California State Assembly

PUBLIC SAFETY

AGENDA

Tuesday, April 16, 2024
8:30 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	AB 1839	Alanis	Peace officers: education and hiring grants.
2.	AB 1856	Ta	Disorderly conduct: distribution of intimate images.
3.	AB 1931	Dixon	Criminal procedure: protective orders.
4.	AB 1954	Alanis	Sexually violent predators.
5.	AB 2036	Joe Patterson	Sexually violent predators.
6.	AB 2106	McCarty	Probation.
7.	AB 2138	Ramos	Peace officers: tribal police pilot project.
8.	AB 2168	Kalra	Prisons: anticipated prison stays.
9.	AB 2210	Petrie-Norris	PULLED BY THE COMMITTEE.
10.	AB 2279	Cervantes	Bureau of Missing and Murdered Indigenous Women, Girls, and Persons.
11.	AB 2308	Davies	Domestic violence: protective orders.
12.	AB 2310	Hart	Parole hearings: language access.
13.	AB 2332	Connolly	Corrections: health care.
14.	AB 2354	Bonta	Criminal procedure: sentencing.
15.	AB 2382	Blanca Rubio	Disorderly conduct: prostitution.
16.	AB 2478	Ramos	Incarcerated persons: health records.
17.	AB 2547	Ta	Criminal procedure: competence to stand trial.
18.	AB 2624	Waldron	Prisoners: employment: bereavement.
19.	AB 2673	McCarty	Sacramento Youth Firearm Prevention Pilot Program.
20.	AB 2691	Quirk-Silva	Crimes: sexual harassment.
21.	AB 2692	Papan	Criminal procedure: competence to stand trial.
22.	AB 2763	Essayli	State agencies: Department of Corrections and Rehabilitation: demographic data: Middle Eastern and North African groups.
23.	AB 2782	Jim Patterson	Controlled substances: fentanyl.
24.	AB 2842	Papan	Firearms.

25.	AB 2959	Ortega	Prisons and jails: food.
26.	AB 3083	Lackey	Domestic violence: protective orders: background checks.
27.	AB 3171	Soria	Controlled substances: fentanyl.

Date of Hearing: April 16, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1839 (Alanis) – As Introduced January 16, 2024

SUMMARY: Establishes the Law Enforcement Officer Grant Program (LEOGP) in higher education settings and creates a grant program, administered by the Board of State and Community Corrections (BSCC), for newly hired peace officers. Specifically, **this bill**:

1) Establishes the Law Enforcement Officer Grant Program (LEOGP) to provide one-time grant funds to students who commit to working as a peace officer and completes the modern policing degree program.

2) Provides that, subject to appropriation, the California Student Aid Commission (CSAC) shall administer the Law Enforcement Officer Grant Program (LEOGP).

3) Provides that under LEOGP, one-time grant funds of up to $6,000 dollars per year to each student enrolled, or who has applied for enrollment, on or after January 1, 2026, in a modern policing degree program at a California community college if the student commits to working as a peace officer at a qualifying agency for four years within the six years following the date the student completes the modern policing program.

4) States that a "qualifying agency" means a California state agency, county sheriff's department, local police department, or other California public entity employing peace officers, as specified, or by an agency employing any peace officer that participates in the Peace Officer Standards and Training program (POST).

5) Requires CSAC along with POST to publish a list of qualifying agencies employing peace officers by April 15 of each year.

6) Requires grant funds must be used to supplement and not supplant other sources of grant financial aid, and may be disbursed in more than one academic year, provided that the total amounts of funds granted to an applicant does not exceed $18,000.

7) Provides that a grant recipient shall agree to serve as a peace officer at a qualifying agency for four years and shall have six years, upon completion of the recipient's modern policing degree, to meet that obligation.

8) Requires a grant recipient to agree to repay the state 25 percent of the total received grant funds annually, up to full repayment of the received grant funds, for each year the recipient fails to do one or more of the following :

a) Be enrolled in or have successfully completed a modern policing degree program from a California community college; or

b) While enrolled in the modern policing program, maintain good academic standing; or,

c) Serve as a peace officer at a qualifying agency for four years, which shall be certified by CSAC.

9) Provides exceptions, as defined by CSAC, for the requirement of repayments that may include, but shall not be limited to, counting a year towards the required four-year service requirement at a qualifying agency if any of the following occur:

a) The grant recipient has completed at least two years of the service requirement; or

b) The qualifying agency deems the grant recipient to have fulfilled the grant recipient's contractual requirement, as applicable, for purposes of salary increases, probationary or permanent status, and retirement; or

c) The grant recipient was not able to serve due to the financial circumstances of the qualifying agency, including a decision to not continue the employment of the grant recipient; or

d) The grant recipient has a condition covered under the federal Family and Leave Act of 1993,as specified, or a similar state law; or,

e) The grant recipient was called or ordered to active duty status for more than 30 days as a member of a reserve component of the Armed Forces of the United States.

10) Allows CSAC to use up to 1.5 percent of funding appropriated for purposes of outreach and administration.

11) Provides that priority for grants shall be afforded to students of historically underserved and disadvantaged communities with barriers to higher education access.

12) Allows CSAC to adopt regulations, including any amendments to regulations, necessary for the implementation of the LEOGP.

13) Allows CSAC to adopt emergency regulations it deems unnecessary for the implementation of this program, in accordance with the rulemaking provisions of the Administrative Procedure Act, as specified.

14) Requires, notwithstanding any other law and without further compliance as specified, any emergency regulations and amendments to the emergency regulations adopted by CSAC shall remain in force and effect until June 30, 2031;

15) States that no rule, policy, or standard of general application issued by CSAC in implementing this shall be subject to the requirements of the Administrative Procedure Act, as specified.

16) Requires CSAC to conduct, in partnership with POST, an evaluation of LEOGP to determine the effectiveness of the program in recruiting peace officers.

17) Provides that CSAC is encouraged to use qualitative and quantitative measures to quantify the number of peace officer candidates the program recruited, disaggregated by agency type, and the number of peace officers employed, and to describe the effects of the program on the decisions of candidates to enter and remain in the law enforcement field.

18) Requires that CSAC provide, with respect to the evaluation , a report to the Department of Finance and the appropriate fiscal and policy committees of the Legislature on or before December 31, 2031, and every two years thereafter.

19) Requires CSAC to accept applications for LEOGP beginning on September 1 for the following academic year and shall establish a process and timeline that allows the California Community Colleges to provide applicants with grant eligibility determinations before the deadline for enrolling.

20) Requires the Office of the Chancellor of the California Community Colleges (OCCCC), subject to an appropriation, develop written and online materials to be distributed to counselors' offices in California public and private schools serving grades 9 to 12, inclusive. The materials shall inform high school students about all of the following:

    a) The existence of the modern policing degree;

    b) The LEOGP, as specified;

    c) The existence of hiring bonuses in many California police and sheriffs' departments, including bonuses for significantly understaffed agencies as specified; and,

    d) The personal and community benefits of a career as a police officer or sheriff's deputy, including average pay, benefits, and the role of law enforcement in creating safer communities.

21) Requires the OCCCC to target the materials described in this section for students of historically underserved and disadvantaged communities with barriers to higher education access.

22) Requires the OCCCC to consult with representatives of law enforcement administration and law enforcement employees, and community organizations in the development of the materials as specified.

23) Requires the BSCC, beginning on January 1, 2026, subject to an appropriation by the Legislature, to award grants to local law enforcement agencies that are significantly understaffed in order for the agency to provide hiring bonuses for peace officers employed by that agency.

24) States the hiring bonus may up to $15,000 per eligible peace officer hired.

25) Provides that BSCC must require any agency receiving funds for hiring bonuses to require the peace officer receiving these funds to agree to work for that agency for at least four years.

26) Provides that BSCC must require any agency receiving funds for hiring bonuses to use these moneys to supplement, no supplant, existing funds used to recruit and employ peace officers.

27) Allows BSCC to establish additional guidelines for the allocation of these hiring bonuses to qualifying agencies.

28) Allows BSCC to use up to 5 percent of the funds appropriated for the program each year for the costs of administering the program.

29) Requires a peace officer who receives hiring bonus funds will agree to repay the state 25% of the total received grant funds annually, up to full repayment of the received hiring bonus funds, for each year the recipient fails to do one or both of the following:

    a) Be employed by the local law enforcement agency that awarded the hiring bonus or be employed by another agency employing peace officers that is significantly understaffed until the person has been employed for four years or more with agencies that meet, or met at the time of the person's initial employment, the definition of significantly understaffed; and/or,

    b) Maintain certification as a peace officer.

30) Requires POST to certify nonperformance of the commitment to serve at a qualifying agency employing peace officers for four years.

31) Provides that any exceptions to the requirement for repayment will be defined by BSCC, and may include, but will not be limited to, counting a year toward the required four-year service requirement at a qualifying agency employing peace officers if a grant recipient is unable to fulfill the four-year employment obligation when any of the following occur:

    a) The hiring bonus recipient has completed at least two years of employment;

    b) The employer deems the hiring bonus recipient to have fulfilled the grant recipient's contractual requirement, as applicable, for purposes of salary increases, probationary or permanent status, and retirement;

    c) The hiring bonus recipient was not able to serve due to the financial circumstances of the employer, including a decision to not continue the employment of the grant recipient;

    d) The hiring bonus recipient has a condition covered under the federal Family and Medical Leave Act of 1993 ,as specified, or similar state law; or,

    e) The hiring bonus recipient was called or ordered to active duty status for more than 30 days as a member of a reserve component of the Armed Forces of the United States.

32) Defines the following terms for the purposes of the BSCC hiring grant program for new peace officers as follows:

a) "Agency" means a department or agency of a local government, special district, or other political subdivision that employs a peace officer, as specified.

b) "Eligible peace officer" means a person who has met all the requirements, as specified in the Government Code, and all additional training and background requirements imosed by POST to be hired as a peace officer who has not previously been employed as a California peace officer.

c) "Significantly understaffed" means the agency has advertised vacancies for peace officer positions, is ready and willing to hire peace officers, and has had a peace officer employment rate of 10 percent or more below the number of budgeted peace officer positions for at least two calendar years.

EXISTING LAW:

1) Establishes the Commission on Peace Officer Standards and Training (POST) to set minimum standards for the recruitment and training of peace officers, develop training courses and curriculum, and establish a professional certificate program that awards different levels of certification based on training, education, experience, and other relevant prerequisites. (Pen. Code, §§ 830-832.10; 13500 *et seq*.)

2) States the powers of POST, including among others, to develop and implement programs to increase the effectiveness of law enforcement, to 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, §§ 830-832.10; 13500 *et seq*.)

3) Requires any person designated as a peace officer, notwithstanding designated exceptions, or any peace officer employed by an agency that participates in a POST program must be at least 21 years of age at the time of appointment. (Gov. Code, § 1031.4, subd. (a).)

4) Provides that any person, who as of December 31, 2021, is currently enrolled in a basic academy or is employed as a peace officer by a public entity in California is not subject to the age requirement of 21 years of age. (Gov. Code, § 1031.4, subd. (b).)

5) Requires representatives from POST, stakeholders from law enforcement, the California State University, and community organizations to serve as advisors to the office of the Chancellor of the Community Colleges to develop a modern policing degree program. (Pen. Code, § 13511.1, subd (a).)

6) Requires the office of the Chancellor of the Community Colleges to report recommendations to the Legislature outlining a plan to implement the modern policing degree program on, or by, June 1, 2023. (Pen. Code, § 13511.1, subd (a).)

7) Requires the report to the Legislature to include the following:

a) Focus on courses pertinent on law enforcement including, but not limited to, psychology, communications, history, ethnic studies, law, and courses determined to develop necessary critical thinking skills and emotional intelligence;

b) Allowances for prior law enforcement experience, appropriate work experience, postsecondary education experience, or military experience;

c) Both the modern policing degree program and bachelor's degree program in the discipline of their choosing as minimum education requirements for employment as a peace officer.

d) Recommendations to adopt financial assistance for students of historically underserved and disadvantaged communities with barriers to higher education access to fulfill the minimum requirements to be adopted for employment as a peace officer. (Pen. Code, § 13511.1, subd (a)(1-4).)

8) Requires POST to approve and adopt the education criteria for peace officers within two years from the submission of the report to the Legislature. (Pen. Code, § 13511.1, subd (c).)

9) Requires POST to adopt rules establishing minimum standards relating to the recruitment, training and fitness of state and local law enforcement officers. (Pen. Code, §§ 13510 & 13510.5.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Maintaining well-staffed police and sheriff's departments is crucial for keeping our communities safe. When these agencies do not have enough officers, the safety of the public is at risk. Without enough staff, daytime patrols may be canceled, investigations can be limited, it takes longer for officers to respond to emergencies, and undercover operations might not happen at all. Offering incentives to encourage people to become police officers and deputy sheriffs, along with support for departments struggling to hire due to competition from neighboring agencies, is essential. This approach will help California build a strong pool of qualified candidates, ensuring our police and sheriff's departments are fully staffed and our communities are safer."

2) **The Peace Officers Education and Age Conditions for Employment (PEACE) Act**: AB 89 (Jones-Sawyer), Chapter 405, Statutes of 2021, enacted the PEACE Act. The PEACE Act changed the age requirement from 18 years of age to 21 years of age to become a California peace officer. The PEACE Act requires the office of the Chancellor of California Community Colleges to develop a modern policing degree program with POST and other stakeholders and submit a report on the recommendations to the Legislature outlining a plan to implement the program on or before June 1, 2023.

   According to the analysis from AB 89, the author stated, "Excessive force at the hands of law enforcement that leads to grave injury or death not only tears apart families and communities but erodes trust in law enforcement. This data-driven bill relies on years of study and new understandings of brain development to ensure that only those officers capable of high level

decision-making and judgment in tense situations are entrusted with working in our communities and correctional facilities. By requiring new peace officer candidates to be more mature and highly educated, the PEACE Act not only professionalizes policing, but also creates a culture that is significantly less reliant on excessive force. The PEACE Act will transform departments across the state and mark a transition in addressing the root causes behind excessive use of force."

A joint study by the Riverside Sheriff's association and UC Riverside stated that "Although not one of the more common topics discussed in police shootings research, the level of education possessed by officers has found its way into other police-related topics such as an officer's commitment to the profession, ability to effectively communicate with others, officer attitude, ability to relate to others, and use of force generally. In their study examining officer education, experience, and use of force, Paoline and Terrill (2007) have provided a comprehensive overview of the literature regarding the effects of education in police work In their own research, Paoline and Terrill found that officers with some higher education (i,e,, some college versus high school diploma) and a 4-year degree were less likely to resort to verbal coercion than officers with a high school education. Moreover, officers with a bachelor's degree were less likely to use physical force than officers with only a high school education." (Law Journal Library - HeinOnline.org, Kposowa, J. P. (2008). *Police officer characteristics and the likelihood of using deadly force. Criminal justice and behavior*, 2008, at p.6 [as of Apr. 8, 2024)

This bill seeks to monetarily incentivize adults interested in becoming peace officers by providing educational grants for the cost of education when receiving a degree in modern policing. This bill also seeks to provide hiring grants to new police officers in underserved communities.

3) **Argument in Support**: According to *The California Highway Patrol*, "AB 1839 would establish the Law Enforcement Officer Grant Program under the administration of the Student Aid Commission to provide grants of up to $6,000 per year to individuals enrolled in a modern policing degree program at a California community college who commit to work for 4 years as a peace officer at a law enforcement agency. The bill would require grant recipients to agree to repay the grant to the state if certain conditions for the grant are not met.

   "According to the Public Policy Institute of California, between 2021 to 2022, Ca lost about 1,500 sworn staff and about 100 civilian staff. The decline from 2020 to 2021 was larger—2,100 sworn and 1,100 civilian staff. Over the past two years, staffing levels are down by 4.5% and 3%, respectively.

   "AB 1839 helps solve this retention issue by establishing the Law Enforcement Officer Grant Program. By providing financial support to law enforcement students, Ca will open new doors of opportunity to a wide range of individuals from various backgrounds that would otherwise not be given this opportunity."

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

5) **Related Legislation**: AB 1845 (Alanis), would establish the Identifying, Apprehending, and Prosecuting of Resale of Stolen Property Grant Program and would require the Board of

State and Community Corrections to award grants, on a competitive basis, to county district attorneys' offices and law enforcement agencies and to establish minimum standards, funding schedules, and procedures for awarding grants among other things.

6) **Prior Legislation**:

a) AB 89 (Jones-Sawyer), Chapter 405, Statutes of 2021, raised the minimum age for peace officers to 21 and requires the Commission on Peace Officer Standards and Training (POST) and educational stakeholders develop a modern policing degree program.

b) AB 2229 (L. Rivas), Chaptered by Secretary of State - Chapter 959, Statutes of 2022, reenacts the requirement that peace officers be found to be free from any physical, emotional, or mental condition that might adversely affect the exercise of their powers, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

c) AB 655 (Kalra), Chaptered by Secretary of State - Chapter 854, Statutes of 2022, required background checks to determine whether a person seeking to be employed as a peace officer exhibits unlawful bias by engaging in a hate group.

d) SB 960 (Skinner), Chaptered by Secretary of State. Chapter 825, Statutes of 2022, removed provisions of existing law requiring peace officers to either be a citizen of the United States or be a permanent resident who is eligible for and has applied for citizenship.

e) AB 846 (Burke), Chapter 322, Statutes of 2020, provided that evaluations of peace officers shall include an evaluation of bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen
California Contract Cities Association
California Police Chiefs Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
League of California Cities
Los Angeles County Professional Peace Officers Association
Los Angeles County Sheriff's Department
Peace Officers Research Association of California (PORAC)

Opposition

None

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

Date of Hearing: April 16, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1856 (Ta) – As Amended March 13, 2024

SUMMARY: Creates a new crime for intentionally distributing or causing to be distributed a deepfake of an intimate body part of an identifiable person, or a deepfake of the person engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or a deepfake of a person engaging in in which the person depicted participates, and the person distributing the deepfake knows or should know that the person depicted did not consent to the distribution and that distribution will cause serious emotional distress, and the person depicted suffers that distress. Specifically, **this bill**:

1) Defines "distribute" as making the image available to another person through any medium, including, but not limited to, exhibiting it in public, giving possession of the image, or through the use of internet, email, or text messaging.

2) Defines "deepfake" as any audio or visual media in an electronic format, including, without limitation, any image, motion picture film, or video recording, that is created or altered in a manner that it would falsely appear to a reasonable observer to be an authentic record of the actual speech or conduct of the individual depicted in the recording.

EXISTING LAW:

1) Makes it a misdemeanor for a person to intentionally distribute an image of the intimate body parts of another identifiable person, or of the person depicted engaged in a sex act, under circumstances in which the persons agreed or understood that the image would remain private, and the person distributing the image knows or should know that the distribution of the image will cause serious emotional distress, and the person depicted suffers that distress. This crime is also commonly known as "revenge porn." (Pen. Code, § 647, subd. (j)(4)(A).)

2) Provides that distribution of the image is not a violation of the law if:

   a) The distribution is made in the course of reporting an unlawful activity;

   b) The distribution is made in compliance with a subpoena or other court order for use in a legal proceeding; or,

   c) The distribution is made in the course of a lawful public proceeding. (Pen. Code, § 647, subd. (j)(4)(D).)

3) Defines "intimate body part" to mean "any portion of the genitals, the anus and, in the case of a female, also includes any portion of the breasts below the top of the areola that is either

uncovered or clearly visible through clothing." (Pen. Code, § 647, subd. (j)(4)(C).)

4) States that a person intentionally distributes an image when that person personally distributes the image, or arranges, specifically requests, or intentionally causes another person to distribute that image. (Pen. Code, § 647, subd. (j)(4)(B).)

5) Provides that every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, with intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct is guilty of child pornography and shall be punished by either by imprisonment in the county jail for up to one year, by a fine not exceeding $1,000, or by both the fine and imprisonment, or by imprisonment in the state prison, by a fine not exceeding $10,000, or by both the fine and imprisonment. (Pen. Code, § 311.1.)

6) Provides that every person who knowingly possesses or controls any matter, representation of information, data, or image, the production of which involves the use of a person under 18 years of age, knowing that the matter depicts a person under 18 years of age personally engaging in or simulating sexual conduct, shall be punished by imprisonment in the state prison, or a county jail for up to one year, or by a fine not exceeding $2,500, or by both the fine and imprisonment. (Pen. Code, § 311.11.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author: As with any new technology, artificial intelligence can improve people's lives. However, AI can also be used to inflict harm through dangerous and unregulated "deepfakes". The weaponization of deepfakes to create and distribute revenge pornography can have a massive impact on the economy, national security, and individual harm. The Legislature must take action to protect victims from extortion, humiliation, and harassment that can come from artificially generated pornography. AB 1856 would provide a criminal penalty for individuals who break the law by distributing artificially generated pornography on an individual without their consent."

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

   Legislation that regulates the content of protected speech is subject to strict scrutiny, sometimes referred to by the courts as "exacting scrutiny" in this context. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2226.) To survive strict scrutiny, state action must be

narrowly tailored to address a compelling government interest. (*Ibid.*) Nevertheless, the protections of the First Amendment are not absolute. Restrictions on the content of speech have been long been permitted in a few limited areas including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. (*United States v. Stevens* (2010) 559 U.S. 460, 130 S.Ct. 1577, 1584 [citations omitted].) The First Amendment permits "restrictions upon the content of speech in a few limited areas which are 'of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the societal interest in order and morality.'" (*R.A.V. v. City of St. Paul* (1992) 505 U.S. 377, 382-383.)

While some lower courts have grappled with First Amendment challenges to state "revenge porn" laws generally, the California Supreme Court has yet to weigh in. (Paul, *Is Revenge Porn Protected Speech? Lawyers Weigh in, and Hope for a Supreme Court Ruling*, The Washington Post (Dec. 26, 2019).[1]

A former version of California's "revenge porn" law (Pen. Code, § 647, subd. (j)(4)(iii)) survived First Amendment scrutiny in *People v. Iniguez* (2016) 247 Cal.App.4th Supp. 1 (*Iniguez*). There, the defendant argued the statute was overbroad, violating free speech. Under the overbreadth doctrine, a defendant "may challenge a statute not because their own rights of free expression are violated, but because the very existence of an overbroad statute may cause others not before the court to refrain from constitutionally protected expression. [Citations.]" (*In re M.S.* (1995) 10 Cal.4th 698, 709.)

To avoid being overbroad, "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." (*Broadrick v. Oklahoma* (1973) 413 U.S. 601, 611–612 [citations omitted].)

Assuming, without deciding a person has a free speech right to distribute such images, the *Iniguez* court concluded former subdivision (j)(4)(iii) of Penal Code section 647.6 was not constitutionally overbroad because its requirement that a person intend to cause distress served to narrow the law. (*People v. Iniguez*, *supra*, 247 Cal.App.4th Supp. at pp. 7-8.) The court noted this rendered the law inapplicable should a person act under a mistake of fact or by accident. (*Id.* at pp. 7-8.)

The *Iniguez* court also explained that "it is not just *any* images that are subject to the statute, but only those which were taken under circumstances where the parties agreed or understood the images were to remain private. The government has an important interest in protecting the substantial privacy interests of individuals from being invaded in an intolerable manner." (*People v. Iniguez*, *supra*, 247 Cal.App.4th Supp. at p. 8 [citation omitted].) The court stated, "It is evident that barring persons from intentionally causing others serious emotional distress through the distribution of photos of their intimate body parts is a compelling need of society." (*Ibid.*)

This bill is mostly identical to Penal Code section 647, subdivision (j)(4)(A) in that it requires distribution and intent to cause serious emotional distress. However, this bill

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[1] Located at https://www.washingtonpost.com/nation/2019/12/26/is-revenge-porn-protected-speech-supreme-court-may-soon-weigh/ [last visited April 3, 2024].

broadens the definition of "distribute" to include "making the image available to another person through any medium, including, but not limited to, exhibiting it in public, giving possession of the image, or through the use of internet, email, or text messaging. This bill also defines "deepfake" as any audio or visual media in an electronic format, including, but not limited to, any image, motion picture film, or video recording, that is created or altered in a manner that it would falsely appear to a reasonable observer to be an authentic record of the actual speech or conduct of the individual depicted."

The definition deepfake may be unconstitutionally overbroad in that it may chill or punish speech that is otherwise constitutionally protected. According to the ACLU California Action:

> … [T]he First Amendment protects nearly all speech, with only a handful of notable exceptions. One of those exceptions is "defamation." But there are numerous constitutional requirements that the Supreme Court has imposed before speech can be prohibited – even speech that is false and may harm someone's reputation and/or may cause emotional distress. (See generally *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988) and *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).) The constitutional requirements that are most relevant here are that even false speech against a public figure, such as a politician, cannot be prohibited unless the plaintiff can show by clear and convincing evidence that the speaker acted with actual malice, i.e., that the speaker knew that the speech was false or acted with "reckless disregard" of its falsity. (*New York Times v. Sullivan,* 376 U.S. at 279-86.)
>
> Assembly Bill 1856 does not take into account these constitutional safeguards. Under the bill, someone who distributed a deepfake depiction of a politician who had staked their reputation on support for family values having sex with a sex worker even if the person who distributed the deepfake believed it was authentic, would be subject to criminal penalties. Indeed, this constitutional problem is exacerbated by the bill's depiction of "deepfake" to be "any image, motion picture film, or video recording that is created or altered in a manner that it would falsely appear to a reasonable observer to be an authentic record of the actual speech or conduct of the individual depicted in the recording."
>
> In other words, someone who distributed the deep fake but did not create it may very well not know that it is fake. Nor does the bill's requirement that the speaker know that distribution will "cause serious emotional distress, and that the person depicted suffers that distress" obviate the constitutional requirement for "actual malice." In *Hustler*, 485 U.S. 46 (1988), the United States Supreme Court held that the First Amendment protected speech directed at public figures even if it caused severe emotional distress unless "the publication contains a false statement of fact which was made with

> 'actual malice,' i.e., with knowledge that the statement was false or with reckless disregard as to whether or not it was true." (*Id.* at 56.)

The free speech guarantee of the First Amendment gives significant protection from overbroad laws that chill speech within the First's Amendment's sphere. Under this principle, a law is unconstitutional on its face if the law prohibits or chills a substantial amount of protected expression." (*Ibid.*) The primary issue when considering overbreadth is whether the prohibited conduct includes otherwise lawful speech. In order to avoid overbreadth, the statute must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society. (*Broadrick v. Oklahoma* (1973) 413 U.S. 601, 611–612.) This bill may be unconstitutional given the definitions of "distributes" and "deepfake."

3) **The Term "Distributes":** In *Iniguez, supra*, 247 Cal.App.4th Supp. at. pp. 10-11, the defendant also argued insufficient evidence supported his conviction because he had failed to "distribute" the photo by posting it on Facebook. The court concluded, however, "there is no indication in section 647, subdivision (j)(4), that the term "distribute[s]" was intended to have a technical legal meaning, or to mean anything other than its commonly used and known definition of "to give or deliver (something) to people." (*Id.* at p. 10; See also, Merriam Webster online definition of "distribute.")[2] The court further noted, "Legislative analyses of the Senate bill that enacted section 647, subdivision (j)(4), are replete with indications that posting images on public Web sites was precisely one of the evils the statute sought to remedy." (*Ibid.*)

   The term distribute as commonly understood would not necessarily include other activities like exhibiting the images in a public place. As noted, this bill broadens the definition of distributes in a manner not contemplated by *Iniguez*.

4) **Background on "Deepfakes"**: "Deepfakes" refer to manipulated videos, or other digital representations produced by sophisticated artificial intelligence, that yield fabricated images and sounds that appear to be real." (Shao, *What 'Deepfakes' Are and How They May Be Dangerous*, CNBC (1/17/2020).)[3] "Deepfake technology enables users to create fake videos, images, or recordings of people that appear authentic. Some of the earliest and most prolific deepfake examples involve pornography—everything from face-swapping a celebrity into a pornographic video to an AI algorithm that creates a realistic nude from a person in an image."[4]

   According to an article by the University of Illinois Law Review, three states have enacted laws related to deepfakes. In 2019, Texas banned political deepfakes designed to influence an election. That same year, Virginia banned deepfake pornography. California's law prohibits the creation of "videos, images, or audio of politicians doctored to resemble real footage within 60 days of an election."[5]

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[2] Located at https://www.merriam-webster.com/dictionary/distribute [last visited April 3, 2024].
[3] Located at https://www.cnbc.com/2019/10/14/what-is-deepfake-and-how-it-might-be-dangerous.html [last visited April 10, 2024.]
[4] Located at (https://www.asisonline.org/security-management-magazine/latest-news/today-in-security/2021/january/U-S-Laws-Address-Deepfakes/) [last visited April 10, 2024.]
[5] Located at https://illinoislawreview.org/blog/ai-deepfakes/ [last visited April 10, 2024]

California's prohibition provides for injunctive relief, as well as a civil cause of action. (See Elec. Code, § 20010.) The California Legislature also enacted AB 602 (Berman), Chapter 491, Statutes of 2019, permitting a person to sue anyone who uses "deepfake" technology to place them in sexually explicit material without their consent. (Civ. Code, § 1708.86.)

California has other laws directed at sexually explicit material, deepfake or otherwise. For example, it is a crime under Penal Code section 311.2 to produce, distribute, or exhibit (show someone) obscene matter. There are also laws addressing online harassment. For example, it is a crime to use an electronic communication device to make repeated contact with another person with the intent to harass or annoy, or to make a single intentionally harassing contact if it includes any obscene or threatening language. (Pen. Code, § 653m.) Another law makes it a crime to use an electronic communication device to distribute the personal information of another person without their consent, and with the intent to harass them or cause them fear. (Pen. Code, § 653.2) Revenge porn is also a crime -- distributing sexually explicit images or videos of someone without their consent when the person doing so knows or should know it will cause serious emotional distress, and the person suffers that distress. (Pen. Code, § 647, subd. (j)(4).)

Opponents of "deepfake" legislation note there are already laws that regulate the impact of pornographic "deepfakes," including specific measures for "revenge porn" and digital harassment. (Fischer, *California's Governor Signed New Deepfake Laws for Politics and Porn, but Experts Say they Threaten Free Speech*, Business Insider (Oct. 10, 2019).[6] They note such legislation can also have "really worrying consequences on free speech." (*Ibid.*)

Further, "[s]ome believe this type of law attacks a symptom rather than a cause: the overall disinformation environment on Facebook and other platforms."[7] According to the managing editor of the fact-checking site Snopes.com who now works for a similar site, "While I understand everyone's desire to protect themselves and one another from deepfakes, it seems to me that writing legislation on these videos without touching the larger issues of disinformation, propaganda, and the social media algorithms that spread them misses the forest for the trees." (*Ibid.*) According to the University of Illinois Law Review article, "The most feasible short-term solution may come from tech giants like Facebook, Google and Twitter, who can take action to limit the spread of harmful deepfakes."

"[G]overnments should focus on increasing public awareness of relevant issues, because legislation cannot prevent all deepfakes from circulating, and legal remedies, no matter how good and efficient they might be, can only be applied after the damage has already been done." (*Ibid.*)

5) **Arguments in Support**: According to the *California State Sheriffs Association*: The advancement of AI technology has exacerbated the prevalence and severity of revenge porn – with the line of what is real and what is generated blurring together, putting unsuspecting victims at risk of their image being exploited. Current revenge porn statutes and remedies

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[6] Located at https://www.businessinsider.com/california-deepfake-laws-politics-porn-free-speech-privacy-experts-2019-10 [last visited April 10, 2024].
[7] Located at https://www.cjr.org/analysis/legislation-deepfakes.php [last visited April 10, 2024].

have flaws and are insufficient. While these are not easy problems to solve, the Legislature can and should criminalize AI-generated revenge porn.

6) **Arguments in Opposition**: According to the *California Public Defenders Association*: "AB 1856 would create a new criminal offense related to "deepfakes" which are defined as "any audio or visual media in an electronic format, including any motion picture film or video recording that is created or altered in a manner that it would falsely appear to a reasonable observer to be an authentic record of the actual speech or conduct of the individual depicted in the recording."

The bill would make it a misdemeanor punishable by one year in county jail to distribute, exhibit, exchange or offer to do any deepfake depicting an individual engaging in sexual conduct. AB 1856 would likely run afoul of the First Amendment. As noted in the Assembly Public Safety Committee analysis of AB 1280 (Grayson) 2019 which also sought to criminalize deepfake recordings of adult sexual activity, while courts have found that laws criminalizing deepfakes involving child pornography serve a compelling governmental interest, prohibitions of depictions of adult sexual activity are not afforded the same protection.

"Though prohibitions on altering photos and video to make it appear that a minor is engaging in sexual conduct have passed constitutional muster in at least some circumstances, it's not clear that the same result would follow for a prohibition on deepfakes that depict adults engaging in sexual conduct.

"Because AB 1280 "expressly aims to curb a particular category of expression... by singling out the type of expression based on its content and then banning it," it is considered a content-based regulation of speech, and is thus presumptively unconstitutional. *Free Speech Coalition v. Reno* (9th Cir. 1999) 198 F.3d 1083, 1090-91, aff'd sub nom. *Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234.)

7) **Related Legislation:**

a) AB 1831 (Berman) creates a new felony for any person that possesses or controls any matter generated through the use of artificial intelligence (AI), which depicts any person under the 18 engaging in or simulating sexual conduct

b) AB 1872 (Sanchez) Expands the definition of "fear" in the extortion statute to include any threat to post, distribute, or create AI-generated images or videos of another. AB 1872 is pending hearing in this committee today.

c) AB 1962 (Berman) expands the definition of revenge porn to the distribution of images recorded, captured, or otherwise obtained without the authorization of the person depicted or by exceeding authorized access from the property, accounts, messages, files, or resources of the person depicted. AB 1962 is pending hearing in this committee today.

8) **Prior Legislation**

a) AB 307 (Lackey), of the 2021-2022 Legislative Session, would have expanded the scope of the misdemeanor offense which prohibits the unlawful distribution of a consensually-

taken image of an identifiable person's intimate body parts and makes it a registerable sex offense. Hearing on AB 307 was canceled in this committee at the request of the author.

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

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

d) AB 730 (Berman), Chapter 493, Statutes of 2019, prohibited the distribution of materially deceptive audio or visual media with actual malice with the intent to injure a candidate's reputation or to deceive a voter into voting for or against a candidate, unless the materially deceptive audio or visual media includes a disclosure that it has been manipulated.

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

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

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

h) AB 321 (Hernández), of the 2011-2012 Legislative Session, would have required additional penalties be imposed on a minor adjudicated of "sexting." AB 321 was held on the Assembly Appropriations Committee's Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California State Sheriffs' Association
Peace Officers Research Association of California (PORAC)
Sag-aftra

Oppose

ACLU California Action
California Public Defenders Association

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

Date of Hearing: April 16, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1931 (Dixon) – As Amended March 18, 2024

SUMMARY: Requires courts, to consider issuing a lifetime criminal protective order prohibiting a convicted defendant from contacting any victim of the crime, for any serious felony any violent felony, or any felony offense requiring registration as a sex-offender. Specifically, **this bill**:

1) Requires a court, when a criminal defendant has been convicted of any violent felony, any serious felony, or any felony offense requiring registration as a sex-offender to consider issuing a lifetime criminal protective order that prohibits the defendant from contacting any victim of the crime for their lifetime, unless the victim requests otherwise.

2) Provides that any victim of an above offense may petition the court to issue a lifetime protective order.

3) Provides that such a lifetime protective order will expire if the victim dies, the underlying conviction is dismissed or overturned, or the court, at the request of the victim, removes the lifetime protective order.

4) Allows a victim to petition the court for removal of a lifetime protective order at any time and the court may hold a hearing to verify the victim's request to dismiss the lifetime protective order.

5) Provides that a protective order still in effect that was issued before January 1, 2025, against a defendant convicted of domestic violence, human trafficking, gang activity, rape, statutory rape, spousal rape, pimping and pandering, offenses requiring sex offender registration, elder abuse, and willfully, malicious, and repeated stalking, may be extended into a lifetime protective order against the defendant. This is applicable, if, during the duration of the order, even if prior to this bill becomes effective, the defendant has violated the terms and conditions of the order, the defendant has been convicted of a violent felony, serious felony, or felony sex-offender offense, and the court finds there is a probability of future violations, and the safety of a victim and the victim's immediate family, would make the extension of the protective order appropriate.

6) Provides that such extended protective orders could similarly expire if the victim dies, the underlying conviction is dismissed or overturned, or the court, at the request of the victim, removes the lifetime protective order, and requires the Department of Justice (DOJ) to be immediately notified upon the issuing of such an order.

7) Clarifies that a court may impose a protective order for up to 10 years prohibiting a defendant from having any contact with a victim of the crime, in the case of a criminal defendant convicted of a misdemeanor offense that requires a person to register as a sex-offender.

8) Requires a court to serve the defendant with any lifetime protective order that has been issued at the time of sentencing.

9) Requires, upon issuing a lifetime protective order, the DOJ to be immediately notified of the contents of the order, specified demographic information, the names of protected persons, the date of issuance of the order, the duration of the order, the terms and conditions of the order, and other specified information.

10) Provides that a lifetime protective order may be issued by the court regardless of whether the defendant is sentenced to incarceration in the state prison or a county jail, whether the defendant is subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation.

11) Provides that the lifetime protective order may be modified throughout the duration of the order by the court in the county in which the order was issued.

12) Provides that such a lifetime protective order may include provisions for electronic monitoring for up to one year, subject to the applicable local government adopting a policy pertaining to electronic monitoring.

13) Provides if the defendant must pay for the electronic monitoring if the court determines they have the ability to pay, but if the defendant does not have the ability to pay for the monitoring, the court may order the electronic monitoring to be paid for by the local government that adopted the policy authorizing electronic monitoring.

14) Requires the Judicial Council to develop forms, instructions, and rules relating to lifetime protective orders issued or the extension of orders already in place, under this bill.

15) Specifies that such lifetime protective orders shall remain in full effect until expiration or until any further order by the court modifying or terminating the order, even if the underlying accusation or information is dismissed, as specified.

EXISTING LAW:

1) Defines the following offenses as "serious" felonies:

   a) Murder or voluntary manslaughter;

   b) Mayhem;

   c) Rape;

   d) Sodomy by force, violence, duress, menace, or threat or fear of bodily injury;

e) Oral copulation by force, violence, duress, menace or threat or fear of bodily injury;

f) Lewd act with child under fourteen years of age;

g) Any felony punishable by death or life imprisonment;

h) Any felony in which defendant personally inflicts great bodily injury on any person other than an accomplice or personally uses a firearm;

i) Attempted murder;

j) Assault with intent to commit rape or robbery;

k) Assault with a deadly weapon or instrument on a peace officer;

l) Assault by a life prisoner on a non-inmate;

m) Assault with a deadly weapon by an inmate;

n) Arson;

o) Exploding a destructive device or any explosive with intent to injure;

p) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;

q) Exploding a destructive device or any explosive with intent to murder;

r) Burglary of an inhabited dwelling;

s) Robbery or bank robbery;

t) Kidnapping;

u) Holding a hostage by an inmate;

v) Attempt to commit a crime punishable by life imprisonment or death;

w) Any felony where defendant personally used a dangerous or deadly weapon;

x) Sale or furnishing heroin, cocaine, PCP, or methamphetamine to a minor;

y) Forcible penetration with a foreign object;

z) Grand theft involving a firearm;

aa) carjacking

bb) Any gang-related felony;

cc) Assault with the intent to commit mayhem or specified sex offenses;

dd) Maliciously throwing acid or flammable substances;

ee) Witness intimidation;

ff) Assault with a deadly weapon or firearm or assault on a peace officer or firefighter;

gg) Assault with a deadly weapon on a public transit employee;

hh) Criminal threats;

ii) Discharge of a firearm at an inhabited dwelling, vehicle, or aircraft;

jj) Commission of rape or sexual penetration in concert;

kk) Continuous sexual abuse of a child;

ll) Shooting from a vehicle;

mm) Any attempt to commit a "serious" felony other than assault;

nn) Any violation of the 10 years, 20 years, 25 years to life gun law;

oo) Possession or use of any weapon of mass destruction,

pp) Human trafficking of a minor, except where the person who committed the offense was a victim of human trafficking at the time of the offense, as specified.

qq) Any conspiracy to commit a "serious" felony. (Pen. Code, § 1192.7, subd. (c).)

2) Defines a "violent felony" as any of the following:

a) Murder or voluntary manslaughter;

b) Mayhem;

c) Rape accomplished by means of force or threats of retaliation;

d) Sodomy by force or fear of immediate bodily injury on the victim or another person or with a child under the age of 14 years, as specified;

e) Oral copulation by force or fear of immediate bodily injury on the victim or another person or with a child under the age of 14 years, as specified;

f) Lewd acts on a child under the age of 14 years, as defined;

g) Any felony punishable by death or imprisonment in the state prison for life;

h) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which the defendant has used a firearm, as specified;

i) Any robbery;

j) Arson of a structure, forest land, or property that causes great bodily injury or that causes an inhabited structure or property to burn;

k) Arson that causes an inhabited structure or property to burn;

l) Sexual penetration accomplished against the victim's will by means of force, menace or fear of immediate bodily injury on the victim or another person, by threats of retaliation, or of a child under the age of 14 years, as specified;

m) Attempted murder;

n) Explosion or attempted explosion of a destructive device with the intent to commit murder;

o) Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;

p) Explosion of a destructive device which causes death or great bodily injury;

q) Kidnapping;

r) Assault with intent to commit mayhem or specified sex offenses;

s) Continuous sexual abuse of a child;

t) Carjacking;

u) Rape or sexual penetration in concert;

v) Felony extortion;

w) Threats to victims or witnesses, as specified;

x) First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;

y) Use of a firearm during the commission of specified crimes; and,

z) Possession, development, production, and transfers of weapons of mass destruction. (Pen. Code § 667.5, subd. (c).)

3) Authorizes the trial court in a criminal case to issue criminal protective orders when there is a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. (Pen. Code, § 136.2, subd. (a).)

4) Requires a court to consider issuing up to a 10 year post-conviction protective order prohibiting a convicted defendant from any contact with a victim of a crime, for convictions pertaining to domestic violence (including domestic violence resulting in corporal injury), human trafficking, gang activity, rape, statutory rape, spousal rape, pimping and pandering, offenses requiring sex offender registration, elder abuse, and willfully, malicious, and repeated stalking. (Pen. Code, §§ 136.2, subd. (i)(1); 273.5, subd. (j); 368, subd. (l); 646.9, subd. (k); 1201.3, subd. (a).)

5) Provides that such an order may be modified by the sentencing court in the county in which it was issued throughout the duration of the order. (Pen. Code, § 136.2, subd. (i)(1).)

6) Provides that a criminal protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison, or a county jail, or subject to mandatory supervision, or whether the defendant is placed on probation. (Pen. Code, § 136.2, subd. (i)(1).)

7) Provides that the duration of a criminal protective order issued by the court should be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and the victim's immediate family. (Pen. Code, § 136.2, subd. (i)(1).)

8) Authorizes a court to place conditions on a 10 year restraining order that can include electronic monitoring for up to one year, as specified. (Pen. Code, § 136.2, subd. (i)(3).)

9) Requires a court to consider issuing up to a 10 year criminal protective order for protecting a percipient witness to a crime, upon clear and convincing evidence of witness harassment, in cases with convictions including, but not limited to domestic violence, rape, statutory rape, gang activity, and sex registerable offenses. (Pen. Code, § 136.2, subd. (i)(2).)

10) Provides that a person violating a criminal protective order may be punished for any substantive offense described in provisions of law related to intimidation of witnesses or victims, or for contempt of court, which is punishable as a misdemeanor. (Pen. Code, § 136.2, subd. (b).)

11) Provides that a willful and knowing violation of a criminal protective order constitutes contempt of court, a misdemeanor, punishable by imprisonment in county jail for up to one year or a fine of $1,000. (Pen. Code, §§ 273.6, subd. (a), 166, subd. (a)(4).)

12) Prohibits a person who is subject to a protective order from owning, possessing, purchasing, attempting to purchase or receive, a firearm while the protective order is in effect, and the court shall order a person subject to the protective order to relinquish ownership or possession of any firearms. (Pen. Code, § 136.2, subd. (d).)

13) States that cases where the defendant is charged with a crime involving domestic violence, rape, or a sex registerable offense must be clearly marked to alert the court of their nature. (Pen. Code, § 136.2, subd. (e)(1).)

14) Civil Protective Orders

a) Allows a court to issue civil harassment restraining orders for up to five years upon a showing of clear and convincing evidence of unlawful harassment. An order can be issued for up to 5 years, or renewed for an additional five years. An order that does not state an expiration date on the face of the form will be deemed to last for 3 years. (Civ. Pro. Code, §§ 527.6.)

b) Allows the court to issue workplace violence restraining orders for up to three years upon a showing of clear and convincing evidence. (Civ. Pro. Code, § 527.8.) An order can be renewed for an additional five years. An order that does not state an expiration date on the face of the form will be deemed to last for 3 years. (Civ. Pro. Code, §§ 527.6.)

c) Permits a court to issue a civil domestic violence or elder abuse restraining order enjoining a party from, among other things contacting or coming within a specified distance of a specified person. Such orders can be issued for up to five years, may be renewed upon a request of a party for five years or permanently, without a showing of any further abuse since the issuance of the order. Failure to state the expiration date on the face of the order creates an order with duration of 3 years. (Fam. Code, §§ 6320, 6345; Welf. & Inst. Code, § 15657.03.)

15) Provides that if there are both civil and criminal orders regarding the same parties and neither an emergency protective order that has precedence in enforcement nor a no-contact order has been issued, the peace officer shall enforce the criminal order issued last. (Fam. Code, § 6383, subd. (h)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1931 will allow a judge the discretion to issue a lifetime injunction against a defendant at the time of sentencing for a serious felony, a violent felony, or a felony sex offense. Currently, California law allows temporary restraining orders that only provide short term relief. Survivors of these heinous acts are forced to face their trauma in the courtroom over and over again to get basic protections. Additionally, the bill gives a judge the ability to lift the order if the victim has passed away, the conviction was dismissed, expunged, or overturned or the victim has petitioned for the order to be removed. AB 1931 will provide critical protections for survivors from their abusers by allowing judges the discretion to issue a lifetime injunction. Because you matter."

2) **Civil and Criminal Protective Orders:** Protective orders and restraining orders are, in the outcome, very similar – both are orders issued or approved by a court that prevents a person from contacting another person under specific circumstances and may also restrict other conduct to prevent contact, harassment, threats, or violence. (See generally, Fam. Code, § 6218, subd. (a)-(c).) There are some differences. For example, criminal protective orders are typically requested by district attorneys on behalf of the victim, while civil restraining orders are typically sought by one of the parties involved in a civil dispute. This bill pertains to criminal protective orders.

There are several types of civil restraining orders available to victims of specified crimes. For example, a victim of domestic violence needing immediate protection may seek a temporary restraining order on an ex parte basis. The court may issue a short-term temporary order enjoining the abuser from a range of conduct, including harassing, threatening, and contacting the victim. (Fam. Code, § 6320 *et seq.*) After a noticed hearing, the court may issue an order protecting the survivor against a range of actions for a term of up to five years. (Fam. Code, § 6340 *et seq.*) At the end of the term of the protective order issued after a hearing, the court may renew the order at the request of any party, subject to any modifications ordered by the court or stipulated to by the parties. (Fam. Code, § 6345.)

Criminal protective orders can be issued during a criminal proceeding. Specifically, a trial court in a criminal case can issue criminal protective orders when there is a good cause to believe that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. (Pen. Code, § 136.2, subd. (a).) Such protective orders are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.). When criminal proceedings have concluded, the court has authority to issue protective orders as a condition of probation. For example, when domestic violence criminal proceedings have concluded, the court can issue a "no-contact order" as a condition of probation. (Pen. Code, § 1203.097.)

Lastly, and most relevant here, courts can issue up to a 10 year post-conviction protective order prohibiting a convicted defendant from any contact with a victim of a crime. This 10 year "no contact" remedy is available for a narrow list of crimes; convictions pertaining to domestic violence, human trafficking, gang activity, rape, pimping and pandering, offenses requiring sex offender registration, elder abuse, and willfully, malicious, and repeated stalking. (Pen. Code, §§ 136.2, subd. (i)(1); 273.5, subd. (j); 368, subd. (l); 646.9, subd. (k); 1201.3, subd. (a).) Specific to domestic violence and offenses requiring sex offender registration, the case file must be clearly marked so that the court is aware of their nature for purposes of considering a protective order. (Pen. Code, § 136.2, subd. (e)(1).) Additionally, a court may issue a 10 year criminal protective order for protecting a percipient witness to a crime, upon clear and convincing evidence of witness harassment, in cases with convictions including, but not limited to domestic violence, rape, statutory rape, gang activity, and sex registerable offenses. (Pen. Code, § 136.2, subd. (i)(2).). Such orders may be modified throughout the duration of the order.

As a general rule, civil courts may issue a civil restraining order up to five years. For example, civil harassment restraining orders can last up to five years, and be renewed for another five years. (Civ. Pro. Code, §§ 527.6.) Similarly, a workplace violence order can be issued for up to three years, and renewed for an additional five years. (Civ. Pro. Code, §§ 527.6.) Additionally, civil domestic violence or elder abuse restraining orders can be issued for up to five years. Notably these particular orders can renewed for another five years, or permanently. (Fam. Code, §§ 6320, 6345; Welf. & Inst. Code, § 15657.03.)

3) **Effect of this Bill:** *This bill would constitute a drastic expansion of both the duration of criminal protection orders and the type of crimes where courts may order criminal protective orders.* Under existing law, courts can issue a criminal protective order lasting up to 10 years against defendants convicted of certain specified crimes (domestic violence, human trafficking, gang activity, rape, pimping and pandering, offenses requiring sex offender

registration, elder abuse, and willfully, malicious, and repeated stalking). This bill would require courts to consider issuing a lifetime criminal protective order preventing a defendant from having any contact with a victim of the crime, for any serious felony, any violent felony, or any felony offense requiring registration as a sex-offender. As noted above, courts are already permitted to issue 10 year criminal protective orders for offenses requiring registration as a sex offender. The list of serious and violent felonies is lengthy - *there over 40 crimes that are considered serious felonies, and over 20 crimes that are considered violent felonies.* These range from murder, rape, and possession of weapons of mass destruction, to first degree burglary, robbery, attempting to commit any crime punishable by life imprisonment, sale of specified controlled substances to a minor, grand theft involving a firearm, carjacking, any gang-related felony, witness intimidation, or any conspiracy to commit a serious felony. By expanding the availability of criminal protective orders to the long list of violent or serious felonies, and authorizing courts to issue lifetime protective order (rather than 10 years for a narrow list of felonies) for all such felonies, this bill can be expected to significantly increase the number of protective orders that are sought and issued, and the amount of time that such persons are subject to such orders. Although, such lifetime orders could expire in certain circumstances (death of the victim, underlying conviction is dismissed or overturned, or a court removes the order at request of the victim).

Additionally, *this bill would apply retroactively to certain criminal protective orders already in effect*. Specifically, it would allow a protective order still in effect that was issued before January 1, 2025, against a defendant convicted of domestic violence, human trafficking, gang activity, rape, statutory rape, spousal rape, pimping and pandering, offenses requiring sex offender registration, elder abuse, and willfully, malicious, and repeated stalking, to be extended into a lifetime protective order against the defendant. This would only occur, if during the duration of the order, the defendant has violated the terms of the order, the defendant has been convicted of a violent felony, serious felony, or felony sex-offender offense, and the court finds there is a probability of future violations and that the safety of a victim and the victim's immediate family, would make the extension of the protective order appropriate. For example, take a person convicted of a domestic violence related offense that resulted in a 10 year protective order prohibiting them from contacting or approaching their former spouse, who, prior to this bill, had violated the terms of their order and was convicted of separate serious felony such as robbery or carjacking. Under this bill, a court would be required to consider extending their 10 year order into a lifetime order based on their prior conduct, upon a finding of a probability of future violations and a threat to the safety of the victim.

4) **Impact of Lifetime Protective Orders on Criminal Contempt Charges**: By expanding the availability of criminal protective orders to every type of serious and violent felony, and permitting such orders to last a defendant's lifetime, *this bill can be expected to create a significant increase in the number of criminal contempt misdemeanor convictions associated with violating protective orders.*

Disobedience of a court order may be punished as criminal contempt. The crime of contempt is a general intent crime. It is proven by showing that the defendant intended to commit the prohibited act, without any additional showing that he or she intended "to do some further act or achieve some additional consequence." (*People v. Greenfield* (1982) 134 Cal.App.3d Supp. 1, 4.) Nevertheless, a violation must also be willful, which in the case of a court order encompasses both intent to disobey the order, and disregard of the duty to obey the order."

(*In re Karpf* (1970) 10 Cal.App.3d 355, 372.)

Criminal contempt is a misdemeanor, punishable by imprisonment in county jail for up to one year or a fine of $1,000. (Pen. Code, §§ 273.6, subd. (a), 166, subd. (a)(4).) Proceedings under the statute are conducted like any other misdemeanor offense. (*In re McKinney* (1968) 70 Cal.2d 8, 10; *In re Kreitman* (1995) 40 Cal.App.4th 750, 755.) Therefore, the criminal contempt power is vested in the prosecution; the trial court has no power to institute criminal contempt proceedings under the Penal Code. (*In re McKinney, supra*, 70 Cal.2d at p. 13.) A defendant charged with the crime of contempt is "entitled to the full panoply of substantive and due process rights." (*People v. Kalnoki* (1992) 7 Cal.App.4t Supp. 8, 11.) Therefore, the defendant has the right to a jury trial, regardless of the sentence imposed. (*People v. Earley* (2004) 122 Cal.App.4th 542, 550.)

This bill can be expected to increase future prosecutions for violating such orders – subjecting persons who have completed their sentences, and all conditions of probation or supervision, to the threat of lifetime prosecution. This can reasonably be expected to increase the number of incarcerated persons and associated prison costs.

5) **Impact of Lifetime Criminal Protective Orders on Families, Housing, Employment, and Immigration Status:** The consequences of having the court issue a restraining order, let alone a lifetime restraining order, can be very severe. A criminal protective order under this bill could prohibit a defendant from any contact or going within a certain distance of any victim of any serious or violent felony for the entirety of the defendant's lifetime.

First, such an order could threaten an individual's housing and community interests by forcing them to vacate their home or leave their family. For example, a person who lives with their family, but is convicted of robbing a nearby house or carjacking of a car on their street, could be subject to criminal protective order that could force that person to move out of their home and away from their family. This could undermine economic security and increase the likelihood of a person becoming unhoused.

*Second, this bill could create lifetime criminal consequences for minors and young adults convicted of serious felonie*s such as gang related offenses, robberies, carjacking, and selling of specified drugs to other minors. Allowing judges to issue criminal protective orders in such circumstances, let alone for a lifetime, could force minors to vacate their schools, communities, and even families. Further, a person convicted of domestic violence, subject to a lifetime protective order prohibiting them from going near the victim of the abuse, could be subject to an order severely limiting their ability to visit their child for the rest of their life.

Third, such a significant expansion of criminal protective orders can additionally be expected to create consequences for a person's future employment, housing, professional licenses, and immigration status, particularly for lifetime orders. For example, a violation of a protective order is a deportable offense. Section 237(a)(2)(E)(ii) of the Immigration and Nationality Act (INA) states:

> *"Any [undocumented person] who at any time after entry is enjoined under a protection order issued by a court an whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible*

threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable."

Further, a person who has served their time, completed all terms of their probation, and otherwise is seeking to be a law abiding member of the community, could face difficulties securing employment or housing for the rest of their lives. Employers or landlords running background checks may be discouraged from hiring or providing housing to persons with active criminal protective orders. This is particularly true given that this bill provides that such lifetime protective orders shall remain in full effect (unless they expire as specified) even if the underlying accusation or information is dismissed, as specified.

While this bill admirably intends to protect victims from having to go through the pain and trauma of having to seek a modification or renewal of a restraining order, *authorizing lifetime protective orders for any violent or serious felony may undermine person's successful reentry into the community, increase a person's likelihood to commit new crimes, and detrimentally impact public safety*. This is counterintuitive to legislative action the state has taken in recent years to make it easier for convicted person's to reintegrate into communities and secure housing and employment, by sealing and reclassifying criminal records, including felony convictions. (*See* SB 731 (Durazo), Chapter 814, Statutes of 2022 (expanding arrest and conviction relief to include felonies); AB 1076 (Ting), Chapter 578, Statutes of 2019 (requiring the DOJ, on a monthly basis, to review the records in the statewide criminal justice databases grant relief to persons who identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure, as specified.); AB 1418 (McKinnor), Chapter 476, Statutes of 2023 (prohibiting a local government from requiring or encouraging a landlord to evict or penalize a tenant because of the tenant's association with another tenant or household member who has had contact with a law enforcement agency or has a criminal conviction or to perform a criminal background check of a tenant or a prospective tenant).)

6) **Constitutional Concerns - Fifth Amendment, Sixth Amendment, Eight Amendment, Fourteenth Amendment, Ex-Post Facto:** The expansion of current law to allow post-conviction restraining orders to last for a lifetime for over 40 types of crimes raises numerous questions about the constitutionality of such an expansion, such as right to travel, due process or cruel and unusual punishment.

First, a lifetime protective prohibiting a defendant from being within a certain distance of the person named in the order, could undermine the defendant's right to travel under the Fifth Amendment. *Second*, this bill may be vulnerable to a constitutional challenge under the Eight, Fifth or Fourteen Amendment. The Eighth Amendment prohibits the government from imposing cruel and unusual punishment and the right to due process is found in the Fifth and Fourteenth Amendments, which ensures that a defendant is treated fairly during criminal proceedings. A cruel and unusual punishment claim could be raised when the punishment is disproportionate to the crime. Allowing lifetime criminal protective orders to be issued against minors who have been convicted of robbery, carjacking, or sale of specified drugs to other minors, in addition to the criminal sentence associated with that penalty, is constitutionally suspect. For decades, California law has only permitted criminal protective orders for up to 10 years for a narrow list of crimes, and allowing lifetime criminal protective

orders to be issued for any serious or violent felony, may result in numerous legal challenges. This is particularly true given that protective orders are a frequent topic of litigation.

Third, when a court sentences a defendant the court generally loses jurisdiction over the case. However, there are instances where the court retains limited jurisdiction for purposes such as adjudicating probation-related issues. In situations where a post-conviction protective order has been issued, the court retains limited jurisdiction to modify or terminate the order. However, if a court were to issue a protective order to last up to a defendant's life, would this also extend a court's jurisdiction over the defendant for life? The bill does not require the court to make any additional findings when issuing a post-conviction protective order for a lifetime, rather than ten years (except for when it would apply retroactively). This may violate due process and the prohibition against cruel and unusual punishment.

Fourth, an argument can be made that a lifetime criminal protective order, in addition to the sentence associated with the crime, runs afoul of the Sixth Amendment. In *Apprendi v. United States* (2000) 530 U.S. 466, the United States Supreme Court held that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Id.* at p. 490.) Subsequently, in *Blakely v. Washington* (2004) 542 U.S. 296, the Court explained that "the 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." (*Id.* at p. 303). Because restraining orders are enforceable by way of contempt proceedings, arguably they constitute criminal punishment over and above the terms mandated by the offense of conviction. As such, they could be considered elements of an offense, and could not be mere findings of a court at sentencing. Thus, it is possible that the orders cannot be imposed unless the defendant had an opportunity for a jury trial and findings beyond a reasonable doubt under *Blakely* and *Apprendi*.

Fifth, because this bill would apply retroactively to extend certain criminal protective orders already in effect, it may run afoul of state and federal prohibitions on ex post facto laws (See Cal Const, Art. I § 9 (providing "a bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed."). (*See also* United States Const. art. I, § 10, cl 1 (No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.") This bill contains a provision allowing for previously issued 10 year protective orders to be extended into lifetime prohibitions, based on prior conduct that occurs prior to this bill's effective date. For example, take a person convicted of a domestic violence related offense that resulted in a 10 year protective order prohibiting them from contacting or approaching their former spouse, who, prior to this bill, had violated the terms of their order and was convicted of separate serious felony such as robbery or carjacking. Under AB 1931 a court could extend their 10 year order into a lifetime order based on their prior conduct, upon a finding of a probability of future violations and a threat to the safety of the victim. This retroactive increase of a prior criminal protective order, based on prior criminal conduct, could make this bill vulnerable to an ex-post facto legal challenge.

7) **Argument in Support:** According to the San Bernardino County Sheriff's Department "As the Sheriff of San Bernardino County, I have seen the immense challenges faced by victims

of sexual crimes and the lasting impacts it has on their lives. "Kayleigh's Law," named after Kayleigh Kozack, a survivor and victim's rights activist, represents a critical step forward ensuring that victims have the necessary legal protections to safeguard themselves from further harm.

By allowing victims to petition for lifetime injunctions against their offenders, "Kayleigh's Law" provides a vital layer of protection and peace of mind to survivors, enabling them to live their lives without fear of further contact or harassment. AB 1931 not only empowers survivors but also sends a clear message that our justice system stands with them and prioritizes their safety and well-being."

8) **Argument in Opposition**: According to the California Public Defenders Association, "Current law provides courts discretion to impose protective orders for a sufficient amount of time and in an appropriate range of cases. Imposing permanent protective orders would create circumstances in which individuals who have served their sentences, satisfied their supervision, and are otherwise living law abiding lives, are subject to the threat of lifetime prosecution because of a permanent restraining order. Setting a maximum length for a protective order ensures individuals have judicial review of existing orders, have notice of changes in victims' geographic location (areas they are prohibited), and allows an end date for orders that no longer serve a purpose."

9) **Related Legislation**: AB 2308 (Davies), of the 2023-2024 Legislative Session, would extend the amount of time a criminal protective order can be issued against a defendant convicted of domestic violence involving corporal injury to a spouse, cohabitant, fiancé, or parent of the offender's child, from 10 years to 15 years. AB 2308 is pending in this committee

10) **Prior Legislation**:

a) AB 467 (Gabriel), Chapter 14, Statutes of 2023, clarifies that a court that sentenced a defendant and issued a 10-year criminal protective order, may make modifications to it throughout the duration of the order.

b) AB 818 (Petrie-Norris), Chapter 242, Statutes of 2023, expands the requirement for law enforcement officers to serve domestic violence orders and specifies that law enforcement must enter a firearm obtained during service of domestic violence restraining order or obtained at the scene of a domestic violence incident into the Automated Firearms System (AFS).

c) SB 853 (Hurtado), of the 2019-2020 Legislative Session, would have required courts to consider issuing a post-conviction restraining order for up to the duration that a defendant is required to register as a sex offender. SB 853 failed passage in Senate Public Safety.

d) SB 382 (Caballero), Chapter 87, Statutes of 2022, includes commercial exploitation of a minor in existing provisions of law that authorize courts to issue a restraining order during the pendency of criminal proceedings and upon conviction of specified offenses.

e) SB 352 (Block) Chapter 279, Statutes of 2015, authorized courts to issue a 10 year protective order upon convictions of certain elder abuse offenses.

f) AB 307 (Campos), Chapter 291, Statutes of 2013, allows a court to issue a protective order for up to 10 years when a defendant is convicted of specified sex crimes, regardless of the sentence imposed.

g) SB 723 (Pavley), Chapter 155, Statutes of 2011, allows a court to issue a protective order for up to 10 years when a defendant is convicted for an offense involving domestic violence.

h) AB 289 (Spitzer), Chapter 582, Statutes of 2007, allows courts to issue a protective order for up to 10 years for a conviction stemming from a domestic violence causing corporal injury conviction.

i) SB 834 (Florez), Chapter 627, Statutes of 2010, authorizes a court to issue a protective order for up to 10 years when a defendant is convicted for a sexual offense involving a minor.

REGISTERED SUPPORT / OPPOSITION:

Support

(EM) power + Resilience Project
Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Orange County Sheriff's Department
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition:

ACLU California Action
California Public Defenders Association
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Legal Services for Prisoners With Children
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy

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

Date of Hearing: April 16, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1954 (Alanis) – As Amended March 12, 2024

SUMMARY: Requires a county sheriff or police chief, district attorney, and county counsel of any alternative county, as specified, to provide consultation and assistance in the Department of State Hospitals' ("DSH") process of locating housing for a conditionally released sexually violent predator ("SVP"). Specifically, **this bill**:

1) Mandates, when determining a conditionally released SVP's "county of domicile," and subsequent placement, that a sheriff or chief police chief, the county counsel, and the district attorney of a proposed alternative placement locality to provide assistance and consultation in DSH's process of locating and securing housing for a sexually violent predator.

2) Requires that notice to the police chief or sheriff, district attorney, or county's designated counsel of a SVP's conditional or unconditional release into the community, as specified, be made via electronic means and certified mail.

EXISTING LAW:

1) Provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be an SVP after the person has served their prison commitment. This is known as the Sexually Violent Predator Act ("SVPA"). (Welf. & Inst. Code, § 6600, et seq.)

2) Defines a "sexually violent predator" as "a person who has been convicted of a sexually violent offense against at least one victim, and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (Welf. & Inst. Code, § 6600, subd. (a)(1).)

3) Permits a person committed as an SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code, §§ 6604 & 6604.1.)

4) Establishes a process whereby a person committed as an SVP can petition for conditional release or an unconditional discharge any time after one year of commitment, notwithstanding the lack of recommendation or concurrence by the Director of DSH. (Welf. & Inst. Code, § 6608, subds. (a), (f) & (m).)

5) Provides that if the petition is made without the consent of the director of the treatment facility, no action may be taken on the petition without first obtaining the written recommendation of the director of the treatment facility. (Welf. & Inst. Code, § 6608, subd. (e).)

6) Provides that before actually placing a person on conditional release, the community program director designated by the DSH must recommend the program most appropriate for supervising and treating the person. (Welf. & Inst. Code, § 6608, subd. (h).)

7) Provides that a person who is conditionally released shall be placed in the county of domicile of the person prior to the person's incarceration, unless both of the following conditions are satisfied:

   a) The court finds that extraordinary circumstances require placement outside the county of domicile; and,

   b) The designated county of placement was given prior notice and an opportunity to comment on the proposed placement of the committed person in the county. (Welf. & Inst. Code, 6608.5, subd. (a).)

8) States that the county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as SVPs who are about to be conditionally released. (Welf. & Inst. Code, § 6608.5, subd. (d).)

9) Specifies that in recommending a specific placement for community outpatient treatment, the DSH or its designee shall consider all of the following:

   a) The concerns and proximity of the victim or the victim's next of kin; and,

   b) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. The "profile" of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics. (Welf. & Inst. Code, § 6608.5, subd. (e)(1)-(2).)

10) States that if the court determines that placement of a person in the county of their domicile is not appropriate, the court shall consider the following circumstances in designating his or her placement in a county for conditional release:

   a) If and how long the person has previously resided or been employed in the county; and,

   b) If the person has next of kin in the county. (Welf. & Inst. Code, § 6608.5, subd. (g)(1)-(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author: "After extensive conversations with the Department of State Hospitals in 2024, following a high profile case involving the placement of a sexually violent predator in the Central Valley, it was determined that current state law omits critical parties necessary to ensure both the safety of the public and sufficient housing and treatment of the SVP. It was also discovered that the only form of required notification

from the state to local parties that are required for placement, was an electronic mail application. AB 1954 requires a higher level of engagement from critical parties with knowledge of the communities being considered and a better form of notification in that process. These changes help ensure that the counties considered for placement of the SVP have the necessary input and notification to prepare for placement of the SVP and are able to offer them sufficient housing and treatment."

2) **Need for the Bill:** This bill is aimed at providing more input from a proposed alternative county when a court or DSH considers placement of a conditionally released SVP in a county other than the county of domicile. According to information provided by the author: "In situations where a judge determines extraordinary circumstances on the placement of an SVP in a county that is not the individuals county of domicile, current law requires the department to convene a committee consisting of the counsel for the committed individual, the sheriff or the chief of police of the locality for placement, and the county counsel and the district attorney of the county of domicile, or their designees, to provide assistance and consultation to the department in locating and securing housing.

"However, while critical parties to these cases like the district attorney of the county of domicile is included in the process, the DA's of alternative counties are not despite their knowledge of the community and impacts of said placement in their county at the ruling of the court. By requiring equal engagement from both counties of domicile and alternative counties, we can ensure that the SVP and receiving county has all necessary information to offer sufficient housing and the best chance for successful treatment.

"Additionally, the Department of State Hospitals only provides notification to required parties through electronic format and confirmation of receipt through the email client/application confirmation pop-up window. By requiring DSH to also send notification by way of certified mail, we can ensure that public safety officials and critical parties to these cases are properly and sufficiently notified.

3) **SVP Law:** This bill requires that, if a SVP is conditionally released and may not, for legal or practical reasons, be returned to the county of domicile, DSH *must* seek assistance from the district attorney, local law enforcement, and county counsel for the alternative county before placing the SVP in the community. According to the author, there is insufficient communication between DSH and the alternative county before the SVP is released – leaving the alternative county with no mechanism to assist DSH in placing the SVP in that community.

Enacted in 1996, the SVPA authorizes an involuntary civil commitment of any person "who has been convicted of a sexually violent offense … and who has a diagnosed mental disorder that **makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior**." (Emphasis added.) (Welf. & Inst. Code, § 6601, subd. (a).) "The SVPA was designed to accomplish the dual goals of protecting the public, by confining violent sexual predators likely to reoffend, and providing treatment to those offenders. Those committed pursuant to the SVPA are to be treated not as criminals, but as sick persons. They are to receive treatment for their disorders and must be

released when they no longer constitute a threat to society." (*People v. Superior Court (Karsai)* (2013) 213 Cal.App.4th 774, 783, citing Welf. & Inst. Code, § 6250.)

Civil commitment is not a prison sentence. Once a person has been deemed no longer a threat to public safety, they must, as a matter of law, be released from custody. Originally, the SVP laws provided for an initial commitment of two years and then a review every two years thereafter. However, effective September 20, 2006, the law now provides for indeterminate commitments for persons found to be sexually violent predators. (Welf. & Inst. Code § 6604.)

a. Process of SVP designation:

When the Department of Corrections and Rehabilitation ("CDCR") determines that an inmate "may be a sexually violent predator," the CDCR Secretary refers the inmate to the DSH for a thorough evaluation. (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1145; Welf. & Inst., § 6601, subd. (b).)

An evaluation "must be conducted by at least two practicing psychiatrists or psychologists in accordance with a standardized assessment protocol[.]" (Welf. & Inst. Code, § 6601, subd. (c)-(d).) If the two evaluators agree the inmate is likely to reoffend without treatment or custody due to their mental disorder, the Director of DSH must request a petition for commitment pursuant to the Welfare and Institutions Code section 6602 to the county in which the inmate was last convicted. (Welf. & Inst. Code, § 6601, subd. (d).) Thereafter, the county district attorney will file a petition for civil commitment. Due process requires any deprivation of liberty by the state requires notice and a meaningful opportunity to be heard.

Accordingly, a court then reviews the petition and determines whether there is probable cause to believe the inmate "is likely to engage in sexually violent predatory criminal behavior upon their release. If the court or jury determines that the person is a sexually violent predator, the person [is] committed for an indeterminate term" to a state mental hospital "for appropriate treatment and confinement." (Welf. & Inst. Code, § 6604.)

The burden then shifts to the "offender seeking his or her release from an SVPA commitment" to prove he or she is no longer a significant risk to society. (Ashley Felando (2012) *California's Sexually Violent Predator Act and the Dangerous Patient Exception*, 40 W. St. U.L. Rev. 73, 76; Note (2014) *Examining the Conditions of Confinement for Civil Detainees under California's Sexually Violent Predators Act*, 68 Hastings L.J. 1441, 1444-1446.)

If the Director of DSH determines that the inmate's diagnosed mental disorder has so changed that the inmate is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the Director will forward a report and recommendation for conditional release. If the court at the hearing determines that the SVP would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court will order the person placed with an appropriate forensic conditional release program operated by the state for one year, a substantial portion of which is required to include outpatient supervision and treatment. (Welf. & Inst. Code § 6608, subd. (f).)

After a judicial determination that a person would not be a danger to the health and safety of others (i.e., in that it is not likely that the person will engage in sexually violent criminal behavior due to the person's diagnosed mental disorder while under supervision and treatment in the community), they will be placed in their pre-incarceration county of domicile, unless the court finds that extraordinary circumstances require placement outside the county domicile. (Welf. & Inst. Code § 6608.5(a); see Welf. & Inst. Code § 6608.5, subd. (b).)

b. Restrictions on Conditionally Released SVPs

A conditionally released SVP is deemed by DSH and the courts to no longer pose a danger to the community and may be treated in the community rather than confinement in the state hospital. However, a conditionally released SVP is tightly monitored and supervised in the community. A person released as an SVP may not be released to any residence that is within one-quarter mile of any public or private school providing instruction in kindergarten or any grades 1 through 12, inclusive, if the person has been previously convicted of child molestation or continuous sexual abuse of a child or the court finds the person has a history of improperly sexual conduct with children. (Welf. & Inst. Code, § 6608.5, subd. (f)(1-2).) Additionally, a conditionally released SVP must be monitored by a global positioning system ("GPS") until they are unconditionally released. (Welf. & Inst. Code, § 6608.1.)

4) **"County of Domicile":** An SVP conditionally released for outpatient supervision and treatment must be placed in the county of domicile prior to the person's incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile. (Welf. & Inst. Code, § 6608.5, subd. (a)(1).) The county of domicile is the county where the person has their true, fixed, and permanent home and principal residence and to which they have manifested the intention of returning whenever they are absent. (*Id.*)

   For purposes of determining the county of domicile, the court may consider information found on a California's driver's license, California identification card, recent rent or utilities receipt, printed personalized checks or other recent banking documents, or any arrest record. If no information can be verified, the county of domicile shall be considered the county in which the person was arrested and convicted or last returned on parole. (Welf. & Inst. Code, § 6608.5, subd. (b)(1).) If that county is not suitable, the court, DSH, and CDCR may choose alternative county for placement.

   Based on input from local law enforcement, a court may approve, modify, or reject the recommended or proposed specific address within that community or proposed specific address within that community. A court could approve a specific city but reject a specific address in that city. Therefore, simply having a verified address is not sufficient to satisfy the terms of a conditional release. The city and the address must be approved by the court. (See Welf. & Inst. Code, 6609.1, subd. (a)(5)A).) Furthermore, agencies receiving notice of an SVP's placement in a specific county may comment on the placement or location of release, and may suggest alternative locations for placement within a community. (Welf. & Inst. Code, § 6609.1, subd. (a)(5)(A) and (b).)

Based on the all the evidence, the court determines whether approve, reject, or modify the terms of conditional release. Welfare and Institutions Code section 6609.1 requires a community be given 30 days' notice if an SVP is pending conditional release in that

community. (Welf. & Inst. Code, § 6609.1, subd. (a)(4).) Notice includes the name and proposed placement address before an SVP is released into the community.

Identifying the county of domicile for an SVP is challenging because in many cases, these individuals have been incarcerated for years – first in state prison and then on civil commitment. There may be no evidence of county of domicile. The SVPA was enacted in 1996 – and used very heavily in the last 15 or 20 years. If a SVP was originally from Hancock Park in Los Angeles in the 1990s – returning to Los Angeles may not be an option because a SVP cannot live near a school or park, or be anywhere children regularly congregate. There may also be additional stay away orders in place that prevent placement in certain areas.

A finding that a person is eligible for conditional release really eliminates the legal grounds for holding the person in custody. Again, civil commitment is not a prison sentence wherein a grant of parole may be determined by examining the offender and the nature of the offense. It is a mental health diagnosis wherein the goal of commitment is to treat the mental illness so the person may ultimately be released into the community. (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1171 ["Here, for instance, the Legislature disavowed any 'punitive purpose [],' and declared its intent to establish 'civil commitment' proceedings in order to provide 'treatment' to mentally disordered individuals who cannot control sexually violent criminal behavior. The Legislature also made clear that, despite their criminal record, persons eligible for commitment and treatment as SVP's are to be viewed 'not as criminals, but as sick persons.' Consistent with these remarks, the SVPA was placed in the Welfare and Institutions Code, surrounded on each side by other schemes concerned with the care and treatment of various mentally ill and disabled groups."].)

Also, conditional release requires weekly individual contact with the SVP, group treatment, and weekly drug screening. It may also include polygraph examinations, anti-androgen therapy, GPS tracking, increased supervision through random visits, and community notification. Furthermore, there are very few SVPs placed on conditional release. The Sex Offender Management Board ("SOMB") reports in 2022 Year-End Report that between 1998 and 2021, a total of 900 people were committed as SVPs and 21 people are currently in the SVP conditional release program.

5) **Arguments in Support:** According to the *Peace Officers Research Association of California*: AB 1954 requires the sheriff or the chief of police of an alternative placement locality and the county counsel and the district attorney of an alternative placement county to provide assistance and consultation in the department's process of locating and securing housing for a sexually violent predator. Again, PORAC supports AB 1954.

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

7) **Related Legislation:**

   a) AB 1456 (Patterson) was substantially similar was gut and amended at the end of the 2023 legislative year and is substantially similar to this bill but was never referred to this committee.

   b) AB 2036 (Patterson) states the intent of the Legislature to enact legislation that would require DSH to notify the victims of a person who has been committed as a SVP of that

person's release date and placement location. AB 2036 is pending hearing in this committee today.

8) **Prior Legislation:**

a) AB 763 (Davies), of the 2023-24 Legislative Session, prohibits placing an SVP released on conditional release within 1/4 mile of a home school. AB 763 was referred to this committee, but never heard.

b) SB 841 (Jones), of the 2021-22 Legislative Session, would have enacted the Sexually Violent Predator Accountability, Fairness, and Enforcement Act, that would have required the DSH to take specified actions regarding the placement of SVPs in communities, including notifying the county's executive officer of the placement location, as specified. SB 841 failed passage in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Peace Officers Research Association of California (PORAC)

Opposition

None

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

Date of Hearing: April 16, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2036 (Joe Patterson) – As Amended April 9, 2024

SUMMARY: Requires that the meeting of local law enforcement, district attorney, and county counsel regarding the conditional placement of a Sexually Violent Predator (SVP) be conducted with each individual, as specified, present and may occur only in the county of domicile with a representative of the Department of State Hospitals (DSH) personally present.

EXISTING LAW:

1) Provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be an SVP after the person has served their prison commitment. This is known as the Sexually Violent Predator Act ("SVPA"). (Welf. & Inst. Code, § 6600, et seq.)

2) Defines a "sexually violent predator" as "a person who has been convicted of a sexually violent offense against at least one victim, and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (Welf. & Inst. Code, § 6600, subd. (a)(1).)

3) Permits a person committed as an SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code, §§ 6604 & 6604.1.)

4) Establishes a process whereby a person committed as an SVP can petition for conditional release or an unconditional discharge any time after one year of commitment, notwithstanding the lack of recommendation or concurrence by the Director of DSH. (Welf. & Inst. Code, § 6608, subds. (a), (f) & (m).)

5) Provides that if the petition is made without the consent of the director of the treatment facility, no action may be taken on the petition without first obtaining the written recommendation of the director of the treatment facility. (Welf. & Inst. Code, § 6608, subd. (e).)

6) Provides that before actually placing a person on conditional release, the community program director designated by the DSH must recommend the program most appropriate for supervising and treating the person. (Welf. & Inst. Code, § 6608, subd. (h).)

7) Provides that a person who is conditionally released shall be placed in the county of domicile of the person prior to the person's incarceration, unless both of the following conditions are satisfied:

a) The court finds that extraordinary circumstances require placement outside the county of domicile; and,

b) The designated county of placement was given prior notice and an opportunity to comment on the proposed placement of the committed person in the county. (Welf. & Inst. Code, 6608.5, subd. (a).)

8) States that the county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as SVPs who are about to be conditionally released. (Welf. & Inst. Code, § 6608.5, subd. (d).)

9) Specifies that in recommending a specific placement for community outpatient treatment, the DSH or its designee shall consider all of the following:

a) The concerns and proximity of the victim or the victim's next of kin; and,

b) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. The "profile" of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics. (Welf. & Inst. Code, § 6608.5, subd. (e)(1)-(2).)

10) States that if the court determines that placement of a person in the county of their domicile is not appropriate, the court shall consider the following circumstances in designating his or her placement in a county for conditional release:

a) If and how long the person has previously resided or been employed in the county; and,

b) If the person has next of kin in the county. (Welf. & Inst. Code, § 6608.5, subd. (g)(1)-(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author: "The entire reason the legislature created the housing committee process is to enable the engagement of local stakeholders and empower local authorities to have input in the placement of Sexually Violent Predators. This process has ensured more transparency but has also been plagued by technological barriers. I have personally participated in several of these meetings and in every case, the video or audio feed has broken down. We must ensure that one representative from the Department of State Hospitals is present at the meeting so he or she can receive the input from the community as intended by the legislature."

2) **SVP Law:** This bill requires that, if a SVP is conditionally released and may not, for legal or practical reasons, be returned to their county of domicile, DSH *must* seek assistance and consultation from the district attorney, local law enforcement, and county counsel for the alternative county before placing the SVP in that community. Pursuant to existing law, an

alternate county of domicile may only receive 30 days' notice of placement. According to the author, there is insufficient communication between DSH and the alternative county before the SVP is released – leaving the alternative county with no mechanism to assist DSH in placing the SVP in that community.

Enacted in 1996, the SVPA authorizes an involuntary civil commitment of any person "who has been convicted of a sexually violent offense … and who has a diagnosed mental disorder that **makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior**." (Emphasis added.) (Welf. & Inst. Code, § 6601, subd. (a).) "The SVPA was designed to accomplish the dual goals of protecting the public, by confining violent sexual predators likely to reoffend, and providing treatment to those offenders. Those committed pursuant to the SVPA are to be treated not as criminals, but as sick persons. They are to receive treatment for their disorders and must be released when they no longer constitute a threat to society." (*People v. Superior Court (Karsai)* (2013) 213 Cal.App.4th 774, 783, citing Welf. & Inst. Code, § 6250.)

Civil commitment is not a prison sentence. Once a person has been deemed no longer a threat to public safety, they must, as a matter of law, be released from custody. Originally, the SVP laws provided for an initial commitment of two years and then a review every two years thereafter. However, effective September 20, 2006, the law now provides for indeterminate commitments for persons found to be sexually violent predators. (Welf. & Inst. Code § 6604.)

a. Process of SVP designation:

When the Department of Corrections and Rehabilitation (CDCR) determines that an inmate "may be a sexually violent predator," the CDCR Secretary refers the inmate to the DSH for a thorough evaluation. (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1145; Welf. & Inst., § 6601, subd. (b).)

An evaluation "must be conducted by at least two practicing psychiatrists or psychologists in accordance with a standardized assessment protocol[.]" (Welf. & Inst. Code, § 6601, subd. (c)-(d).) If the two evaluators agree the inmate is likely to reoffend without treatment or custody due to their mental disorder, the Director of DSH must request a petition for commitment pursuant to the Welfare and Institutions Code section 6602 to the county in which the inmate was last convicted. (Welf. & Inst. Code, § 6601, subd. (d).) Thereafter, the county district attorney will file a petition for civil commitment. Due process requires any deprivation of liberty by the state requires notice and a meaningful opportunity to be heard.

Accordingly, a court then reviews the petition and determines whether there is probable cause to believe the inmate "is likely to engage in sexually violent predatory criminal behavior upon their release. If the court or jury determines that the person is a sexually violent predator, the person [is] committed for an indeterminate term" to a state mental hospital "for appropriate treatment and confinement." (Welf. & Inst. Code, § 6604.)

The burden then shifts to the "offender seeking his or her release from an SVPA commitment" to prove he or she is no longer a significant risk to society. (Ashley Felando

(2012) *California's Sexually Violent Predator Act and the Dangerous Patient Exception*, 40 W. St. U.L. Rev. 73, 76; Note (2014) *Examining the Conditions of Confinement for Civil Detainees under California's Sexually Violent Predators Act*, 68 Hastings L.J. 1441, 1444-1446.)

If the Director of DSH determines that the inmate's diagnosed mental disorder has so changed that the inmate is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the Director will forward a report and recommendation for conditional release. If the court at the hearing determines that the SVP would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court will order the person placed with an appropriate forensic conditional release program operated by the state for one year, a substantial portion of which is required to include outpatient supervision and treatment. (Welf. & Inst. Code § 6608, subd. (f).)

After a judicial determination that a person would not be a danger to the health and safety of others (i.e., in that it is not likely that the person will engage in sexually violent criminal behavior due to the person's diagnosed mental disorder while under supervision and treatment in the community), they will be placed in their pre-incarceration county of domicile, unless the court finds that extraordinary circumstances require placement outside the county domicile. (Welf. & Inst. Code § 6608.5, subd. (a); see Welf. & Inst. Code § 6608.5, subd. (b).)

b. Restrictions on Conditionally Released SVPs

A conditionally released SVP is deemed by DSH and the courts to no longer pose a danger to the community and may be treated in the community rather than confinement in the state hospital. However, a conditionally released SVP is tightly monitored and supervised in the community. A person released as an SVP may not be released to any residence that is within one-quarter mile of any public or private school providing instruction in kindergarten or any grades 1 through 12, inclusive, if the person has been previously convicted of child molestation or continuous sexual abuse of a child or the court finds the person has a history of improperly sexual conduct with children. (Welf. & Inst. Code, § 6608.5, subd. (f)(1-2).) Additionally, a conditionally released SVP must be monitored by a global positioning system ("GPS") until they are unconditionally released. (Welf. & Inst. Code, § 6608.1.)

3) **DSH SVP Conditional Release Program (CONREP):** The DSH CONREP is described by DSH as follows:

> CONREP is DSH's statewide system of community-based services for court-ordered individuals. Mandated as a state responsibility, CONREP began on January 1, 1986. The SVP Act governs all SVP commitments and releases. Releases from the hospital to the community are either unconditional (direct community discharge) or conditional through CONREP and are court-ordered. CONREP is an intensive community-based treatment, and 24 hours per day monitoring program with gradual steps toward increased community re-entry depending on treatment progress. DSH contracts with Liberty Healthcare to provide SVP CONREP

services across the state. SVP CONREP is designed in accordance with best practice standards, called the Risk, Needs, and Responsivity Principles. Research shows that interventions with sex offenders that follow these principles have the greatest reduction in re-offense rates.

Interventions are coordinated through the Collaboration Model of sex offender management that relies on cross agency teamwork and a broad range of services that are flexibly applied in response to patient's risk profiles and treatment needs. This model of sex offender treatment holds patients accountable by the combined use of the patient's internal controls, developed during inpatient treatment, and the use of external tools, including polygraph examinations, surveillance, and electronic monitoring. It is victim-centered, focusing on community safety as the primary goal. Close collaboration and communication by all parties participating in the patient's community treatment and supervision are essential.

Use of a Community Safety Team (CST), a standard practice for providing community supervision and treatment, is the method by which the principles of Risks, Needs, and Responsivity and the Collaboration Model are applied for each patient. Members of the CST include the following: (a) CONREP Regional Coordinator; (b) CONREP Clinical Program Director; (c) Treatment Providers; (d) Victim Advocate; (e) Polygraph Provider; (f) Local law enforcement; (g) Defense attorney; (h) District Attorney; and (i) Others as needed for support, accountability, and/or clinical needs.

The SVP CONREP program utilizes the following supervision and monitoring tools that are carried out by the CST: (a) unannounced and scheduled in person visits onsite and offsite from the residence; (b) collateral contacts and chaperone training with significant people in the patient's life; (c) covert surveillance; (d) 24-hour GPS monitoring; (e) monitoring of approved electronics (i.e. phone, computer); (f) random urine screens for illicit substances; (g) unannounced residence, vehicle, and personal property searches; (h) Banking and expense reviews; and (i) approval of schedules, locations of outings, and routes of travel for all time outside of residence. This is verified daily by review of GPS tracking. The GPS system also provides "real time" tracking with instant notification of any violations of the inclusion/exclusion zones developed for the patient. Life skills training, residential placement, and other services needed to support safe and successful community reintegration.

Conditional release of an SVP is complex and time consuming and often engenders strong reactions from those in the community where the SVP will be placed. This complex process has been mired in delays for many years. While tight restrictions on conditionally released SVPs is critical, the number of laws that restrict housing has created an untenable reality

where a court can no longer deprive someone of their constitutional liberty, but there is nowhere for an SVP t reside outside the facility.

4) **"County of Domicile":** An SVP conditionally released for outpatient supervision and treatment must be placed in the county of domicile prior to the person's incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile. (Welf. & Inst. Code, § 6608.5, subd. (a)(1).) The county of domicile is the county where the person has their true, fixed, and permanent home and principal residence and to which they have manifested the intention of returning whenever they are absent. (*Id.*)

For purposes of determining the county of domicile, the court may consider information found on a California's driver's license, California identification card, recent rent or utilities receipt, printed personalized checks or other recent banking documents, or any arrest record. If no information can be verified, the county of domicile shall be considered the county in which the person was arrested and convicted or last returned on parole. (Welf. & Inst. Code, § 6608.5, subd. (b)(1).) If that county is not suitable, the court, DSH, and CDCR may choose alternative county for placement.

Based on input from local law enforcement, a court may approve, modify, or reject the recommended or proposed specific address within that community or proposed specific address within that community. A court could approve a specific city but reject a specific address in that city. Therefore, simply having a verified address is not sufficient to satisfy the terms of a conditional release. The city and the address must be approved by the court. (See Welf. & Inst. Code, 6609.1, subd. (a)(5)A).) Furthermore, agencies receiving notice of an SVP's placement in a specific county may comment on the placement or location of release, and may suggest alternative locations for placement within a community. (Welf. & Inst. Code, § 6609.1, subd. (a)(5)(A) and (b).)

Based on the all the evidence, the court determines whether approve, reject, or modify the terms of conditional release. Welfare and Institutions Code section 6609.1 requires a community be given 30 days' notice if an SVP is pending conditional release in that community. (Welf. & Inst. Code, § 6609.1, subd. (a)(4).) Notice includes the name and proposed placement address before an SVP is released into the community.

Identifying the county of domicile for an SVP is challenging because in many cases, these individuals have been incarcerated for years – first in state prison and then on civil commitment. There may be no evidence of county of domicile. The SVPA was enacted in 1996 – and used very heavily in the last 15 or 20 years. If a SVP was originally from Hancock Park in Los Angeles in the 1990s – returning to Los Angeles may not be an option because a SVP cannot live near a school or park, or be anywhere children regularly congregate. There may also be additional stay away orders in place that prevent placement in certain areas.

A finding that a person is eligible for conditional release really eliminates the legal grounds for holding the person in custody. Again, civil commitment is not a prison sentence wherein a grant of parole may be determined by examining the offender and the nature of the offense. It is a mental health diagnosis wherein the goal of commitment is to treat the mental illness so the person may ultimately be released into the community. (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1171 ["Here, for instance, the Legislature disavowed any 'punitive

purpose [],' and declared its intent to establish 'civil commitment' proceedings in order to provide 'treatment' to mentally disordered individuals who cannot control sexually violent criminal behavior. The Legislature also made clear that, despite their criminal record, those eligible for commitment and treatment as SVP's are to be viewed 'not as criminals, but as sick persons.' Consistent with these remarks, the SVPA was placed in the Welfare and Institutions Code, surrounded on each side by other schemes concerned with the care and treatment of various mentally ill and disabled groups."].)

Also, conditional release requires weekly individual contact with the SVP, group treatment, and weekly drug screening. It may also include polygraph examinations, anti-androgen therapy, GPS tracking, increased supervision through random visits, and community notification.

5) **Argument in Support:** None on file.

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

7) **Related Legislation:**

a) AB 1456 (Patterson) was substantially similar was gut and amended at the end of the 2023 legislative year and is substantially similar to this bill but was never referred to this committee.

b) AB 1954 (Alanis) states the intent of the Legislature to enact legislation that would require the State Department of State Hospitals to notify the victims of a person who has been committed as a sexually violent predator of that person's release date and placement location. AB 1954 is pending hearing in this committee today.

c) AB 2035 (Patterson) prohibits the Department of State Hospitals ("DSH") from placing a conditionally released sexually violent predator ("SVP") into the community if the person does not have housing in a qualified dwelling, which is defined as a structure intended for human habitation by one person or a single family and that is not within 10 feet of another dwelling. AB 2035 is pending in the Assembly Committee on Appropriations.

8) **Prior Legislation:**

a) AB 763 (Davies, of the 2023-24 Legislative Session, prohibits placing an SCP released on conditional release within 1/4 mile of a home school. AB 763 was referred to this committee, but never heard.

b) SB 841 (Jones), of the 2021-22 Legislative Session, would have enacted the Sexually Violent Predator Accountability, Fairness, and Enforcement Act, would have required the DSH to take specified actions regarding the placement of SVPs in communities, including notifying the county's executive officer of the placement location, as specified. SB 841 failed passage in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

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

Date of Hearing: April 16, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2106 (McCarty) – As Amended March 21, 2024

As Proposed to Be Amended in Committee

SUMMARY: Increases the term of probation for persons convicted of a controlled substance offense. Specifically, **this bill**:

1) Requires, in instances where a defendant is charged with a controlled substances offense and granted probation, the term of probation to be for a period not exceeding two years in misdemeanor cases and not exceeding three years in felony cases, and upon those terms and conditions as the court shall determine, including a court-mandated drug treatment program or drug education, as specified.

2) Requires the court to reduce a probation term upon a showing that the defendant successfully completed a court-mandated drug treatment program.

3) Defines "drug treatment program" as a state-licensed or state-certified community drug treatment program, which may include one or more of the following: drug education, outpatient services, narcotic replacement therapy, residential treatment, detoxification services, and aftercare services.

4) Defines "Successfully completed" as a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court. Completion of treatment shall not require cessation of narcotic replacement therapy.

EXISTING LAW:

1) 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 the probation officer. (Pen. Code, § 1203, subd. (a).)

2) Authorizes the court to order up to one year of probation for misdemeanors, except when an offense requires specific probation lengths. (Pen. Code, § 1203a.)

3) Authorizes the court to order up to two years of probation for felonies. (Pen. Code, § 1203.1. subd. (a).)

4) Requires the court, upon a conviction of specified a controlled substance offense and when recommended by the probation officer, to require as a condition of probation that the defendant shall not use or be under the influence of any controlled substance, and that the

defendant submit to drug and substance abuse testing as directed by the probation officer. (Pen. Code 1203.1ab, subd. (a).)

5) Requires a person convicted of a nonviolent drug possession offense to receive probation. (Pen. Code, § 1210.1(a).)

6) Provides that a court may not deny a defendant probation because of their inability to pay the fine for specified controlled substance offenses. (Health & Saf. Code, § 11350, subd. (b).)

7) Requires the trial court to order a defendant, as a condition of probation, to secure education or treatment from a local community agency designated by the court, if the service is available and is likely to benefit from the service, whenever that person is granted probation by the court after conviction for a violation of any controlled substance offense. (Health & Saf. Code, § 11373, subd. (a).)

8) Requires the court to require, as a condition of probation, participation in and completion of an appropriate drug treatment program. (Pen. Code, § 1210.1, subd. (a).)

9) Authorizes the court, if it determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, to place a person convicted of a felony on probation if that person is not otherwise precluded by law from being placed on probation. (Pen. Code, § 1203, subd. (b)(3).)

10) Makes it unlawful to possess several specified controlled substances, including heroin, cocaine, cocaine base, opium, hydrocodone, and fentanyl. Provides that the punishment is imprisonment in the county jail for not more than one year unless the person has one or more prior convictions for a serious or violent felony, as specified, or for an offense requiring sex offender registration, in which case it is punishable as a felony. (Health & Saf. Code, § 11350, subd. (a).)

11) Makes it unlawful to possess several specified controlled substances, including methamphetamine, amphetamine, phencyclidine (PCP), and gamma hydroxybutyric acid (GHB). Provides that the punishment is imprisonment in the county jail for not more than one year unless the person has one or more prior convictions for a serious or violent felony, as specified, or for an offense requiring sex offender registration, in which case it is punishable as a felony. (Health & Saf. Code, § 11377, subd. (a).)

12) Makes it unlawful for a person to possess for sale, or purchase for purpose of sale, several specified controlled substances, including heroin, cocaine, cocaine base, opium, and fentanyl. Provides that the punishment is imprisonment in the county jail for two, three, or four years. (Health & Saf. Code, §§ 11351, 11351.5.)

13) Makes it unlawful for a person to transport, import, sell, furnish, administer, or give away, or offer or attempt to transport, import, sell, furnish, administer, or give away several specified controlled substances, including cocaine, cocaine base, heroin, and fentanyl. Provides that the punishment is imprisonment in the county jail for three, four, or five years. Provides that the punishment for transporting those specified controlled substances within the state between noncontiguous counties is imprisonment in the county jail for three, six, or nine years.

(Health & Saf. Code, § 11352.)

14) Makes it unlawful to possess for sale several specified controlled substances, including methamphetamine, amphetamine, and GHB. Provides that the punishment is imprisonment in the county jail for 16 months, two years, or three years. (Health & Saf. Code, § 11378.)

15) Makes it unlawful to possess PCP for sale. Provides that the punishment is imprisonment in the county jail for three, four, or five years. (Health & Saf. Code, § 11378.5.)

16) Makes it unlawful for a person to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport specified controlled substances, including methamphetamine, amphetamine, and GHB. Provides that the punishment is imprisonment in the county jail for two, three, or four years. Provides that the punishment for transporting those specified controlled substances within the state between noncontiguous counties is imprisonment in the county jail for three, six, or nine years. (Health & Saf. Code, § 11379.)

17) Makes it unlawful for a person to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport PCP or its analogs. Provides that the punishment is imprisonment in the county jail for three, four, or five years. Provides that the punishment for transporting those specified controlled substances within the state between noncontiguous counties is imprisonment in the county jail for three, six, or nine years. (Health & Saf. Code, § 11379.5.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Californians with substance use disorder (SUD) face their addictions without comprehensive and successful rehabilitation programs. Because of this, California faces a revolving door of repeat offenders stealing to feed their addiction, and our communities continue to suffer to address our inmate populations and keep our residents and businesses safe."

2) **Effect of the Bill**: Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be "formal" or "informal." "Formal" probation is under the direction and supervision of a probation officer. Under "Informal" probation, a defendant is not supervised by a probation officer but instead reports to the court. Sometimes a defendant on formal probation is moved to a "banked" caseload at the discretion of the probation officer if the probation officer concludes that the defendant presents a low risk. A defendant on a "banked" caseload has a lower level of contact with a probation officer than a defendant on regular supervision under formal probation. As a general proposition, the level of probation supervision will be linked to the level of risk the probationer presents to the community.

   Probation can include a sentence in county jail before the conditional release to the community. Defendants convicted of misdemeanors, and most felonies, are eligible for probation based on the discretion of the court. When considering the imposition of probation,

the court evaluates the safety of the public, the nature of the offense the interests of justice, the loss to the victim, and the needs of the defendant. (Pen. Code, § 1202.7.) The court also has broad discretion to impose conditions that foster the defendant's rehabilitation and protect public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) A valid condition must be reasonably related to the offense and aimed at deterring misconduct in the future. (*Id.* at 1121.)

To the extent that a probationer is not complying with the treatment or counseling directed by the court during a probationary period, the court can revoke the defendant's probation until the defendant is back in compliance. The period while probation is revoked tolls the running of time towards the end point of the probationary period. That tolling process would effectively extend the probationary period for individuals that are not in compliance with the conditions of their probation.

Prior to 2021, when a defendant was convicted of a felony, the court could impose a term of probation for up to five years, or no longer than the prison term that can be imposed if the maximum prison term exceeds five years. (Pen. Code, § 1203.1.) In misdemeanor cases, the court could impose a term of probation for up to three years, or no longer than the maximum term of imprisonment if more than three years. (Pen. Code, § 1203a.) AB 1950 (Kamlager), Chapter 328, Statutes of 2020, limited probation to two years for a felony and one year for a misdemeanor.

Existing law requires a trial court to order a person granted probation subsequent to a conviction for any controlled substance offense to secure education or treatment in a local community agency. (Health & Saf. Code, § 11373, subd. (a).) Under Proposition 36, any person convicted of a nonviolent drug possession offense must be granted probation, unless otherwise precluded by law. (Pen. Code, § 1210.1, subd. (a).) A person convicted of drug trafficking may be granted probation if the trial court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, and that person is not otherwise precluded by law from receiving probation. (Pen. Code, § 1203, subd. (b)(3).)

This bill would increase the term of probation to be for a period not exceeding two years in misdemeanor cases and not exceeding three years in felony cases. It also requires a court to reduce the term of probation if a defendant completes a drug treatment program, as defined.

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

4) **Argument in Opposition**: According to *Smart Justice*, "Existing law authorizes the court to impose probation for a period not to exceed one year in misdemeanor cases and two years in felony cases. This bill would increase the maximum term of probation to 2 years in misdemeanor cases and 3 years in felony cases if the case involves controlled substances. The bill would also direct a court to reduce the period of probation if the defendant successfully completes a court-mandated drug treatment program.

"We understand this bill is intended to encourage a person to complete a drug program because of the incentive to reduce a probationary period. This approach is unlikely to succeed due to the many existing barriers to substance use treatment. Currently, most individuals on probation are simply ordered to participate in AA or NA programs but not

provided any access to effective substance use treatment. Almost no one successfully manages an addiction to opioids through NA or AA meetings and more time on probation will not improve outcomes.

"Rather, much more must be done to ensure that every person in California has access to high quality substance use treatment on demand. For example, successful programs like the CA Bridge program, which provides emergency room patients with access to medically assisted treatment and support navigating the barriers to treatment, can be replicated for those in contact with the criminal legal system."

5) **Related Legislation**: AB 3222 (Wilson), would have established the Drug Court Success Incentives Pilot Program, which would authorize the Counties of Sacramento, San Diego, and Solano to offer up to $500 per month of supportive services to adult defendants who participate in the county's drug court to encourage participation in, and successful completion of, drug court. AB 697 was held in suspense in the Assembly Appropriations Committee.

6) **Prior Legislation**:

   a) AB 697 (Davies), was substantially similar to AB 3222 above. AB 697 was held in suspense in the Assembly Appropriations Committee.

   b) AB 890 (Joe Patterson), Chapter 818, Statutes of 2023, required a court to order a defendant who is granted probation for specified drug offenses involving fentanyl and other specified opiates to complete a fentanyl and synthetic opiate education program.

   c) AB 1360 (McCarty), Chapter 685, Statutes of 2023, authorized the Counties of San Joaquin, Santa Clara, and Yolo to establish pilot programs to offer secured residential treatment for qualifying individuals suffering from substance use disorders (SUDs) who have been convicted of drug-motivated felony crimes.

   d) SB 46 (Roth), Chapter 481, Statutes of 2023, required the county drug program administrator and representatives of the court and county probation department, with input from substance use treatment providers, to design and implement an approval and renewal process for controlled substance education and treatment.

   e) SB 904 (Bates), of the 2021-2022 Legislative Session, was substantially similar to SB 46 above. SB 904 was held in the Assembly Appropriations Committee in the Suspense File.

   f) AB 1750 (Davies), of the 2021-2022 Legislative Session, was similar to SB 46 above. AB 1750 was held in the Assembly Appropriations Committee on the Suspense File.

   g) AB 1928 (McCarty), of the 2021-2022 Legislative Session, was substantially similar to AB 1360 above. AB 1928 was held in the Assembly Appropriations Committee on the Suspense File.

   h) AB 644 (Waldron), Chapter 59, Statutes of 2021, changed the existing requirement for the California MAT Re-Entry Incentive Program that a person participate in an institutional substance abuse program in order to be eligible for a reduction to the period

of parole to a requirement that the person has been enrolled or participated in a post-release substance abuse program.

i) AB 653 (Waldron), Chapter 745, Statutes of 2021, established the MAT Grant Program, in order for the Board of State and Community Corrections to award grants to counties for purposes relating to the treatment of substance use disorders and the provision of medication-assisted treatment.

j) AB 1304 (Waldron), Chapter 325, Statutes of 2020, required a person to participate in a post-release substance abuse program rather than an institutional substance abuse program in order to be eligible for a 30-day reduction to the period of parole for every six months of treatment that is not ordered by the court, up to a maximum 90-day reduction.

k) SB 194 (Anderson), Legislative Session of 2017-2018, would have authorized a court to place the person on probation for a new period of probation that exceeds the statutory maximum when the order setting aside the judgment, the revocation of probation, or both was made before the expiration of the probationary period. AB 194 was held on the Senate Appropriation's Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

Californians for Safety and Justice
California Public Defenders Association
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Friends Committee on Legislation of California
Legal Services for Prisoner With Children
Reform Alliance
Smart Justice California, a Project of Tides Advocacy
Uncommon Law

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

Amended Mock-up for 2023-2024 AB-2106 (McCarty (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. Section 1203.044 is added to the Penal Code, to read:

1203.044. (a) (1) Notwithstanding Sections 1203a and 1203.1, in instances where a defendant is charged with a controlled substances offense and granted probation, the term of probation shall be for a period not exceeding two years in misdemeanor cases and not exceeding three years in felony cases, and upon those terms and conditions as the court shall determine, including a court-mandated drug treatment program **or drug education pursuant to Section 11373 of the Health and Safety Code.** ~~as a condition of their probation~~.

(2) Notwithstanding paragraph (1), the court shall reduce a probation term upon a showing that the defendant successfully completed a court-mandated drug treatment program.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Drug treatment program" means a state-licensed or state-certified community drug treatment program, which may include one or more of the following: drug education, outpatient services, narcotic replacement therapy, residential treatment, detoxification services, and aftercare services.

(2) "Successfully completed" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment as recommended by the treatment provider and ordered by the court. Completion of treatment shall not require cessation of narcotic replacement therapy.

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 16, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2138 (Ramos) – As Amended April 10, 2024

As Proposed To Be Amended In Committee

SUMMARY: Establishes a pilot program within the Department of Justice (DOJ) that would grant certain tribal law enforcement officers of the Blue Lake Rancheria, the Coyote Valley Band of Pomo Indians, and the Yurok Tribe of the Yurok Reservation state peace officer authority on Indian land and elsewhere in the state under specified circumstances. Specifically, **this bill**:

1) Establishes the Tribal Police Pilot Program to operate from January 1, 2025, until January 1, 2028, under the direction of the DOJ.

2) Provides that, any "qualified entity" may notify DOJ that they wish to enroll in the program, and upon verification by the DOJ that the qualified entity has complied with specified requirements, any "qualifying member" of that qualified entity shall be deemed a peace officer, as specified.

3) Defines "qualified entity" as the Blue Lake Rancheria, the Coyote Valley Band of Pomo Indians, and the Yurok Tribe of the Yurok Reservation.

4) Defines "qualified member" as a person who is regularly employed by a qualified entity as a law enforcement, police, or public safety officer or investigator, who meets all of the specified requirements and qualifications, and who has been designated by the qualified entity to be a peace officer pursuant to the program.

5) Requires DOJ to provide ongoing monitoring, evaluation, and support for the program and provides that the DOJ may suspend or terminate a qualified entity's participation in the program for gross misconduct or for willful or persistent failure to comply with requirements.

6) States that the provisions in this bill shall not be construed to infringe upon the sovereignty of any Indian tribe nor their inherent authority to self-govern, including the authority to enact laws that govern their lands and provides that a qualified entity may terminate their participating in the program at will, as specified.

7) Provides that the authority of a tribal officer designated as a peace officer pursuant to the program extends to any place within the territorial boundaries of the Indian country of the officer's employing tribe.

8) Provides that the authority of a tribal officer designated as a peace officer pursuant to this program also extends to any place in the state, under any of the following circumstances:

   a) At the request of a state or local law enforcement agency;

   b) Under exigent circumstances involving an immediate danger to persons or property, or of the escape of a perpetrator;

   c) For the purposes of making an arrest when there is probable cause to believe a public offense has occurred within the Indian country of the tribe and with the prior consent of the chief of police or the sheriff, as specified;

   d) When the officer is in hot pursuit or close pursuit of an individual that the officer has reasonable suspicion has violated or attempted to violate state law and the violation occurred within the Indian country of the tribe that employs the officer; and,

   e) When delivering an apprehended person to the custody of a law enforcement authority or magistrate in the city or county in which the offense occurred.

9) Provides that, when a tribal officer designated as a peace officer pursuant to the program issues a citation for a violation of state law, the citation shall require the person cited to appear in the superior court of the county in which the offense was committed, and shall be submitted to the district attorney of that county.

10) Provides that any criminal charge resulting from a custodial arrest or citation issued by a person designated as peace officer designated pursuant to the program, while exercising the authority as a peace officer, shall be within the jurisdiction of the courts of the State of California.

11) Requires any official action taken by a person designated as a peace officer pursuant to this program, while exercising the authority as a peace officer, including, without limitation, any detention, arrest, use of force, citation, release, search, or application for, or service of, any warrant, shall be taken in accordance with all applicable state laws.

12) States that a person shall not be designated as a peace officer unless the person completes and maintains all requirements for the appointment, training, education, hiring, eligibility, and certification required for peace officers under state law. The tribe employing the peace officer must document the officer's compliance with this provision and submit documentation to the DOJ.

13) Requires a qualified entity enrolled in the program to do all of the following:

   a) Enact and maintain in continuous force a law or resolution expressing their intent that their tribal officers be California peace officers and adopting any requirements prescribed by this bill;

   b) Adopt and maintain in continuous force for a period of no less than two years after the conclusion of the program, an ordinance or other enforceable policy that provides

procedures comparable to the California Public Records Act (CPRA);

c) Maintain and make available for public inspection, pursuant to ordinance or policy, any record related to misconduct by a person designated as a peace officer pursuant to the program, as specified, including any administrative record of the tribe specifically related to such conduct, for a period of no less than two years after the conclusion of the program;

d) Adopt and maintain in continuous force an ordinance or other enforceable policy that provides procedures comparable to the Government Claims Act for any claim arising from any actions or omissions of a tribal police officer acting as a California peace officer pursuant to the program;

e) Adopt a limited waiver of sovereign immunity against suit, liability, and judgment, as specified.

f) Adopt an ordinance or policy with a requirement that the tribe shall cooperate with any inspections, audits, and investigations by the DOJ for improper acts or omissions by tribal officers, including any sanction or discipline imposed by the department, up to and including removal of the tribe from the program;

g) Comply with specified state laws relating to peace officer decertification;

h) Carry sufficient insurance coverage for the liability of the tribe arising from acts or omissions of tribal officers, which shall be determined by the DOJ in consultation with the tribe;

i) Submit all required documentation of compliance with these provisions to the DOJ; and,

j) Submit any data, statistics, reports, or other information requested by the DOJ for the monitoring and evaluation of the pilot program to the DOJ.

14) Requires, no later than January 1, 2027, DOJ to prepare and submit an interim report to the Legislature, the Assembly Select Committee on Native American Affairs, and the Assembly and Senate Public Safety Committees.

15) Requires, no later than June 1, 2028, DOJ to prepare and submit a final report to the Legislature, the Assembly Select Committee on Native American Affairs, and the Assembly and Senate Public Safety Committees.

16) States that these reports shall include, without limitation, the program's impact on case clearance rates, including, without limitation, homicide and missing persons cases, crime rates on Indian lands and surrounding communities, recruitment and retention of tribal police, a discussion of feasibility and implementation difficulties, and recommendations to the Legislature.

17) Includes a sunset date January 1, 2030, and provides that as of that date, the above-described provisions are repealed.

18) Provides that the peace officer authority granted to any person pursuant to the program shall be automatically revoked on January 1, 2029, unless extended by a later enacted statute.

19) Makes legislative findings and declarations.

EXISTING FEDERAL LAW:

1) Provides that Indian tribes are domestic independent nations that exercise inherent sovereign authority which can be modified only through Congressional action. (*E.g.*, *Michigan v. Bay Mills Indian Community* (2014) 572 U.S. 782, 788-789.)

2) States that any Indian tribe shall have the right to organize for its common welfare. (25 U.S.C. § 476.)

3) 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.)

4) 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.)

5) 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.)

6) Establishes the BIA, which is responsible management of all Indian affairs and of all matters arising out of Indian relations. (25 U.S.C. §§ 1 through 68.)

7) States that the BIA is responsible for assisting in the provision of federal law enforcement services in Indian County and authorizes the BIA to issue SLECs to tribal law enforcement officers. (25 U.S.C. §§ 2802 & 2803.)

8) Limits the penalty that a tribal court may impose on a criminal defendant for a conviction to a term of imprisonment not to exceed 1 year or a fine of $5,000. 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 United States. Under no circumstance can the term of the sentence exceed 9 years. (25 U.S.C. § 1302.)

9) 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 specified crimes, including, assault of tribal justice personnel, child violence, dating violence, domestic violence, obstruction of justice, sexual violence, sex trafficking, stalking, and a violation of a protective order. A Tribe may not exercise this special jurisdiction if neither the defendant nor the victim is Indian. (25 U.S.C § 1304.)

10) Guarantees that the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe. (25 U.S.C. § 1303.)

EXISTING STATE LAW:

1) Provides that the Attorney General (AG) is the chief law enforcement officer of the State. The AG shall have direct supervision over every law enforcement officers as may be designated by law. (Cal. Const. art. V, § 13.)

2) States that a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. (Cal. Const. art. XI, § 7.)

3) Establishes the "Feather Alert," which is a notification system designed to issue and coordinate alerts with respect to endangered indigenous people, specifically indigenous women or indigenous people, who are reported missing under unexplained or suspicious circumstances. (Gov. Code § 8594.13.)

4) Provides that, to improve upon the implementation of concurrent criminal jurisdiction on California Indian lands, the DOJ shall provide technical assistance to local law enforcement agencies that have Indian lands within or abutting their jurisdictions, and to tribal governments with Indian lands, including those with and without tribal law enforcement agencies, as specified. (Pen. Code, § 110151.)

5) Authorizes law enforcement agency or court of a tribe may apply to the Attorney General for access to the California Law Enforcement Telecommunications System (CLETS). (Pen. Code, § 15168.)

6) Allows cities and counties to enter into a contract with an Indian tribe to provide police or sheriff protection services for the Indian tribe either solely on Indian lands, or on the Indian lands and territory adjacent to those Indian lands. (Gov. Code, § 54981.7)

7) Designates specified persons who meet all standards imposed by law on a peace officer, as a peace officer. (Pen. Code, § 830-832.18.)

8) Provides that the authority of peace officers, as specified, extends to any place in the state as follows:

   a) As to a public offense committed or for which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves;

   b) If the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by that chief, director, or officer to give consent, if the place is within a city, or of the sheriff, or person authorized by the sheriff to give consent, if the place is within a county; and,

c) As to a public offense committed or for which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

9) States that any person designated by a tribe, who is deputized or appointed by the county sheriff, is a peace officer, if the person and the person has completed the basic Commission on Peace Officer Standards and Training (POST) course. The authority of a peace officer pursuant to this subdivision includes the full powers and duties of a peace officer, as follows:

   a) As to a public offense committed or for which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves;

   b) If the peace officer has the prior consent of the chief of police, if the place is within a city, or of the sheriff, if the place is within a county; and,

   c) As to a public offense committed or for which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense. (Pen. Code, § 830.6, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The devastating issue of MMIP has caused untold tragedy that often becomes long lingering ripples of grief and further tragedy. We can reduce the number of cases through greater collaboration by law enforcement, tribal communities, mental health and other service providers to ensure that victims and their loved ones receive the support and attention they need to overcome these acts of violence. Providing California Peace officer status to Tribal police will strengthen public safety in our communities, and allow us to start making progress to finding our missing loved ones and preventing tragedy."

2) **Effect of this Bill**: This bill would establish the Tribal Police Pilot Program pilot program within the DOJ that would allow select Indian tribes to elect to participate in the program. The program requires the DOJ to submit a report to the legislature detailing the status of the program. The program also places significant requirements on both the participating tribe and the law enforcement officer to be designated by the tribe as a California peace officer. The pilot program would last for three years, commencing January 1, 2025. As currently drafted, this bill provides that any peace officer status designated pursuant to the program will be revoked on June 1, 2028 and that the pilot program will sunset on January 1, 2030.

   The proposed committee amendments would extend the date that peace officer authority would be revoked to January 1, 2029 closer to the sunset date in this bill. In so doing, the Legislature would have sufficient time to review the reports required by this bill and enact legislation extending the sunset before the date peace officer authority would be revoked.

3) **Requirements That Must Be Met By the Tribe:** This bill provides that, to designate a tribal law enforcement officer as peace officer, the tribe participating in the program meet certain requirements. The tribe must enact a law or resolution expressing their intent that tribal officers be California peace officers; providing public access to tribal records relating to any exercise of authority granted by this bill, in a manner equivalent to the CPRA and personnel records related to misconduct by a person designated as a California peace officer by the tribe; compliance with specified provisions of state law regarding peace officers, including officer decertification; and, maintain liability and property damage insurance in an amount to be determined by the DOJ. The tribe must also adopt a limited waiver of tribal sovereign immunity for claims against a tribal officer arising from any actions or omission of a tribal police officer acting as a California peace officer.

4) **Requirements that the Tribal Officer Must Meet** This bill would require a tribal law enforcement officer participating in the program to meet the same requirements required of any other person under state law to be designated as a California peace officer. Notably, the officer must meet POST training standards for peace officers pursuant to specified provisions of state law. POST was created by the legislature in 1959 to set minimum selection and training standards for California law enforcement. Their mandate includes establishing minimum standards for training of peace officers in California. (Pen. Code § 13510, subd. (a).) As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. (Pen. Code, § 832, subd. (a).)

5) **The Powers Granted to Tribal Law Enforcement Officers by This Bill**: This bill would allow a tribal law enforcement officer designated as a California peace officer to exercise full authority as a peace officer both within the Indian country of the tribe and anywhere in the state.

   a) **Within Indian Country of the Tribe**: A person designated as a peace officer pursuant to this bill would have the full authority of a California peace officer to enforce state law against both Indians and non-Indians within Indian county of their employing Tribe.

   b) **Anywhere in this State**: A person designated as a peace officer pursuant to this bill would have the full authority of a California peace officer to enforce state law, against Indians and non-Indians anywhere in this state, under the following circumstances:

      i) At the request of a state or local law enforcement agency;

      ii) Under exigent circumstances, as specified;

      iii) To make an arrest where there is probable cause to believe a public offense occurred within Indian county of the tribe and with prior consent of the sheriff or police, as specified;

      iv) When the officer is in hot pursuit, as specified; and,

      v) When delivering an apprehended person to the custody of a local law enforcement official.

There are serious concerns with regard to (iii). This would give tribal law enforcement officers participating in the program broader arrest authority than all other California peace officers. Under existing law, Penal Code section 836 authorizes an officer to make an arrest if they have "probable cause that the person has committed a public offense in the officer's presence."

This bill would not require the person to have committed the offense in the tribal law enforcement officer's presence in order to make an arrest anywhere within this state. For example, an officer could have cause to believe a person no longer located with Indian country of the tribe committed an offense while within Indian country. The officer could search and arrest that person anywhere in this state, without a warrant, even if that offense was not committed in their presence. This raises serious Fourth Amendment concerns. (U.S. Cont., 4th Amend [guarantees the right against unreasonable searches and seizures without a warrant].)

Also, as drafted a local police officer or circumvent existing state law by requesting a tribal law enforcement officer effectuate an arrest that they did not observe—an arrest that would otherwise be impermissible. Accordingly, author of this bill should consider an amendment to that would require the offense be committed in the presence of the tribal officer, consistent with existing law.

6) **Criminal Jurisdiction 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 government [under the General Crimes Act, 18 U.S.C. § 1153 and the Major Crimes Act, 18 U.S.C. § 1152] and to the 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.

The history of law enforcement action under PL 280 has been heavily criticized. PL 280 has created a number of legal complexities which may help explain why state law enforcement responses to criminal activity on Indian land have been inconsistent and at times, inadequate.[1]

7) **Cross-Deputization Agreements**: Federal law authorizes tribes to enter into cross-deputization agreements with state and local governments. (*United States v. Fowler* (9th Cir. 2022) 48 F.4th 1022, 1026.) Likewise, state law allows cities and counties to enter into contracts with Indian tribes to provide police or sheriff protection services for the Indian tribe either solely on Indian lands, or on the Indian lands and territory adjacent to those Indian lands. (Gov. Code, § 54981.7) State law also allows local law enforcement agency heads to deputized or appoint a tribal law enforcement officer as peace officer, if the officer has completed the basic POST course. (Pen. Code, § 830.6.)

Generally, these agreements include provisions related to the roles and responsibilities of the respective agencies in regards to matters such as search warrants, booking and dispatch, detention and jailing, citizen complaints, emergency vehicles, field training, ongoing and continued POST training, cultural and diversity training, police reporting, police records, lines of communications, insurance and indemnification clauses, provisions for access to criminal information systems, waivers to sovereign immunity, dispute resolution and more.[2]

These agreements "can do a great deal of good in Indian country."[3] However, some observers criticize cooperative agreements as "too dependent on political goodwill, too likely to increase state jurisdictional encroachments, and too temporary to provide long-term clarity in Indian country."[4] For example, the Humboldt County Sheriff unilaterally suspended a cooperative agreement with the Hoopa Valley Tribal Police and the "degraded trust between the parties makes a [renewed] agreement unlikely."[5]

As stated in background material provided by the author, "While some tribal police agencies have developed agreements with county law enforcement agencies to allow for cooperation in enforcement of California laws on tribal lands, these agreements are subject to the discretion of individual officer holders, are not guaranteed in statute, and can change at any time. Many Tribes do not have positive relationships with county law enforcement, given historical trauma and even recent events Development of an MOU with local law enforcement is not an option for many Tribes. State recognition would bring parity and

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[1] (Judicial Council, *PUBLIC LAW 280 JURISDICTION*. Available at: <https://www.courts.ca.gov/documents/PL280-jurisdiction.pdf>.
[2] See, e.g., *Resolution of the Yurok Tribal Council* (March 13, 2006). Available at: <https://www.courts.ca.gov/documents/Tribal-Resources-YurokResolution.pdf>.
[3] *Developments in the Law –Indian Law: Chapter Two: Fresh Pursuit from Indian Country: Tribal Authority to Pursue Suspects onto State Land* (April 2016) 129 Harv. L. Rev. 1685.
[4] *Ibid.*
[5] *Ibid.*

equity to Tribal police, communities, families, and victims of crime. It would also strengthen Tribal Police, who are trusted members of the community who utilize a "community policing" model."[6]

8) **MMIP Crisis:** For Native Americans and Alaska Natives, rates of murder, rape, and violent crime are all higher than the national averages. When looking at missing and murdered cases, data shows that Native American and Alaska Native women make up a significant portion of missing and murdered individuals.[7] According to advocates of this bill, "These statics are a result of existing 'policies and actions' that 'create or exacerbate barriers to full and equal participation' by Tribes and Rancherias in public safety efforts. Without the power to enforce California criminal laws, tribal police and tribal communities are exposed to consequences of relying on local law enforcement to respond to exigent emergencies or violent crime."

9) **Potential for Longer Sentences**: Pursuant to the Indian Civil Rights Act, federal law imposes sentencing limits. Subject to some exceptions, generally tribes cannot impose for conviction of an offense any penalty or punishment greater than imprisonment for a term of one year or a fine of $5,000, and cannot impose a total punishment greater than nine years imprisonment. (25 U.S.C. § 1302.)

   Under this bill, tribal officers who are designated by tribes that participate in the program would be able police violations of state law by both Indians and non-Indians, without reliance on state or local law enforcement. Practically, this means that more individuals will be charged with offenses in state court under state statutes that call for increased penalties, and longer terms of imprisonment under state law and will serve such terms imprisonment in local and state correctional facilities.

10) **Argument in Support**: According to the *Yurok Tribe*, a sponsor of this bill, "AB 2138 will reform California law, which currently denies California tribal police officers the recognition of peace officer status if certain requirements are met. Thirteen states and the federal government provide a mechanism for tribal police to have peace officer status, as long as certain requirements are met. However, California does not, which leaves Tribal Police officers, especially those in rural areas, unable to pursue many issues on and off the reservation. As a result, Tribal communities, families, and victims also go unprotected, contributing to the MMIP crisis. State recognition would bring parity and equity to Tribal police, communities, families, and victims of crime. It would also strengthen Tribal Police, who are trusted members of the community who utilize a "community policing" model. And studies have shown that public safety improves when Tribal Nations have the resources to enforce their own laws and to protect their people."

11) **Argument in Opposition**: None Submitted.

12) **Related Legislation**:

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[6] *Ibid.*
[7] U.S. Department of the Interior, *Indian Affairs, Missing and Murdered Indigenous People Crisis* <https://www.bia.gov/service/mmu/missing-and-murdered-indigenous-people-crisis>.

a) ACR 133 (Ramos) would designate the month of May 2024 as Missing and Murdered Indigenous People Awareness Month in California. ACR 133 is pending in Assembly Rules Committee.

b) AB 1863 (Ramos) would revise the conditions under which a law enforcement agency may request the California Highway Patrol to activate a Feather Alert. AB 1863 is pending in this Committee.

c) AB 2265 (Ramos) would require law enforcement to disaggregate data reported to the DOJ based on whether domestic violence incidents took place in Indian country, as defined, and would require a domestic violence incident report form to include a notation of whether the incident took place in Indian country. AB 2265 is pending in this Committee.

d) AB 2279 (Cervantes) would express the intent of the Legislature to enact legislation to create a Bureau of Missing and Murdered Indigenous Women within the Department of Justice. AB 2279 is pending in this Committee.

e) AB 2281 (Soria) would make it a crime for a person to assault a judge or former judge of a Tribal court in retaliation for or to prevent the performance of their official duties. AB 2281 is pending in Assembly Transportation Committee.

f) AB 2944 (Waldron) would authorize the Governor to appoint a Red Ribbon Panel to address the murdered or missing indigenous persons crisis. AB 2944 is pending in Assembly Appropriations Committee.

g) AB 2974 (Dahle) would include a deputy sheriff employed by the County of Modoc within that definition of peace officer. AB 2974 is pending on the Assembly floor.

13) **Prior Legislation**:

a) AB 44 (Ramos), Chapter 638, Statues of 2023, requires the DOJ to grant tribal courts and tribal law enforcement access to CLETS.

b) AB 1314 (Ramos), Chapter 476, Statutes of 2022, authorizes law enforcement agencies to request CHP to activate a Feather Alert if specified criteria are satisfied with respect to an indigenous person who has been reported missing.

c) AB 3099 (Ramos), Chapter 170, Statutes of 2020, requires the DOJ to provide technical assistance to local law enforcement agencies and tribal governments relating to guidance for law enforcement education and training on policing and criminal investigations on Indian lands, providing guidance on improving crime reporting, crime statistics, criminal procedures, and investigative tools, and facilitating and supporting improved communication between local law enforcement agencies and tribal governments.

d) AB 1854 (Frazier), of the 2019-2020 Legislative Session, would have created the Missing or Murdered Native American Women Task Force in the DOJ. AB 1854 was never heard in this Committee.

e) AB 1507 (Hernández), of the 2015-2016 Legislative Session, would have required each police chief and county sheriff to assess their jurisdiction to determine if any Indian tribal lands lie within the jurisdiction, and to ensure that those peace officers employed by the agency who work in, or adjacent to, Indian tribal lands, or who may be responsible for responding to calls for service on, or adjacent to, Indian tribal lands, complete a course that includes, but is not limited to, a review of Public Law 280. AB 1507 failed passage by the Senate.

f) SB 911 (Alarcon), of the 2001-2002 Legislative Session, would have among other things, authorized Tribal officers to exercise the powers of California peace officers and to enforce California law. SB 911 was heard for testimony only in Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Tribal Business Alliance
Habematolel Pomo of Upper Lake
Initiate Justice
Picayune Rancheria of The Chukchansi Indians
Strong Hearted Native Women's Coalition, INC.
Tejon Indian Tribe
Yurok Tribe

1 Private Individual

Opposition

None submitted.

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

Amended Mock-up for 2023-2024 AB-2138 (Ramos (A))

Mock-up based on Version Number 98 - Amended Assembly 4/10/24
Submitted by: Liah Burnley, Assembly Public Safety Committee

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

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

(a) California is home to more Native American and Alaska Native people than any other state in the country. There are approximately 109 federally recognized tribes in California.Federally recognized tribes have a unique government-to-government relationship with local, state, and federal entities, and are recognized as sovereign nations. Tribes can create their own laws, governmental structure, and enrollment or membership rules for the land and citizens of their nation.

(b) California has the fifth largest caseload of missing and murdered Indigenous women and people. Nationwide, more than four in five Native American and Alaska Native women have experienced violence in their lifetime, and more than one in three have in the last year. One in 130 Native American children are likely to go missing each year. Indigenous women go missing and are murdered at rates higher than any other ethnic group in the United States. Nearly one-half of all indigenous women have been raped, beaten, or stalked by an intimate partner. LGBTQ+ Native Americans and people who identify as "two-spirit" people within tribal communities are also often the targets of violence.

(c) California Indian tribes retain the inherent authority to self-govern, including the authority to enact laws that govern their lands.

(d) Approximately 27 tribal governments in the state have exercised their inherent authority by establishing law enforcement agencies to maintain public safety on Indian lands. Additionally, tribes have exercised their inherent authority by establishing 22 tribal courts statewide, serving approximately 40 tribes.

(e) Federal law requires certain states, including the State of California, to enforce state criminal laws on Indian lands in those states, but does not provide funding to those states or the tribes within those states for public safety.

(f) Thirteen states and the federal government provide tribal law enforcement authority to enforce state or federal law if tribal officers meet qualifications delineated in the state and federal authorizing legislation and regulations. Twenty-one of the 27 tribal governments in California that have law enforcement departments have deputation agreements with the Bureau of Indian Affairs, Office of Justice Services, which allows qualified tribal officers to become special commissioned federal officers authorized to enforce federal law on Indian lands in their jurisdiction.

(g) A large number of persons are designated as peace officers under state law, including, without limitation, the members of the University of California and California State University Police Department and certain employees of the Department of Fish and Wildlife, the Department of Parks and Recreation, and the Department of Alcoholic Beverage Control. Others have limited designation as peace officers under state law including, without limitation, museum safety and security employees of the California Science Center, police appointed by the California Exposition and State Fair, certain employees of the California Department of Tax and Fee Administration, and persons designated by a local agency as a park ranger. Tribal law enforcement officers are not designated peace officers under state law.

(h) While there are avenues for tribal officers to enforce state law on Indian lands, these options are limited, discretionary, and inconsistently applied across counties. While state law authorizes a county sheriff to deputize a tribal officer as a reserve or auxiliary deputy, those agreements are often limited by the sheriff's term in office and subject to termination at any time.

(i) Where state and county law enforcement departments have developed close working and cooperative relationships with the tribal law enforcement agencies, these relationships have resulted in greater public safety for both the Indian and non-Indian communities.

(j) Tribal governments employing police designated as California peace officers should be subject to the same requirements and responsibilities as other local and state agencies, including transparency and the right of the public to seek redress for grievances, while also recognizing that tribal governments are sovereign nations that govern themselves in accordance with their own laws and are not subject to liability in the same manner as state and local governmental entities.

SEC. 2. Article 2.45 (commencing with Section 11073) is added to Chapter 1 of Title 1 of Part 4 of the Penal Code, to read:

Article 2.45. Tribal Police Pilot Program

11073. (a) The Tribal Police Pilot Program is hereby established to operate from January 1, 2025, until January 1, 2028, under the direction of the Department of Justice.

(b) Notwithstanding any contrary provision of law, any qualified entity may notify the department that they wish to enroll in the pilot program and, upon verification by the department that the entity has complied with the requirements prescribed in subdivision (e), any qualifying member of that entity shall be deemed a peace officer as provided in this section.

(c) (1) The authority of a peace officer designated pursuant to this section extends to any place within the territorial boundaries of the Indian country of the employing tribe.

(2) The authority of a peace officer designated pursuant to this section may extend to any place in the state, under any of the following circumstances:

(A) At the request of a state or local law enforcement agency.

(B) Under exigent circumstances involving an immediate danger to persons or property, or of the escape of a perpetrator.

(C) For the purpose of making an arrest, when a public offense has occurred, or there is probable cause to believe a public offense has occurred, within the Indian country of the tribe that employs the peace officer, and with the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by that chief, director, or officer to give consent, if the place is within a city, or of the sheriff, or person authorized by the sheriff to give consent, if the place is within an unincorporated area of a county.

(D) Notwithstanding subparagraph (C), when the peace officer is in hot pursuit or close pursuit of an individual that the officer has reasonable suspicion has violated or attempted to violate state law and the violation occurred within the Indian country of the tribe that employs the peace officer.

(E) When delivering an apprehended person to the custody of a law enforcement authority or magistrate in the city or county in which the offense occurred.

(d) (1) A person shall not be designated as a peace officer pursuant to this section unless the person completes and maintains all requirements for the appointment, training, education, hiring, eligibility, and certification required for peace officers under state law, including, without limitation, those described in Sections 832 and 834, and any regulations adopted thereto.

(2) A person designated as a peace officer pursuant to this section is subject to the requirements of Sections 1029, 1031, and 1031.4 of the Government Code, and any regulations adopted thereto.

(3) A tribe designating a person as a peace officer pursuant to this section shall document that person's compliance with this subdivision and submit that documentation to the Department of Justice.

(e) A qualified entity enrolled in this pilot program shall do all of the following:

(1) Enact and maintain in continuous force a law or resolution expressing their intent that tribal officers be California peace officers and adopting any requirements prescribed by this section.

(2) Adopt and maintain in continuous force for a period of no less than two years after the conclusion of the pilot program, an ordinance or other enforceable policy that provides procedures

comparable to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(3) Maintain and make available for public inspection pursuant to the ordinance or policy described in paragraph (2) any record related to conduct specified in Section 832.7 by a person designated as a peace officer pursuant to this section, including any administrative record of the tribe specifically related to such conduct, for a period of no less than two years after the conclusion of the pilot program.

(4) (A) Adopt and maintain in continuous force an ordinance or other enforceable policy that provides procedures comparable to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) for any claim arising from any actions or omissions of a tribal police officer acting as a California peace officer pursuant to this section.

(B) The ordinance or policy described in this paragraph shall include all of the following:

(i) A limited waiver of tribal sovereign immunity against suit, liability, and judgment, including the full enforcement of judgments and collections for a peace officer designated pursuant to this section, while exercising the authority granted by the section, and while acting within the scope of their employment or duties, for negligent or wrongful acts or omissions that cause undue harm to a person within the personal and subject matter jurisdictions of the tribe.

(ii) An express agreement that the substantive and procedural laws of the State of California may govern any claim, suit, or regulatory or administration action, that the obligations, rights, and remedies shall be determined in accordance with those laws, and that the courts of the State of California or of the federal government, as applicable. This clause does not limit the jurisdiction of the court of a tribe.

(iii) A requirement that the tribe shall cooperate with any inspections, audits, and investigations by the Department of Justice for improper acts or omissions by tribal officers, including any sanction or discipline imposed by the department, up to and including removal of the tribe from the pilot program described in this section.

(iv) (I) A requirement for the tribe to carry sufficient insurance coverage for the liability of the tribe arising from acts or omissions of tribal officers.

(II) The department shall determine, in consultation with the tribe, the amount of coverage that is sufficient for the requirement in subclause (I).

(5) Comply with all applicable provisions of Sections 13510, 13510.1, 13510.8, and 13510.9.

(6) Submit all required documentation of compliance with this subdivision to the department, in a manner and form prescribed by the department.

(7) Submit any data, statistics, reports, or other information requested by the department for the monitoring and evaluation of the pilot program to the department in a manner and form prescribed by the department.

(f) When a peace officer authorized under this section issues a citation for a violation of state law, the citation shall require the person cited to appear in the superior court of the county in which the offense was committed, and shall be submitted to the district attorney of that county.

(g) Any criminal charge resulting from a custodial arrest made by, or citation issued by, a peace officer designated pursuant to this section, while exercising the authority granted by this section, shall be within the jurisdiction of the courts of the State of California.

(h) Any official action taken by a peace officer designated pursuant to this section, while exercising the authority granted by this section, including, without limitation, any detention, arrest, use of force, citation, release, search, or application for, or service of, any warrant, shall be taken in accordance with all applicable state laws.

(i) The peace officer authority granted to any person pursuant to this section shall be automatically revoked ~~on January 1, 2028~~ **on January 1, 2029**, unless extended by a later enacted statute.

(j) (1) The department shall provide ongoing monitoring, evaluation, and support for the pilot program.

(2) A qualified entity may terminate their participation in the pilot program at will, however the requirements of paragraphs (2), (3), and (4) of subdivision (e) shall remain in effect.

(3) The department may suspend or terminate a qualified entity's participation in the program for gross misconduct or for willful or persistent failure to comply with requirements.

(4) (A) (i) By no later than January 1, 2027, the department shall prepare and submit an interim report to the Legislature, the Assembly Select Committee on Native American Affairs, and the Assembly and Senate Public Safety Committees.

(ii) By no later than June 1, 2028, the department shall prepare and submit a final report to the Legislature, the Assembly Select Committee on Native American Affairs, and the Assembly and Senate Public Safety Committees.

(B) The reports required by this section shall include, without limitation, the impacts of the pilot program on case clearance rates, including, without limitation, homicide and missing persons cases, the impact of the pilot program on crime rates on Indian lands and surrounding communities, the impact of the pilot program on recruitment and retention of tribal police, a discussion of feasibility and implementation difficulties, and recommendations to the Legislature.

(C) The reports required by this paragraph shall be submitted in compliance with Section 9795 of the Government Code.

(k) This section shall not be construed to infringe upon the sovereignty of any Indian tribe nor their inherent authority to self-govern, including the authority to enact laws that govern their lands.

(l) As used in this section, the following terms are defined as follows:

(1) "Department" means the Department of Justice or any subdivision thereof to whom the Attorney General has delegated responsibility for the provisions of this section.

(2) "Indian country" has the same meaning as provided in Section 1151 of Title 18 of the United States Code.

(3) "Qualified entity" means the Blue Lake Rancheria, the Coyote Valley Band of Pomo Indians, and the Yurok Tribe of the Yurok Reservation.

(4) "Qualified member" means a person who is regularly employed by a qualified entity as a law enforcement, police, or public safety officer or investigator, who meets all of the requirements and qualifications in subdivision (d), and who has been designated by the qualified entity to be a peace officer pursuant to this section.

11073.5. This article shall remain in effect only until January 1, 2030, and as of that date is repealed.

Date of Hearing: April 16, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2168 (Kalra) – As Amended March 18, 2024

As Proposed To Be Amended In Committee

SUMMARY: Requires dismissal of specified misdemeanors and infractions pending against a person at the time the person is committed to imprisonment for a felony offense, as specified. Specifically, **this bill**:

1) Provides that a person shall not be subject to prosecution for a non-felony offense that is pending against them at the time of their commitment to state prison, a county facility as a ward of the juvenile court, or to a county jail for a felony offense subject to prison realignment.

2) Provides that this provision does not apply to any of the following:

   a) An offense in which the victim is a victim of domestic violence, as defined;

   b) An offense for which the victim is entitled to restitution;

   c) An offense that requires sex offender registration;

   d) An offense that can be filed as either a misdemeanor or a felony at the discretion of the prosecution (i.e., wobblers);

   e) Reckless driving;

   f) Driving under the influence of drugs; and,

   g) Driving under the influence of alcohol.

EXISTING LAW:

1) Provides that a person shall not be subject to prosecution for a non-felony offense arising out of the a violation of the Vehicle that is pending against them at the time of their commitment to a state prison, juvenile facility, or to a county jail for a realigned felony, unless any of the following apply:

a) The offense requires the Department Of Motor Vehicles to immediately revoke or suspend the person's license upon receipt of a court record showing that the person has been convicted of that non-felony offense;

b) The offense is committed by a person while that person is temporarily released from custody pursuant or while they are on parole or postrelease community supervision; and,

c) If the pending offense is for reckless driving, driving under the influence of drugs, or driving while intoxicated. (Veh. Code. § 41500.)

2) States that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime. (Pen. Code, § 1202.4.)

3) Provides that state prisoners who have other criminal charges pending against them at the commencement of their terms have a right to trial on the pending charges within 90 days after written notice to the district attorney, and to dismissal of the charges absent timely trial. (Pen. Code, § 1381.)

4) Allows a judge, either on motion of the court or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. (Pen. Code, § 1385.)

5) States that the purpose of incarceration is rehabilitation and successful community reintegration achieved through education, treatment, and active participation in rehabilitative and restorative justice programs. This purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of people incarcerated for committing the same offense under similar circumstances. (Pen. Code, § 1170, subd. (a)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Under existing law, the courts are permitted to dismiss certain Vehicle Code misdemeanors if the defendant is sentenced to state prison. However, because this dismissal process is limited to the Vehicle Code, thousands of other defendants already sentenced to prison remain in county jail and are still being transported for hearings on open misdemeanor cases that will not increase their sentence.

"AB 2168 addresses this inefficient process by allowing a court to dismiss victimless low-level misdemeanors against people waiting in county jail who are already sentenced to state prison. By extending this flexibility to the courts, this bill will reduce needless delays that result in unnecessary ongoing incarceration costs that do not ultimately improve public

safety."

2) **Dismissals**: Under current law, Vehicle Code section 41500, non-felony traffic offenses are automatically dismissed when a defendant is incarcerated for a felony offense. (Veh. Code, § 41500.) The statute as originally enacted in 1970 only applied to defendants who were committed to state prison. However, the statute has since been expanded, and now applies to committed youths [Chapter 545, Statutes of 1975] and to defendants who are committed to county jail for a realignment felony [AB 1156 (Brown), Chapter 378, Statutes of 2015].

This statute "is an exception to the rule that all criminal offenses are subject to prosecution." (*Joseph v. Superior Court* (1992) 9 Cal.App.4th 498, 503, 11 Cal.Rptr.2d 757.) The purpose of this statute is that a conviction for vehicle offenses would often run concurrent with and be subsumed by the felony level sentence. Hence, judicial economy is served by automatic dismissal—it would be a waste of time and resources to continue the trial on the lesser offense because the defendant has already served their time. As several courts have stated, it is in the public interest that courts not be burdened with the prosecution of minor cases where the defendant has already been sentenced to serve a long term in prison, and the additional prosecution will not substantially increase that term. (*People v. Freeman* (1987) 225 Cal.App.3d Supp. 1, 4.) Further, there is "strong public policy that allows felons sentenced to state institutions to obtain relief from detainers that might render their release date uncertain and thus adversely affect their eventual rehabilitation." (*People v. Lopez* (2013) 218 Cal.App.4th Supp. 6, 11, 160.) "A prisoner serving time often faces other charges or proceedings when his term of imprisonment is completed. These are sometimes referred to as 'detainers' or 'holds.' They render the prisoner's final date of release into the community uncertain, and often adversely affect his security classification thereby preventing his participation in various programs otherwise available to prisoners." (*Freeman, supra,* at p. Supp. 4, fn. 2.)

Proponents of this bill content that the statute is inadequate. Specifically, while the statute currently mandates dismissal of Vehicle Code offenses, it does not mandate dismissal of other misdemeanors listed outside the Vehicle Code. An example of these type of offenses are the drug misdemeanors listed in the Health and Safety Code (e.g. possession of a controlled substance).To illustrate by example: Under Section 41500, a defendant charged with felony robbery in one case and driving on a suspended license [Veh. Code, §14601.1] in another case. The defendant is convicted and sentenced to state prison for felony robbery. Because defendant is now serving a felony sentence on a more serious case, Section 41500 mandates dismissal of the Vehicle Code suspended license charge. However, under current law, if that same defendant was instead charged with felony robbery in one case and in another case with possession of drug paraphernalia [Health & Safe. Code, § 11364], the drug charge would not be dismissed under Section 41500 because it is not a "Vehicle Code" charge. This bill would treat all misdemeanors the same as those proscribed in the Vehicle Code. Thus, under either of the examples listed above, following a conviction and sentence to state prison on the defendant's robbery charge, the non-violent misdemeanor would be dismissed.

Further, the changes made by this bill are narrow. This bill would only apply to misdemeanor offenses and infractions. Further, a court would not be required to dismiss charges for domestic violence offenses; offenses in which the victim is owed restitution (given that victims of crime are constitutionally entitled to restitution, this exception encompasses the

vast majority of criminal offenses); offenses that require sex offender registration (there are at least 15 misdemeanors that require registration); any offense that can be filed as either a misdemeanor or a felony at the discretion of the prosecution (which covers a wide-range of offenses, including many theft and drug related offenses); and, a court would not be required to dismiss a reckless driving charge, or a charge for driving under the influence of drugs or alcohol.

Also, it is likely that the dismissals required by this bill would not apply to charges brought in the same case as the felony. In a recent unpublished decision, the court of appeals affirmed a trial court's refusal to dismiss the misdemeanor and infraction charges pursuant to Vehicle Code section 41500 after sentencing the defendant prison on felony counts. (*People v. Escareno*, 2021 WL 2069434, at *1–4.) The court reasoned that Section 41500 applies to charges "pending against [the defendant] at the time of [their] commitment" and does not apply to charges "filed concurrently" with a pending felony case. Like Vehicle Code section 41500, this bill would require dismissal only of charges "pending against that person at the time of that person's commitment." Thus, if a defendant were to be charged with both a misdemeanor and a felony as part of a single action, the misdemeanor could still be prosecuted.

3) **Argument in Support**: According to *Californians for Safety and Justice*, "under current law, courts are permitted to dismiss certain victimless Vehicle Code misdemeanors if a defendant has been sentenced to state prison. The idea behind the law is simple – it makes little sense to spend limited time and money prosecuting a victimless crime when the defendant is already going to prison. AB 2168 would extend the current dismissal requirement for Vehicle Code misdemeanors following a prison commitment to all victimless misdemeanors, regardless of whether that misdemeanor is located in the Vehicle Code, Penal Code, or elsewhere. This simple change could result in millions of dollars per year in cost savings."

4) **Argument in Opposition**: According to California State Sheriff's Association (CSSA), "…the bill gives certain convicts a pass for liability for certain non-felony offenses simply by virtue of the fact that they have already been sentenced for a felony crime. This bill decreases accountability under the guise of easing logistical burdens regarding prosecution for additional offenses.

"As long as people choose to commit crimes, appropriate custodial sanctions must be available. Our state's correctional system is just that – a system – and prisons and jails serve similar but also unique purposes."

5) **Prior Legislation**:

   a) SB 1105 (Skinner), of the 2017-2018 Legislative Session, would have extended the existing laws relating to the dismissal of Vehicle Code violations pending at the time of a defendant's commitment to state prison or county jail on a jail-eligible felony to persons sentenced to county jail or other alternatives to incarceration, as specified. SB 1105 was held in Senate Appropriations Committee.

   b) AB 1156 (Brown), Chapter 378, Statutes of 2015, extended the existing laws relating to the dismissal of Vehicle Code violations pending at the time of a defendant's commitment

to state prison committed to a county jail for conviction of a felony.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association (Sponsor)
ACLU California Action
California for Safety and Justice
Californians for Safety and Justice
Empowering Women Impacted by Incarceration
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
Lawyers Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoners With Children
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Young Women's Freedom Center

Opposition

California State Sheriffs' Association

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

Amended Mock-up for 2023-2024 AB-2168 (Kalra (A))

Mock-up based on Version Number 98 - Amended Assembly 3/18/24
Submitted by: Liah Burnley, Assembly Public Safety Committee

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

~~**SECTION 1.** Section 1202b is added to the Penal Code, to read:~~

~~**1202b.** (a) For purposes of this section, "anticipated prison stay" means an estimate of the defendant's expected length of stay in state prison, including pretrial credit earned under Sections 2900.5, 2933.1, 2933.2, and 4019, postsentence credit pursuant to subdivision (c) of Section 3371.1 of Title 15 of the California Code of Regulations, and credit for good conduct that is anticipated to be awarded under Section 3043.2 of Title 15 of the California Code of Regulations, or any successor regulations or authority. The estimate shall assume that the defendant will be classified in workgroup A-1. This estimate shall not include credit that could be earned under any other prison program, including those in Sections 3043.3, 3043.4, 3043.5, and 3043.6 of Title 15 of the California Code of Regulations.~~

~~(b) In any case where a prison sentence may be imposed, the reports required to be prepared by the probation department pursuant to subdivision (b) of Section 1191.3 and subparagraph (A) of paragraph (2) of subdivision (b) of Section 1203 shall include an estimate of the defendant's anticipated prison stay.~~

~~(c) At the time of sentencing, the court shall cause to be recorded on the judgment or commitment the total time in custody to be credited on the sentence under Sections 2900.5, 2933.1, 2933.2, and 4019.~~

~~(d) At the time of sentencing, if the court imposes a prison sentence, the court shall determine the defendant's anticipated prison stay using the estimate from subdivision (b). The court may disregard the probation department's estimate from subdivision (b) if it determines the defendant would have a shorter length of stay than estimated by the probation department.~~

~~(e) If the court determines in subdivision (d) that the defendant will serve 365 days or less in state prison, the court shall order that the defendant serve the sentence in the custody of the sheriff or county jail administrator unless that order is prohibited by any initiative statute.~~

~~(f) Anyone who remains in the custody of the county sheriff or county jail administrator shall earn credit at either the rate specified in Section 3043.2 of Title 15 of the California Code of~~

~~Regulations, or any successor regulation or authority, or the rates specified in Section 2900.5, subdivision (c) of Section 2933.1, subdivision (c) of Section 2933.2, or Section 4019. The defendant shall earn credit at whichever rate results in a greater accumulation of credit for the defendant. The defendant shall also be eligible for any other credit earning, work furlough, or similar program available to people in county jail.~~

SECTION 1. ~~**SEC. 2.**~~ Section 1386.1 is added to the Penal Code, to read:

1386.1. (a) A person shall not be subject to prosecution for a nonfelony offense that is pending against that person at the time of that person's commitment to the custody of the Secretary of the Department of Corrections and Rehabilitation, to a county facility as a ward of the juvenile court, or to a county jail pursuant to subdivision (h) of Section 1170.

(b) This section shall not apply to any offense in which the victim is a person described in Section 1203.097, an offense for which the named victim is entitled to restitution as described in Section 1202.4, an offense that requires registration pursuant to Section 290, an offense that can be filed as either a misdemeanor or a felony at the discretion of the prosecution, or a violation of Section 23103, 23152, or 23153 of the Vehicle Code.

~~**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 16, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2210 (Petrie-Norris) – As Introduced February 7, 2024

PULLED BY THE COMMITTEE.

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

Date of Hearing: April 16, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2279 (Cervantes) – As Amended April 4, 2024

SUMMARY: Establishes the Bureau of Missing and Murdered Indigenous and Women, Girls, and Persons (MMIWGP) within the Department of Justice (DOJ). Specifically, **this bill**: Establishes MMIWGP within DOJ and requires MMIWGP to have all of the following responsibilities:

1) Facilitate collaboration between victims' families, tribal governments, and federal, state, and out-of-state law enforcement agencies regarding cases involving missing and murdered indigenous women, girls, and persons in California, including cases involving human trafficking.

2) Assist in investigating cases involving missing and murdered indigenous women, girls, and persons, including cases of human trafficking, that occur in California, if appropriate.

3) Publish data on the number of facts about cases involving missing and murdered indigenous women, girls, and persons, in California.

4) Submit an annual report to both houses of the Legislature containing the findings on the published data until January 1, 2029.

EXISTING FEDERAL LAW:

1) Defines "Indian Country" as:

   a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

   b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and,

   c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (18 U.S.C. § 1151)

2) Provides concurrent California and Tribal jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country, as specified. (18 U.S.C. § 1162.):

3) Provides California limited jurisdiction over civil offenses that occur within Indian country. (25 U.S.C. § 1322, subds. (a) & (c).)

EXISTING STATE LAW:

1) States that murder is the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187, subd. (a).)

2) States that malice is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. (Pen. Code, § 188, subd. (a)(2).)

3) Requires that all local police and sheriffs' departments shall accept any report, by any party, including any telephonic report, of a missing person, including runaways, without delay and shall give priority to the handling of these reports over the handling of reports relating to crimes involving property. (Pen. Code, § 14211, subd. (a).)

4) States that in cases of reports involving missing persons, including, but not limited to, runaways, the local police or sheriff's department shall immediately take the report and make an assessment of reasonable steps to be taken to locate the person by using the report forms, checklists, and guidelines, as specified. (Pen. Code, § 14211, subd. (c).)

5) Establishes the "feather alert", a notification system designed to issue and coordinate alerts with respect to endangered indigenous people, specifically indigenous women or indigenous people, who are reported missing under unexplained or suspicious circumstances. (Gov. Code, § 8594.13 subd. (a).)

6) States that if a person is reported missing to a law enforcement agency and that agency determines that specified requirements are met, the law enforcement agency may request the Department of the California Highway Patrol to activate a Feather Alert. (Gov. Code, § 8594.13 subd. (b)(1).)

7) Establishes the Rural Indian Crime Prevention Program. (Pen. Code, § 13847, subd. (a).)

8) Requires the Rural Indian Crime Prevention Program to target the relationship between law enforcement and Native American communities to encourage and to strengthen cooperative efforts and to implement crime suppression and prevention programs. (Pen. Code, § 13847, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "It is an unfortunate truth that across the United States, including in California, there is an ongoing crisis of persistent violence levied committed against Indigenous people, especially women and girls. The Sovereign Bodies Institute (SBI) began tracking the number of murdered and missing Indigenous people (MMIP) in California in 2015 and found that there are approximately 18 new MMIP cases documented per year. Cases were documented in 42 of California's 58 counties. According to SBI, 91 percent of murdered and missing Indigenous children in Southern California are girls, and the lack of any thematic issues among these cases suggests that these girls are

targeted because they are both Indigenous and girls. Of all of the MMIP cases that SBI documented in California, only 21 percent involved a response by the criminal justice system. For known MMIP cases in Southern California, there is no documentation of a single conviction. In 2019, the Urban Indian Health Institute reported that 95 percent of MMIP cases go without being covered by either national or international media. The enactment and implementation of Assembly Bill 1314 in 2022 has helped improve our state's response to the MMIP crisis through the use of the 'Feather Alert,' but there is still much work to be done.

"Assembly Bill 2279 will continue this effort by establishing a Bureau of Missing and Murdered Indigenous Women, Girls, and Persons within the Department of Justice. The Bureau would be empowered to facilitate collaboration between victims' families; tribal governments; and state, federal, and out-of-state law enforcement agencies. The Bureau would also assist in investigating MMIP cases in California when appropriate. Finally, in order to further improve transparency regarding the ongoing MMIP crisis, the Bureau would be required to publish data on the number of MMIP cases and facts about those cases, as well as submit an annual report to the Legislature. This bill will help provide a coordinated state response to MMIP cases, as well as shine a light on a crisis affecting our Indigenous communities that has not received nearly the attention it deserves."

2) **Savannah's Law and The Not Invisible Act of 2020**: In 2019, U.S. Senator, Lisa Murkowski, from the State of Alaska introduced proposed legislation to address the problem of MMIP. Signed in 2020, Public Law 116-165, also known as Savannah's Law, was enacted to direct the federal Department of Justice (DOJ) to review, revise, and develop law enforcement and justice protocols to address missing or murdered Native Americans.

   The legislation requires DOJ to:

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

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

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

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

Finally, the Federal Bureau of Investigation must include gender in its annual statistics on missing and unidentified persons published on its website. (https://www.congress.gov/bill/116th-congress/senate-bill/227) [as of Mar. 25. 2024]

According to the Federal Bureau of Indian Affairs, within the U.S. Department of the Interior, "H.R. 2438, the ''Not Invisible Act of 2020,'' is a congressional act designed to address the crisis of violence and sexual violence committed against American Indian and Alaska Native men and women. The Act brings together a committee of law enforcement, tribal authorities, federal partners, and more to study and discuss solutions to the crisis of murdered and missing Indigenous women and to establish better systems of coordination.

"Specifically, the Act directs BIA to appoint a federal effort coordinator to combat violence against Native people and establishes, within the Department of the Interior (DOI) and the Department of Justice (DOJ), a Joint Commission on Reducing Violent Crime Against Indians. It also creates a new position within the Interior Department dealing specifically with murder, trafficking, and missing Native Americans, and forms a new joint advisory committee between the Interior and Justice Departments to solve those issues.

"The Not Invisible Act appoints BIA to coordinate prevention efforts, grants, and programs relating to murder of, trafficking of, and missing Native Americans, across various federal agencies. The coordinator reports to the Secretary of the Interior, and is directed to take into consideration the unique challenges faced by Tribal communities and works in cooperation with outside organizations to train Tribal law enforcement, Indian Health Service (IHS) providers, and other Tribal community members on identifying, responding to, and reporting on cases of missing persons, murder, and human trafficking. The coordinator also reports to Congress annually on these efforts and provides recommendations for improving coordination." (<Problem Solving | Indian Affairs (bia.gov)> [as of Apr. 11, 2024]

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

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

The UIHI tried, repeatedly, to gather information from various sources including, but not limited to, law enforcement agencies, state and national databases, and media coverage

regarding MMIP. Some sources either did not respond or found it to laborious to produce or provide information for MMIP.

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

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

This bill seeks to establish the MMIWGP within DOJ, to collect data from various sources, and to publish a report of its findings to the Legislature.

4) **Practical Considerations:** The MMIWGP would be required to produce a report regarding the data it collects, but it is unclear how the data should be analyzed. The need for this state to address MMIP is long overdue, however, MMIWGP may benefit from additional guidance and structure as to how to best achieve their goals.

5) **Argument in Support**: According to *The Yurok Tribe,* "California has the largest population of Native Americans of any state in the United States and the state is facing increasing public safety challenges and the crisis of Missing and Murdered Indigenous Persons (MMIP). Indigenous Persons, especially Indigenous Women and Girls, are disproportionately affected by violence, human trafficking, and murder, and become "missing" at much higher rates than people of other racial groups.) California has the fifth largest caseload of MMIP. More than 4 in 5 American Indian and Alaska Native women have experienced violence in their lifetime and more than 1 in 3 in the last year. Additionally, 1 in 130 Native American children likely go missing each year.

"The Sovereign Bodies Institute (SBI) began tracking the number of murdered and missing Indigenous people (MMIP) in California in 2015 and found that there are approximately 18 new MMIP cases documented per year. Cases were documented in 42 of California's 58 counties. According to SBI, 91 percent of murdered and missing Indigenous children in Southern California are girls, and the lack of any thematic issues among these cases suggests that these girls are targeted because they are both Indigenous and girls. Of all of the MMIP

cases that SBI documented in California, only 21 percent involved a response by the criminal justice system. For known MMIP cases in Southern California, there is no documentation of a single conviction. In 2019, the Urban Indian Health Institute reported that 95 percent of MMIP cases go without being covered by either national or international media.

"Assembly Bill 2279 will help provide a state response to the ongoing MMIP crisis by establishing a Bureau of Missing and Murdered Indigenous Women, Girls, and Persons within the Department of Justice. The Bureau would be empowered to facilitate collaboration between victims' families; tribal governments; and state, federal, and out-of-state law enforcement agencies. The Bureau would also assist in investigating MMIP cases in California when appropriate, including human trafficking cases. Finally, in order to further improve transparency regarding the ongoing MMIP crisis, the Bureau would be required to publish data on the number of MMIP cases and facts about those cases, as well as submit an annual report to the Legislature."

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

7) **Related Legislation**:

   a) AB 1863 (Ramos), would make changes to the "Feather Alert" including, but not limited to, application of the "Feather Alert" to a missing indigenous person and urging the Governor to declare a state of emergency on MMIP. AB 1863 is pending hearing in the Emergency Management Committee.

   b) AB 2944 (Waldron), would allow the Governor to appoint a Red Ribbon Panel to address the murdered or missing indigenous persons (MMIP) crisis.

8) **Prior Legislation**:

   a) AB 1574 (Waldron), of the 2023-2024 Legislative Session, was substantially similar to AB 2944 above, but was never heard by a policy committee, and subsequently returned to the desk.

   b) AB 1314 (Ramos), Chapter 476, Statutes of 2022, established the Feather Alert system, to aid in the location of an Indigenous person who has gone missing under suspicious circumstances, been abducted or kidnapped.

   c) AB 3099 (Ramos), Chapter 170, Statutes of 2020, requires the Department of Justice (DOJ), upon funding, to provide technical assistance relating to tribal issues to local law enforcement agencies, as specified, and tribal governments with Indian lands. It also requires DOJ, upon funding, to study and report on how to increase state criminal justice protective and investigative resources for reporting and identifying missing Native Americans in California, particularly women and girls.

   d) AB 1653 (Frazier), of the 2019-2020 Legislative Session, would have created the Missing and Murdered Indigenous Women Task Force to consult with California's Indian tribes to ensure resources are used effectively to investigate cases of missing and murdered indigenous persons in the state and would have alsso required the task force to submit a report to the Legislature on or before January 1, 2022. AB 1653 was held on the

Assembly Appropriations suspense file, and subsequently returned to the desk.

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

f)

REGISTERED SUPPORT / OPPOSITION:

Support

Cahuilla Band of Indians
California Public Defenders Association
Yurok Tribe

Opposition

None

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

Date of Hearing: April 16, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2308 (Davies) – As Introduced February 12, 2024

AS PROPOSED TO BE AMENDED IN COMMITTEE

SUMMARY: Extends the maximum duration of criminal protective orders that may be issued against defendants convicted of domestic violence involving corporal injury to a spouse, cohabitant, fiancé, or parent of the offender's child, from 10 years to 15 years.

EXISTING LAW:

1) Provides that a person who willfully inflicts corporal injury resulting in a traumatic condition upon the offender's spouse, former spouse, cohabitant, former cohabitant, fiancé, someone the offender has or previously had an engagement or dating relationship, or the mother or father of the offender's child, is guilty of a felony, punishable by imprisonment in state prison for two, three, or four years, or in a county jail for up to one year, or a fine up to $6,000. (Pen. Code, § 273.5, subd. (a) & (b).)

2) Defines "traumatic condition" as a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck. (Pen. Code, § 273.5, subd. (d)

3) Provides that for a person convicted of the above felony, the sentencing court shall consider issuing a criminal protective order restraining the defendant from any contact with the victim, which may be valid for up to 10 years. (Pen. Code, § 273.5, subd. (j).)

4) States the length of the above restraining order should be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and their immediate family. (*Ibid.*)

5) Authorizes a court to issue a protective order regardless of whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation. (*Ibid.*)

6) Requires a court to consider issuing up to a 10 year post-conviction protective order prohibiting a convicted defendant from any contact with a victim of a crime, for domestic violence convictions, and other specified crimes such as human trafficking, gang activity, rape, statutory rape, spousal rape, pimping and pandering, offenses requiring sex offender registration, elder abuse, and willfully, malicious, and repeated stalking as specified. (Pen. Code, §§ 136.2, subd. (i)(1); 273.5, subd. (j); 368, subd. (l); 646.9, subd. (k); 1201.3, subd.

(a).)

7) Defines "Domestic violence" as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship, any other person related by consanguinity or affinity within the second degree, and a child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected. (Pen. Code, § 13700, subd. (b); (Fam. Code, § 6211.).)

8) Defines abuse as intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to them-self, or another. Pen. Code, § 13700, subd. (a).)

9) States that for domestic violence and offenses requiring sex offender registration, the case file must be clearly marked so that the court is aware of their nature for purposes of considering a protective order. (Pen. Code, § 136.2, subd. (e)(1).)

10) Provides that a willful and knowing violation of a criminal protective order constitutes contempt of court, a misdemeanor, punishable by imprisonment in county jail for up to one year or a fine of $1,000. (Pen. Code, §§ 273.6, subd. (a), 166, subd. (a)(4).)

11) Permits a court to issue a civil domestic violence or elder abuse restraining order enjoining a party from, among other things contacting, coming within a specified distance of a specified person. Such orders can be issued for up to five years, may be renewed upon a request of a party for five years or permanently, without a showing of any further abuse since the issuance of the order. Failure to state the expiration date on the face of the order creates an order with duration of 3 years. (Fam. Code, §§ 6320, 6345; Welf. & Inst. Code, § 15657.03.)

12) Provides that if there are both civil and criminal orders regarding the same parties and neither an emergency protective order that has precedence in enforcement nor a no-contact order has been issued, the peace officer shall enforce the criminal order issued last. (Fam. Code, § 6383, subd. (h)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Domestic violence is considered one of the worst crimes that can be committed against someone. Victims are often emotionally, financially and physically abused by their abuser. AB 2308 is a common-sense measure to give longer protections for victims by extending the length of a protective order for up to a permanent basis. Currently, it is only allowed up to 10-years. Extending this timeline will give relief to victims that they will be able to continue living their lives and healing from

their trauma without fear their abuser will contact them ever again."[1]

2) **Civil and Criminal Protective Orders:** Protective orders and restraining orders are, in the outcome, very similar – both are orders issued or approved by a court that prevents a person from contacting another person under specific circumstances and may also restrict other conduct to prevent contact, harassment, threats, or violence. (See generally, Fam. Code, § 6218, subd. (a)-(c).) There are some differences. For example, criminal protective orders are typically requested by district attorneys on behalf of the victim, while civil restraining orders are typically sought by one of the parties involved in a civil dispute. This bill pertains to criminal protective orders.

Criminal protective orders can be issued during a criminal proceeding. Specifically, a trial court in a criminal case can issue criminal protective orders when there is a good cause to believe that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. (Pen. Code, § 136.2, subd. (a).) Such protective orders are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.). When criminal proceedings have concluded, the court has authority to issue protective orders as a condition of probation. For example, when domestic violence criminal proceedings have concluded, the court can issue a "no-contact order" as a condition of probation. (Pen. Code, § 1203.097.)

Most relevant here, under existing law, if a person is convicted of a domestic violence felony involving willful infliction of corporal injury resulting in a traumatic condition, the sentencing court shall consider issuing a criminal protective order restraining the defendant from any contact with the victim, which may be valid for up to 10 years. (Pen. Code, § 273.5, subd. (j).) Courts can similarly issue 10 year post-conviction protective order for several other types of specified crimes: convictions pertaining to domestic violence, human trafficking, gang activity, rape, statutory rape, spousal rape, pimping and pandering, offenses requiring sex offender registration, elder abuse, and willfully, malicious, and repeated stalking as specified. (Pen. Code, §§ 136.2, subd. (i)(1); 273.5, subd. (j); 368, subd. (l); 646.9, subd. (k); 1201.3, subd. (a).)

In contrast, there are several types of civil restraining orders that can be issued in the domestic violence context. For example, a victim of domestic violence needing immediate protection may seek a temporary restraining order on an ex parte basis. The court may issue a short-term temporary order enjoining the abuser from a range of conduct, including harassing, threatening, and contacting the victim. (Fam. Code, § 6320 *et seq.*) After a noticed hearing, the court may issue an order protecting the survivor against a range of actions for a term of up to five years. (Fam. Code, § 6340 *et seq.*) At the end of the term of the protective order issued after a hearing, the court may renew the order at the request of any party, subject to any modifications ordered by the court or stipulated to by the parties. (Fam. Code, § 6345.)

As a general rule, civil courts may issue a civil restraining order up to five years. For example, civil harassment restraining orders can last up to five years, and renewed for another five years. (Civ. Pro. Code, §§ 527.6.) Similarly, a workplace violence order can be

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[1] Please note that as amended, this bill would extend the maximum duration of certain domestic violence criminal protective orders from 10 years to 15 years, rather than a defendant's lifetime as initially proposed.

issued for up to three years, and renewed for an additional five years. (Civ. Pro. Code, §§ 527.6.) Additionally, civil domestic violence or elder abuse restraining orders can be issued up to five years. Notably these particular orders can renewed for another five years, or permanently. (Fam. Code, §§ 6320, 6345; Welf. & Inst. Code, § 15657.03.)

3) **Effect of this bill:** Under existing law, a person convicted of domestic violence involving willful corporal injury to a spouse, cohabitant, fiancé, or parent of the offender's child can be subject to a 10 year protective order restraining the defendant from any contact with the victim. AB 2308 would increase the maximum duration of such an order from 10 to 15 years. Notably, courts can additionally issue 10 year protective orders against defendants convicted of domestic violence offenses that do not necessarily result in corporal injury. Specifically, Penal Code Section 136.2 allows courts to issue 10 year protective orders against persons convicted of intentionally/recklessly causing or attempting to cause bodily injury, or placing spouses, cohabitants, children, and other specified persons in reasonable apprehension of imminent serious bodily injury. (Pen. Code, §§ 136.2). Therefore, AB 2308 would permit longer protective orders to be issued for more physically harmful domestic violence convictions resulting from the willful infliction of traumatic conditions, such as wounds, strangulation, suffocation, resulting from physical force. (Pen. Code, § 273.5, subd. (d).)

   The need for this bill is uncertain, given there is insufficient evidence showing that the 10 protective orders provided under existing fail to protect victims or that victims face violence from defendants even after a 10 year order has expired. Additionally, civil restraining orders, which are functionally very similar to criminal restraining orders can be sought after the 10 year criminal protective order has expired. That being said, in extreme cases where a person convicted of corporeal domestic violence threatens future violence to a victim, a 15 year protective order could provide additional protection for victims and avoid the trauma of having to face their abuser to seek an additional order.

4) **Criminal Contempt**: Disobedience of a court order may be punished as criminal contempt. The crime of contempt is a general intent crime. It is proven by showing that the defendant intended to commit the prohibited act, without any additional showing that he or she intended "to do some further act or achieve some additional consequence." (*People v. Greenfield* (1982) 134 Cal.App.3d Supp. 1, 4.) Nevertheless, a violation must also be willful, which in the case of a court order encompasses both intent to disobey the order, and disregard of the duty to obey the order." (*In re Karpf* (1970) 10 Cal.App.3d 355, 372.)

   Criminal contempt is a misdemeanor, punishable by imprisonment in county jail for up to one year or a fine of $1,000. (Pen. Code, §§ 273.6, subd. (a), 166, subd. (a)(4).) Proceedings under the statute are conducted like any other misdemeanor offense. (*In re McKinney* (1968) 70 Cal.2d 8, 10; *In re Kreitman* (1995) 40 Cal.App.4th 750, 755.) Therefore, the criminal contempt power is vested in the prosecution; the trial court has no power to institute criminal contempt proceedings under the Penal Code. (*In re McKinney*, *supra*, 70 Cal.2d at p. 13.) A defendant charged with the crime of contempt is "entitled to the full panoply of substantive and due process rights." (*People v. Kalnoki* (1992) 7 Cal.App.4t Supp. 8, 11.) Therefore, the defendant has the right to a jury trial, regardless of the sentence imposed. (*People v. Earley* (2004) 122 Cal.App.4th 542, 550.)

By increasing the maximum duration of a corporal domestic violence protective order from 10 years to 15 years, this bill may result in an increase in the number of criminal contempt misdemeanor convictions associated with violating protective orders.

5) **Effects of Restraining Orders:** The consequences of having the court issue a restraining order can be significant. Depending on the facts, such an order may implicate an individual's housing and community interests by requiring them to vacate their home or neighborhood. Additionally, they can create consequences for a person's future employment, housing, professional licenses, and immigration status, particularly for lengthy protective orders. For example, a violation of a protective order is a deportable offense. Section 237(a)(2)(E)(ii) of the Immigration and Nationality Act (INA) states: "Any [undocumented person] who at any time after entry is enjoined under a protection order issued by a court an whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable." Additionally, a person who has served their time, completed all terms of their probation, and otherwise is seeking to be a law abiding member of the community, could face difficulties securing employment or housing for the duration of their order, since employers or landlords running background checks may be discouraged from hiring or providing housing to persons with active criminal protective orders. While this bill is well-intended and seeks to protect victims from having to go through the pain and trauma of seeking a modification or renewal of a restraining order, increasing the maximum duration of a domestic violence criminal protective order could negatively an individual's successful reentry into the community and increase a person's likelihood to commit new crimes.

6) **Argument in Support**: According to the California Police Chiefs Association "According to Summit Defense, domestic violence accounts for roughly 20% of all violent crimes in California, and at the end of 2019, California had submitted about 12,500 misdemeanor convictions for domestic violence cases. When comparing domestic violence cases in California with the rest of the country, it is clear that California has records that are higher than the national average. AB 2308 would create parity within the criminal court system similar to that already allowed in family court and allow an individual to request a lifetime domestic violence restraining order against someone instead of the currently allowed 10-year order."

7) **Argument in Opposition**: According to Smart Justice California, "This bill would allow the court to issue a permanent protective order restraining a convicted person from any contact with the victim if the person has been convicted of domestic violence. Current law provides courts discretion to impose protective orders in domestic violence cases for a sufficient amount of time. Imposing permanent protective orders would create circumstances in which individuals who have served their sentences, satisfied their supervision, and are otherwise living law abiding lives, are subject to the threat of lifetime prosecution because of a permanent restraining order. Setting a maximum length for a protective order ensures individuals have judicial review of existing orders, have notice of changes in victims geographic location (areas they are prohibited), and allows an end date for orders that no longer serve a purpose."

8) **Related Legislation**:

a) AB 1931 (Dixon), of the 2023-2024 Legislative Session, would require courts, to consider issuing a lifetime criminal protective order prohibiting a convicted defendant from contacting any victim of the crime, for any serious felony, any violent felony, or any felony offenses requiring registration as a sex-offender. AB 1931 is pending in this committee.

b) AB 467 (Gabriel), Chapter 14, Statutes of 2023, clarifies that a court that sentenced a defendant and issued a 10-year criminal protective order, may make modifications to it throughout the duration of the order.

9) **Prior Legislation**:

a) AB 818 (Petrie-Norris), Chapter 242, Statutes of 2023, expands the requirement for law enforcement officers to serve domestic violence orders and specifies that law enforcement must enter a firearm obtained during service of domestic violence restraining order or obtained at the scene of a domestic violence incident into the Automated Firearms System (AFS).

b) SB 853 (Hurtado), of the 2019-2020 Legislative Session, would have required courts to consider issuing a post-conviction restraining order for up to the duration that a defendant is required to register as a sex offender. SB 853 failed passage in Senate Public Safety.

c) SB 382 (Caballero), Chapter 87, Statutes of 2022, includes commercial exploitation of a minor in existing provisions of law that authorize courts to issue a restraining order during the pendency of criminal proceedings and upon conviction of specified offenses.

d) SB 352 (Block) Chapter 279, Statutes of 2015, authorized courts to issue a 10 year protective order upon convictions of certain elder abuse offenses.

e) AB 307 (Campos), Chapter 291, Statutes of 2013, allows a court to issue a protective order for up to 10 years when a defendant is convicted of specified sex crimes, regardless of the sentence imposed.

f) SB 723 (Pavley), Chapter 155, Statutes of 2011, allows a court to issue a protective order for up to 10 years when a defendant is convicted for an offense involving domestic violence.

g) AB 289 (Spitzer), Chapter 582, Statutes of 2007, allows courts to issue a protective order for up to 10 years for a conviction stemming from a domestic violence causing corporal injury conviction.

h) SB 834 (Florez), Chapter 627, Statutes of 2010, authorizes a court to issue a protective order for up to 10 years when a defendant is convicted for a sexual offense involving a minor.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California District Attorneys Association
California Partnership to End Domestic Violence
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Conference of California Bar Associations
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Oppose

ACLU California Action
California Public Defenders Association
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Legal Services for Prisoners With Children
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Uncommon Law

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

Amended Mock-up for 2023-2024 AB-2308 (Davies (A))

Mock-up based on Version Number 99 - Introduced 2/12/24
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 273.5 of the Penal Code is amended to read:

273.5. (a) Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars ($6,000), or by both that fine and imprisonment.

(b) Subdivision (a) shall apply if the victim is or was one or more of the following:

(1) The offender's spouse or former spouse.

(2) The offender's cohabitant or former cohabitant.

(3) The offender's fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243.

(4) The mother or father of the offender's child.

(c) Holding oneself out to be the spouse of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(d) As used in this section, "traumatic condition" means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.

(e) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.

(f) (1) Any person convicted of violating this section for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to ten thousand dollars ($10,000).

(2) Any person convicted of a violation of this section for acts occurring within seven years of a previous conviction under subdivision (e) of Section 243 shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to ten thousand dollars ($10,000), or by both that imprisonment and fine.

(g) If probation is granted to any person convicted under subdivision (a), the court shall impose probation consistent with the provisions of Section 1203.097.

(h) If probation is granted, or the execution or imposition of a sentence is suspended, for any defendant convicted under subdivision (a) who has been convicted of any prior offense specified in subdivision (f), the court shall impose one of the following conditions of probation:

(1) If the defendant has suffered one prior conviction within the previous seven years for a violation of any offense specified in subdivision (f), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that the defendant be imprisoned in a county jail for not less than 15 days.

(2) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of any offense specified in subdivision (f), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that the defendant be imprisoned in a county jail for not less than 60 days.

(3) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.

(i) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a domestic violence shelter-based program, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

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

(B) For any order to pay a fine, make payments to a domestic violence shelter-based program, or pay restitution as a condition of probation under this subdivision, the court shall make a

determination of the defendant's ability to pay. An order to make payments to a domestic violence shelter-based program shall not be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a person who is married or in a registered domestic partnership is caused in whole or in part by the criminal acts of their spouse or domestic partner in violation of this section, the community property may not be used to discharge the liability of the offending spouse or domestic partner for restitution to the injured spouse or domestic partner, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse or domestic partner and dependents, required by this section, until all separate property of the offending spouse or domestic partner is exhausted.

(j) Upon conviction under subdivision (a), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 150 years, ~~or upon the victim's request, permanently~~, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and their immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

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

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 16, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2310 (Hart) – As Amended April 1, 2024

SUMMARY: Establishes the "Parole Hearing Language Accessibility Act," which requires the Board of Parole Hearings (BPH) to provide limited-English-proficient (LEP) parole candidates with meaningful access to parole hearing proceedings. Specifically, **this bill**:

1) Requires BPH to take all reasonable steps to provide LEP parole candidates with meaningful access to, and equal and full participation in, parole hearing proceedings and activities conducted by BPH.

2) Requires BPH to translate all of the following documents:

   a) Notice and Request for Assistance at Parole Proceedings (BPH 1073);

   b) Notice of Confidential Disclosure;

   c) Hearing Rights Form (BPH 1003);

   d) Board of Parole Hearings Consultation Decision (BPH 1001);

   e) Notices or memoranda regarding confidential information;

   f) Forms or written materials pertaining to individual rights, services, or benefits, including those pertaining to victims and their next of kin;

   g) Notices pertaining to the denial, reduction, modification, or termination of services and benefits, and the right to file a grievance or appeal;

   h) Notices informing LEP parole candidates of language assistance services and forms for requesting language assistance services;

   i) Letters or written material from the board that require a response from the LEP parole candidate;

   j) Consent and complaint forms; and,

   k) Beginning January 1, 2027, both of the following:

      i. Parole hearing transcripts; and,

ii. Comprehensive risk assessment reports.

3) Requires BPH to translate the above-listed documents on a rolling basis as follows:

   a) Notices of rights including, but not limited to, BPH form 1003, BPH form 1073, and notices of LEP assistance shall be translated within 60 days of the effective date of this bill;

   b) All other standard documents that are not case specific shall be translated no later than 365 days after the effective date of this bill for the 15 most commonly spoken languages in California, based on CDCR and BPH demographic data, and no later than 730 days after the effective date of this bill for all remaining languages; and,

   c) Parole hearing transcripts and comprehensive risk assessment reports created after January 1, 2027, shall be translated within 30 days of the creation of the document.

4) Provides that BPH shall adopt a process to ensure that the translation of forms and notices of rights are updated each time the original document is revised.

5) States that, to ensure the accuracy of the translation, BPH must do all of the following:

   a) Hire qualified translators;

   b) Provide translators with a bilingual glossary of standardized legal and parole hearing-specific terminology in each language; and,

   c) Limit the use of automated translation technology to assist a qualified human translator.

6) Requires, if a parole candidate has requested language access assistance for a parole hearing, reconsideration hearing, rescission hearing, or medical parole hearing, an audio recording to be rendered that clearly captures both English and non-English testimony.

7) Requires BPH to provide the audio recording to the parole candidate's attorney or representative and to the public upon request no later than 30 days from the date of the hearing at no cost to the candidate.

8) Provides that, a parole hearing, reconsideration hearing, rescission hearing, or medical parole hearing shall be postponed or continued if any of the following occur:

   a) No qualified interpreter is provided for a parole candidate who requested language assistance;

   b) The parole candidate or their attorney object to proceeding with the interpreter provided due to a lack of competency or adherence to ethical or professional codes of conduct; or,

   c) BPH determines that the interpreter cannot effectively assist the parole candidate.

9) Requires BPH to provide timely and language-accessible notice to all parole candidates of all available language access services and an opportunity to request an interpreter prior to each proceeding or activity in which an LEP parole candidate has the right to access an interpreter.

10) Provides that BPH shall also provide timely and language-accessible notice of the process for filing a complaint or grievance or for requesting a rehearing due to a failure to provide adequate language access.

11) States that, if CDCR or BPH is aware of the LEP parole candidate's preferred language, BPH shall provide all information in the preferred language.

12) Requires BPH to develop, periodically update, and publish bilingual glossaries of parole hearing terminology.

13) Requires BPH to provide bilingual glossaries to language access service providers, including interpreters and translators, parole candidates who have requested language assistance, and attorneys representing parole candidates who have requested language assistance.

14) Provides that, no later than July 1, 2026, BPH to promulgate regulations that establish all of the following:

    a) A requirement that BPH shall make every effort to provide interpreters certified by the Judicial Council for parole hearing proceedings and comprehensive risk assessment interviews, including by limiting the use of foreign language contracts to agencies with appropriate expertise and hiring practices, rates, and standards necessary to provide certified interpreters for legal proceedings;

    b) Standards for interpreters provided for indigent parole candidates during attorney visits;

    c) The specific selection and recruitment procedures that must be exhausted to demonstrate that an interpreter certified by the Judicial Council is not available before a noncertified interpreter can be provisionally qualified;

    d) The standards and procedures for provisionally qualifying a noncertified interpreter, including voir dire;

    e) Procedures for routinely verifying the identity, credentials, and qualifications of interpreters; and,

    f) The definition of a "qualified interpreter," including specific educational, training, ethical, and competency-based standards.

15) States that, at a minimum, an interpreter shall not be deemed to be qualified to provide interpretation in a parole hearing unless the interpreter has demonstrated, through training and testing, fluency in both English and the target language, oral interpretation skills, knowledge of interpreter ethics and professional codes of conduct, knowledge of interpretation standards and techniques, and specialized knowledge of parole hearing terminology, concepts, and protocol.

16) Requires, no later than January 1, 2027, BPH to submit a report to the Legislature detailing the steps needed to ensure there are sufficient certified and qualified interpreters for parole proceedings and activities, including recommendations for providing interpreter training, credentialing, or both training and credentialing specific to parole proceedings, revising hiring and contracting practices and terms to ensure recruitment of certified interpreters, and other recommendations for improving language access for parole candidates, victims, and family members participating in parole proceedings.

17) Requires, at least annually, BPH shall collect, review, update, and publish on its internet website all of the following information:

    a) Information about BPH's language access services and policies;

    b) A list of all languages in which language assistance was requested by a parole candidate for a parole hearing and the number of people requesting assistance in each language;

    c) Information about translators utilized, including about their certification and credentials;

    d) Information about the provision and utilization of interpretation in parole proceedings, attorney visits, and comprehensive risk assessment interviews, including all of the following:

        i. The name of each interpreter utilized, the contracting agency, if relevant, whether the interpreter is certified or registered, and the language interpreted;

        ii. The number of people who requested assistance in each language;

        iii. The number of people who received interpretation in each language; and,

        iv. Parole hearing outcomes for parole candidates who used interpreters, categorized by language spoken.

18) Defines "Certified interpreter" as an interpreter who is certified by the Judicial Council to interpret a language designated by the Judicial Council, as specified, or an interpreter from another state who is granted reciprocity by the Judicial Council's Court Interpreters Program.

19) Defines "Qualified translator" as a translator who is certified by the Judicial Council.

20) States legislative findings and declarations.

EXISTING LAW:

1) Establishes the Dymally-Alatorre Bilingual Services Act which requires every state agency involved in the furnishing of information or the rendering of services to the public whereby contact is made with a substantial number of non-English-speaking people, to employ a sufficient number of qualified bilingual persons in public contact positions to ensure provision of information and services to the public, in the language of the non-English-

speaking person. (Gov. Code, §§ 7290-7299.8.)

2) Provides for a period of post-prison supervision immediately following a period of incarceration in state prison. (Pen. Code, § 3000 et seq.)

3) Authorizes BPH to determine whether people who are serving indeterminate sentences are suitable for release on parole once they reach their minimum eligible parole date. (Pen. Code, § 3041, subd. (a).)

4) Requires BPH to record all parole hearings and transcribe those hearings within 30 days of any hearing. (Pen. Code, § 3042, subd. (b).)

5) States that all parole hearing transcripts must be filed and maintained by BPH and be made publicly available no later than 30 days from the date of the hearing. (Pen. Code, § 3042, subd. (b).)

6) Mandates that any statements, recommendations, or other materials considered by BPH be incorporated into the transcript of the hearing unless there is a security concern, as specified. (Pen. Code, § 3042, subd. (d).)

7) Provides that the incarcerated person, the victim, next of kin, members of victim's family, and two representatives designated by the victim or next of kin, are permitted to request and receive a stenographic record of all proceedings. (Pen. Code, § 3041.5, subd. (a)(4).)

8) Requires BPH, within 20 days following any decision denying parole, to send the incarcerated individual a written statement setting forth the reason or reasons for denying parole, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated. (Pen. Code, § 3041.5, subd. (b)(2).)

9) Establishes the Elderly Parole Program to be administered by BPH for purposes of reviewing the parole suitability of any incarcerated person who is 50 years of age or older and has served a minimum of 20 years of continuous incarceration on the individual's current sentence, serving either a determinate or indeterminate sentence. Defines "elderly parole eligible date" as the date on which an incarcerated individual who qualifies as an elderly offender is eligible for release from prison. (Pen. Code, § 3055, subds. (a) & (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2310 provides parole candidates, who have limited English proficiency, with meaningful interpretation and document translation services to provide them with access to justice in their native language. AB 2310 will require the Board of Parole Hearings to hire certified interpreters who are trained in the hearing process and knowledgeable about the legal terminology used in hearings. These translators will be available to assist LEP candidates before, during, and after hearings. The Board of Parole will be required to provide LEP candidates with interpreted audio recordings of their hearing and essential documents translated into their native language. This includes hearing transcripts, parole decisions, notices of rights, and a glossary of common terminology used

during parole hearings. AB 2310 will ensure individuals undergoing parole hearings can fully comprehend the proceedings, and necessary legal documents, to ensure equal access to justice for limited English language speakers."

2) **Need for this Bill**: According to background material submitted by the author, CDCR data as of November 2023 demonstrates that the three primary languages of the in-custody population are English (89.16%), Spanish (8.31%), and Unknown (1.79%). In regard to language access, CDCR's website provides:

> The State of California has bilingual resources available to assist non-English speaking persons in accessing state government information and services. The law requires departments to explain or translate information and services to the public into any language spoken by 5% or more of those served. This does not preclude departments from providing services if the 5% threshold is not met. If the California Department of Corrections and Rehabilitation (CDCR) has not provided the requested translated materials or interpreter services, you should request to speak to a manager in charge. CDCR is required to have a process for reviewing language-access complaints and should have information regarding their process. If CDCR is unable to assist or provide the requested language access services in your native language, please submit a formal complaint. After doing so, the Bilingual Services Team will follow-up for resolution with you.[1]

Building on this, this bill would require BPH to promulgate regulations that establish standards and procedures in interpreter recruitment and contracting processes to ensure that certified interpreters that meet minimum standards and qualifications are used in parole hearings.

3) **Parole Hearings and Transcripts**: All parole hearings are required to be recorded and transcribed within 30 days. (Pen. Code, § 3042, subd. (b).) If the incarcerated person, victim or other specified person requests, BPH must provide them with a transcript. (Pen. Code, § 3041.5, subd. (a)(4).) According to a California Department of Corrections and Rehabilitation (CDCR) webpage, for the most part, free electronic transcripts are provided upon request, but printed copies cost 12 cents per page plus the cost of postage.[2]

During a parole suitability hearing, BPH commissioners ask incarcerated individuals about their social history, past and present mental state, past and present attitude toward their crime, and plans for work and housing if they are released.[3] If the incarcerated person is found unsuitable for release, the commissioners are required to set the next hearing 3, 5, 7, 10, or 15 years in the future. During that time, it makes sense to ensure the incarcerated person has the most complete record of why they were denied parole, so that they may go about addressing those issues and achieve their rehabilitative goals. This bill does that by ensuring the incarcerated individual is given a transcript of the hearing in their preferred language, and an audio recording that captures both English and non-English testimony. It is also helpful in the event that the individual wants to appeal from the denial of parole.

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[1] CDCR, Bilingual Services. Available at: <https://www.cdcr.ca.gov/bilingual-services-act/>.
[2] CDCR, *Request for Parole Suitability Hearing Transcript.* <https://www.cdcr.ca.gov/bph/psh-transcript/>.
[3] Legislative Analyst's Office (LAO) *Promoting Equity in the Parole Hearing Process.* (Jan. 5, 2023) <https://lao.ca.gov/Publications/Report/4658> at p. 6.

In addition, this bill could also aid LEP victims during parole hearings. Under existing law, victims have a right to participate in parole hearings and can order transcripts of the hearing.[4]This bill would also help to ensure that language barriers to not stifle victims' opportunity to be heard.

4) **Argument in Support**: According to *Ella Baker Center for Human rights*, "The state of California has the largest Limited English Proficient population in the country, with roughly 7 million LEP people in the state who speak over 200 languages and dialects. According to a California Department of Corrections and Rehabilitation (CDCR) Office of Research report published in December of 2023, over 10% of the incarcerated population is documented as speaking a primary language other than English.

"The Board of Parole Hearings (BHP) is an executive agency made up of 21 governor-appointed commissioners who make release decisions for over 8,000 incarcerated people annually. The Board makes release decisions by conducting quasi-judicial hearings where parole candidates are interviewed extensively about their life history, commitment offense, transformation while incarcerated, programming and disciplinary history, and their insight into and remorse for past behavior. Succeeding in these testimony-based hearings is incredibly difficult for the average person, let alone for LEP parole candidates who depend on interpreters' assistance.

"Furthermore, LEP parole candidates are not provided critical translated documents—including documents informing them of their rights or of their ability to request an interpreter—before the parole hearing. After the hearing, LEP parole candidates only receive an English language transcript and are thus unable to access vital information regarding the reason for their parole denial and how to prepare for their next hearing.

"Access to due process and justice is not possible without language access. Limited English Proficient people must not be excluded from the promise of our laws, including the promise of a fair chance for parole consideration, simply because of their language limitations. By requiring the Board of Parole Hearings to translate documents and take steps to increase the quality of interpretation for parole hearing proceedings, AB 2310 will ensure that LEP parole candidates can meaningfully participate in our legal system and receive a fair and full parole hearing.

5) **Related Legislation**:

a) AB 2178 (Ting) would require CDCR to ensure that state prisons maintain average daily empty bed thresholds, as specified. AB 2179 is pending in this Committee.

b) AB 2763 (Essayli) would requires that CDCR to use separate demographic collection categories for the Middle Eastern and North African group and to offer and report new categories of self-reported data about inmate race, ancestry, and ethnic origin. AB 2763 is pending in this Committee.

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[4] CDCR, *Parole Hearing Information*. Available at: <https://www.cdcr.ca.gov/victim-services/parole-hearing-info>.

c) AB 1986 (Bryan) would require the Office of the Inspector General (OIG) to post CDCR's Centralized List of Disapproved Publications on its website. AB 1986 is pending in Assembly Appropriations Committee.

d) AB 1810 (Bryan) would require an incarcerated person to have access to personal hygiene with regard to their menstrual cycle and reproductive system. AB 1810 is pending in the Assembly Appropriations Committee.

e) AB 1875 (McKinnor) would require CDCR to sell sulfate-free shampoos and conditioners, curl creams and gel at canteens. AB 1875 is pending in Assembly Appropriations Committee.

AB 2740 (Waldron) would require each incarcerated pregnant person at CDCR to be referred to a social worker to discuss options for parenting classes. AB 2740 is pending in Assembly Appropriations Committee.

f) AB 2709 (Bonta) would specify the right of incarcerated persons at CDCR to have family visits. AB 2709 is pending in Assembly Appropriations Committee.

g) AB 2527 (Bauer-Kahan) would prohibit incarcerated pregnant persons at CDCR from being placed in solitary confinement. AB 2527 is pending in Assembly Appropriations Committee.

6) **Prior Legislation**:

a) AB 943 (Kalra), Chapter 459, Statutes of 2023, requires CDCR to prepare and publish monthly demographic data, based on voluntary self-identification information from people admitted, in custody, and released and paroled, disaggregated by race and ethnicity.

b) SB 81 (Skinner), of the 2023-2024 Legislative Session, would have, among other things, prohibited BPH from considering discriminatory factors in reaching a finding of unsuitability for parole. SB 81 was vetoed.

c) AB 1177 (McKinnor) of the 2023-2024 Legislative Session, would have required BPH to send a transcript and audio recording of the parole hearing to the incarcerated person. AB 1117 was held under submission in the Assembly Appropriations Committee.

d) SB 875 (Skinner), of the 2021-2022 Legislative Session, would have prohibited BPH from considering specified factors when reaching a finding of unsuitability for parole. SB 875 was never heard by Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Coalition for Women Prisoners
California Federation of Interpreters

California for Safety and Justice
California Public Defenders Association
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Grip Training Institute
Initiate Justice
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoners With Children
Los Angeles County Public Defenders Union Local 148
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Women's Foundation California
Young Women's Freedom Center

Opposition

None Submitted.

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

Date of Hearing: April 16, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2332 (Connolly) – As Amended March 21, 2024

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to take specific actions in the provision of substance use for incarcerated persons. Specifically, **this bill:**

1) Requires CDCR to do the following:

   a) Ensure the uniform application of the California Correctional Health Care Services Care Guide on substance use disorder in order to assess and enhance integrated substance use disorder treatment infrastructure, including cognitive behavior intervention, supportive housing, and adherence to the informed consent for medication-assisted treatment for substance use disorder.

   b) Uphold the terms of the medication-assisted treatment agreement entered into with patients.

   c) Provide physicians and surgeons all of the following:

      i) Adequate training to prepare providers for practicing addiction medicine.

      ii) Clear guidance on clinical interpretation of urine toxicology tests, ongoing illicit buprenorphine misuse and abuse, polysubstance use, and the misuse, abuse, and illegal distribution of substances.

      iii) Ready access to alternative medication, to include naltrexone and buprenorphine at the point of care, as appropriate.

   d) Authorize physicians and surgeons to use a criteria-based approach when prescribing alternative medications, rather than requiring approval.

   e) Ensure that physicians and surgeons have the ability to move patients out of housing assignments that place the patient at high risk.

   f) Provide all of the following training to physicians and surgeons, during regular work hours with time specifically dedicated to the training:

      i) A minimum of eight hours of integrated substance use disorder treatment didactic training and a minimum of three workdays of shadowing an integrated substance use disorder treatment practice.

ii) In addition to the training described in paragraph (1), eight hours annually of integrated substance use disorder treatment training to include all of the following topics:

(1) Brief cognitive behavioral intervention.

(2) Motivational interviewing.

(3) Rapid induction.

(4) Induction.

(5) Difficult case management.

(6) Higher risk.

g) Ensure that physicians and surgeons represented by State Bargaining Unit 16 have real-time access to integrated substance use disorder treatment physicians and surgeons qualified and capable of providing consultation or support to manage patients at the point of care, including in-house consultation, central team consultation, and on-call consultation.

h) Conduct direct and real-time observation and oversight of a physician and surgeon, only with the physician and surgeon's consent.

i) Authorize a provider to determine whether to combine chronic care visits with medication-assisted treatment visits.

j) Ensure that physicians and surgeons represented by State Bargaining Unit 16 who received extra training during the implementation of the integrated substance use disorder treatment program and are assigned full time to a facility are not assigned chronic care patient responsibilities in addition to a full schedule of medication-assisted treatment patient responsibilities. The department shall give priority to those physicians and surgeons who are currently working or formerly worked extensively in medication-assisted treatment during their service with the department.

k) Make every effort to ensure that at least one full-time addiction medicine physician and surgeon is retained at each facility to be assigned medication-assisted treatment patients exclusively.

l) Monitor the workload of primary care providers to ensure there is adequate time to properly treat integrated substance use disorder treatment patients within the standard 40-hour workweek.

m) Requires CDCR to establish a working group to improve the integrated substance use disorder treatment program. The working group shall consist of six members of the Union of American Physicians and Dentists and integrated substance use disorder treatment program departmental representation with the authority to make decisions. The working group shall meet quarterly and shall focus on identifying program areas for

improvement or additional training that could be offered to State Bargaining Unit 16 employees, in order to enhance program success.

n) Requires the credentialing process for patients receiving healthcare at CDCR institutions to include addiction medicine as an additional qualification.

EXISTING LAW:

1) Requires CDCR to shall establish a three-year pilot program that will provide a medically assisted substance use disorder treatment model for treatment of inmates with a history of substance use problems. The program shall offer a continuum of evidenced-based care that is designed to meet the needs of the persons being served and that is appropriate for a correctional setting. In establishing the program, CDCR shall consider the following:

   a) Access to services during an inmate's enrollment in the pilot program.

   b) Access to subacute detoxification and medical detoxification, as necessary

   c) Comprehensive pretreatment and post-treatment assessments.

   d) Ongoing evaluation of an inmate's program needs and progress at least every 90 days, and appropriate adjustment of treatment based on that evaluation.

   e) Services provided by professionals for whom substance use disorder treatment is within the scope of their practice.

   f) Referrals for medically assisted care and prescription of medication-assisted treatment.

   g) Provision of behavioral health services, including the capacity to treat co-occurring mental illness.

   h) Access to medication-assisted treatment throughout the period of incarceration up to and including immediately prior to release.

   i) Linkages to community-based treatment upon parole. (Pen. Code, § 2694.5, subd. (a).)

2) Requires CDCR to submit reports on the above pilot program to the Legislature on March 1, 2017, and each March 1 thereafter (up until March 1, 2025) during the tenure of the pilot project. The report shall include:

   a) The planned inmate capacity of the program.

   b) The number of persons enrolled in the program.

   c) The number of persons who leave the treatment program against medical advice and the number of persons who are discharged from the program prior to achieving their treatment goals.

d) The percentage of participants with negative urine toxicology screens for illicit substances during treatment and post-treatment while incarcerated.

e) The number of persons who are successfully linked to post-release treatment.

3) Requires CDCR to expand substance abuse treatment services in prisons to accommodate at least 4,000 additional inmates who have histories of substance abuse. In determining the prisons in which these additional treatment services will be located, CDCR may consider efficiency and efficacy of treatment, availability of staff resources, availability of physical space, and availability of additional resources in surrounding communities to supplement the treatment. In addition, the department shall expand follow-up treatment services in the community in order to ensure that offenders who participate in substance abuse treatment while incarcerated in prison shall receive necessary follow-up treatment while on parole. (Pen. Code, § 2694, subd. (a).)

4) Provides that unless there is a security or safety reason not to do so, a substance abuse treatment program funded by CDCR and offered in a CDCR facility shall include a peer counseling component allowing prisoners to receive the necessary training within those facilities to become certified addiction counselors, including necessary course work and clinical hours. (Pen. Code, § 2694, subd. (b).)

5) Requires CDCR to ensure patients receive health care services from licensed or credentialed healthcare providers, verify the credentials and privileges of all licensed medical providers providing patience care services at CDCR institutions, and ensure such providers meet minimum credentials, privileging and performance standards(Cal. Code Regs., tit. 15, § 3999.134.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Substance abuse and fatal overdoses rates continue to be the highest in California in comparison to every other state in the nation. With these issues only increasing with the dangerous introduction of synthetic drugs like Fentanyl, quality medical care and addiction treatment for inmates is paramount. While California has taken important steps to provide Medication-Assisted Treatment (MAT) for inmates with substance abuse issues, physicians within our correctional institutions do not receive the proper training and education. AB 2332 addresses this issue by requiring additional training for physicians, surgeons, and dentists in MAT, as well as education regarding substance use disorders."

2) **Background:** On June 27, 2016, Governor Brown approved Senate Bill 843, requiring CDCR, under the direction of the Undersecretary of Health Care Services, to develop and implement a three-year MAT Pilot Program at one or more of CDCR's adult institutions. This legislative mandate was in response to the large proportion of urine drug tests (UDT) that were positive for opioids1, and significant increases in the number of fatal drug overdoses in CDCR, related mostly to opioids. MAT, which is the use of medications in combination with counseling and behavioral interventions, is an effective treatment for patients with opioid-use disorders (OUD). Numerous studies support the efficacy of MAT,

with data showing that it is associated with significant reductions in overdose deaths, illicit drug use, and the spread of infectious diseases; it is also associated with increased treatment adherence and retention. Preliminary data from Rhode Island shows that targeting people with opioid addiction releasing from the state's jails and prisons reduced the death rate among this group by 61%, which contributed to an overall 12% reduction in overdose deaths in the state. In addition, treatment of OUD results in lower criminal justice and health care costs, with estimates showing that every dollar invested in treatment yields a return on investment between $4 and $7. These costs include reductions in drug-related crime, criminal justice costs, and theft. When savings related to health care are included in these calculations, total savings can exceed costs by a ratio of 12 to 1.9 CDCR/CCHCS' MAT Program utilizes oral long-acting injectable naltrexone and acamprosate to treat alcohol-use disorder (AUD), and oral and long-acting injectable naltrexone for OUD. All medications used as part of the MAT Program are FDA-approved to treat either AUD or OUD. (California Correctional Health Care Services, *Medication-assisted treatment for substance-use disorders, Final Legislative Report* (March 2019). Available at < https://cchcs.ca.gov/wp-content/uploads/sites/60/Reports/MAT-Final-Legislative-Report-Final-3-1-2019.pdf> [as of April 12, 2024].)

However, as of December 2020, "more than 6,000 California prison inmates [were] awaiting the doctor's appointments they need to receive addiction-treatment medication. (KQED, *Thousands of California Inmates Waiting for Access to Addiction Treatment* (Dec. 9, 2020). Available at: https://www.kqed.org/news/11849703/thousands-of-california-inmates-waiting-for-access-to-addiction-treatment [as of April 12, 2024].) Additionally doctors have expressed "concerns over the department's directives for prescribing Suboxone, a brand-name drug that combines the addictive opioid buprenorphine with overdose-reversal drug naloxone. The prisons administer the drug in soluble pieces of film the size of a Band-aid patch. In interviews, three doctors said prisoners often hide the pieces of film instead of ingesting them and sell them to other inmates for as much as $200, often at the direction of gang leaders." Sacramento Bee, *California prison doctors fear drug treatment program could create new addicts* (May 24, 2021). Available at: https://www.sacbee.com/news/politics-government/the-state-worker/article251600583.html [as of April 12, 2024].) AB 2332 seeks to reduce substance abuse and overdoses in California prisons by improving the training surrounding substance use disorders for medical practitioners in CDCR correctional institutions.

3) **Argument in Support:** According to the Union of American Physicians and Dentists "AB 2332 requires the California Department of Corrections and Rehabilitation (CDCR) to address the lack of training by CDCR of physicians required to treat addicted incarcerated persons by way of Medically Assisted Treatment (MAT). CDCR has mandated that civil service physicians prescribe MAT to incarcerated persons without appropriate training or certifications for administering such MAT drugs or determination that such administration is in accordance with medical professional ethics. AB 2332 will require the CDCR to provide physicians and surgeons clear guidance on interpretation of certain toxicology tests, the misuse, abuse, and illegal distribution of substances, and access to alternative medication as well as training consisting of at least 8 hours of integrated substance use disorder treatment didactic training, 3 days of shadowing an integrated substance use disorder treatment practice, and annual training of at least 8 hours covering specified topics."

4) **Argument in Opposition**: None

5) **Related Legislation**: None

6) **Prior Legislation**:

   a) SB 843 (Committee on Budget and Fiscal Review), Chapter 33, Statutes of 2016, requires CDCR to shall establish a three-year pilot program that will provide a medically assisted substance use disorder treatment model for treatment of inmates with a history of substance use problems. The program shall offer a continuum of evidenced-based care that is designed to meet the needs of the persons being served and that is appropriate for a correctional setting.

   b) AB 1468 (Committee on Budget), Chapter 26, Statutes of 2014, requires CDCR to expand substance abuse treatment services in prisons to accommodate at least 4,000 additional inmates who have histories of substance abuse. In determining the prisons in which these additional treatment services will be located, CDCR may consider efficiency and efficacy of treatment, availability of staff resources, availability of physical space, and availability of additional resources in surrounding communities to supplement the treatment. In addition, the department shall expand follow-up treatment services in the community in order to ensure that offenders who participate in substance abuse treatment while incarcerated in prison shall receive necessary follow-up treatment while on parole.

REGISTERED SUPPORT / OPPOSITION:

Support

Union of American Physicians and Dentists (Sponsor)
Initiate Justice

Opposition: None

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

Date of Hearing: April 16, 2024
Counsel: Shaun Naidu

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2354 (Bonta) – As Amended March 18, 2024

SUMMARY: Expands vacatur relief to a victim of human trafficking, intimate partner violence, or sexual violence who was arrested for, or convicted (or adjudicated through juvenile court) of, a violent offense. Specifically, **this bill**:

1) Makes human trafficking, intimate partner violence, and sexual violence vacatur relief applicable to all crimes the petitioner lacked the requisite intent to commit, by striking provisions that exclude crimes on the violent felonies list.

2) Allows for the vacation of the arrest or conviction if the commission of the offense was a result of the petitioner being a victim of human trafficking, intimate partner violence, or sexual violence, by striking the requirement that the commission of the offense be a *direct* result of the petitioner as a victim.

3) Changes from discretionary authority of the court to mandatory that the court vacate an arrest or conviction if the petitioner was a victim of human trafficking, intimate partner violence, or sexual violence at the time of the alleged offense and the offense for which the petitioner was arrested for or convicted of was a result of being a victim of human trafficking, intimate partner violence, or sexual violence.

4) Requires the court issue an order of vacatur if the applicable prosecutorial agency does not file an opposition to the petition.

5) Requires the vacation of unpaid restitution, fines, and fees if the petition is granted.

6) Requires the court to file as confidential the final court order granting the petition if requested by the petitioner.

7) Allows a human trafficking, intimate partner violence, or sexual violence vacatur petition to be heard at any time, by striking the requirement that the petition be heard after the later of the person ceasing to be a victim or the person seeking services for being a victim.

8) Prohibits a court from refusing to hear a properly-made petition on the basis of the petitioner's outstanding restitution.

9) Specifies the sealing and destruction of records related to the offense maintained by the Department of Justice (DOJ) and other law enforcement agencies.

10) Reduces, as specified, the amount of time within which the court, DOJ, and any law enforcement agency that arrested or participated in the arrest of the petitioner must seal and destroy their records of the arrest, if the court issues a vacatur order.

EXISTING LAW:

1) Authorizes a person who was arrested for, or convicted of, any nonviolent offense, as defined, committed while they were a victim of human trafficking, intimate partner violence, or sexual violence, to petition the court for vacatur relief of their convictions, adjudications, and/or arrests. (Pen. Code, §§ 236.14 & 236.15.)

2) Requires the petitioner to establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking, intimate partner violence, or sexual violence which demonstrates that the person lacked the requisite intent to commit the offense. (Pen. Code, §§ 236.14, subd. (a); 236.15, subd. (a).)

3) Authorizes the court, after considering the totality of the evidence presented, to vacate the conviction and/or arrest and issue an order, if it all of the following:

   a) The petitioner was a human trafficking, intimate partner violence, or sexual violence victim at the time of the alleged commission of the qualifying;

   b) The arrest for or conviction of the crime was a direct result of being a victim; and

   c) It is in the best interest of justice. (Pen. Code, §§ 236.14, subd. (g); 236.15, subd. (g).)

4) Specifies that the human trafficking, intimate partner violence, and sexual violence vacatur laws do not relieve a petitioner of any financial restitution order that directly benefits the victim of a nonviolent crime unless it has been paid already. (Pen. Code, §§ 236.14, subd. (i); 236.15, subd. (i).)

5) Requires, if the court issues a vacatur order, the court, DOJ, and any law enforcement agency that arrested or participated in the arrest of the petitioner to seal and destroy their records of the arrest, and the court order, within the later of either of the following:

   a) Three years from the date of the arrest; or

   b) One year after the court order is granted. (Pen. Code, §§ 236.14, subd. (k); 236.15, subd. (k).)

6) Permits a human trafficking, intimate partner violence, and sexual violence vacatur petition to be made and heard any time after the later of either of the following, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims who may be jeopardized by the bringing of the application or for other reasons consistent with the vacatur laws:

   a) The person has ceased to be a victim of human trafficking; or,

   b) The petitioner has sought services for being a victim of human trafficking. (Pen. Code, §§ 236.14, subd. (l); 236.15, subd. (l).)

7) Defines "nonviolent offense," for the purposes of human trafficking, intimate partner violence, or sexual violence vacatur relief to mean any offense not listed as a violent felony. ((Pen. Code, §§ 236.14, subd. (t)(1); 236.15, subd. (t)(1).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Every Californian deserves the opportunity to live a life free of trauma and violence, and to receive protection, healing, and care when they are victims of violence. AB 2354 embodies this goal and offers a vital lifeline to those who've endured unimaginable hardships. By granting all survivors of human trafficking, intimate partner violence, and other forms of violence the opportunity to clear their records through vacatur, we dismantle barriers to essential resources, such as housing, job training, and employment, and pave the way for true healing. AB 2354 ensures every individual can rebuild their life unencumbered by the shadows of their past."

2) **Vacatur Relief**: Penal Code section 236.14 provides post-conviction relief to human trafficking victims by vacating nonviolent arrests, juvenile adjudications, and convictions that were a direct result of human trafficking. Penal Code section 236.15 extends the same form of post-conviction relief to intimate partner violence and/or sexual violence victims by vacating nonviolent arrests, juvenile adjudications, and convictions that were a direct result of the intimate partner or sexual violence. "Vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed. (Pen. Code, §§ 236.14, subd. (t)(2), 236.15, subd. (t)(2).) The purpose of these laws is to provide relief for individuals who have criminal records as a result of their exploitation, by vacating nonviolent criminal offenses that were committed by human trafficking victims at the behest of their traffickers. (See, Assembly Public Safety Analysis for SB 823 (Block), Chapter 650, Statutes of 2016.)

   This bill would extend the human trafficking, intimate partner violence, and sexual violence vacatur relief to any crime listed as a violent felony. Crimes currently listed as a violent felony include murder, voluntary manslaughter, mayhem, specified sex crimes, robbery, arson, kidnapping, carjacking, and first-degree burglary, among other offenses. (Pen. Code, § 667.5, subd. (c).) According to information provided by the author's office, while California does not extend vacatur relief to violent felonies, some states do not have such categorical exemptions. (See, e.g., Wyo. Stat. Ann. § 6-2-708.)

   In addition to expanding vacatur relief to arrests for and convictions of violent felonies, AB 2354 would remove the courts discretion to grant this relief if it is in the best interest of justice. Specifically, this bill would make this relief mandatory by the court if the petition for relief is unopposed by the applicable prosecuting agency or, after considering the totality of the evidence presented, the court finds that the petitioner was a victim of human trafficking, intimate partner violence, or sexual violence at the time of the alleged commission of the qualifying offense and the arrest or conviction of the offense was a result (no longer a *direct* result) of being such a victim.

3) **Argument in Support**: According to the California Coalition for Women Prisoners and the other co-sponsors, "In California, 34% of women will experience domestic violence in their lifetimes (National Center for Injury Prevention and Control, Division of Violence Prevention, The National Intimate Partner and Sexual Violence Survey 2010-2012 State Report). Gender-based violence – including domestic violence, human trafficking, and sexual violence – impacts all communities, but Black, brown, and indigenous women and queer and trans people are disproportionately impacted. Black women are almost three times more likely than white women to die at the hands of a current or former partner (Everytown for Gun Safety, Guns and Violence Against Women: America's Uniquely Lethal Intimate Partner Violence Problem). More than 80% of American Indian and Alaska Native women had experienced violence in their lifetime, and one in three had experienced violence within the past year (Andre B. Rosay, 'Violence Against American Indian and Alaska Native Women and Men'). Transgender and gender non-conforming people are more likely to be sexually assaulted as children, have a greater risk of sexual violence across their lifetimes, and are vastly overrepresented in prisons (Office for Victims of Crime, 'Responding to Transgender Victims of Sexual Assault'; Brian C. Thoma, Taylor L. Rezeppa, Sophia Choukas-Bradley, Rachel H. Salk, and Michael P. Marshal, 'Disparities in Childhood Abuse Between Transgender and Cisgender Adolescents'; Lambda Legal, 'Transgender Incarcerated People in Crisis').

"A horrifying reality of our current legal system is that over 90% of human trafficking victims are criminalized while being trafficked (National Survivor Network, 'National Survivor Network Survey: Impact on Criminal Arrest and Detention on Survivors of Human Trafficking'). Survivors are often arrested and punished simply for protecting their or their family's lives (Yasmin Vafa & Rebecca Epstein, Criminalized Survivors: Today's Abuse to Prison Pipeline for Girls). The criminalization of victims by California's legal system leaves survivors without access to resources for survival, like housing, employment, education, and financial independence, and subjects them to continued cycles of violence, homelessness, and poverty (Polaris, In Harm's Way: How Systems Fail Human Trafficking Survivors Survey Results from the First National Survivor Study).

"Too often, victims and survivors of violence are blocked from the opportunity to heal because their trauma is used against them, ignored, or not accounted for during legal proceedings. Vacatur – a process that allows survivors to petition the court for the records to be cleared – can provide a form of relief for survivors who carry records created as a result of their abuse.

"AB 2354 would recognize the trauma and coercion many survivors face, offering a path to justice by recognizing their victimization and clearing those arrests and convictions from their records if their criminalization was a result of their experience of intimate partner violence, human trafficking, or sexual violence. It empowers survivors to rebuild their lives without the burden of a record tied to their abuse." (Hyperlinks omitted.)

4) **Argument in Opposition**: According to the California District Attorneys Association, "This bill would amend the vacatur relief statutes to expand the provisions to include violent offenses and also take discretion away from judges.

"The vacatur relief provisions – Penal Code section 236.14 and 236.15 – were enacted in 2016 and 2021, respectively. The statutes provide that individuals arrested or convicted of a

nonviolent offense while they were a victim of human trafficking, intimate partner violence, or sexual violence may petition the court for relief. Importantly, both provisions specifically exclude violent offenders such as murderers, rapists, kidnappers, and other serious offenders who committed offenses listed in Penal Code section 667.5(c). In addition, both provisions also specifically give the court the discretion to grant relief, but only when in the interests of justice.

"AB 2354 both removes the exclusion for violent offenses and takes discretion away from judges. The bill provides that vacatur relief is available for any offense, including violent offenses. Thus, convicted murderers, rapists, and kidnappers, among other violent offenders, would be eligible for relief. Furthermore, the bill makes relief mandatory and takes discretion away from judges to grant relief only when in the interest of justice. And, if relief is granted, AB 2354 would also require that any victim restitution order be vacated and that the arrest or conviction be deemed never to have occurred with all records sealed."

5) **Prior Legislation**:

a) AB 1497 (Haney), of the 2023-2024 Legislative Session, would have, among other things, expanded vacatur relief to violent felony offenses for victims of human trafficking, intimate partner violence, and sexual violence. AB 1497 was held on the Suspense File of the Assembly Committee on Appropriations.

b) AB 2169 (Gipson), Chapter 776, Statutes of 2022, clarified that vacatur relief for offenses committed while the petitioner was a victim of human trafficking, intimate partner violence, or sexual violence demonstrates that the petitioner lacked the requisite intent to commit the offense and that the conviction is invalid due to legal defect.

c) AB 124 (Kamlager), Chapter 695, Statutes of 2021, required courts to consider if specified trauma to a defendant and other factors contributed to the commission of an offense when making sentencing and resentencing determinations and expanded the affirmative defense of coercion for human trafficking victims and extended it and vacatur relief to victims of intimate partner violence and sexual violence.

d) AB 262 (Patterson), Chapter 193, Statutes of 2021, provided additional legal rights when a victim of human trafficking petitions the court to vacate a conviction for a non-violent crime that was committed while the petitioner was a victim of human trafficking. It allowed a person, when petitioning to vacate a non-violent conviction because the petitioner was a victim of human trafficking and the conviction was a direct result of being a victim of human trafficking, to appear at the court hearings by counsel and removed time limitations to bring the petitions.

e) AB 2868 (Patterson), of the 2019-2020 Legislative Session, would have provided additional legal rights in the judicial process when a victim of human trafficking petitions the court to vacate a conviction for a non-violent crime that was committed while the petitioner was a victim of human trafficking. AB 2868 was not heard in this committee.

f) AB 2869 (Patterson), of the 2019-2020 Legislative Session, would have allowed a petitioner, on a petition to vacate a non-violent conviction because the petitioner was victim of human trafficking and the conviction that was a direct result of being a victim

of human trafficking, to appear at the court hearings by counsel. AB 2869 was not heard in this committee.

g) SB 823 (Block), Chapter 650, Statutes of 2016, allowed a person arrested for or convicted of a non-violent crime while they were a human trafficking victim to apply to the court to vacate the conviction and seal and destroy records of arrest.

h) SB 799 (Karnette), Chapter 858, Statutes of 2001, allowed women who were convicted of homicide prior to the enactment of the Evidence Code provision providing for the admissibility of evidence relating to battered women's syndrome to bring a writ of habeas corpus when there is a reasonable probability that the result of the case may have been different had evidence of battered women's syndrome been admissible in the original trial.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coalition for Women Prisoners (Co-Sponsor)
Californians for Safety and Justice (Co-Sponsor)
Crime Survivors for Safety and Justice (Co-Sponsor)
Coalition to Abolish Slavery & Trafficking (Co-Sponsor)
Felony Murder Elimination Project (Co-Sponsor)
Free to Thrive (Co-Sponsor)
Immigrant Legal Resource Center (Co-Sponsor)
Los Angeles Center for Law and Justice (Co-Sponsor)
National Center for Youth Law (Co-Sponsor)
Rainbow Services, Ltd. (Co-Sponsor)
San Francisco Public Defender's Office (Co-Sponsor)
Sister Warriors Freedom Coalition (Co-Sponsor)
Survived & Punished (Co-Sponsor)
A New Way of Life Reentry Project
AAPI Equity Alliance
ACLU California Action
Alliance for Boys and Men of Color
Alliance for Children's Rights
Alliance for Girls
Buen Vecino
California Immigrant Policy Center
California Public Defenders Association
Children's Defense Fund – CA
Communities United for Restorative Youth Justice (CURYJ)
Community Legal Services in East Palo Alto
Ella Baker Center for Human Rights
Freedom 4 Youth
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action

Inland Coalition for Immigrant Justice
John Burton Advocates for Youth
Journey Out
Justice At Last
Legal Services for Prisoners with Children
Messaging for Success
Parenting for Liberation
Shared Hope International
Smart Justice California
VALOR
Women's Foundation California
Young Women's Freedom Center

Opposition

California District Attorneys Association

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