano Counties.
- k) AB 2346 (Dickerson), Chapter 185, Statutes of 2002, extended peace officer status and protections deputy sheriffs in Kern, Humboldt, Imperial, Mendocino, Plumas, Santa Barbara, Siskiyou, Sonoma, Sutter, and Tehama Counties.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association

Opposition

None submitted

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

Date of Hearing: April 2, 2024

Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Kevin McCarty, Chair

AB 2985 (Hart) – As Amended March 21, 2024

SUMMARY: Requires the court to provide jurors serving in a criminal case involving a violent felony with information about mental health services. Specifically, **this bill:**

- 1) Requires the court, before discharging the jury in a criminal case alleging a violent felony, as defined, to provide the jurors written information about mental health awareness regarding vicarious trauma that may occur as a result of their jury service, and the symptoms and methods for stress relief.
- 2) Requires the court to mail this same information to the alternate jurors who have been discharged from their duty.
- 3) Authorizes a court to provide information about mental health services to jurors and alternate jurors after a criminal case alleging any other type of offense.
- 4) Requires the Judicial Council to provide the written information that the courts must disseminate. The information must include, but is not limited to, the signs and symptoms of distress, coping mechanisms, and how to seek help for trauma, if needed.

EXISTING LAW:

- 1) Defines a “violent felony” as any of the following:
 - a) Murder or voluntary manslaughter;
 - b) Mayhem;
 - c) Rape accomplished by means of force or threats of retaliation;
 - d) Sodomy by force or fear of immediate bodily injury on the victim or another person or with a child under the age of 14 years, as specified;
 - e) Oral copulation by force or fear of immediate bodily injury on the victim or another person or with a child under the age of 14 years, as specified;
 - f) Lewd acts on a child under the age of 14 years, as defined;
 - g) Any felony punishable by death or imprisonment in the state prison for life;

- h) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which the defendant has used a firearm, as specified;
 - i) Any robbery;
 - j) Arson of a structure, forest land, or property that causes great bodily injury or that causes an inhabited structure or property to burn;
 - k) Arson that causes an inhabited structure or property to burn;
 - l) Sexual penetration accomplished against the victim's will by means of force, menace or fear of immediate bodily injury on the victim or another person, by threats of retaliation, or of a child under the age of 14 years, as specified;
 - m) Attempted murder;
 - n) Explosion or attempted explosion of a destructive device with the intent to commit murder;
 - o) Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;
 - p) Explosion of a destructive device which causes death or great bodily injury;
 - q) Kidnapping;
 - r) Assault with intent to commit mayhem or specified sex offenses;
 - s) Continuous sexual abuse of a child;
 - t) Carjacking, as defined;
 - u) Rape or sexual penetration in concert;
 - v) Felony extortion;
 - w) Threats to victims or witnesses, as specified;
 - x) First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;
 - y) Use of a firearm during the commission of specified crimes; and,
 - z) Possession, development, production, and transfers of weapons of mass destruction. (Pen. Code § 667.5, subd. (c).)
- 2) Establishes the Trial Jury Selection and Management Act, which applies to the selection of jurors, and the formation of trial juries, for both civil and criminal cases, in all trial courts of

the State. (Code Civ. Proc., § 190 et seq.)

- 3) States the policy of the State of California is that all persons selected for jury service must be selected at random from the population of the area served by the court; that all qualified persons have an equal opportunity to be considered for jury service in the state, as specified; that it is an obligation of all Californians to serve as jurors when summoned for that purpose; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner. (Code Civ. Proc., § 191.)
- 4) Requires the trial judge in a criminal jury trial to conduct an initial examination of prospective jurors in order to elect a fair and impartial jury. At the first practical opportunity before voir dire, the trial judge shall consider the form and subject matter of voir dire questions. The parties may submit questions to the trial judge. The trial judge may include additional questions requested by the parties as the trial judge deems proper. (Code Civ. Proc., § 223, subd. (a).)
- 5) Provides, in criminal cases only, while the jury is kept together, either during the progress of the trial or after their retirement for deliberation, the court may direct the sheriff or marshal to provide the jury with suitable and sufficient food and lodging, or other reasonable necessities. (Code Civ. Proc., § 217.)
- 6) Requires alternate jurors to be seated so as to have equal power and facilities for seeing and hearing the proceedings in the case, and to take the same oath as the jurors already selected, and to attend at all times upon the trial of the cause in company with the other jurors. (Code Civ. Proc., § 234; Pen. Code, § 1089.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “AB 2985 aims to support jurors who have served on a violent felony trial by providing them with a written notice, detailing mental health warning signs, and coping mechanisms following the stressful experience. This measure strikes the right balance between caring for jurors’ mental health and keeping costs low. AB 2985 installs safeguards to provide California jurors with mental health awareness and support after they fulfill their civic duty of serving on a jury.”
- 2) **Need for this Bill:** “Jury service is stressful. Jurors internalize both the difficulty of deciding another’s fate, as well as the emotional toll of bearing witness to tragic events. A National Center for State Courts report found that 70 percent of all jurors feel some stress. Yet the greatest difficulty often lies in homicide and death penalty trials, in which jurors not only share the burden of imposing guilt (or even death), but are necessarily confronted with the loss of life that led to the case. Some jurors even report physical ailments, including headaches, nightmares, and symptoms consistent with post-traumatic stress disorder.” (A. Ferguson, *The Atlantic*, May 17, 2015, *The Trauma of Jury Duty*, available at: <https://www.theatlantic.com/politics/archive/2015/05/the-trauma-of-jury-duty/393479/> [as of March 26, 2024].)

This bill would require the courts to provide jurors and alternate jurors serving on criminal

cases involving the offenses listed as violent felonies in the Penal Code with information on symptoms of stress and methods for coping with stress. This bill would require that the information be shared with sitting jurors before they are discharged, and would require that same information to be mailed to alternate jurors who have been discharged. In criminal trials that do not allege a violent felony, the court would be authorized, but not required, to share the same information.

It should be noted that the Judicial Council already produces a pamphlet to be shared with jurors that discusses both the temporary signs of stress as well as suggested coping techniques after serving on a jury. The pamphlet acknowledges that jury duty can not only be disruptive, but also unsettling depending on the case. The pamphlet notes that temporary signs of distress following jury duty include: anxiety and/or depression; sleep and/or appetite changes; physical symptoms, such as headaches, muscle tension, stomach aches; increased drug and/or alcohol use; second guessing the verdict and/or dwelling on the case; moodiness; feelings of guilt and/or fear; trouble dealing with issues or topics related to the case; a desire to be alone; diminished interest in activities that are normally of interest; and decreased concentration or memory problems. The pamphlet also lists coping techniques, including: talking to family, friends, and fellow jurors; sticking to a normal, daily routine; cutting down on alcohol, nicotine, and caffeine; deep breathing techniques; and increasing daily exercise. The pamphlet also suggests reaching out to the local mental or behavioral health services, if additional help is needed. (<https://www.courts.ca.gov> › Jury_Stress_Relief.)

It is unclear why this bill is limited to criminal cases. Civil cases often involve allegations of violence. For example, a victim of a sexual assault might file a civil suit based on underlying conduct arising out of the commission of a violent felony. A decedent's family member might file a wrongful death suit involving gruesome facts arising from a murder. Jurors in these cases could also benefit from mental health information.

- 3) **Argument in Support:** According to the *Santa Barbara County District Attorney's Office*, "This bill will ensure that jurors receive written information about vicarious trauma, stress relief, and mental health awareness upon the completion of their jury service. Jurors provide an invaluable service to our community, with Californians serving on approximately 1,672 felony trials in FY 2022-2023. Of this number, many jurors served on cases involving violence and trauma.

"While prosecutors, peace officers, and criminal defense attorneys never get used to the violent, traumatic, and horrific acts that we are exposed to on a daily basis, this exposure is not unexpected and is an unfortunate reality of a career in public service in the criminal justice arena. Jurors, on the other hand, are often unprepared for the very difficult issues that they will be exposed to while fulfilling their public service as the triers of fact. This exposure can trigger past trauma or be a source of new trauma for those citizens doing their civic duty.

"It is important for jurors to be supported in taking care of their wellness following service on a trial that involves serious violence."

- 4) **Argument in Opposition:** None submitted.
- 5) **Prior Legislation:**

- a) AB 78 (Ward), of the 2023-2024 Legislative Session, would have increased the compensation for any individual selected to serve as a grand juror. AB 78 was held in the Assembly Appropriations Committee.
- b) AB 881 (Ting), of the 2023-2024 Legislative Session, would have extended the existing pilot program authorizing the Superior Court of San Francisco to pay low-income trial jurors \$100 per day for each day of service as a trial juror in a criminal case and expanded it to four additional courts as selected by Judicial Council. AB 881 was vetoed.
- c) AB 1972 (Ward), of the 2021-2022 Legislative Session, would have increased the compensation for individuals selected to serve as grand jurors. AB 1972 was held in the Senate Appropriations Committee.
- d) AB 1981 (Lee) Chapter 326, Statutes of 2022, increased mileage reimbursement for trial jurors and requires Judicial Council to sponsor a pilot program to study whether increases in juror compensation and mileage reimbursement rates increase juror diversity and participation.
- e) AB 2866 (Migden), Chapter 127, Statutes of 2000, increased the daily fees for jurors from \$5 per day to \$15 per day.

REGISTERED SUPPORT / OPPOSITION:

Support

California Council of Community Behavioral Health Agencies
Clue (Clergy and Laity United for Economic Justice)
Freedom to Choose Project
Santa Barbara County District Attorney's Office
Smart Justice California, a Project of Tides Advocacy

Opposition

None submitted

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3014 (Irwin) – As Introduced February 16, 2024

SUMMARY: Authorizes a district attorney to petition for an ex parte gun violence restraining order (GVRO), a GVRO after notice and a hearing, and a renewal of a GVRO. Specifically, **this bill:**

- 1) Allows a district attorney to file a petition requesting that the court issue an ex parte GVRO.
- 2) Requires a district attorney’s office to develop, adopt, and implement written policies and standards relating to GVROs before filing petitions seeking them.
- 3) States that if a district attorney files a petition for a GVRO, the petition shall be brought in the name of the people of the State of California.
- 4) Requires the court, before issuing an ex parte GVRO sought by a district attorney, to examine the law enforcement officer who signed the affidavit, as well as any other witnesses the district attorney may produce.
- 5) Allows a district attorney to file a petition requesting that the court issue a GVRO after notice and a hearing.
- 6) Allows a district attorney to file a petition requesting a renewal of a GVRO.
- 7) Requires a person employed as an inspector or investigator in a district attorney’s office who serves a GVRO to submit proof of service within one business day of service to either the court clerk or a local law enforcement agency. Requires, that entity, in turn, to submit the proof of service to the California Restraining Order and Protective Order System.
- 8) Defines “law enforcement officer” for purposes of GVRO laws, to include “a person employed as an inspector or investigator in the office of a district attorney.”
- 9) Makes conforming changes.

EXISTING LAW:

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

- 2) Prohibits a person that is subject to a GVRO from having in their custody or control any firearms or ammunition while the order is in effect. (Pen. Code, § 18120, subd. (a).)
- 3) Allows law enforcement to seek a temporary GVRO if the officer asserts, and the court finds, that there is reasonable cause to believe the following:
 - a) The subject of the petition poses an immediate and present danger of causing injury to himself or another by possessing a firearm; and
 - b) A temporary GVRO is necessary to prevent personal injury to the subject of the order or another because less restrictive alternatives have been tried and been ineffective or have been determined to be inadequate under the circumstances. (Pen. Code, § 18125, subd. (a).)
- 4) States that a temporary GVRO shall expire 21 days from the date it is issued and requires the court to hold a specified hearing to determine whether to issue an extended GVRO. (Pen. Code, §§ 18125, subd. (b), & 18148.)
- 5) Allows an immediate family member, an employer, a coworker, an employee or teacher of a secondary or post-secondary school, law enforcement officer, a roommate, an individual who has a dating relationship or a child in common with the subject of the petition to file a petition requesting that the court issue an ex parte GVRO enjoining a person from possessing, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18150, subd. (a)(1).)
- 6) Allows a court to issue an ex parte GVRO if there is a substantial likelihood that the subject of the petition poses a significant risk of injury to themselves, or to another, by having under their custody and control, owning, purchasing, possessing, or receiving a firearm as determined by balancing specified factors, and that the order is necessary to prevent personal injury to the subject of the petition or to others. (Pen. Code, §§ 18150, subd. (b), & 18155.)
- 7) States that an ex parte GVRO shall expire 21 days from the date the order is issued and requires the court to hold a hearing to determine whether to issue an extended GVRO. (Pen. Code, §§ 18155, subd. (c), & 18165.)
- 8) States that at the hearing, the petitioner has the burden to establish by clear and convincing evidence that the person poses a significant danger of causing injury to themselves or to another by possessing, owning, purchasing, possessing, or receiving a firearm and that the order is necessary to prevent injury. (Pen. Code, § 18175, subd. (b).)
- 9) Enumerates factors which the court must consider in making a determination that grounds for a GVRO exist. (Pen. Code, §§ 18155, subd. (b)(1), & 18175, subd. (a).)
- 10) Provides that the court shall issue a GVRO for a period between one to five years, subject to termination and renewal. (Pen. Code, § 18175, subd. (e)(1).)
- 11) Allows a request for renewal of a GVRO at any time within three months of its expiration. (Pen. Code, § 18190, subd. (a)(1).)

- 12) 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.)
- 13) Makes a violation of a GVRO a misdemeanor. (Pen. Code, § 18205.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “As Californians continue to endure the trauma of gun violence, I am dedicated to finding every opportunity we can to continue to make a difference in this fight. In 2019, with AB 12 and AB 339, I worked to improve Gun Violence Restraining Orders and require every law enforcement agency to create policies to use them, in hopes of increasing the awareness and use of this lifesaving tool. However we have yet to see widespread use of GVROs, with only small upticks in GVROs in areas where the State has invested in a City Attorney to provide legal assistance for petitions. District Attorneys across the state are willing to step up and provide the legal expertise to petition and defend GVROs in court. As a result of their limited jurisdiction however they have been precluded from joining City Attorneys and County Counsels. AB 2532 will fix this and add thousands of attorneys to the fight against gun violence in California.”
- 2) **Gun Violence Restraining Orders:** California's GVRO laws, modeled after domestic violence restraining order laws, went into effect on January 1, 2016. A GVRO will prohibit the restrained person from purchasing or possessing firearms or ammunition and authorizes law enforcement to remove any firearms or ammunition already in the individual's possession.

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

In contrast, an immediate family member,¹ an employer, a coworker,² an employee or teacher of a secondary or post-secondary school,³ law enforcement officer, a roommate, an individual who has a dating relationship or a child in common⁴ with the subject of the petition can petition for either an ex parte GVRO or a GVRO after notice and a hearing.

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

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

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

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

An 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.

Before a GVRO lapses, existing law allows a request for renewal of a GVRO of between one to five years. (Pen. Code, § 18190.)

This bill would authorize a district attorney to petition for an ex parte GRVO, for a GRVO after notice and a hearing, and for renewals as well. Notably, most of the individuals who are able to petition for a GRVO have a close relationship to the person to be restrained or personal knowledge of their conduct. However, law enforcement officers are also currently able to seek a GRVO. District attorneys are arguably similarly situated to other law enforcement officers. District attorneys would have knowledge of pending charges against an individual and might be in a good position to see a pattern of escalating violence. In addition, this bill provides safeguards to ensure that there is such personal knowledge by requiring the court to question the individual who signed the affidavit, as well as any other witnesses the district attorney may produce.

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

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

Based on *Bruen*, the Fifth Circuit Court of Appeals invalidated a federal statute prohibiting a defendant from possessing a firearm pursuant to a domestic violence court order, even after the defendant was involved in five shootings over the course of approximately one month. (*U.S. v. Rahimi* (2023) 61 F.4th 443.) The court examined several different historical statutes to see if there were any analogues which prohibited firearm possession based on civil proceedings alone. (*Id.* at 455-460.) Ultimately, the court found that there were no such

relevantly similar historical laws and found that the firearm prohibition was “an 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 gun violence restraining order laws.

- 4) **Argument in Support:** According to the *California District Attorneys Association*, “GVROs are a means of intervening in potentially dangerous situations before the worst can occur. They permit a court to temporarily seize a person’s firearms upon proof that the person is likely to use those weapons against themselves or others. The system for GVROs provides an opportunity for the restrained person to appear and object, as well as opportunities to lift the GVRO once it is imposed.

“Currently GVROs may be sought by law enforcement officers, family members, employers, or coworkers, of the person to be restrained. But district attorneys are not included in this list. CDAA believes this is a significant omission. District attorneys are often in the best position to spot dangerous and escalating patterns of conduct and to act to protect victims and other community members from gun violence.

“AB 3014 recognizes that our efforts to stop the scourge of gun violence require an all-hands approach. District attorneys who are already entrusted with broad authority to help maintain public safety should not be left out of this critical means of public protection.”

- 5) **Argument in Opposition:** None submitted.
- 6) **Related Legislation:** AB 2917 (Zbur), would require the court to consider recent or past threats of violence to another group or location when determining if there are grounds to issue a GVRO. AB 2917 is pending hearing in this committee.
- 7) **Prior Legislation:**
- a) 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.

- b) AB 2532 (Irwin), of the 2019-2020 Legislative Session, would have allowed a district attorney, county counsel, or city attorney to file a petition on behalf of a law enforcement officer, requesting the issuance or renewal of a GVRO, and to represent the officer at any subsequent related court proceeding. AB 2532 was referred to, but did not receive a hearing in, the Senate Public Safety Committee.
- c) AB 12 (Irwin), Chapter 724, Statutes of 2019, extended the duration of GVROs and their renewals to a maximum of five years.
- d) AB 61 (Ting), Chapter 725, Statutes of 2019, expanded the persons who could petition for a GVRO to include an employer, a coworker, as specified, and an employee or teacher of a secondary school, or postsecondary school, as specified.
- e) AB 1014 (Skinner), Chapter 872, Statutes of 2014, allowed the court to issue a GRVO and established the process by which the orders can be obtained.

REGISTERED SUPPORT / OPPOSITION:

Support

Ventura County District Attorney's Office (Sponsor)
California District Attorneys Association
Peace Officers Research Association of California

Opposition

None submitted

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 3021 (Kalra) – As Introduced February 16, 2024

SUMMARY: Establishes procedures law enforcement must follow prior to interviewing, questioning, or interrogating the family member of person who has been killed or seriously injured by a peace officer. Specifically, **this bill:** Requires a peace officer, a prosecuting attorney, or an investigator for the prosecution, prior to commencing any interview, questioning, or interrogation, regardless of whether they are in a police station, of a family member of a person who has been killed or seriously injured by a peace officer, to do both of the following:

- 1) Clearly identify themselves, including their full name and the agency they work for and whether they represent, or have been retained by, the prosecution. If the interview takes place in person, the person shall also show the person a business card, official badge, or other form of official identification before commencing the interview or questioning.
- 2) State all of the following to the person being interviewed, questioned, or interrogated:
 - a) “You have the right to ask about the status of your family member prior to answering any questions, and that information is not conditional on answering any questions.”
 - b) “You are not being detained. You may leave at any time. You are not required to be taken to the police station.”
 - c) “You do not have to talk to the police. You have the right to remain silent.”
 - d) “Anything you say can be used as evidence in civil or criminal court.”
 - e) “You have the right to refuse to be recorded, photographed, or searched.”
 - f) “Before speaking with law enforcement, the prosecution, or any investigator, you can consult with a trusted support person, civil attorney, or legal advocate, and you can have that person with you while you speak to the police.”

EXISTING LAW:

- 1) Requires a state prosecutor to investigate incidents of officer-involved use of force resulting in the death of an unarmed civilian. (Gov. Code, § 12525.3, subd. (b)(1).)
- 2) Requires a state prosecutor to investigate and gather facts in an incident involving a shooting by a peace officer that results in the death of a civilian if the civilian was unarmed or if there is a reasonable dispute as to whether the civilian was armed. (Gov. Code, § 12525.3, subd.

(b)(2)(A.)

- 3) Requires law enforcement to furnish written notice to victims of domestic violence at the scene with information on victims' rights and resources. (Pen. Code, § 13701.)
- 4) Requires, upon the initial interaction with a sexual assault victim, a law enforcement officer to provide the victim with a card explaining the rights of sexual assault victims, including that they do not need to participate in the criminal justice system. (Pen. Code, § 680.2, subd. (a).)
- 5) Requires each department or agency in this state that employs peace officers to make a record of any investigations of misconduct involving a peace officer in the officer's general personnel file or a separate file designated by the department or agency. (Pen. Code, § 832.12, subd. (a).)
- 6) Requires every person employed as a peace officer to immediately report all uses of force by the officer to the officer's department or agency. (Pen. Code, § 832.13.)
- 7) Provides that, to the extent that such privilege exists under the Constitution of the United States or the State of California, a person has a privilege to refuse to disclose any matter that may tend to incriminate him. (Evid. Code, § 940.)
- 8) Allows a department or agency that employs peace or custodial officers to release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. (Pen. Code, § 832.7, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The relatives of individuals affected by police violence have a reasonable expectation to transparency and information about the circumstances surrounding their loved ones' welfare, without encountering deceiving and threatening information. The harmful and immoral methods law enforcement officers use to interrogate family members of the victim not only inflict harm upon the victim and their family, but also erode trust in law enforcement. AB 3021 will affirm and empower the family members of victims of police violence to exercise their rights in interactions with law enforcement when they are at their most vulnerable."
- 2) **Need of the Bill:** This bill would require law enforcement to give a Miranda-like warning prior to interviewing, questioning, or interrogating the family member of person who has been killed or seriously injured by a peace officer.

According to a recent *Los Angeles Times* report:

For years, law enforcement agencies across California have been trained to quickly question family members after a police killing in order to collect information that, among other things, is used to protect the involved officers and their department, an investigation by the Los Angeles Times and the Investigative Reporting Program at UC Berkeley's Graduate School of Journalism has found.

Police and prosecutors routinely incorporate the information into disparaging accounts about the people who have been killed that help justify the killings, bolster the department's defense against civil suits and reduce the amount of money families receive in settlements and jury verdicts, according to police reports, court records and interviews with families and their attorneys.

The Times and the Investigative Reporting Program documented 20 instances of the practice by 15 law enforcement agencies across the state since 2008. Attorneys specializing in police misconduct lawsuits say those cases are just a fraction of what they describe as a routine practice.

(Howey, *After police killings, families are kept in the dark and grilled for information*, L.A. Times (Mar. 28, 2023) <[After police killings, California families often kept in the dark - Los Angeles Times \(latimes.com\)](#)> [last visited Mar. 26, 2024].)

“Miranda warnings” are a series of admonitions that are typically given by police prior to interrogating a suspect of a crime—they do not apply to, among others, witnesses of crime, the family members of a criminal defendant, or the family members of a person killed by police. The purpose of Miranda warnings is to advise people that have been arrested of their constitutional right against self-incrimination. They are the product of the landmark Supreme Court decision *Miranda v. Arizona* (1966) 384 U.S. 436. In deciding that case, the Supreme Court imposed specific, constitutional requirements for the advice an officer must provide prior to engaging in custodial interrogation and held that statements taken without these warnings are inadmissible against the defendant in a criminal case. The Court summarized its decision as follows:

[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive

him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

(*Id.* at 444-45.)

Put more simply, “Miranda warnings” are meant to inform people who are in custody of their constitutional right not to be a witness against themselves. Police are not required to speak a specific set of words but generally must convey that the person has the rights enumerated above.

Notably, however, law enforcement need only give Miranda warnings to people “taken into custody or otherwise deprived of [their] freedom of action in any significant way”—i.e. people seized for questioning about a crime.

Because of the documented use of interrogating family members of individuals harmed by police use of force to obtain information, akin to Miranda warnings, this bill would require law enforcement to give an admonishment to the family members of a person killed or seriously injured by law enforcement. Specifically, it would require law enforcement to state that the person has a right to ask about their family member prior questioning by law enforcement; that the family member is not detained and may leave at any time; they that do not have to speak to law enforcement; that anything they say could be used in evidence in court; that they the right not to be recorded, photographed, or searched; and that they have the right to consult an attorney or legal advocate, and that that person can be with the family member during questioning.

- 3) **Argument in Support:** According to *Californians for Safety and Justice*, one of the bill’s co-sponsors, “In the aftermath of incidents involving police violence, families of the victim are often approached by authorities under the guise of an “interview”. Family members are told to go to the precinct, not given information about the state of their loved one, and often lied to about the incident as they are interrogated. While the family member is distressed and worried for their loved one, law enforcement uses this opportunity to coerce information about the victim’s past in order to paint a narrative about the victim or build a case against them. Such tactics not only inflict harm upon the victim and their family, but also erode trust in law enforcement. The relatives of individuals affected by police violence have a reasonable expectation to transparency about the circumstances surrounding their loved ones', without being manipulated in the process.”
- 4) **Argument in Opposition:** According to the *California District Attorneys Association*, “Because the bill requires police to recite inherently accusatory ‘rights,’ and because of the ubiquitous understanding of the purpose of Miranda warnings in our culture, these warnings are likely to mislead rather than inform. The warnings may even mislead persons the bill seeks to protect.

“Miranda warnings are required before police can interrogate *suspects* who are in *custody*. This is because custodial interrogations of suspects are deemed inherently coercive. Family members of a person killed or seriously injured by a police officer are not suspects and are not in custody. They don’t undergo Miranda interrogation either, because police questioning is not reasonably likely to elicit a response that incriminates them.

“Miranda warnings are a staple of television crime shows and movies and are familiar to most persons. When police administer a Miranda admonition, everyone understands the recipient is suspected of committing a crime. Telling a witness, they have the right to remain silent, anything they say can be used as evidence in court, that they have the right to refuse to be searched (a search would clearly be illegal under these circumstances), and that they have the right to legal representation, are inherently accusatory. A person hearing such Miranda-like warnings and familiar with their ordinary context will reasonably conclude police think they committed a crime.

“Because of these common understandings (correct for over 50 years under the U.S. Constitution and California law) the effect of these warnings will be to mislead rather than inform. A conversation with a family member of a person killed or seriously injured by police is a difficult one, made harder or impossible after this admonition. The proposed admonition’s effect is likely to discourage communication and to impede the search for truth, vital to a fair evaluation of an officer involved shooting. To evaluate whether charges should be filed on an officer, it is important to know whether the person shot suffered from mental illness or suicidal ideation, because such facts may provide circumstantial understanding of the earlier violent encounter. Even more important, when a person is injured by police and faces the prospect of criminal charges for felony assault on an officer, the suspect’s state of mind is critically important to the prosecution and defense in any criminal case. Family members often are the most immediate source for this crucial information. Charges might be brought against an officer, or not be brought against a civilian suspect, depending on the truth.

“Miranda admonitions, which often inhibit the search for truth, are necessary when a person is in the custody and control of police and is subject to lengthy interrogation. Witnesses, who are not similarly situated, properly run the risk that their statements will be evaluated in determining whether criminal charges lie, regardless of their own preferences concerning a putative criminal defendant. We understand that loved ones may later regret providing truthful statements to police either because they disagree with a decision not to file on an officer, or because their statements were used in a criminal prosecution, or because their statements were inimical to their subsequent civil lawsuit; but we disagree that the answer is to mislead them so they are discouraged from giving a statement in the first place ‘for their own good’ at the expense of the truth. AB 3021 as written does not strike the proper balance. We do agree with you, however, that family members in a vulnerable state should not be taken advantage of or misled in any way.”

5) **Prior Legislation:**

- a) AB 1506 (McCarty), Chapter 326, Statutes of 2020, requires a state prosecutor to conduct an investigation of any officer-involved shooting that resulted in the death of an unarmed civilian, as specified.
- b) SB 203 (Bradford), Chapter 355, Statutes of 2020, requires that, prior to any custodial interrogation and before the waiver of any Miranda rights, a youth of 17 years or younger must consult with legal counsel in person, by telephone, or by video conference.
- c) SB 395 (Lara) Chapter 681, Statutes of 2017 requires that a youth 15 years of age or younger consult with legal counsel in person, by telephone, or by video conference prior

to a custodial interrogation and before waiving any of the above-specified rights.

- d) SB 1052 (Lara), of the 2015-2016 Legislative Session, would have required that a youth under the age of 18 consult with counsel prior to a custodial interrogation and before waiving any specified rights. SB 1052 was vetoed by Governor Brown.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Re-entry Project
Alliance for Boys and Men of Color
Amelia Ann Adams Whole Life Center
Asian Law Alliance
California Families United 4 Justice
California for Safety and Justice
California Public Defenders Association
Californians United for A Responsible Budget
Caras Gilroy
Children's Defense Fund - CA
Coalition for Justice and Accountability
Communities United for Restorative Youth Justice (CURYJ)
Community Agency for Resources, Advocacy and Services
Fixin' San Mateo County
Haywood Burns Institute
Immigrant Legal Resource Center
In Our Care San Mateo County
Initiate Justice
Initiate Justice Action
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoners With Children
Love Not Blood Campaign
Oakland Privacy
Orange County Rapid Response Network
Pacific Juvenile Defender Center
Pillars of The Community
Reuniting Families Contra Costa
Rubicon Programs
San Francisco Public Defender
San Jose Peace and Justice Center
Showing Up for Racial Justice At Sacred Heart Community Service (san José)
Silicon Valley De-bug
Sister Warriors Freedom Coalition
Urban Peace Movement
Young Women's Freedom Center

16 Private Individuals

Opposition

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

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 3029 (Bains) – As Introduced February 16, 2024

SUMMARY: Criminalizes xylazine, also known as “tranq,” by making it a Schedule III drug under California’s Uniform Controlled Substances Act (UCSA). Specifically, **this bill:**

- 1) Requires a coroner or medical examiner to conduct a toxicology analysis or drug screening if needed to determine or confirm the cause and manner of death, as specified.
- 2) Requires a coroner or medical examiner, when suspecting a death is due to a drug overdose, to conduct a toxicology analysis or drug screening to test for presence fentanyl or an analog of fentanyl, ketamine, gamma hydroxybutyric acid, xylazine, or other emergency adulterants as determined by the State Department of Public Health (DPH).
- 3) Makes xylazine a Schedule III controlled substance under the USCA.
- 4) Provides that xylazine is not treated as a Schedule III controlled substance in the following circumstances:
 - a) Dispensing or prescribing for, or administration to, a nonhuman species of a drug containing xylazine that has been approved, as specified;
 - b) Dispensing or prescribing for, or administration to, a nonhuman species, as specified;
 - c) The manufacturing, distribution, or use of xylazine as an active pharmaceutical ingredient for manufacturing an animal drug, as specified;
 - d) The manufacturing, distribution or use of a xylazine bulk chemical for pharmaceutical compounding by licensed pharmacists, as specified, or by veterinarians in the event that xylazine as an active pharmaceutical ingredient manufactured as specified become unavailable; or,
 - e) Any other use approved or permissible under the Federal Food, Drug, and Cosmetic Act.

EXISTING LAW:

- 1) Lists controlled substances in five “schedules” - intended to list drugs in decreasing order of harm and increasing medical utility or safety - and provides penalties for possession of and commerce in controlled substances. Schedule I includes the most serious and heavily controlled substances, with Schedule V being the least serious and most lightly controlled substances. (Health & Saf. Code, §§ 11054-11058.)

- 2) Makes possession of a non-narcotic Schedule III controlled substance a misdemeanor subject to imprisonment in county jail for up to one year. (Health & Saf., § 11377, subd. (a).)
- 3) Makes possession of a non-narcotic Schedule III controlled substance a felony subject to 16 months, 2 years, or 3 years in county jail where the person has one or more prior convictions for an offense classified as a violent felony or one that requires registration as a sex offender. (Health & Saf., § 11377, subd. (a).)
- 4) Makes possession for sale of a non-narcotic Schedule III substance a felony subject to imprisonment in county jail for 16 months, 2 years or 3 years. (Health & Saf., § 11378.)
- 5) Makes trafficking of a non-narcotic Schedule III substance a felony subject to imprisonment in county jail for 2, 3, or 4 years. (Health & Saf., § 11379.)
- 6) Makes manufacturing, producing, or preparing a non-narcotic Schedule III controlled substance either directly or indirectly by chemical extraction or independently by means of chemical synthesis a felony punishable by imprisonment in county jail for 3, 5, or 7 years and a fine of up to \$50,000. (Health & Saf., § 11379.6, subd. (a).)
- 7) Makes offering to manufacturing, producing, or preparing a non-narcotic Schedule III controlled substance either directly or indirectly by chemical extraction or independently by means of chemical synthesis a felony punishable by imprisonment in county jail for 3, 4, or 5 years. (Health & Saf., § 11379.6, subd. (e).)
- 8) Requires coroners to determine the manner, circumstances, and cause of death in the following circumstances:
 - a) Violent, sudden, or unusual deaths;
 - b) Unattended deaths;
 - c) Known or suspected homicide, suicide, or accidental poisoning;
 - d) Drowning, fire, hanging, gunshot, stabbing, cutting, exposure, starvation, acute alcoholism, drug addiction, strangulation, aspiration, or sudden infant death syndrome;
 - e) Deaths in whole or in part occasioned by criminal means;
 - f) Deaths known or suspected as due to contagious disease and constituting a public hazard;
 - g) Deaths from occupational diseases or occupational hazards;
 - h) Deaths where a reasonable ground exists to suspect the death was caused by the criminal act of another; and,
 - i) Deaths reported for inquiry by physicians and other persons having knowledge of the death. (Gov. Code, § 27491.)

- 9) Requires the coroner to sign the certificate of death if they perform a mandatory inquiry. (Gov. Code, § 27491, subd. (a).)
- 10) Gives the coroner discretion when determining the extent of the inquiry required to determine the manner, circumstances and cause of death. (Gov. Code, § 27491, subd. (b).)
- 11) States that the content of a death certificate must include, among other things, personal data of the decedent, date of death, place of death, disease or conditions leading directly to death and antecedent causes, accident and injury information, and information regarding pregnancy. (Health & Saf. Code, § 102875.)
- 12) Requires a physician and surgeon, physician assistant, funeral director, or other person to notify the coroner when they have knowledge that a death occurred, or if they have charge of a body in which death occurred under any of the following, among others:
 - a) Without medical attendance;
 - b) During continued absence of attending physician and surgeon;
 - c) Where attending physician and surgeon, or physician assistant is unable to state cause of death; and,
 - d) Reasonable suspicion to suspect death was caused by criminal act. (Health & Saf. Code, § 102850.)
- 13) Requires the California Department of Public Health (DPH) to establish an Internet-based electronic death registration system for the creation, storage, and transfer of death registration information. (Health & Saf. Code, § 102778.)
- 14) Requires DPH to track data on pregnancy-related deaths and publish such data at least once every three years, as specified. (Health & Saf. Code, § 123630.4.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “Xylazine is being mixed with other drugs sold on the streets, most notably fentanyl, under the street name ‘tranq’. Since xylazine is not an opioid, the standard overdose treatments like naloxone or Narcan can be less effective or even fail. California lacks policy to fully track xylazine’s growing role in our opioid crisis, much less mitigate its dangers. AB 3029 will reclassify xylazine as a Schedule III controlled substance while protecting its legitimate uses in veterinary medicine, and require coroners and medical examiners to test for xylazine, fentanyl and other drugs in suspected overdose deaths. This bill is an important step toward containing a rising threat before it becomes a bigger problem.”
- 2) **Xylazine:** According to CDPH, xylazine (also known as “tranq”) is a non-opioid animal tranquilizer that has been connected to an increasing number of overdose deaths nationwide. Some people who use drugs intentionally take fentanyl or other drug mixed with xylazine; in

other circumstances, drug sellers cut fentanyl or heroin with xylazine to extend product's effect without disclosing the adulterant.

(<https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/Xylazine.aspx>)

The extent to which xylazine has proliferated in California drug markets is unclear. In 2022, the Drug Enforcement Administration (DEA) reported that its identification of xylazine-positive overdose deaths in the western United States increased by 750% in recent years, from four such deaths in 2020 to 34 in 2021. (https://www.dea.gov/sites/default/files/2022-12/The_Growing_Threat_of_Xylazine_and_its_Mixture_with_Illicit_Drugs.pdf) However, the DEA also noted comprehensive data on xylazine-related deaths is not available because xylazine is not routinely included in postmortem testing or data reporting in all jurisdictions. (*Ibid.*) In April 2023, based in part on the DEA's report, the White House Office of National Drug Control Policy designated fentanyl mixed with xylazine as an emerging threat, recognizing its "growing role in overdose deaths in every region in the United States."

(<https://www.whitehouse.gov/ondcp/briefing-room/2023/04/12/biden-harris-administration-designates-fentanyl-combined-with-xylazine-as-an-emerging-threat-to-the-united-states/-:~:text=Xylazine%20is%20a%20non%20opioid,region%20of%20the%20United%20States.>)

On the other hand, in November 2023 in a letter to California health care facilities, CDPH described xylazine as "present" in California, but noted that the drug had not penetrated the state's drug supply as extensively as it has in other regions.

(<https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/Xylazine.aspx>)

- 3) **The California Uniform Controlled Substances Act:** In 1970, Congress passed the Comprehensive Drug Abuse Prevention and Control Act, which established a framework for federal regulation of controlled substances. Title II of the act is the Controlled Substances Act (CSA), which placed controlled substances in one of five "schedules."

The schedule on which a controlled substance is placed determines the level of restriction imposed on its production, distribution, and possession, as well as the penalties applicable to any improper handling of the substance... [W]hen DEA places substances under control by regulation, the agency assigns each controlled substance to a schedule based on its medical utility and its potential for abuse and dependence.

(The Controlled Substances ACT (CSA): A Legal Overview for the 118th Congress, Congressional Research Service (Jan. 19, 2023) p. 2

<<https://crsreports.congress.gov/product/pdf/r/r45948>> [last visited Mar. 28, 2024].)

Substances are added to or removed from schedules through agency action or by legislation. (*Id.* at p. 9.)

State laws generally follow the federal scheduling decisions, and "they are relatively uniform across jurisdictions because almost all states have adopted a version of a model statute called the Uniform Controlled Substances Act (UCSA)." (*Id.* at 4.) California adopted the UCSA in 1972. (Stats. 1972, ch. 1407, § 3.)

Congress has not yet acted to place xylazine on a schedule under the Controlled Substances Act. There are currently two bills pending in Congress that would make xylazine a Schedule III substance. (H.R. No. 1839, 118th Cong., 1st Sess. (2023) & Sen. No. 993, 118th Cong., 1st Sess. (2023).) However, neither bill has received a vote in its respective house, and

whether Congress will act to schedule xylazine remains uncertain. (Cf. Solender, *Capitol Hill stunner: 2023 led to fewest laws in decades*, Axios.com (Dec. 18, 2023)

<<https://www.axios.com/2023/12/19/118-congress-bills-least-unproductive-chart>> [last visited Mar. 28, 2024] [only 20 bills passed both chambers of Congress and were signed into law by the President in 2023].)

Depending on the outcome of those measures, this bill could place schedule xylazine under the UCSA ahead of a decision by the federal government. California, of course, may more tightly regulating controlled substances than the federal government. (The Controlled Substances Act (CSA), *supra*, at p. 5.) However, California generally has aligned its Uniform Controlled Substances Act with the federal government’s scheduling decisions. (See *People v. Ward* (2008) 167 Cal.App.4th 252, 259 [“In the California Uniform Controlled Substances Act, California adopted the five schedules of controlled substances used in federal law and in the Uniform Controlled Substances Act”]; *Williamson v. Bd. Of Medical Quality Assurance* (1990) 271 Cal.App.3d 1343, 1352, fn. 1. [“Effective January 1, 1985, Schedules I through V of the California Uniform Controlled Substances Act were revised so as to generally parallel the five schedules contained in the Federal Controlled Substances Act.”].)

- 4) **Reporting Drug Overdoses:** California’s Overdose Prevention Initiative (OPI) collects and shares data on fatal and non-fatal drug related overdoses, overdose risk factors, prescriptions, and substance use. (<<https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/OPI-landing.aspx>> [as of February 20, 2024].) The OPI works with local and state partners to address the complex and evolving nature of the drug overdose epidemic by data collection and analysis, prevention programs, public awareness and education campaigns, and safe prescribing and treatment practices. (DPH Drug Overdose Response Partner Recommendations, <<https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/Drug-Overdose-Response.aspx>> [as of Feb. 20, 2024].) One of the five recommendations it makes to local and statewide partners is to improve rapid identification of drug overdose outbreaks by partnering with coroner and medical examiner offices, healthcare facilities, and emergency medical services to obtain overdose data to form a timely response. (*Ibid.*)

To the extent it is not already being done, this bill would require coroners or medical examiners to conduct a toxicology analysis or drug screening if needed to determine or confirm the cause and manner of death; and, if suspecting a death to be due to drug overdose, to test for presence fentanyl or an analog of fentanyl, ketamine, gamma hydroxybutyric acid, xylazine, or other emergency adulterants as determined by DPH.

- 5) **Argument in Support:** According to the *California Veterinary Medical Association*, “AB 3029 makes aggressive moves to protect the public from xylazine diversion and abuse while balancing the need for veterinarians to maintain access to this important drug for use primarily in livestock, equine, and wildlife species.

“Xylazine is commonly used in veterinary medicine to provide sedation and pain control to livestock and horses. Its use and availability are of paramount importance to animal safety, human safety (such as veterinarians who have to perform procedures on animals that outweigh us by 10-fold), and public safety for animal control officers who use it to subdue wild and loose animals under the direction of a veterinarian. It is also used in zoological medicine to help care for exotic species. It easily ranks among one of the top 10 most

important medications in livestock, equine and wildlife veterinary medicine.

“While AB 3029 will add xylazine to California’s list of controlled substances as a schedule III drug, it does so by also incorporating language to help ensure that veterinarians will be able to maintain vital access to xylazine for use in legitimate veterinary practices and procedures that benefit our animal patients.”

6) Related Legislation:

- a) AB 1859 (Alanis), would require coroners to report to the State Department of Public Health (DPH) and to the Overdose Detection Mapping Application Program (ODMAP) whether an autopsy revealed the presence of xylazine at the time of a person’s death. AB 1859 is currently pending in the Assembly Appropriations Committee.
- b) AB 2018 (Rodriguez), would remove fenfluramine as a controlled substance under the UCSA. AB 2018 is pending a vote by the Assembly.
- c) AB 2871 (Maienschein), would authorize a county to establish an interagency overdose fatality review team to assist local agencies in identifying and reviewing overdose fatalities. AB 2871 is pending hearing in the Assembly Health Committee.
- d) AB 3073 (Haney), would, among other things, require the State Department of Public Health to develop protocols for implementing wastewater surveillance for high-risk substances, including xylazine. AB 3073 is pending hearing in the Assembly Committee on Environmental Safety and Toxic Materials.
- e) SB 1502 (Ashby) would make xylazine or any substance containing xylazine a Schedule III controlled substance under the UCSA. SB 1502 is pending referral in the Senate Rules Committee.

7) Prior Legislation:

- a) AB 1399 (Friedman), Chapter 475, Statutes of 2023, prohibited, among other things, a veterinarian from ordering, prescribing, or making available xylazine unless the veterinarian has performed an in-person physical examination of the animal patient or make medically appropriate and timely visits to the premises where the animal patient is kept.
- b) SB 67 (Seyarto), Chapter 859, Statutes of 2023, requires a coroner or medical examiner to report deaths that are a result of a drug overdose to the Overdose Detection Mapping Application Program managed by the Washington/Baltimore High Intensity Drug Trafficking Area program.
- c) AB 1351 (Haney), of the 2023-2024 Legislative Session, would have required all coroners or medical examiners to submit quarterly reports to the DPH on deaths caused by, or involving, overdoses of any drugs. AB 1351 was held by the Assembly Appropriations Committee.

- d) SB 1695 (Escutia), Chapter 678, Statutes of 2002, among other things, requires DPH to create a webpage on drug overdose trends in California, including death rates, in order to ascertain changes in the cause or rate of fatal and nonfatal drug overdoses.

REGISTERED SUPPORT / OPPOSITION:

Support

California Veterinary Medical Association
Peace Officers Research Association of California (PORAC)

Opposition

None

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3037 (Essayli) – As Introduced February 16, 2024

SUMMARY: Exempts firearm enhancements listed in the “10-20-life firearm law” from the requirement that a court dismiss an enhancement if it is in the furtherance of justice and does not endanger public safety. Specifically, **this bill:**

- 1) Provides that a court is not required to dismiss a 10-20-life firearm use enhancement, even if it is in the furtherance of justice to do so.
- 2) Retains court discretion to dismiss these firearm-related enhancements under the court’s general authority to dismiss an action.

EXISTING LAW:

- 1) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses¹ is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in great bodily injury (GBI) or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison.² (Pen. Code, § 12022.53, subds. (b)-(d).)
- 2) Provides that if the offense is gang-related, the 10-20-life firearm enhancements shall apply to every principal in the commission of the offense. But, an enhancement for participation in a criminal street gang shall not be imposed in addition to an enhancement under this provision, unless the person personally used or personally discharged a firearm in the commission of the specified offense. (Pen. Code, § 12022.53, subds. (e)(1) & (e)(2).)
- 3) Provides that only one additional term of imprisonment under the 10-20-life firearm law shall be imposed per person per crime. Further, other firearm enhancements shall not be imposed on a person in addition to an enhancement under this provision. (Pen. Code, § 12022.53,

¹ The felonies which trigger the enhancements under the 10-20-life firearm law are: murder; mayhem, kidnapping; robbery; carjacking; assault with intent to commit a specified felony; assault with a firearm on a peace officer or firefighter; specified sex offenses; assault by a life prisoner; assault by a prisoner; holding a hostage by a prisoner; any felony punishable by death or life imprisonment; and any attempt to commit one of these crimes other than assault. (Pen. Code, § 12022.53, subd. (a).)

² The felonies which trigger the 25-to-life enhancement also include discharge of a firearm at an inhabited dwelling and willfully and maliciously discharging a firearm from a motor vehicle. (Pen. Code, § 12022.53, subd. (d).)

subd. (f).)

- 4) Authorizes the court, either on its own motion or upon motion of the district attorney, and in furtherance of justice, to order an action to be dismissed. The reasons for the dismissal must be stated orally on the record, and entered in the minutes, if requested by either party. (Pen. Code, § 1385, subd. (a).)
- 5) Provides that if the court has the authority to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice. (Pen. Code, § 1385, subd. (b)(1).)
- 6) States that, notwithstanding any other law, the sentencing court “shall dismiss” an enhancement “if it is in the furtherance of justice to do so” except if dismissal of that enhancement is prohibited by any initiative statute. (Pen. Code, § 1385, subd. (c)(1).)
- 7) Instructs the court to consider the following factors in determining whether it is in the interests of justice to dismiss an enhancement:
 - a) Application of the enhancement would result in a discriminatory racial impact, as specified;
 - b) Multiple enhancements are alleged in a single case, in which case all enhancements but one shall be dismissed;
 - c) Application of the enhancement could result in a sentence of over 20 years, in which case the enhancement shall be dismissed;
 - d) The current offense is connected to mental illness, as specified;
 - e) The current offense is connected to prior victimization or childhood trauma, as specified;
 - f) The current offense is not a violent felony, as specified;
 - g) The defendant was a juvenile when they committed the current offense or any prior juvenile adjudication that triggers the enhancement or enhancements applied in this case;
 - h) The enhancement is based on a prior conviction that is over five years old;
 - i) Though a firearm was used in the current offense, it was inoperable or unloaded. (Pen. Code, § 1385, subd. (c)(2)(A)-(I).)
- 8) Requires the court to consider and afford great weight to evidence offered by the defendant to prove that any of the aforementioned mitigating circumstances are present. (Pen. Code, § 1385, subd. (c)(2).)
- 9) States that proof of the presence of one or more of these mitigating circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would “endanger public safety,” meaning that there is a likelihood that the

dismissal of the enhancement would result in physical injury or other serious danger to others. (Pen. Code, § 1385, subd. (c)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “California has more than a hundred gun laws in statute yet still experiences significant firearm related crime. When this Legislature essentially eliminated firearm sentencing enhancements in 2021, it was a slap in the face to victims of heinous crimes committed with a firearm. AB 3037 is a smart gun law that takes the thumb off the scale of justice, restoring the ability for judges to sustain firearm-related sentencing enhancements in felony cases involving a gun. It’s long overdue that we punish—and punish harshly—individuals who commit felonies with a firearm.”
- 2) **Background of “Use of a Gun and You’re Done” Law (i.e., the 10-20-life Firearm Law):** In 1997, the Legislature passed the “Use a Gun and You’re Done” law that significantly increased sentencing enhancements for possessing a gun at the time of committing a specified felony, such as robbery, homicide, or certain sex crimes. Under the law, if someone uses a gun while committing one of the identified crimes, their sentence is extended by 10 years, 20 years, or 25 years-to-life, depending on how the gun was used. Subdivision (b) provides a 10-year enhancement for using a firearm; subdivision (c), a 20-year enhancement for intentionally firing the gun; and subdivision (d), a 25-years-to-life enhancement for intentional discharge causing great bodily injury or death to someone other than an accomplice.

“Often the enhancement for gun use is longer than the sentence for the crime itself. For example, in the case of second-degree robbery, a person could serve a maximum of five years for the robbery and an extra 10 years for brandishing a gun during the robbery, even if the gun was unloaded or otherwise inoperable. Someone convicted of first-degree murder would be sentenced to at least 50 years-to-life if a gun was used, whereas if the murder was carried out using another method – such as strangulation – the sentence would be half the length (25 years-to-life). A judge has no discretion in applying this enhancement; if a gun was used, a judge must apply it.” (California Budget and Policy Center (2015) *Sentencing in California: Moving Toward a Smarter, More Cost-Effective Approach.*)

Deterrence was a driving factor behind this legislation: “The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime.” (AB 4 (Bordonaro), Chapter 503, Statutes of 1997.)

In 2017, the Legislature passed SB 620 (Bradford), Chapter 682, Statutes of 2017. This legislation allowed a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

As to the exercise of that judicial discretion, CDCR has informed the committee in the three

years preceding the court’s ability to strike an enhancement under the 10-20-Life firearm law, there were 6,255 enhancements imposed under the law on 2,845 offenders³; and in the three years after judicial discretion to strike the enhancement was implemented, there were 6,078 enhancements pursuant to the statute imposed on 2,672 offenders. More recent data obtained from CDCR for 2022 and 2023 shows imposition of these enhancements after changes were made, effective January 1, 2022, requiring a court to dismiss an enhancement if it is in the furtherance of justice but does not endanger public safety, discussed below.

Date Range	Number of Offenders	Number of PC 12002.53(b)	Number of PC 12002.53(c)	Number of PC 12002.53(d)	Number of Enhancements
2015 - 2017	2,845	3,239	1,227	1,789	6,225
2018 - 2021	2,672	3,089	1,181	1,808	6,078
2022	547	549	488	205	1,104
2023	581	584	555	285	1,228

Based on these figures, judges continued to impose these enhancements.

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

Effective January 1, 2022, SB 81 (Skinner) Chapter 721, Statutes of 2021, Penal Code section 1385 now requires, instead of just authorizes, a court to dismiss an enhancement if it is in the furtherance of justice to do so, unless any initiative statute prohibits such action. In exercising discretion, the court must give great weight to evidence offered by the defendant

³ The law prohibits imposition of more than one enhancement under the statute per *crime*, but not per *case*, since one case may involve multiple crimes charged. (See Pen. Code, § 12022.53, subd. (f).) Therefore, an offender who is convicted of two or more crimes using or discharging the same gun, can receive multiple enhancements under the 10-20-Life Law. (See e.g. *People v. Palacios* (2007) 41 Cal.4th 720, 733 [Where defendant was convicted of attempted murder, kidnapping for robbery, and kidnapping for carjacking based on a single act against a single victim, the imposition of sentence for three Penal Code section 12022.53 enhancements was proper and did not violate the bar against multiple punishment].)

to prove any of mitigating circumstances. Proof of mitigating circumstances “weighs greatly” in favor of dismissing the enhancement, unless the court finds that dismissal would endanger public safety. Examples of mitigating circumstances include where: the enhancement would result in discriminatory racial impact; multiple enhancements are alleged in a single case; the enhancement could result in a sentence exceeding 20 years; and the enhancement is based on a prior conviction that is over five years old. The statute allows a court to exercise this discretion before, during, or after trial or entry of plea as well as at sentencing.

This bill would exempt firearm enhancements under the 10-20-life law from the provision requiring dismissal of an enhancement if it is in furtherance of justice, but it would still allow a court to dismiss such an enhancement under the court’s general authority to do so.

- 4) **Research on the Deterrent Effect and Impact on State Prisons:** In a 2014 report, the Little Hoover Commission addressed the disconnect between science and sentencing – that is, putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. (Little Hoover Commission, *Sensible Sentencing for a Safer California* (2014) at p. 4 <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf>.)

The report also explains how California’s sentencing structure and enhancements contributed to a 20-year state prison building boom, specifically remarking on the “significant sentencing enhancements” of the 10-20-life firearm law. (Little Hoover Commission, *supra*, at p.9.)

According to the 2020 Annual Report by the Committee on the Revision of the Penal Code, over 80% of the people sentenced to state prison are serving a sentence lengthened by an enhancement, with some of the most common enhancements including firearm-use enhancements. (See *Annual Report and Recommendations 2020*, Committee on Revision of the Penal Code, at p. 37-38, http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf.) Citing data provided by the California Department of Correction and Rehabilitation’s Office of Research, the committee noted that these enhancements are applied disproportionately against people of color and people suffering from mental illness. (*Id.* at p. 38.)

- 5) **Argument in Support:** According to the *California District Attorneys Association*, “AB 3037 ... would restore judicial discretion to apply personal use and discharge firearm sentence enhancements where warranted and provide needed clarification to subdivision (c) of section 1385.

“At present, subdivision (c) states that a trial court must dismiss an enhancement if it is in the furtherance of justice when the application of an enhancement could result in a sentence of over 20 years. Subdivision (a), on the other hand, gives a trial court the discretion to dismiss an enhancement like those under section 12022.53 if the court finds that it is in the interest of justice. But because the enhancements under section 12022.53 carry lengthy terms (e.g., 10, 20, or indeterminate), their application would frequently result in a sentence over 20 years, which would in turn require a trial court to dismiss that same enhancement. Since the enhancement is related to the personal use and discharge of a firearm enhancement, we think judicial discretion is appropriate.

“AB 3037 removes mandatory dismissal for violent felony enhancements, restores a trial

court's discretion, and provides and an important safeguard in sentencing procedures.”

- 6) **Argument in Opposition:** According to *Smart Justice*, “Existing law requires a court to dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal of that enhancement is prohibited by any initiative statute. SB 81 (Skinner), Chapter 721, Statutes of 2021, provided explicit direction to courts regarding dismissal of enhancements in the furtherance of justice and provided guidelines for courts to follow in making those decisions. The language change was a response to a recommendation by the Committee on the Revision of the Penal Code because there was a lack of clarity and guidance as to how courts should exercise their discretion to dismiss enhancements.

“AB 3037 seeks to carve out from this guidance specific enhancements regarding the use of a firearm. There is no policy reason to make such a distinction and it is important to provide judges consistent guidelines regarding application of enhancements. Under current law, judges are not compelled to dismiss these enhancements but have the discretion to do so when they truly believe it is in the furtherance of justice to do so.”

7) **Prior Legislation:**

- a) AB 27 (Ta), of the 2023-2024 Legislative Session, would have exempted specified firearm enhancements from the presumption that a court must dismiss an enhancement if it is in the furtherance of justice to do so and does not endanger public safety. AB 27 failed passage in this committee.
- b) AB 328 (Essayli), of the 2023-2024 Legislative Session, would have prohibited the court from dismissing a firearm enhancement under the 10-20-life law, except as specified. AB 328 failed passage in this committee.
- c) SB 81 (Skinner), Chapter 721, Statutes of 2021, requires the court to dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal is prohibited by an initiative statute.
- d) AB 1509 (Lee), of the 2021-2022 Legislative Session, would have repealed several firearm enhancements, reduced the penalty for using a firearm in the commission of specified crimes from 10 years, 20 years, or 25-years-to-life to one, two, or three years, and authorized recall and resentencing for a person serving a term for these enhancements. AB 1509 was held in the Assembly Appropriations Committee.
- e) SB 620 (Bradford), Chapter 682, Statutes of 2017, allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.
- f) AB 4 (Bordonaro), Chapter 503, Statutes of 1997, provided for the 10-20-life firearm law.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' 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 School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Californians for Safety and Justice
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice
Initiate Justice Action
Legal Services for Prisoner With Children
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3042 (Stephanie Nguyen) – As Amended March 4, 2024

SUMMARY: Eliminates the sunset date on a county’s authority to transfer funds levied as a penalty pursuant to the DNA Fingerprint, Unsolved Crime, and Innocence Protection Act (hereinafter “Prop. 69”).

EXISTING LAW:

- 1) Mandates a state penalty be assessed on any person convicted of a crime of an amount of \$10 for every \$10 assessed by the court, with some exceptions. (Pen. Code, § 1464, subd. (a)(1).)
- 2) Requires pursuant to Proposition 69, that each person be levied a fine of an additional \$1 for every \$10 assessed for any criminal offenses, including vehicle code violations. (Gov. Code, § 76104.6, subd. (a)(1).)
- 3) States any deposit into the Prop. 69 account may continue through and including the 20th year after the initial calendar year in which the surcharge is collected, or longer if and as necessary to make payments upon any lease or leaseback arrangement utilized to finance any of the projects, as specified. (Gov. Code, § 76104.6, subd. (b)(1).)
- 4) States that on the last day of each calendar quarter of the year, the county treasurer shall transfer funds in the county’s DNA Identification Fund to the State Controller for credit to the state’s DNA Identification Fund, as specified.
 - a) In the first two calendar years following the effective date of this section, 70 percent of the amounts collected, including interest earned thereon.
 - b) In the third calendar year following the effective date of this section, 50 percent of the amounts collected, including interest earned thereon.
 - c) In the fourth calendar year following the effective date of this section and in each calendar year thereafter, 25 percent of the amounts collected, including interest earned thereon. (Pen. Code, § 76104.6, subd. (b)(2).)
- 5) Requires the state’s DNA Identification Fund be administered by the Department of Justice (DOJ) and funds in the state’s DNA Identification Fund, upon appropriation by the Legislature, shall be used by the Attorney General (AG) only to support DNA testing in the state and to offset the impacts of increased testing.
- 6) Provides that to ensure expeditious and economical processing of offender DNA specimens and samples for inclusion in the FBI’s Combined DNA Index System (CODIS) and the

state's DNA Database and Data Bank Program, the DOJ DNA Laboratory is authorized to contract with other laboratories, whether public or private, including law enforcement laboratories, that have the capability of fully analyzing offender specimens or samples within 60 days of receipt, for the anonymous analysis of specimens and samples for forensic identification testing, as specified. (Pen. Code, § 298.3, subd. (a).)

- 7) States that in addition to the \$10 on every \$10 assessed for any criminal offense for deposit in the DNA Identification fund, an additional state-only penalty of \$4 for every \$10, or part of \$10, in each county on every fine, penalty, or forfeiture imposed and collected by the courts. (Gov. Code, § 76104.7, subd. (a).)
- 8) Requires the following persons to provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required for law enforcement identification analysis:
 - a) Any person, including any juvenile, who is convicted of or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated under Section 602 of the Welfare and Institutions Code for committing any felony offense.
 - b) Any adult person who is arrested for or charged with any of the following felony offenses:
 - i. Any felony offense for which a person is required to register as a sex offender, or attempt to commit any felony offense described in sex offender registration provisions, or any felony offense that imposes on a person the duty to register in California as a sex offender.
 - ii. Murder or voluntary manslaughter or any attempt to commit murder or voluntary manslaughter.
 - iii. Commencing on January 1 of the fifth year following enactment of the act that added this subparagraph, as amended, any adult person arrested or charged with any felony offense. (Pen. Code, § 296, subd. (a)(1).)
- 9) States that whenever the DNA Laboratory of the DOJ notifies the CDCR or any law enforcement agency that a biological specimen or sample, or print impression is not usable for any reason, the person who provided the original specimen, sample, or print impression shall submit to collection of additional specimens, samples, or print impressions. CDCR or other responsible law enforcement agency shall collect additional specimens, samples, and print impressions from these persons as necessary, and transmit these specimens, samples, and print impressions to the appropriate agencies of the DOJ. (Pen. Code, 296.2, subd (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “Proposition 69, the ‘DNA Fingerprint, Unsolved Crime and Innocence Protection Act,’ was passed by voters in November 2004 to support and expand the use of DNA technology to improve public safety. Among its provisions, Prop. 69 directs funding from criminal fines to be allocated between state and local crime labs to support expanded efforts to collect and test DNA samples. This additional funding has been instrumental in the success of the state’s DNA database program. In the 20 years since the measure was passed, the state has recorded over 106,000 DNA hits to unsolved crimes, many of which were sexual assault crimes.

“AB 3042 eliminates the sunset date for Prop 69 funding to establish a permanent, steady source of revenue outside of the General Fund that supports DNA testing programs at both state and local levels. Retaining this key funding source will not only aid in exonerating the innocent but also support public safety in our communities for generations to come.”

- 2) **DNA Fingerprint, Unsolved Crime and Innocence Protection Act:** The DNA Identification Fund was adopted by the voters in 2004 as Prop. 69. In the early 2000s, the rise of DNA technology made it an attractive component to a criminal prosecution – it theoretically eliminates all other suspects that are not guilty; and conclusively identifies the suspect that is guilty. Furthermore, after multiple instances of states including Georgia, Texas, and Illinois nearly executing or actually executing innocent people that were exonerated by DNA, DNA became a literal life saver and acted as a form of protection against wrongful conviction.¹ Prop. 69 requires felony arrestees to have their DNA taken at the time of arrest and, ideally, uploaded into the CODIS.

Prop. 69 set up a funding mechanism that required assessing penalties on criminal and traffic offenses and transferring those funds between state and local agencies for DNA testing. Government Code section 76104.6 requires each county to submit an annual report to the Legislature and the DOJ on the total amount of penalty assessments they collected, allocated, and expended for authorized programs to implement Prop. 69. The DNA Identification Fund is used for a variety of purposes on both the state and county levels, including law enforcement collection and analysis of DNA specimens, and to reimburse local law enforcement for processing, tracking, and storing DNA samples that may be tested by the state or a private lab. (See Gov. Code, § 76104.6, subd. (b)(3).)

Civil Rights advocates objected at the time to the enactment of Proposition 69, and filed suit arguing it constituted an unconstitutional invasion of privacy and was overbroad. The ACLU, in particular, filed suit alleging Prop. 69 is an unconstitutional violation of the 4th Amendment prohibition against unlawful search and seizure.² The California Supreme Court held in *People v. Buza* (2018) 4 Cal.5th 658, 690-91, that Prop. 69’s collection requirement were constitutionally valid because of the safeguards built into the law. In its decision, the Court held:

¹ See Death Penalty Information Center, Executed but Possibly Innocent, located at <https://deathpenaltyinfo.org/policy-issues/innocence/executed-but-possibly-innocent>

² See ACLU of Northern California (2004) *DNA Dragnet Includes Victims of Identity theft and Domestic Violence*, press release, located at <https://www.aclu.org/press-releases/aclu-challenges-california-law-permitting-government-seizure-dna-samples-innocent> last visited March 22, 2024.

“Safeguards against the wrongful use or disclosure of sensitive information may minimize the privacy intrusion when the government accesses personal information, including sensitive medical information. The DNA Fingerprint, Unsolved Crime and Innocence Protection Act makes the misuse of a DNA sample a felony, punishable by years of imprisonment and criminal fines. (See Pen. Code, § 299.5.)

In assessing whether the demand for a sample of an arrestee's DNA was reasonable under California Constitution, article I, section 13, we agree that it may be appropriate to consider not only the minimal nature of the physical intrusion associated with a buccal swab, but the arrestee's reasonable expectations about what would happen to the sample after collection. But in so analyzing the arrestee's choice, we cannot ignore the safeguards built into the DNA Act: the limited nature of the information stored in databases on an arrestee (specifically, a numerical profile describing noncoding parts of the arrestee's DNA); the legal protections against possible misuse of the profile or the sample (including felony sanctions for knowing improper use or dissemination); and the availability of procedures for removing the profile from the database and destroying the sample should the basis for the arrestee's inclusion dissipate. We have no record before us to show that these legal protections would have been violated or proved unworkable had defendant chosen to comply with the requirement to provide a DNA sample on booking. ...To be sure, as explained above, defendant was entitled to the full scope of constitutional protection against unreasonable searches, despite his arrest on evident probable cause. And had he later found himself in a position to seek expungement of his sample and profile and found the statutory procedures inadequate, he would have been entitled to challenge the retention of his information on that basis.” (*Buza, supra*, at 692.)

Given that the legal challenges to Prop. 69 have mostly been exhausted, it may make sense to formalize the funding so as to ensure a steady stream of financing for DNA testing statewide.

- 3) **DNA Identification Fund:** For the purpose of implementing Prop. 69, there is levied an additional penalty by the courts in each county which will be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. The penalty amounts will be collected by the counties and deposited into a DNA Identification Fund, established within each county treasury.

This money, along with any interest earned, is held by the county treasurer until transferred to the State Controller for credit to the DNA Identification Fund. (Gov. Code, § 76104.6, subd. (b)(2); Gov. Code, § 76104.7, subd. (b).) The DNA Identification Fund was created within the State Treasury to deposit the penalties collected to be used by the AG only to support DNA testing in the state and to offset the impacts of increased testing. Its scope is further expanded to fund the operations of all of the DOJ forensic laboratories.

Government Code section 16346 states that in the absence of language that either eliminates the 20 year sunset or extends it, or no other successor fund is identified, any remaining balance and existing obligations in this fund upon abolishment shall be transferred to the General Fund. If this bill or any related bills are not signed into law, the fund would simply be deposited into the GF. As explained below, the Budget process has used the GF to backfill the DNA Identification Fund because it is increasingly unstable. (See Department of Finance, Manual of State Funds, April 2021, DNA Identification Fund, No. 3086.)³

According to the Legislative Analyst's Office ("LAO"), the Governor's 2023-24 Budget included \$54.9 million from the GF in 2023-24 (decreasing to \$47.6 million in 2024-25 and 2025-26) to maintain existing service levels. In addition, the budget includes a \$10 million increase in DNA Identification Fund expenditure authority annually for three years to restore historical expenditure levels from the fund. (This was reduced in prior years when the budget partially addressed the fund's insolvency by temporarily redirecting General Fund support from another DOJ program to support BFS instead.)

"The proposed amount consists of \$46.1 million annually for three years to backfill a decline in criminal fine and fee revenue deposited into the DNA Identification Fund used to support the Department of Justice ("DOJ") Bureau of Forensic Services ("BFS") Division. BFS provides criminal laboratory services, such as DNA testing, alcohol and controlled substances analysis, and on-site crime scene investigation support. Ten regional laboratories provide services at no charge for local law enforcement and prosecutorial agencies in 46 counties that do not have access to those services. BFS also assists the 12 counties and 8 cities that operate their own laboratories where BFS offers services their laboratories lack. Local agencies also contract with providers or other government laboratories for services. Additionally, BFS operates the state's DNA laboratory as well as the state's criminalistics training institute. (LAO, 2023-24 Budget (February 23, 2023) DOJ Budget Proposals.)"⁴

The DNA Identification Fund has been underfunded for at least the last four years. Over the past several years, the Legislature has taken steps to reduce the cycle of criminal justice

³ Located at <https://ebudget.ca.gov/budget/2024-25/#/FundIndex>, last visited March 19, 2024.

⁴ Located at <https://www.lao.ca.gov/Publications/Report/4701>, last visited March 19, 2024.

debtors by reducing or eliminating fines and fees based on criminal convictions. As a general matter, it makes more sense to fund these programs through GF allocation rather than by low or no income members of the community who cannot pay exorbitant fines. It lead to catastrophic consequences for people in the community and did not generate much money. Does it make more sense to simply deposit the funds into the GF and continue to allocate moneys for BSF as a general fund appropriation?

- 4) **Penalty Assessments:** As explained above, Prop. 69 is funded via penalty assessments on criminal convictions. Government Code section 76104.6, subdivision (a) states:

For the purpose of implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act, there shall be levied an additional penalty of one dollar for every ten dollars (\$10) or fraction thereof in each county which shall be collected together with and in the same manner as the amounts otherwise levied against a criminal defendant, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except parking offenses.... These moneys shall be taken from fines and forfeitures deposited with the county treasurer....The board of supervisors shall establish in the county treasury a DNA Identification Fund into which shall be deposited the collected moneys pursuant to this section.

In the past several years, numerous changes to the law have eliminated penalty assessments on convictions because it creates a cycle of poverty for historically marginalized communities. Currently, penalty assessments may amount to thousands of dollars and ultimately act as a bar to services, and may even result in a violation of probation, resulting in jail time. Fines are assessed as follows:

For a base fine of \$1,000:

Penal Code § 1464 state penalty on fines	\$1,000 (\$10 for every \$10).
Penal Code § 1465.7 state surcharge	\$200 (20%)
Penal Code §1465.8 court operations assessment	\$40 (\$40 per criminal offense)
Government Code §70372 court construction penalty	\$500 (\$5 for every \$10).
Government Code §70373 assessment	\$30 (\$30 for any felony or misdemeanor)
Government Code §76000 penalty	\$700 (\$7 for every \$10)
Government Code §76000.5 EMS penalty	\$200 (\$2 for every \$10)
Government Code §76104.6 DNA fund penalty	\$100 (\$1 for every \$10)
Government Code §76104.9 additional DNA fund penalty	\$400 (\$4 for every \$10)
Total Fine with Assessments:	\$4,170.

The total amount would obviously increase depending on the amount of the base fine. Penalty assessments more than triples the total fine. Given the importance of DNA testing,

should the Legislature consider creating a permanent funding source that is not predicated on steadily declining fines and fees but allocations from the GF? Additionally, as explained above, the DNA Identification Fund is steadily declining and requires backfill from the GF. Does it make more sense to simply fund DNA testing directly, rather than through specified county transfers based on penalty assessments?

- 5) **Argument in Support:** According to the *California Department of Justice*: Proposition 69, also known as the “DNA Fingerprint, Unsolved Crime and Innocence Protection Act,” was passed by voters in November 2004 to support and expand the use of DNA technology to solve crimes. Among its provisions, Prop. 69 directs funding from criminal fines to be allocated between state and local crime labs to support expanded efforts to collect and test DNA samples. In the two decades since Prop. 69 was passed, DOJ has received more than \$74 million from the fund and has recorded over 106,000 DNA hits to unsolved crimes. By contrast, the state’s underfunded DNA database program recorded only 1,108 hits from 1984 to 2004.

While the numbers illustrate the benefit of these funds on public safety, Prop. 69 included a sunset date of 20 years that is set to expire this year. Fortunately, Prop. 69 included a provision allowing the legislature to amend it so long as the changes are consistent with the purposes of the proposition. By eliminating the sunset date, AB 3042 will establish a permanent, steady source of revenue from an already established criminal fine – completely separate and apart from the General Fund -- that will allow crime labs to continue this critical investigative work. This funding has been instrumental in the success of the state’s DNA database program, bringing closure to thousands of victims and their families. But the work is not done. AB 3042 will help the DOJ and local crime labs continue to bring justice to victims and to exonerate the innocent.

- 6) **Argument in Opposition:** None on file.

7) **Related Legislation:**

- a) AB 1368 (Lackey), requires a law enforcement agency to submit specified sexual assault forensic evidence received prior to January 1, 2016 to a crime lab for testing, and requires the crime lab to process that kit and upload DNA profiles to the Combined DNA Index System (CODIS). AB 1368 was held on the Assembly Appropriations suspense file.
- b) SB 917 (Committee on Budget and Fiscal Review), requires a law enforcement agency to submit specified sexual assault forensic evidence received prior to January 1, 2016 to a crime lab for testing, and requires the crime lab to process that kit and upload DNA profiles to the Combined DNA Index System (CODIS).

8) **Prior Legislation:**

- a) AB 1869 (Committee on Budget), Chapter 92, Statutes of 2020, states a court may order that a portion of the costs assessed pursuant to existing law include a reasonable portion of the cost of obtaining specimens, samples, and print impressions in furtherance of Prop. 69 and the funds collected shall be deposited in the DNA Identification Fund as created by Section 76104.6 of the Government Code.

b) SB 824 (Committee on Budget) of the 2019-2020 Legislative Session, includes changes necessary to implement the 2020 Budget Act to repeal various criminal administrative fees and provide the counties with an appropriation to address the corresponding revenue loss. SB 842 was held on the Assembly Floor.

c) SB 144 (Mitchell) of the 2019-2020 Legislative Session, would have eliminated a number of administrative fees imposed on a person related to involvement in the criminal justice system. SB 144 was referred to, but never heard in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Justice (Sponsor)
California Association of Crime Laboratory Directors
California State Sheriffs' Association
Los Angeles County Professional Peace Officers Association

Opposition

None on File.

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 3077 (Hart) – As Amended March 11, 2024

SUMMARY: Removes borderline personality disorder (BPD) as an exclusion for mental health diversion for defendants found incompetent to stand trial (IST), as specified, and as an exclusion to dismiss a sentence enhancement in furtherance of justice.

EXISTING LAW:

- 1) Requires a court to dismiss an enhancement if it is in the furtherance of justice to do so, except if prohibited by any initiative statute. (Pen. Code, § 1385, subd. (c)(1).)
- 2) Requires the court, when dismissing an enhancement, to consider and afford great weight to evidence offered by the defendant to prove if any specified mitigating circumstances are present, including among others, whether the current offense is connected to mental illness. (Pen. Code, § 1385, subd. (c)(2).)
- 3) Provides that, proof of one or more of the specified mitigating circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety. “Endanger public safety” means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others. (Pen. Code, § 1385, subd. (c)(2).)
- 4) Specifies, for the purposes of dismissing a sentence enhancement, a mental illness is a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder but excluding antisocial personality disorder, BPD, and pedophilia. (Pen. Code, § 1385, subd. (c)(5).)
- 5) Specifies the process for the commitment and treatment of defendants found IST. (Pen. Code, § 1370.)
- 6) Requires defendants found IST to be committed to the Department of State Hospitals (DSH), a treatment facility, or on outpatient treatment for restoration of competency. (Pen. Code, § 1370, subd. (a).)
- 7) Allows the court to make a finding that an IST defendant is the appropriate candidate for mental health diversion, in lieu of commitment for restoration of competency. (Pen. Code, § 1370, subd. (a)(1)(B)(iv)(I).)
- 8) Requires, if an IST defendant is found by the court to be an appropriate candidate for mental health diversion, the defendant’s eligibility shall be determined pursuant to the mental health

diversion statute, Penal Code section 1001.36. (Pen. Code, § 1370, subd. (a)(1)(B)(v).)

- 9) Sets forth the eligibility criteria for mental health diversion, including among other things, that the defendant has been diagnosed with a mental disorder as identified in the most recent edition of the DSM, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder and pedophilia. (Pen. Code, § 1001.36.)
- 10) States that the purpose of mental health diversion is to mitigate the entry and reentry of individuals with mental health disorders into the criminal justice system while protecting public safety. (Pen. Code, § 1001.35.)
- 11) States the intent to promote the diversion of individuals with serious mental disorders pursuant to the mental health diversion statute, and to assist counties in providing diversion for individuals with serious mental illnesses who have been found IST and committed to the DSH for restoration of competency. (Welf. & Inst. Code, § 4361.)
- 12) Allows DSH to solicit proposals and contract with counties to help fund the development or expansion of pretrial mental health diversion for individuals with serious mental disorders and that meets all of the following criteria:
 - a) Participants are individuals diagnosed with a mental disorder as identified in the most recent edition of the DSM, including, but not limited to, bipolar disorder, schizophrenia, and schizoaffective disorder, but excluding a primary diagnosis of antisocial personality disorder, BPD, and pedophilia, and who are presenting non-substance-induced psychotic symptoms, who have been found IST;
 - b) There is a significant relationship between the individual's serious mental disorder and the charged offense, or between the individual's conditions of homelessness and the charged offense; and,
 - c) The individual does not pose an unreasonable risk of danger to public safety if treated in the community.
- 13) Requires DSH to implement a growth cap program for all counties for IST individuals committed to DSH and requires DSH to charge counties penalty payments as to implement the growth cap program. (Welf. & Inst. Code, § 4336.)
- 14) Creates the Mental Health Diversion Fund in the State Treasury to receive the penalty payments from each county. The fund shall be used to support county activities that will divert individuals with serious mental illnesses away from the criminal justice system and lead to the reduction of felony IST determinations. (Welf. & Inst. Code, § 4336, subd. (c)(1).)
- 15) Provides that activities supported by the Mental Health Diversion Fund shall include one or more of the following:
 - a) Prebooking mental health diversion to serve those with serious mental illness and prevent their felony arrest. The target population that shall be served are individuals

demonstrating psychosis manifesting as hallucinations, delusions, disorganized thoughts, or disorganized behavior at the time of the interaction;

- b) Postbooking mental health diversion to serve those with serious mental illness and who are likely to be found IST, to prevent the IST determination and divert the individual from incarceration. The target population that shall be served are individuals diagnosed with a mental disorder as identified in the most recent edition of the DSM, including, but not limited to, bipolar disorder, schizophrenia, and schizoaffective disorder but excluding a primary diagnosis of antisocial personality disorder, BPD, and pedophilia, and who are presenting non-substance-induced psychotic symptoms; and,
- c) Reentry services and support to serve those who have been restored to competency following a felony IST commitment and directly released to the community from jail. (Welf. & Inst. Code, § 4336, subd. (c)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Borderline personality disorder (BPD) affects 2-6% of the population with slightly higher rates among women and younger individuals. Current law allows for individuals diagnosed with post-traumatic stress, bipolar disorder, schizophrenia and schizoaffective disorder to be eligible for incompetent to stand trial. BPD is characterized by a pervasive pattern of instability in behavior, mood, identity and interpersonal relationships. The exclusion of BPD is not data driven, perpetuates harmful stigma about the disorder, and limits access to mental health treatment. AB 3077 aims to increase equity within the justice system for individuals living with BPD and help reduce recidivism rates."
- 2) **Mental Health Diversion for IST Defendants:** The purpose of mental health diversion is to "mitigate individuals' entry and reentry into the criminal justice system while protecting public safety." (Pen. Code, § 1001.35.) A defendant is eligible for mental health diversion if they are "diagnosed with a mental disorder as identified in the most recent edition of the [DSM], including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder and pedophilia." (Pen. Code, § 1001.36, subd. (b)(1).) Until this year, BPD was also listed as an excluded disorder in this statute. The Legislature passed AB 1412 (Hart), Chapter 687, Statutes of 2023, which removed BPD as an exclusion for mental health diversion.

IST defendants are generally committed to DSH for restoration of competency. (Welf. & Inst. Code, § 1370.) There is a statewide waitlist crisis for defendants who are IST awaiting transfer to a state hospital to receive treatment to restore their competency. DSH has seen an unprecedented growth in referrals in recent years. (DSH, *Governor's Budget Proposals and Estimates* (Jan. 10, 2024) at p. 16. Available at: <https://www.dsh.ca.gov/About_Us/docs/2024-25_Governors_Budget_Estimate.pdf> [as of Feb. 20, 2024].) The number of IST defendants in California exceeds the number of beds DSH had available to treat them and IST defendants languish in county jail waiting to be transferred to a DSH facility. (*People v. Kareem A.* (2020) 46 Cal.App.5th 58, 63-64.) In *Stiavetti v. Clendenin* (2021), 65 Cal.App.5th 691, a court of appeal held that the state's long

waitlist for competency restoration treatment violates the due process rights of people found IST. (Committee on the Revision of the Penal Code, *Annual Report and Recommendations* (Dec. 2022), at pp. 50-55. Available at:

http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2022.pdf [as of Feb. 20, 2024].)

The court ordered the state to ensure that, by February 27, 2024, all IST defendants access treatment within 28 days. (*Ibid.*)

If a defendant can benefit from mental health diversion, the court may make a finding that the defendant is an appropriate candidate for diversion, and the defendant can be diverted in lieu of a DSH commitment. (*Ibid.*) To be diverted, an IST defendant must meet the eligibility requirements specified in the mental health diversion statute. (Pen. Code, § 1370, subd. (a)(1)(B)(iv).) To address the snowballing waitlist for DSH commitments, the Legislature authorized DSH to contract with counties to help fund the development and expansion of pretrial mental health diversion. (Welf. & Inst. Code, § 4361, subd. (a).) This would also “promote the diversion of individuals with serious mental disorders” and to “assist counties in providing diversion for individuals with serious mental illnesses who have been found IST and committed to DSH.” (*Ibid.*)

However, the statute provides that DSH may only contract with a county to help fund the development or expansion of pretrial mental health diversion that meets specified criteria, including: (1) that the diversion is for individuals “diagnosed with a mental disorder as identified in the most recent edition of the [DSM], including, but not limited to, bipolar disorder, schizophrenia, and schizoaffective disorder, **but excluding a primary diagnosis of antisocial personality disorder, borderline personality disorder, and pedophilia**, and who are presenting non-substance-induced psychotic symptoms, who have been found IST”; (2) that “there is a significant relationship between the individual’s serious mental disorder and the charged offense, or between the individual’s conditions of homelessness and the charged offense”; and, (3) that the “individual does not pose an unreasonable risk of danger to public safety [...] if treated in the community.” (Welf. & Inst. Code, § 4361, subd. (c).)

This bill would eliminate the requirement that the county mental health diversion program exclude individuals diagnosed with BPD in order to receive DSH funds. In so doing, this bill could help further reduce the DSH backlog by expanding diversion eligibility. Further, excluding IST defendants based solely on their diagnosis of BPD, and making them languish in jail waiting for treatment to restore competency, while there are other avenues available for their treatment, is simply unfair—especially where the person does not pose an unreasonable risk of danger to public safety if treated in the community, and they would otherwise be eligible under the mental health diversion statute.

Under existing law, DSH is required to implement a growth cap program for all counties for committed IST defendants. (Welf. & Inst. Code, § 4336.) DSH is required to charge counties penalty payments to implement the growth cap program. (*Ibid.*) For each IST determination that exceeds a specified baseline, a county must pay a specified penalty amount. (Welf. & Inst. Code, § 4336, subd. (b).) The penalty funds are deposited into the state Mental Health Diversion Fund. (*Ibid.*) The fund is used to support county activities that will divert individuals with serious mental illnesses away from the criminal justice system and lead to the reduction of felony IST determinations, including pre-and-post booking mental health diversion and reentry services for those who have been restored to competency. (Welf. & Inst. Code, § 4336, subd. (c).)

This statute specifies that the Mental Health Diversion Fund monies can be used for mental health diversion to serve those with serious mental illness and who are likely to be found IST, to prevent the IST determination and divert the individual from incarceration. (Welf. & Inst. Code, § subd. (c)(2)(B).) “The target population that shall be served are individuals diagnosed with a mental disorder as identified in the most recent edition of the [DSM], including, but not limited to, bipolar disorder, schizophrenia, and schizoaffective disorder **but excluding a primary diagnosis** of antisocial personality disorder, **borderline personality disorder**, and pedophilia, and who are presenting non-substance-induced psychotic symptoms.” (Welf. & Inst. Code, § 4336, subd. (c)(2)(B).)

Current law prevents counties from receiving funds to divert individuals with BPD. This bill would remove this exemption. As such, counties would be able to receive funds for activities to further encourage people diagnosed with BPD to mental health diversion in order to prevent their incarceration and potential IST determination.

- 3) **Dismissals in the Furtherance of Justice:** This bill would remove BPD as an exclusion for dismissing sentence enhancements.

Penal Code section 1385 gives courts discretion to dismiss an action if it is in “furtherance of justice.” (Pen. Code, § 1385, subd. (a).) The word “action” includes sentencing enhancements. (Pen. Code, § 1385, subd. (b)(1); see also, *People v. Thomas* (1992) 4 Cal.4th 206, 209.) SB 81 (Skinner), Chapter 721, Statutes of 2021, requires the court to dismiss an enhancement if it is in the interest of justice to do so. (Pen. Code, § 1385, subd. (c).) In so doing, the court is required to “consider and afford great weight to evidence offered by the defendant to prove specified mitigating circumstances are present.” (Pen. Code, § 1385, subd. (c)(2).) Proof of the presence of one or more of the specified circumstances weighs greatly in favor of dismissing the enhancement. (*Ibid.*) Among others, one such circumstance is that “the current offense is connected to a mental illness.” (Pen. Code, § 1385, subd. (c)(2)(D).)

The statute further specifies that “a mental illness is a mental disorder as identified in the most recent edition of the [DSM], including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder **but excluding** antisocial personality disorder, **borderline personality disorder**, and pedophilia.” (Pen. Code, § 1385, subd. (c)(5) (Emphasis added).)

Accordingly, when an individual is diagnosed with BPD, the court is not required to dismiss the enhancement, even if doing so would not endanger public safety and would serve the interests of justice. However, for individuals with similar mental health conditions, such as bipolar disorder, the court would be compelled to dismiss the enhancement under identical circumstances. It is inherently unjust that an individual who poses no threat to public safety cannot have their enhancement dismissed, particularly when it serves the interests of justice, solely due to their mental health diagnosis.

- 4) **Under Existing Law, Some Individuals with BPD May Be Eligible for Dismissals, While Others May Be Unfairly Excluded:** In *Negron v. Superior Court* (2021) 70 Cal.App.5th 1007, the California Court of Appeal reviewed the mental health diversion statute. The court determined that a “Defendant’s antisocial personality disorder (ASPD) did not disqualify him

from mental health diversion, even though ASPD is expressly excluded in the statute, because the defendant *also* suffered from several qualifying mental health disorders. (*Ibid.*) The court reasoned that the mental health diversion statute simply disallowed defendants from establishing eligibility for diversion based on an excluded disorder. “Suffering from an excluded disorder does not categorically bar defendants from establishing eligibility based on a different, qualifying disorder.” (*Id.*, at p. 1016.) Otherwise put, the court determined that a defendant is eligible for mental health diversion “so long as he or she suffers from a qualifying disorder, even if he or she is also diagnosed with an excluded disorder.” (*Ibid.*)

The court further opined that, “It is entirely predictable, and thus certainly within the contemplation of the Legislature, that a person might suffer from included *and* excluded disorders. Because [the statute] requires suffering only one included disorder, the Legislature would have been aware a defendant could still meet that requirement notwithstanding suffering from a disorder [the statute] designates as excluded. Had the Legislature intended to wholly preclude from diversion any person diagnosed with an excluded disorder (regardless of concurrently suffering from included disorders), the sentence phrasing of [the statute] would have shifted from simply listing excluded disorders to disqualifying persons with any of the excluded disorders.” (*Negron v. Superior Court, supra*, at p. 1017.)

Like the mental health diversion statute, the current dismissal statute suffers from the same defect.¹ (See, e.g. Pen. Code, §§ 1385, subd. (c)(5).) Therefore, consistent with the court’s reasoning in *Negron v. Superior Court*, under existing law a person who has BPD *and* other mental disorders would be required to have their enhancements dismissed, but a person who *only* has BPD is not eligible. It is inequitable that a person diagnosed with multiple mental health disorders could receive this benefit, but a person diagnosed with BPD only cannot.

- 5) **Advancements in Treatment of BPD:** BPD is characterized by intense, rapidly fluctuating moods combined with impulsivity and interpersonal difficulties.² BPD has been used for decades to “label patients who are ‘hopeless’, those who get therapists upset, and is one of the most controversial mental health diagnoses.”³ BPD can be a difficult diagnosis because of similarities to other conditions, particularly mood disorders. The validity of the current criteria for BPD shares problems with other psychiatric disorders: namely, the absence of biological markers, unclear delimitation from other disorders. The diagnostic criteria for BPD allow for 256 different combinations of symptoms that could lead to a diagnosis.⁴

In the past, treatment of BPD was considered challenging, but interventions have been developed over the past two decades that have dramatically changed the lives of individuals with BPD.⁵ There have been advances in our understanding and treatment approaches to BPD, which preclude dismissing BPD as an untreatable condition. For example,

¹ In comparison, the IST diversion statutes exclude BPD if it is the person’s “primary diagnosis.” (See, Welf. & Inst. Code, §§ 4361, subd. (c)(1)(A) & 4336, subd. (c)(2)(B).)

² Biskin RS, *Management of Borderline Personality Disorder* (Nov. 2012) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3503902/>> [as of March 17, 2024].

³ Al-Alem, Linah and Omar, Hatim A., *Borderline Personality Disorder: An Overview of History, Diagnosis and Treatment in Adolescents* (2008) Pharmacology and Nutritional Sciences Faculty Publications.

⁴ Biskin RS, Paris J., *Diagnosing Borderline Personality Disorder* (Nov 2012) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3494330/>> [as of March 17, 2024].

⁵ *Ibid.*

psychotherapy is the most important component in the treatment of BPD, which results large reductions in symptoms that persist over time. The most popular treatment for BPD is dialectical behavior therapy (DBT). DBT consists of weekly individual sessions and weekly life-skills group sessions that teach skills in four domains: mindfulness, distress tolerance, regulation of emotions and interpersonal effectiveness. (Biskin RS, Paris J., *supra.*) In addition to DBT, there are other effective psychotherapies for BPD including schema-focused therapy, mentalization-based therapy, systems training for emotional predictability and problem-solving, and transference-focused psychotherapy. (Lee JS., *Borderline Personality Disorder in the Courtroom* (June 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8547869/>> [as of March 17, 2024].) Pharmacologic treatments have also been effective in treating BPD. Medications commonly used for mood and psychotic disorders have shown modest efficacy in improving the mood and behavior of BPD patients, including mood stabilizers and antipsychotics. (*Ibid.*)

- 6) **Disparate Treatment of Personality Disorders in the Criminal Justice System:** Within the criminal justice system, there has been a strong push to exclude personality disorders, like BPD, from the types of mental illnesses potentially significant enough to warrant exculpation of fault or consideration of decreased criminal responsibility. (Johnson SC, Elbogen EB. *Personality Disorders at the Interface of Psychiatry and the Law: Legal Use and Clinical Classification* (June 2013) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3811091/>> [as of March 17, 2024].) “Some state statutes (ie, California and Oregon) go as far as excluding all personality disorders with respect to the insanity defense.” (*Ibid.*; see also Pen. Code, § 29 [not guilty by reason of insanity defense not allowed solely on the basis of a “personality or adjustment disorder, a seizure disorder, or an addiction to, or abuse of, intoxicating substances.”].) “Perhaps because of their relatively high prevalence within the criminal justice system, personality disorders have to some degree lost their identity as mental illnesses, and instead are often seen as common population characteristics.” (*Ibid.*) The diagnoses of certain personality disorders are among the most frequently made diagnoses within offender and prison populations. (*Ibid.*) “Their expression no longer falls outside of the norms when the offender population is considered the population of concern; thus, they lose their usefulness as differentiating factors within at least part of the legal system.” (*Ibid.*)

As explained more fully above, there have been significant advances in our understanding of BPD, and it is no longer considered untreatable. With our progressed understanding of BPD, as well advancements in its treatment, it would be prudent to reevaluate the management of individuals with BPD in the criminal justice system. Wholly discounting BPD from mental health diversion and dismissals in the interest of justice excludes an entire class of defendants who otherwise could be amenable to treatment, and whose reentry into the criminal justice system might otherwise be prevented. Consistent with this updated understanding of BPD, this bill builds upon the progress made by legislation last year that removed BPD as an exclusion for mental health diversion. (AB 1412 (Hart), Chapter 687, Statutes of 2023.)

- 7) **Argument in Support:** According to *Emotions Matter, Inc.*, “This legislation is essential because it recognizes people diagnosed with BPD are unfairly excluded from California’s judicial options for people with mental health conditions, despite evidence showing that BPD treatment reduces criminal behavior, arrests, and recidivism in this population. [...]”

“The exclusion of BPD from the list of eligible psychiatric diagnosis that are eligible for a determination of IST and the dismissal of penalty enhancements is not data driven,

perpetuates harmful stigma about the disorder, and limits access to the necessary rehabilitative mental health treatment that both helps individuals recover their mental health and protect public safety. People with BPD make important contributions to society and deserve equitable and just treatment, and compassion. Treatment is essential for reducing the risk of suicide among people with BPD, as self-harming behaviors are common in BPD, and 10% of people with BPD die by suicide, a higher rate than any other psychiatric disorder.

“The overwhelming consensus among scholars is that BPD is treatable, and psychotherapy is the first-line intervention for BPD. People with BPD deserve the judicial options that are currently available to people with other mental health diagnoses.

“AB 3077 is an important step in the right direction toward providing equitable and just treatment to people with BPD.

8) **Related Legislation:** AB 3037 (Essayli) would prohibit a court from dismissing a firearms-related enhancement. AB 3037 is pending hearing in this Committee.

9) **Prior Legislation:**

- a) AB 1412 (Hart), Chapter 687, Statutes of 2023, removed BPD from the mental disorders excluding a defendant from eligibility for pretrial mental health diversion.
- b) AB 27 (Ta), of the 2023-2024 Legislative Session, would have prohibited a court from dismissing a firearms-related enhancement. AB 27 failed passage in this Committee.
- c) AB 328 (Essayli), of the 2023-2024 Legislative Session, would have prohibited a court from dismissing a firearms-related enhancement. AB 328 failed passage in this Committee.
- d) AB 1310 (McKinnor), of the 2023-2024 Legislative Session, would have allowed individuals with a firearm enhancement to file a court petition for resentencing, but excludes individuals with certain mental disorders, including BPD. AB 1310 was held under submission in Senate Appropriations Committee.
- e) SB 63 (Ochoa Bogh), of the 2023-2024 Legislative Session, would have established a Homeless and Mental Health Court Grant Program that excluded individuals with certain mental health disorders, including BPD. SB 63 failed passage in the Senate Appropriations Committee.
- f) SB 81 (Skinner), Chapter 721, Statutes of 2021, required a court to dismiss an enhancement, if it is in the furtherance of justice, when specific circumstances, such as mental health issues are present, but excluded BPD.

REGISTERED SUPPORT / OPPOSITION:

Support

California Council of Community Behavioral Health Agencies (Sponsor)
California Attorneys for Criminal Justice

California Public Defenders Association
Emotions Matter INC
Erzule Paul Foundation
National Alliance on Mental Illness
National Education Alliance for Borderline Personality Disorder
Pathpoint
Prc Baker Places / Black Leadership Council

77 Private Individuals

Opposition

None

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 3088 (Friedman) – As Introduced February 16, 2024

SUMMARY: Requires a habeas corpus petition to be considered on the merits and not dismissed on grounds that it is untimely or successive if, the allegations in the petition taken as true, establish by a preponderance of evidence that at least one juror would not have convicted the petitioner in light of the new evidence.

EXISTING LAW:

- 1) Provides that a person unlawfully imprisoned or restrained of their liberty may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint. (Pen. Code, § 1473, subd. (a).)
- 2) States that a writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:
 - a) False evidence that is material on the issue of guilt or punishment was introduced against a person at a hearing or trial relating to the person's incarceration;
 - b) False physical evidence, believed by a person to be factual, probative, or material on the issue of guilt, which was known by the person at the time of entering a plea of guilty, as specified;
 - c) New evidence exists that is presented without substantial delay, is admissible, and is sufficiently material and credible that it more likely than not would have changed the outcome of the case. "New evidence" means evidence that has not previously been presented and heard at trial and has been discovered after trial; and,
 - d) A significant dispute has emerged or further developed in the petitioner's favor regarding expert medical, scientific, or forensic testimony that was introduced at trial or a hearing and that expert testimony more likely than not affected the outcome of the case, as specified. (Pen. Code, § 1473, subd. (b)(1).)
- 3) Provides that the writ of habeas corpus may also be prosecuted after judgment has been entered based on evidence that a criminal conviction or sentence was sought, obtained, or imposed on the basis of race, ethnicity, or national origin, as specified. (Pen. Code, § 1473, subd. (e).)
- 4) States that a petition raising a claim based on evidence that a criminal conviction or sentence was sought, obtained, or imposed on the basis of race, ethnicity, or national origin, or on the basis of new discovery provided by the state or other new evidence that could not have been

previously known by the petitioner with due diligence, shall not be deemed a successive or abusive petition. (Pen. Code, § 1473, subd. (e).)

- 5) Provides that, if the district attorney in the county of conviction or the Attorney General concedes or stipulates to a factual or legal basis for habeas relief, there shall be a presumption in favor of granting relief. This presumption may be overcome only if the record before the court contradicts the concession or stipulation or it would lead to the court issuing an order contrary to law. (Pen. Code, § 1473, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “People who are innocent but imprisoned face obstacles in seeking habeas petition relief due to unclear procedural bars. They are prevented from presenting crucial evidence that could exonerate them, leading to unjust incarceration. California must address this legal ambiguity to ensure fair opportunities for the wrongly convicted. AB 3088 seeks to empower those wrongly imprisoned with the chance to present their case effectively, fostering a criminal legal system that prioritizes the vital goal of establishing innocence.”
- 2) **The Writ of Habeas Corpus:** The right to habeas corpus is guaranteed by the California Constitution and “may not be suspended unless required by public safety in cases of rebellion or invasion.” (Cal. Const., art. I, § 11.) A writ of habeas corpus provides “an avenue of relief to those unjustly incarcerated when the normal method of relief—i.e., direct appeal—is inadequate.” (*In re Reno* (2012) 55 Cal.4th 428, 450.) Habeas challenges are a “safety valve” or “escape hatch” allowing an incarcerated person to attack the validity of a conviction “based on newly discovered evidence, claims going to the jurisdiction of the court, and claims of constitutional dimension.” (*In re Clark* (1993) 5 Cal.4th 750, 766-767.) “The fundamental due process principle . . . is that the prosecution may not deprive an accused of the opportunity to present material evidence which might prove his innocence.” (*People v. Mejia* (1976) 57 Cal.App.3d 574, 579.)

A writ of habeas corpus may be prosecuted when there is false evidence that is material on the issue of guilt or punishment that was introduced against the defendant at trial or at the time of entering a plea of guilty, as specified; when new evidence exists that is sufficiently material and credible and it more likely than not would have changed the outcome of the case, as specified; and, if a significant dispute has emerged or further developed in the defendant’s favor regarding expert medical, scientific, or forensic testimony that was introduced at trial and that expert testimony more likely than not affected the outcome of the case, as specified. (Pen. Code, § 1473, subd. (b)(1).)

- 3) **Dismissals Based on Timeliness:** Under existing law, a person who wishes to challenge their conviction by filing a petition for a writ of habeas corpus in state court must present each

claim in a timely fashion¹. There is no express time period in which to seek state habeas corpus relief in a non-capital criminal case. (*In re Douglas* (2011) 200 Cal.App.4th 236, 242.) Whether a claim has been timely presented is assessed based on an indeterminate reasonableness standard. A petition is timely if filed “within a reasonable time.” (*Evans v. Chavis* (2006) 546 U.S. 189, 191-192.)

Generally, delay in seeking habeas corpus relief in a non-capital case is measured from the time a petitioner or petitioner’s counsel becomes aware of the grounds for relief, which may be as early as the date of conviction. (*Douglas, supra*, 200 Cal.App.4th at 243.) To show that there was not a substantial delay in filing a habeas petition, the “petitioner must allege, with specificity, facts showing when information offered in support of the claim was obtained, and that the information neither was known, nor reasonably should have been known, at any earlier time.” (*In re Reno* (2012) 55 Cal.4th 428, 461.)

There are exceptions to the rule. California courts allow a longer delay if the petitioner demonstrates good cause. (*In re Robbins* (1998) 18 Cal.4th 770, 780.) “A petitioner may establish good cause by showing particular circumstances to justify substantial delay.” (*Ibid.*) A petitioner can also bring an untimely habeas petition if they can show “error of constitutional magnitude led to a trial that was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner”; that they are “actually innocent of the crime or crimes of which he or she was convicted”; or that they were “convicted or sentenced under an invalid statute.” (*In re Reno* (2012) 55 Cal.4th 428, 460; *In re Clark* (1993) 5 Cal.4th 750, 797–98.)

This bill would additionally require a habeas corpus petition to be considered on the merits and not dismissed on grounds that it is untimely if, the allegations in the petition taken as true, establish by a preponderance of evidence that at least one juror would not have convicted the petitioner in light of the new evidence.

- 4) Dismissals Based on Successive Petitions:** Under existing law, a person is not allowed to engage in “piecemeal litigation” by bringing successive habeas petitions (i.e. “abuse of the writ”). For example, courts may refuse to consider new arguments if those arguments were known to the person when they brought a prior attack on the judgment. (*In re Clark, supra*, 5 Cal.4th 750.) Similarly, previously rejected claims will not be considered in a successive petition. “It has long been the rule that absent a change applicable law of facts the court will not consider repeated applications for habeas corpus presenting claims that were previously rejected.” (*Ibid.*) Before a successive petition is considered on its merits, the petitioner must explain their failure to timely present their claims in prior petitions. (*Id.*, at p. 779.)

This bill would require a habeas petition to be considered on the merits and not dismissed even if it is a successive petition if the allegations in the petition establish, by a preponderance of evidence, that at least one juror would not have convicted the petitioner.

¹ The changes made by this bill would apply to non-capital cases only. Proposition 66, codified as California Penal Code section 1509, provides that the initial habeas petition in a death penalty case must be filed within one year of the order in which habeas corpus counsel was appointed. (See also, *Briggs v. Brown* (2017) 3 Cal.5th 808.)

- 5) **Argument in Support:** According to *La Defensa* “In California, case law states that a petitioner has to bring their habeas petition in a timely fashion and that courts will not consider successive claims. Unlike other states, these requirements are not statutorily defined, forcing courts to look to case law to determine whether a petition is timely or successive. Under existing case law, the procedural barriers of timeliness and successive petition considerations often bar incarcerated people from having their claims heard by a court, even when new evidence of innocence is alleged in their case.

“If someone fails to file a habeas petition in a timely manner or faces other procedural barriers, the court may dismiss the petition based on procedural grounds alone. This means that the court never has to consider the merits of the petition at all if it is deemed untimely or successive in their initial review of the petition. If the petitioner cannot prove actual innocence, as defined in case law, to overcome the procedural barrier, their claim will be dismissed. This actual innocence definition in case law is not only one of the highest standards in the country, but is also higher than the standard required to reverse a conviction.

“AB 3088 seeks to articulate the standard by which procedural barriers can be overcome by innocent individuals attempting to secure their release from prison through habeas petitions in California. AB 3088 would allow for habeas petitions implicating a wrongful conviction to be evaluated on their merits rather than being summarily dismissed based on procedural grounds. Specifically, if it is indicated that by a preponderance of the evidence, at least one juror would not have convicted the petitioner, the claims raised in a petition should be considered by the court on their merits in light of the new evidence presented.

“The result of the current system is innocent incarcerated people being barred from habeas petition consideration due to ill-defined procedural barriers. These individuals find themselves barred from presenting compelling evidence that could prove their innocence, resulting in wrongly incarcerated people remaining in prison. This clarification in the law is necessary for California to ensure that the wrongfully convicted are given an equitable process to prove their innocence. AB 3088 aims to ensure that the wrongfully incarcerated are empowered with the rightful opportunity to argue their case, fostering a justice system that genuinely honors and prioritizes the crucial task of determining innocence.”

- 6) **Argument in Opposition:** According to the *California District Attorneys Association* (CDA), “AB 3088 would implement a mandate for courts to disregard longstanding rules that require habeas corpus petitioners to file new claims in a timely manner and prohibit repetitive attempts to raise previously rejected claims. These procedural rules already permit a court to hear a petition that is unduly delayed or successive if the court finds that the claims raised would show a fundamental miscarriage of justice. AB 3088 however would mandate the court hear an otherwise barred petition based on a finding that a single juror would – for any reason – not have convicted the defendant. [...]

“If a habeas corpus petition is granted, however, prosecutors may be unable to retry the case. This is especially true when the petition is brought decades after the original verdict. Evidence may have been lost and witnesses may have forgotten details or may even be deceased. This is especially true if the habeas proceedings are commenced long after the original conviction. The procedural protections that this bill would eliminate help ensure that persons convicted of crime cannot take unfair advantage of the passage of time.

“AB 3088 would also permit a court to ignore abusive use of writ petitions. Such abuses include repeated petitions raising the same claims, or repetitive petitions each raising only part of a claim even though the entirety of the information was known at the time of filing the original writ. Abuses also include using a writ to raise issues that have already been decided on their merits. Under AB 3088 a petitioner could file multiple petitions raising the same claim even if a court has already determined the claim is without merit.

“For example, a petitioner could claim they had an alibi for the time of the crime. That allegation, taken as true and supported by reasonably available evidence, may establish a prima facie case. Under AB 3088, such a claim be raised decades after the conviction even though the convicted person would presumably have known where they were and who they were with at the time of the crime. Moreover, if the alibi claim resulted in a hearing upon first being raised, and if at that hearing the People presented proof the alibi evidence was falsified, current procedural protections would mean the court could refuse to hear the claim again. AB 3088 however would mandate a new hearing on the merits because an alibi defense, if believed, could cause a juror to vote not guilty. Under AB 3088 there would be no limit to the number of hearings the defendant would be entitled to have on the same disproven claim. [...]

“Further, AB 3088 appears broad enough to apply when an individual juror’s shift in religious, social, or political beliefs regarding the crime, defendant, or victim mean that the juror would no longer vote to convict regardless of the evidence presented at trial or in a habeas petition.”

7) **Related Legislation:** AB 2483 (Ting), would require the presiding judge of each county superior court to convene a meeting to plan for fair and efficient handling of postconviction proceedings. AB 2483 is being heard by this Committee today.

8) **Prior Legislation:**

- a) SB 97 (Wiener), Chapter 381, Statutes of 2023, authorizes a broader basis for the prosecution of a writ of habeas corpus when new evidence is discovered after plea or trial, creates a presumption in favor of granting relief if the prosecution stipulates to a factual or legal basis for the relief, and provides for continuity of counsel on retrial.
- b) SB 467 (Wiener), Chapter 982, Statutes of 2022, permits a person to bring a habeas writ where a significant dispute has developed regarding expert medical, scientific, or forensic testimony that would have more likely than not changed the outcome of their trial, and expands the definition of false evidence for the purpose of a habeas writ.
- c) SB 1134 (Leno), Chapter 785, Statutes of 2016, codified a standard for habeas corpus petitions filed on the basis of new evidence.
- d) SB 1058 (Leno), Chapter 623, Statutes of 2014, allows a writ of habeas corpus to be prosecuted when evidence given at trial has subsequently been repudiated by the expert that testified or undermined by later scientific research or technological advances.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California for Safety and Justice
California Public Defenders Association
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Initiate Justice
LA Defensa
Legal Services for Prisoners With Children
Rubicon Programs
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
University of San Francisco School of Law | Racial Justice Clinic
Young Women's Freedom Center

Opposition

California District Attorneys Association

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 3092 (Ortega) – As Introduced February 16, 2024

SUMMARY: Provides that law enforcement agencies required to report in-custody death information to the California Attorney General (DOJ) must update that report within 10 days in certain circumstances. Specifically, this bill:

- 1) Requires law enforcement agencies or agencies in charge of correctional facilities that must submit in-custody death information to the DOJ within 10 days after the death, to update their initial written report to the DOJ if any of the previously provided information changes or if new information becomes available regarding the death, such as the manner and means of the death.
- 2) Requires this update to be made within 10 days of the date that the in-custody death information that was previously provided changes or the date new information becomes available.

EXISTING FEDERAL LAW:

- 1) Requires states receiving funds from the Edward Byrne Memorial Justice Assistant Grant Program and other specified grant programs to report to the U.S. Attorney General on a quarterly basis information regarding the death of any person who is detained, under arrest, in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, state prison, state-run boot camp prison, boot camp prison that is contracted out by the state, any state or local contract facility, or other local or State correctional facility (including any juvenile facility). This information must include:
 - a) The name, gender, race, ethnicity, and age of the deceased;
 - b) The date, time, and location of death;
 - c) The law enforcement agency that detained, arrested, or was in the process of arresting the deceased; and
 - d) A brief description of the circumstances surrounding the death. (34 U.S.C. § 60105, subs. (a) & (b).)

EXISTING STATE LAW

- 1) Provides that if a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in California, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the DOJ, within 10

days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death. (Gov. Code, § 12525.)

- 2) Provides that such in-custody death reports are public records within the meaning of the California Public Records Act and are open to public inspection. (Gov. Code, § 12525.)
- 3) Provides that when a person in custody dies, the agency with jurisdiction over the state or local correctional facility with custodial responsibility for the person at the time of their death, shall post the following information on its website for the public to view within 10 days of the date of death.
 - a) The full name of the agency with custodial responsibility at the time of death;
 - b) The county in which the death occurred;
 - c) The facility in which the death occurred, and the location within that facility where the death occurred;
 - d) The race, gender, and age of the decedent;
 - e) The date on which the death occurred;
 - f) The custodial status of the decedent, including, but not limited to, whether the person was awaiting arraignment, awaiting trial, or incarcerated; and
 - g) The manner and means of death. (Pen. Code, § 10008, subs. (a) & (b).)
- 4) Provides that if any of the death related information that the responsible state or local agency is required to post on their website changes, such as manner and means of the death, the agency must update the posting within 30 days of the change. (Pen. Code, § 10008, subd. (b).)
- 5) States that if the responsible agency seeks to notify the next of kin and is unable to notify them within 10 days of the death, the agency shall be given an additional 10 days to make good faith efforts to notify the next of kin before the information shall be posted for the public to view on the agency's internet website. (Pen. Code, § 10008, subd. (b).)
- 6) Requires each law enforcement agency to report to the DOJ on a monthly basis all instances when a peace officer employed by that agency is involved in specified incidents, including an incident involving the shooting of a civilian by a peace officer, the shooting of a peace officer by a civilian, the use of force by a peace officer against a civilian that results in serious bodily injury or death, and use of force by a civilian against a peace officer that results in serious bodily injury or death. (Gov. Code, § 12525.2, subd. (a).)
- 7) Requires every death to be registered with the local registrar of births and deaths in the district in which the death was officially pronounced or the body was found, within 8 calendar days after death and prior to any disposition of the human remains. (Health & Saf. Code, § 102775.)

- 8) Requires a certificate of death to include items necessary to establish the fact of death, including:
 - a) Personal data of the decedent;
 - b) The decedent's gender identity, which shall be recorded as female, male, or nonbinary;
 - c) Date of death;
 - d) Place of death;
 - e) The current first and middle names, birth last names, and the birthplaces of the parents, without reference to the parent's gendered relationship to the decedent;
 - f) Informant;
 - g) Information related to the disposition of body, including information regarding the embalmer, funeral director, attending physician, date and place of interment or removal, and the date accepted for registration and signature of local registrar;
 - h) Information relating to medical and health data, including the disease or conditions leading directly to death and antecedent causes, operations and major findings, accident and injury information, and information indicating whether the decedent was pregnant at the time of death, or within a year prior to the death if known. (Health & Saf. Code, § 102875, subs. (a) & (b).)
- 9) Provides that a funeral director or person acting in their place shall prepare the certificate of death and register it with the local registrar, and shall obtain the required information, other than medical and health section data, from the person or source best qualified to supply this information. (Health & Saf. Code, §§ 102780, 102790.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 3092 seeks to update current law by requiring DICRA [Death in Custody Reporting Act] reporting agencies provide follow-up death in custody information to the DOJ when it becomes available. This is crucial to maintain funding from the federal Edward Byrne Memorial Justice Assistance Grant (JAG), which provides states, tribes, and local governments with critical funding necessary to support a range of program areas including law enforcement, prosecution, indigent defense, courts, crime prevention and education. The bill addresses this issue by aligning DICRA reporting requirements in the Government Code with more recent precedent for reporting agencies enacted in the Penal Code. By enacting this change, it will improve the quality of death in custody data for both state and federal reporting requirements, and ensure that California continues to receive federal JAG funding."
- 2) **Background:** Incarcerated persons are dying in county jails at record rates in California. According to the Department of Justice, "Since the passage of Public Safety Realignment in

2011 - which mandated that individuals sentenced for specific non-violent offenses be housed in county jails rather than state prisons - the share of deaths in custody reported from county sheriff's departments (who manage county jail systems) has grown from 17.1 percent in 2010 to 22.2 percent in 2014...." (Department of Justice, *Death in Custody from 2010 to 2019*. (July 5, 2023). Available at: <<https://openjustice.doj.ca.gov/data-stories/2019/death-custody-2010-2019>> [as of March 26, 2024].) The percentage of county jail deaths rose to 20.6 percent in 2019. (*Id.*) Notably, between 2006 and 2020, 185 people died in San Diego County jails – one of the highest totals among counties in the State. (California State Auditor, *Report 2021-109, San Diego County Sheriff's Department – It Has Failed to Adequately Prevent and Respond to the Deaths of Individuals in Its Custody*. (Feb. 3, 2022). Available at: <<https://www.auditor.ca.gov/reports/2021-109/index.html>> [as of March 26, 2024].) In 2022, 215 persons died in California jails, a record high considering data going back to 2005. (Duara and Kimelman, *California jails are holding thousands fewer people, but far more are dying in them*. (March 25, 2024). Available at <<https://calmatters.org/justice/2024/03/death-in-california-jails/>> [as of March 26, 2024].)

- 3) **Need for This Bill:** Federal law requires states receiving grant funding from the Edward Byrne Memorial Justice Assistant Grant (JAG) to make quarterly reports to the U.S. DOJ regarding the death of persons detained, under arrest, or incarcerated in municipal or county jails and state prisons. Beginning in Fiscal Year 2023, states were required to submit Death in Custody Reporting Act (DICRA) implementation plans demonstrating their understanding of DICRA reporting requirements and the State's plan to collect the necessary in-custody death information that is required to be reported. (Bureau of Justice Assistance, *U.S. Department of Justice, Death in Custody Reporting Act (DCRA) Data Collection*. (March 14, 2024). Available at <<https://bja.ojp.gov/program/dcra/state-implementation-plans>> [as of March 26, 2024].) California's August 2023 Federal DICRA Implementation Plan has been approved. (*Id.*)

California law requires law enforcement agencies to report in-custody deaths that occur in local or state correctional facilities to the California DOJ within 10 days after the death. Additionally, the agency with custodial responsibility for the person at the time of their death must also post information on their website related to the death within 10 days of the death. If any of the in-custody death related information that the responsible agency is required to post on their website changes, such as manner and means of the death, the agency must update the posting within 30 days of the change. Notably, while responsible agencies are required to update the in-custody death information that is posted on their website, there is no such requirement to affirmatively update the written reports provided to the California DOJ.

This can result in vague and/or inaccurate reporting to the California DOJ. This is most applicable in situations where there is a prolonged death in custody investigation or where the responsible agency does not have all the information that they need to report to the California DOJ within 10 days of the death. In their letter of support, the California DOJ notes that 15-20% of death in custody incidents data within the last five years listed the manner of deaths as 'pending investigations' suggesting that law enforcement agencies, in a significant portion of instances, need more than 10 days to accurately collect and report the necessary in-custody death information to the California DOJ. This places California's receipt of federal JAG funding at risk, given that such funding is conditioned on the accurate reporting of state in-custody death information. This also creates the potential for inconsistent information between state and local agencies surrounding in-custody deaths

since local agencies must update their in-custody death information on their websites if new information becomes available but this is not the case for the information provided to California DOJ.

Given that responsible law enforcement agencies are already required to update the in-custody death information they post on their websites within 30 days of the date of the death, this bill would make reasonable conforming changes to also require the updating of the in-custody death information that is provided to the DOJ. Ensuring accurate reporting and maintaining receipt of federal JAG funding is critical given the significant increase in-custody deaths across the state in recent years. This bill opts to require the information provided to the DOJ to be updated within 10 days of the date that information changes or new information becomes available, while the current requirement that law enforcement agencies update their websites with newly available in-custody death information only applies within 30 days of any change in information. In order to promote uniform in-custody death updating obligations among law enforcement agencies it may be prudent to align the deadline to update information given to the DOJ with the existing 30 day requirement that applies to information posted on law enforcement agency websites. That being said, a shorter deadline to update the in-custody death information provided to the California DOJ promotes improved public transparency and greater accuracy of the in-custody death information given to the U.S. DOJ.

- 4) **Argument in Support:** According to AB 3092's sponsor, the *California Office of the Attorney General*, state law "does not require [Death in Custody Reporting Act] reporting agencies to affirmatively update DOJ in situations where there is an ongoing death in custody investigation. This is problematic because over the last five years, DICRA data on average reflects 15 to 20 percent of the manner of deaths listed as "pending investigation." While this is not the only data field that is incomplete, it is the most important in understanding death in custody incidents... AB 3092 would update Government Code section 12525 to require that reporting agencies provide follow-up information to DOJ when it becomes available, aligning DICRA reporting requirements in the Government Code with more recent precedent for reporting agencies enacted in the Penal Code. Making this change will improve the quality of death in custody data for both state and federal reporting requirements, and ensure the state continues to receive federal [Justice Assistance Grant] funding."
- 5) **Argument in Opposition:** None.
- 6) **Related Legislation:** AB 2531 (Bryan), would require law enforcement agencies reporting in-custody death information on their website, to include information on when a juvenile in custody dies, and to include the date of their death. AB 2531 is pending in this committee.
- 7) **Prior Legislation:**
 - a) SB 519 (Atkins), Chapter 306, Statutes of 2023, makes records relating to an investigation conducted by a local detention facility into a death incident available to the public and creates the position of Director of In-Custody Death Review within the Board of State and Community Corrections to review investigations of any death incident, as defined, occurring within a local detention facility.

- b) AB 2761 (McCarty), Chapter 802, Statutes of 2022, requires a state or local correctional facility to post specified information on its website within 10 days after the death of a person who died while in custody, and to update that information within 30 days of any change.
- c) AB 439 (Bauer-Kahan), Chapter 53, Statutes of 2021, specifies that gender identity includes female, male, or nonbinary for purposes of completing a death certificate.
- d) AB 242 (Arambula), Chapter 222, Statutes of 2017, requires a certificate of death to indicate whether the deceased person was a member of the Armed Forces so that the Department of Public Health may compile data on veteran suicides.
- e) AB 1577 (Atkins), Chapter 631, Statutes of 2014, requires a person completing a death certificate to record the decedent's sex reflecting the decedent's gender identity as reported by the person or source best qualified to supply this information, unless presented with specified legal documents identifying the decedent's gender.
- f) AB 2302 (Burton), Chapter 529, Statutes of 1992, established records regarding in-custody deaths provided by law enforcement agencies to the California DOJ as public records under the California Public Records Act.

REGISTERED SUPPORT / OPPOSITION:**Support**

Attorney General Rob Bonta (Sponsor)
California Public Defenders Association
Carceral Ecologies
Vera Institute of Justice

Opposition:

None

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3127 (McKinnor) – As Amended April 1st, 2024

SUMMARY: Eliminates the duty of a health care practitioner to report assaultive or abusive conduct to law enforcement when they suspect a patient has suffered physical injury caused by such conduct, except in specified cases. Specifically, **this bill:**

- 1) Retains a health practitioner’s duty to make a report of injuries to law enforcement to instances where a wound or injury is self-inflicted, caused by a firearm, is life threatening and caused by intentional violence, or involves child abuse, elder abuse, or the abuse of a dependent adult.
- 2) Allows reporting of other assaultive or abusive conduct when a patient requests, and in such cases, requires the medical documentation of injuries be made available to the patient.
- 3) Requires a health care practitioner, who in their professional capacity or within the scope of their employment, knows or reasonably suspects that their patient is experiencing any form of domestic violence or sexual violence, to provide brief counseling, education, or other support, and offer a “warm handoff” or referral to domestic violence or sexual violence advocacy services before the end of treatment, to the extent that it is medically possible.
- 4) Encourages health care practitioners to offer patients direct connection to an in-person domestic or sexual violence advocate or social worker whenever available.
- 5) Provides that the health practitioner can satisfy the above requirement when the brief counseling, education, or other support is provided by, and warm handoff or referral is offered by, a member of the health care team.
- 6) States that if the patient is being treated in the emergency department of a general acute care hospital, the health practitioner shall also offer assistance to the patient in accessing a medical evidentiary exam, reporting to law enforcement, and a 24-hour domestic or sexual violence advocacy program, if the patient wants to pursue these options.
- 7) Allows the health practitioner to offer a warm handoff and referral to other available victim services, including, but not limited to, legal aid, community-based organizations, behavioral health, crime victim compensation, forensic evidentiary exams, trauma recovery centers, family justice centers, and law enforcement to patients who are suspected to have suffered any non-accidental injury.
- 8) Defines “warm handoff” as including but not being limited to, the health practitioner establishing direct and live connection through a call with survivor advocate, in-person on site survivor advocate, in-person on-call survivor advocate, or some other form of

teleadvocacy.

- 9) Provides the patient may decline the “warm hand-off.”
- 10) Provides that a “referral” may include, but is not limited to, the health practitioner sharing information about how a patient can get in touch with a local or national survivor advocacy organization, information about how the organization could be helpful for the patient, what the patient could expect when contacting the survivor organization, the survivor advocacy organizations contact information.
- 11) Provides that nothing limits or overrides the ability of a health care practitioner to alert law enforcement to an imminent or serious threat to health or safety of an individual or the public, pursuant to the privacy rules of the federal Health Insurance Portability and Accountability Act of 1996 (HIPPA).
- 12) Gives health care practitioners immunity from criminal or civil liability arising from any required or authorized report.
- 13) Contains legislative findings and declarations.

EXISTING LAW:

- 1) Requires a health practitioner, as defined, to make a report to law enforcement when they suspect a patient has suffered physical injury that is either self-inflicted, caused by a firearm, or caused by assaultive or abusive conduct, as specified. (Pen. Code, § 11160.)
- 2) Punishes the failure of a health care practitioner to submit a mandated report by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$1,000, or by both. (Pen. Code, § 11162.)
- 3) Provides that a health practitioner who makes a report in accordance with these duties shall not incur civil or criminal liability as a result of any report. (Pen. Code, § 11161.9, subd. (a).)
- 4) States that neither the physician-patient privilege nor the psychotherapist patient privilege apply in any court or administrative proceeding with regards to the information required to be reported. (Pen. Code, § 11163.2)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “AB 3127 will ensure survivors can access healthcare services by creating a survivor-centered, trauma-informed approach and limit non-consensual and potentially dangerous referrals to law enforcement. This change will increase access to healthcare and ensure that survivors are provided the agency and information they need to be safe and healthy.”
- 2) **Duty of Health Care Practitioners to Report Injuries:** Penal Code section 11160 requires a health care practitioner who treats a person brought in to a health care facility or clinic who

is suffering from specified injuries to report that fact immediately, by telephone and in writing, to the local law enforcement authorities. The duty to report extends to physicians and surgeons, psychiatrists, psychologists, dentists, medical residents, interns, podiatrists, chiropractors, licensed nurses, dental hygienists, optometrists, marriage and family therapists, clinical social workers, professional clinical counselors, emergency medical technicians, paramedics, and others. The duty to report is triggered when a health practitioner knows or reasonably suspects that the patient is suffering from a wound or other physical injury that is the result of assaultive or abusive conduct caused by another person, or when there is a gunshot wound or injury regardless of whether it is self-inflicted or one caused by another person. Health practitioners are required to report if these triggering conditions are met, regardless of patient consent. Failure to make the required report is a misdemeanor.

This bill would eliminate the duty of a health care practitioner to report known or suspected assaultive or abusive conduct, subject to exceptions. This bill specifies that there is still a duty to report assaultive conduct caused by intentional violence and which results in life threatening injuries or death, as well child abuse, elder abuse, and abuse of a dependent adult. In addition, this bill specifies that nothing in its provisions limits or overrides the ability of a health care provider to report assaultive or abusive conduct at a patient's request, or to alert law enforcement to an imminent and serious threat to health or safety of an individual pursuant to HIPPA.

A report by Futures Without Violence, a co-sponsor of this bill, notes with regards to mandated reporting laws:

Most U.S. states have enacted mandatory reporting laws, which require the reporting of specified injuries and wounds, and very few have mandated reporting laws specific to suspected abuse or domestic violence for individuals being treated by a health care professional. Mandatory reporting laws are distinct from elder abuse or vulnerable adult abuse and child abuse reporting laws, in that the individuals to be protected are not limited to a specific group, but pertain to all individuals to whom specific health care professionals provide treatment or medical care, or those who come before the health care facility. The laws vary from state-to-state, but generally fall into four categories: states that require reporting of injuries caused by weapons; states that mandate reporting for injuries caused in violation of criminal laws, as a result of violence, or through non-accidental means; states that specifically address reporting in domestic violence cases; and states that have no general mandatory reporting laws.

(Compendium of State and U.S. Territory Statutes and Policies on Domestic Violence and Health Care, Fourth Ed. 2019 at pp.2-3, available at: <https://www.futureswithoutviolence.org/wp-content/uploads/Compendium-4th-Edition-2019-Final.pdf>.)

A survey of state laws on reporting nationwide shows:

[O]nly two states have laws that specifically require mandated reporting of DV specifically (not just injuries) to law enforcement and that five states have exceptions for reporting injuries due to domestic violence. New Hampshire's statute excuses a person from reporting if the victim is over 18, has been the

victim of a sexual assault offense or abuse (defined in RSA 173-B:1), and objects to the release of any information to law enforcement. However, this exception does not apply if the victim of sexual assault or abuse is also being treated for a gunshot wound or other serious bodily injury. Oklahoma's statute does not require reporting domestic abuse if the victim is over age 18 and is not incapacitated, unless the victim requests that the report be made orally or in writing. In all cases what is reported to be domestic abuse shall clearly and legibly be documented by the health care provider and any treatment provided. Pennsylvania's statute states that failure to report such injuries when the act caused bodily injury (defined in § 2301) is not an offense if the victim is an adult; the injury was inflicted by an individual who is the current or former spouse or sexual or intimate partner; has been living as a spouse or who shares biological parenthood; the victim has been informed of the physician's duty to report and that report cannot be made without the victim's consent; the victim does not consent to the report; and the victim has been provided with a referral to the appropriate victim service agency.

Tennessee's statute excuses health care practitioners from reporting if the person is 18 years of age or older; objects to the release of any identifying information to law enforcement officials; and is a victim of a sexual assault offense or domestic abuse (defined in § 36-3-601). The exception does not apply and the injuries shall be reported if the injuries incurred by the sexual assault or domestic abuse victim are considered by the treating healthcare professional to be life threatening, or the victim is being treated for injuries inflicted by strangulation, a knife, pistol, gun, or other deadly weapon. Colorado's statute provides an exception for reporting if the injuries are resulting from domestic violence and if the victim is at least 18 and does not wish the injury to be reported. This exception does not apply if the injury is from a firearm, knife, ice pick, or other sharp object. *Compendium of State and U.S. Territory Statutes and Policies on Domestic Violence and Health Care Futures Without Violence* Kentucky, North Dakota, and Washington also require that victims of domestic violence be given educational information related to support services. Kentucky's statute states that professionals (including health professionals) must provide the victim with educational materials on domestic violence support services if the professional has cause to believe the patient has experienced domestic or dating violence. North Dakota's statute requires that health professionals provide victims with information on support services when a report on domestic or sexual violence has been made. Washington's statute requires that hospitals inform the patient of resources to ensure their safety if the patient has stated that their bullet, gunshot, or stab wound was the result of domestic violence. (*Compendium, supra*, at pp. 5-6.)

It should be stressed that the duty to report known or suspected child abuse and neglect under the Child Abuse and Neglect Reporting Act, is separate from a health care practitioner's duty to report injuries generally. (See Pen. Code, § 11164 et. seq.) This bill does not eliminate the duty of health care practitioners under that Act. Similarly, the duty to report known or suspected abuse of an elder or a dependent adult is also separate from a health care provider's general duty to report injury. (See Welf. & Inst. Code, § 15360.) This bill also does not eliminate the duty of health care practitioners under those provisions of law. In fact, as noted above, this bill specifies that there is still a duty to report those types of abuse.

- 3) **Argument in Support:** According to Futures Without Violence, a co-sponsor of this bill, “California law currently mandates that health professionals, when treating patients who have a physical injury that is known or suspected to have been a result of violence make an immediate report to law enforcement. While medical mandated reporting to law enforcement for firearm wounds or other very serious injuries is common in many states, California is one of only three states that still have such broad and harmful requirements to report explicitly for domestic and sexual violence-related injuries without patient consent. Although this law was a well-intentioned attempt to ensure health care providers take violence and abuse seriously, no research has shown that medical mandatory reporting to law enforcement has positive safety or health outcomes for survivors.

“Domestic and sexual violence can have long term negative health outcomes, so it is crucial that survivors are able to access health care. Though health providers have an important role in addressing violence, some actively avoid discussing domestic and sexual violence out of fear of having to make a report to law enforcement. Mandatory reporting laws have also been shown to keep survivors from seeking care, and when survivors do see a health provider, they often don’t feel comfortable bringing up their experiences of violence. This results in unaddressed health issues and missed opportunities to connect survivors to crucial advocacy services.

“Fear of involving law enforcement is a main reason survivors decide not to tell their health provider about domestic violence, or even seek care in the first place. According to a survey by the National Domestic Violence Hotline that documented survivors’ experiences with law enforcement, of survivors who chose to involve law enforcement by calling 911, only 20% said they felt safer - 80% said they had no change in safety or felt even less safe. There are many reasons why survivors do not want to involve police: fear of angering their partner and increasing severity of violence, not wanting their partner to be arrested, being arrested for defending themselves, exposing themselves and their families to involvement with child welfare systems, and more. Mandatory reporting laws may also discourage immigrant survivors from seeking health care; research has shown that contact with law enforcement produces a chilling effect in asking for help or fear of reprisal from federal immigration authorities.

“Extensive research has been done on what survivors of domestic and sexual violence want from health care professionals: self determination and autonomy, validation and compassion, confidentiality and trust, and informed providers who are able to offer resources and health promotion strategies.

“In a more measured approach than previous versions of this bill, AB 3127 will limit injuries that require a medical mandated report to life threatening violent injuries and firearm injuries, in addition to child abuse and elder abuse. With this bill, health providers will be required to offer survivors a warm connection to a trained, confidential advocate who will work with them to address their different safety needs such as emergency safety planning, housing, legal support, counseling, restraining orders, and safer access to the legal system. Health providers will be able to address domestic and sexual violence in a confidential and trusting manner, and ensure access to advocacy services.”

- 4) **Argument in Opposition:** According to the *California Sexual Assault Forensic Examiners Association* (Cal SAFE), “We agree that PC 11160-1163.6 needs to be amended; however,

the proposed language is an over-reach that creates significant unintended consequences. The bill language was developed without consultation or considerations for PC 13823.5-13823.11 which defines the standard of care for the medical treatment of victims of Sexual Assault and gives authority to the California Clinical Forensic Medical Training Center to establish best practices for the care of Sexual Assault patients. Cal SAFE has met with the authors and sponsors in an effort to educate, explain unintended consequences, and propose amended language. We have been unable to come to a timely agreement with the sponsors that will address the health and safety concerns for patients who are victims of Sexual Assault and Domestic Violence together referred to as Interpersonal Violence (IPV). ...

“AB1028 was initiated to address the needs of IPV victims who DO NOT WANT to report to law enforcement, however it does not protect victims that DO WANT to make a report to law enforcement. Often the most injured victims, brought to emergency departments WANT and NEED the support of health care and advocacy to make or complete a report to law enforcement. AB 1028, if passed, will eliminate any requirement for health care to assist a victim to report to law enforcement, and instead will require only that health care provider give a victim of IPV a phone number to a DV advocacy agency. In Alameda County, only 4% of domestic violence victims who only received Family Justice Center (FJC) contact information in the emergency room setting ever made contact with the FJC.. In contrast, IN-PERSON advocacy will quantitatively and qualitatively improve survivor outcomes. Direct-to-advocacy (warm-handoff) referrals, unlike traditional referrals, improve survivor's chances of reaching advocacy services (increase to 48% in Alameda County) and also alleviated racial/ethnic disparities in care.

“The OPT IN approach to mandatory reporting that is proposed in this bill asserts that it will guarantee autonomy for victims, but without mandating IN-PERSON advocacy to guide these patients in crisis through their choices and legal options, it will more likely be perceived by the patients as further abandonment, particularly for the patients with the most challenges to navigating systems. Cal SAFE proposes to amend the language to 1) Require IN-PERSON advocacy for those victims at highest risk for DV homicide. 2) Maintain health care mandatory reporting to law enforcement for victims that present for care, in urgent or emergency health care settings seeking care for IPV injury including all forms of serious life threatening injuries, not just gun related injuries.

“Since 2017, sexual assault (SA) victims have had the option of the Non Investigative Report (NIR) created for SA victims who are undecided about making a statement to law enforcement. This allows the victim to have in-person advocacy and medical forensic exam to capture time sensitive evidence, and to postpone making the law enforcement report until which time the patient is ready. The OPT-OUT NIR protocol has been used by 6% of SA victims annually across the state. The NIR solution has been effectively utilized and allows patients time to make a considered decision. A similar NIR report protocol for DV would be an option that will maintain much needed medical/forensic documentation while giving the patient the option to consider reporting to law enforcement.

“50% of all DV homicides are committed with guns. Limiting mandated reporting to gun related injuries, as proposed in AB 1028, will eliminate the mandate for health care to report all other forms of DV regardless of severity. DV health care mandatory reporting was an effort to impact the growing number of domestic violence homicides. Homicide is the leading cause of death for pregnant women in the U.S. and black women are at substantially

higher risk of being killed. Kentucky eliminated health care mandatory reporting 5 years ago, and since has seen a 63% increase in DV homicides. A multidisciplinary approach to DV that includes health care, advocacy and law enforcement is homicide prevention. Removing the health care mandated report without providing direct to advocacy (warm hand-off) referrals will result in more DV homicides.”

5) **Prior Legislation:**

- a) AB 1028 (McKinnor) of the 2023-2024 Legislative Session, was similar to this bill. AB 1028 was held in the Senate Appropriations Committee.
- b) AB 2790 (Wicks) of the 2021-2022 Legislative Session, also would have limited the duty of a health care practitioner to report assaultive or abusive conduct to law enforcement to instances in which the wound or injury is self-inflicted or caused by a firearm. AB 2790 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Access Reproductive Justice
 ACLU California Action
 Alliance for Boys and Men of Color
 American Nurses Association/California
 Asian Americans for Community Involvement
 Black Lives Matter - Los Angeles
 California Black Women's Collective Empowerment Institute
 California Consortium for Urban Indian Health
 California for Safety and Justice
 California Partnership to End Domestic Violence
 Coalition to Abolish Slavery & Trafficking (CAST)
 Communities United for Restorative Youth Justice (CURYJ)
 Community Solutions
 Culturally Responsive Domestic Violence Network
 Downtown Women's Center
 East Los Angeles Women's Center
 Family Violence Appellate Project
 Freefrom
 Futures Without Violence (UNREG)
 Gray's Trauma-informed Care Services Corp
 Heal Trafficking
 Healthy Alternatives to Violent Environments
 Initiate Justice
 Jenesse Center, INC.
 Los Angeles Dependency Lawyers, INC.
 Los Angeles LGBT Center
 Lumina Alliance
 Miracles Counseling Center

Project Sanctuary, INC.
Psychiatric Physicians Alliance of California
Public Counsel
Resilience Orange County
San Francisco Public Defender
Sheedy Consulting, LLC
Sunita Jain Anti-trafficking Initiative
The Collective Healing and Transformation Project
UC Irvine School of Law, Domestic Violence Clinic
Victims Empowerment Support Team
Western Center on Law & Poverty
Woman INC
Youth Forward
Youth Leadership Institute
YWCA Golden Gate Silicon Valley

Opposition

Arcadia Police Officers' Association
Burbank Police Officers' Association
California District Attorneys Association
California Narcotic Officers' Association
California Reserve Peace Officers Association
California Sexual Assault Forensic Examiner Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles County Professional Peace Officers Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Ana Police Officers Association
Upland Police Officers Association

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