California State Assembly

PUBLIC SAFETY

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KEVIN MCCARTY
CHAIR

AGENDA

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

Analyses Packet Part II
(AB 2281 Soria – AB 3241 Pacheco)

Date of Hearing: April 9, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2281 (Soria) – As Introduced February 8, 2024

SUMMARY: Authorizes tribal judges of federally recognized tribes to request the confidentiality of specified personal information, and increases the criminal penalties associated with assaulting or attempting to murder tribal judges. Specifically, this bill:

1) Adds tribal judges of federally recognized California Indian tribes to the list of "public safety officer[s]" authorized to request the confidentiality of their residence address, telephone number, and email address appearing on their affidavit of voter registration.

2) Adds tribal judges of federally recognized California Indian tribes to the list of public officials authorized to request the confidentiality of their home addresses appearing in the Department of Motor Vehicle (DMV) records.

3) Adds tribal judges of federally recognized California Indian tribes to the list of public officials for whom it is a criminal offense to assault or to attempt to commit murder, in retaliation for or to prevent the performance of that official's official duties.

4) Makes specified findings and declarations.

EXISTING FEDERAL LAW:

1) States that California has jurisdiction over offenses committed by or against Indians in Indian Country to the same extent that the State has jurisdiction over offenses committed elsewhere in the State. (18 U.S.C. § 1162.)

2) Provides that the criminal laws of California shall have the same force and effect within Indian country as they have elsewhere within the State. (18 U.S.C. § 1162.)

3) Defines "Indian country" as all land within the limits of any Indian reservation under the jurisdiction of the United States Government. (18 U.S.C. § 1151.)

4) Authorizes tribal courts to exercise special tribal criminal jurisdiction over all people, concurrent with the criminal jurisdiction of the federal government and the state, for the crime of assault of tribal justice personnel, even if neither the defendant nor the alleged victim is an Indian. (25 U.S.C § 1304, subds. (a)(1), (a)(5)(A), & (b)(4)(A).)

5) Defines "assault of tribal justice personnel" as any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, that Indian tribe… during, or because of the performance or duties of that

individual in… adjudicating, participating in the adjudication of, or supporting the adjudication of an [assault of tribal justice personnel]." (25 U.S.C. § 1304, subd. (a)(1).)

6) Establishes that the penalty that a tribal court may impose on a criminal defendant for a conviction is a term of imprisonment not to exceed 1 year or a fine of $5,000, or both. (25 U.S.C. § 1302, subd. (a)(7)(B).)

7) A tribal court may impose a term of imprisonment of 3 years or a fine not to exceed $15,000 or both, as specified, if the person has previously been convicted of the same or comparable offense by any jurisdiction in the U.S. or is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the federal or state government. Under no circumstance can the term of the sentence exceed 9 years. (25 U.S.C. § 1302, subd. (a)(7)(c) &(d).)

EXISTING STATE LAW:

1) Provides that simple assault is punishable by a fine up to $1,000, up to six months in county jail, or both. (Pen. Code, § 241, subd. (a).)

2) Provides that a person who commits any assault upon any justice, judge, or former judge of any local, state, or federal court, or other subordinate judicial officer of any court, in retaliation for or to prevent the performance of that official's official duties, shall be punished by imprisonment in county jail of no more than one year (Pen. Code, § 217.1, subd. (a).)

3) Defines "battery" as the willful and unlawful use of force or violence upon another person, and makes the offense punishable by up to six months in the county jail, by a fine not to exceed $2,000, or by both. (Pen. Code, §§ 242 & 243, subd. (a).)

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

5) Provides that persons guilty of murder in the second degree shall be imprisoned in state prison for a term of 15 years to life and persons guilty of murder in the first degree shall be punished with death, imprisonment in state prison for life without parole, or imprisonment in state person for a term of 25 years to life. (Pen. Code, § 190, subd. (a).)

6) Provides that a person who attempts to murder any justice, judge, or former judge of any local, state, or federal court, or other subordinate judicial officer of any court, in retaliation for or to prevent the performance of that official's official duties, shall be confined in state prison for 15 years to life (Pen. Code, § 217.1, subd. (b).

7) Provides that persons attempting to commit crimes punishable by imprisonment in county jail or state prison are punishable by a term not to exceed half the term of imprisonment associated with the offense, although attempted first degree murder is punishable by life in prison with possibility of parole. (Pen. Code, § 664.)

8) Provides that any person that files with a county elections official an affidavit of voter registration may have their residential address, telephone, and email address appearing on the affidavit declared confidential upon order of a superior court showing good cause that a life-threatening circumstance exists to the person or their household (Elec. Code, § 2166, subd. (a).).

9) Authorizes county elections officials, upon application of a public safety officer who states that a life threatening circumstance exists to the officer or a member of their family, to make confidential that officer's residence address, telephone number, and email address appearing on their affidavit of voter registration. (Elec. Code, § 2166.7, subds. (a) & (b).)

10) Defines a public safety officer, for purposes of voter registration confidentiality, to include state and federal judges and court commissioners, peace officers, city attorneys, attorneys employed by the Department of Justice, State Public Defender, county district attorney offices, county public defender offices, the U.S. Attorney, or the Federal Public Defender, and specified employees of the Department of Corrections and Rehabilitation. (Elec. Code, § 2166.7, subd. (f); Gov. Code, § 7920.535.)

11) Provides that such voter registration confidentiality, if granted, shall be available for two years, and for an additional two years if a new request is granted. (Elec. Code, § 2166.7, subd. (c).)

12) Requires election officials, in producing any list, roster, or index, to exclude voters with confidential voter status. (Elec. Code, § 2166.7, subd. (d).)

13) Provides that no action of negligence may be brought against a government entity as a result of the disclosure of an officer's confidential voter registration information, unless there is a showing of gross negligence or willfulness. (Elec. Code, § 2166.7, subd. (e).)

14) Provides that any residence address in any record of the DMV is confidential and shall not be disclosed to any person, except a specified government or law enforcement agency. (Veh. Code, § 1808.21, subd. (a).)

15) Provides that specified public officials, including active or retired judges or court commissioners, may request that their home addresses that appear in DMV records be made confidential. (Veh. Code, § 1808.4, subd. (a)(4).)

16) Provides that the home addresses of retired judges and court commissioners shall be permanently withheld from public inspection, if confidentiality is requested, and the home addresses of specified surviving spouses and children, shall be withheld from public inspection for three years following the death of the judge or court commissioner. (Veh. Code, § 1808.4, subd. (c)(5).)

17) Provides that the disclosure of a confidential home address of a judge or court commissioner that results in bodily injury to that judge, court commissioner, or their spouse or children, is a felony. (Veh. Code, § 1808.4, subd. (d.).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Like local and state counterparts, tribal courts oversee a slew of legal cases that can touch upon very sensitive information. Misdemeanor cases, custody battles, and child support cases risk the chance of emotions becoming heightened and leading to threats and assaults on tribal judges. As the rates of court-targeted acts of violence increase at the state and federal level, California must bring to parity the same protections given to local, state, and federal judges to their counterparts servicing tribal courts across the state."

2) **Increase in Threats and Violence Against Judges.** There has been an increase in threats and violence against judicial officers in recent years. Threats to federal judges have risen every year since 2019. CBS News, *Threats to federal judges have risen every year since 2019* (Feb. 14, 2024). Available at: <https://www.cbsnews.com/news/threats-to-federal-judges-have-risen-every-year-since-2019/> [as of April 1, 2024].) Since 2021, persons protected by the U.S. Marshals Service, such as federal judges, prosecutors, and court officials, have faced over 4,500 threats, an increase of 400% since 2015 (National Center for State Courts, *NCSC supports new legislation to protect state court judges from escalating threats* (Accessed March 31, 2024). Available at: <https://www.ncsc.org/newsroom/at-the-center/2024/ncsc-supports-new-legislation-to-protect-state-court-judges-from-escalating-threats> [as of April 1, 2024].) This trend holds true at the state level. The numbers of violent incidents in state courthouses has increased every decade since 1970. (National Council of Juvenile and Family Court Judges, *Courthouse Security Incidents Trending Upward: The Challenges Facing State Courts Today* (March, 2022). Available at: <https://www.ncjfcj.org/wp-content/uploads/2022/03/courthouse-security-incidents-trending-upward.pdf> [as of April 1, 2024].)

   Unfortunately, there is insufficient data to determine if tribal judges are facing a similar increase in threats and violence. However, written testimony provided to this committee by tribal judges in California indicates that threats to tribal judges are not uncommon. For example, one tribal judge cites multiple incidents of persons appearing before the judge who made threatening comments and referenced their knowledge of where the judge lived.

3) **Effect of this Bill:** AB 2281 would add tribal judges to the list of public officials, for whom it is a criminal offense to assault or to attempt to commit murder, in retaliation for or to prevent the performance of that official's official duties. Notably, it is already a crime for a person to assault a tribal judge. Under the California Penal Code simple assault is punishable by a fine up to $1,000, imprisonment of county jail, not to exceed six months, or both. (Pen. Code, § 241, subd. (a).) Further, second degree murder is punishable by 15 years to life in state prison, and first degree murder is punishable by death, imprisonment in state prison for life without parole, or imprisonment in state person for a term of 25 years to life. (Pen. Code, § 190.) Persons *attempting* to commit crimes punishable by imprisonment in county jail or state prison are punishable by a term not to exceed half the term of imprisonment associated with the office, although attempted first degree murder is punishable by life in prison with possibility of parole. (Pen. Code, § 664.) Given that California's criminal laws have the same force and effect within Indian country as they have elsewhere within the State (*See* 18 U.S.C. § 1162) a person who assaults a tribal judge can already be charged by a fine up to $1,000, imprisonment of county jail, not to exceed six months, or both. Additionally, a person who

attempts to murder a tribal judge will face 7.5 years up to life in state prison, depending on the degree of attempted murder.

AB 2281 would make the assault of a tribal judge in retaliation for, or to prevent the performance of the judge's duties, punishable by imprisonment in county jail of no more than one year. This would *increase the punishment associated with assaulting a tribal judge from a maximum of six months to a maximum of one year*. AB 2281 would also provide that a person who attempts to murder a tribal judge in retaliation for, or to prevent the performance of the judge's duties, shall be confined in state prisons for 15 years to life. This would *increase the minimum punishment associated with attempted murder of a tribal judge from 7.5 years to 15 years.*

AB 2281 will afford tribal judges the same protections under as the law as state and federal judges by authorizing tribal judges to request the confidentiality of their home address, telephone number, and email address appearing in DMV records and affidavits of voter registration. It is unlikely that this bill will have any significant effect on the confidentiality of DMV records of tribal judges. Residence addresses in DMV records are already confidential, with limited exceptions under Vehicle Code Section 1801.21. This confidentiality was established after the killing of actress Rebecca Schaeffer in 1989, where the murder was able to obtain her address from a private investigation agency that acquired her address from an agent in California who obtained it from DMV records. In response, the Legislature enacted AB 1779 (Roos), Chapter 1213, Statutes of 1989, which made all home addresses in DMV records confidential. There is little to no evidence to suggest that residential addresses in DMV records have since been used for physical harm or for violent criminal purposes. This being said, given that this additional layer of confidentiality is already available to active and retired non-tribal judges, fairness and uniformity purposes support expanding this protection to include tribal judges.

It is similarly unlikely this bill would significantly impact the confidentiality available to tribal judges as it pertains to affidavits of voter registration. Existing law authorizes *any person*, including tribal judges, filing affidavits of voter registration to request that their personal contact information appearing on affidavits of registration or any list or roster, be declared confidential, upon order of a superior court showing good cause that life threatening circumstances exist to the person or their household. In addition, specified public safety officers such as state and federal judges, may request that their personal information on affidavits of registration be kept confidential, by submitting an application to a county election official that contains a statement, signed under penalty of perjury, that the person is a public safety officer and that a life threatening circumstance exists to the officer or a member of the officer's family. AB 2281 would make this additional confidentiality avenue available to tribal judges by declaring tribal officers to be public safety officers.

In practice, tribal judges can already seek the confidentiality of the personal information contained in affidavits of registration. However, this bill would make it easier for tribal judges to secure such confidentiality, since public safety officers need only submit an application swearing that a life threatening circumstance exists, to be approved by a county elections official. In contrast, members of the public more generally have to seek such confidentiality by securing an order of a superior court showing good cause that life threatening circumstances exist. Further, upon a successful application by a public safety officer, confidentiality of affidavit records is provided for two years and public safety

officers can subsequently re-apply to maintain such confidentiality. Thus, this bill will make it easier for tribal judges to secure the confidentiality of their information in voter registration records, and will ensure the confidentiality of those records for at least two years, until a new request is filed.

4) **Research on the Deterrent Effect:** 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> [as of April 4, 2024].) Given the evidence that increased incarceration does not significantly decrease criminal conduct, AB 2281s increased penalties are unlikely to deter future violent conduct against tribal judges. That being said, since the California Penal Code already contains special penalties for persons that assault or attempt to murder any local, state, or federal court judges, fairness and uniformity reasons support expanding these penalties to include tribal judges.

5) **Jurisdiction to Enforce Criminal Law in Indian Country under Public Law 280**: Tribes are under the exclusive and plenary jurisdiction of the federal Congress, which may restrict or abolish jurisdiction and sovereignty. The federal government has exercised this power a number of times to limit tribal jurisdiction, assume federal jurisdiction over a number of areas: Congress has granted limited jurisdictional authority to the federal (under the General Crimes Act, 18 U.S.C. § 1153 and the Major Crimes Act, 18 U.S.C. § 1152) and to states (under PL 280) and has imposed limits on tribal courts through the Indian Civil Rights Act (ICRA, 25 U.S.C. § 1301–1303).

   Further, in 1953 the United States Congress passed Public Law 280, which significantly altered the criminal jurisdictional framework governing tribal lands. Specifically, it provided six states, including California, with civil and criminal jurisdiction over crimes occurring on tribal land, and gave other states the option to adopt such jurisdiction. As a result, California and Tribes have concurrent jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country. For example, if the offender is non-Indian, and the victim is non-Indian or Indian or it is a victimless crime the state generally has exclusive jurisdiction. (*Draper v. United States* (1896) 164 U.S. 240). Alternatively, if the offender is Indian, and the victim is Indian or non-Indian, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (Indian Civil Rights Act, 25 U.S.C. § 1301.) Lastly, if the offender is Indian, and there is a victimless crime, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (*Ibid.*)

   Most crimes committed in California Indian Country are criminally prosecuted in state court, although Tribes can also prosecute the same crime in tribal court under tribal law, if the defendant is Indian. Notably, tribal courts may exercise special tribal criminal jurisdiction over all people, concurrent with the criminal jurisdiction of the federal government and the state, for the crime of assault of tribal justice personnel, even if neither the defendant nor the alleged victim is an Indian. (25 U.S.C § 1304, subds. (a)(1), (a)(5)(A), & (b)(4)(A).) This means that both state and tribal courts may prosecute persons who assault or attempt to murder tribal judges, even where the defendant is not Indian.

In practice, the criminal penalties that tribal courts can impose are limited. For example, tribal courts may not impose a penalty resulting from a conviction of more than 1 year or a fine of $5,000, or both. . (25 U.S.C. § 1302, subd. (a)(7)(B).) Although a tribal court may impose a term of imprisonment of 3 years or a fine not to exceed $15,000 or both, as specified, if the person has previously been convicted of the same or comparable offense by any jurisdiction in the U.S. or is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the federal or state government. (*Id.* at subd. (a)(7)(C). Under no circumstance can the term of the sentence exceed 9 years. (*Id.* at subd. (a)(7)(D). Here, tribal courts could still exercise their special criminal jurisdiction to prosecute persons who assault tribal judges since this bill only increases the punishment associated with assaulting a tribal judge from a maximum of six months to a maximum of one year. However, state courts will be the more appropriate venue for cases pertaining to the attempted murder of a tribal judge, seeing as AB 2281 increases the penalty associated with a conviction for the attempted murder of a tribal judge to a minimum of 15 years, which is above the maximum 9 year sentence that tribal courts can impose.

6) **Argument in Support**: According to California Indian Legal Services, "California Tribal Judges are often faced with making decisions impacting child custody, protection orders, division of property and other highly charged litigant claims. However, unlike other judges, many Tribal Court Judges do not law enforcement officers in their court room or other security protection. Due to Judges significant vulnerabilities, state laws have greater penalties for threats and assaults made against State and Federal Court Judges and also the protections limiting their personal information from being made public. Tribal Court Judges are no less vulnerable and deserve the same level of protection. This bill is crucial as it aims to rectify this disparity by providing equity for Tribal Judges who are integral to upholding the Tribe's sovereign right to operate their own judicial systems."

7) **Argument in Opposition**: None

8) **Related Legislation**:

   a) AB 2138 (Ramos), would authorize a tribal law enforcement officer to be designated as a California peace officer if the Tribe and officer meet specified requirements. AB 2138 is pending in this committee.

   b) AB 3168 (Gipson), would authorize an agency employing specified public officials, to request that the department remove the DMV confidentiality protections following the termination of employment if no appeal to the termination is filed or if the termination or separation is upheld. AB 2168 is pending in the Assembly Committee on Transportation.

9) **Prior Legislation**:

   a) SB 101 (Nielsen), of the 2021-2022 Legislative Session, would have added code enforcement and parking control officers, as well as their spouses and children, to the list of persons who may request an additional level of confidentiality from the DMV and would have required the DMV to charge a fee to cover its program costs. SB 101 was held in the Senate Appropriations Committee.

b) AB 980 (Kalra), of the 2019-2020 Legislative Session, would have made confidential, upon a person's request, a person's home address in the records of the DMV if the person is a county public guardian, county public conservator or county public administrator or a staff member of such offices. AB 980 was held in Assembly Appropriations Committee.

c) AB 2322 (Daly), Chapter 914, Statutes of 2018, requires the DMV, upon request, to make a retired judge or court commissioner's home address confidential for the rest of their life and for any surviving spouse or child for three years following the death of the judge or court commissioner.

d) SB 1093 (Jackson), of the 2017-2018 Legislative Session, would have added adult abuse investigators and social workers, as well as their spouses and children, to the list of persons who may request an additional level of confidentiality from the DMV. SB 1093 was held in Senate Appropriations Committee.

e) SB 506 (Poochigian), Chapter 466, Statutes of 2006, establishes confidentiality of voter registration information for public safety officials, state and federal judges, and court commissioners and allows a local elections official in their discretion to extend confidentiality of voter registration information to specified public safety officials

f) AB 767 (Pacheco), of the 1999-2000 Legislative Session, would have made it a felony punishable by 4, 7, or 10 years in prison to kidnap a specified elected official, a specified participant in the justice system, or one of their family members in retaliation for or to prevent the performance of their official duties. AB 767 was held in Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Indian Legal Services
California State Sheriffs' Association
Northern California Tribal Court Coalition

Opposition: None

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2406 (Davies) – As Amended April 1, 2024

SUMMARY: Creates a new crime if any person, including any minor, persuades two or more minors to commit theft, as specified. Specifically, **this bill**:

1) Makes it a crime to knowingly promote, employ, use, persuade, induce, or coerce two or more minors to commit a theft-related offense.

2) Provides that this new crime shall be punishable as follows:

   a) As a misdemeanor, by imprisonment in the county jail not exceeding one year or, a felony, by imprisonment in the county jail for 16 months, or two or three years, if the theft-related offense is any of the following:

      i. Shoplifting;

      ii. Petty theft; or,

      iii. Organized retail theft, as specified.

   b) By imprisonment pursuant in the county jail for two, four, or six years, if the theft-related offense is any of the following:

      i. Grand theft;

      ii. Cargo theft;

      iii. Theft from an elder or dependent adult;

      iv. The theft or unauthorized use of a vehicle;

      v. Burglary, as;

      vi. Carjacking;

      vii. Robbery;

      viii. Receiving stolen property; or,

      ix. Identity theft and mail theft.

3) Provides that probation shall not be granted to a person convicted of this new crime, except in unusual cases in which the interest of justice would be served.

4) Requires, to be convicted of this offense, "knowledge that the persons are minors under 18 years of age", or possession of "facts on the basis ow which they should reasonably know that the persons are minors under 18 years of age."

EXISTING LAW:

1) Provides that ***all persons counseling, advising, or encouraging children under the age of fourteen years***, to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed. A person who aids and abets in any crime faces the same punishment at the person who directly commits the crime. (Pen. Code, § 31.)

2) Provides that every person who contributes to the delinquency of any person under the age of 18 is guilty of a misdemeanor, punishable by a fine not exceeding $2,500, imprisonment in the county jail for not more than one year, or both, or may be released on probation for a period not exceeding five years. (Pen. Code, § 272, subd. (a)(1).)

3) States that a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child. (Pen. Code, § 272, subd. (a)(2).)

4) Provides that it is conspiracy if any two or more people conspire to commit any crime. If they conspire to commit a felony, the offense is punishable in the same manner and to the same extent as is provided for the punishment of that felony. If they conspire to commit any other crime, the conspiracy shall be punishable as a misdemeanor by imprisonment in a county jail for not more than one year, or as a felony, punishable by imprisonment in the county jail for 16 months, or two or three years, or by a fine not exceeding $10,000, or by both. (Pen. Code, § 182.)

5) Defines "Shoplifting" as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed $950. Shoplifting is. Shoplifting shall be punished as a misdemeanor. (Pen. Code, § 459.5.)

6) Defines "burglary" as entering a structure, as defined, with intent to commit theft or any felony offense and divides burglary into two degrees, first and second. (Pen. Code, §§ 459, 460.)

7) Provides that first degree burglary is burglary of building, inhabited for dwelling purposes, as specified, or vehicle inhabited for dwelling purposes, as specified. First degree burglary is punishable by imprisonment in the state prison for two, four, or six years. (Pen. Code, §§ 459, 460, 461.)

8) Provides that all other burglary is burglary in the second degree. Entering a commercial establishment to steal property exceeding $950 is burglary in the second degree. Burglary in the second degree is punishable as a misdemeanor, by imprisonment in the county jail not

exceeding one year, or as a felony by imprisonment in the county jail for in the county jail for 16 months, two years, or three years. (Pen. Code, §§ 459.5, 460, 461.)

9) States that every person who steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates property which has been entrusted to them, or who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or real or personal property, is guilty of theft. Divides theft into two degrees, petty theft and grand theft. (Pen. Code §§ 484, subd. (a), 486.)

10) Defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding $950 dollars, except as specified; other cases of theft are petty theft. Grand theft is punishable as a misdemeanor, by imprisonment in the county jail not exceeding one year, or as a felony by imprisonment in the county jail for in the county jail for 16 months, two years, or three years. (Pen. Code §§487-488.)

11) Punishes petty theft as a misdemeanor, punishable by fine not exceeding $1,000, or by imprisonment in the county jail not exceeding six months, or both. (Pen. Code §490.)

12) States that a person who commits any of the following acts is guilty of organized retail theft:

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

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

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

    d) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of these acts or any other statute defining theft of merchandise. (Pen. Code, § 490.4, subd. (a).)

13) Punishes organized retail theft, as follows:

    a) If violations of the provisions directed at acting in concert or as an agent are committed on two or more separate occasions within a one-year period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that period exceeds $950, the offense is punishable as an alternate felony-misdemeanor (a "wobbler");

    b) Any other violation of the provisions directed at acting in concert or as an agent is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year; and,

    c) A violation of the recruiting, coordinating, organizing, supervising, directing, managing, or financing provision is punishable as a wobbler. (Pen. Code, § 490.4, subd. (b).)

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

15) Prohibits elder theft. Elder theft is punishable as a misdemeanor by a fine not exceeding $2,500, by imprisonment in a county jail not exceeding one year, or by both, or as a felony, by a fine not exceeding $10,000, or by imprisonment in county jail for two, three, or four years, or by both, if the property taken or obtained is of a value exceeding $950. (Pen. Code, § 368.)

16) States that any person who drives or takes a vehicle not their own, without the consent of the owner, and with intent to permanently or temporarily deprive the owner thereof, shall be punished with a misdemeanor by imprisonment in a county jail for not more than one year or with a felony by imprisonment in a county jail for a term of two, three, or four years, or by a fine of not more than $5,000, or by both. (Veh. Code, § 10851.)

17) Provides that carjacking is the taking of a motor vehicle in the possession of another from their person or immediate presence. Carjacking is a felony, punishable by imprisonment in the state prison for a term of three, five, or nine years. (Pen. Code, § 215.)

18) States that robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. Robbery is a felony punishable by imprisonment in the state prison for two, three or five years. If the defendant acts in concert with two or more person to commit robbery, as specified, the offense is punishable by imprisonment in the state prison for three, six, or nine years. (Pen. Code, § 211.)

19) Makes it a crime to receive stolen property. If the value of the property is less than $950, the offense is a misdemeanor punishable by imprisonment in county jail for one year. If the value of the property is over $950, the offense is a misdemeanor, punishable by imprisonment in a county jail for not more than one year, or as a felony punishable by imprisonment in the county jail f for 16 months, or two or three years. (Pen. Code, § 496.)

20) Prohibits mail theft. This offense is a misdemeanor punishable by a fine, by imprisonment in a county jail not to exceed one year, or by both. (Pen. Code, § 530.5.)

21) Defines "probation" as the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. (Pen. Code, § 1203, subd. (a).)

22) Requires, if a person is convicted of a felony and is eligible for probation, the court to refer the matter to a probation officer to investigate and make a written report to the court containing findings and recommendations, including recommendations as to the granting or denying of probation and the conditions of probation, if granted. (Pen. Code, § 1203, subd. (b).)

23) Requires the probation officer to include in the report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances to deny probation. (Pen.

Code, § 1203, subd. (b).)

24) States that, if the court finds that the ends of justice would be served by granting probation to a person convicted of a felony, it may place the person on probation. (Pen. Code, § 1203, subd. (b)(3).)

25) Requires, if a person is convicted of a misdemeanor, the court to either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. (Pen. Code, § 1203, subd. (c).)

26) States that, except in unusual cases in which the interests of justice would best be served if the person is granted probation, probation shall not be granted in specified circumstances, including:

   a) Any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon;

   b) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which that person has been convicted;

   c) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which that person has been convicted;

   d) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony;

   e) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, and specified sex offenses, or a conspiracy to commit one or more of those crimes;

   f) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if that person committed any of the following acts:

      i. The person was armed with a weapon;

      ii. The person used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the previous crime; or,

      iii. The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

g) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion;

h) Any person who knowingly furnishes or gives away phencyclidine;

i) Any person who intentionally inflicted great bodily injury in the commission of arson or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property;

j) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway;

k) Any person who possesses a short-barreled rifle or a short-barreled shotgun; and,

l) Specified firearm offenses. (Pen. Code, § 1203, subd. (e).)

27) Provides that, if probation is granted in any of the above-listed cases, the court is required to specify on the record the circumstances indicating that the interests of justice would best be served by granting probation. (Pen. Code, § 1203, subd. (f).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Organized retail theft rings have caused untold harm and mayhem in our communities. The ringleaders of these criminal syndicates have reached new lows in attempting to recruit and coerce minors to participate and take part in these crimes. AB 2406 is a common-sense measure to ensure we start holding these people accountable. California needs to send a strong signal that anyone who attempts to use a minor in a commission of one of these crimes will be held accountable and it will no longer be considered a "slap-on-the-wrist" offense."

2) **This Bill Would Apply to Minors**: Given that the background material provided by the author contains no information or data whatsoever to suggest that there is a rising trend among adults enticing minors to steal, the most likely scenario is that this bill, should it go into effect, would be used to prosecute minors who steal with other minors.

   Minors steal for a number of reasons. "Sometimes, a child may steal as a show of bravery to friends, or to give presents to family or friends or to be more accepted by peers. Children may also steal because they might not want to depend on anyone, so they take what they feel they need. Children in this age group may continue to steal because of several factors, including they may feel peer pressure and the need to fit in, low self-esteem, and that they may be trying to 'buy' their friends." (John Hopkins Medicine, *Lying and Stealing*. Available at: <https://www.hopkinsmedicine.org/health/conditions-and-diseases/lying-and-stealing>.) As the United States Supreme Court has stated, juveniles are more vulnerable or susceptible to peer pressure, and their characters are "not as well formed." (*Graham v. Florida* (2010)

560 U.S. 48.) Accordingly, "juvenile offenders cannot with reliability be classified among the worst offenders." (*Ibid.*) A juvenile is not absolved of responsibility for his actions, but his transgression "is not as morally reprehensible as that of an adult." (*Ibid.*)

Not only does this bill fail to account for child and adolescent development as it applies to minors, it also ignores the dynamics of theft and poverty. Desperation and inequality lead to an increase in stealing. (Radkani S, Holton E, de Courson B, Saxe R, Nettle D., *Desperation And Inequality Increase Stealing: Evidence From Experimental Microsocieties* (July 19, 2023). Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10354492/>.) This bill would create draconian penalties for petty theft and shoplifting, without regard to the value of the property stolen. To be clear, an impoverished parent who encouragers their hungry children to steal a loaf of bread from the supermarket, could, under this bill be guilty of a felony, and could be sentenced to a term of imprisonment for up to three years, without the opportunity for probation.

Further, contrary to the author's contentions that using a minor in the commission of a crime is "considered a 'slap-on-the-wrist'," there are significant penalties for using a minor in the commission of a crime. Anyone who aids and abets in any crime, including ***encouraging children under the age of fourteen years to commit a crime***, can be charged as a principal in the crime and therefore punished to the same extent as if they committed the underlying offense. (Pen. Code, § 31.) Additionally the person could be charged with felony conspiracy for this conduct. (Pen. Code, § 182.) Also, it is a misdemeanor to contribute to the delinquency of any person under the age of 18, punishable by a $2,500 fine, imprisonment in the county jail for not more than one year, or both, or probation for up to five years. (Pen. Code, § 272, subd. (a)(1).)

Another alternative fact touted by proponents of this bill that the law is "vastly more lenient on our youth." Indeed, the purpose of the juvenile justice system is to provide youth care, treatment, and guidance that is consistent with their best interest, and to "hold them accountable for their behavior" in a way "***that is appropriate for their circumstances***." (Welf. & Inst. Code, § 202, subd. (b).) However, even when a theft offense is handled in the juvenile court, minors and their families still face significant penalties, ranging from substantial fines and fees, to probation, and in some instances formal commitments. Further, for serious "707(b)" offenses, including robbery, minors can be tried as adults. (Welf. & Inst. Code, § 707, subd. (b).)

3) **This Bill Would Create a New Felony and Prohibit Probation:** A person convicted of the new felony created by this bill would be required to serve a term of imprisonment ranging from sixteen months to six years. Anyone convicted of this new crime, misdemeanor or felony, would be categorically prohibited from probation, except in unusual cases in which the interest of justice would be served.

Unduly long sentences, like those proposed by this bill, are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands. (*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018).) Increasingly punitive sentences add little to the deterrent effect of the criminal justice system; and mass incarceration diverts resources from program and policy initiatives that hold the potential for greater impact on public safety. (*Ibid.*)

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

> This finding makes intuitive sense. Consider a person who is thinking about stealing a car or burglarizing a local business. If he is thinking rationally, he will take into account a variety of factors when considering how to commit the crime, including time of day, ease of entry, presence of security personnel or technology, or his ability to leave the crime scene. He does this to avoid being caught in the act because being arrested and prosecuted will impose significant burdens on him. Additionally, because he is not planning on being apprehended, he is unlikely to be thinking about how much time he might spend in prison and whether his sentence will be three, five, or seven years.
>
> Notably, this example looks at the behavior of a rational person, which rarely fits the picture of a substantial portion of those who actually commit a crime. ***Many are teenagers seeking peer approval for their illegal behavior,*** individuals under the influence of alcohol or drugs at the time of the offense, ***or are motivated by economic challenges. Many of these individuals are not even thinking about the risk of being caught, let alone know how much prison time they may face.***
>
> The limited impact of extending sentence length becomes even more attenuated for long-term incarceration. If the penalty for a second robbery conviction is twenty years and a legislative body increases that penalty to twenty- five, few would-be robbers undeterred by the prospect of "only" a twenty year sentence would balk at an additional five years.
>
> Again, there are multiple possible reasons for imposing a given prison term, depending on the circumstances of the crime. But policymakers and judges should be cognizant of the evidence to support any particular goal of sentencing. If the length of a prison term has little deterrent value, it may be time to forego the rationale of "sending a message."

(*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018) (citations omitted).) An analysis of 116 studies showed that incarceration does not deter people from committing future crimes and, in fact, incarceration can actually make

someone more likely to be arrested and commit crimes later (due to heightened barriers to securing employment, identification, housing, and other basic services necessary to successfully reenter society). (Brookings, *Retail Theft In US Cities: Separating Fact from Fiction* (March 6, 2024). Available at: <https://www.brookings.edu/articles/retail-theft-in-us-cities-separating-fact-from-fiction/>.) These findings are consistent with other research from national institutions of renown. (National Research Council of the National Academies of Sciences, Engineering, and Medicine, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, (April 2014) at pp. 130 -150. Available at: <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs>.)

Not only would the incarceration provided for in this bill fail to deter crime, it would come at a significant expense to the State. According to the Legislative Analyst's Office (LAO), it costs taxpayers $106,131 to incarcerate a person in state prison for one year. (LAO, *How Much Does it Cost to Incarcerate an Inmate*? (2022). Available at <https://lao.ca.gov/policyareas/cj/6_cj_inmatecost>.) This bill would ***require*** a person convicted of a felony created by this bill to serve a term of imprisonment ranging of up to six years and would disqualify any defendant convicted of this offense from probation. Could money spent to incarcerate a person be better spent on strategies proven to deter crime?

4) **Reports of Exaggerated Losses by Retailers – Separating Fact from Fiction:** Some complaints of retail theft have been overstated. For example, in 2021, Walgreens closed five stores in San Francisco purportedly due to retail theft. However, the San Francisco Police Department's data on shoplifting did not support this explanation for the closures. Recently, the chief financial officer of Walgreens acknowledged the shoplifting threat had probably been overstated. The company likely spent too much on security measures and mischaracterized the amount of theft at stores. In fact, shrinkage (the inventory that was bought but could not be sold primarily due to shoplifting) actually decreased to around 2.5 to 2.6 percent of sales, compared to 3.5 percent the prior year. (See New York Times, *Walgreens Executive Says Shoplifting Threat Was Overstated* (Jan. 6, 2023) <https://www.nytimes.com/2023/01/06/business/walgreens-shoplifting.html> ; see also Los Angeles Times, *Retailers Say Thefts Are at Crisis Level. The Numbers Say Otherwise* (Dec. 15, 2021) <https://www.latimes.com/business/story/2021-12-15/organized-retail-theft-crime-rate>; CNN Business, '*Maybe We Cried Too Much' Over Shoplifting, Walgreens Executive Says* (Jan. 7, 2023) <https://www.cnn.com/2023/01/06/business/walgreens-shoplifting-retail/index.html>; The Atlantic, *The Great Shoplifting Freak-Out* (Dec. 203, 2021) <https://www.theatlantic.com/health/archive/2021/12/shoplifting-holiday-theft-panic/621108/>.)

Others say retail theft, while an issue, might be overstated as an excuse to write off mediocre sales and historic inflation might be a key reason why we're seeing any theft bump at all Things have become expensive – "we are in an economy right now where some everyday staples have risen in price six times faster than the overall rate of inflation. Until July of this year, American paychecks grew at a slower rate than inflation as a whole." Some retailers lump theft in with heavy discounting, soft sales and macroeconomic conditions as other factors that cut into their margins. (Freight Waves, *What's Behind the Reports of 'Unprecedented' Retail Theft* (Oct. 2023). Available at: <https://www.freightwaves.com/news/whats-behind-the-reports-of-unprecedented-retail-theft>; see also Bloomberg, *Thieves Target Donuts and Ham as Food Prices Jump* (Feb. 2024). Available at: <https://www.bloomberg.com/news/newsletters/2024-02-23/supply-chain-latest-food-theft-

rises-on-grocery-inflation>.)

What's more, the National Retail Federation has not solidified any data around increased rates of organized retail theft or what percentage of external theft is organized crime. Retailers are not required to break down how much they actually lose to theft. "Retailers and trade associations are increasingly using their positions to influence lawmakers to pass new legislation that benefits them, hurts competitors and could disproportionally affect marginalized people." (CNBC, *Companies say organized retail crime is on the rise, but there's no data to prove it.* (Aug. 2023). Available at < https://www.cnbc.com/2023/08/09/claims-about-organized-retail-theft-are-nearly-impossible-to-verify.html>.)

From 2020 to 2021, the number of news stories covering smash-and-grab incidents nearly doubled. However, the information available does show that the vast majority of shoplifting is not committed by mobs of people. (Council on Criminal Justice, *Shoplifting Trends: What You Need to Know* (Nov. 2023) Available at: <https://councilоncj.org/shoplifting-trends-what-you-need-to-know/>.)

Additionally, the Federal Trade Commission recently reported that retail stores likely inflated prices to accommodate for lost revenue resulting from the pandemic. The FTC states, in summary, that:

> Notably, consumers are still facing the negative impact of the pandemic's price hikes, as the Commission's report finds that some in the grocery [including drug stores] retail industry seem to have used rising costs as an opportunity to further raise prices to increase their profits, which remain elevated today.

Retail stores actually saw significant profits over the past few years despite claims that stores are losing profits as a result of theft and other market forces.

> "In the first three-quarters of 2023, retailer profits rose even more, with revenue reaching 7% over total costs, casting doubt on the assertions of some companies that rising prices at the grocery store are the result of retailers' own rising costs." (Federal Trade Commission, "*Feeding America in a Time of Crisis, The United States Grocery Supply Chain and the COVID-19 Pandemic*" (March 21, 2024).

Finally, the Federal Bureau of Investigation (FBI) data on crime statistics reports that crime is actually down nationwide by a significant margin – contributing to the conclusion that the crime rate was a temporary phenomenon brought on by the pandemic and rapidly escalating costs for basic goods and services.

> The new fourth-quarter numbers [for 2023] show a 13% decline in murder in 2023 from 2022, a 6% decline in reported violent crime and a 4% decline in reported property crime.
>
> After a terrible period of underfunding and understaffing caused by the pandemic, local governments have, by most measures, returned

> to pre-pandemic levels," wrote John Roman, a criminologist at the University of Chicago. In an interview, Roman said, 'The courts were closed, a lot of cops got sick, a lot of police agencies told their officers not to interact with the public. Teachers were not in schools, not working with kids.

(FTC, *Report on Grocery Supply Chain Disruptions* (March 2024). Available at: <https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-releases-report-grocery-supply-chain-disruptions>.) Given that claims of massive retail theft appear to be inconsistent with the data, the Legislature should consider evidence-based solutions to address property crimes.

5) **Immigration and Other Collateral Consequences**: A conviction for any crime where the penalty following conviction is a year or more and specified crimes "of moral turpitude" will likely bar a person from receiving lawful permanent residence status and may result in deportation. (Dadhania, *Deporting Undesirable Women* (2018) 9 U.C. Irvine L.Rev. 53, 56.) Hence, undocumented Californians may potentially be uniquely penalized because an arrest or conviction for this crime may result in deportation or other serious immigration consequences. Additionally, if a person is unlawful at entry, they will likely be immediately deported in summary proceedings. According to the American Immigration Council in August of 2021:

> Tens of thousands of migrants and asylum seekers are subjected to criminal prosecution for these crimes every year. Prosecutions for entry-related offenses reached an all-time high of 106,312 in Fiscal Year (FY) 2019, near the end of the Trump administration, before falling to 47,730 in FY 2020 after the government began rapidly expelling most people crossing the border in March 2020 rather than referring them for prosecution.

(American Immigration Council *Fact Sheet, Prosecuting People for Coming to the United States*. Available at: <https://www.americanimmigrationcouncil.org/research/immigration-prosecutions>.) Any time an undocumented person interacts with law enforcement, the risk of incarceration and deportation is significant. (L.A. Times, *Orange County Sheriff's cooperation with ICE sees spike in inmate transfers*, (Mar. 26, 2024) Available at: <https://www.latimes.com/socal/daily-pilot/entertainment/story/2024-03-26/orange-county-sheriffs-cooperation-with-ice-sees-spike-in-inmate-transfers>.)

Further, the collateral consequence of a felony are substantial. A criminal conviction exposes individuals to thousands of collateral consequences that will follow them long after the successful completion of their sentence. These collateral consequences serve as substantial, lifelong barriers to stability. A recent survey found that 76% of individuals with a criminal conviction report instability in finding a job or housing, obtaining a license, paying for fines or fees, and having health issues. A National Institute of Justice study found that having a criminal record reduced the chance of getting a job offer or callback. (SAMHSA, *Survey of California Victims and Populations Affected by Mental Health, Substance Issues, and Convictions*. Available at:
<https://www.samhsa.gov/data/sites/default/files/reports/rpt32885/2019NSDUHsaeSpecState

s/NSDUHsaeCalifornia2019.pdf>; see also National Inventory of Collateral Consequences of Conviction. Available at: <https://niccc.nationalreentryresourcecenter.org/consequences>; Brennan Center, *Employment after Incarceration: Ban the Box and Racial Discrimination.* Available at: <https://www.brennancenter.org/our-work/analysis-opinion/employment-after-incarceration-ban-box-and-racial-discrimination>.)

6) **Argument in Support**: According to the *National Federation of Business (NFIB)*, "AB 2406 (Davies) addresses head on, a particularly pernicious aspect of retail theft: the exploitation of underaged kids. Organized retail theft rings are recruiting minors to steal on their behalf, understanding that the law is vastly more lenient on our youth. Collectively, we as Californians do not tolerate the exploitation of children in any way and the time is now to send a strong message that it will not be tolerated in the retail theft space either.

"NFIB supports the robust penalties in AB 2406 for those who recruit, organize, supervise, direct, manage or finance another to act in concert with another to steal merchandise from one or more merchant's premises or who acts in concert with two or more to receive or purchase stolen property. Not only will the implementation of this bill as law send a strong message to those exploiting California's youth and assist small business owners in preserving their ability to conduct business in California, but it will also help to prevent our youth from committing that first crime that might lead them down the perilous path of potential recidivism."

7) **Argument in Opposition**: According to the *Vera Institute of Justice*, "while retailers claim that retail theft is a massive and urgent crisis, experts and journalists have repeatedly noted that false and inflated claims are driving an exaggerated sense of panic, and retailers are struggling with other issues more responsible for financial challenges. In particular, many concerns around "organized retail crime" have been driven by the National Retail Federation's now-redacted claim that it was responsible for half of all inventory losses in 2021, which was based on incorrect data.

"When we blame the wrong problems, we miss the right solutions. As sensational claims about organized retail theft have been debunked and data shows that retail theft is not rising statewide, responses need to be tailored to the facts. The legislature should respond to concerns from the community and local businesses with evidence-backed solutions.

"Increasing penalties for non-violent offenses like retail theft will do little to make our communities safer. Study after study has shown that neither lengthening sentences nor increasing charges and punishments based on a second or third offense meaningfully deters crime. And unlike the community-based programs funded by Proposition 47, which have reduced recidivism, sending people to jail and prison makes them more likely to reoffend, while costing taxpayers dearly amid abudget deficit. Finally, evidence indicates that AB 2406 is likely to worsen racial disparities in California's criminal system by sending more Black and Latinx people to prison.

"To deter and address retail theft, we need to take on its drivers. When people shoplift as part of an organized retail theft operation, law enforcement should investigate and hold accountable the people who profit most from these sophisticated operations. However, we know from the War on Drugs that threatening low-level offenders with harsh punishment to find those driving sophisticated organized retail theft will not be particularly successful.

Legislators can also help by regulating online marketplaces to make it harder to sell stolen goods. Supporting retail workers by enhancing pay, increasing staffing (instead of using self-checkout or surveillance based technology), and providing training can also help.

"When people are arrested for stealing out of need—whether in cooperation with an organized operation or not—we need to make sure they don't need to do it again. Instead of reducing public safety through unnecessary and often counterproductive incarceration, we can effectively intervene by meeting their needs and connecting them to stable housing, jobs, and other treatment and services. Cities around the country have effectively employed this model, while similar models have proved effective in California thanks to community funding created by Prop 47.

"It is long past time to reject the reach for 'tough' policies in favor of real solutions."

8) **Related Legislation**:

a) AB 1802 (Jones-Sawyer), would eliminate the sunset date for organized retail theft and the operation of CHP's regional property crimes task force. AB 1802 is pending in this Committee.

b) AB 1960 (Soria), would reenact sentence enhancement for theft offenses when the loss exceeds specified dollar amounts. AB 1960 is pending in this Committee.

c) AB 1990 (W. Carrillo), would authorize peace officers to make a warrantless arrest for misdemeanor shoplifting, as specified. AB 1990 is pending in this Committee.

d) AB 1779 (Irwin), would allow, a prosecutor to bring a case in any county where theft offenses occurred for offenses that occur in multiple jurisdictions, as specified. AB 1779 is pending in this Committee.

e) AB 1787 (Villapudua), would among other things, repeal the sunset provision in the organized retail theft statute. AB 1787 is pending in this Committee.

f) AB 1794 (McCarty), would clarify aggregation requirements for grand theft, among other things. AB 1794 is pending in this Committee.

g) AB 2438 (Petrie-Norris), would make any person who acts in concert to take, damage, or destroy any property in the commission of a felony punishable by an additional and consecutive term of imprisonment. AB 2438 is pending in this Committee.

h) AB 2790 (Pacheco), would define organized retail theft to include acting in concert with one or more persons to steal specified types of merchandise, including infant formula, baby food, over-the-counter medications, and blood glucose testing strips, with the intent to sell those items. AB 2790 is pending in this Committee.

i) AB 2943 (Zbur), would, among other things, extend the organized retail theft statute until January 2031, and make it a crime for any person to possess property unlawfully that was acquired through one or more acts of shoplifting, theft, or burglary from a retail business,

if the property is not possessed for personal use. AB 2943 is pending in this committee.

j) SB 923 (Archuleta), would revise the definition of shoplifting to require an intent to steal retail property or merchandise and would require a person convicted of petty theft or shoplifting, if the person has two or more prior convictions for specified theft-related offenses, to be punished by imprisonment in the county jail for up to one year, or for 16 months, or two or three years. SB 923 is pending in Senate Public Safety Committee.

k) SB 928 (Niello), would remove the sunset date for organized retail theft. SB 928 is pending in Senate Public Safety Committee.

l) SB 982 (Wahab), would remove the sunset date for organized retail theft. SB 982 is pending in Senate Appropriations Committee.

m) SB 1416 (Newman), would create sentencing enhancements for selling, exchanging, or returning for value, or attempting to sell, exchange, or return for value, any property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property value exceeds specified amounts and would make these enhancements apply to any person acting in concert with another person to commit these offenses. SB 1416 is pending in Senate Public Safety Committee.

9) **Prior Legislation**:

a) AB 329 (Ta), of the 2023-2024 Legislative Session, would have expanded the territorial jurisdiction in which the Attorney General can prosecute specified theft offenses and associated offenses connected together in their commission to include cargo theft. AB 329 failed passage in this Committee.

b) AB 335 (Alanis), of the 2023-2024 Legislative Session, would have required the Little Hoover Commission to submit a report to the Legislature describing the reported retail thefts, as specified. AB 335 was held under submission in Assembly Appropriations Committee.

c) AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, extended the sunset date for organized retail theft through January 1, 2026.

d) AB 23 (Muratsuchi), of the 2023-2024 Legislative Session, would have decreased the threshold amount for grand theft from $950 to $400. The hearing on AB 23 was canceled the request of the author.

e) AB 329 (Ta) would have imposed higher penalties for shoplifting and petty theft if the crime is committed by a non-citizen of the state of California. AB 329 failed passage in this committee.

f) AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022, authorized the misdemeanor arrest of a person that has a prior arrest, citation or conviction for theft, as specified, and authorized a city or county prosecuting authority or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft

offense or repeat theft offenses.

g) AB 2356 (Rodriguez), Chapter 22, Statues of 2022, expanded the definition of "grand theft" where the aggregate amount taken by all participants exceeds $950.

h) AB 1603 (Salas), of the 2021-2022 Legislative Session, would have reduced the threshold amount for petty theft and shoplifting to be punished as a misdemeanor from $950 to $400. AB 1603 failed passage in this Committee.

i) AB 2390 (Muratsuchi), of the 2021-2022 Legislative Session, would have authorized the aggregation of the value of property from one or more acts of theft or shoplifting, as specified. AB 2390 failed passage in this Committee.

j) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft and expanded jurisdiction to prosecute cases of theft or receipt of stolen merchandise.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California District Attorneys Association
California Problem Solvers Caucus
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
League of California Cities
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
National Federation of Independent Business (NFIB)
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Oppose

California Public Defenders Association
Californians for Safety and Justice
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice
Initiate Justice Action
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Vera Institute of Justice

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2432 (Gabriel) – As Amended April 2, 2024

SUMMARY: Establishes additional fines for corporations convicted of felony or misdemeanor offenses. Specifically, **this bill**:

1) Establishes the California Crime Victims Fund within the State Treasury.

2) Requires a court, when a corporation is convicted of a crime, to impose a separate and additional restitution fine of at least $100,000 for a felony conviction and at least $1,000 for a misdemeanor conviction.

3) Provides that the fine shall be commensurate with the seriousness of the offense.

4) Authorizes the court to forgo imposition of the additional restitution fine if there exists a compelling and extraordinary reason for not doing so and states those reasons on record.

5) Provides that moneys collected from the additional restitution fine shall be disbursed as follows:

   a) 75 percent deposited in the California Crime Victims Fund; and,

   b) 25 percent distributed to the prosecuting agency that brought the criminal prosecution.

6) Provides that, in addition to any other penalty or fine provided by law, any corporation convicted of any felony or misdemeanor offense shall also be liable for an additional fine, known as the corporate criminal enhancement, as follows:

   a) Where the offense resulted in the taking of another person's or entity's money, labor, or real or personal property, up to two times the value of the taking or loss, whichever is greater, as admitted or found to be true by the trier of fact; or

   b) Where the fine did not result in the taking of another person's or entity's money, labor, or real or personal property, a fine of up to $25,000,000, based on the court's consideration of all of the following:

      i) The nature and seriousness of the offense;

      ii) The number of offenses committed;

      iii) The persistence of the criminal conduct;

iv) The length of time over which the criminal conduct occurred;

v) The willfulness of the corporation's criminal conduct; and,

vi) The corporation's assets, liabilities, and net worth.

7) Requires the moneys collected from the additional fine against a corporation resulting from a criminal conviction to be deposited directly in the Crime Victims Services Fund.

8) Defines, for the purposes of the enhancement and the restitution fine, a "corporation" as any entity, other than a natural person, that is capable under laws of any State to do any of the following: sue, be sued, own property, contract, or employ another.

EXISTING LAW:

1) Provides that the word "person" includes a corporation as well as a natural person. (Pen. Code, § 7.)

2) Provides that when a fine is imposed upon a corporation on conviction, the fine may be collected by virtue of the order imposing it in a manner provided for enforcement of money judgments generally. (Pen. Code, § 1397.)

3) Provides that victims have a right to restitution from the convicted wrongdoer in every case and that all payments collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to victim. (Cal. Const. art. I, § 28, subd. (b).)

4) Requires the court, in every case where a person is convicted of a crime, to impose a separate and additional restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. (Pen. Code, § 1202.4, subd. (b).)

5) Provides that the restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense. (Pen. Code, § 1202.4, subd. (b)(1).)

6) Provides that a person convicted of a felony shall be fined between $300 and $10,000, and a person convicted of a misdemeanor shall be fined between $150 and $1,000. (Pen. Code, § 1202.4, subd. (b)(1).)

7) Authorizes the court, in setting a felony restitution fine, to determine the amount of the fine as the product of the minimum fine, as specified, multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted. (Pen. Code, § 1202.4, subd. (b)(2).)

8) Requires the court to impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record, and prohibits a defendant's inability to pay from being considered a compelling and extraordinary reason not to impose a restitution fine. (Pen. Code, § 1202.4, subd. (c).)

9) Provides that inability to pay may be considered only in increasing the amount of the restitution fine in excess of the minimum fine. (Pen. Code, § 1202.4, subd. (c).)

10) Requires the court to consider all relevant factors in setting the fine, including, but not limited to:

   a) The defendant's inability to pay;

   b) The seriousness and gravity of the offense and the circumstances of its commission;

   c) Any economic gain derived by the defendant as a result of the crime;

   d) The extent to which any other person suffered losses as a result of the crime; and,

   e) The number of victims involved in the crime. (Pen. Code, § 1202.4, subd. (d).)

11) Requires the court, in every case in which a victim has suffered economic loss as a result of the defendant's conduct, to require that the defendant make full restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. (Pen. Code, § 1202.4, subd. (f).)

12) Requires the sentencing court to prepare the restitution order and to identify each victim and each loss to which the order pertains, and requires the order to be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, as specified. (Pen. Code, § 1202.4, subd. (f).)

13) Provides that a defendant's inability to pay shall not be a consideration in determining the amount of a restitution order. (Pen. Code, § 1202.4, subd. (f)(3).)

14) Authorizes the district attorney to request an order of examination, as specified, to determine the defendant's financial assets for purposes of collecting on the restitution order. (Pen. Code, § 1202.4, subd. (h).)

15) Provides that a restitution order is enforceable as if the order were a civil judgment. (Pen. Code, § 1202.4, subd. (i).)

16) Authorizes the court to order probation instead of the restitution fine if the court finds and states on the record compelling and extraordinary reasons why a restitution fine should not be required, but that the restitution fine must be imposed if probation is revoked. (Pen. Code, § 1202.4, subd. (m).)

17) Provides that the restitution fine shall be payable to the clerk of the court, the probation officer, or any other person responsible for the collection of criminal fines. (Pen. Code, 1202.43, subd. (a).)

18) Provides that, if the defendant is unable or otherwise fails to pay the restitution fine in a felony case and there is an amount unpaid of $1,000 or more within 60 days after the imposition of sentence, or in a case in which probation is granted, within the period of

probation, the clerk of the court, probation officer, or other person to whom the fine is to be paid shall forward to the Controller the abstract of judgment along with any information which may be relevant to the present and future location of the defendant and their assets, if any, and any verifiable amount which the defendant may have paid to the victim as a result of the crime. (Pen. Code, 1202.43, subd. (a).)

19) Provides that a restitution fine shall be deemed a debt of the defendant owing to the state, as specified, excepting any amounts the defendant has paid to the victim as a result of the crime. (Pen. Code, 1202.43, subd. (b).)

20) Provides that a corporation, limited liability company, or person who is a manager with respect to a product, facility, equipment, process, place of employment, or business practice, is guilty of a public offense does both of the following:

   a) Has actual knowledge of a serious concealed danger that is subject to the regulatory authority of an appropriate agency and is associated with that product or a component of that product or business practice;

   b) Knowingly fails during the period ending 15 days after the actual knowledge is acquired, or if there is imminent risk of great bodily harm or death, immediately, to inform the Division of Occupational Safety and Health in the Department of Industrial Relations in writing, unless the corporation, limited liability company, or manager has actual knowledge that the division has been so informed; and to warn its affected employees in writing, unless the corporation, limited liability company, or manager has actual knowledge that the employees have been so warned. (Pen. Code, § 387, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2432 will provide a critical revenue source for crime victim services programs across the state. These programs serve vulnerable populations, including domestic violence victims, survivors of human trafficking, and vulnerable LGBTQ+ youth. By modeling after the federal Victims of Crime program, we can create better financial stability for crucial crime victim services in California."

2) **Practical Consideration**: This bill defines "corporation" as "an entity, other than a natural person, that is capable under the laws of any state of suing, beings sued, owning property, entering into a contract, or employing a person." Although outside the purview of this committee, the definition of "corporation" seems to broadly encompass a range of business entities that are not commonly understood as corporations, many of which would be small businesses. Perhaps narrowing the definition of corporation would be appropriate.

3) **Existing Penalty Assessments**: This bill establishes additional fines for corporations convicted of a felony or misdemeanor offenses. Even without the additional fines, the actual cost to a corporation for violating the law could be significant. For example, a small business committing a felony for which no fine is prescribed may be fined $10,000. (Pen. Code, § 672.) And, a base fine of $10,000 would be subject to the following addition fees and assessments:

Penal Code section 1464 state penalty on fines: $10,000 ($10 for every $10)
Penal Code section 1465.7 state surcharge: $2,000 (20% surcharge)
Penal Code section 1465.8 court operation assessment: $40 ($40 fee per criminal offense)
Government Code section 70372 court construction penalty: $5,000 ($5 for every $10)
Government Code section 70373 assessment: $35 ($35 for each infraction)
Government Code section 76000 penalty: $7,000 ($7 for every $10)
Government Code section 76000.5 EMS penalty: $2,000 ($2 for every $10)
Government Code section 76104.6 DNA fund penalty: $1,000 ($1 for every $10)
Government Code section 76104.7 additional DNA fund penalty: $4,000 ($4 for every $10)

After fines and assessments, and assuming no other fines on separate counts, a crime with a $10,000 base fine would actually cost the small business $31,075. A corporation who willfully defrauds any person in connection with the offer, purchase, or sale of any security may be fined up to $10,000,000, costing up to $31,000,075 after fees and assessments. (Corp. Code, § 25541, subd. (a).)

These figure does not include victim restitution, or the restitution fine, or other fines and fees (e.g., attorney fees) that may be assessed.

4) **Prioritization of Court-Ordered Debt**: Current law under Penal Code section 1203.1d prioritizes the order in which delinquent court-ordered debt received is to be satisfied. The priorities are 1) victim restitution, 2) state surcharge, 3) restitution fines, penalty assessments, and other fines, with payments made on a proportional basis to the total amount levied for all of these items, and 4) state/county/city reimbursements, and special revenue items.

5) **The Crime Victims Fund**: This bill would create the California Crime Victims Fund, and would require money collected by the corporate criminal enhancement to be deposited in the fund. According to author, this would provide a "critical revenue source for crime victim services programs across the state." The additional funds could help cover expected reductions in federal dollars from the Victims of Crime Act of 1984 (VOCA).

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

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

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

Although the State provides some level of funding for victims' services, federal funds authorized by VOCA is a major source of funding. (CalOES, *supra.*) That is, California is dependent on federal funding to provide its broad array of services to crime victims and survivors throughout the state. The VOCA distribution cap increased more than six-fold from $705 million from 2011 to $4.4 billion in 2018. The significant increase in the cap resulted in unprecedented growth in victim assistance programs around the country. However, recent proposals regarding cuts to the fund would lead to considerable shortfalls. (CalOES, *supra*, *Victim Services in California: A Recommendation for Combining the State's Victims' Programs*, (2018).)

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

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

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

6) **Argument in Support**:

a) According to *Attorney General Rob Bonta*, a co-sponsor of the bill, "In alignment with the intent of this bill, Attorney General Bonta joined a coalition of attorneys general representing 32 states and territories urging Congress to provide critical support and services to victims and survivors of crime by taking steps to increase the Crime Victims Fund (Fund) with short term, bridge funding. The balance of the Fund, which was established under the Victims of Crime Act of 1984 (VOCA), has decreased significantly in recent years. It is projected that compared to 2023 funding, the 2024 funding for victim services grants will be 41 percent or $700 million lower nationwide year over year.1 The California Victim Compensation Board (CalVCB) also administers state compensation to crime survivors as a payor of last resort, but is also perpetually underfunded.

"In addition to recent actions taken related to the VOCA Fund, the Special Prosecutions Section in the Criminal Division at the California Department of Justice (DOJ) investigates and prosecutes complex criminal cases occurring in California, primarily related to financial, securities, mortgage, and environmental fraud; public corruption; underground economy offenses, including tax and revenue fraud and counterfeiting; and human trafficking. Separately, DOJ's Division of Medi-Cal Fraud and Elder Abuse (DMFEA) also protects California's most vulnerable residents, and helps safeguard the state's Medi-Cal program. DMFEA works to investigate and prosecute those who would defraud taxpayers of millions of dollars and divert scarce health care resources, as well as diligently protect residents in nursing homes and other long-term care facilities from abuse or neglect.

"Had AB 2432 existed at that time, this white-collar criminal enhancement would have furthered DOJ's commitment to securing restitution for victims of the Santa Barbara oil spill. In that case, then-Attorney General Xavier Becerra and then-Santa Barbara County District Attorney Joyce E. Dudley secured a guilty verdict Plains All American Pipeline (Plains), L.P. for the 2015 Refugio Oil Spill in Santa Barbara County. Plains was sentenced to pay $3,347,650 in total fines and penalty assessments, but the corporation fought against and stiffed many victims of their restitution.

"This bill would establish the California Crime Victims Fund in the State Treasury, that would disburse monies secured under a new fine that a judge can impose if a corporate defendant is convicted of a criminal offense. Through the proposed fund, AB 2432 would create a supplemental state funding stream for VOCA and CalVCB, and support prosecuting agencies with bringing these criminal cases forward on behalf of vulnerable Californians."

b) According to *Crime Survivors for Safety and Justice*, "Congress is cutting critical funding for crime victim services nationwide, leading to a 30% reduction in programmatic spending across all crime victim service providers in California. This leaves California's crime victim services program roughly $200 million short of their previous funding levels.

"These programs provide vital, even lifesaving, services to survivors of domestic violence, human trafficking, and vulnerable youth after. California needs a long-term, permanent funding stream to support crime victims' service providers, and crime victims and survivors by extension. Congressional negotiations notwithstanding, federal funding has typically been sustained through the prosecution of large companies with deep

pockets. But comparable legal options are not available at the state level.

"Like many states, the California code lacks a sufficient mechanism to hold bad corporate actors criminally accountable for certain harms committed against Californians. As a result, funding for a variety of support programs for victims of crime unfairly depends on restitution payments from those who are unable to pay.

"Individuals who are found responsible for crimes in a criminal court in California face significant sentences. Yet, corporations that harm Californians face minimal accountability. For example, PG&E was charged with 84 counts of involuntary manslaughter and required to pay a fine of $3.5 million, which is "equivalent to two weeks' worth of annual revenue" for the corporation.

"This bill will ensure that victims of crime in California have access to the vital services they need. By establishing a permanent funding stream, AB 2432 will insulate California's crime victim services from federal budget issues and support victims and their service providers.

"This bill creates a creates a new and permanent funding mechanism for the programs historically funded through the federal Victims of Crime Act (VOCA) and those administered by the California Victim Compensation Board by holding corporations accountable for wrongdoing."

7) **Related Legislation**: AB 1956 (Reyes) requires, if the grant funding from the federal Victims of Crime Act (VOCA) awarded to the Office of Emergency Services (CalOES) is 10% lower than the amount awarded the prior year, CalOES to allocate funds, upon appropriation by the Legislature, to fill the gap. AB 1956 is currently pending hearing in the Assembly Appropriations Committee.

8) **Prior Legislation**:

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Rob Bonta (Co-Sponsor)

California Partnership to End Domestic Violence (Co-Sponsor)
Children's Advocacy Centers of California (Co-Sponsor)
Coalition to Abolish Slavery & Trafficking (CAST) (Co-Sponsor)
Culturally Responsive Domestic Violence Network (CRDVN) (Co-Sponsor)
Valorus (Co-Sponsor)
Asian Americans for Community Involvement
Bill Wilson Center
California Elder Justice Coalition (CEJC)
California Women's Law Center
Californians for Safety and Justice
Californians United for A Responsible Budget
Center for Community Solutions
Center for Domestic Peace
Center for The Pacific Asian Family
Child Guidance Center, INC.
Crime Survivors for Safety and Justice
Ella Baker Center for Human Right
Family Services of Tulare County
Family Violence Appellate Project
Felony Murder Elimination Project
Free to Thrive
Healthy Alternatives to Violent Environments
Homebridge
House of Ruth, INC.
Humboldt Domestic Violence Services
Initiate Justice
Initiate Justice Action
Interface Children & Family Services
Jewish Family Service of Los Angeles (UNREG)
Journey Out
Just Detention International
Next Door Solutions to Domestic Violence
Onejustice
Peace Over Violence
Project Sanctuary, INC.
Rubicon Programs
San Francisco Public Defender
Senior Advocacy Network
Shelter From the Storm, INC.
Smart Justice California, a Project of Tides Advocacy
Stand Up Placer INC.
Ventura County District Attorney's Office
Victims Empowerment Support Team
Waymakers
Wild Iris Family Counseling & Crisis Center
Woman INC
YWCA Golden Gate Silicon Valley

Opposition

None

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2438 (Petrie-Norris) – As Introduced February 13, 2024

SUMMARY: Creates a new sentence enhancement, punishable by an additional and consecutive term of imprisonment of one, two, or three years, for any person who acts in concert with two or more persons to steal or damage any property in the commission or attempted commission of a felony.

EXISTING LAW:

1) States that a person who commits any of the following acts is guilty of organized retail theft:

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

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

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

   d) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of these acts or any other statute defining theft of merchandise. (Pen. Code, § 490.4, subd. (a).)

2) Punishes organized retail theft, as follows:

   a) If violations of the provisions directed at acting in concert or as an agent are committed on two or more separate occasions within a one-year period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that period exceeds $950, the offense is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year, or as a felony, punishable by a term of imprisonment in a county jail for 16 months, or two or three years;

   b) Any other violation of the provisions directed at acting in concert or as an agent is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year; and,

   c) A violation of the recruiting, coordinating, organizing, supervising, directing, managing, or financing provision is punishable is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year, or as a felony, punishable by a term of

imprisonment in a county jail for 16 months, or two or three years. (Pen. Code, § 490.4, subd. (b).)

3) Defines "Shoplifting" as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed $950. Shoplifting shall be punished as a misdemeanor, except as specified. (Pen. Code, § 459.5.)

4) States that every person who steals, takes, carries, leads, or drives away the personal property of another is guilty of theft. (Pen. Code, § 484, subd. (a).)

5) Punishes petty theft as a misdemeanor. (Pen. Code §490.)

6) Defines grand theft as theft of money, labor, real or personal property of a value exceeding $950. Grand theft is a wobbler, punishable by imprisonment in a county jail not exceeding one year, or as a felony by imprisonment in the county jail for 16 months, two years, or three years (Pen. Code, § 487, 489.)

7) Provides that the value of the money, labor, real property, or personal property taken exceeds $950 over the course of distinct but related acts, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. (Pen. Code, § 487, subd. (e).)

8) Defines "burglary" as entering a structure, as defined, with intent to commit theft or any felony offense and divides burglary into two degrees, first and second. (Pen. Code, §§ 459, 460.)

9) Provides that first degree burglary is burglary of building, inhabited for dwelling purposes, as specified, or vehicle inhabited for dwelling purposes, as specified. First degree burglary is punishable by imprisonment in the state prison for two, four, or six years. (Pen. Code, §§ 459, 460, 461.)

10) Provides that all other burglary is burglary in the second degree. Entering a commercial establishment to steal property exceeding $950 is burglary in the second degree. Burglary in the second degree is punishable as a misdemeanor, by imprisonment in the county jail not exceeding one year, or as a felony by imprisonment in the county jail for in the county jail for 16 months, two years, or three years. (Pen. Code, §§ 459.5, 460, 461.)

11) Provides that robbery of the first degree is punishable by imprisonment in the state prison for three, six, or nine years if the defendant, voluntarily acts in concert with two or more other persons, to commit robbery within an inhabited vehicle or building, as specified. (Pen. Code, § 213.)

12) Provides that every person who defaces, damages or destroys real or personal property that is not their own, is guilty of vandalism. If the amount of the damage is less than $400, the offense is a misdemeanor, punishable by imprisonment in a county jail, not exceeding one year, or by a fine of $1,000 or by both. If the amount of the damage is $400 or more, the offense is a felony, punishable imprisonment in a county jail not exceeding one year, or by a

fine of not more than $10,000, or both. (Pen. Code, § 594 subd. (b).)

13) Provides that it is conspiracy if any two or more people conspire to commit any crime conspiracy. If they conspire to commit a felony, the offense is punishable in the same manner and to the same extent as is provided for the punishment of that felony. If they conspire to commit any other crime, the conspiracy shall be punishable as a misdemeanor by imprisonment in a county jail for not more than one year, or as a felony, punishable by imprisonment in the county jail for 16 months, or two or three years, or by a fine not exceeding $10,000, or by both. (Pen. Code, § 182.)

14) Provides that any person concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, have advised and encouraged its commission, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed. A person who aids and abets a crime faces the same punishment as the one who directly commits the crime. (Pen. Code, § 31.)

15) Creates a sentence enhancement for committing a felony in association with a street gang, as specified, for an additional term of imprisonment ranging from two to 15 years. (Pen. Code, § 186.22.)

16) Provides that, an act or omission that is punishable in different ways by different provisions of law may be punished under either of such provisions, but in no case shall the act or omission be punished under more than one provision. (Pen. Code, § 654.)

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "It has been widely reported and recognized that smash and grab thefts have increased at an alarming rate. These are not crimes of opportunity, nor are they victimless. They are, rather, calculated and planned by groups of criminals who make off with large amounts of goods to re-sell, while terrifying shoppers and workers in the process. California's retail workers have a right to go to work each day

without having to worry about their safety.

"AB 2438 bill permits judges – at their discretion – to impose an additional term of imprisonment of one, two, or three years when someone acts in concert with two or more persons to take, attempt to take, damage, or destroy any property, in the commission or attempted commission of a felony. By permitting discretion in these scenarios, judges will be able to fashion sentences that are appropriate for the crime committed, including "smash and grabs" committed by mobs or large groups of people working together."

2) **Double Punishment for the Same Act**: The stated need for the increased penalties proposed by this bill is to "hold individuals who participate in organized retail crime accountable." However, several statutes already cover this conduct, including the organized retail theft statute and robbery statutes. (See, e.g., Pen. Code, § 490.4 [defining organized retail theft as "acting in concert with one or more persons" to steal merchandise, as specified]; & Pen. Code, § 213 [enhanced penalties for robbery committed by acting in concert with two or more other persons].)

Penal Code section 654 provides, in relevant part, that "[a]n act or omission that is punishable in different ways by different provisions of law may be punished under either of such provisions, but in no case shall the act or omission be punished under more than one provision." Penal Code section 654 was enacted to prohibit double punishment of a single act that violates multiple statutes. The prohibition is on double punishment, not double conviction. (*People v. Johnson* (1966) 242 Cal.App.2d 870, 876.) The prohibition applies even if the punishments were to be run concurrently. (*People v. Diaz* (1967) 66 Cal.2d 801, 807.)

In *People v. Ahmed* (2011) 53 Cal.4th 156, the California Supreme Court noted that "as a default, section 654 does apply to enhancements when the specific statutes do not provide the answer." The court reasons that section 654's language states that it applies to "provisions of law" under which an "act or omission" is "punishable," and this language would encompass enhancements. (*Ibid.*)

When applying section 654 to enhancements, the court found it significant that while substantive crimes define criminal acts, enhancements focus on different aspects of the criminal acts. (*People v. Ahmed*, *supra*, 53 Cal.4th at pp. 163-164.) The court held that "section 654 bars multiple punishment for enhancements the same *aspect* of a criminal act." (*Id.* at p. 164.) Thus, under the Supreme Court's holding in *Ahmed*, *supra*, 53 Cal.4th 156, Penal Code section 654 would prohibit the imposition of the enhancement created by this bill if it would result in double punishment for the same aspect of the criminal act-- for example, organized retail theft and acting in concert to commit robbery.

3) **Sentence Enhancements**: Sentence enhancements add time to an individual's base sentence. California uses over 100 unique enhancements. According to data from California Department of Corrections and Rehabilitation (CDCR), enhancements are more likely to impact the sentences of men and Black and American Indian people who are sentenced to prison, application varies by county, and that enhancements contribute to the overall size of the state prison population. (Committee on Revision of the Penal Code, *Sentence Enhancements in California* (2023). Available at: <https://www.capolicylab.org/wp-content/uploads/2023/03/Sentence-Enhancements-in-California.pdf>.)

Sentence enhancements are typically applied at the discretion of both prosecutors and judges, and the threat of an enhancement can play an important role in the plea-bargaining process. Subject to prosecutorial discretion, enhancements can be used during the plea bargain phase to potentially cajole low-income defendants into admitting guilt in weak cases and accepting unjustly long sentences. (Bureau of Justice Assistance, *US Department of Justice (2011) Plea and Charge Bargaining Research Summary* (2011). Available at: <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>.)

In 2021, the California Commission on Revision of the Penal Code made three recommendations on sentence enhancements that were signed into law. AB 333 (Kamlager), Chapter 699, Statues of 2021, made updates to the gang enhancements which narrowed the definition of gang involvement. SB 483 (Allen), Chapter 728, Statutes of 2022, built on legislation repealing one- and three-year enhancements for prior convictions and applied the repeal to people who were incarcerated and had the enhancements as part of their sentences. Finally, SB 81 (Skinner) Chapter 721, Statutes of 2021, provided guidance to judges that allowed them discretion in whether to dismiss sentence enhancements, unless in the judge's perspective, not enhancing a sentence could endanger public safety. Still, there are hundreds of sentencing enhancements available to prosecutors in California. By creating a new sentence enhancement, this bill would be a step in opposite direction taken by the Legislature in recent years.

4) ***Estes* Robberies – Transforming Shoplifting to a Felony and a Strike:** The conduct this bill attempts to further penalize is "when someone acts in concert" "to take, attempt to take, damage, or destroy any property." However, case law currently allows this conduct to be treated as full-blown robberies, which are violent offenses and eligible, for example, for a 10-year gang enhancement or use as a future strike under California's Three Strikes Law. Robbery is punishable for a term of two, three, or five years imprisonment in state prison. (Pen. Code, § 211.) Though not a traditional sentencing enhancement, these are known as *Estes* robberies. These offenses typically occur when someone is shoplifting and has an encounter where they use force or fear. California law considers these "smash and grab" type thefts to be *Estes* robberies — and thus violent offenses. (*People v. Estes* (1983) 147 Cal.App.3d 23.)

5) **Existing Law Already Allows for Increased Penalties for Thefts**: To the extent this bill is aimed at increasing penalties for thefts, there are currently a number of laws that prosecutors can use that call for increased penalties, in addition to charging the offense as an *Estes* Robbery.

Grand theft of property valued over $950 is already chargeable as a felony offense, punishable by imprisonment in county jail for a period of 16 months, two or three years. (Pen. Code, § 489, subd. (c)(1).) Existing law also allows for increased penalties for thefts less than $950, for example by aggregation of theft offenses. Repeated acts of theft can be aggregated and prosecuted as one felony if they are conducted pursuant to one intention, one general impulse, and one plan. (*People v. Bailey* (1961) 55 Cal.2d 514, 518-519 (*Bailey*).)

Moreover, under California law, if two or more persons conspire to commit any crime, even misdemeanor petty theft, they can be charged with a felony for the conspiracy itself. Thus, any time there is more than one person involved in any act of stealing the items specified in

this bill, the offense can be charged as felony conspiracy, regardless of the value of the items stolen. (Pen. Code, § 182.) Also, in all cases, the defendant is also constitutionally required to make full restitution to the victim in the amount stolen, with interest, in addition to any other penalty fine. Cal. Const., art. I, § 28, subd. (b)(13); Pen. Code, § 1202.4, subd. (f)(3).)

The existing organized retail theft statue already covers this offense. Pursuant to this statute, any person who acts in concert with one or more persons to steal merchandise with the intent to sell the product can be punished with a misdemeanor if the value of the items stolen are less than $950 or a felony if the value exceeds $950. (Pen. Code, § 490.4.)

A person who commits this offense could also be charged with vandalism. Any person who defaces, damages or destroys real or personal property that is not their own, is guilty of vandalism. If the amount of the damage is less than $400, the offense is a misdemeanor, punishable by imprisonment in a county jail, not exceeding one year, or by a fine of $1,000 or by both. If the amount of the damage is $400 or more, the offense is a felony, punishable imprisonment in a county jail not exceeding one year, or by a fine of not more than $10,000, or both. (Pen. Code, § 594 subd. (b).)

These penalties are not a slap-on-the-wrist. Accordingly, this bill is unnecessary.

6) **Unduly Long Sentences are Counterproductive for Public Safety**: An analysis of twelve years of data (2005 to 2017) from San Francisco concluded that while only 13% of cases were enhanced, sentencing enhancements caused 25% of all time spent in jail or prison. (Committee on Revision of the Penal Code, *Sentence Enhancements: Overview*. (2020). Available at: <http://www.clrc.ca.gov/CRPC/Pub/Memos/CRPC20-11.pdf>.) Unduly long sentences, like those proposed by this bill, are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands. (*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018).) Increasingly punitive sentences add little to the deterrent effect of the criminal justice system; and mass incarceration diverts resources from program and policy initiatives that hold the potential for greater impact on public safety. (*Ibid.*)

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

> This finding makes intuitive sense. Consider a person who is thinking about stealing a car or burglarizing a local business. If he is thinking rationally, he will take into account a variety of factors when considering how to commit the crime, including time of day, ease of entry, presence of security personnel or technology, or his ability to leave the crime scene. He does this to avoid being caught

> in the act because being arrested and prosecuted will impose significant burdens on him. Additionally, because he is not planning on being apprehended, he is unlikely to be thinking about how much time he might spend in prison and whether his sentence will be three, five, or seven years.
>
> Notably, this example looks at the behavior of a rational person, which rarely fits the picture of a substantial portion of those who actually commit a crime. Many are teenagers seeking peer approval for their illegal behavior, individuals under the influence of alcohol or drugs at the time of the offense, or are motivated by economic challenges. Many of these individuals are not even thinking about the risk of being caught, let alone know how much prison time they may face.
>
> The limited impact of extending sentence length becomes even more attenuated for long-term incarceration. If the penalty for a second robbery conviction is twenty years and a legislative body increases that penalty to twenty- five, few would-be robbers undeterred by the prospect of "only" a twenty year sentence would balk at an additional five years.
>
> Again, there are multiple possible reasons for imposing a given prison term, depending on the circumstances of the crime. But policymakers and judges should be cognizant of the evidence to support any particular goal of sentencing. If the length of a prison term has little deterrent value, it may be time to forego the rationale of "sending a message."

(*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018) (citations omitted).) An analysis of 116 studies showed that incarceration does not deter people from committing future crimes and, in fact, incarceration can actually make someone more likely to be arrested and commit crimes later (due to heightened barriers to securing employment, identification, housing, and other basic services necessary to successfully reenter society). (Brookings, *Retail Theft In US Cities: Separating Fact from Fiction* (March 6, 2024). Available at: <https://www.brookings.edu/articles/retail-theft-in-us-cities-separating-fact-from-fiction/>.) These findings are consistent with other research from national institutions of renown. (National Research Council of the National Academies of Sciences, Engineering, and Medicine, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, (April 2014) at pp. 130 -150. Available at: <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs>.)

In sum, harsher sentences do not deter crime.

7) **Reports of Exaggerated Losses by Retailers – Separating Fact from Fiction:** Some complaints of retail theft were overstated. For example, in 2021, Walgreens closed five stores in San Francisco purportedly due to retail theft. However, the San Francisco Police Department's data on shoplifting did not support this explanation for the closures. Recently, the chief financial officer of Walgreens acknowledged the shoplifting threat had probably

been overstated. The company likely spent too much on security measures and mischaracterized the amount of theft at stores. In fact, shrinkage (the inventory that was bought but could not be sold primarily due to shoplifting) actually decreased to around 2.5 to 2.6 percent of sales, compared to 3.5 percent the prior year. (See New York Times, *Walgreens Executive Says Shoplifting Threat Was Overstated* (Jan. 6, 2023) <https://www.nytimes.com/2023/01/06/business/walgreens-shoplifting.html>; see also Los Angeles Times, *Retailers Say Thefts Are at Crisis Level. The Numbers Say Otherwise* (Dec. 15, 2021) <https://www.latimes.com/business/story/2021-12-15/organized-retail-theft-crime-rate>; CNN Business, *'Maybe We Cried Too Much' Over Shoplifting, Walgreens Executive Says* (Jan. 7, 2023) <https://www.cnn.com/2023/01/06/business/walgreens-shoplifting-retail/index.html>; The Atlantic, *The Great Shoplifting Freak-Out* (Dec. 203, 2021) <https://www.theatlantic.com/health/archive/2021/12/shoplifting-holiday-theft-panic/621108/>.)

Others say retail theft, while an issue, might be overstated as an excuse to write off mediocre sales and historic inflation might be a key reason why we're seeing any theft bump at all Things have become expensive – "we are in an economy right now where some everyday staples have risen in price six times faster than the overall rate of inflation. Until July of this year, American paychecks grew at a slower rate than inflation as a whole." Some retailers lump theft in with heavy discounting, soft sales and macroeconomic conditions as other factors that cut into their margins. (Freight Waves, *What's Behind the Reports of 'Unprecedented' Retail Theft* (Oct. 2023). Available at: <https://www.freightwaves.com/news/whats-behind-the-reports-of-unprecedented-retail-theft>; see also Bloomberg, *Thieves Target Donuts and Ham as Food Prices Jump* (Feb. 2024). Available at: <https://www.bloomberg.com/news/newsletters/2024-02-23/supply-chain-latest-food-theft-rises-on-grocery-inflation>.)

What's more, the National Retail Federation has not solidified any data around increased rates of organized retail theft or what percentage of external theft is organized crime. Retailers are not required to break down how much they actually lose to theft. "Retailers and trade associations are increasingly using their positions to influence lawmakers to pass new legislation that benefits them, hurts competitors and could disproportionally affect marginalized people." (CNBC, *Companies say organized retail crime is on the rise, but there's no data to prove it.* (Aug. 2023). Available at < https://www.cnbc.com/2023/08/09/claims-about-organized-retail-theft-are-nearly-impossible-to-verify.html>.)

From 2020 to 2021, the number of news stories covering smash-and-grab incidents nearly doubled. The author comments that the impetus of this bill is to "fashion sentences that are appropriate for the crime committed, including "smash and grabs" committed by mobs or large groups of people working together." However, the information available does show that the vast majority of shoplifting is not committed by mobs of people. (Council on Criminal Justice, *Shoplifting Trends: What You Need to Know* (Nov. 2023) Available at: <https://councilоncj.org/shoplifting-trends-what-you-need-to-know/>.)

Additionally, the Federal Trade Commission recently reported that retail stores likely inflated prices to accommodate for lost revenue resulting from the pandemic. The FTC states, in summary, that:

> Notably, consumers are still facing the negative impact of the pandemic's price hikes, as the Commission's report finds that some in the grocery [including drug stores] retail industry seem to have used rising costs as an opportunity to further raise prices to increase their profits, which remain elevated today.

Retail stores actually saw significant profits over the past few years despite claims that stores are losing profits as a result of theft and other market forces.

> "In the first three-quarters of 2023, retailer profits rose even more, with revenue reaching 7% over total costs, casting doubt on the assertions of some companies that rising prices at the grocery store are the result of retailers' own rising costs." (Federal Trade Commission, "*Feeding America in a Time of Crisis, The United States Grocery Supply Chain and the COVID-19 Pandemic*" (March 21, 2024).

Finally, the Federal Bureau of Investigation (FBI) data on crime statistics reports that crime is actually down nationwide by a significant margin – contributing to the conclusion that the crime rate was a temporary phenomenon brought on by the pandemic and rapidly escalating costs for basic goods and services.

> The new fourth-quarter numbers [for 2023] show a 13% decline in murder in 2023 from 2022, a 6% decline in reported violent crime and a 4% decline in reported property crime.
>
> After a terrible period of underfunding and understaffing caused by the pandemic, local governments have, by most measures, returned to pre-pandemic levels," wrote John Roman, a criminologist at the University of Chicago. In an interview, Roman said, 'The courts were closed, a lot of cops got sick, a lot of police agencies told their officers not to interact with the public. Teachers were not in schools, not working with kids.

(FTC, *Report on Grocery Supply Chain Disruptions* (March 2024). Available at: <https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-releases-report-grocery-supply-chain-disruptions>.) Given that claims of massive retail theft appear to be inconsistent with the data, the Legislature should consider evidence-based solutions to address property crimes.

8) **Argument in Support**: According to the *Los Angeles County Professional Peace Officers Association (PPOA)*, "AB 2483 would increase the consequences that perpetrators face commensurate with the severity of their actions and hold offenders accountable for their crimes. Moreover, it would send a clear message to potential offenders that such behavior will not be tolerated in our society."

9) **Argument in Opposition**: According to *Initiate Justice*, "AB 2438 is bad public policy because sentence enhancements are costly, ineffective, and contribute heavily to systemic racism in the criminal legal system. There are more than 150 sentence enhancements on the

books across California's Penal Code, however, there is no compelling evidence that their usage improves public safety. In fact, the opposite may be true.

"While initial incarceration prevents crime through incapacitation in theory, studies show that each additional sentence year causes a 4 to 7 percent increase in recidivism that eventually outweighs the incapacitation benefit1. Each year of incarceration costs the state approximately $132,000 per incarcerated person, so the cost of incarceration to the state will far exceed the cost of stolen property.

"With this in mind, any creation of a new sentence enhancement needs to be scrutinized very closely. AB 2438 is unnecessary and does not address the root causes of theft or economic insecurity"

10) **Related Legislation**:

a) AB 1802 (Jones-Sawyer) would eliminate the sunset date for organized retail theft. AB 1802 is pending in this Committee.

b) AB 1960 (Soria) would reenact sentence enhancement for theft offenses when the loss exceeds specified dollar amounts. AB 1960 is pending in this Committee.

c) AB 1990 (W. Carrillo) would authorize peace officers to make a warrantless arrest for misdemeanor shoplifting, as specified. AB 1990 is pending in this Committee.

d) AB 1779 (Irwin) would allow, a prosecutor to bring a case in any county where theft offenses occurred for offenses that occur in multiple jurisdictions, as specified. AB 1779 is pending in this Committee.

e) AB 1787 (Villapudua) would among other things, repeal the sunset provision in the organized retail theft statute. AB 1787 is pending in this Committee.

f) AB 1794 (McCarty) would clarify aggregation requirements for grand theft, among other things. AB 1794 is pending in this Committee.

g) AB 2406 (Davies) would make it a felony to use two or more minors to engage in theft related offenses. AB 2406 is pending in this Committee.

h) AB 2943 (Zbur) would, among other things, extend the organized retail theft statute until January 2031, and make it a crime for any person to possess property unlawfully that was acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property is not possessed for personal use. AB 2943 is pending in this committee.

i) SB 923 (Archuleta) would revise the definition of shoplifting to require an intent to steal retail property or merchandise and would require a person convicted of petty theft or shoplifting, if the person has two or more prior convictions for specified theft-related offenses, to be punished by imprisonment in the county jail for up to one year, or for 16 months, or two or three years. SB 923 is pending in Senate Public Safety Committee.

j) SB 928 (Niello) would remove the sunset date for organized retail theft. SB 928 is pending in Senate Public Safety Committee.

k) SB 982 (Wahab) would remove the sunset date for organized retail theft. SB 982 is pending in Senate Appropriations Committee.

l) SB 1416 (Newman) would create sentencing enhancements for selling, exchanging, or returning for value, or attempting to sell, exchange, or return for value, any property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property value exceeds specified amounts and would make these enhancements apply to any person acting in concert with another person to commit these offenses. SB 1416 is pending in Senate Public Safety Committee.

11) **Prior Legislation**:

a) AB 329 (Ta), of the 2023-2024 Legislative Session, would have expanded the territorial jurisdiction in which the Attorney General can prosecute specified theft offenses and associated offenses connected together in their commission to include cargo theft. AB 329 failed passage in this Committee.

b) AB 335 (Alanis), of the 2023-2024 Legislative Session, would have required the Little Hoover Commission to submit a report to the Legislature describing the reported retail thefts, as specified. AB 335 was held under submission in Assembly Appropriations Committee.

c) AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, extended the sunset date for organized retail theft through January 1, 2026.

d) AB 23 (Muratsuchi), of the 2023-2024 Legislative Session, would have decreased the threshold amount for grand theft from $950 to $400. The hearing on AB 23 was canceled the request of the author.

e) AB 329 (Ta) would have imposed higher penalties for shoplifting and petty theft if the crime is committed by a non-citizen of the state of California. AB 329 failed passage in this committee.

f) AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022, authorized the misdemeanor arrest of a person that has a prior arrest, citation or conviction for theft, as specified, and authorized a city or county prosecuting authority or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses.

g) AB 2356 (Rodriguez), Chapter 22, Statues of 2022, expanded the definition of "grand theft" where the aggregate amount taken by all participants exceeds $950.

h) AB 1603 (Salas), of the 2021-2022 Legislative Session, would have reduced the threshold amount for petty theft and shoplifting to be punished as a misdemeanor from $950 to $400. AB 1603 failed passage in this Committee.

i) AB 2390 (Muratsuchi), of the 2021-2022 Legislative Session, would have authorized the aggregation of the value of property from one or more acts of theft or shoplifting, as specified. AB 2390 failed passage in this Committee.

j) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft and expanded jurisdiction to prosecute cases of theft or receipt of stolen merchandise.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Highway Patrolmen
California District Attorneys Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
County of Orange, Through its Office of The District Attorney/public Administrator
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
League of California Cities
Los Angeles County Professional Peace Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Orange County Sheriff's Department
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Oppose

California Public Defenders Association
Californians for Safety and Justice
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights

Initiate Justice
Initiate Justice Action
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Uncommon Law
Vera Institute of Justice
Young Women's Freedom Center

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

Date of Hearing: April 9, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2531 (Bryan) – As Amended April 3, 2024

SUMMARY: Clarifies that death-in-custody reporting requirements apply to juveniles who die in custody, and requires such in-custody death information to include the names of adult decedents. Specifically, **this bill:**

1) Clarifies that the requirement for agencies with jurisdiction over state or local correctional facilities with custodial responsibility for a person at the time of their death, report specified in-custody death information on the agency's website within 10 days of the date of the death, also applies to juveniles who die in custody.

2) Specifies that the date of death that is required to be included in such reporting, is the date of death according to a medical examiner or similar entity.

3) Requires the in-custody death information that must be posted on the agency's website to include the names of adult decedents, but not juveniles.

4) Defines "in-custody death" to have the same meaning as in specified federal law, and which includes the death of a person who is either detained or arrested by an officer, is en route to be incarcerated or detained, or is incarcerated or detained at a correctional facility or pretrial detention facility located within the state.

EXISTING FEDERAL LAW

1) Requires states receiving funds from specified grant programs to report to the U.S. Attorney General on a quarterly basis information regarding an in-custody death. (34 U.S.C. § 60105.)

2) Defines an in-custody death, for purposes of reporting to the U.S. Attorney General, as "the death of a 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, subds. (a) & (b).)

EXISTING STATE LAW:

1) 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, subds. (a) & (b).)

2) States that if the 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).)

3) Provides that if any of the death related information that the 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).)

4) 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 California Department of Justice (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.)

5) 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.)

6) Requires administrators of juvenile facilities to develop written policies and procedures in the event a youth dies while detained, including notifications to necessary parties, which may include the Juvenile Court, the parent, guardian, or person standing in loco parentis, and the youth's attorney of record. (Cal. Code Regs., tit. 15, § 1341, subd. (1)(a).)

7) Requires health administrators of juvenile facilities to develop written policies and procedures to assure there is medical and operational review of every in-custody death of a youth. (Cal. Code Regs., tit. 15, § 1341, sub.d (1)(c).)

8) Requires the administrator of juvenile facilities to provide to the Board of State and Community Corrections (BSCC) a copy of the report submitted to the DOJ within 10 calendar days after the death. (Cal. Code Regs., tit. 15, § 1341, subd. (1)(c).)

9) Establishes the position of Director of In-Custody Death Review within the BSCC , to review investigations of death incidents occurring in local detention facilities and make recommendations to the sheriff or administrator of the local detention facility who operates the local detention facility regarding changes to policies, procedures, and practices. (Pen. Code, § 6034.)

10) Provides that within 90 days of receipt of the director's recommendations, the sheriff or administrator who operates the local detention facility shall identify the director's recommendations that will be implemented and shall provide a timeline for implementation and the anticipated cost of implementing those recommendations. (Pen. Code, § 6034,. subd. (c).)

11) Provides that the above recommendations and responses shall be available to the public, although the director and the sheriff or administrator of the local detention facility may redact these disclosures or otherwise protect the names of individuals or other facts that might hinder litigation related to the review, compromise the safety and security of staff, incarcerated persons, or members of the public, or where disclosure of the information is otherwise prohibited by law.

12) 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.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2531 is a positive step towards increasing transparency and accountability within California's correctional system. Currently, the framework for reporting in-custody deaths in California is insufficient, leading to inconsistent and incomplete disclosure of critical information to the public. Unanswered questions regarding the accuracy and completeness of reported data further exacerbate concerns about the integrity of the reporting system.

   This bill will improve transparency and accountability by mandating the reporting of deaths of youth in custody, defining in-custody deaths in line with the federal Death In-custody Reporting Act, and clarifying required metrics."

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, 20240.) 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. (Cal Matters, *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].) While there has been a significant increase in in-custody deaths in county jails more generally, it is less clear if there has also been an increase in in-custody deaths in juvenile detention facilities.

3) **Effect of this Bill:** First, AB 2531 specifies that the existing requirement that agencies with jurisdiction over correctional facilities must post in-custody death information on their websites also includes juveniles who die in custody. Under existing law, "when a person who is in custody dies" the agency with jurisdiction over the correctional facility with custodial responsibility for the person at the time of their death must post specified death in custody information within 10 days of the date of death. (Pen. Code, § 10008, subds. (a).) This definition could be interpreted to encompass juveniles, who are "persons" who die while in custody, although the language does not explicitly include juveniles who die in-custody. As a result, it is possible that many juvenile detention facilities do not with Penal Code Section 10008's reporting requirements. By clarifying that the in-custody death information that must be posted on agency websites does include juvenile deaths, AB 2531 can be expected to promote more consistent and more accurate reporting of juvenile in-custody deaths.

   Second, AB 2531 defines "in-custody death" to have the same meaning as in the federal Death in Custody Reporting Act. This provides clarity surrounding the definition of a reportable "in-custody death," as this term is not currently defined in the Penal Code for purposes of posting in-custody death information on agency websites. This federal definition broadly encompasses deaths 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) (34 U.S.C. § 60105, subs. (a) & (b).) Penal Code Section 10008 does not define an "in-custody death" but more generally requires applicable agencies to post death-in custody information on their websites "when a person who is in custody dies." (Pen. Code, § 10008.) The Penal Code elsewhere defines death incident as "an event where a person has died in the custody or supervision of the local detention facility" although, this does not appear to govern the death-in custody reporting requirements addressed by this bill since that definition is contained in a separate statutory section and only applies to investigation of in-custody deaths in local detention facilities (Pen. Code, § 832.10, subd. (a)(1).)

By adopting this definition, AB 2531 clarifies and expands the existing in-custody death reporting requirement to include deaths that occur not just when a person is "in custody" but persons who are detained, under arrest, or in the process of being arrested. This can reasonably be expected to promote additional transparency surrounding deaths that occur during the process of a person who is being detained or arrested, but is not formally in the custody of a correctional facility. This also promotes uniformity with federal law, which is critical given that states are separately required to report in-custody death information to the U.S. Department of Justice on a quarterly basis. The author may wish to consider adopting the exact definition of an in custody death included in 34 U.S.C. § 60105, subd. (a). This bill currently states that it "[i]n-custody deaths has the same meaning as defined in the federal Death in Custody Reporting Act," however, the definition subsequently defined by the bill slightly differs from that provided in 34 U.S.C. § 60105, subs. (a). Additionally the author may wish to consider amending Penal Code Section 832.10, which contains a separate definition of "death incident" in order to maintain conformity surrounding in-custody death reporting in state law.

4) **Privacy Concerns:** AB 2531 requires that the in-custody death information that must be posted on the agency's website must, if the decedent is an adult, include the name of the decedent. Existing law does not require responsible agencies to post the specific names of persons who have died on their website. Rather, the information that is required to be posted on the responsible agency's website is: 1) the name of the agency with custodial responsibility; 2) the county where the death occurred; 3) the facility and location where the death occurred; 4) the race, gender, and age of the decedent; 5) the date on which the death occurred; 6) the custodial status of the decedent; and 7) the manner and means of the death. (Pen. Code, § 10008.) Responsible law enforcement agencies are separately required to report to the DOJ all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning an in-custody death, within 10 days of that death. (Gov. Code, § 12525.). That information reported to the DOJ are public records under the California Public Records Act (CPRA). (*Ibid.*)

   It appears that some counties do share certain in-custody death information publicly that includes the names of decedents. (County of Los Angeles Medical Examiner, *Case Search.* Available at: < https://me.lacounty.gov/case-search/> [as of April 3, 2024].) Including the name of decedents on agency websites raises some privacy concerns. Identifying individual decedents by name on such publicly available websites may not be in the interest of the families and loved ones of persons who have died in-custody. Such family members may not appreciate the public disclosure of the demographic information and manner and means of their loved ones death (as articulated by the responsible law enforcement agency). For example, a person may have died in custody after being wrongly arrested, and family members may prefer to keep the arrest private. Further, because a specific person's cause of death would have to be disclosed, families may not wish for their loved one's cause of death to be made public since they would lose control of the narrative of how their loved one died and how they are remembered.

   Existing law does provide that responsible agencies must attempt to notify a decedent's next of kin within 10 days of the death, and 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. (Pen. Code, § 10008, subd. (b).) While this provides some protections to family

members of decedents, this still permits a responsible correctional agency to make public a specific decedent's name within 20 days, if they weren't able to make contact with the decedent's next of kin. Additionally, while the in-custody death information separately provided to the DOJ are public records, there is a distinction between in-custody death records being accessible under the CPRA, as opposed to being publicly available on each correctional facilities website. Lastly, the value associated with agency's posting on their websites the names of specific persons who have died in custody is unclear, as demographic, cause of death, and other relevant information is already required to be posted on such websites.

5) **Argument in Support**: According to Justice2Jobs Coalition "Currently California law does require law enforcement agencies to notify the public of deaths that occur in custody. This law (AB 2761) went into effect January 2023, emphasizing the importance of public disclosure of in-custody deaths but implementation challenges surfaced, with inconsistencies observed in reporting practices across counties, resulting in inconsistent, incomplete or non-disclosure of critical information surrounding these deaths. Additionally, AB 2761 only mandated reporting for adult in custody deaths, leaving the number of youth in custody deaths unknown to the public.

"Through an audit conducted by community-based organizations, at least 174 in-custody deaths were publicly reported in 2023 by a Sheriff's Department or local news outlets. Of the deaths, 21 were not reported to the state Attorney General's Office. An additional 19 deaths were reported to the California Attorney General's Office, but were not publicly reported; these were uncovered through a Public Records Act Request. Furthermore, many agencies reported incomplete information: 12 counties did not provide the location of death, 11 did not provide the race of the deceased, and nine (9) did not report the custody status of the deceased. Of all deaths that occurred while in the custody of a Sheriff's department, only 115 deaths across 14 counties were reported in compliance with AB 2761.

"The lack of standardized reporting procedures led to disparities in data collection, hindering comprehensive understanding and accountability. Despite efforts to enforce reporting requirements, gaps remained, raising concerns about the accuracy and completeness of information provided to the public. As communities grapple with the number of deaths and unanswered questions regarding the circumstances of these deaths, AB 2531 is a critical step toward enhancing transparency and accountability in California's correctional system.

"AB 2531 proposes necessary revisions to the current statute to enhance the reporting requirements for in-custody deaths including mandating the reporting of youth in-custody deaths, clarifying required metrics, and defining in-custody deaths in alignment with the federal Death In-custody Reporting Act."

6) **Related Legislation**: AB 3092 (Ortega), would require law enforcement agencies required to report in-custody death information to the California Attorney General (DOJ) to update that report within 10 days of that initial information changing or if new information becomes available regarding the death. AB 3092 is pending in the Assembly Judiciary 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 BSCC 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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Immigrant Policy Center
California Public Defenders Association
Californians United for A Responsible Budget
Carceral Ecologies
Care First Kern
Justice2jobs Coalition
Racial Justice Coalition of San Diego
Vera Institute of Justice

Opposition:

None

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

Date of Hearing: April 9, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2625 (Bryan) – As Amended March 21, 2024

AS PROPOSED TO BE AMENDED IN COMMITTEE

SUMMARY: Requires counties to develop court reminder programs to notify defendants of scheduled court appearances. Specifically, this bill:

1) Requires each county to develop a court reminder program that allows a superior court, county defense agency or contractor, pretrial services provider, or a community-based organization to send a text message to notify defendants of scheduled court appearances.

2) States that the purposes of the program are to:

   a) Reduce the costs associated with defendants who fail to appear for a court appearance;

   b) Improve the efficiency of California courts;

   c) Remind defendants to appear at each scheduled court appearance;

   d) Reduce the number of defendants who are confined in county jail solely due to their failure to appear for a court appearance.

3) Requires the court reminder program to:

   a) Be available to all enrolled persons at no cost;

   b) Send text message reminders to enrolled persons about their arraignment and all subsequent court appearances at least one week prior, three days prior, and one day prior to the hearing, if they have access to a device with the technological capability of receiving text messages and provide an operational telephone number for the device. Additional reminders may also be provided via email or other methods;

   c) Automatically enroll all arrested persons who provide a telephone number;

   d) Send a text message with the initial reminder regarding the arraignment that informs the person of the program and provides them an option to opt out;

   e) Include the technological capability to provide additional information to defendants concerning scheduled court appearances, including the location of the court appearance, available transportation options, and procedures for defendants who are unable to attend court appearances;

f) Provide a publicly available internet website through which defendants may request text reminders, update their telephone number or other contact information, and update language preferences.

g) Make text reminders available in California's threshold languages, which is defined as "a language identified as the primary language, as indicated in the Medi-Cal Eligibility Data System, of 3,000 beneficiaries or 5 percent of the beneficiary population, whichever is lower, in an identified geographic area."

4) Provides that the arresting law enforcement agency shall request an accused person's cellphone number for the purpose of receiving court notifications upon citation or booking, and transmit that number to the relevant agency managing the court reminder program in their jurisdiction and then dispose of the cellular telephone number if there is no other legally mandated requirement to retain it.

5) Provides that a person's refusal to provide a phone number to the law enforcement agency shall not be held against a defendant for any purpose.

6) Provides that contact information collected solely through this program shall not be used by law enforcement agencies or the courts for any purpose other than for court date reminders.

7) Provides that records generated by this program, including any contact information for the defendant, may not be used for any purpose other than for court date reminders.

EXISTING LAW:

1) Provides that in any infraction, misdemeanor, or felony cases, a court may (in addition to any other penalty) impose a civil assessment (fine) of up to $100 against a defendant who fails, after notice and without good cause, to appear in court for a proceeding authorized by law. (Pen. Code, § 1214.1, subd. (a).)

2) Provides the above fine shall not apply until at least 20 calendar days after the court mails a warning notice to the defendant, using first class mail, to the address shown on the notice to appear or the defendant's last known address. (Pen. Code, § 1214.1, subd. (b).)

3) Provides that if the defendant appears within the specified time and shows good cause for the failure to appear, the court shall vacate the fine. (Pen. Code, § 1214.1, subd. (b).) Payment of the fine is not required to schedule a court hearing on the underlying pending charge. (*Ibid.*)

4) Provides that if a fine is imposed for failure to appear, then no warrant of arrest shall be issued for the failure to appear at the proceeding for which the assessment is imposed. (Pen. Code, § 1214.1, subd. (c).) An outstanding warrant of arrest for a failure to appear shall be recalled prior to the subsequent imposition of a fine.

5) Provides that the following procedures apply for infraction offenses, for which a defendant has received a written notice to appear and has failed to appear:

a) The notice of a civil assessment must inform the defendant of their right to petition that the assessment be vacated for good cause and include information about the process for

vacating or reducing the assessment.

b) When a notice of civil assessment is given, a defendant may, within the time specified in the notice, move by written petition to vacate or reduce the assessment.

c) When a court imposes a civil assessment for failure to appear or pay, the defendant may petition that the court vacate or reduce the assessment without paying any bail, fines, penalties, fees, or assessments.

d) A petition to vacate an assessment does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessment unless specifically ordered by the court.

e) The court must vacate the assessment upon a showing of good cause for failure to appear.

f) If the defendant does not establish good cause, the court may still exercise its discretion to reconsider whether a civil assessment should be imposed and the amount of the assessment.

g) In exercising its discretion, the court may consider such factors as a defendant's due diligence in appearing or paying after notice of the assessment has been given and the defendant's financial circumstances. (Cal Rules of Court, Rule 4.106 (c).)

6) Provides that the civil assessment imposed shall be subject to the due process requirements governing defense and collection of civil money judgments generally. (Pen. Code, § 1214.1, subd. (d).)

7) Provides that any person who willfully violates their written promise to appear in court or a lawfully granted continuance of their promise to appear in court is guilty of a misdemeanor, regardless of the disposition of the charge upon which they were originally arrested (Pen. Code, § 853.7.)

8) Provides that a person who is charged with, or convicted of a misdemeanor who is released from custody on their own recognizance and, to avoid the process of court, willfully fails to appear in court as required, is guilty of a misdemeanor. (Pen. Code, § 1320, subd. (a).)

9) Provides that it is presumed that a defendant intended to avoid the process of court if they willfully fail to appear within 14 days of their court date. (*Ibid.*)

10) Provides that a person who is charged with, or convicted of a felony who is released from custody on their own recognizance and, to avoid the process of court, willfully fails to appear in court as required, is guilty of a felony, and upon conviction shall be punished by a $5,000 fine, specified imprisonment, or a year of county jail. (Pen. Code, § 1320, subd. (b).)

11) Provides that a person who is charged with or convicted of a felony, who is released from custody on bail, and who in order to evade the process of the court willfully fails to appear as required, is guilty of a felony, and upon a conviction, the person shall be punished by up to a $10,000 fine, specified imprisonment, or up to a year in county jail. (Pen. Code, § 1320.5.)

Willful failure to appear within 14 days of the date assigned for appearance may be found to have been for the purpose of evading the process of the court. (*Ibid.*)

12) Provides that a person who willfully violates their written promise to appear in court or a lawfully granted continuance of their promise to appear in court is guilty of a misdemeanor regardless of the disposition of the charge upon which the person was originally arrested. (Veh. Code, § 40508, subd. (a).)

13) Provides that a person who willfully fails to comply with a condition of a court order for a violation of this code, other than for failure to appear or failure to pay a fine, is guilty of a misdemeanor, regardless of their subsequent compliance with the order. (Veh. Code, § 40508, subde. (c).)

14) Establishes mandatory reminder notices for specified traffic court appearances. Specifically:

    a) Each court must send a reminder notice to the address shown on the Notice to Appear, unless the defendant otherwise notifies the court of a different address.

    b) The court may send the reminder notice electronically, including by e-mail or text message, to the defendant. By providing an electronic address or number to the court or law enforcement officer at the time of signing the promise to appear, a defendant consents to receiving the reminder notice electronically.

    c) The failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the Notice to Appear.

    d) The reminder notice must contain specified information such as an appearance date and location, whether the court appearance is mandatory or optional, potential consequences for failure to appear, including a driver license hold or suspension, or a civil assessment of up to $300. (Cal Rules of Court, Rule 4.107 (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Court notification systems are a powerful and cost-effective tool to help those in the pretrial system return to court. Unfortunately, far too many Californians unintentionally miss their court dates. Over the past four years, anywhere from 17-39% of cases had a bench warrant issued due solely to a missed court appearance. Having a missed court appearances can have serious consequences for people and the entire community.

   AB 2625 will address these issues by creating a more efficient court hearing process and reduce the adverse impacts of pretrial detention for individuals who miss their court hearing. This bill ensures that timely reminders are sent to those scheduled for court dates, thereby reducing the likelihood of missed hearings."

2) **Effectiveness of Court Reminder Systems:** "When used at the pretrial stage, notification systems may help to improve the court appearance rates of defendants, thereby reducing the

community and court costs associated with missed hearings. When defendants fail to appear in court, arrest warrants must be issued and served, defendants may serve more jail time, docket sizes increase, workloads increase for justice system professionals, and an additional burden may be placed on victims and witnesses. Interventions that decrease failure-to-appear (FTA) rates may therefore provide a multi-layered budget-saving measure for courts. They may also help to improve perceptions of justice system fairness by avoiding the need to impose potentially harmful penalties (such as jail time) on defendants, who otherwise may have unintentionally missed their scheduled court date. The National Institute of Corrections cites court date notification as an effective pretrial supervision practice in "A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency." (Pretrial Justice Center for Courts, *Use of Court Date Reminder Notices to Improve Court Appearance Rates* (Sept. 2017), p. 1. Available at: <https://static.prisonpolicy.org/scans/PJCCBrief10Sept2017CourtDateNotificationSystems.pdf> [as of April 4, 2024].)

As noted above, not only can court reminder systems reduce unnecessary penalties upon persons who miss their court date, but data on court reminder systems suggests that such systems can result in significant cost savings. For example, Hennepin County (Minnesota) District Court's text message court notification system was estimated to reduce failure to appear rates by 35 percent when reminders were received and save the county over $3 million per year. (Minnesota Judicial Branch, *Using Reminders to Reduce Failure to Appear in Court* (Sept. 2019) at p. 15. Available at: <https://www.mncourts.gov/mncourtsgov/media/fourth_district/documents/Research/Hennepin-County-Court-eReminders-Project-September-2019.pdf> [as of April 4, 2024].) Additionally, Multnomah County's (Oregon) court notification system reduced failure to appear rates by 37 percent and saved over $200,000 in just six months. (Multnomah County, *Court Appearance Notification System: Process and Outcome Evaluation* (March 2006) at p. 1. Available at: <http://multco-web7-psh-files-usw2.s3.amazonaws.com/s3fs-public/budget/documents/12_cans.pdf> [as of April 4, 2024].) Non-text court reminder systems, such as automated phone reminders, have also been shown to reduce court costs. An analysis of a Los Angeles Superior Court's use of automated dialer phone technology to provide defendants of scheduled traffic dates found that "[r]eductions in initial failure-to-appear rates resulting in an annual cost savings of over $30,000." (California Courts, *Court Appearance Reminder System – Los Angeles Superior Court*. Available at: < https://www.courts.ca.gov/27771.htm> [as of April 4, 2024].)

3) **Effect of this Bill**: AB 2625 would require counties to develop court reminder programs to notify defendants of scheduled court appearances. Under existing law, counties are permitted to send digital reminders of court dates to accused persons, however, there is no statewide requirement to provide such reminders. Under this bill, administering entities would be required to notify enrolled persons about their arraignment and all subsequent court appearances at least one week prior, three days prior, and one day prior to the hearing. While AB 2625 would automatically enroll defendants and accused persons who provide a telephone number, such persons would have an option to opt out and refusal to provide a phone number would not be held against that person for any purpose. Additionally, AB 2625 contains privacy protections for enrolled persons by requiring that contact information collected solely through this program, or records generated by this program, cannot be used by law enforcement agencies or courts for any purpose other than for court date reminders. Additionally, this bill, as proposed to be amended, provides that law enforcement agencies

must dispose of the cellular telephone number if there is no other legally mandated requirement to retain it. Given the well documented data demonstrating the effectiveness of court reminder systems, AB 2625 can reasonably be expected to reduce failure to appear rates, lower associated court costs, and reduce the detrimental consequences associated with unnecessary pretrial detention (e.g., increased risk of unemployment, loss of housing, loss of child custody, higher rates of guilty pleas, and longer sentences).

The author may wish to clarify that an enrolled persons contact information or records can also be used to provide information regarding the location of the court appearance, transportation options, and procedures for persons who cannot attend court appearances. Proposed Penal Code Section 1425 (b)(5), as created by this bill, states that a county court reminder program must "[i]nclude the technological capability to provide additional information to defendants concerning scheduled court appearances, including the location of the court appearance, available transportation options, and procedures for defendants who are unable to attend court appearances." However, proposed Section 1425(e) provides that contact information collected solely through the program or records generated by the program, cannot be used for any purpose other than court date "reminders". It may be prudent to clarify the scope of what constitutes a "reminder" to provide this would not prohibit an enrolled person from being provided additional information beyond just the reminder itself (e.g. court locations, transportation options, and other relevant procedures), that AB 2625 authorizes elsewhere.

4) **Argument in Support**: According to the Initiate Justice "When a person is arrested, they have an obligation to return to court. Their ability to remain out of jail and with their families throughout the duration of their case can depend entirely on their ability to attend court dates regularly and consistently. The reason for swift responses to failures to appear is directly tied to concerns that someone may attempt to flee from prosecution rather than participating in the legal process. But there are many reasons why someone may not attend a required court hearing – most of which are unintentional and not an attempt to willfully avoid prosecution. These include, but are not limited to: illness, injury, or hospitalization; inability to take time off work or school; lack of transportation (personal or public); confusion about the date, time, or location of a court hearing; inability to find or afford childcare; and mental or behavioral health challenges.

"Even one failure to appear in court can result in the immediate revocation of pretrial release, bail, and even trigger warrants for arrest, exacerbating the impacts of incarceration on their lives. Subsequent pretrial detention contributes to loss of housing and child custody; increased risk of unemployment; higher rates of guilty pleas; and longer sentences. Unfortunately, far too many Californian[s] unintentionally miss their court dates; over the past four years anywhere from 17-39% of felony cases had a bench warrant issued due to a missed court appearance. Court systems can and often do contribute to missed court dates by failing to send notifications about court dates or sending them so late that they don't arrive until after the scheduled court date. California currently has a patchwork of court reminder systems, but there are no standards Initiate Justice to ensure that all Californians released pretrial have equal access to a court notification system. Limited access to and awareness of existing court reminder notification systems further impedes efforts to improve court attendance rates.

"Court notification systems are a simple, powerful and cost effective tool to support return to court and facilitate a more cost effective pretrial process. Court date notifications effectively increase court appearance rates regardless of the method and interval of reminder. They also reduce administrative costs as a result of decreased rates of re[-]arrest, bench warrant issuance, and reducing the number of hearings that need to be rescheduled. Court notifications also reduce the workload of judges, sheriffs, and prosecutors.

"AB 2625 will allow various agencies in each county to operate a court reminder system while requiring certain standards be met including language access and a minimum number of reminders for each hearing including the initial appearance. Under AB 2625 court reminder systems will be made available to all persons arrested at no cost but will not require their enrollment and will offer opportunities to later opt-out. Finally, AB 2625 will establish evidentiary protections for all information collected through any court reminder system."

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

6) **Prior Legislation**:

   a) SB 255 (Umberg), of the 2023-2024 Legislation Session, would have required the Judicial Council of California to develop and make available to each county court a reminder program that allows the county court to send a text message to notify defendants of scheduled court appearances. SB 255 died in the Senate Appropriations Committee.

   b) SB 850 (Umberg), of the 2023-2024 Legislation Session, would have required the Judicial Council of California to develop and make available to each county trial court a reminder program that allows county courts to send a text message to notify defendants of scheduled court appearances. SB 255 died in the Senate Appropriations Committee

   c) AB 412 (Ting), of the 2017-2018 Legislative Session, would have required courts to vacate a monetary fine imposed for failure to appear in court or pay a fine, if the defendant establishes that he or she had good cause to not appear or not pay a fine, or is unable to pay the assessment. AB 412 died in the Assembly Appropriations Committee.

   d) SB 405 (Hertzberg), Chapter 385, Statutes of 2015, requires courts to allow individuals to schedule court proceedings, even if bail or civil assessment has been imposed.

REGISTERED SUPPORT / OPPOSITION:

Support

Behavioral Ideas Lab, INC. Dba Ideas42
Bend the Arc: Jewish Action, Southern California
California Coalition for Women Prisoners
California for Safety and Justice
California Public Defenders Association
Communities United for Restorative Youth Justice (CURYJ)
Critical Resistance, Los Angeles
Felony Murder Elimination Project

Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoner With Children
Sister Warriors Freedom Coalition
Transformative Programming Works (TPW)
Vera Institute of Justice
Young Women's Freedom Center

Opposition: No longer applicable.

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

Amended Mock-up for 2023-2024 AB-2625 (Bryan (A))

Mock-up based on Version Number 98 - Amended Assembly 3/21/24
Submitted by: Staff Name, Office Name

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

SECTION 1. Chapter 16 (commencing with Section 1425) is added to Title 10 of Part 2 of the Penal Code, to read:

CHAPTER 16. Statewide Court Notification System

1425. (a) Each county shall develop a court reminder program that allows a superior court, county defense agency or contractor, pretrial services provider, or a community-based organization to send a text message to notify defendants of scheduled court appearances. The purposes of the program shall include all of the following:

(1) Reducing costs associated with defendants who fail to appear for a scheduled court appearance.

(2) Improving the efficiency of courts in this state.

(3) Reminding defendants to appear at each scheduled court appearance.

(4) Reducing the number of defendants who are confined in a county jail due solely to the defendant's failure to appear for a scheduled court appearance.

(b) The program shall do all of the following:

(1) Be available to all persons enrolled at no cost.

(2) Provide text message reminders to all persons enrolled about their arraignment and all subsequent court appearances at least one week prior, three days prior, and one day prior to the hearing, if they have access to a device with the technological capability of receiving text messages and provide an operational telephone number for the device. Additional reminders may also be provided via email or other methods.

(3) Automatically enroll all persons arrested who provide a telephone number.

(4) Send a message that accompanies the initial reminder regarding the arraignment that informs the person of the program and provides them an option to opt out.

(5) Include the technological capability to provide additional information to defendants concerning scheduled court appearances, including the location of the court appearance, available transportation options, and procedures for defendants who are unable to attend court appearances.

(6) Provide a publicly available internet website through which defendants may request text reminders, update their telephone number or other contact information, and update language preferences.

(7) Make reminders available in the state's threshold languages.

(c) The arresting law enforcement agency shall request a cellular telephone number of a person accused of a criminal offense for the purpose of receiving court notifications upon citation or booking and shall transmit the number to the relevant agency managing the court reminder program in their jurisdiction **and then dispose of the cellular telephone number if there is no other legally mandated requirement to retain it**.

(d) Refusal to provide a telephone number to the law enforcement agency shall not be held against a defendant for any purpose.

(e) (1) Contact information collected solely through this program shall not be used by law enforcement agencies or the courts for any purpose other than for court date reminders.

(2) Records generated by this program, including any contact information for the defendant, may not be used for any purpose other than for court date reminders.

(f) For purposes of this section, the term "threshold languages" means a language identified as the primary language, as indicated in the Medi-Cal Eligibility Data System, of 3,000 beneficiaries or 5 percent of the beneficiary population, whichever is lower, in an identified geographic area.

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2645 (Lackey) – As Amended April 3, 2024

SUMMARY: Requires a transportation agency to notify law enforcement when a vehicle identified in an emergency alert passes through a toll. Specifically, **this bill**:

1) Requires a transportation agency that employs an electronic toll collection system, if the Department of the California Highway Patrol (CHP) activates an emergency alert, as specified, and that alert contains a license plate number of a vehicle involved in the incident, to notify CHP and the law enforcement agency that requested the alert upon identifying the vehicle with that license plate number.

2) Requires the transportation agency to review prior footage within a reasonable time after an alert has been activated and notify CHP and the law enforcement agency that requested the alert upon identifying the vehicle with the license plate number identified in the alert.

3) Requires the transportation agency to include the time and location that the vehicle was identified.

4) Requires CHP, in consultation with transportation agencies that employ an electronic toll collection system, to develop a standard protocol regarding the notification of law enforcement after activation of an emergency alert, including how the transportation agencies will receive notifications of the initiation and conclusions of alerts and report any notifications to law enforcement agency.

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

EXISTING LAW:

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

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

3) Provides that a search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or

persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)

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

5) Provides that a transportation agency may make personally identifiable information of a person available to a law enforcement agency only pursuant to a search warrant. (Sts. & Hy Code, § 31490, subd. (e)(1).)

6) Requires, absent a provision in the search warrant to the contrary, law enforcement to immediately notify the person that their records have been obtained and to provide the person with a copy of the search warrant and the identity of the agency or peace officer to whom the records were provided. (Sts. & Hy. Code, § 31490, subd. (e)(1).)

7) Provides that the search warrant requirement does not prohibit law enforcement, when conducting a criminal or traffic collision investigation, from obtaining personally identifiable information of a person if the officer has good cause to believe that a delay in obtaining this information by seeking a search warrant would cause an adverse result, as specified. (Sts. & Hy. Code, § 31490, subd. (e)(2).)

8) Defines "electronic toll collection system" as a system where a transponder, camera-based vehicle identification system, or other electronic medium is used to deduct payment of a toll from a subscriber's account or to establish an obligation to pay a toll. (Sts. & Hy. Code, § 31490, subd. (m).)

9) Defines "transportation agency" as the Department of Transportation, the Bay Area Toll Authority, any entity operating a toll bridge, toll lane, or toll highway within the state, any entity administering an electronic transit fare collection system and any transit operator participating in that system, or any entity under contract with any of the those entities. (Sts. & Hy Code, § 31490, subd. (l).)

10) Establishes the "Amber Alert" system issued when a law enforcement agency determines that a child 17 years of age or younger, or an individual with a proven mental or physical disability, has been abducted or taken and the victim is in imminent danger of serious bodily injury or death, and there is information available that, if disseminated to the general public, could assist in the safe recovery of the victim. (Gov. Code, § 8594, subd. (a).)

11) Establishes the "Blue Alert" system to issue and coordinate alerts following an attack on a law enforcement officer. (Gov. Code, § 8594.5, subd. (a).)

12) Establishes the "Silver Alert" system to issue and coordinate alerts for a missing person who is 65 years old or older, developmentally disabled, or cognitively impaired. (Gov. Code, § 8594.10, subd. (a).)

13) Establishes the "Endangered Missing Advisory" system to issue and coordinate alerts with respect to a person who is at risk, developmentally disabled, or cognitively impaired. (Gov.

Code, § 8594.11, subd. (a).)

14) Establishes the "Feather Alert" system to issue and coordinate alerts for missing, under unexplained or suspicious circumstances, endangered indigenous people, specifically indigenous women or indigenous people. (Gov. Code, § 8594.13, subd. (a).)

15) Establishes the "Ebony Alert" system to issue and coordinate alerts with respect to Black youth, including young women and girls, who are reported missing under unexplained or suspicious circumstances, at risk, developmentally disabled, or cognitively impaired, or who have been abducted. (Gov. Code, § 8594.14, subd. (a).)

16) Establishes the "Yellow Alert" system designed to issue and coordinate alerts with respect to a hit-and-run incident resulting in the death of a person. (Gov. Code, § 8594.15, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2645 amends California Streets and Highways Code to include special alerts as justifiable cause for transportation agencies to share license plate reading data from toll lanes with California Highway Patrol and the law enforcement agency that requested the alert, including time and location that the vehicle was identified.

   "This proposed legislative amendment seeks to improve public safety and make law enforcement more efficient and responsive by leveraging existing available technology in specific cases involving special alerts."

2) **Need for the Bill:** This bill would require a transportation agency using an electronic toll collection system to notify law enforcement when a vehicle identified in a CHP-activated emergency alert passes through a toll. Under existing law, an "electronic toll collection system" is an "automated license recognition system" where a transponder, camera-based vehicle identification system, or other electronic medium is used to deduct payment of a toll from a subscriber's account or to establish an obligation to pay a toll. (Sts. & Hy. Code, § 31490, subd. (m); Civ. Code, § 1798.90.5, subd. (d).) According to the California State Auditor,

   > The majority of California law enforcement agencies (agencies) collect and use images captured by automated license plate reader (ALPR) cameras. The ALPR system is both a real-time tool for these agencies and an archive of historical images. Fixed cameras mounted to stationary objects, such as light poles, and mobile cameras mounted to law enforcement vehicles, capture ALPR images. Software extracts the license plate number from the image and stores it, with the date, time, and location of the scan and sometimes a partial image of the vehicle, in a searchable database. The software also automatically compares the plate number to stored lists of vehicles of interest, called hot lists then issues alerts, called hits if the plate number matches an entry on the hot list. Agencies compile these hot lists based on vehicles sought in crime investigations and vehicles connected to people of interest—for example, a list of stolen vehicles or of missing

persons.

(California State Auditor, Automated License Plate Readers, To Better Protect Individuals' Privacy, Law Enforcement Must Increase Its Safeguards for the Data It Collects (Feb. 2020) p. 1 <https://www.auditor.ca.gov/pdfs/reports/2019-118.pdf>[as of Mar. 4, 2021]; see Civ. Code, § 1798.90.5, subd. (d).).

SB 34 (Hill) Chapter 532, Statutes of 2015, established regulations on the privacy and usage of ALPR data and expanded the meaning of "personal information" to include information or data collected through the use or operation of an ALPR system. (Civ. Code, § 1798.90.5, et seq.) However, transportation agencies are currently exempt from laws regulating ALRP operators and end-users. (Civ. Code, § 1798.90.5, subd. (a)(1) & (c).)

Nevertheless, existing law limits when transportation agencies can share electronic toll collection system data with law enforcement. Existing law provides that a transportation agency may make personally identifiable information of a person available to a law enforcement agency only pursuant to a search warrant. (Sts. & Hy Code, § 31490, subd. (e)(1).) It provides, however, that the search warrant requirement does not prohibit law enforcement, when conducting a criminal or traffic collision investigation, from obtaining personally identifiable information of a person if the officer has good cause to believe that a delay in obtaining this information by seeking a search warrant would cause an adverse result. (Sts. & Hy. Code, § 31490, subd. (e)(2).) Adverse results exist when delay would result in among other things, danger to the life or physical safety of an individual; a flight from prosecution; the destruction of or tampering with evidence; the intimidation of potential witnesses; or the serious jeopardy to an investigation. (*Ibid.*; Pen. Code, § 1524.2, subd. (a)(2).)

This bill would add an exception to the search warrant requirement when CHP has issued an emergency alert. Specifically, it would oblige a transportation agency operating the electronic toll collection system to notify CHP and the law enforcement agency that requested the alert upon identifying the vehicle with that license plate number.

3) **Argument in Support**: According to *San Bernardino County*, the bill's sponsor: "By providing law enforcement with access to real-time data from toll lanes, AB 2645 will better protect abducted children.

"Amber, Ebony, and Feather Alerts are swift response tools for child abduction cases. However, the effectiveness of these alerts is often hindered by the lack of access to real-time data that could aid law enforcement in locating suspect vehicles. Current California law restricts the sharing of personally identifiable information by transportation agencies operating toll lanes, toll highways, and toll bridges, requiring a search warrant for access.

"AB 2645 allows transportation agencies to share license plate reading data from toll lanes with the California Highway Patrol and the law enforcement agency that requested the alert. By leveraging automated license plate readers used by toll collection systems, law enforcement officers could swiftly identify and intercept suspect vehicles, increasing the chance of rescuing an abducted child."

4) **Related Legislation:**

a) AB 1814 (Ting), would establish that law enforcement and peace officers need more than a facial recognition technology match before making an arrest, conducting a search, or seeking an affidavit for a warrant. AB 1814 is currently pending hearing in the Assembly Committee on Privacy and Consumer Protections.

b) AB 1863 (Ramos), would require CHP, in consultation with other entities, to develop policies and procedures providing instruction to law enforcement agency, a broadcaster participating in the Emergency Alert System, and any other intermediate emergency agency that may institute activation of the Feather Alert, on how proceed after a report of a missing person. AB 1863 is pending hearing in the Assembly Committee on Emergency Management.

5) **Prior Legislation:**

a) AB 1463 (Lowenthal), of the 2023-2024 Legislative Session, would have required license plate data that does not match information on a "hot list" to be deleted within 30 days, and would have prohibited law enforcement agencies from sharing the data with any federal or out of state entities unless they have a valid California court order or warrant. AB 1463 failed passage in the Senate Judiciary Committee.

b) AB 946 (S. Nguyen), Chapter 93. Statutes of 2023, codified the CHP's existing Endangered Missing Advisory (EMA) Alert Program.

c) SB 673 (Bradford), Chapter 627, Statutes of 2023, established the Ebony Alert system to aid in the location of missing Black youths who are reported missing under unexplained or suspicious circumstances, at risk, developmentally disabled, cognitively impaired, or who have been abducted.

d) 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, or who has been abducted or kidnapped.

e) AB 1732 (Jim Patterson), Chapter 107, Statutes of 2022, re-established the "Yellow Alert" system, to aid in the apprehension of a suspect if a person has been killed or suffered serious bodily injury in a hit-and-run incident.

f) AB 2192 (Ramos), of the 2021-2022 Legislative Session, would have authorized a public agency that uses an ALPR to share the data that it collects with a law enforcement agency of the federal government or another state if the ALPR information was being sold, shared, or transferred to locate a vehicle or person reasonably suspected of being involved in the commission of a public offense, except as specified. AB 2192 was taken up in Assembly Privacy and Consumer Protection for testimony only.

g) SB 210 (Wiener), of the 2021-2022 Legislative Session, would have required ALPR operators and end-users to conduct annual audits to review ALPR searches and required most public ALPR operators and end-users to destroy all ALPR data *within 24 hours* if it did not match information on a "hot list." SB 210 was held on suspense by the Senate

Appropriations Committee.

h) AB 1076 (Kiley), of the 2021-2022 Legislative Session, would have required the Department of Justice to draft and make available on its internet website an ALPR system policy template for local law enforcement agencies and require that the guidance given include the necessary security requirements agencies should follow to protect the data in their ALPR systems. AB 1076 was held on suspense by the Assembly Appropriations Committee.

i) AB 1782 (Chau), of 2019-2022 Legislative Session, would have required those operating ALPR systems and those accessing or using ALPR data to have policies that included procedures to ensure non-anonymized ALPR information is destroyed within 60 days, except as specified, and that all ALPR information that is shared be anonymized. AB 1782 was subsequently amended to address a different topic.

j) AB 8 (Gatto), Chapter 326, Statutes, of 2015, established the "Yellow Alert" notification system (similar to "Amber Alert") and authorized activation of the system for certain hit-and-run incidents.

k) SB 34 (Hill) Chapter 532, Statutes of 2015, established regulations on the privacy and usage of automatic license plate recognition data and expanded the meaning of "personal information" to include information or data collected through the use or operation of an ALPR system.

l) SB 1047 (Alquist), Chapter 651, Statutes of 2012, established a "Silver Alert" notification system designed to issue and coordinate alerts to inform the public when a person who is 65 years or older is missing, as specified.

m) SB 839 (Runner), Chapter 311, Statutes of 2010, created a "Blue Alert" system similar to the "Amber Alert" system to notify the public when a law enforcement officer has been attacked, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
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 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' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

None

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2681 (Weber) – As Introduced February 14, 2024

As Proposed to Be Amended in Committee

SUMMARY: Makes it unlawful for a person to manufacture, modify, sell, transfer, or operate a robotic device or unmanned aircraft equipped or mounted with a weapon. Specifically, **this bill**:

1) Provides that a person who knowingly manufactures, modifies, sells, transfers, or operates a robotic device must pay a fine of between $1,000 and $5,000, in addition to any other penalty imposed by law.

2) Exempts from the prohibition on weaponized robotic devices:

   a) A defense industrial company with respect to robotic devices that are within the scope of its contract with the United States Department of Defense;

   b) A robotic device developer, manufacturer, or producer who modifies or operates a robotic device equipped or mounted with a weapon for the sole purpose of developing or testing technology that is intended to detect, prevent, or mitigate the unauthorized weaponization of a robotic device; and,

   c) The United States Department of Defense, and any of its departments, agencies, or units.

3) Provides that government officials are not prohibited from, when acting in the public performance of their duties, operating a weaponized robotic device or one equipped with an disrupter technology when used to dispose of explosives or suspected explosives or for the destruction of property in cases where there is an imminent, deadly threat to human life.

4) Defines "robotic device" as a mechanical device capable of locomotion, navigation, flight, or movement and that operates at a distance from its operator or supervisor based on commands or in response to sensor data, or a combination of those, including mobile robots, unmanned ground vehicles and unmanned aircraft.

5) Defines "weapon" as a device designed to threaten or cause death, incapacitation, or physical injury to a person, including, but not limited to, stun guns, firearms, machine guns, chemical agents or irritants, kinetic impact projectiles, weaponized lasers, and explosive devices.

6) Defines "defense industrial company" as a company that has a contract with the United States Department of Defense to design, manufacture, develop, modify, upgrade, or produce a robotic device, and includes any employees or agents authorized by that defense industrial company to engage in activities relating to such a contract on its behalf.

EXISTING LAW:

1) Defines "weaponized aircraft, vessels, or vehicles of any kind" as "military equipment" requiring the approval a local governing body before law enforcement may seek, use, or acquire such equipment. (Gov. Code, §§ 7070, subd. (c)(6), & 7071, subd. (a)(1).)

2) Provides that a person who knowingly and intentionally operates an unmanned aircraft system on or above the grounds of a state prison, a jail, or a juvenile hall, camp, or ranch is guilty of an infraction, punishable by a fine of $500. (Gov. Code, § 4577, subd. (a).)

3) Makes it a misdemeanor to use an unmanned aircraft system to look through a hole or opening into the interior of specified areas in which the occupant has a reasonable expectation of privacy with the intent to invade the privacy of a person inside. (Pen. Code, § 647, subd. (j)(1).)

4) Provides that it is unlawful for any person to operate an unmanned aircraft system in pest control unless the pilot operating the unmanned aircraft system holds a valid manned pest control aircraft pilot's certificate or a valid unmanned pest control aircraft pilot's certificate issued by the director and is certified or otherwise authorized by the Federal Aviation Administration to operate an unmanned aircraft system approved by the Federal Aviation Administration to conduct pest control. (Food & Agr., § 11901, subd. (b).)

5) Provides that the possession or knowing transport of a machine gun, except as specified, is a felony punishable by imprisonment in county jail for 16 months, 2 years, or 3 years, by a fine of up to $10,000, or by both fine and imprisonment. (Pen. Code, § 32625, subd. (a).)

6) Provides that intentionally converting a firearm into a machine gun, or selling or knowingly manufacturing a machine gun, is a felony punishable by imprisonment in county jail for 4, 6, or 8 years. (Pen. Code, § 32625, subd. (b).)

7) Provides that possession of a destructive device is punishable by up to one year in county jail, by up to three years in state prison, by a fine of up to $10,000, or both fine and imprisonment. (Pen. Code, § 18710, subd. (b).)

8) Provides that a person who recklessly or maliciously possesses a destructive device or explosive in a public place or designated private places is guilty of a felony punishable by imprisonment in county jail for 2, 4, or 6 years. (Pen. Code, § 18715.)

9) Provides that selling or knowingly transporting a destructive device is a felony punishable by imprisonment in county jail for 2, 3, or 4 years. (Pen. Code, § 18730.)

10) Provides that a person who possesses, explodes, ignites, or attempts to explode or ignite any destructive device or any explosive with intent to injure, intimidate, or terrify any person, or with intent to wrongfully injure or destroy any property, is guilty of a felony punishable by imprisonment in county jail for a period of 3, 5, or 7 years. (Pen. Code, § 18740.)

11) Defines "destructive device" to include, among other things, a bomb, grenade or explosive missile; a weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, other

than a shotgun, as specified; a rocket or rocket-propelled projectile, as specified; and a breakable container that a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less with a wick capable of being ignited. (Pen. Code, § 16460, subd. (a).)

12) Defines "machinegun" as a weapon that shoots, is designed to shoot, or can readily be restored to shoot, automatically more than one shot, without manual reloading, by a single function of a trigger; the frame or receiver of any weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if those parts are in the possession or under the control of a person; or any weapon deemed by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives as readily convertible to a machinegun, as specified. (Pen. Code, § 16880.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California leads the nation in ground breaking policy when it comes to the environment, labor, public safety, consumer protections, and technology. The proliferation of cheap drones and advanced robotics has made it easier than ever to weaponize these devices. Within the last several years there have been viral videos with weaponized robots and drones utilizing firearms to shoot at targets and dropping training grenades on willing participants. These types of videos may give individuals the idea that it is okay to arm their drones or robot. We must alert the public that it is not allowed in California to arm these devices. The imagery of armed robots walking the streets of California is damaging to the goals of many robotics companies. These devices are being designed and built to assist us. They are not being designed to harm us. It is again time for California to lead the nation and establish a prohibition of weaponized robots and drones."

2) **Armed Robots in California:** This bill would prohibit law enforcement from using weaponized robotic devices except in specified circumstances.

   Whether law enforcement should be able to use robots or drones capable of deadly force has received increasing attention in recent years. Currently, law enforcement in California are not prohibited from using weaponized robots or drones, although law enforcement needs approval to do so. Existing law requires a law enforcement agency to get approval from the local governing body with jurisdiction over the agency prior to using military equipment. (Gov. Code, § 7071, subd. (a).) Military equipment includes "unmanned, remotely piloted, powered aerial and ground vehicles" and "weaponized aircraft, vessels, or vehicles of any kind." (Gov. Code, § 7070, subd. (c)(1) & (6).) And the public must have an opportunity to comment on the propriety of law enforcement's acquisition or use of weaponized robotic devices. (Gov. Code, § 7071, subd. (c).)

   The decision to adopt weaponized robotic devices has been hotly debated on multiple occasions in California. The San Francisco County Board of Supervisors approved a measure that would have allowed the San Francisco Police Department (SFPD) to deploy weaponized robots capable of killing people. (Boyette et al., *San Francisco supervisors vote to allow police to use robots to kill people*, CNN.com (Nov. 30, 2022) <

https://www.cnn.com/2022/11/30/us/san-francisco-police-remote-control-robots/index.html> [last visited Mar. 29, 2023].) (https://sfgov.legistar.com/View.ashx?M=F&ID=11449772&GUID=F7CFBF85-C7B3-4922-AC4E-7063056833AD) SFPD said "they had no plans to arm the robots with guns but wanted the ability to put explosives on them in extraordinary circumstances." (*San Francisco supervisors bar police robots from using deadly force for now*, The Associated Press (Dec. 6, 2022) <https://www.npr.org/2022/12/06/1141129944/san-francisco-deadly-robots-police> [last visited Apr. 3, 2023].) After public outcry, however, the Board of Supervisors reversed its decision just days later by voting unanimously to ban such use while still allowing robots "for situational awareness, such as going first into a dangerous situation so police can stay back." (*Ibid.*)

The Oakland Police Department requested the authority to use robots armed with shotguns under certain circumstances, but abandoned the idea after public outcry. (Biddle, *Oakland Cops Hope to Arm Robots with Lethal Shotguns*, The Intercept (Oct. 17 2022) <https://theintercept.com/2022/10/17/police-robot-gun-oakland/> [last visited Apr. 3, 2022]; Baker, *Oakland Police Department says it's no longer considering armed robots*, KRON (Oct. 19, 2022) <https://www.kron4.com/news/oakland-police-department-says-its-no-longer-considering-armed-robots/> [last viewed Apr. 5, 2023].) Similarly, the Los Angeles City Council postponed a vote on whether to authorize the Los Angeles Police Department to accept the donation of robot for 60 days over concerns about privacy and surveillance, and despite assurances from both the LAPD and the robot manufacture that there were no plans to furnish the robot with weapons. (Jany, *City Council delays vote on LAPD robot dog for 2 months*, The Los Angeles Times (Mar. 7, 2023) <https://www.latimes.com/california/story/2023-03-07/la-city-council-tables-police-robot-dog-vote-2-months> [last visited Apr. 3, 2023]; cf. Fussel, *New York Returns Its Police 'Robodog' After a Public Outcry*, WIRED.com (Apr. 30, 2021) <https://www.wired.com/story/new-york-returns-police-robodog-after-public-outcry/> [last visited Apr. 5, 2023].)

Despite objections to their use, law enforcement may consider acquiring armed robotic devices promising public safety tools that could save lives. In Dallas, after an ambush attack on police left five officers dead, police outfitted a bomb squad robot with an explosive device to kill the suspect who had barricaded himself in a parking garage. According to the Dallas Police Chief, "We saw no other option [after negotiations failed] but to use our bomb robot and place a device on its extension for it to detonate where the suspect was… Other options would have exposed our officers to grave danger." (Karimi et al., *Dallas sniper attack: 5 officers killed, suspect identified*, CNN.com (July 9, 2016) <https://www.cnn.com/2016/07/08/us/philando-castile-alton-sterling-protests> [last visited Apr. 3, 2016].) The San Francisco Police Chief noted that police had not yet had to use a robot to kill a civilian, and that police hoped to avoid such use. "But," he added, "we need the option to be able to save lives" if there is an imminent threat to the lives of police officers or civilians. (Boyette et al., *San Francisco supervisors vote to allow police to use robots to kill people*, CNN.com (Nov. 30, 2022) < https://www.cnn.com/2022/11/30/us/san-francisco-police-remote-control-robots/index.html> [last visited Mar. 29, 2023].)

Some experts caution, however, that opening the door for the use of armed robots or drones by law enforcement, even in limited circumstances, carries significant risks. One stated, "[H]orror stories, or worst examples, can and have opened the door for much more use of

that power beyond the most horrific situation... Historically, when we grant police power or discretion or advanced technologies, they tend to be used in many more situations." (Jany et al., *See Spot spy? A new generation of police robots faces backlash*, The Los Angeles Times (Dec. 21, 2022) <https://www.latimes.com/california/story/2022-12-21/lapd-testing-robot-dog-amid-debate-over-arming-police-robots> [last visited Apr. 3, 2022].) Another cited uncertainty about potential errors in robotics and automotive technology, citing problems self-driving vehicles. (Deto, *Will Lethal-Force Police Robots Come to More Cities*, Pittsburgh Tribune-Review (Dec. 20, 2022) <https://www.govtech.com/public-safety/will-lethal-force-police-robots-come-to-more-cities)> [last viewed Apr. 5, 2023].)

This bill would specify that law enforcement is not prohibited from operating a weaponized robotic device or one equipped with disrupter technology when used to dispose of explosives or suspected explosives or for the destruction of property in cases where there is an imminent, deadly threat to human life. However, under this bill, law enforcement would be prohibited from deploying a weaponized robotic device in all other circumstances, including situations like the one in Dallas.

3) **The Cost of Violating this Law Would Far Exceed the Minimum of $5,000**: This bill creates a fine of between $1,000 and $5,000 fine for manufacturing, modifying, selling, transferring, or operating a robotic device or unmanned aircraft equipped or mounted with a weapon. The actual cost to a person convicted of violating the statute would actually far exceed the base fine. For example, a crime carrying base fine of $5,000 would be subject to the following addition fees and assessments:

    Penal Code section 1464 state penalty on fines: $5,000 ($10 for every $10)
    Penal Code section 1465.7 state surcharge: $1,000 (20% surcharge)
    Penal Code section 1465.8 court operation assessment: $40 ($40 fee per criminal offense)
    Government Code section 70372 court construction penalty: $2,500 ($5 for every $10)
    Government Code section 70373 assessment: $35 ($35 for each infraction)
    Government Code section 76000 penalty: $3,500 ($7 for every $10)
    Government Code section 76000.5 EMS penalty: $1,000 ($2 for every $10)
    Government Code section 76104.6 DNA fund penalty: $500 ($1 for every $10)
    Government Code section 76104.7 additional DNA fund penalty: $2,000 ($4 for every $10)

    Taken together with additional fines and assessments, and assuming the person received the maximum fine under the proposed statute, the total owed by a person convicted of this crime would be $20,575—or roughly four times the base fine.

    Further, the total cost to an individual convicted of this new crime could dramatically increase depending on the weapon connected to the robotic device. A person found guilty of possessing a destructive device may be fined up to $10,000. (Pen. Code, § 18710.) Similarly, a person convicted of the unlawful possession of a machine gun may also be fined up to $10,000. (Pen. Code, § 32625, subd. (a).) Indeed, attaching a destructive device or machine gun to robotic device could result, in addition to potential incarceration, in a total fine of roughly $60,000.

4) **Argument in Support**: According to the *Association of Uncrewed Vehicle Systems International*, "Assembly Bill 2681 is a strong measure, promoting public acceptance and

protecting public safety, while encouraging the safe use of advanced robotics by preserving the proper carveouts for very specific communities in the DoD and law enforcement, allowing for precise missions for national defense and public safety.

"We have built our advocacy work around industry consensus based educational campaigns and common-sense legislation and we have had great engagement with Stakeholders on this language. We are working closely with manufacturers and users of both ground robots and drones around the country.

"When we envision large scale commercial and civil adoption of drones and robots, weapons are not a part of that picture outside of a limited scope of companies, users, and use cases. We and our members regularly work with the Department of Defense and our service members to provide them with specialized technologies to keep them and others safe. Given this experience, we uniquely understand the varying needs these technologies serve, as well as the need to appropriately establish guard rails and guidelines for their responsible use. By working together as a group, California can pave the way towards safe adoption of these lifesaving technologies to protect citizens and structures in the State."

5) **Prior Legislation**:

a) AB 79 (Weber), of the 2023-2024 Legislative Session, would have provided that knowingly manufacturing, modifying, selling, transferring, or operating a weaponized drone or robot is punishable by a fine of between $1,000 and $5,000 dollars. The hearing on AB 79 was canceled at the request of the author.

b) AB 48 (Gonzalez), Chapter 404, Statutes of 2021, prohibits the use of kinetic energy projectiles or chemical agents, as defined, by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards.

c) AB 392 (S. Weber), Chapter 170, Statutes of 2019, limits the use of deadly force by a peace officer to those situations where it is necessary to defend against a threat of imminent serious bodily injury or death to the officer or to another person.

d) AB 931 (S. Weber), was substantially similar to AB 392 above. AB 931 was held in the Senate Rules Committee.

e) SB 807 (Gains), Chapter 834, Statutes of 2016, granted civil immunity to local public entities, public employees, and unpaid volunteers and private entities acting within the scope of delegated authority granted by a local public entity that damage an unmanned aircraft system (UAS) in the course of providing emergency services.

REGISTERED SUPPORT / OPPOSITION:

Support

Association for Uncrewed Vehicle Systems International
Oakland Privacy

Opposition

None

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

Amended Mock-up for 2023-2024 AB-2681 (Weber (A))

Mock-up based on Version Number 99 - Introduced 2/14/24
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 18722 is added to the Penal Code, to read:

18722. (a) For the purposes of this section, the following terms have the following meanings:

(1) "Robotic device," means a mechanical device capable of locomotion, navigation, **flight,** or movement ~~on the ground~~ and that operates at a distance from its operator or supervisor based on commands or in response to sensor data, or a combination of ~~those.~~ **those, including mobile robots, unmanned ground vehicles and unmanned aircraft.**

~~(2) "Unmanned aircraft" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.~~

(~~3~~2) "Weapon" means a device designed to threaten or cause death, incapacitation, or physical injury to a person, including, but not limited to, stun guns, firearms, machine guns, chemical agents or irritants, kinetic impact projectiles, weaponized lasers, and explosive devices.

(3) "Defense industrial company" means a company that has a contract with the United States Department of Defense to design, manufacture, develop, modify, upgrade, or produce a robotic device, and includes any employees or agents authorized by that defense industrial company to engage in activities relating to such a contract on its behalf.

(b) It shall be unlawful for a person to manufacture, modify, sell, transfer, or operate a robotic device ~~or unmanned aircraft~~ equipped or mounted with a weapon.

(c) A person who knowingly violates this section shall be required to pay a fine of at least ~~five thousand dollars ($5,000) but not more than twenty-five thousand dollars ($25,000).~~**one thousand dollars ($1,000) but not more than five thousand dollars ($5,000.)** This fine shall be imposed in addition to any other penalty imposed pursuant to any other laws.

(d) This section shall not apply to any of the following:

~~(1) A defense industrial company under contract with the United States Department of Defense with respect to robotic devices and unmanned aircraft being developed or produced under that contract.~~

~~(2) A defense industrial company that obtains a waiver from the Attorney General for robotic devices or unmanned aircraft that are covered by the waiver.~~

~~(3) A robotics company that obtains a waiver from the Attorney General for the purpose of testing anti-weaponization technologies using robotic devices or unmanned aircraft that are covered by the waiver.~~

(1) A defense industrial company with respect to robotic devices that are within the scope of its contract with the United States Department of Defense.

(2) A robotic device developer, manufacturer, or producer who modifies or operates a robotic device equipped or mounted with a weapon for the sole purpose of developing or testing technology that is intended to detect, prevent, or mitigate the unauthorized weaponization of a robotic device.

(3) The United States Department of Defense, and any of its departments, agencies, or units.

(e) It shall not be a violation of this act for government officials, acting in the public performance of their duties, to operate a robotic device ~~or unmanned aircraft~~ equipped or mounted with a weapon or disrupter technology, when used for the purpose of the disposal of explosives or suspected explosives, for development, evaluation, testing, education or training relating to the use of such technologies for the purpose of disposing of explosives or suspected explosives, or for the destruction of property in cases where there is an imminent, deadly threat to human life.

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2790 (Pacheco) – As Amended March 21, 2024

PULLED BY THE AUTHOR.

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2814 (Low) – As Introduced February 15, 2024

SUMMARY: Creates a new crime making it unlawful to enter the curtilage of a dwelling with the intent to steal a package. Specifically, **this bill**:

1) Makes it a crime to enter the curtilage of a home with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier.

2) Punishes this crime as an alternate felony/misdemeanor (a "wobbler"), punishable by imprisonment in the county jail not exceeding one year, or by 16 months, two, or three years in the county jail.

3) Defines "curtilage" as "an area adjacent to or in the immediate area of the home, and to which the activity of home life extends, including, but not limited to, a porch, doorstep, patio, stoop, driveway, hallway, or enclosed yard."

EXISTING LAW:

1) Defines the criminal offense of theft and divides the offense into two degrees: grand theft and petty theft. (Pen. Code, §§ 484; 486.)

2) Provides that grand theft occurs when the money, labor, or real or personal property taken is of a value exceeding $950. (Pen. Code § 487, subd. (a).)

3) Provides that other cases of theft are petty theft. (Pen. Code, § 488.)

4) Punishes grand theft as a state prison felony when the item taken is a firearm, and as an alternate felony/misdemeanor (a "wobbler") in all other cases. (Pen. Code, § 489.)

5) Punishes petty theft as a misdemeanor. (Pen. Code, § 490.)

6) Specifies that a burglary of an inhabited dwelling or vessel which is inhabited and designed for habitation, floating home, or trailer coach, or the inhabited portion of any other building, is burglary of the first degree. (Pen. Code, § 460, subd. (a).)

7) Provides that all other types of burglary is burglary in the second degree. (Pen. Code, § 460, subd. (b).)

8) Provides the following penalties for burglary:

a) Burglary in the first degree is punishable by imprisonment in the state prison for 2, 4 or 6 years; and,

b) Burglary in the second degree is punishable as an alternate felony/misdemeanor by imprisonment in the county jail not exceeding one year or imprisonment in county jail for 18 months, 2 or 3 years. (Pen. Code, § 461.)

9) States that every person who commits mail theft, as defined, is guilty of a crime, and shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment. (Pen. Code, § 530.5, subd. (e).)

10) Defines mail theft as follows:

a) Whoever steals, takes, or obtains by fraud or deception, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein;

b) Whoever steals, takes, or by fraud or deception obtains any letter, postal card, package, bag, or mail, or any article or thing contained therein which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or,

c) Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, as described above, knowing the same to have been stolen, taken, or embezzled. (Pen. Code, § 530.5, subd. (e), cross referencing 18 U.S.C, § 1708).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, ""The scourge that is package theft has hit every neighborhood and community in this state for far too long. It's time we send a clear message to porch pirates in California: under AB 2814 you will be prosecuted for these serious and invasive crimes."

2) **Existing Possible Penalties for Package Theft**: Existing law separates theft into two degrees: petty theft and grand theft. Unless otherwise specified, grand theft is committed when the money, labor, or real or personal property taken is of a value exceeding $950. (Pen. Code, § 487.) All other theft is petty theft. (Pen. Code, § 488.)

The current threshold amount to constitute grand theft requires a taking or loss in excess of $950 which was established through legislation in 2010. (AB 2373 (Ammiano) Chapter 693, Statutes of 2010.) Prior to that change in the law, the amount was $400 or more which was

established in the 1982-1983 Legislative Session. (Chapter 375, Statutes of 1982.) The previous amount of $200 was established in 1923; up to that time, the threshold amount was $50.

Grand theft is punishable as a "wobbler," meaning that it may be punished as either a felony or misdemeanor. (Pen. Code, § 489, subd. (c).) Petty theft is punishable as a misdemeanor. (Pen. Code, § 490.) Thus, under existing law, a person may be charged with a felony for stealing packages if the value of items taken exceeds $950.

This bill creates a new crime of entering "an area adjacent to or in the immediate area of the dwelling, and to which the activity of home life extends" such as, but not limited to "a porch, doorstep, patio, stoop, driveway, hallway, or enclosed yard" with intent to steal a package, regardless of the value of the items taken. This conduct would be punishable as either a felony or a misdemeanor, regardless of the value of the package. Additionally, the bill does not require that a theft actually occurred; rather a person would be guilty of the offense if there were some showing of an intent to steal the package. In this regard, the crime is akin to a burglary.

Burglary of an inhabited dwelling house or structure is first degree burglary and punishable as a felony. (Pen. Code, § 461.) An inhabited dwelling house has been interpreted by case law to mean ". . . a structure where people ordinarily live and which is currently being used for dwelling purposes. A place is an inhabited dwelling if a person with possessory rights uses the place as sleeping quarters intending to continue doing so in the future. There may be more than one dwelling under the same roof. Apartments and hotel rooms may be the dwelling house of persons living in them." (*People v. Fleetwood* (1985) 171 Cal.App.3d. 982, 987-988.) Inhabited houses and apartments are included in this definition.

Courts have broadly interpreted the term "inhabited dwelling house" to include a variety of structures and places in order to effect the legislative purpose of the burglary statutes—to protect the peaceful occupation of one's residence against intrusion and violence. In determining whether a structure is part of an inhabited dwelling, the essential inquiry is whether the structure is functionally interconnected with and immediately contiguous to other portions of the house. "Functionally interconnected" means used in related or complementary ways. "Contiguous" means adjacent, adjoining, nearby, or close." (*People v. Thorn* (2009) 176 Cal.App.4th 255, 261-262.) Courts have also included in certain cases garages, carports, and balconies as a dwelling structure for purposes of residential burglary. (*People v. Gilbert* (1961) 188 Cal.App.2d 723; *People v. Thorn*, *supra*, 176 Cal.App.4th 255; *People v. Yarborough* (2012) 54 Cal.4th 889.)

The burglary laws are primarily designed, not to deter trespass and the intended crime, which are prohibited by other laws, but rather to protect against dangerous situations to personal safety created by a violation of the occupant's possessory interest in the building. (*People v. Thorn, supra*, 176 Cal.App.4th at 264.)

This bill creates a new crime for a person to enter the curtilage of a residential dwelling with the intent to commit theft of a package shipped through the mail or delivered by a public or private carrier. "Curtilage" is defined as "an area adjacent to or in the immediate area of the residential dwelling, and to which the activity of residential life extends, including, but not limited to, a porch, doorstep, patio, stoop, driveway, hallway, or enclosed yard." Depending

on the facts of the case, a person who violates the provisions in this bill could be charged with burglary of a residential building or structure, which is already punishable as a felony.

3) **Mail Theft:** California also criminalizes the theft of mail. The California crime is based on the federal statute prohibiting the theft of mail, and specifically cross references the federal statute to establish the elements of mail theft. Mail theft is an offense which involves the theft of items sent through the United States Postal Service (USPS), a federal agency. "Mail" constitutes the items that are sent through and entrusted to that governmental agency. In order for mail theft to occur, the theft must occur while the items are physically or constructively within the control and ambit of the USPS.

   Courts have noted the crime of mail theft is based on the importance of the USPS as government agency providing service to the citizens of the United States. "The United States Postal Service has served as the keystone of the American communications system since its founding by Benjamin Franklin in 1775. In recognition of the indispensable role the Postal Service plays in the private and commercial life of the nation, Congress has provided criminal penalties for activities that interfere with the Postal Service's mandate to deliver the mail." (*United States v. Lavin* (3d Cir. 1977), 567 F.2d 579, 580.)

   This bill seeks to punish "theft of a package shipped through the mail *or delivered by a public or private carrier*." (Emphasis added.) Given that mail theft was specifically constructed as a crime involving the government, it is not clear that including private actors within what is essentially mail theft is consistent with the nature of the crime. This bill does not define "a public or private carrier." As such, it is not clear whether it would apply to private entities that are in the shipping and delivery business, such as Fed Ex and United Parcel Service, or whether it would also apply to retailers who also happen to deliver their own packages, such as Amazon. In either case, it is not clear that a "private mail carrier" performs a role and function that is coextensive with that of the USPS to appropriately be included in the crime defined by the elements of the federal crime of mail theft.

4) **Argument in Support**: According to the *California State Sheriffs' Association*, "As retail entities see their customers' transition from shopping at brick-and-mortar stores to shopping online, retailers are delivering more of their products directly to their customers' residences. Increasingly, criminals have been stealing packages delivered at the doorsteps of homes. Because these package contents are often valued under the $950 grand theft threshold or the offender may not actually enter the dwelling to complete the act, individuals engaging in this criminal activity are generally not subject to significant punishment that could deter them from engaging in this activity."

5) **Argument in Opposition**: According to *Californians for Safety and Justice*, "This bill is an invitation to racial profiling. Completely lawful activity - walking up to the front door of a home - is made criminal by this bill based solely on the witness or officer's belief that the person "intends" to steal. Innocent behavior such as a volunteer canvassing for a political campaign or a Girl Scout selling cookies to her neighbor could easily be misinterpreted under this bill. History shows us that this misinterpretation will be infected with racial bias and fall heavily on Black, Latino and Native American people."

6) **Prior Legislation**:

a) AB 1698 (Maienschein), of the 2021-2022 Legislative Session, would have created the criminal offense of package theft, punishable as a misdemeanor. AB 1698 was held on the Appropriation Committee's suspense file.

b) AB 1699 (Maienschein), of the 2021-2022 Legislative Session, would have counted a conviction for package theft as a point against a driver's record if the crime involved the use or acquisition of a vehicle. AB 1699 was never heard in the Assembly Transportation Committee at the request of the author.

c) SB 358 (Jones), of the 2021-2022 Legislative Session, was substantially similar to this bill. SB 358 was held in the Assembly Appropriations Committee.

d) AB 1210 (Low), of the 2019-2020 Legislative Session, would have made it a crime to enter the curtilage of a dwelling with the intent to steal a package and would have specified that a violation committed by a person acting in concert with one or more persons, on two or more separate occasions within a 12-month period, for which the value of the property stolen exceeds $950 . AB 1210 was held on the Appropriation Committee's suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Highway Patrolmen
California District Attorneys Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
League of California Cities
Los Angeles County Professional Peace Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

Californians for Safety and Justice
Californians United for a Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice Action
Oakland Privacy

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2943 (Zbur) – As Amended April 3, 2024

As Proposed to Be Amended In Committee

SUMMARY: Authorizes peace officers to make warrantless arrests for misdemeanor shoplifting, as specified, among other provisions related to retail theft. Specifically, **this bill**:

1) Authorizes peace officers to make warrantless arrests for misdemeanor shoplifting, as follows:

   a) The officer has probable cause to make the arrest. The probable cause shall be based on either:

      i) A sworn statement obtained by the officer from a person who witnessed the person to be arrested committing the alleged violation; or,

      ii) The officer observing video footage that shows the person to be arrested committing the alleged violation.

   b) The arrest can be made even if the offense was not committed in the officer's presence.

2) Extends the sunset date on existing provisions that authorize non-release for arrests relating to repeat thefts and organized retail theft until January 1, 2031.

3) Clarifies procedures relating to aggregation to charge multiple thefts as grand theft, as follows:

   a) Clarifies that the distinct but related acts of theft that can be aggregated can include acts committed against multiple victims;

   b) Clarifies that the distinct but related acts of theft that can be aggregated can include acts committed in counties other than the county of the current offense; and,

   c) Clarifies that, in determining whether the acts of theft "are motivated by one intention, one general impulse, and one plan," the court may consider, but is not limited to, the following evidence:

      i) Whether the thefts involve the same defendant or defendants;

      ii) Whether the thefts are substantially similar in nature; or,

iii) Whether the thefts occur within a 60-day period.

4) Creates a new offense, "criminal deprivation of a retail business opportunity," relating to receipt of stolen property, as follows:

   a) Provides that a person is guilty of this new crime if they possess property unlawfully that was stolen from a retail business, whether or not they committed the act of stealing the property, if all of the following apply:

      i) The property is not possessed for personal use;

      ii) The person has the intent to sell, exchange, or return the merchandise for value, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value; and,

      iii) The value of the property exceeds $950.

   b) Provides that, for purposes of determining the value of the property, the property can be considered in the aggregate with either:

      i) Any other property possessed by the person with the intent to sell, exchange, or return the merchandise for value, within the prior three years; or,

      ii) Any property possessed by another person acting in concert with the defendant.

   c) Provides that, for the purpose of determining whether the defendant has the intent to sell, exchange, or return the merchandise for value, the trier of fact may consider any competent evidence, including, but not limited to, the following:

      i) Whether the defendant has in the prior three years sold, exchanged, or returned for value merchandise acquired through shoplifting, theft, or burglary from a retail business, or through any related offense, including any conduct that occurred in other jurisdictions, if relevant to demonstrate a fact other than the defendant's disposition to commit the act; and,

      ii) The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption, including use or consumption by one's immediate family.

   d) Provides that this new criminal offense is punishable as a misdemeanor, by imprisonment in the county jail for up to one year, or as a felony, punishable by imprisonment in the county jail for a term of 16 months, two years, or three years.

5) Increases the allowable term of probation for petty theft and shoplifting, as follows:

   a) Provides that for a person convicted of shoplifting or petty theft, the court may impose probation for a period not to exceed two years;

b) Provides that, if a court imposes a term of probation exceeding two years, the court, as a condition of probation shall consider referring the defendant to a collaborative court or rehabilitation program that is relevant to the underlying factors that led to the commission of the offense;

c) Provides that, upon successful completion of the rehabilitation program or collaborative court, the court shall discharge the defendant from probation; and,

d) States that participation in a collaborative court or rehabilitative program shall not exceed two years, except with the consent of the defendant.

6) Extends the sunset date on existing provisions authorizing cities and counties to established diversion and deferred entry of judgment (DEJ) programs for theft and repeat theft crimes until January 1, 2031.

EXISTING LAW:

Misdemeanor Arrests

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

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

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

4) Provides that a peace officer may arrest a person in obedience to a warrant, or, without a warrant, may arrest a person whenever any of the following circumstances occur:

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

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

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

5) Authorizes a peace officer to arrest a person for committing specified crimes not committed in the officer's presence, including domestic violence, violations of a domestic violence protective or restraining order, or for carrying a concealed firearm within an airport. (Pen. Code, § 836, subds. (c)-(e).)

6) Provides that, when a person is arrested for a misdemeanor, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released as specified. If the person is released, the officer shall prepare a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. (Pen. Code, § 853.6, subd. (a)(1).)

7) Allows for nonrelease when a person is arrested by a peace officer for a misdemeanor, in specified circumstances, including, among others:

    a) The person arrested was so intoxicated that they could have been a danger to themselves or to others;

    b) The person arrested required medical examination or medical care or was otherwise unable to care for their own safety;

    c) There were one or more outstanding arrest warrants for the person;

    d) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested;

    e) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested;

    f) There is reason to believe that the person would not appear at the time and place specified in the notice;

    g) The person has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months; and,

    h) There is probable cause to believe that the person arrested is guilty of committing organized retail theft. (Pen. Code, § 853.6, subd. (i).)

8) Sunsets the provisions for nonrelease of a person arrested for theft and organized retail theft on January 1, 2026. (Pen. Code, § 853.6, subd. (m).)

Aggregation

9) Provides that the value of the money, labor, real property, or personal property taken exceeds $950 over the course of distinct but related acts, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. (Pen. Code, § 487, subd. (e).)

Diversion and DEJ for Theft and Repeat Thefts

10) Authorizes a city or county prosecuting attorney or county probation department to create a diversion or DEJ program for persons who commit a theft offense or repeat theft offenses. The program may be conducted by the prosecuting attorney's office or the county probation department. (Pen. Code, § 1001.81.)

11) Sunsets the provisions authorizing diversion and DEJ for theft on January 1, 2026. (Pen. Code, § 1001.82.)

Misdemeanor Probation

12) Defines "probation" as the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. (Pen. Code, § 1203, subd. (a).)

13) States that courts imposing punishment in misdemeanor cases may suspend the imposition or execution of the sentence and make and enforce the terms of probation for a period not to exceed one year. (Pen. Code, § 1203a.)

Theft Generally

14) States that every person who steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates property which has been entrusted to them, or who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or real or personal property, is guilty of theft. Divides theft into two degrees, petty theft and grand theft. (Pen. Code §§ 484, subd. (a), 486.)

15) Defines grand theft as theft of money, labor, real or personal property of a value exceeding $950. Grand theft is a wobbler, punishable by imprisonment in a county jail not exceeding one year, or as a felony by imprisonment in the county jail for 16 months, two years, or three years (Pen. Code, §§ 487, 489.)

16) Punishes petty theft as a misdemeanor, punishable by fine not exceeding $1,000, or by imprisonment in the county jail not exceeding six months, or both. (Pen. Code, § 490.)

17) States that a person who commits any of the following acts is guilty of organized retail theft:

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

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

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

d) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of these acts or any other statute defining theft of merchandise. (Pen.

Code, § 490.4, subd. (a).)

18) Punishes organized retail theft, as follows:

a) If violations of the provisions directed at acting in concert or as an agent are committed on two or more separate occasions within a one-year period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that period exceeds $950, the offense is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year, or as a felony, punishable by a term of imprisonment in a county jail for 16 months, or two or three years;

b) Any other violation of the provisions directed at acting in concert or as an agent is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year; and,

c) A violation of the recruiting, coordinating, organizing, supervising, directing, managing, or financing provision is punishable is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year, or as a felony, punishable by a term of imprisonment in a county jail for 16 months, or two or three years. (Pen. Code, § 490.4, subd. (b).)

19) Defines "Shoplifting" as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed $950. Shoplifting is. Shoplifting shall be punished as a misdemeanor. (Pen. Code, § 459.5.)

20) Defines "burglary" as entering a structure, as defined, with intent to commit theft or any felony offense and divides burglary into two degrees, first and second. (Pen. Code, §§ 459, 460.)

21) Provides that first degree burglary is burglary of building, inhabited for dwelling purposes, as specified, or vehicle inhabited for dwelling purposes, as specified. First degree burglary is punishable by imprisonment in the state prison for two, four, or six years. (Pen. Code, §§ 459, 460, 461.)

22) Provides that all other burglary is burglary in the second degree. Entering a commercial establishment to steal property exceeding $950 is burglary in the second degree. Burglary in the second degree is punishable as a misdemeanor, by imprisonment in the county jail not exceeding one year, or as a felony by imprisonment in the county jail for in the county jail for 16 months, two years, or three years. (Pen. Code, §§ 459.5, 460, 461.)

23) Provides that robbery of the first degree is punishable by imprisonment in the state prison for three, six, or nine years if the defendant, voluntarily acts in concert with two or more other persons, to commit robbery within an inhabited vehicle or building, as specified. (Pen. Code, § 213.)

24) Provides that every person who defaces, damages or destroys real or personal property that is not their own, is guilty of vandalism. If the amount of the damage is less than $400, the offense is a misdemeanor, punishable by imprisonment in a county jail, not exceeding one

year, or by a fine of $1,000 or by both. If the amount of the damage is $400 or more, the offense is a felony, punishable imprisonment in a county jail not exceeding one year, or by a fine of not more than $10,000, or both. (Pen. Code, § 594 subd. (b).)

25) Provides that it is conspiracy if any two or more people conspire to commit any crime conspiracy. If they conspire to commit a felony, the offense is punishable in the same manner and to the same extent as is provided for the punishment of that felony. If they conspire to commit any other crime, the conspiracy shall be punishable as a misdemeanor by imprisonment in a county jail for not more than one year, or as a felony, punishable by imprisonment in the county jail for 16 months, or two or three years, or by a fine not exceeding $10,000, or by both. (Pen. Code, § 182.)

26) Provides that any person concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, have advised and encouraged its commission, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed. A person who aids and abets a crime faces the same punishment as the one who directly commits the crime. (Pen. Code, § 31.)

27) States that robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. Robbery is a felony punishable by imprisonment in the state prison for two, three or five years. If the defendant acts in concert with two or more person to commit robbery, as specified, the offense is punishable by imprisonment in the state prison for three, six, or nine years. (Pen. Code, § 211.)

28) Makes it a crime to receive stolen property. If the value of the property is less than $950, the offense is a misdemeanor punishable by imprisonment in county jail for one year. If the value of the property is over $950, the offense is a misdemeanor, punishable by imprisonment in a county jail for not more than one year, or as a felony punishable by imprisonment in the county jail f for 16 months, or two or three years. (Pen. Code, § 496.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The California Retail Theft Reduction Act demonstrates that the California Assembly has listened and that we are serious about addressing the problem of retail crime that is plaguing our communities. We have advanced a comprehensive set of proposals that we believe will have a meaningful impact on stopping the growing threat of retail crime. The proposals in the bill are intended to advance balanced, effective, and meaningful solutions that address the problem and preserve criminal justice reforms that have been effective at keeping our communities safe. Each element of the California Retail Theft Reduction Act can be enacted by the Legislature and signed into law by the Governor without voter approval."

2) **Effect of This Bill**: As currently drafted, this bill contains six distinct provisions relating to retail theft, including: (1) clarification regarding aggregation to charge multiple thefts as grand theft; (2) a provision creating a new offense relating to receipt of stolen property; (3) a

provision authorizing warrantless arrests for misdemeanor shoplifting; (4) extending the sunset date on existing provisions that authorize non-release for arrests relating to repeat thefts and organized retail theft; (5) extending the sunset date on existing provisions relating to diversion and DEJ programs for theft and repeat theft crime; and, (6) a provision increasing the allowable term of probation for petty theft and shoplifting from one to two years.

3) **Aggregation**: Under existing law, theft can be charged as grand theft if the value taken exceeds $950; if the value is below $950, the theft can be charged as petty theft, a misdemeanor. (Pen. Code, §§ 487, 490.)

   Repeated acts of theft can be aggregated and prosecuted as one felony if they are conducted pursuant to one intention, one general impulse, and one plan. (Pen. Code, § 487, subd. (e); see also, *People v. Bailey* (1961) 55 Cal.2d 514, 518-519.) Aggregation is an important concept in theft offenses because it can make a difference between a defendant being charged with multiple misdemeanor offenses (where the value of each item stolen is less than $950) or a felony charge, when the value of the items stolen can be added together to breach the $950 threshold for felony grand theft.

   For example, the defendant in *Bailey* made a single fraudulent misrepresentation about her household income that caused her to receive a stream of welfare payments. (*Id.* at pp. 515–516.) While each individual payment fell below the felony threshold, the aggregated total constituted grand theft. (*Id.* at p. 518.) The Supreme Court concluded that the payments could be aggregated because "the evidence established that there was only one intention, one general impulse, and one plan." (*Id.* at p. 519; see also CALCRIM No. 1802 [Theft: As Part of Overall Plan].) In *People v. Columbia Research Corp.* (1980) 103 Cal.App.3d Supp. 33, the court approved aggregation where the defendant was charged with grand theft based on a series of petty thefts that occurred over a 10-month period, pursuant to a single plan and intent, and involved different victims. (*Id.* at p. 40.) In *People v. Garcia* (1990) 224 Cal.App.3d 297, the defendant filed fraudulent bonds at different times involving different victims. The court found multiple convictions proper. (*Id.* at pp. 308-309.)

   This bill clarifies that distinct but related acts of theft can be aggregated, even if the acts are committed against multiple victims or in counties other than the county of the current offense. This bill also clarifies that, in determining whether the acts are motivated by "one intention, one general impulse, and one plan," as required to aggregate under existing law, the court may consider evidence that the act involve the same or different defendants, are similar in nature, or occur within a 60-day period.

4) **Warrantless Misdemeanor Arrests**: This bill would allow a peace officer to make an arrest without a warrant for shoplifting, even if the offense was not committed in the officer's presence.

   The United States Constitution guarantees the right against arrests made without probable cause. (U.S. Const., 4th Amend.) Generally, existing law allows peace officers to make a warrantless arrest in two circumstances (1) the crime was committed in the officer's presence; and (2) the officer has probable cause to believe a person has committed a felony. (Pen. Code, § 836, subd., (a).) Exceptions under the statute also include violations of domestic violence protective or restraining order; an assault or battery of a significant other,

as specified; or carry a concealed firearm within an airport. (Pen. Code, § 836, subds. (c)-(e).)

This bill would create another exception to the warrant requirement for shoplifting. As currently drafted, this bill provides that a peace officer can make a warrantless arrest if the officer has probable cause to believe that the person shoplifted. The probable cause to make an arrest shall be based on either, as sworn statement obtained by the officer from a person who witnessed the person commit the violation, or if the officer observes video footage that shows the person to be arrested committing the violation. The author's office should consider amendments that would make the sworn statement authorizing the arrest more reliable. For example, should the statement be required to include the date, time, specific location, and property stolen? Or, would a vague sworn statement that a person "merely saw another person shoplift" suffice?

Similarly, the author should consider amendments that would provide law enforcement officers guidance as to the reliability of the video footage that would authorize a warrantless arrest. For example, should the video footage be footage from the retailer's security cameras or would any video footage, such as a viral tik tok video circulating the internet, be sufficient to authorize a warrantless arrest? Could the video footage date back to a year ago, or does it have to be video footage from a more recent date? Would the video footage clearly have to identify the defendant and the products stolen, or would the officer have discretion to infer from the video that a person who looks somewhat like the defendant could have potentially shoplifted some amount of products from a store? Given the rise of AI deepfakes, should this bill require officers to take some steps to verify the authenticity of the video footage?

Generally, a person arrested by a peace office for a misdemeanor must be released, except in limited circumstances. (Pen. Code, § 853.6, subd. (i).) For example, an officer is not required to release a person arrest for a misdemeanor if there is reason to believe that the person would not appear at the time and place specified on the notice to appear. (Pen. Code, § 853.6, subd. (i)(9).) There is also an exception to the release requirement when there is a reasonable likelihood that the person would resume committing offenses, or where there person has outstanding warrants. (Pen. Code, § 853.6, subd. (i)(4) & (6).) Moreover, a peace officer is not required to release the person if the person has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months. (Pen. Code, § 853.6, subd. (i)(11).) Likewise, a peace officer is not required to release a person if they have probable cause to believe the person is guilty of organized retail theft. (Pen. Code, § 853.6, subd. (i)(12).) Put simply, under existing law, many people arrested for shoplifting are not required to be "cited and released." The provisions allowing non-release of persons arrested for theft and organized retail theft are set to sunset of January 1, 2026. (Pen. Code, § 853.6.) This bill extends the sunset date to January 1, 2031.

Taken together, the arrest provisions in this bill would authorize a peace officer to, without a warrant, arrest and take into custody a person for merely shoplifting—even when the offense did not take place in the officer's presence, and in circumstances where the person is not a threat, has no outstanding warrants, is unlikely to continue shoplifting, has not shoplifted in the last six months, and is likely to appear as required for their scheduled hearing before a magistrate. This authorization is constitutionally suspect, given the Fourth Amendment's warrant requirement, and contrary to the Legislature's intent "that the disposition of any

criminal case use the least restrictive means available." (Pen. Code, § 17.2, subd. (a).)

5) **Probation for Shoplifting and Petty Theft**: This bill would increase the maximum period of probation from one year to two years for a person convicted of shoplifting or petty theft. This bill also allows a court to impose, as a condition of probation, referring the defendant to a collaborative court or rehabilitation program. While measures aimed at rehabilitation and treating the root causes of crime are laudable, the author should consider amendments to this provision that would require the court, when referring defendants who are most likely indigent to a rehabilitation program, to consider the defendant's ability to pay and any financial hardship that the defendant may have in participating in the program. The author should also consider amending this provision to include standards for such programs, including that the programs be evidence based.

6) **This Bill Creates a New Criminal Offense**: This bill creates a new crime, "criminal deprivation of a retail business opportunity," relating to receipt of stolen property. This new crime is a wobbler—it would be punishable either as a misdemeanor, by imprisonment in the county jail for up to one year, or as a felony, punishable by imprisonment in the county jail for a term of 16 months, two years, or three years.

   The conduct criminalized by this new crime is possessing stolen property valued over $950. Specifically, a person could be convicted of the offense if they possess property that was stolen from a retail business, without regard to whether the person stole property. The property cannot be for personal use, and the person must have the intent to sell or return the merchandise for value. To prevent double punishment, the author should consider language that would clarify whether a person could be convicted pursuant to both this section and for the theft of the same property, if they are the person that actually steals the property.

   In determining whether the property is valued over $950, this bill provides that, the property can be considered in the aggregate with any other property possessed by the person with the intent to sell or return for value in the prior three years, or any property possessed by other people who were acting in concert with the defendant. As currently drafted, it is unclear whether property for which the defendant was already charged and convicted for a crime within the prior three years would be aggregated. Further, the author may wish to consider amendments that harmonize the aggregation provision created by this new offense with the existing aggregation provisions for grant theft. (Pen. Code, § 487, subd. (e).

   For the purpose of determining whether the defendant has the intent to "sell, exchange, or return the merchandise for value," this bill provides that the trier of fact may consider any competent evidence, including, but not limited to, evidence that the defendant committed similar acts in the prior three years, if relevant to demonstrate the defendant's disposition to commit the act, and whether the property is the type that would not normally be purchased for personal use or consumption.

   The new offense created by this bill is somewhat of a hybrid of the existing laws that punish receipt of stolen property and organized retail theft. Under existing receipt of stolen property statute, anyone who possess any property that is stolen can be punished with a misdemeanor by imprisonment in a county jail for not more than one year, or with a felony with imprisonment for a term of 16 months, two years, or three years. (Pen. Code, § 496.) Additionally, under the organized retail theft statute, a person who acts in concert with two or

more persons to "receive, purchase, ***or possess***" property stolen from a retailer can be punished with a misdemeanor or felony. (Pen. Code, § 490.4, subd. (a)(2).) Accordingly, the conduct that this bill attempts to punish is already a crime.

7) **Reports of Exaggerated Losses by Retailers – Separating Fact from Fiction:** According to background material provided by the author, "[t]he Legislature has recognized the gravity of this issue by investing hundreds of millions of dollars in combatting organized retail crime." However, some complaints of retail theft have been overstated. For example, in 2021, Walgreens closed five stores in San Francisco purportedly due to retail theft. However, the San Francisco Police Department's data on shoplifting did not support this explanation for the closures. Recently, the chief financial officer of Walgreens acknowledged the shoplifting threat had probably been overstated. The company likely spent too much on security measures and mischaracterized the amount of theft at stores. In fact, shrinkage (the inventory that was bought but could not be sold primarily due to shoplifting) actually decreased to around 2.5 to 2.6 percent of sales, compared to 3.5 percent the prior year. (See New York Times, *Walgreens Executive Says Shoplifting Threat Was Overstated* (Jan. 6, 2023) <https://www.nytimes.com/2023/01/06/business/walgreens-shoplifting.html> ; see also Los Angeles Times, *Retailers Say Thefts Are at Crisis Level. The Numbers Say Otherwise* (Dec. 15, 2021) <https://www.latimes.com/business/story/2021-12-15/organized-retail-theft-crime-rate>; CNN Business, '*Maybe We Cried Too Much' Over Shoplifting, Walgreens Executive Says* (Jan. 7, 2023) <https://www.cnn.com/2023/01/06/business/walgreens-shoplifting-retail/index.html>; The Atlantic, *The Great Shoplifting Freak-Out* (Dec. 203, 2021) <https://www.theatlantic.com/health/archive/2021/12/shoplifting-holiday-theft-panic/621108/>.)

   Others say retail theft, while an issue, might be overstated as an excuse to write off mediocre sales and historic inflation might be a key reason why we're seeing any theft bump at all. Things have become expensive – "we are in an economy right now where some everyday staples have risen in price six times faster than the overall rate of inflation. Until July of this year, American paychecks grew at a slower rate than inflation as a whole." Some retailers lump theft in with heavy discounting, soft sales and macroeconomic conditions as other factors that cut into their margins. (Freight Waves, *What's Behind the Reports of 'Unprecedented' Retail Theft* (Oct. 2023). Available at: <https://www.freightwaves.com/news/whats-behind-the-reports-of-unprecedented-retail-theft>; see also Bloomberg, *Thieves Target Donuts and Ham as Food Prices Jump* (Feb. 2024). Available at: <https://www.bloomberg.com/news/newsletters/2024-02-23/supply-chain-latest-food-theft-rises-on-grocery-inflation>.)

   What's more, the National Retail Federation has not solidified any data around increased rates of organized retail theft or what percentage of external theft is organized crime. Retailers are not required to break down how much they actually lose to theft. "Retailers and trade associations are increasingly using their positions to influence lawmakers to pass new legislation that benefits them, hurts competitors and could disproportionally affect marginalized people." (CNBC, *Companies say organized retail crime is on the rise, but there's no data to prove it.* (Aug. 2023). Available at < https://www.cnbc.com/2023/08/09/claims-about-organized-retail-theft-are-nearly-impossible-to-verify.html>.)

   From 2020 to 2021, the number of news stories covering smash-and-grab incidents nearly

doubled. However, the information available does show that the vast majority of shoplifting is not committed by mobs of people. (Council on Criminal Justice, *Shoplifting Trends: What You Need to Know* (Nov. 2023) Available at: <https://councilonj.org/shoplifting-trends-what-you-need-to-know/>.)

Additionally, the Federal Trade Commission recently reported that retail stores likely inflated prices to accommodate for lost revenue resulting from the pandemic. The FTC states, in summary, that:

> Notably, consumers are still facing the negative impact of the pandemic's price hikes, as the Commission's report finds that some in the grocery [including drug stores] retail industry seem to have used rising costs as an opportunity to further raise prices to increase their profits, which remain elevated today.

Retail stores actually saw significant profits over the past few years despite claims that stores are losing profits as a result of theft and other market forces.

> "In the first three-quarters of 2023, retailer profits rose even more, with revenue reaching 7% over total costs, casting doubt on the assertions of some companies that rising prices at the grocery store are the result of retailers' own rising costs." (Federal Trade Commission, "*Feeding America in a Time of Crisis, The United States Grocery Supply Chain and the COVID-19 Pandemic*" (March 21, 2024).

Finally, the Federal Bureau of Investigation (FBI) data on crime statistics reports that crime is actually down nationwide by a significant margin – contributing to the conclusion that the crime rate was a temporary phenomenon brought on by the pandemic and rapidly escalating costs for basic goods and services.

> The new fourth-quarter numbers [for 2023] show a 13% decline in murder in 2023 from 2022, a 6% decline in reported violent crime and a 4% decline in reported property crime.
>
> After a terrible period of underfunding and understaffing caused by the pandemic, local governments have, by most measures, returned to pre-pandemic levels," wrote John Roman, a criminologist at the University of Chicago. In an interview, Roman said, 'The courts were closed, a lot of cops got sick, a lot of police agencies told their officers not to interact with the public. Teachers were not in schools, not working with kids.

(FTC, *Report on Grocery Supply Chain Disruptions* (March 2024). Available at: <https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-releases-report-grocery-supply-chain-disruptions>.) Given that claims of massive retail theft appear to be inconsistent with the data, the Legislature should continue to consider evidence-based solutions such as the rehabilitative programs prescribed in this bill, to address property crimes.

7) **Argument in Support**: According to the *California Retailers Association*, "This bill has many crucial elements to help law enforcement and protect our businesses, including: creating a new crime targeting "serial" retail thieves, specifying that the value of thefts from different victims can be aggregated to reach the threshold for grand theft, expanding the use of diversion and rehabilitative programs like drug court through increased supervision for shoplifting and petty theft, expanding tools for police to arrest for shoplifting based on a witness's sworn statement or video footage of the crime, and extending the ability of police to keep repeat offenders and those committing organized retail theft in custody.

   "The creation of the "serial" retail thief's criminal statute is crucial to holding repeat offenders accountable. This crime would come with a penalty of up to three years for possession of stolen property with intent to resell. Acknowledging the difficulty of proving intent to sell in court, the author specifies that evidence of intent can include repeated conduct or possession of a quantity of goods inconsistent with personal use. Additionally, this bill does not require proof that a defendant acted with another person and applies to the secondary sellers (fences). We believe these changes are adequate for charging repeat offenders and are a sufficient deterrent.

   "In an effort to give law enforcement the necessary and critical tools to combat retail, this bill allows for officers to arrest shoplifters, as defined in P.C. §459.5, based on the probable cause of video footage showing the offender committing the crime or based on a sworn statement of a witness. Additionally, retailers would be incentivized to observe/report retail theft activity and provide officers with sworn statements that can be used to apprehend repeat offenders."

8) **Argument in Opposition**: According to *Vera California*, "Although we appreciate ongoing conversations about this bill, I am writing to register our opposition to AB 2943 by Speaker Rivas and Assemblymember Zbur, which would increase penalties for possession of stolen goods and shoplifting, as well as increase arrest authority and pretrial detention for retail theft. With more than sixty years of experience helping to implement practical and equitable policies for safety and justice, we know that AB 2943 is the latest iteration of an ineffective public safety strategy that is perceived as "tough on crime" but does little to make our communities safer.

   "[…] while retailers claim that retail theft is a massive and urgent crisis, experts and journalists have repeatedly noted that false and inflated claims are driving an exaggerated sense of panic, and retailers are struggling with other issues more responsible for financial challenges. In particular, many concerns around "organized retail crime" have been driven by the National Retail Federation's now-redacted claim that it was responsible for half of all inventory losses in 2021, which was based on incorrect data.

   "Further, California's current theft laws are in fact already harsher than those in many other states. For example, in South Carolina and Texas, states not known for being "soft on crime," theft cannot be charged as a felony unless the amount of loss is at least $2,000 or $2,500 respectively. AB 2943 would make our current theft laws even harsher by redefining shoplifting to classify certain repeated instances of theft surpassing $950 as a felony, and by creating a new felony for possession of stolen goods. Worse yet, evidence indicates that AB 2943 is likely to worsen racial disparities in California's criminal system by sending more Black and Latinx people to prison: a study found that when organized retail theft can be

charged as either a misdemeanor or felony, Black and Latinx people are more often charged with the more serious offense.

"Additionally, AB 2943 will not make our communities safer by allowing law enforcement officers to more easily arrest and detain people with past shoplifting charges or those suspected of organized retail theft. Years of research shows that pretrial detention decreases community safety in the long run—a landmark study of more than 1.5 million cases found that any amount of time in jail beyond 23 hours makes a person more likely to be arrested again in the future. This is because even a short period in jail can result in someone losing their job, their housing, or custody of their children. When someone is not a threat to public safety or a flight risk, evidence tells us that the safest option is to allow them to await trial within the community.

"Further, shoplifting is a low-level misdemeanor that does not implicate the personal safety of the victim or any other person in the community. Less than 2 percent of shoplifting incidents involve another crime, and just over 1 percent involve assault. In these limited cases, detention is already an option and further legislation is not necessary to safeguard public safety.

"When we blame the wrong problems, we miss the right solutions. As sensational claims about organized retail theft have been debunked and data shows that retail theft is not rising statewide, responses need to be tailored to the facts. The legislature should respond to concerns from the community and local businesses with evidence-backed solutions.

"Increasing penalties and arrests for non-violent offenses like possessing stolen goods and retail theft will do little to make our communities safer. Unlike the community-based programs funded by Proposition 47, which have reduced recidivism, sending people to jail and prison makes them more likely to reoffend, while costing local governments dearly amid a budget deficit.

"To deter and address retail theft, we need to take on its drivers. When people shoplift as part of an organized retail theft operation, law enforcement should investigate and hold accountable the people who profit most from these sophisticated operations. However, we know from the War on Drugs that arresting low-level offenders to find those driving sophisticated organized retail theft will not be particularly successful. Legislators can also help by regulating online marketplaces to make it harder to sell stolen goods. Supporting retail workers by enhancing pay, increasing staffing (instead of using self-checkout or surveillance based technology), and providing training can also help.

"When people are arrested for stealing out of need, we need to make sure they don't need to do it again. Instead of reducing public safety through unnecessary criminalization, we can effectively intervene by meeting their needs and connecting them to stable housing, jobs, and other treatment and services. Cities around the country have effectively employed this model, while similar models have proved effective in California thanks to community funding created by Prop 47.

"It is long past time to reject the reach for "tough" policies in favor of real solutions."

9) **Related Legislation**:

a) AB 1802 (Jones-Sawyer) would extend the sunset date for organized retail theft to January 1, 2031. AB 1802 is pending in this Committee.

b) AB 1960 (Soria) would reenact sentence enhancement for theft offenses when the loss exceeds specified dollar amounts. AB 1960 is pending in this Committee.

c) AB 1990 (W. Carrillo) would authorize peace officers to make a warrantless arrest for misdemeanor shoplifting, as specified. AB 1990 is pending in this Committee.

d) AB 1779 (Irwin) would allow, a prosecutor to bring a case in any county where theft offenses occurred for offenses that occur in multiple jurisdictions, as specified. AB 1779 is pending in this Committee.

e) AB 1787 (Villapudua) would among other things, repeal the sunset provision in the organized retail theft statute. AB 1787 is pending in this Committee.

f) AB 1794 (McCarty) would clarify aggregation requirements for grand theft, among other things. AB 1794 is pending in this Committee.

g) AB 2406 (Davies) would make it a felony to use two or more minors to engage in theft related offenses. AB 2406 is pending in this Committee.

h) AB 2438 (Petrie-Norris) would make any person who acts in concert to take, damage, or destroy any property in the commission of a felony punishable by an additional and consecutive term of imprisonment. AB 2438 is pending in this Committee.

i) SB 923 (Archuleta) would revise the definition of shoplifting to require an intent to steal retail property or merchandise and would require a person convicted of petty theft or shoplifting, if the person has two or more prior convictions for specified theft-related offenses, to be punished by imprisonment in the county jail for up to one year, or for 16 months, or two or three years. SB 923 is pending in Senate Public Safety Committee.

j) SB 928 (Niello) would remove the sunset date for organized retail theft. SB 928 is pending in Senate Public Safety Committee.

k) SB 982 (Wahab) would remove the sunset date for organized retail theft. SB 982 is pending in Senate Appropriations Committee.

l) SB 1416 (Newman) would create sentencing enhancements for selling, exchanging, or returning for value, or attempting to sell, exchange, or return for value, any property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property value exceeds specified amounts and would make these enhancements apply to any person acting in concert with another person to commit these offenses. SB 1416 is pending in Senate Public Safety Committee.

10) **Prior Legislation**:

a) AB 329 (Ta), of the 2023-2024 Legislative Session, would have expanded the territorial jurisdiction in which the Attorney General can prosecute specified theft offenses and associated offenses connected together in their commission to include cargo theft. AB 329 failed passage in this Committee.

b) AB 335 (Alanis), of the 2023-2024 Legislative Session, would have required the Little Hoover Commission to submit a report to the Legislature describing the reported retail thefts, as specified. AB 335 was held under submission in Assembly Appropriations Committee.

c) AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, extended the sunset date for organized retail theft through January 1, 2026.

d) AB 23 (Muratsuchi), of the 2023-2024 Legislative Session, would have decreased the threshold amount for grand theft from $950 to $400. The hearing on AB 23 was canceled the request of the author.

e) AB 329 (Ta) would have imposed higher penalties for shoplifting and petty theft if the crime is committed by a non-citizen of the state of California. AB 329 failed passage in this committee.

f) AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022, authorized the misdemeanor arrest of a person that has a prior arrest, citation or conviction for theft, as specified, and authorized a city or county prosecuting authority or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses.

g) AB 2356 (Rodriguez), Chapter 22, Statues of 2022, expanded the definition of "grand theft" where the aggregate amount taken by all participants exceeds $950.

h) AB 1603 (Salas), of the 2021-2022 Legislative Session, would have reduced the threshold amount for petty theft and shoplifting to be punished as a misdemeanor from $950 to $400. AB 1603 failed passage in this Committee.

i) AB 2390 (Muratsuchi), of the 2021-2022 Legislative Session, would have authorized the aggregation of the value of property from one or more acts of theft or shoplifting, as specified. AB 2390 failed passage in this Committee.

j) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft and expanded jurisdiction to prosecute cases of theft or receipt of stolen merchandise.

REGISTERED SUPPORT / OPPOSITION:

Support

Boma California
Calchamber
California Association of Highway Patrolmen

California Business Properties Association
California Business Roundtable
California Restaurant Association
California Retailers Association
Chief Probation Officers' of California (CPOC)
Los Angeles County Business Federation (BIZ-FED)
Naiop of California
Orange County Business Council
Orange County Taxpayers Association
Peace Officers Research Association of California (PORAC)
South Bay Association of Chambers of Commerce
Southern California Leadership Council
United Chamber Advocacy Network

Opposition

Vera Institute of Justice

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

Amended Mock-up for 2023-2024 AB-2943 (Zbur (A) , Robert Rivas (A))

Mock-up based on Version Number 98 - Amended Assembly 4/3/24
Submitted by: Liah Burnley, Assembly Public Safety Committee

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

~~**SECTION 1.** It is the intent of the Legislature to enact legislation to ensure that any business or retailer that reports retail crime may not be retaliated against by local law enforcement or local jurisdictions by threatening or bringing nuisance actions against them as a result of reporting retail crime alone, nor may fines or fees be sought against them as a result of reporting retail crime alone.~~

~~**SEC. 2.** It is the intent of the Legislature to enact legislation to prevent the sale of unlawfully acquired products by requiring sellers of specified products to maintain chain of custody records of the products to demonstrate their lawful provenance and by addressing the use of online platforms to advertise and sell unlawfully acquired products.~~

~~**SEC. 3.** It is the intent of the Legislature to enact legislation to require retail businesses of a certain size to periodically report specified data related to thefts suffered by the businesses while maintaining protections to ensure that no individual business is identified publicly through the reporting of the data, and to strengthen laws to prevent stolen goods from being sold via online marketplaces.~~

~~**SEC. 4.**~~ **SEC. 1.** Section 487 of the Penal Code is amended to read:

487. Grand theft is theft committed in any of the following cases:

(a) When the money, labor, real property, or personal property taken is of a value exceeding nine hundred fifty dollars ($950), except as provided in subdivision (b).

(b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases:

(1) (A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding two hundred fifty dollars ($250).

(B) For the purposes of establishing that the value of domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops under this paragraph exceeds two hundred fifty dollars ($250), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops of the same variety and weight exceeded two hundred fifty dollars ($250) in wholesale value.

(2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding two hundred fifty dollars ($250).

(3) Where the money, labor, real property, or personal property is taken by a servant, agent, or employee from their principal or employer and aggregates nine hundred fifty dollars ($950) or more in any 12 consecutive month period.

(c) When the property is taken from the person of another.

(d) When the property taken is any of the following:

(1) An automobile.

(2) A firearm.

(e) If the value of the money, labor, real property, or personal property taken exceeds nine hundred fifty dollars ($950) over the course of distinct but related acts, including acts committed against multiple victims or in counties other than the county of the current offense, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. In determining whether acts are motivated by one intention, one general impulse, and one plan, the court may consider, but is not limited to, evidence that the acts involve the same defendant or defendants, are substantially similar in nature, or occur within a 60-day period.

~~**SEC. 5.**~~ **SEC. 2.** Section 496.6 is added to the Penal Code, to read:

496.6. (a) Any person who possesses property unlawfully that was acquired through one or more acts of shoplifting, theft, or burglary from a retail business, whether or not the person committed the act of shoplifting, theft, or burglary, is guilty of the unlawful deprivation of a retail business opportunity when both of the following apply:

(1) The property is not possessed for personal use and the person has the intent to sell, exchange, or return the merchandise for value, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value.

(2) The value of the possessed property exceeds nine hundred fifty dollars ($950). For purposes of determining the value of the property, the property described in paragraph (1) can be considered in the aggregate with either of the following:

(A) Any other such property possessed by the person with such intent within the prior three years.

(B) Any property possessed by another person acting in concert with the first person to sell, exchange, or return the merchandise for value, when such property was acquired through one or more acts of shoplifting, theft, or burglary from a retail business, regardless of the identity of the person committing the act of shoplifting, theft, or burglary.

(b) For the purpose of determining in any proceeding whether the defendant has the intent to sell, exchange, or return the merchandise for value, the trier of fact may consider any competent evidence, including, but not limited to, the following:

(1) Whether the defendant has in the prior three years sold, exchanged, or returned for value merchandise acquired through shoplifting, theft, or burglary from a retail business, or through any related offense, including any conduct that occurred in other jurisdictions, if relevant to demonstrate a fact other than the defendant's disposition to commit the act, as provided by subdivision (b) of Section 1101 of the Evidence Code.

(2) The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption, including use or consumption by one's immediate family.

(c) The criminal deprivation of a retail business opportunity is punishable by imprisonment in the county jail for up to one year or pursuant to subdivision (h) of Section 1170.

~~**SEC. 6.**~~ **SEC. 3.** Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

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

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic violence call, it shall be mandatory that the officer make a good faith effort to inform the victim of their right to make a citizen's arrest, unless the peace officer makes an arrest for a violation of paragraph (1) of subdivision (e) of Section 243 or 273.5. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under Section 527.6 of the Code of Civil Procedure, the Family Code, Section 136.2, 646.91, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, Section 213.5 or 15657.03 of the Welfare and Institutions Code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the dominant aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the dominant aggressor involved in the incident. The dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect

is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, any other person related to the suspect by consanguinity or affinity within the second degree, or any person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 25400 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 25400.

(2) The violation of Section 25400 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 25400.

(f) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 459.5 when the violation was not committed in the officer's presence if the officer has probable cause to believe the person committed the violation. The probable cause to make an arrest pursuant to this subdivision shall be based on either of the following:

(1) A sworn statement obtained by the officer from a person who witnessed the person to be arrested committing the alleged violation.

(2) The officer observing video footage that shows the person to be arrested committing the alleged violation.

~~**SEC. 7.**~~ **SEC. 4.** Section 853.6 of the Penal Code, as amended by Section 1 of Chapter 856 of the Statutes of 2022, is amended to read:

853.6. (a) (1) When a person is arrested for an offense declared to be a misdemeanor, including a violation of a city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter, although nothing prevents an officer from first booking an arrestee

pursuant to subdivision (g). If the person is released, the officer or the officer's superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or the officer's superior determines that the person should be released, the officer or the officer's superior shall prepare a written notice to appear in a court.

(2) When a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in Section 13700, or arrested pursuant to a policy, as described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

(3) This subdivision does not apply to the crimes specified in Section 1270.1, including crimes defined in each of the following:

(A) Paragraph (1) of subdivision (e) of Section 243.

(B) Section 273.5.

(C) Section 273.6, if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.

(D) Section 646.9.

(4) This subdivision shall not affect a defendant's ability to be released on bail or on their own recognizance, except as specified in Section 1270.1.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give their written promise to appear in court as specified in the notice by signing the duplicate notice, which shall be retained by the officer, and the officer

may require the arrested person, if the arrested person has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, a person or entity shall not sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the signing of the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) (A) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

(B) If the duplicate notice is filed with the prosecuting attorney, the prosecuting attorney, within their discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

(C) Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in the magistrate's judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by the magistrate in the form set forth in Section 815a. The defendant may, prior to the date upon which the defendant promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. At the time the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in the magistrate's discretion, order that further proceedings shall not be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and the defendant has previously been convicted of a violation of that section or a violation that is punishable under that section, except when the magistrate finds that undue hardship will be imposed upon the defendant by requiring the defendant to appear, the magistrate may declare the bail forfeited and order that further proceedings not be had in the case.

(D) Upon the making of the order that further proceedings not be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) A warrant shall not be issued for the arrest of a person who has given a written promise to appear in court, unless and until the person has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment, or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person at the scene or at the arresting agency prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency, at the time of booking or fingerprinting, shall provide the arrested person with verification of the booking or fingerprinting by making an entry on the citation. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that the defendant was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which the officer has taken custody of a person pursuant to Section 847.

(i) When a person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth in this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, except as provided in subdivision (a), or the arresting officer shall indicate, on a form to be established by the officer's employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that they could have been a danger to themselves or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for their own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

(10) (A) The person was subject to Section 1270.1.

(B) The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release the arrested person from custody before trial.

(11) The person has been cited, arrested, or convicted for misdemeanor or felony theft from a store in the previous six months.

(12) There is probable cause to believe that the person arrested is guilty of committing organized retail theft, as defined in subdivision (a) of Section 490.4.

(j) (1) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

(2) Any person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or a copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

(3) If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

(4) If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

(5) A personal relationship with any officer, public official, or law enforcement agency shall not be grounds for dismissal.

(k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through the person's local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear or copy thereof back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

(l) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

(m) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

~~**SEC. 8.**~~ **SEC. 5.** Section 853.6 of the Penal Code, as added by Section 2 of Chapter 856 of the Statutes of 2022, is amended to read:

853.6. (a) (1) When a person is arrested for an offense declared to be a misdemeanor, including a violation of a city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter, however an officer may first book an arrestee pursuant to subdivision (g). If the person is released, the officer or the officer's superior shall prepare, in duplicate, a written notice to appear in court, containing the name and address of the person, the offense charged, and

the time when, and place where, the person shall appear in court. If, pursuant to subdivision (i), the person is not released prior to being booked and the officer in charge of the booking or the officer's superior determines that the person should be released, the officer or the officer's superior shall prepare a written notice to appear in a court.

(2) When a person is arrested for a misdemeanor violation of a protective court order involving domestic violence, as defined in subdivision (b) of Section 13700, or arrested pursuant to a policy described in Section 13701, the person shall be taken before a magistrate instead of being released according to the procedures set forth in this chapter, unless the arresting officer determines that there is not a reasonable likelihood that the offense will continue or resume or that the safety of persons or property would be imminently endangered by release of the person arrested. Prior to adopting these provisions, each city, county, or city and county shall develop a protocol to assist officers to determine when arrest and release is appropriate, rather than taking the arrested person before a magistrate. The county shall establish a committee to develop the protocol, consisting of, at a minimum, the police chief or county sheriff within the jurisdiction, the district attorney, county counsel, city attorney, representatives from domestic violence shelters, domestic violence councils, and other relevant community agencies.

(3) This subdivision shall not apply to the crimes specified in Section 1270.1, including crimes defined in each of the following:

(A) Paragraph (1) of subdivision (e) of Section 243.

(B) Section 273.5.

(C) Section 273.6, if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.

(D) Section 646.9.

(4) This subdivision does not affect a defendant's ability to be released on bail or on their own recognizance, except as specified in Section 1270.1.

(b) Unless waived by the person, the time specified in the notice to appear shall be at least 10 days after arrest if the duplicate notice is to be filed by the officer with the magistrate.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by that court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, shall give their written promise to appear in court as specified in the notice by signing the duplicate notice, which shall be retained by the officer. The officer may require the arrested person, if the arrested person has no satisfactory identification, to place a right thumbprint, or a left thumbprint or fingerprint if the person has a missing or disfigured right

thumb, on the notice to appear. Except for law enforcement purposes relating to the identity of the arrestee, a person or entity may not sell, give away, allow the distribution of, include in a database, or create a database with, this print. Upon the person signing the duplicate notice, the arresting officer shall immediately release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice, as follows:

(1) It shall be filed with the magistrate if the offense charged is an infraction.

(2) It shall be filed with the magistrate if the prosecuting attorney has previously directed the officer to do so.

(3) (A) The duplicate notice and underlying police reports in support of the charge or charges shall be filed with the prosecuting attorney in cases other than those specified in paragraphs (1) and (2).

(B) If the duplicate notice is filed with the prosecuting attorney, the prosecuting attorney, within their discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified in the duplicate notice within 25 days from the time of arrest. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. The failure by the prosecutor to file the notice or formal complaint within 25 days of the time of the arrest shall not bar further prosecution of the misdemeanor charged in the notice to appear. However, any further prosecution shall be preceded by a new and separate citation or an arrest warrant.

(C) Upon the filing of the notice with the magistrate by the officer, or the filing of the notice or formal complaint by the prosecutor, the magistrate may fix the amount of bail that in the magistrate's judgment, in accordance with Section 1275, is reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by the magistrate in the form set forth in Section 815a. The defendant may, prior to the date upon which the defendant promised to appear in court, deposit with the magistrate the amount of bail set by the magistrate. When the case is called for arraignment before the magistrate, if the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may, in the magistrate's discretion, order that no further proceedings shall be had in the case, unless the defendant has been charged with a violation of Section 374.3 or 374.7 of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and the defendant has previously been convicted of a violation of that section or a violation that is punishable under that section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring the defendant to appear, the magistrate may declare the bail forfeited and order that no further proceedings be had in the case.

(D) Upon the making of the order that no further proceedings be had, all sums deposited as bail shall immediately be paid into the county treasury for distribution pursuant to Section 1463.

(f) A warrant shall not be issued for the arrest of a person who has given a written promise to appear in court, unless and until the person has violated that promise or has failed to deposit bail, to appear for arraignment, trial, or judgment or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer may book the arrested person at the scene or at the arresting agency prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person's court appearance, the arresting agency, at the time of booking or fingerprinting, shall provide the arrested person with verification of the booking or fingerprinting by making an entry on the citation. If it is indicated on the citation that the arrested person is to be booked or fingerprinted, the magistrate, judge, or court shall, before the proceedings begin, order the defendant to provide verification that the defendant was booked or fingerprinted by the arresting agency. If the defendant cannot produce the verification, the magistrate, judge, or court shall require that the defendant be booked or fingerprinted by the arresting agency before the next court appearance, and that the defendant provide the verification at the next court appearance unless both parties stipulate that booking or fingerprinting is not necessary.

(h) A peace officer shall use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person without a warrant pursuant to Section 836 or in which the officer has taken custody of a person pursuant to Section 847.

(i) When a person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this chapter unless one of the following is a reason for nonrelease, in which case the arresting officer may release the person, except as provided in subdivision (a), or the arresting officer shall indicate, on a form to be established by the officer's employing law enforcement agency, which of the following was a reason for the nonrelease:

(1) The person arrested was so intoxicated that they could have been a danger to themselves or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for their own safety.

(3) The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.

(10) (A) The person was subject to Section 1270.1.

(B) The form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release the arrested person from custody before trial.

(j) (1) Once the arresting officer has prepared the written notice to appear and has delivered a copy to the person arrested, the officer shall deliver the remaining original and all copies as provided by subdivision (e).

(2) A person, including the arresting officer and any member of the officer's department or agency, or any peace officer, who alters, conceals, modifies, nullifies, or destroys, or causes to be altered, concealed, modified, nullified, or destroyed, the face side of the remaining original or any copy of a citation that was retained by the officer, for any reason, before it is filed with the magistrate or with a person authorized by the magistrate to receive deposit of bail, is guilty of a misdemeanor.

(3) If, after an arrested person has signed and received a copy of a notice to appear, the arresting officer determines that, in the interest of justice, the citation or notice should be dismissed, the arresting agency may recommend, in writing, to the magistrate that the charges be dismissed. The recommendation shall cite the reasons for the recommendation and shall be filed with the court.

(4) If the magistrate makes a finding that there are grounds for dismissal, the finding shall be entered in the record and the charges dismissed.

(5) A personal relationship with any officer, public official, or law enforcement agency shall not be grounds for dismissal.

(k) (1) A person contesting a charge by claiming under penalty of perjury not to be the person issued the notice to appear may choose to submit a right thumbprint, or a left thumbprint if the person has a missing or disfigured right thumb, to the issuing court through the person's local law enforcement agency for comparison with the one placed on the notice to appear. A local law enforcement agency providing this service may charge the requester no more than the actual costs. The issuing court may refer the thumbprint submitted and the notice to appear to the prosecuting attorney for comparison of the thumbprints. When there is no thumbprint or fingerprint on the

notice to appear, or when the comparison of thumbprints is inconclusive, the court shall refer the notice to appear, or a copy thereof, back to the issuing agency for further investigation, unless the court finds that referral is not in the interest of justice.

(2) Upon initiation of the investigation or comparison process by referral of the court, the court shall continue the case and the speedy trial period shall be tolled for 45 days.

(3) Upon receipt of the issuing agency's or prosecuting attorney's response, the court may make a finding of factual innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

(l) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

(m) This section shall become operative January 1, 2031.

~~**SEC. 9.**~~ **SEC. 6.** Section 1001.82 of the Penal Code is amended to read:

1001.82. This chapter shall remain in effect only until January 1, 2031, and as of that date is repealed.

~~**SEC. 10.**~~ **SEC. 7.** Section 1203g is added to the Penal Code, to read:

1203g. (a) Notwithstanding Section 1203a, for a violation of shoplifting, as defined in Section 459.5, or petty theft, as described in Section 488 or 490.2, the court may suspend the imposition or execution of the sentence and make and enforce the terms of probation for a period not to exceed two years.

(b) If a court imposes a term of probation that exceeds the maximum period of time specified in subdivision (a) of Section 1203a, the court, as a condition of probation, shall consider referring the defendant to a collaborative court or rehabilitation program that is relevant to the underlying factor or factors that led to the commission of the offense. If the court finds that referral to a collaborative court or rehabilitation program is not an appropriate condition of probation, it must state the reasons for its finding on the record.

(c) Upon successful completion of the rehabilitation program, as determined by the program provider, or successful participation in the collaborative court, as determined by the collaborative court, the court shall discharge the defendant from probation.

(d) Participation in a collaborative court or a rehabilitation program by the defendant shall not exceed the maximum period of time of probation specified in subdivision (a), except with the consent of the defendant.

~~**SEC. 11.**~~ **SEC. 8.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

Date of Hearing: April 9, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3027 (Bains) – As Amended April 1, 2024

AS PROPOSED TO BE AMENDED IN COMMITTEE

SUMMARY: Defines "transnational repression" in state law and requires the Office of Emergency Services ("Cal OES") to develop a transnational repression recognition and response training. Specifically, this bill:

1) Provides that by July 1, 2026, Cal OES, through its California Specialized Training Institute ("CSTI") and in consultation with the Commission on Peace Officer Standards and Training ("POST"), shall develop a transnational repression recognition and response training.

2) Provides that this training shall be regularly updated to address emerging threats and specific information on tactics used by specific foreign governments.

3) Provides that the training shall include, but not be limited to:

   a) How to identify different tactics of transnational repression in physical and nonphysical forms.

   b) Those governments that are known to employ transnational repression, including but not only those who use it most frequently, but also those who use it most egregiously, including, but not limited to, tools of digital surveillance and other cyber-tools frequently used to carry out transnational repression activities.

   c) Best practices for appropriate local and state law enforcement prevention, reporting, and response tactics.

   d) Information about communities targeted by transnational repression and misinformation that may be perpetuated by foreign governments, including, but not limited to, improper labeling of dissidents as terrorist threats and notice abuses effectuated through international law enforcement cooperatives, such as The International Criminal Police Organization ("INTERPOL").

4) Defines "human rights" for the purposes of this bill, as "the free exercise or enjoyment of any right or privilege secured to an individual by the California Constitution or laws of this state or by the United States Constitution or laws of the United States in whole or in part."

5) Defines "transnational repression" for the purposes of this bill, as "any action by a foreign government or an agent of a foreign government involving the transgression of national borders through physical, digital, or analog means in order to intimidate, silence, coerce, harass, or harm members of diaspora and exile communities, or organizations that advocate

for individuals in diaspora and exile communities, in order to prevent the exercise of their human rights. "Transnational repression" includes gathering information about individuals in diaspora or exile communities, or organizations that advocate for individuals in diaspora and exile communities, on behalf of a foreign government with the intent to use that information to harass, intimidate, or harm an individual in order to prevent their exercise of their human rights."

6) Makes specified findings and declarations pertaining to transnational repression.

EXISTING FEDERAL LAW

1) Provides that the Department of Homeland Security (DHS), under the federal Homeland Security Act of 2002, has responsibility for integrating law enforcement and intelligence information relating to terrorist threats to the homeland. (6 U.S.C. § 111.)

2) Provides that it is the sense of Congress that some INTERPOL member countries have repeatedly misused INTERPOL's databases and processes to conduct activities of an overtly political or other unlawful character and in violation of international human rights standards, including by making requests to harass or persecute political opponents, human rights defenders, or journalists. (22 U.S.C. § 263b.)

3) Requires the U.S. Secretary of State to transmit to the Speaker of the House of Representatives and Committee on Foreign Relations of the Senate, by February 25 of each year, a full and complete report that includes, where applicable, a description of the nature and extent of acts of transnational repression that occurred during the preceding year, including identification of:

   a) Incidents in which a government harassed, intimidated, or killed individuals outside of their internationally recognized borders and the patterns of such repression among repeat offenders;

   b) Countries in which such transnational repression occurs and the role of the governments of such countries in enabling, preventing, mitigating, and responding to such acts;

   c) The tactics used by governments of specified countries, including the actions identified and any new techniques observed;

   d) In the case of digital surveillance and harassment, the type of technology or platform, including social media, smart city technology, health tracking systems, general surveillance technology, and data access, transfer, and storage procedures, used by the governments of specified countries for such actions; and

   e) Groups and types of individuals targeted by acts of transnational repression in each country in which such acts occur. (22 U.S.C. § 2151n, subd. (d)(14).)

EXISTING STATE LAW:

1) Does not define or address "transnational repression."

2) Establishes Cal OES within the Office of the Governor for the purpose of mitigating the effects of natural, manmade, or war-caused emergencies. (Gov. Code, § 8550)

3) Requires Cal OES to coordinate the emergency activities of all state agencies in connection with an emergency, and requires every state agency and officer to cooperate with Cal OES in rendering all possible assistance in carrying out its duties, as specified. (Gov. Code, § 8587, subd. (a).)

4) Establishes the CSTI in Cal OES, to assist the Governor in providing training to state agencies, cities, and counties in their planning and preparation for disaster. (Gov. Code, § 8588.3, subd. (b).)

5) Establishes the Curriculum Development Advisory Committee to recommend criteria for terrorism awareness curriculum content to meet the training needs of state and local emergency response personnel and volunteers, and to make recommendations pertaining to training oversight agencies for first responders. (Gov. Code, § 8588.12, subd. (a).)

6) Specifies that Cal OES shall be considered a law enforcement organization as required for receipt of specified criminal intelligence information by persons employed by Cal OES whose duties and responsibilities require the authority to access criminal intelligence information. (Gov. Code, § 8585, subd. (c).)

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The human rights of dissidents and religious and ethnic minorities are increasingly under attack from hostile governments. These governments seek to intimidate and stifle any dissent, and their tactics have ranged from harassment to threats and even murder. The rise of social media and the interconnectedness of our online presence has made the tools of harassment and intimidation easier than ever before.

   In my own Sikh community we have experienced transnational repression. The Indian government was credibly linked to the assassination of a, prominent Sikh activist in Toronto, Canada. Another assassination plot against Sikh leaders by an Indian government official took place right here in California, but thankfully law enforcement intervened to prevent more death. The United States and California should be a haven for anyone who has fled their country in search of a safer home with the protections and freedoms we have all come to know and love. Recognizing transnational repression and training our law enforcement to identify and prevent them is critical to protecting the many refugees and exiles who call our state home. AB 3027 is groundbreaking legislation that will prevent future harm, support

victims, and hold foreign governments accountable when they target Californians."

2) **Transnational Repression: "**Authorities, particularly at the federal level, are increasingly aware of the threat of transnational repression within the United States, and have taken steps to prevent the worst of it: assassination attempts, rendition, and assault. However, property damage, stalking, and intimidation still occur, causing severe disruption to people's lives. The Departments of Homeland Security, Justice, and State, as well as the Federal Bureau of Investigation (FBI) are part of a recently launched "whole-of-government" approach to this issue, which is being coordinated by the National Security Council. Significant effort has been expended to make federal law enforcement practices more responsive to the threat of transnational repression, deploy targeted sanctions to hold perpetrators accountable, and prosecute those engaging in the most aggressive campaigns. Important action has also been taken by Congress, including passage of legislation to help end the authoritarian practice of misusing Interpol to target critics." Freedom House, *Unsafe in America: Transnational Repression in the United States*. Available at: <https://freedomhouse.org/report/transnational-repression/united-states> [as of April 4, 2024].)

   Federal law does not currently define "transnational repression", however, there are two bills, pending in Congress that would define this term, improve the tracking of transnational repression incidents, and develop policies and training materials to better recognize and respond to incidents of transnational repression. (*See* H.R. 3654 – 118th Congress (2023-2024). Available at: < https://www.congress.gov/bill/118th-congress/house-bill/3654> [as of April 4, 2024]; S. 831 – 118th Congress (2023-2024). Available at: < https://www.congress.gov/bill/118th-congress/senate-bill/831/text>[as of April 4, 2024].) For example, H.R. 3654 defines "transnational repression" as "actions of a foreign government, or agents of a foreign government, involving the transgression of national borders through physical, digital, or analog means to intimidate, silence, coerce, harass, or harm members of diaspora and exile communities in order to prevent their exercise of internationally recognized human rights."

3) **Effect of this Bill:** AB 3027 seeks to provide California law enforcement with training on transnational repression recognition and response, by requiring Cal OES, in consultation with POST, to develop a training that identifies: 1) different tactics of transnational repression; 2) governments that are known to employ transnational repression; 3) best practices for appropriate local and state law enforcement prevention, reporting, and response tactics; and 4) information about communities targeted by transnational repression and misinformation that may be perpetuated by foreign governments. This bill additionally defines human rights and transnational repression for purposes of this bill. Notably, the issue of transnational repression is largely within the jurisdiction of federal law enforcement agencies. This being said, providing California law enforcement with materials on how to recognize and respond to transnational repression may promote more effectiveness responses to incidents of transnational repression at the state and local level, particularly in those instances where federal law enforcement is unware of, or otherwise not involved in, said incidents.

4) **Maintaining Consistency with Federal Law:** Given that transnational repression is largely within the jurisdiction of the federal government and that there are multiple pieces of federal legislation that would define transnational repression, establish federal training procedures, and provide guidance on transnational repression recognition and response, it may be prudent for California to wait for federal legislative guidance before enacting legislation in this space.

Defining and establishing state trainings on transnational repression before the federal government has acted carries a risk of creating statutory provisions, or state training guidelines, that are inconsistent with federal law. For example, AB 3027 defines transnational repression as "any action by a foreign government or an agent of a foreign government involving the transgression of national borders through physical, digital, or analog means in order to intimidate, silence, coerce, harass, or harm members of diaspora and exile communities, or organizations that advocate for individuals in diaspora and exile communities, in order to prevent the exercise of their human rights." This definition is substantially similar to the current definitions of transnational repression contained in the pending federal legislation. However, this definition is distinct from H.R. 2654, which does not include "organizations that advocate for individuals in diaspora and exile communities" within the definition of persons that can be subject to transnational repression. Given that both the federal bills are still in their respective houses, their definitions of transnational repression and associated recognition and response tactics may change. Due to the potential for inconsistencies between this bill and potential federal legislation, the author may wish to consider adding amendment language conditioning the effectiveness of this bill on federal action or otherwise clarifying that the Cal OES training and definition of transnational repression this bill proposes should be updated to reflect future federal legislative action. Lastly, the author may wish to remove the definition of "human rights" in this bill, since the legislative language does not contain any references to human rights.

5) **Argument in Support:** According to the California State Sheriff's Association " Ensuring that it is the policy of the state of California to protect its denizens against transnational repression and providing for appropriate training to allow governmental officials to have the necessary tools to fight this scourge are worthy goals."

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

7) **Related Legislation**: None.

8) **Prior Legislation**:

   a) AB 640 (Frazier), Chapter 177, Statutes of 2019, requires the training course developed by the advisory committee within Cal OES for district attorneys on the investigation and prosecution of sexual assault cases, child sexual exploitation cases, and child sexual abuse, to also include training on the investigation and prosecution of sexual abuse cases involving victims with developmental disabilities.

   b) SB 833 (McGuire), Chapter 617, Statutes of 2018, requires Cal OES, in consultation with specified stakeholders, to develop voluntary guidelines for alerting and warning the public of an emergency, and requires OES, through its CSTI to develop an alert and warning training, as specified.

   c) AB 2384 (Gallagher), Chapter 268, Statutes of 2016, requires Cal OES to adopt a public education program to enhance the public's knowledge about how to identify and report suspected terrorist activity.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sherriff's Association

Opposition: None

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

Amended Mock-up for 2023-2024 AB-3027 (Bains (A))

Mock-up based on Version Number 98 - Amended Assembly 4/1/24
Submitted by: Staff Name, Office Name

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

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

(a) Transnational repression against individuals and organizations that live outside their countries of origin, prominent or vocal antiregime figures, and persons who provide aid and support to dissidents and religious and ethnic minority communities is a human rights violation that seeks to stifle dissent and enhance control over exile, activist, emigrant, and diaspora communities.

(b) Transnational repression is any action taken by government officials, diplomatic personnel, and proxies through acts such as extrajudicial killings, physical assaults, unexplained disappearances, physical or online surveillance or stalking, intimidation, digital threats, such as cyberattacks, targeted surveillance and spyware, and online harassment, and coercion, such as harassment of, or threats of harm to, family and associates both in and outside the United States.

(c) Transnational repression is a threat to individuals, democratic institutions, the exercise of rights and freedoms, and national security and sovereignty.

(d) Governments, including, but not limited to, Russia, Iran, China, and India, increasingly rely on transnational repression as their consolidation of control at home pushes dissidents abroad.

(e) The spread of digital technologies provides new tools for censoring, surveilling, and targeting individuals deemed to be threats across international borders, especially dissidents pushed abroad who themselves rely on communications technology to amplify their messages, which can often lead to physical attacks and coercion by proxy, including individuals radicalized by state-sponsored propaganda or ideology that targets ethnic or religious minorities.

(f) Authoritarian actors routinely attempt to deter and silence the voices of dissident and exile communities at international fora, as documented by the United Nations Assistant Secretary-General for Human Rights in the Secretary-General's annual report on reprisals to the United Nations Human Rights Council.

(g) It is the policy of the State of California to do all of the following:

(1) Protect persons and organizations in the state from transnational repression.

(2) Pursue criminal prosecutions, as appropriate, against those who engage in transnational repression.

(3) Provide support services for victims and communities that may credibly be targeted in transnational repression.

(4) Meaningfully hold accountable foreign governments engaged in transnational repression and limit their ability to influence state policy or public opinion.

SEC. 2. Section 8588.13 is added to the Government Code, to read:

8588.13. (a) On or before July 1, 2026, the Office of Emergency Services, through its California Specialized Training Institute and in consultation with the Commission on Peace Officer Standards and Training, shall develop a transnational repression recognition and response training. The training shall be regularly updated to address emerging threats and specific information on tactics used by specific foreign governments.

(b) The training shall include, but not be limited to, all of the following:

(1) How to identify different tactics of transnational repression in physical and nonphysical forms.

(2) Those governments that are known to employ transnational repression, including not only those who use it most frequently, but also those who use it most egregiously, including, but not limited to, tools of digital surveillance and other cybertools frequently used to carry out transnational repression activities.

(3) Best practices for appropriate local and state law enforcement prevention, reporting, and response tactics.

(4) Information about communities targeted by transnational repression and misinformation that may be perpetuated by foreign governments, including, but not limited to, improper labeling of dissidents as terrorist threats and notice abuses effectuated through international law enforcement cooperatives, such as The International Criminal Police Organization -- Interpol.

~~(c) As used in this section, "transnational repression" has the same meaning as in Section 422.65 of the Penal Code.~~

(c) As used in this section, the following terms have the following meanings:

(1) "Human rights" means the free exercise or enjoyment of any right or privilege secured to an individual by the California Constitution or laws of this state or by the United States Constitution or laws of the United States in whole or in part.

(2) "Transnational repression" means any action by a foreign government or an agent of a foreign government involving the transgression of national borders through physical, digital, or analog means in order to intimidate, silence, coerce, harass, or harm members of diaspora and exile communities, or organizations that advocate for individuals in diaspora and exile communities, in order to prevent the exercise of their human rights. "Transnational repression" includes gathering information about individuals in diaspora or exile communities, or organizations that advocate for individuals in diaspora and exile communities, on behalf of a foreign government with the intent to use that information to harass, intimidate, or harm an individual in order to prevent their exercise of their human rights.

~~**SEC. 3.** Section 422.65 is added to the Penal Code, to read:~~

~~**422.65.** (a) As used in this section, the following terms have the following meanings:~~

~~(1) "Human rights" means the free exercise or enjoyment of any right or privilege secured to an individual by the California Constitution or laws of this state or by the United States Constitution or laws of the United States in whole or in part.~~

~~(2) "Transnational repression" means any action by a foreign government or an agent of a foreign government involving the transgression of national borders through physical, digital, or analog means in order to intimidate, silence, coerce, harass, or harm members of diaspora and exile communities, or organizations that advocate for individuals in diaspora and exile communities, in order to prevent the exercise of their human rights. "Transnational repression" includes gathering information about individuals in diaspora or exile communities, or organizations that advocate for individuals in diaspora and exile communities, on behalf of a foreign government with the intent to use that information to harass, intimidate, or harm an individual in order to prevent their exercise of their human rights.~~

~~(b) It is the policy of the State of California to do all of the following:~~

~~(1) Protect persons and organizations in the state from transnational repression.~~

~~(2) Pursue criminal prosecutions, as appropriate, against those who engage in transnational repression.~~

~~(3) Provide support services for victims and communities that may credibly be targeted in transnational repression.~~

~~(4) Meaningfully hold accountable foreign governments engaged in transnational repression and limit their ability to influence state policy or public opinion.~~

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3209 (Berman) – As Amended April 1, 2024

SUMMARY: Allows a court to issue an order prohibiting a person from being present on the grounds of, or any parking lot adjacent to, a retail establishment and any other retail establishments in that chain or franchise, as specified, and provides that a violation of the order would be punishable as a misdemeanor. Specifically, **this bill**:

1) Allows the court to issue the order when sentencing the defendant for any of the following offenses:

   a) Shoplifting;

   b) Theft from a retail establishment;

   c) Organized retail theft;

   d) Any vandalism of a retail establishment; or,

   e) Any assault or battery of an employee of a retail establishment while that person is working at the retail establishment.

2) Allows a prosecuting attorney, city attorney, county counsel, or attorney representing a retail establishment to petition for the order. In response to a petition, the court can impose the order under the following circumstances:

   a) Pursuant to a hearing at which the petitioner bears the burden of proving, by a preponderance of the evidence, that the respondent, on two or more separate occasions, committed one of the follow offenses within the retail establishment or on the grounds thereof:

      i) Shoplifting;

      ii) Theft from a retail establishment;

      iii) Organized retail theft;

      iv) Any vandalism of a retail establishment; or,

      v) Any assault or battery of an employee of a retail establishment while that person is working at the retail establishment.

b) The respondent is personally served with a notice of the hearing;

c) The respondent shall be entitled to representation by court-appointed counsel;

d) The court must find by a preponderance of the evidence that both of the following are true:

i) The respondent, on two or more separate occasions, committed any of the offenses within the retail establishment or on the grounds thereof; and,

ii) There is a substantial likelihood that the individual will return to the retail establishment.

3) Provides that the order shall prohibit the restrained person from entering the retail establishment, or being present on the grounds of, or any parking lot adjacent to, the retail establishment.

4) Allows, if the retail establishment is part of a chain or franchise, the court to include other retail establishments in that chain or franchise within a specified geographic range in the order.

5) Requires, when determining whether to impose the order, the court to consider whether the retail establishment is the only place that sells food, pharmaceuticals, or other basic life necessities within one mile of where the individual resides, or otherwise creates undue hardship for the individual.

6) Makes a violation of the order a crime, punishable as a misdemeanor, punishable by punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding $1,000, or by both.

7) Authorizes an officer to arrest a person for a violation of the order instead of releasing the person pursuant to a written notice to appear.

EXISTING LAW:

1) States that a person who commits any of the following acts is guilty of organized retail theft:

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

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

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

d) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of these acts or any other statute defining theft of merchandise. (Pen. Code, § 490.4, subd. (a).)

2) Punishes organized retail theft, as follows:

   a) If violations of the provisions directed at acting in concert or as an agent are committed on two or more separate occasions within a one-year period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that period exceeds $950, the offense is punishable as an alternate felony-misdemeanor (a "wobbler");

   b) Any other violation of the provisions directed at acting in concert or as an agent is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year; and,

   c) A violation of the recruiting, coordinating, organizing, supervising, directing, managing, or financing provision is punishable as a wobbler. (Pen. Code, § 490.4, subd. (b).)

3) States that every person who steals, takes, carries, leads, or drives away the personal property of another is guilty of theft. (Pen. Code, § 484, subd. (a).)

4) Defines grand theft as theft of money, labor, real or personal property of a value exceeding $950. Grand theft is a wobbler, punishable by imprisonment in a county jail not exceeding one year, or as a felony by imprisonment in the county jail for 16 months, two years, or three years (Pen. Code, §§ 487, 489.)

5) Defines "Petty theft" as obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed $950 and states that petty theft is a misdemeanor, punishable by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding six months, or both. (Pen. Code, §§ 490, 490.2, subd. (a).)

6) Provides that the value of the money, labor, real property, or personal property taken exceeds $950 over the course of distinct but related acts, the value of the money, labor, real property, or personal property taken may properly be aggregated to charge a count of grand theft, if the acts are motivated by one intention, one general impulse, and one plan. (Pen. Code, § 487, subd. (e).)

7) Defines "Shoplifting" as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed $950. Shoplifting shall be punished as a misdemeanor, except as specified. (Pen. Code, § 459.5.)

8) Provides that every person who defaces, damages or destroys real or personal property that is not their own, is guilty of vandalism. If the amount of the damage is less than $400, the offense is a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, by a fine of $1,000, or by both. If the amount of the damage is $400 or more, the offense is a felony, punishable by imprisonment in a county jail not exceeding one year, by a fine of not more than $10,000, or both. (Pen. Code, § 594 subd. (b).)

9) Provides that a person is guilty of trespass where the person enters private property, whether or not the property is open to the public, and the following circumstances apply:

   a) The person has been previously convicted of a violent felony on the property, as defined;

   b) The owner, the owner's agent, or lawful possessor, has requested a peace officer to inform the person that the property is not open to him or her;

   c) The peace officer has informed the person that he or she may not enter the property and informs the person that the notice has been given at the request of the owner or other authorized person; and,

   d) The person fails to leave the property upon being asked to do so. (Pen. Code, §602, subd. (t).)

10) Provides that any intentional and knowing violation of a protective order is a misdemeanor crime punishable by up to one year in county jail, by a fine of up to $1,000, or both. (Pen. Code, § 273.6.)

11) Provides that, unless a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, by fine not exceeding $1,000, or by both. (Pen. Code, § 19.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 3209 would authorize a court to impose a Retail Crime Restraining Order for a theft offense, vandalism within the store, or battery of an employee within the store. With the rise in retail theft and robbery in California, solutions needs to find the balance of strengthening enforcement while not perpetuating the underlying causes of retail theft, such as poverty. Addressing the issues of retail theft, vandalism, and assaults on employees are important to ensure safety in our communities and businesses. This bill strikes a balance between providing a necessary enforcement tool to keep stores, customers, and workers safe and ensuring that the consequences fit the offense."

2) **Effect of this Bill**: This bill would allow a court, when sentencing a defendant for specified theft, to consider issuing a restring order prohibiting the defendant from entering the retail theft establishment. This bill would also allow a prosecuting attorney, city attorney, county counsel, or attorney representing a retail establishment to file a petition requesting a retail crime restraining order.

   The restraining orders created by this bill would prohibit a person from entering a retail establishment, or being present on the grounds of, any parking lot adjacent to the retail establishment. This bill would give a court authority to include in the order other retail establishments in the chain or franchise within a specific geographic range. This bill contains no definition for "specific geographic range," and as such, this consideration would be left to the discretion of the court. This bill also requires, when imposing a retail crime restraining order, the court to consider whether the retail establishment is the only place that sells food,

pharmaceuticals, or other basic life necessities within one mile of where the individual resides, or whether the order otherwise creates undue hardship for the individual.

The order created by this bill would remain in effect for a period of up to two years. Violation of the order would be a misdemeanor, punishable by a fine of up to $1,000 or six months imprisonment in county jail, or both. In addition, this bill would not require an officer making an arrest to cite and release the person with a notice to appear for violation of the restraining order. Instead, the officer would have the discretion to arrest the person without a warrant and book the person into custody.

Orders issued pursuant to a petition can only be issued after a noticed hearing in which the respondent would be entitled to court-appointed counsel. The petitioner would have the burden of proving, by a preponderance of the evidence, that the respondent on two or more separate occasions committed an offense within the retail establishment. Notably, in these instances, the person did not have to have a conviction –or even be charged with the prior offenses. The petitioner only need to prove "by a preponderance of the evidence" that the respondent, on two or more separate occasions, committed theft within the retail establishment or on the grounds thereof and that there is a "substantial likelihood" that the individual will return to the retail establishment. This bill does not require that the petitioner prove the person was ***convicted*** of two or more thefts, just that the thefts were ***committed***. This distinction deserves considerable attention, given that the restraining order created by this bill would create a substantial restriction on a person's liberty and allow officers to arrest and book a person for violating the order.

Given the disparities in the criminal justice system[1], the Legislature should consider the fact that this bill will have the unintended consequence of, intentionally or unintentionally, excluding low income, unhoused, LGBTQ, and people of color from public spaces.

3) **Restraining Orders**: There are several different types of restraining orders, including domestic violence restraining orders (DVROs), civil harassment restraining orders, elder abuse restraining orders, gun violence restraining orders (GVRO), workplace violence protective orders, and school violence protective orders. These restraining orders are usually requested by the victim. (Judicial Branch of California, *Types of Restraining Orders*. Available at <https://selfhelp.courts.ca.gov/types-restraining-orders>.) In addition, police can seek emergency protective orders (EPOs) and courts can issue criminal protective orders as part of a criminal case. (*Ibid.*) An EPO usually last for a short period of time, and can order a defendant stay a certain distance away from people or places by the order. (*Ibid.*) A criminal protective order stays in place throughout the criminal proceedings, and can be dismissed if the case is dismissed. A judge can issue a new criminal protective order at the time of sentencing if the person is convicted. A criminal protective order can remain valid for up to 10 years. (*Ibid.*) Generally, violation of a restraining order is a misdemeanor punishable by up to one year in county jail, by a fine of up to $1,000, or both. (Pen. Code, § 273.6.)

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[1] (See, National Conference of State Legislatures, *Racial and Ethnic Disparities in the Criminal Justice System*. Available at: <https://www.ncsl.org/civil-and-criminal-justice/racial-and-ethnic-disparities-in-the-criminal-justice-system>.)

4) **Argument in Support**: According to the *California Retailers Association*, "Retail theft has become an increasingly prevalent problem across California, with detrimental effects on both local businesses and consumers. The significant losses incurred by retailers due to theft not only threaten their financial stability, but also jeopardize their ability to provide essential goods and services to the communities they serve. Moreover, the rise in organized retail crime has led to safety concerns for both employees and customers, further exacerbating the problem.

"The introduction of Retail Theft Restraining Orders presents a proactive and effective approach to combatting this growing issue. By enabling retailers to obtain civil restraining orders against habitual offenders, this legislation empowers businesses to protect themselves and deter potential thieves from engaging in criminal activities. Additionally, RTROs provide law enforcement with valuable tools to address repeat offenders, disrupt organized retail crime networks, and enhance public safety.

"Furthermore, the implementation of RTROs offers a balanced solution that upholds the rights of both retailers and individuals while holding accountable those who repeatedly engage in criminal behavior. By targeting habitual offenders and providing avenues for rehabilitation and support, this legislation not only addresses the symptoms of retail theft, but also tackles the underlying issues contributing to criminal behavior."

5) **Argument in Opposition**: According to *Vera California,* "AB 3209 would create a harmful new process whereby attorneys representing retailers—not district attorneys nor individual victims—could seek a two-year "retail theft restraining order" for petty theft or vandalism. Such an order could be sought either at sentencing (after conviction), or merely if someone has been arrested (but not convicted) of such an offense twice. This would expand criminal consequences based on a lower standard of proof (preponderance of the evidence, rather than beyond a reasonable doubt) and eliminate key procedural protections in the case of restraining orders sought by attorney representing retailers. Weakening these key tenets of both state and federal law raises significant concerns.

"The bill would also interrupt the ability of assistant district attorneys to effectively and justly carry out their duties. Assistant district attorneys are hired by prosecutor's offices, receive job-specific training, and swear oaths to uphold their additional burdens before obtaining the power to request criminal protective orders on behalf of the district attorney under California law. This discretion is bestowed upon prosecutors for a reason—because issuance of criminal charges and orders is within their mandate to promote safety and justice in the community. By expanding this power to attorneys representing retail establishments, AB 3209 improperly grants quasi-law enforcement authority to lawyers who represent private interests rather than public safety, and it potentially gives power to retail chain lawyers that not even criminal judges have.

"Additionally, this bill subverts the intent of criminal protective orders—which is to protect *people*. Allowing such orders to apply to retail establishments or chains of retail establishments instead of individuals is misaligned with the legislative intent of Cal Penal Code §136.2. Prosecutors and retail stores have historically combatted theft using theft or trespass charges. Those tools are still available, and they are more than sufficient for non-violent theft and vandalism offenses. For offenses involving violence against retail workers, the harmed employee still has all rights available to them as a crime victim—but should not

have more rights than any other victim in the community.4 This legislation elevates well-resourced retail chains above other victims needing protection, including both victims of violent crime and smaller retail stores without the means to hire counsel.

"The restraining order would also apply to any store within a franchise or chain, which suggests that retail workers may be tasked with enforcing the restraining order based on photos of someone who may have visited another chain store within the past two years. A large majority of wrongful convictions stem from eyewitness misidentifications—and the problem only worsens by over 50 percent for cross racial identifications—raising the specter of racial profiling and dangerous consequences.

"Further, by permitting law enforcement officers to arrest, as opposed to cite and release, those suspected of violating a restraining order, AB 3209 will not make our communities safer. Years of research shows that pretrial detention decreases community safety in the long run—a landmark study of more than 1.5 million cases found that any amount of time in jail beyond 23 hours makes a person more likely to be arrested again in the future. This is because even a short period in jail can result in someone losing their job, their housing, or custody of their children.

"Finally, AB 3209 may worsen racial disparities by expanding warrantless detentions by law enforcement officers. A long trail of evidence indicates that when law enforcement has expanded authority to detain individuals for low-level offenses, as for example in the case of low-level traffic stops, racial disparities may ensue. For sake of safety *and* justice, policing should follow procedures that ensure accountability, including requiring warrants for low-level offenses.

"When we blame the wrong problems, we miss the right solutions. As sensational claims about organized retail theft have been debunked and data shows that *retail theft is not rising statewide*, responses need to be tailored to the facts. The legislature should respond to concerns from the community and local businesses with evidence-backed solutions.

"Increasing arrests for non-violent retail crimes will do little to make our communities safer. Unlike the community-based programs funded by Proposition 47, which have reduced recidivism, sending people to jail and prison makes them more likely to reoffend, while costing local governments dearly amid a budget deficit.

"To deter and address retail theft, we need to take on its drivers. When people shoplift as part of an organized retail theft operation, law enforcement should investigate and hold accountable the people who profit most from these sophisticated operations. However, we know from past experience that arresting low-level offenders to find those driving sophisticated organized retail theft will not be particularly successful. Legislators can also help by regulating online marketplaces to make it harder to sell stolen goods. Supporting retail workers by requiring employers to enhance pay, increase staffing (instead of using self-checkout or surveillance based technology), and provide training can also help.

"When people are arrested for stealing out of need, we need to make sure they don't need to do it again. Instead of reducing public safety through unnecessary criminalization, we can effectively intervene by meeting their needs and connecting them to stable housing, jobs, and other treatment and services. Cities around the country have effectively employed this model,

while similar models have proved effective in California thanks to community funding created by Prop 47.

"It is long past time to reject the reach for "tough" policies in favor of real solutions."

6) **Related Legislation**:

a) AB 1802 (Jones-Sawyer) would eliminate the sunset date for organized retail theft. AB 1802 is pending in this Committee.

b) AB 1960 (Soria) would reenact sentence enhancement for theft offenses when the loss exceeds specified dollar amounts. AB 1960 is pending in this Committee.

c) AB 1990 (W. Carrillo) would authorize peace officers to make a warrantless arrest for misdemeanor shoplifting, as specified. AB 1990 is pending in this Committee.

d) AB 1779 (Irwin) would allow, a prosecutor to bring a case in any county where theft offenses occurred for offenses that occur in multiple jurisdictions, as specified. AB 1779 is pending in this Committee.

e) AB 1787 (Villapudua) would among other things, repeal the sunset provision in the organized retail theft statute, thereby extending the crime indefinitely. AB 1787 is pending in this Committee.

f) AB 1794 (McCarty) states the intent of the Legislature to enact legislation relating to theft. AB 1794 is pending in this Committee.

g) AB 2406 (Davies) would make it a felony, punishable by imprisonment in state prison, to use two or more minors to engage in theft related offenses. AB 2406 is pending in this Committee.

h) AB 2438 (Petrie-Norris) would make any person who acts in concert with two or more persons to take, attempt to take, damage, or destroy any property in the commission or attempted commission of a felony punishable by an additional and consecutive term of imprisonment of one, two or three years. AB 2438 is pending in this Committee.

i) AB 2943 (Zbur) would, among other things, extend the organized retail theft statute until January 2031, and make it a crime for any person to possess property unlawfully that was acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property is not possessed for personal use and the person has intent to sell, exchange, or return the merchandise for value, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value, and the value of the possessed property exceeds $950. AB 2943 is pending in this committee.

j) SB 923 (Archuleta) would revise the definition of shoplifting to require an intent to steal retail property or merchandise and would require a person convicted of petty theft or shoplifting, if the person has two or more prior convictions for specified theft-related offenses, to be punished by imprisonment in the county jail for up to one year, or for 16

months, or two or three years. SB 923 is pending in Senate Public Safety Committee.

k) SB 928 (Niello) would remove the sunset date for organized retail theft. SB 928 is pending in Senate Public Safety Committee.

l) SB 982 (Wahab) would remove the sunset date for organized retail theft. SB 982 is pending in Senate Appropriations Committee.

m) SB 1416 (Newman) would create sentencing enhancements for selling, exchanging, or returning for value, or attempting to sell, exchange, or return for value, any property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property value exceeds specified amounts and would make these enhancements apply to any person acting in concert with another person to commit these offenses. SB 1416 is pending in Senate Public Safety Committee.

7) **Prior Legislation**:

a) AB 329 (Ta), of the 2023-2024 Legislative Session, would have expanded the territorial jurisdiction in which the Attorney General can prosecute specified theft offenses and associated offenses connected together in their commission to include cargo theft. AB 329 failed passage in this Committee.

b) AB 335 (Alanis), of the 2023-2024 Legislative Session, would have required the Little Hoover Commission to submit a report to the Legislature describing the reported retail thefts, as specified. AB 335 was held under submission in Assembly Appropriations Committee.

c) AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, extended the sunset date for organized retail theft through January 1, 2026.

d) AB 23 (Muratsuchi), of the 2023-2024 Legislative Session, would have decreased the threshold amount for grand theft from $950 to $400. The hearing on AB 23 was canceled the request of the author.

e) AB 329 (Ta) would have imposed higher penalties for shoplifting and petty theft if the crime is committed by a non-citizen of the state of California. AB 329 failed passage in this committee.

f) AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022, authorized the misdemeanor arrest of a person that has a prior arrest, citation or conviction for theft, as specified, and authorized a city or county prosecuting authority or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses.

g) AB 2356 (Rodriguez), Chapter 22, Statues of 2022, expanded the definition of "grand theft" where the aggregate amount taken by all participants exceeds $950.

h) AB 1603 (Salas), of the 2021-2022 Legislative Session, would have reduced the threshold amount for petty theft and shoplifting to be punished as a misdemeanor from

$950 to $400. AB 1603 failed passage in this Committee.

i) AB 2390 (Muratsuchi), of the 2021-2022 Legislative Session, would have authorized the aggregation of the value of property from one or more acts of theft or shoplifting, as specified. AB 2390 failed passage in this Committee.

j) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft and expanded jurisdiction to prosecute cases of theft or receipt of stolen merchandise.

REGISTERED SUPPORT / OPPOSITION:

Support

Calchamber
California Retailers Association
League of California Cities

Oppose

Vera Institute of Justice

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3241 (Pacheco) – As Introduced February 16, 2024

SUMMARY: Establishes minimum standards for the use of a canine by law enforcement to search for and/or apprehend a suspect; requires the Commission on Peace Officer Standards and Training (POST) to develop minimum standards for the use of canines by law enforcement; and requires each law enforcement agency to publish on its website a report on the use of canines by the agency. Specifically, **this bill**:

1) Requires law enforcement agencies to annually publish on their websites a report on the number of canine units in the agency, the number of deployments, the number of interventions, and the number of incidents of use of force involving a canine.

2) Requires the agency to report only information known to the agency at the time of the report.

3) Requires POST to develop uniform, minimum guidelines regarding the use of canines by law enforcement, including all of the following:

   a) An explanation of the legal standards on the use of force with a canine, as specified;

   b) An explicitly stated requirement that officers carry out duties, including use of force with respect to canines, in a manner that is fair and unbiased;

   c) Minimum patrol performance standards, including competencies in obedience, search, apprehension, and handler protection;

   d) Minimum detection performance standards, including competencies in control, alert, and odor detection;

   e) Requirements that all patrol canine handlers shall be equipped with a supplemental method of aiding with the release of a bite including, but not limited to, a breaker bar, e-collar, pinch collar or other device;

   f) A requirement that, unless it would otherwise increase the risk of injury or escape, a clearly audible warning announcing the potential release of a canine if the suspect does not surrender will be given prior to the release, if feasible;

   g) A requirement that officers allow a reasonable opportunity to a suspect to comply after a warning, if feasible;

   h) Factors for evaluating and reviewing all canine use of force incidents;

i) The role of supervisors in the review of use of force canine applications; and,

j) A requirement that any canine team that does not meet the agency's required training regimen and guidelines will be prohibited from field assignment with the canine until such training and guidelines have been successfully satisfied.

4) Requires a law enforcement agency, on or before July 1, 2025, to maintain a policy for the use of canines by the agency that, at a minimum, complies with POST standards, as specified.

5) Provides that each canine team shall be required to meet and maintain the standards in the agency's policy prior to deployment.

6) Requires a law enforcement agency to conduct a regular review and update of its policy.

7) Requires POST to certify courses of training for all law enforcement canine handlers and those law enforcement supervisors directly overseeing canine programs in the use of canines by law enforcement.

8) Requires the training courses to include, at a minimum, both an explanation of POST standards, as specified, and the requirements for officers, investigators, and supervisors to demonstrate knowledge and understanding of their law enforcement agency's canine policy.

9) Requires all courses to be certified by POST before being implemented.

10) Requires a law enforcement agency to establish a training regimen that includes a course certified by POST.

11) Requires the release of a canine to search for or apprehend a suspect to be based upon the handler's reasonable belief that the suspect has committed, is committing, or is threatening to commit a serious offense under any of the following conditions:

a) There is a reasonable belief that the suspect poses an imminent or immediate threat of violence or serious harm to the public or an officer;

b) The suspect is physically resisting or threatening to resist arrest and the use of a canine reasonably appears necessary to overcome such resistance; or,

c) Officers reasonably believe the suspect is concealed in an area where entry by a person would pose a threat to the safety of officers or the public.

12) Requires the POST guidelines to stress that the use of canines by law enforcement personnel is of important concern to the community and law enforcement and that law enforcement should safeguard the life, dignity, and liberty of all persons, without prejudice to anyone.

13) Provides that POST guidelines shall be a resource for each agency executive to use in the creation of canine policy that the agency is required to adopt and that reflects the needs of the agency, the jurisdiction it serves, and the law.

14) Defines "deployment" as the removal of the canine from the police car for any legitimate law enforcement purpose, but does not include allowing the canine a break, training the canine, or using the canine in a demonstration.

15) Defines "intervention" as any use of a canine that results in the surrender or apprehension of a suspect by the mere presence of the canine, which may be established by witness statements or clearly articulated facts.

16) Defines "force incident" as a bite or injury to a person caused by a canine during a deployment.

EXISTING LAW:

1) Establishes POST. (Pen. Code, § 13500, et seq.)

2) Provides that POST has, among others, the power to develop and implement programs to increase the effectiveness of law enforcement and, when those programs involve training and education courses, to cooperate with and secure the cooperation of state-level peace officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs. (Pen. Code, § 13500.3, subd. (e).)

3) Requires POST to submit annually a report to the Legislature on the overall effectiveness of any additional funding for improving peace officer training, including the number of peace officers trained by law enforcement agency, by course, and by how the training was delivered, as well as the training provided and the descriptions of the training. (Pen. Code, § 13500.5, subd. (a) & (b).)

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

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

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

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

6) Prohibits a peace officer from using deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to

another person. (Pen. Code, § 835a, subd. (c)(2).)

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "While case law, training and policy guidelines, and general legal principles apply to the development and deployment of law enforcement K9 programs, there are not statewide standards to ensure consistency across a myriad of different programs. AB 3241 resolves this issue by setting clear and comprehensive statewide standards specific to law enforcement K9 programs."

2) **Police Canine Use and Deployment Policies:** Law enforcement agencies view the use of police canines as indispensable to protecting the public and law enforcement personnel. According the Los Angeles County Sheriff's Department,

> The prompt and proper utilization of a trained canine team has proven to be a valuable use of a unique resource in law enforcement. When properly used, a canine team greatly increases the degree of safety to citizens within a contained search area, enhances individual officer safety, significantly increases the likelihood of suspect apprehension, and dramatically reduces the amount of time necessary to conduct a search.

(Field Operations Direction (FOD): 86-037 Canine Deployment, Search and Force Policy, at p. 2; see also VanSickle et al., When Police Violence Is a Dog Bite, The Marshall Project (Oct. 2, 2020) <https://www.themarshallproject.org/2020/10/02/when-police-violence-is-a-dog-bite> [last viewed Apr. 4, 2024] [a joint investigation with USA Today, AL.com, and the Invisible Institute] and Kaste, Videos Reveal A Close, Gory View of Police Dog Bites, NPR (Nov. 20, 2017) <https://www.npr.org/2017/11/20/563973584/videos-reveal-a-close-gory-view-of-police-dog-bites> [last visited Apr. 4, 2024].) Despite their importance to law enforcement, the state has offered very little direction to local law enforcement on the use and deployment of police canines.

POST has minimum training and performance standards for police canines. According to POST, "Patrol K-9 teams should meet minimum standards with regards to obedience, search, apprehension, and handler protection." (POST Law Enforcement K-9 Guidelines, p. xiii <https://post.ca.gov/Portals/0/post_docs/publications/K-9.pdf> [last viewed Apr. 4, 2024].) POST apprehension guidelines require, "[u]nder the direction of the handler and

while off leash, the K-9 will pursue and apprehend a person acting as a 'suspect' (agitator/decoy)." It adds, "The K-9 team will demonstrate a pursuit and call off prior to apprehension. On command from the handler, the K-9 will pursue and apprehend the agitator/decoy. From a reasonable distance and on verbal command only, the K-9 will cease the apprehension." (Id. at p. 2.) POST detection guidelines advise "[t]he evaluator [to] be fully apprised of the pertinent agency policies and regulations prior to commencement of the exercise. The 'correct' response or reach of the handler, the dog, or the two acting together, may differ from agency to agency, based on prevailing agency policy." (Id. at 5.) The detection exercise duplicates the apprehension procedure, "except in [the detection] scenario the agitator/decoy will not stop and the handler will send the dog to pursue, contact, and apprehend the agitator decoy." (Ibid.) The exercise requires the police canine to "contact and control the agitator/decoy until called off by the handler." (Ibid.) "During the apprehension and on verbal command only from the handler, the dog will disengage the contact." (Ibid.)

These limited training and guidelines leave local law enforcement agencies to come up with their own use and deployment practices and procedures. Some agencies have limited the use of police canines. The Oakland Police Department, for example, provides that a police canine may be used "[t]o search for and assist in the apprehension of criminal suspects when there is reasonable suspicion to believe they committed a forcible violent crime, burglary, or a weapon-related offense"; or "[t]o pursue and apprehend criminal suspects who are attempting to actively evade arrest" for a forcible violent crime, burglary, or a weapon-related offense." (Office of Chief of Police, Oakland Police Department, Revised DGO K-9, Department Canine Program (Aug. 1, 2006) p. 1 <http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak059998.pdf> [last visited Apr. 4, 2024] [emphasis in original].)

Similarly, the Los Angeles County Sheriff's Department provides for police canine deployment for "[s]earches for felony suspects, or armed misdemeanor suspects, who are wanted for SERIOUS crimes and the circumstances of the situation presents a clear danger to deputy personnel who would otherwise conduct a search without a canine." (FOD: 86-037, supra, at p. 2 [emphasis in original].) The department's guidelines further provide, "Searches for suspects wanted for Grand Theft Auto shall be limited to those who are reasonably believed to be adults, and are reasonably believed to be the driver of a confirmed stolen vehicle." (Ibid.) Despite these limitations, the Special Counsel to the department recommended "winnowing the list of crimes for which canines should be used." (33rd Semiannual Report of Special Counsel, Los Angeles County Sheriff's Department (Sept. 2013) p. 14 <https://scvtv.com/pdf/lasd100713.pdf> [last visited Apr. 4, 2024].)

This bill would, among other things, require POST to develop uniform, minimum guidelines regarding the use of canines by law enforcement, including: an explanation of the legal standards on the use of force with a canine; an explicitly stated requirement that officers carry out duties, including use of force with respect to canines, in a manner that is fair and unbiased; minimum patrol performance standards, including competencies in obedience, search, apprehension, and handler protection; minimum detection performance standards, including competencies in control, alert, and odor detection; requirements that all patrol canine handlers shall be equipped with a supplemental method of aiding with the release of a bite including, but not limited to, a breaker bar, e-collar, pinch collar or other device; a requirement that, unless it would otherwise increase the risk of injury or escape, a clearly audible warning announcing the potential release of a canine if the suspect does not surrender

will be given prior to the release, if feasible; a requirement that officers allow a reasonable opportunity to a suspect to comply after a warning, if feasible; factors for evaluating and reviewing all canine use of force incidents; the role of supervisors in the review of use of force canine applications; and, a requirement that any canine team that does not meet the agency's required training regimen and guidelines will be prohibited from field assignment with the canine until such training and guidelines have been successfully satisfied.

3) **Lack of Comprehensive Data:** Efforts to examine the effect and scope of police canine use by law enforcement agencies are stymied by a familiar problem: insufficient data. There currently is no statewide data on the use of police canines. No entity is charged with collecting information that would help contextualize existing practices.

   For example, supporters and opponents of the use of police canines by law enforcement dispute the effectiveness of call-off procedures. Police dog-handlers "point out that a dog can be called back after it's been unleashed — unlike the deployment of a Taser or the firing of a gun." (Kaste, supra.) Indeed, the Los Angeles County Sheriff's Department reasonably requires a handler to "call off the dog at the first moment the canine can be safely released." (FOD: 86-037, supra, at p. 2.)

   But opponents point to instances where police canines do not obey call-off commands by their handlers. One report states, "Although training experts said dogs should release a person after a verbal command, we found dozens of cases where handlers had to yank dogs off, hit them on the head, choke them or use shock collars." (VanSickle et al., supra.) According to another, "Privately, handlers often talk about having trouble getting a dog to 'out,' or open its jaws. It's a concern that comes up on discussion boards, and in this K9 training video." (Kaste, supra.)

   Law enforcement does not appear to collect data on the frequency with which police canines obey call-off commands. Some agencies require officers to document how long a bite lasted, but that does not appear to be a consistent practice throughout the state. (See FOD: 86-037, supra, at p. 2 [providing that "[w]ithout exception, a reference to the duration of the canine's contact with a suspect shall be included in the handler's supplemental report"].)

   This bill would require law enforcement to collect and report its website data on the number of canine units in the agency, the number of deployments, the number of interventions, and the number of incidents of use of force involving a canine.

4) **Department of Justice Data on Use of Force Incidents Involving Police Canines:** According to data collected by the DOJ's Criminal Justice Statistics Center, law enforcement used a police canine in a use of force incident that resulted in serious bodily injury or death 76 times in 2020, accounting for 10.2% of the total such use of force incidents by law enforcement.[1] (DOJ, Use of Force Incident Reporting (2021) p. 30 <https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/USE OF FORCE 2020.pdf> [last visited Apr. 1, 2024].) Of those 76 incidents, 49 were against persons of color—9 Black individuals, 33 Hispanic individuals, 3 Asian/Pacific Islander individuals, and 2 multi-race individuals.

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[1] The DOJ's Use of Force Incident Reporting contains only incidents where use of force resulted in serious bodily injury or death. DOJ, Use of Force Incident Reporting (2021) p. 1 <https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/USE OF FORCE 2020.pdf> [last visited Apr. 4, 2024].)

(*Id.* at 34 [2 individuals are identified as "other"].) In 29 of the 76 incidents, the officer did not perceive that the civilian was armed. (*Id.* at 37.) The civilian was later confirmed armed in 24 of the 76 of incidents. (*Id.* at 39.) In two incidents, the civilian did not resist. (*Id.* at 40.)

According to the raw data on use of force incidents in 2020, 14 use of force incidents involving canine contact also involved the discharge of a firearm by the officer, six of which resulted in fatalities and three of which resulted in critical or serious injuries. Of those 14 incidents involving the use of both a canine and a firearm, eight were against people of color. (2020 URSUS Use of Force Data.)

In 2021, law enforcement used a canine in a use of force incident that resulted in serious bodily injury or death 77 times, or 11.7% of the total use of force incidents by law enforcement against a civilian. (DOJ, Use of Force Incident Reporting (2021) p. 31 <https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/USE OF FORCE 2021.pdf> [last visited Apr. 1, 2024].) Of those 77 incidents, 50 were against persons of color—13 Black individuals, 36 Hispanic individuals, and 1 American Indian individual. (*Id.* at 35.) In 37 of the 77 incidents, the officer did not perceive that the civilian was armed. (*Id.* at 38.) The civilian was later confirmed armed in 27 of the 77 incidents. (*Id.* at 39.) In five of those incidents the civilian did not resist. (*Id.* at 40.)

There were 63 use of force incidents involving a canine reported to DOJ in 2022, which amounted to 10.3% of the total use of force incidents. (DOJ, Use of Force Incident Reporting (2022) p. 38 <https://data-openjustice.doj.ca.gov/sites/default/files/2023-06/USE OF FORCE 2022f.pdf> [last visited Apr. 1, 2024].) Arrests were made in 62 of the 63 incidents, and 49 of the 63 incidents were against people of color—11 Black individuals, 36 Hispanic individuals, and 2 Asian/Pacific Islander individuals. (*Id.* at p. 32.) The officer did not perceive the individual to be armed in 22 of the 63 incidents. (*Id.* at p. 35.) The civilian was later confirmed to be armed in 26 of the 63 incidents. (*Id.* at p. 36.)

5) **Past Use of Police Dogs:** In July 2022, the California Task Force to Study and Develop Reparations Proposals for African Americans issued an interim report documenting the history of, among other things, the enslavement, racial terror, political disenfranchisement, and mistreatment of African Americans in the justice system. The report briefly discussed the role of police dogs in that history:

> Slave patrols also used dogs to attack enslaved people by biting them but also to instill fear, and used bloodhounds to track down enslaved people. Freedom seekers learned to run without shoes and put black pepper in their socks to make the slave patrols' bloodhounds sneeze and throw them off their scent.
>
> Much like slave patrols, police have continued to use dogs against African Americans in the 20th century through the present. Police used dogs against demonstrators during the civil rights movement. The United States Department of Justice noted in its 2015 report that the Ferguson Police Department "exclusively set their dogs against black individuals, often in cases where doing so was not justified by the danger presented." In Baton Rouge, Louisiana, police dogs bit at least 146 people from 2017 to 2019 and almost all of whom were Black…
>
> In the 1980s, the Los Angeles Police Department, which is the largest police department

> in California and one of the largest in the country, referred to Black suspects as "dog biscuits." Victims of police dogs sued and alleged that the department disproportionately used dogs in minority neighborhoods, which resulted in police dogs inflicting 90 percent of their reported bites on African Americans or Latinos. In 2013, the Special Counsel to the Los Angeles County Sheriff's Department, which is the largest sheriff's department in California and the country, found that African Americans and Latinos comprised 89 percent of the total individuals who were bitten by the department's dogs from 2004 to 2012. During the same time, the Special Counsel found that the number of African Americans that police dogs bit increased 33 percent.

(California Task Force to Study and Develop Reparations Proposals for African Americans, Interim Report (June 2022) p. 376, 380 < https://oag.ca.gov/system/files/media/ab3121-reparations-interim-report-2022.pdf> [last visited Apr. 4, 2024].)

There remain "stark racial disparities in police interactions and use of force, particularly for Black people." (Premkumar et al., Police Use of Force and Misconduct in California, PPIC (Oct. 2021) <https://www.ppic.org/publication/police-use-of-force-and-misconduct-in-california/> [last visited Apr. 4, 2024].)

6) **Police Canine Bites:** Given the history and contemporary uses of police canines by law enforcement, the question is whether this particular law enforcement tool is unique.

Police canines are considered less than lethal. Law enforcement hopes that the presence of a canine will de-escalate a situation by intimidating the sought individual with the threat of a canine attack. The fear is supposed to make the person submit. If they do not surrender, and occasionally even when they do, law enforcement releases the canine who subdues the individual by biting them.

According to canine handlers, a police canine's bite should not cause serious injury. (VanSickle et al., supra.) However, as one report observed, "police videos shows some officers using biting dogs against people who show minimal threat to officers, and a degree of violence that would be unacceptable if inflicted directly by the officers." (Kaste, supra.).) A police canine's bite causes more damage than a domestic dog bite. According to one study, "Police dog bite victims were usually bitten multiple times…were bitten more often in the head, neck, chest, and flank. They were hospitalized more often, underwent more operations and had more invasive diagnostic tests." (https://www.sciencedirect.com/science/article/pii/S1572346106000596.)

Indeed, police canine bites are "strong enough to punch through sheet metal" and have been compared to shark attacks. (VanSickle et al., supra.) One article argued that "the police canine needs to be reconceptualized as the physical equivalent of a police baton with spikes three centimeters in length, the approximate length of German Shepherd teeth (i.e., a spiked impact weapon capable of sustained puncturing, compression-pressure, pulling and tearing)." (McCauley et al., The Police Canine Bite: Force, Injury, and Liability, The Center for Research in Criminology (Nov. 2008) <k9-crc-report-11-08-final-for-pds_1_.pdf (iup.edu)> [last visited Apr. 4, 2024].) By comparison, for the purpose of DOJ use of force investigations, a deadly weapon includes a billy or blackjack. (Gov. Code, § 12525.3, subd. (a)(1).)

Moreover, individuals suspected of a crime are not the only ones injured by police canines. Occasionally, a police canine bites an individual who is not a suspect of a crime. (VanSickle et al., supra.) Sometimes, a law enforcement officer is the victim. According to NPR, "In 2016, California's workers compensation system recorded 190 law enforcement officers reporting on-the-job injuries involving police dogs." (Kaste, supra.)

7) **Limitations on Use of Force by Law Enforcement:** The legislature has acted to limit the authority of law enforcement to use specific types of force. Following the death of George Floyd in Minneapolis, MN, California banned the use of carotid restraint control holds by law enforcement. (Gov. Code, § 7286.5; AB 96 (Gipson), Chapter 324, Statutes of 2020.) According to the DOJ's Use of Force Incident Reporting data, these holds resulted in serious bodily injury or death at similar rates as police canines, and the racial disparities among those who suffered the injuries mirrored those of police canines. For example, of the 60 carotid restraint hold incidents in the year before the ban, 37 were used on people of color (DOJ, Use of Force Incident Reporting (2019) p. 34 <https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/USE OF FORCE 2019.pdf> [last visited Apr. 4, 2024].)

8) **Argument in Support**: According to the *California Police Chiefs Association*, the bill's sponsor, "AB 3241 represents a significant step forward in standardizing law enforcement K-9 programs to build trust and accountability between agencies and the communities they serve. This bill sets clear and comprehensive standards for law enforcement K-9 programs to ensure that all personnel are safely deploying canines while also prioritizing the protection of both canine handlers and the public.

"AB 3241 is reflective of the law enforcement community's unwavering commitment to ensure the highest level of training and accountability for K-9 programs. This bill focuses on four key areas: training, policy standards, legal principles, and reporting requirements:

1. Training: Requires the Commission on Peace Officers Standards & Training (POST) to develop uniform guidelines for creation of each agency's department policies to ensure consistency. Also requires that POST certify all training courses and set a minimum standard for what must be taught.
2. Policy Standards: Sets consistent policies across law enforcement agencies for the deployment and management of K-9 units.
3. Legal Principles: Addresses legal considerations to ensure the use of any canine will be in response to violent crime or to otherwise protect the safety of the officer or the public.
4. Reporting Requirements: Establishes standardized reporting requirements to enhance transparency and accountability in K-9 programs.

"These standards will promote responsible, consistent, and effective practices that increase professionalism and excellence in the use of police canines across the state."

9) **Argument in Opposition**: According to *ACLU California Action*, "AB 3241's provisions are dangerous because they would add the legislature's approval to the status quo and entirely fail to address the undeniable problem—law enforcement has been siccing police attack dogs on innocent Californians for generations.

"AB 3241 cedes the legislature's authority to enact lifesaving reforms on this sometimes-

deadly use of force to law enforcement. Under its provisions, the decision of whether to deploy a police dog will still rest solely with the handler. We know this because the dangerously broad language offers no limits at all, instead giving California Commission on Peace Officers Standards and Training (POST) unfettered discretion and denying innocent Californians the protection of clear and strict statutory limitations.

"We agree with you—the use of police attack dogs to seriously injure Californians is a critical issue. And yet AB 3241's provisions invite vague standards that are inconsistent with best practices and will prevent departments from adopting strong policy provisions limiting the deployment of police dogs; these are policies that are already in use at other agencies.

"The practice of training and using dogs to attack people dates back to slave patrols.1 Even after emancipation, the use of attack dogs remained and were prominently used during the Civil Rights Movement as a tool of racial terror. Today, police agencies continue to disproportionately use attack dogs against our Black and Latine communities to terrorize, harass, and injure communities of color.2 Statewide, two-thirds of Californians severely injured by police dogs are people of color.3 Notably, many of the attacks by police dogs are perpetrated against people who are unarmed, do not pose a danger to officers or others, are suspected of minor crimes or no crime at all, and often against people who are experiencing a behavioral health crisis.4 The >
present-day use of police attack dogs is outdated and dangerous - with the potential of severe, life-altering, and deadly consequences for the public.5

"AB 3241's delegation of authority to POST to set canine use of force standards, without meaningful guidelines or limitations, directly facilitates police special interests' efforts to perpetuate the status quo. Without clear and strict statutory limitations on the use of police dogs, AB 3241 will lead to objectively weak rules for this dangerous practice, perpetuating standards far below the federal standards for the limited permissible use of police attack dogs, that do not mirror best practices from other law enforcement agencies, and fails to account for recommendations made by the U.S. Department of Justice6 and California DOJ to California police departments.7 We have observed police special interest groups such as Lexipol and the Peace Officers Research Association of California (PORAC), among others, manipulate the outcome of POST's use of force policy-making process in ways that completely undermined both public safety and the Legislature's intent. Of additional concern is the increase to POST's budget in light of potential cuts to critical social safety net programs and other critical funding. As such, we respectfully ask that you not advance AB 3241.

"**AB 3241 is gravely concerning because it entrenches into law broad language permitting the unfettered use of police dogs in ways we know are harmful to our communities, and cedes to POST the power to draft guidelines regulating the use of police dogs without establishing any limitations.**

"AB 3241 contains a number of provisions that are harmful to the larger goal of regulating police use of attack dogs and will prevent departments from adopting strong policy provisions limiting the deployment of police dogs already in use at other agencies.

"Section 4 troublingly provides handlers unfettered discretion to deploy an attack dog. The language is overly broad and contains numerous escape valves that allow the deployment of

police dogs to "search for or apprehend a suspect" in essentially any situation. The conditions governing the deployment of police dogs in subdivisions (a)(1) through (a)(3) do not limit their deployment in ways that would meaningfully safeguard community members from their harm; rather, it does the opposite. For example, despite ample data proving that police agencies often use dogs to bite and seriously injure people who pose no threat to officers or others, including unarmed people who are already lying down, restrained, or with their hands in the air, and individuals experiencing a behavioral health crisis,8 subdivision (a)(1) would allow police dogsto be deployed in these situations. Of deep concern is subdivision (a)(2), which would allow the use of a police dog when a "suspect is physically resisting or threatening to resist arrest." A canine attack - which may lead to serious and often permanent damage to nerves, muscles, and bones, and even loss of organs and limbs9 - is not proportional as a response to any movement a person may make, or any form of physical or threatened resistance. Such an attack would obviously be inappropriate in response to a person merely flinching or cowering, or verbally or passively resisting in a manner that poses no threat to the officer or another person, or unable to respond to police command and in need of medical care because the individual has a mental or physical disability or is experiencing a behavioral health crisis.10Additionally, the language in Section 2, subdivision (b)(6) is troubling because it provides escape valves for when officers would be required to provide a warning prior to deploying a police dog. These broad exceptions swallow any requirement to provide a warning prior to deployment of an attack dog, thus rendering this language meaningless in its real-life application. AB 3241 thus codifies standards far below federal standards, best practices, and the terms of stipulated judgments entered between the California DOJ and California law enforcement agencies.

"**Accidental maulings by police attack dogs are a serious threat to the health and safety of Californians, and AB 3241 would obscure efforts to address this threat.**

"Section 1 seemingly attempts to provide insight into police agencies' use of attack dogs by requiring that they publish an annual report. However, the categories of reportable information and their accompanying definitions are concerningly hollow. For example, subdivision (c)(1)(A)'s "deployment" definition is narrow and is limited to situations where a police dog is deployed "for any legitimate law enforcement purpose." This will result in the failure to document and report critical information relating to "accidental" or "unintentional" incidents – both of which occur with regularity, such as when a police dog was accidentally released and attacked a person complying with commands by latching onto his neck and mauling him,11 or when a police dog broke out of a patrol car and attacked a woman in a parking lot causing her major bite wounds.12 Additionally, subdivision (c)(1)(B) provides a carveout that would fail to document and report incidents like when a police dog "accidentally" attacked a child at a police dog unit demonstration.13 The other definitions in section 1, subdivisions (c)(2) and (c)(3) are equally problematic, broad, and hollow.

"**The delegation to POST to establish regulations for police attack dogs will certainly lead to weak standards, which will not safeguard the rights or well-being of our community.**

"Although the Legislature has regularly delegated to POST the responsibility to develop policies related to officer use of force and other agency practices, POST's actions over the past several years have been inconsistent with the spirit, intent, and sometimes plain language of the law.

"For example, AB 846 (Burke, 2020) required POST to update their regulations and screening material for prospective police officers to help identify implicit or explicit bias.14 In the regulations that set forth how investigators and evaluators should identify implicit and explicit bias, POST did not initially require investigators to look at applicants' social media. POST rejected public comments from the Racial and Identity Profiling Advisory (RIPA) Board recommending mandated social media review. POST blatantly refused to implement the spirit and intent of the legislature, despite RIPA highlighting that the Legislature explicitly mentioned social media as an example of where evidence of bias manifests and cited research on the relationship between bias displayed in officers' social media and misconduct complaints against them. Only after the Office of Administrative Law rejected POST's regulations because POST did not meaningfully respond to the RIPA Board's comments, did POST amend its regulations to comply.

"The Legislature also directed POST to develop guidelines and training to address peace officer bias. POST's existing training curricula do not train officers based on the existing definitions of bias enacted by the Legislature and instead uses a lower standard than California law. Existing law, as enacted by the Legislature, defines illegal 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[.]"

"In its training on anti-bias, POST consistently asserts that bias exists only if an officer stops an individual solely because of their identity, and that it is not illegal profiling if there is reasonable suspicion to stop the individual—which is contrary to existing law. In addition, the Legislature in 2017 directed POST to "develop and disseminate guidelines . . . [for] effective, noncombative methods of carrying out law enforcement duties in a diverse racial, identity, and cultural environment," which agencies can use to develop their own policies implementing RIPA. POST has never created these guidelines, despite the recommendation by the RIPA Board that it complete this duty, and numerous findings of this failure in the RIPA reports. While POST has finally agreed to satisfy this obligation, it has yet to do so.

"Senate Bill 2 (Bradford, 2021) created the police decertification process and delegated to POST the duty to develop regulations defining "serious misconduct" that would render an individual ineligible to work as a peace officer in California. The Legislature set a floor for minimum conduct that would satisfy this definition and authorized POST to expand those grounds–yet POST's proposed regulations either restate this minimum or, in some cases, attempt to undercut the statutory language by permitting conduct that the Legislature determined categorically rendered an individual unfit to serve as an officer. For example, POST's initial definition of "demonstrating bias" used a definition of bias that was more permissive than illegal bias alreadyprohibited by law. POST only made the "demonstrating bias" definition consistent with the law after public comments by the ACLU and other community stakeholders noted that POST's failure to do so was an illegal exercise of authority that contradicted the statute.

"POST should not be entrusted to draft regulations to safeguard the rights and safety of our community against the use of police attack dogs because it has allowed police special interest groups, such as Lexipol and PORAC, to undermine the use of force policies and trainings in

ways that endanger public safety.16 For example, POST caved to the demands of police special interest groups (e.g., PORAC and California Police Chiefs Association) who objected to an AB 392 training video. Records indicate POST discussed the content of the training with these opponents of the new law behind closed doors and agreed to their demands to remove portions of the training, then completely de-published the training, and only republished a revised, watered-down version after these special interest groups provided their stamp of approval.17 Concerningly, POST recently admitted that the organization always develops its curriculum and guidelines with input from, among others, Bruce Praet (i.e., co-founder of Lexipol).18 Yet, although Lexipol touts itself as a neutral writer of policies and trainings, "Bruce Praet's communications and Lexipol's official communications make clear that there is little daylight separating the two."19 Lexipol has continuously employed aggressive efforts to limit and undermine POST regulations, making it plain that legislation granting POST the authority to regulate the use of police attack dogs would fare no differently.

"For these reasons, strong statewide limitations on the use of attack dogs by California's police agencies must be explicitly legislated in clear statutory standards.

"Funding POST to develop standards and training, that could instead be more effectively and efficiently set by statute, is not a fiscally sound approach.

"POST's budget is bloated, and the current allocation of funds to law enforcement agencies like POST is disproportionate when compared to other critical areas like education, healthcare, and social services. POST's proposed budget for training alone (program codes 6505 and 6510), for the fiscal year 2024-2025, is $64,467,000 – which is more than half (57%) of its total budget of $112,239,000.20 Given a potential fiscal crisis in California that will likely require significant cuts to critical social safety net programs, we are compelled to oppose policies that would direct more funding to law enforcement when people are struggling to access affordable housing, quality education, community-based mental health and substance use services, and low or no-cost healthcare.

"Moreover, the Little Hoover Commission (LHC), the Legislature's own oversight agency, has called into serious doubt the efficacy of POST trainings. From 2020-2021, the LHC conducted a study examining the effect of law enforcement trainings. LHC's 2021 report raised concerns about law enforcement trainings, finding that California "spends **millions of dollars** on law enforcement training each year, yet there is **very little evidence** to demonstrate which types of training actually achieve intended goals and positively impact officer behavior in the field – and which do not." 21 LHC's report also explained the importance of assessing and improving law enforcement training courses prior to spending more taxpayer dollars on training that may have limited effectiveness. The California State Auditor has also raised similar concerns about POST training, further raising concerns about the effectiveness of training being delivered to officers. Similarly, the RIPA Board raised concerns in its 2022 and 2023 Annual Reports.22 AB 3241 would require a convoluted, costly process for POST to create regulations for the use of police attack dogs, when instead clear and strict limitations on the use of police attack dogs could be set simply, clearly, and effectively by statute."

10) **Related Legislation**: AB 2042 (Jackson), would require the Commission on Peace Officer Standards and Training (POST) to develop standards and standardized training guidelines for

use of canines by law enforcement. AB 2042 will be heard today in this committee.

11) **Prior Legislation**:

a) AB 742 (Jackson), of the 2023-2024 Legislative Session, would have prohibited the use of canines by peace officers for arrest and apprehension, or in any circumstances to bite a person, but permits their use of canines for search and rescue, explosives detection, and narcotics detection. AB 742 was ordered to the inactive file in the Assembly.

b) AB 1196 (Gibson), Chapter 324, Statutes of 2020, prohibited a law enforcement agency for authorizing the use of a carotid restraint or a choke hold, as defined, and further prohibits techniques or transport methods that involve a substantial risk of positional asphyxia, as defined.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Association for Los Angeles Deputy Sheriffs
Association of Orange County Deputy Sheriffs
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California District Attorneys Association
California Fish and Game Warden Supervisors and Managers Association
California Fraternal Order of Police
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
California Wildlife Officers Foundation
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Long Beach 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
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association

Riverside Police Officers Association
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs' Association
San Bernardino County Sheriff's Employees' Benefit Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

ACLU California Action
Alliance for Boys and Men of Color
Asian Law Alliance
California for Safety and Justice
California Public Defenders Association
Californians United for A Responsible Budget
Care First Kern
Children's Defense Fund - CA
Initiate Justice Action
Legal Services for Prisoners With Children
Milpa (motivating Individual Leadership for Public Advancement)
National Police Accountability Project
Pacific Juvenile Defender Center
San Francisco Public Defender

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