California State Assembly

PUBLIC SAFETY

1020 N Ste, Room 111
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AGENDA

Tuesday, April 23, 2024
9 a.m. -- State Capitol, Room 126

HEARD IN SIGN-IN ORDER

REGULAR ORDER OF BUSINESS

LIMITED TESTIMONY FOR SUPPORT AND OPPOSITION

TWO WITNESSES - TWO MINUTES EACH

1.	AB 1863	Ramos	California Emergency Services Act: notification systems: Feather Alert.
2.	AB 2020	Bonta	Survivors of Human Trafficking Support Act.
3.	AB 2065	Kalra	Criminal justice records: offender data.
4.	AB 2136	Jones-Sawyer	Controlled substances: analyzing and testing.
5.	AB 2160	McKinnor	California Women's Care Act.
6.	AB 2178	Ting	Prisons: bed thresholds.
7.	AB 2210	Petrie-Norris	Driving under the influence: ignition interlock devices.
8.	AB 2295	Addis	Crimes: commencement of prosecution.
9.	AB 2296	Villapudua	Enhancements: concentrated cannabis.
10.	AB 2309	Muratsuchi	City attorney: state law: misdemeanor.
11.	AB 2391	Vince Fong	Bail: pretrial release.
12.	AB 2406	Davies	Crimes: theft.
13.	AB 2456	Jones-Sawyer	Criminal law: civil compromise.
14.	AB 2470	Joe Patterson	Violent felonies: domestic violence.
15.	AB 2518	Davies	Firearms: prohibited persons.
16.	AB 2519	Maienschein	Misdemeanor offenses: deferral of sentencing: firearms prohibition.
17.	AB 2521	Waldron	Criminal procedure: confidentiality and DNA testing.
18.	AB 2544	Low	Background checks.
19.	AB 2576	Stephanie Nguyen	Diversion: attempted murder.

20.	AB 2603	Low	Hate crimes: search warrants.
21.	AB 2604	Low	Hate crimes.
22.	AB 2629	Haney	Firearms: prohibited persons.
23.	AB 2692	Papan	Criminal procedure: competence to stand trial.
24.	AB 2695	Ramos	Law enforcement: tribal affiliation.
25.	AB 2710	Lackey	Peace officers: active shooter incidents.
26.	AB 2788	Low	Crimes.
27.	AB 2790	Pacheco	Crimes: organized retail theft.
28.	AB 2823	Joe Patterson	Crimes: vehicular manslaughter while intoxicated.
29.	AB 2824	McCarty	Battery: public transportation provider.
30.	AB 2846	Lackey	Controlled substances: synthetic cannabinoid compounds and derivatives.
31.	AB 2850	Rodriguez	Cannabis.
32.	AB 2878	Gabriel	Statute of limitations: Pandemic Unemployment Assistance fraud.
33.	AB 2907	Zbur	Firearms: restrained persons.
34.	AB 2917	Zbur	Firearms: restraining orders.
35.	AB 2964	Hart	Crimes: animal cruelty.
36.	AB 2984	Gipson	Fleeing the scene of an accident.
37.	AB 3032	Hoover	Crimes: child neglect: serious felony.
38.	AB 3064	Maienschein	Firearms.
39.	AB 3071	Joe Patterson	Controlled substances: fentanyl sales.
40.	AB 3094	Low	Crimes: assault.
41.	AB 3108	Jones-Sawyer	Business: mortgage fraud.
42.	AB 3222	Wilson	Drug Court Success Incentives Pilot Program.
43.	AB 3231	Villapudua	Violent felonies: hate crimes.
44.	AB 3235	Bryan	Fingerprint rollers and custodians of records.

VOTE ONLY

45.	AB 2609	Ta	Crimes: false reporting.
46.	AB 2923	Jones-Sawyer	Peace officers: public complaints.

Date of Hearing: April 23, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 1863 (Ramos) – As Amended March 21, 2024

SUMMARY: Requires the Department of the California Highway (CHP) in consultation with tribal nations and specified law enforcement agencies to develop policies and procedures to successfully implement a Feather Alert after a missing indigenous person is reported to law enforcement. Specifically, **this bill**:

1) Requires the Department of the California Highway (CHP) in consultation with tribal nations, the Department of Justice (DOJ), a representative from the California State Sheriffs' Association (CSSA), the California Police Chiefs Association, and the California Peace Officers' Association to develop policies and procedures providing instruction specifying how a law enforcement agency, a broadcaster participating in the Emergency Alert System (EAS) that may activate a Feather Alert, shall proceed after a missing person has been reported to a law enforcement agency and specified conditions are met. These policies shall include, but not be limited to:

   a) Procedures for the transfer of information regarding the missing person and the circumstances surrounding the missing persons disappearance from the law enforcement agency and the broadcasters;

   b) Specifications of the event code or codes that should be used if the Feather Alert System is activated to report a missing person;

   c) Recommended language if a Feather Alert is activated;

   d) Specification of information that shall be included by the reporting law enforcement agency, including which agency a person with information relating to the missing person should contact and how the person should contact the agency; and,

   e) Recommendations on the extent of the geographical area to be notified if a Feather Alert is issued.

2) Allows a law enforcement or a Tribe of California to directly request the CHP activate a Feather Alert.

3) Requires the CHP to respond to a law enforcement agency or tribe's request to activate a Feather Alert within 48 hours of receiving the request.

4) Require the CHP to take reasonable steps to confirm that a report from a missing person's family members is not an attempt to locate to locate an indigenous woman or indigenous

person is intentionally avoiding or evading abuse, as specified.

5) Requires the CHP if it declines to activate a Feather Alert to provide written notice to the law enforcement agency or tribe of the reasons for declining the request within 48 hours of issuing its decision.

6) Allows a law enforcement agency to request a Feather Alert if the law enforcement agency determines a Feather Alert would be an effective tool in the investigation of missing and murdered indigenous persons, including young women or girls and requires the law enforcement agency to consider specified factors.

7) Requires the existing report by the CHP to the Legislature to include specific information relating to the operation of the Feather Alert system.

8) States that the requirement that the CHP submit a report to the Legislature by January 1, 2027, and sunsets the reporting requirements on January 1, 2031.

EXISTING LAW:

1) Authorizes the CHP to activate a "Feather Alert" upon request by a law enforcement agency and the following requirements are met:

   a) The missing person is an indigenous woman or an indigenous person;

   b) The investigating law enforcement agency has utilized available and tribal resources;

   c) The law enforcement agency determines that the person has gone missing under unexplained or suspicious circumstances;

   d) The law enforcement agency determines that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of potentially dangerous person, or there are other factors that indicate that the person might be in peril; and,

   e) There is information available that, if disseminated to the public could assist in the safe recovery of the missing person. (Gov. Code § 8594.13 (c).)

2) Provides that if the CHP determines that the conditions for the activation of a "Feather Alert" are met, it shall activate the alert in the appropriate geographical area requested by the investigating law enforcement agency. (Gov. Code § 8594. 13 (b) (1).

3) Provides that the CHP may use a changeable message system if the law enforcement determines that a vehicle was used in the incident and there is specific identifying information about the vehicle. (Gov. Code § 8594.13 (b) (4).

4) Defines "Feather Alert" as an activation system designed to issue and coordinate alerts with endangered or indigenous people, specifically indigenous women, who are reported missing under unexplained or suspicious circumstances. (Gov. Code § 8594.13 (a).

5) Provides that the CHP shall create and submit a report to the Governor's office and the Legislature that includes an evaluation of the Feather Alert, including the efficacy, the advantages, and the impact of other alert programs. The CHP shall submit the report to the Governor's office and the Legislature no later than January 1, 2027. (Gov. Code § 8594.13 (d).

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Missing and Murdered Indigenous Persons is at an all time high in the State of California. This crisis has been plaguing California tribes for generations, and progress has been slow to solve this. In 2022, I introduced AB 1314, the Feather Alert, the first of its kind law in the nation which was ultimately signed into law. However, since the passing of the bill, tribes and advocates have experienced difficulty in utilizing this law, citing roadblocks from law enforcement and from the State. AB 1863 would make fixes to established law, in the hopes of finding our loved ones and bring them home.

2) **Argument in Support**: According to the *Yurok Tribe*, "The Feather Alert, previously created by AB 1314 in 2022, is an emergency alert issued by the California Highway Patrol when a California law enforcement agency determines that an Indigenous person is missing under unexplained or suspicious circumstances. Unfortunately, early implementation of the Feather Alert has exposed gaps in how the system works and AB 1863 is intended to bridge those gaps.

   "Since the inception of the Feather Alert, there have been 5 requests with 3 of them denied. As the law in currently drafted, there is some ambiguity around activation criteria and reporting the incident to the appropriate entities. It is critical that we get the Feather Alert right, and make it work for California tribes. This will improve communication between law enforcement agencies and local jurisdiction, and will also serve to increase awareness about the crisis of Missing and Murdered Indigenous People."

3) **Prior Legislation**: AB 1314 (Ramos), Statutes of 2022, Chapter 476, established the Endangered Missing Advisory System to aid in location of an Indigenous person who has been involuntarily abducted or kidnapped.

REGISTERED SUPPORT / OPPOSITION:

Support

Bear River of The Rohnerville Rancheria
Pechanga Band of Mission Indians
San Manuel Band of Mission Indians
Smart Justice California, a Project of Tides Advocacy
Yurok Tribe

Opposition

None

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: April 23, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2020 (Bonta) – As Amended April 9, 2024

SUMMARY: Requires counties with interagency sexual assault response teams to establish a survivor review board and requires law enforcement agencies to establish written policies regarding interactions with survivors of human trafficking. Specifically, this bill:

1) Requires counties that have established an interagency sexual assault response team [limited scope??] to establish a survivor review board to review feedback from survivors regarding their experience.

2) Requires the members of the review board to include key contributors to the interagency sexual assault response team and survivors of sexual assault.

3) Provides that the purpose of the review board is to solicit, accept, and review feedback from survivors regarding their experience with service providers, including, without limitation, law enforcement, health care, and advocates.

4) Provides that such survivor feedback may be submitted in any form, may be submitted anonymously, and may be submitted by a service provider on behalf of a survivor.

5) Requires the review board to meet at least once every two months to review feedback that has been submitted, and to review all feedback to identify and respond to any of the following, without limitation:

   a) Policies and procedures resulting in positive outcomes;

   b) Policies and procedures resulting in negative outcomes and recommended changes to those policies and procedures;

   c) Failures to follow policy or protocol by service providers requiring training or accountability; or,

   d) Commendable accomplishments of service providers deserving recognition.

6) The review board must respond in writing to any survivor submitting feedback within 30 days of reviewing the feedback, unless that feedback was anonymously submitted.

7) The board shall report recommendations regarding policies and procedures to the appropriate agency heads or legislative bodies.

8) Requires each law enforcement agency, by January 1, 2026, to establish and maintain a written policy regarding interactions with survivors of human trafficking. This requirement can be satisfied by adopting the model policy created by the Commission on Peace Officer Standards and Training ("POST") identified below.

9) Requires any such written policy to incorporate best practices and to include, without limitation, all of the following:

   a) That an officer contacting a survivor of human trafficking inform them that they have the right to have an advocate present during any interviews with law enforcement and other subsequent examinations and proceedings;

   b) That an officer explain the benefits of being represented by an advocate, including, without limitation, confidentiality and evidentiary privilege, emotional support, assistance in accessing resources, and assistance with understanding their legal rights;

   c) That, if the survivor requests an advocate, the officer contact the rape crisis center and arrange for an advocate to be present for any further interviews or examinations;

   d) That an officer obtain a waiver in writing if a survivor refuses an advocate, and inform them that they may revoke their waiver at any time and request an advocate; and,

   e) That an officer provide referrals to organizations that provide services to survivors of human trafficking.

10) Requires law enforcement agency to create a standardized written waiver of advocacy or may use the waiver developed by POST, as provided below.

11) Requires POST, by January 1, 2026, to develop and promulgate a model policy for law enforcement personnel interactions with survivors of human trafficking.

12) Requires this model policy to, without limitation, include the same criteria required of law enforcement agencies, as outlined above.

13) Requires POST, in developing the policy, to collaborate with community-based organizations providing services to health care professionals and survivors of human trafficking.

14) Requires POST to develop and promulgate a standardized written waiver of advocacy.

15) Defines "law enforcement agency" as any department or agency of the state or any political subdivision thereof that employs any peace officer and that provides uniformed general law enforcement services to the public. This includes, without limitation, any municipal police department, county sheriff's department, the California Highway Patrol, and the University of California and California State University police departments.

EXISTING LAW:

1) Authorizes each county establish and implement an interagency sexual assault response team (SART) program for the purpose of providing a forum for interagency cooperation and

coordination, to assess and make recommendations for the improvement in the local sexual assault intervention system, and to facilitate improved communication and working relationships to effectively address the problem of sexual assault in California. (Pen. Code, § 13898.)

2) Provides that, dependent upon local needs and goals, each SART may consist of representatives from the following agencies or organizations:

   a) Law enforcement agencies.

   b) County district attorneys' offices.

   c) Rape crisis centers.

   d) Local sexual assault forensic examination teams.

   e) Crime laboratories.

   f) Child protective services.

   g) Local victim and witness assistance centers.

   h) County public health departments.

   i) County mental health services departments.

   j) Forensic interview centers.

   k) University and college Title IX coordinators.

   l) University and college police departments. (Pen. Code, § 13898.1.)

3) Provides that such SART programs have the following objectives

   a) Review local sexual assault intervention undertaken by all disciplines to promote effective intervention and best practices.

   b) Assess relevant trends, including drug-facilitated sexual assault, the incidence of predatory date rape, and human sex trafficking.

   c) Evaluate the cost-effectiveness and feasibility of a per capita funding model for local sexual assault forensic examination teams to achieve stability for this component of the SART program.

   d) Evaluate the effectiveness of individual agency and interagency protocols and systems by conducting case reviews of cases involving sexual assault.

   e) Plan and implement effective prevention strategies and collaborate with other agencies and educational institutions to address sexual assault perpetrated by strangers, sexual

assault perpetrated by persons known to the victim, including, but not limited to, a friend, family member, or general acquaintance of the victim, predatory date rape, risks associated with binge alcohol drinking, and drug-facilitated sexual assault. (Pen. Code, § 13898.2.)

4) Authorizes a city, county, city and county, or community-based nonprofit organization to establish a human trafficking multidisciplinary personnel team consisting of two or more persons who are trained in the prevention, identification, management, or treatment of human trafficking cases and who are qualified to provide a broad range of services related to human trafficking. (Pen. Code, § 13753, subd. (a).)

5) Provides that following a report of suspected human trafficking, members of such a multidisciplinary personnel team may exchange with one another information and writings that relate to any incident of human trafficking that may also be designated as confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of human trafficking, subject to confidentiality restrictions. (Pen. Code, § 13753, subd. (c).)

6) Such sharing of information shall be governed by protocols developed in each county describing how and what information may be shared by the human trafficking multidisciplinary team. (Pen. Code, § 13753, subd. (e).)

7) Provides that a victim of sexual assault as the result of specified offenses has the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. (Pen. Code, 679.04, subd. (a).)

8) Specifies that a sexual assault victim retains this right regardless of whether the victim has previously waived the right in a previous medical evidentiary or physical examination or in a previous interview by law enforcement authorities, district attorneys, or defense attorneys. (Pen. Code, 679.04, subd. (a).)

9) Specifies that the support person for a sexual assault victim may be excluded from an interview by law enforcement or the district attorney if they determine that the presence of the support person would be detrimental to the purpose of the interview. (Pen. Code, 679.04, subd. (a).)

10) Defines "victim advocate" as a sexual assault counselor, as defined, or a victim advocate working in a center, as specified. (Pen. Code, 679.04, subd. (a).)

11) Provides that prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a sexual assault, a victim of sexual assault as the result of specified offenses shall be notified in writing by the attending law enforcement authority or district attorney that the victim has the right to have victim advocates and a support person of the victim s choosing present at the interview or contact, about other rights of the victim pursuant to law, as specified, and that the victim has the right to request to have a person of the same gender as the victim present in the room during any interview with a law enforcement official or district attorney, unless no such person is reasonably available. This provision applies to investigators and agents

employed or retained by law enforcement or district attorney. (Pen. Code, 679.04, subd. (b)(1).)

12) States that at the time a sexual assault victim is advised of their rights, the attending law enforcement authority or district attorney shall also advise the victim of the right to have victim advocates and a support person present at any interview by the defense attorney or investigators or agents employed by the defense attorney. (Pen. Code, 679.04, subd. (b)(2).)

13) Specifies that the presence of a victim advocate shall not defeat any existing right otherwise guaranteed by law. A victim's waiver of the right to a victim advocate is inadmissible in court, unless a court determines the waiver is at issue in the pending litigation. (Pen. Code, 679.04, subd. (b)(3).)

14) Specifies that the victim has the right to request to have a person of the same gender or opposite gender as the victim present in the room during any interview with a law enforcement official or district attorney, unless no such person is reasonably available. (Pen. Code, 679.04, subd. (b)(4).)

15) States that an initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section. (Pen. Code, 679.04, subd. (c).)

16) Provides that a person who deprives or violates the personal liberty of another to obtain forced labor or services is guilty of human trafficking, and can be imprisoned for 5, 8, or 12 years. (Pen. Code, § 236.1, subd. (a).)

17) States that a person who deprives or violates the personal liberty of another with the intent to pimp, pander, procure, or commit another specified sex crime, is guilty of human trafficking and may be imprisoned for 8, 14, or 20 years. (Pen. Code, § 236.1, subd. (b).)

18) Provides that a person who induces or persuades a minor to engage in a commercial sex act, as specified, is guilty of human trafficking and may be imprisoned for 5, 8, or 12 years, or for 15 years to life if some form of violence, threat, or duress is involved. (Pen. Code, § 236.1, subd. (c).)

19) Defines a human trafficking "victim" as a person who consults a human trafficking caseworker for the purpose of securing assistance concerning a condition related to their experience as a human trafficking victim. (Evid. Code, § 1038.2, subd. (e).)

20) Defines a "human trafficking caseworker" as a person employed by a human trafficking victim service organization, who has a specified degree or license, and meets other specified qualifications. (Evid. Code, § 1038.2, subd. (c).)

21) Provides that cases involving minor victims of human trafficking shall be provided with assistance from the local county Victim Witness Assistance Center, if the minor so desires. However, this does not require local agency's to operate a Victim Witness Assistance Center. (Pen. Code, § 236.13.)

22) Establishes in the State Treasury the Human Trafficking Victims Assistance Fund. Moneys in the fund shall only be expended to support programs for victims of human trafficking. (Gov. Code § 8590.7 (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Human trafficking continues to have a strong and dark presence in the United States. It has crept into nearly every corner of our state, including in my own district. In 2021, the National Human Trafficking Hotline identified 1,334 human trafficking cases in California. Of those cases, 2,122 victims were involved. Even with the data we do know, understanding the true scope of human trafficking is difficult because it is a seriously underreported crime. As we continue to work on understanding the scope of human trafficking, it is crucial that we continue to focus on survivor's needs. My bill recognizes the impact of human trafficking in our communities and centers the need to continue to support and lift up survivors. AB 2020 centers survivors by easing access to identification documents, allowing survivors to more easily access critical services such as housing when they need it, establishes human trafficking survivor boards where survivors can speak to their experiences and challenges, and implements and expands upon law enforcement protocols and best practices."

2) **Human Trafficking**: According to the Department of Justice (DOJ), human trafficking, also known as modern-day slavery, is a crime involving the coercion or compelling of a person to provide labor or services, or to engage in commercial sex acts. The coercion can be physical or psychological, and may involve the use of violence, threats, lies, or debt bondage. It is among the world's fastest growing criminal enterprises and is estimated to be a $150 billion-a-year worldwide industry. The International Labor Organization estimates that there are approximately 24.9 million human trafficking victims globally at any given time. (DOJ. *What is Human Trafficking?* <https://oag.ca.gov/human-trafficking/what-is#top> [as of Mar. 29, 2023]; DOJ. *Human Trafficking*. <https://oag.ca.gov/human-trafficking> [as of Mar. 29, 2023].)

   The U.S. is widely regarded as a destination country for human trafficking. (DOJ. *What is Human Trafficking?* <https://oag.ca.gov/human-trafficking/what-is#top> [as of Jun. 7, 2023]; DOJ. *Human Trafficking*. <https://oag.ca.gov/human-trafficking> [as of Jun. 7, 2023].) At the federal level, it is estimated that 14,500 to 17,500 victims are trafficked into the U.S. annually. At the state level, California is one of the nation's top destination states for human trafficking. Human trafficking victims do not necessarily fit into any one profile. (*Id.*) Victims of human trafficking include men, women, and children from diverse backgrounds in terms of race, color, national origin, religion, sexual orientation, socioeconomic status, and education level. (*Id.*) Many domestic victims of sex trafficking are runaway or homeless youth with backgrounds of sexual and physical abuse, poverty, or addiction; these vulnerabilities are often exploited by traffickers. (*Id.*)

3) **The California Trafficking Victims Protection Act**: The California Trafficking Victims Protection Act, enacted in 2006, established human trafficking for forced labor or services as a felony crime. (See Pen. Code, § 236.1) Since the California Trafficking Victims Protection Act, a number of additional laws have been passed in California related to human trafficking.

(Judicial Council of California (JCC), *Human Trafficking in California: Toolkit for Judicial Officers* (2017) <http://www.courts.ca.gov/documents/human-trafficking-toolkit-cfcc.pdf > [as of Jun. 6, 2023] at p. 31.) "Trafficking victims have certain commonalities that make them vulnerable to exploitation, including poverty, history of sexual or physical abuse, a lack of family or family support, young age, and limited education." (*Id.* at 3.) "Traffickers convince victims to distrust outsiders, particularly law enforcement, and victims are kept unaware of their rights." (*Id.* at p. 4.) "Collaborative approaches to treating victims as victims rather than as criminals have been identified as successful practices. Victim-centered approaches to prosecution ensure that victims are treated as victims and not as criminals, and that they have access to adequate services, assistance, and benefits." (*Id.* at p. 5.)

4) **Law Enforcement Contacts with Survivors of Sex Trafficking:** According to a survivor survey "Encounters with law enforcement are some of the first institutional interactions for many survivors of trafficking. Whether as a juvenile, pre-trafficking, or after exit, law enforcement and the justice system play a large role in many survivors' lives. Of respondents, 62 percent were arrested, detained, or cited by law enforcement. Of those arrested, detained, or cited, 81 percent reported that it happened during their trafficking experience. The impact of arrest on survivors is both an emotional challenge and a logistical one. Of those who were arrested, detained, or cited, 71 percent had a criminal record as a result." Polaris, *In Harm's Way: How Systems Fail Human Trafficking Survivors*. Available at: <https://polarisproject.org/resources/in-harms-way-how-systems-fail-human-trafficking-survivors/> [as of April 14, 2024].)

5) **Effect of this Bill:** AB 2020 does two primary things. First, it requires counties that have establishes interagency sexual assault response teams to establish survivor review boards to review feedback from survivors, for the purposes of making recommendations to relevant agencies and legislative policies regarding policies and procedures pertaining to sexual assault. Second it requires law enforcement agencies to establish a written policy regarding interactions with human trafficking survivors that requires that officers: 1) inform survivors that they have the right to have an advocate present during any interviews with law enforcement; 2) explain the benefits of being represented by an advocate; 3) arrange for an advocate to be present if the survivor requests an advocate; and 4) provide referrals to organizations that provide services to survivors of human trafficking. AB 2020 would similarly require POST to develop model policies for law enforcement personnel interactions with survivors, for use by other law enforcement agencies.

This bill can reasonably be expected to support survivors of sexual assault and trafficking by centering the policies and procedures developed by sexual assault response teams around the voices of directly impacted survivors. Similarly, it seeks to reduce harmful law enforcement contacts such as arrests, detention, and citations that victims of sex trafficking have with law enforcement. It does so by requiring law enforcement officers to adopt policies that require them, when contacting a survivor of sex trafficking, to ensure that such survivors are aware of their right to be represented by an advocate to and to refer them to organizations providing services to human trafficking survivors. Such a survivor centered, services-oriented approach may reduce harmful interactions between trafficking victims and law enforcement and increase the likelihood that trafficking victims are connected to services and housing, rather than facing criminal penalties.

6) **Additional Comments:** The author may wish to clarify a couple aspects of the bill. First, for the requirement that review boards meet to identity policies and procedures resulting in positive and negative outcomes, it may be worth providing examples or criteria of the type of positive or negative outcomes this bill is referring to. Second, it may be worth identifying the specific agencies or legislative bodies that the review board must send their recommendations to, as well as the purpose and types of "recommendations regarding policies and procedures" they are required to send to such agencies. Lastly, AB 2020 requires that review boards response in writing to survivors who have submitted feedback. The author may wish to clarify what this response entails (e.g. confirming receipt, appreciation of feedback, or specifically addressing their concern).

7) **Argument in Support**: According to *Smart Justice California* "Victims of human trafficking deal with significant emotional and psychological trauma. The State of California has taken a number of legislative steps in recent years to provide victims of human trafficking more services for healing, support, and community reintegration. However, those services are frequently distributed across disparate providers, making it difficult for victims to navigate their way through the recovery process. AB 2020 provides a framework to help coordinate services for victims of human trafficking.

   "AB 2020 would require the California Health and Human Services Agency to establish a statewide human trafficking survivor passport program for the purposes of identifying a person as a survivor of human trafficking and increasing efficiency in providing assistance to them. The bill would authorize counties to establish a Human Trafficking Survivor Board to work with community-based organizations to address issues relating to human trafficking in the local community. The bill would also require state and local enforcement agencies to establish protocols for how to interact with people who are victims of human trafficking that include a best practice to contact and coordinate with a community-based organization."

8) **Argument in Opposition**: None.

9) **Related Legislation**:

   a) SB 376 (Rubio), Chapter 109, Statutes of 2023, provides that a victim of human trafficking or abuse has the right to have a human trafficking advocate and a supporter person of the victim's choosing present at an interview by a law enforcement authority.

   b) SB 14 (Grove), Chapter 230, Statutes of 2023, designates human trafficking of a minor for purposes of a commercial sex act as a "serious felony," making it a strike for purposes of the Three Strikes Law, except as specified

   c) AB 380 (Arambula), of the 2023-2024 Legislative Session, would have established the Labor Trafficking Unit (LTU) within the Department of Industrial Relations' Division of Labor Standards Enforcement (DLSE).AB 380 was held in Senate Appropriations Committee.

   d) AB 1149 (Grayson), of the 2023-2024 Legislative Session, would have established the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) task force to study specified topics relating to human trafficking and prepare a report of

findings and recommendations by January 1, 2026. AB 1149 was held in Assembly Appropriations Committee.

e) AB 235 (Rubio) of the 2023-2024 Legislative Session, would have established the Labor Trafficking Unit (LTU) within the Civil Rights Department (CRD). AB 235 died in Assembly Appropriations Committee.

10) **Prior Legislation**:

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

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

c) AB 1475 (Cooper), Chapter 210, Statutes of 2015, authorizes each county to establish and implement an interagency sexual assault response team program for the purpose of, among other things, effectively addressing the problem of sexual assault.

d) AB 406 (Torres), Chapter 406, Statutes of 2013, Deleted the January 1, 2014 sunset date on provisions of law that authorizes counties to establish child abuse multidisciplinary personnel teams within that county to allow provider agencies to share confidential information in order to investigate reports of suspected child abuse and neglect

e) AB 2229 (Brownley), Chapter 464, Statutes of 2010, authorized members of a multidisciplinary personnel team engaged in the prevention, identification, and treatment of child abuse to disclose and exchange information telephonically and electronically if there is adequate verification of the identity of the multidisciplinary team members involved in the disclosure or exchange of information.

f) AB 1858 (Hollingsworth), Chapter 1090, Statutes of 2002, authorized counties to establish and implement SAFE Team programs.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Californians for Safety and Justice
Ella Baker Center for Human Rights
Glide
Initiate Justice
Prosecutors Alliance of California, a Project of Tides Advocacy
Smart Justice California, a Project of Tides Advocacy

Opposition: None

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

Date of Hearing: April 23, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2065 (Kalra) – As Amended April 17, 2024

SUMMARY: Requires disclosure of arrest records, as specified, and probation reports to a licensed attorney who has submitted a request for records and, under penalty of perjury, declared the records are being requested for the purpose of investigating a claim or potential claim pursuant to the Racial Justice Act of 2020 ("RJA"). Specifically, **this bill**:

California Public Records Act:

1) Requires the following records be disclosed pursuant to the California Public Records Act (CPRA), notwithstanding existing restrictions, to a licensed attorney:

   a) Any and all arrest records or data within the period of time requested that are in the possession of any state or local law enforcement agency, regardless of the date of the arrest or the date of the creation of the record.

   b) Any and all probation reports within the period of time requested that are in the possession of a county probation department, or, if no longer in the possession of the probation department, in the possession of the district attorney, regardless of the date they were prepared or submitted.

2) States a request for records, as defined above, must be made in writing and include a declaration under penalty of perjury that the requestor is an attorney licensed in California and the records are being requested for the purposes of assisting in the investigation of a violation of the RJA.

3) Provides that in order to protect a privacy right or privilege, the agency in possession of records sought, as described in (1) may, in good faith, petition the court to permit the redaction of information prior to disclosure or subject disclosure to a protective order.

4) Mandates that if a statutory privilege or constitutional privacy right cannot be adequately protected by redaction or a protective order, the court shall consider if aggregate data can be reasonably provided. If there is no mechanism to adequately protect statutory privilege or constitutional privacy right, the court shall order the records not to be disclosed. This restriction shall not be used to intentionally delay or obstruct the disclosure of records.

5) Defines "law enforcement agency" as any city police department, county sheriff's department, or any other department or agency of the state, or any political subdivision, that employees any peace officer, as specified.

Judicial Council

6) Requires Judicial Council to collect data on criminal cases statewide relating to the disposition of those cases according to the race and ethnicity of the defendant, and report annually to the Legislature.

7) States the intent of the Legislature to appropriate funds to Judicial Council to collect data, as specified in (6).

8) States commencing January 1, 2025, the Judicial Council shall annually prepare and make available to the public in a machine-readable format the following data, without limitation, including a county-level analysis for each person convicted of a criminal offense during the calendar year:

   a) The race, ethnicity, and gender of the defendant.

   b) The age of the defendant at the time of sentencing.

   c) Each offense for which the defendant is convicted, including the code section for each offense.

   d) The county of conviction.

   e) For each conviction offense, the type of sentence imposed, including, but not limited to, a prison term, a jail term, a term of probation and jail, or terms of probation, and for each conviction offense, the length of the sentence imposed.

California Department of Corrections and Rehabilitation

9) Requires the California Department of Corrections and Rehabilitation (CDCR) to annually prepare and make available to the public in a machine-readable format, the following data, without limitation, for each person who is currently in CDCR custody, or at any point during the calendar year preceding the release of the data, was in CDCR custody:

   a) The person's county of conviction;

   b) The code sections for the controlling offense and for each offense for which the person was convicted.

   c) Any sentencing enhancements or alternate sentencing schemes that are part of the person's sentence.

   d) The race, ethnicity, gender, and age of the person.

   e) The total length of the person's sentence and the length of each component of the sentence.

   f) The date of the sentencing.

   g) Any special circumstances, as defined in existing law.

10) States if the number of individuals from any of the categories specified in (9) in any single county is fewer than 10, the data shall list those numbers for that offense from the county as fewer than 10" in order to protect personally identifying information. If the number is zero, the data shall list the number as zero.

Department of Justice

11) States annual statistics, as specified, published by the Department of Justice (DOJ) must include, at a minimum, all the following information for each arrest and disposition reported to the DOJ:

    a) The arresting agency and county of arrest.

    b) The code section for the offense for which an individual was arrested.

    c) The race, ethnicity, gender, and age of the individual arrested;

    d) The disposition of each arrest. The report must include whether an arrest resulted in a sentence the defendant received, including, but not limited to a prison term, a term of probation and jail term, or a term of probation.

    e) If an arrest ultimately resulted in a conviction, the report shall include, the type of probation, and jail term, or term of probation.

12) States the number of individuals in any category of offenses specified in (11)(b) is fewer than 10 in any single county, the data shall list those numbers for that offense from that county as "fewer than 10" in order to protect personally identifying information. If the number is zero, the data shall list the number as zero.

EXISTING LAW:

1) Establishes the CRJA which prohibits the state from seeking or obtaining a criminal conviction or seeking, obtaining, or imposing a sentence on the basis of race, ethnicity, or national origin. A violation is established if the defendant proves, by a preponderance of the evidence, any of the following:

    a) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin;

    b) During the trial, in a court and during the proceedings, the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful, except as specified;

    c) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and the evidence establishes that the prosecution more frequently

sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained;

d) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other races, ethnicities, or national origins in the county where the sentence was imposed; or,

e) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins in the county where the sentence was imposed. (Pen. Code, § 745, subd. (a).)

2) States that a defendant may file a motion in the trial court, or if judgment has been imposed, may file a petition for writ of habeas corpus or a motion to vacate the conviction or sentence alleging a violation of the CRJA in a court of competent jurisdiction. (Pen. Code, § 745, subd. (b).)

3) States that if a motion is filed in the trial court and the defendant makes a prima facie showing of a violation of the CRJA, the court shall hold a hearing. Requires the judge to recuse themselves if the conduct was based in whole or in part on conduct or statements by the judge. (Pen. Code, § 745, subd. (c).)

4) Requires a motion made at trial to be made as soon as practicable upon the defendant learning of the violation. An untimely motion may be deemed waived in the court's discretion. (Pen. Code, § 745, subd. (c).)

5) Provides that at the hearing, either party may present evidence, including, but not limited to, statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses. The court may also appoint an independent investigator. (Pen. Code, § 745, subd. (c)(1).)

6) States the defendant must prove the violation by a preponderance of the evidence but need not prove intentional discrimination. (Pen. Code, § 745, subd. (c)(2).)

7) States that, notwithstanding any other law, except for an initiative approved by the voters, if the court finds by a preponderance of evidence a violation of the CRJA, the court shall impose a remedy specific to the violation found from a specified list of remedies. (Pen. Code, § 745, subd. (e).)

8) Provides that before a judgment has been entered, the court may declare a mistrial if requested by the defendant, discharge the jury panel and empanel a new jury, or, in the interests of justice, the court may dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges. (Pen. Code, § 745, subd. (e)(1).)

9) Provides that after judgment has been entered, the following remedies apply:

   a) If the court finds that the conviction was sought or obtained in violation of the CRJA, the court shall vacate the conviction and sentence, find that it is legally invalid, and order new proceedings consistent with the CRJA;

   b) If the court finds the violation was based only on the defendant being charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins, the court may modify the judgment to impose a lesser included or lesser related offense; and,

   c) If the court finds that only the sentence was sought or obtained in violation of the CRJA, the court shall vacate the sentence, find that it is legally invalid, and impose a new sentence no greater than the sentence previously imposed. (Pen. Code, § 745, subd. (e)(2).)

10) Prohibits imposition of the death penalty where the court finds a violation of the CRJA. (Pen. Code, § 745, subd. (e)(3).)

11) Provides that a court is not foreclosed from imposing any other remedies available under the United States Constitution, the California Constitution, or any other law. (Pen. Code, § 745, subd. (e)(4).)

12) Specifies that these provisions apply to adjudications and dispositions in the juvenile delinquency system and adjudications to transfer a juvenile case to adult court. (Pen. Code, § 745, subd. (f).)

13) Defines "prima facie showing" as meaning that the defendant produces facts that, if true, establish a substantial likelihood that a violation of the CRJA occurred, as specified. (Pen. Code, § 745, subd. (h)(2).)

14) Provides that the CRJA applies to all cases in which the judgment is not final. (Pen. Code, § 745, subd. (j)(1).)

15) Provides that the CRJA shall also apply retroactively, as follows:

   a) Commencing January 1, 2023, to all cases in which, at the time of the filing the petition raising a claim of a violation of the CRJA, the petitioner is sentenced to death or to cases in which a motion to vacate a judgment is filed because of actual or potential immigration consequences related to the conviction or sentence, regardless of when the judgment or disposition became final;

   b) Commencing January 1, 2024, to all cases in which, at the time of the filing of the petition raising a claim of a violation of the CRJA, the petitioner is currently serving a sentence in the state prison or in a county jail on a realigned felony, or committed to DJJ for a juvenile disposition, regardless of when the judgment or disposition became final;

   c) Commencing January 1, 2025, to all cases raising a claim of a violation of the CRJA in which judgment became final for a felony conviction or juvenile disposition that resulted

in commitment to DJJ on or after January 1, 2015; and,

d) Commencing January 1, 2026, to all cases raising a claim of a violation of the CRJA in which judgment was for a felony conviction or juvenile disposition that resulted in commitment to DJJ, regardless of when the judgment or disposition became final. (Pen. Code, § 745, subd. (j)(2)-(4).)

16) States that for petitions (motions) that are filed in cases for which judgment was entered before January 1, 2021, and only in those cases, if the petition is based on exhibited bias or animus or the use of discriminatory language, as provided, the petitioner shall be entitled to relief as specified, unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment. (Pen. Code, § 745, subd. (k).)

17) States that a writ of habeas corpus may be prosecuted after a judgment has been entered, based on evidence of a violation of the CRJA. Incorporates the same timelines applicable CRJA motions based on finality of judgment and nature of the case. (Pen. Code, § 1473, subd. (f).)

18) States that if the petitioner already has a habeas corpus petition on file in state court, but it has not yet been decided, the petitioner may amend the existing petition with a claim that the petitioner's conviction or sentence was sought, obtained or imposed in violation of the CRJA. (Pen. Code, § 1473, subd. (f).)

19) Requires the petition to state if the petitioner requests appointment of counsel, and the court to appoint counsel if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of the CRJA or the State Public Defender requests counsel be appointed. Newly appointed counsel may amend a petition filed before their appointment. (Pen. Code, § 1473, subd. (f).)

20) Requires the court to review the petition, and if the court determines that the petitioner makes a prima facie showing of entitlement to relief, the court shall issue an order to show cause why relief shall not be granted and hold an evidentiary hearing, unless the state declines to show cause. The defendant may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel indicates the defendant's presence in court is needed. (Pen. Code, § 1473, subd. (f).)

21) Allows a person who is no longer in custody to vacate a conviction or sentence based on a violation of the CRJA, as specified. (Pen. Code, § 1473.7, subd. (a)(3).)

22) States except as provided in existing law, the CPRA does not require the disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the DOJ, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 7923.600.)

23) Mandates any state or local law enforcement agency make public all of the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

   a) The full name and occupation of every individual arrested by the agency.

   b) The individual's physical description including date of birth, color of eyes and hair, sex, height, and weight.

   c) The time and date of arrest.

   d) The time and date of booking.

   e) The location of the arrest.

   f) The factual circumstances surrounding the arrest.

   g) The amount of bail set.

   h) The time and manner of release or the location where the individual is currently being held.

   i) All charges the individual is being held upon, including any outstanding warrants from other jurisdictions, parole holds, and probation holds. (Gov. Code, § 7323.610.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author: The Racial Justice Act (RJA) and the Racial Justice Act for All were significant steps in addressing racial discrimination and bias in criminal proceedings across the state. Under the RJA, petitioners can demonstrate a statistical showing of disparate treatment between similarly situated people whose primary difference is their race or ethnicity. However, the information needed to establish as such under an RJA violation can be challenging to obtain due to varying data collection and sharing practices across state and local agencies. AB 2065 addresses this gap and reduces the overall burden of records production by requiring the CDCR, the Judicial Council, and the Department of Justice to report disaggregated data by county annually. Furthermore, this bill would require law enforcement agencies to release all arrest records and probation reports, regardless of the date they were prepared, to a licensed attorney investigating a claim under the RJA.

   In 2020, the Legislature passed AB 2542 (Kalra), the California Racial Justice Act (RJA), to address racial discrimination and bias in criminal proceedings. Acting upon the promise to ensure all Californians have access to the protections of the RJA, AB 256 (Kalra, 2021) made the law retroactive with a phased-in timeline for individuals to file petitions.

   Under existing law, the RJA allows petitioners two paths to relief: 1) show bias directed at the individual or use of "racially discriminatory language" in court or 2) demonstrate a

statistical showing of disparate treatment between similarly situated people, as defined in law, from different racial groups, but in the same county where the individual was sentenced.

The information needed to establish an RJA violation can be challenging to obtain, and data requests are time-consuming for state and local agencies. This is partly due to data collection and sharing practices varying by county and agency, with reports only containing aggregate information or breaking down offenses into broad categories that do not provide the required details for an RJA claim. For example, while the Judicial Council is required to report data on criminal case dispositions according to the race and ethnicity of the defendant, they only report statewide information. As a result, individuals repeatedly file records requests with Judicial Council seeking county-specific data to use in RJA litigation.

Additionally, while the RJA provides for discovery from law enforcement agencies after showing "good cause," this process can be time-consuming, and the results inconsistent due to a lack of clarity in existing law. For example, although police reports contain detailed information about particular offenses that would be relevant to an RJA claim, courts have held that access is limited to only recent reports. In one case, a county denied a request to provide law enforcement records because the information the petitioner sought was 11 months old at the time.

2) **RJA**: In its landmark *McCleskey* decision, the United States Supreme Court rejected the defendant's claim the Georgia capital punishment statute violates the equal protection clause of the Fourteenth Amendment. The defendant argued "that race has infected the administration of Georgia's statute in two ways: (a) persons who murder whites are more likely to be sentenced to death than persons who murder blacks, and (b) black murderers are more likely to be sentenced to death than white murderers." (*McCleskey v. Kemp* (1987) 481 U.S. 279, 291-292.) In rejecting the claim, the Court concluded the defendant failed to demonstrate the statute was enacted for, or the decision makers in defendant's case acted with, a discriminatory purpose in applying the Georgia death penalty. (*Id.* at pp. 297-299.)

However, the Court acknowledged that biased decision making may affect sentencing. (*McCleskey v. Kemp, supra*, 481 U.S. at p. 309.) ***However, the Court suggested that the legislature, not the judiciary, was the proper branch to engineer remedies to these systemic problems***. (*Id.* at p. 319.)

In response, the Legislature passed AB 2542 (Kalra), Statutes of 2020, the California RJA, which allows a defendant to seek relief because their case was impacted by racial bias. The RJA allows a defendant to demonstrate racial bias by, among other things, statistical evidence that convictions for an offense were more frequently sought or obtained against people who share the defendant's race, ethnicity or national origin than for defendants of other races, ethnicities or national origin in the county where the convictions were sought or obtained; or longer or more severe sentences were imposed on persons based on their race, ethnicity or national origin or based on the victim's race, ethnicity or national origin.

Racial bias may also be shown by evidence that a judge, law enforcement, or attorney, among others listed persons associated with the defendant's case, exhibited bias towards the defendant, or, in court and during the trial proceedings, used racially discriminatory language

or otherwise exhibited bias or animus, based on the defendant's race, ethnicity or national origin. The RJA does not require the discrimination to have been purposeful or to have had a prejudicial impact on the defendant's case.

As originally enacted, the CRJA applied only to judgments of conviction occurring on or before January 1, 2021. AB 256 (Kalra), Chapter 739, Statutes of 2022, created a timeline for retroactive application of the CRJA. AB 256 made additional substantive, technical, and clarifying changes.

These changes included imposing a standard of prejudice for certain petitions (i.e., motions) filed in cases in which the judgment was entered before January 1, 2021. In that subset of cases, in particular, if the petition (motion) is based on exhibited bias or animus or the use of discriminatory language, the petitioner would be entitled to relief unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment. (Pen. Code, § 745, subd. (k).)

3) **CPRA:** Government Code section 7923.600[1] generally limits disclosure of investigatory materials such as the kinds of arrest and police records authorized by this bill. Specifically, it states:

> Except as provided in other sections, as specified, this division does not require the ***disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures*** of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 7923.600, subd. (a).)

However, there are specified exceptions, including records pertaining to air or other pollution monitoring data, (Gov. Code, § 7924.510), notice of housing or building code violations (Gov. Code, § 7924.700), and legislative or gubernatorial requests for test questions or material (Gov. Code, 7929.610.)

Government Code section 7923.610 allows for access to state and local arrest information, unless it would endanger public safety, including: (a) the full name and occupation of the person arrested; (b) the person's physical description, including date of birth, color of eyes, sex, height, and weight; (c) the time and date of the arrest; (d) the time and date of the booking; (e) the location of the arrest; (f) the factual circumstances; (g) the amount of bail set; (h) the time and manner of release or the location where the individual is currently being

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[1] The CPRA was renumbered in 2023 and is now codified at 7920.000, *et seq.* Former Government Code section 6254, subdivision (f) was re-enacted as Government Code section 7923.600.

held; and (i) all charges the individual is being held on, including any outstanding warrants from other jurisdictions, parole holds, and probation holds. (Gov. Code, § 7923.610.)

It is unclear whether the arrest data authorized by this bill would be otherwise prohibited by the CPRA. This bill allows access to arrest records: "*Any and all arrest records or data within the period of time requested that are in the possession of any state or local law enforcement agency, regardless of the date of the arrest or the date of the creation of the record.*"

> CPRA balances the dual concerns for privacy and disclosure by providing for various exemptions that permit public agencies to refuse disclosure of certain public records. For example, the CPRA does not require agencies to permit public inspection of records that are exempted or prohibited from public disclosure pursuant to federal or state law, including Evidence Code provisions relating to privilege. (Gov. Code, § 7927.705.) ***Also, law enforcement investigatory files typically are categorically exempt from the CPRA's general requirement of disclosure.*** Gov. Code, § 7923.600. In large part, these exemptions are designed to protect the privacy of persons whose data or documents come into governmental possession. CPRA exemptions are narrowly construed, and the agency opposing disclosure bears the burden of proving an exemption applies. (*Castañares v. Superior Court [City of Chula Vista]* (2023) 98 Cal.App.5th 295, 305-06.)

Depending on the type of investigative material sought, this bill may be substantially expanding the CPRA and access to records for purposes of investigating a RJA claim. Additionally, there is no limitation on time because the RJA allows a defendant convicted at any time to bring a claim. That may create significant pressures on local law enforcement because the state does not reimburse for compliance with statewide CPRA laws. Proposition 42 was passed by voters on June 3, 2014, and requires all local governments to comply with the Public Records Act and the Brown Act and with any subsequent changes to those acts and eliminated reimbursement to local agencies for costs of complying with the Public Records Act and the Brown Act.

Additionally, considerable redaction may be necessary or the Legislature must amend Penal Code section 1054.2 which largely prohibits defendants having access to the personal identifying information of a witness. Penal Code section 1054.2 states, in part:

> (1) No attorney shall disclose or permit to be disclosed to a defendant, members of the defendant's family, or anyone else, the personal identifying information of a victim or witness whose name is disclosed to the attorney pursuant to existing criminal discovery statutes other than the name of the victim or witness, unless specifically permitted to do so by the court after a hearing and a showing of good cause.

> (2) Notwithstanding paragraph (1), an attorney may disclose or permit to be disclosed the personal identifying information of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section, is prohibited. (Pen. Code, § 1054.2, subd. (a)(1-2).)

In this case, presumably attorneys of record are familiar with this prohibition and will provide any confidential information to defendants. However, county district attorney, law enforcement, and probation, may have to redact a substantial number of records to comply with the CPRA requirements set forth herein. It may make more sense to draft a comprehensive discovery statute for RJA claims that allow access to required statistical information, but in a manner that protects the defendant's right of access and the victim's and witness' right to privacy. Otherwise, we may run afoul of existing state laws further frustrating the author's purpose.

4) **Data Collection:** This bill creates numerous reporting requirements for Judicial Council, CDCR, and DOJ. It requires information specific to individual's race, national origin, and ethnicity, age, underlying criminal charges, sentencing, and county of conviction, among others. It is not clear from the language that this data would be anonymized so as not reveal the identities of the actual defendants. Publically accessible, one-stop shopping for all criminal convictions in the state by name, would likely result in mass discrimination against incarcerated and formerly incarcerated.

   The bill provides that a court may redact or aggregate data to protect privacy rights, but it would seem any posting of this information in a machine-searchable method, on one publically accessible website would naturally violate someone's privacy rights. (*Iloh v. Regents of University of California* (2023) 87 Cal.App.5th 513, 523-25 ["CPRA), Gov. Code, § 7920.000 *et seq*., does not confer an absolute right of access to government records. As part of the CPRA, the Legislature included a provision declaring it was mindful of the right of individuals to privacy. This express policy declaration bespeaks legislative concern for individual privacy as well as disclosure.

   While criminal records are largely public, using a county court website to search a name that may or may not yield an accurate result, this bill would create an easily navigated state agency site that will return accurate data about any person. Additionally, it is unclear whether Judicial Council of California has access to the arrest data this bill requires, in particular, the race, ethnicity, and gender of the defendant. Gender is not defined and the courts do not currently track gender – just sex. While a defendant may be a biological woman, if the person is Trans, the record may not be accurate as to gender.

   AB 1331 (Bonta), Chapter 581, Statutes of 2019 required, starting January 1, 2021, various entities, including local and state law enforcement agencies and courts, to report specified information related to each arrest made and the disposition of those arrests to DOJ on a

weekly basis and prohibited a person from being denied access to de-identified information solely on the basis of that person's criminal record, unless that person has been convicted of a felony or any other offense that involves moral turpitude, dishonesty, or fraud. However, this information is provided only in an anonymized fashion. However, AB 1331 only requires updating name, aliases, and monikers, race, sex, date of birth, place of birth, by either state or country, height, weight, hair color, eye color, CII number, FBI number, social security number; California operator's license number; fingerprint classification number, in both the Henry and NCIC systems; address; arresting agency; booking number; date of arrest; offenses charged, in the form of both statutes violated and descriptions of the offense; police disposition, whether they were released, cited and released, turned over to another entity, or a complaint was filed; for each felony or misdemeanor arrest, the incident reporting number; for each misdemeanor or infraction citation, the citation number; and date each charge was referred to a prosecutor, if applicable

According to the author, it does not propose to release any personally identifying information. Indeed, the 1977 Information Practices Act may prohibit releasing personal information about defendants. Enacted in 1977, the IPA generally limits the right of governmental agencies to disclose personal information about an individual and imposes liability on agencies and individuals for improperly disclosing personal information maintained by agencies. (See Civ. Code §§ 1798.1, subd. (c), Civ. Code, § 1798.24, 1798.45, Civ. Code, § 1798.53; *Bates v. Franchise Tax Bd.* (2004) 124 Cal.App.4th 367, 373; *Jennifer M. v. Redwood Women's Health Center* (2001) 88 Cal.App.4th 81, 87–88.)

The IPA defines "personal information" as "any information that is maintained by an agency that identifies or describes an individual, including, but not limited to their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history.

It includes statements made by, or attributed to, the individual. The IPA defines a "record" as "any file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual's name, photograph, finger or voice print, or a number or symbol assigned to the individual." (See Civ. Code, § 1798.3, subd. (g).) It defines "disclose" as "to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity." (§ 1798.3, subd. (c).) The IPA would likely prohibit release of personal information related to gender identity, race, or ethnicity. (See *Hurley v. Department of Parks & Recreation* (2018) 20 Cal.App.5th 634, 639.) .

This information is normally provided in aggregate data when provided to the public. While DOJ may get personally identifying information from the courts, it does not provide that same information to the public even if a person may find it on a court website. The RJA likely requires additional criminal discovery rules that are different than ordinary criminal discovery pursuant to Penal Code section 1045.1. It may make more sense to enact a comprehensive discovery law for the RJA rather than risk the release of personally identifying data that will either be misused or limited in impact.

Finally, Penal Code section 745, subdivision (d) specifies that a defendant may file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of the RJA. An RJA motion for access to records must describe the type of records or information

the defendant seeks and must demonstrate good cause. It also allows for redaction and a protective order. (See Pen. Code, § 745, subd. (d).) This bill does not amend this subdivision, so it is not clear how these two provisions are designed to work in concert. The author may wish to consider a more holistic discovery statute that responds to the needs of a defendant seeking evidence in support of an RJA claim.

5) **Arguments in Support:** According to the *Friends Committee on Legislation*: In 2020, the Legislature passed AB 2542 (Kalra, Chapter 317) to address racial discrimination and bias in criminal proceedings. Acting upon the promise to ensure all Californians have access to the protections of the RJA, AB 256 (Kalra, Chapter 739, 2022), made the law retroactive with a phased-in timeline for individuals to file petitions. Under existing law, petitioners have two paths to relief: 1) a showing of bias directed at the individual or use of "racially discriminatory language" in court; or, 2) demonstrate a statistical showing of disparate treatment between similarly situated people, as defined in law, from different racial groups, but in the same county where the individual was sentenced.

   The information needed to establish and RJA violation can be challenging to obtain, and data requests are time-consuming for state and local agencies. This is partly due to data collection and sharing practices varying by county and agency, with reports only containing aggregate information or breaking down offenses into broad categories that do not provide the required details for an RJA claim. For example, while the Judicial Council is required to report data on criminal case dispositions according to the race and ethnicity of the defendants, they only report statewide information. As a result, individuals repeatedly file records requests with the Judicial Council seeking county-specific data to use in RJA litigation.

   AB 2065 improves access to critical data that would aid individuals seeking relief under the Racial Justice Act while reducing the burden of records production for state and local agencies. Specifically, this bill requires the California Department of Corrections and Rehabilitation, the Judicial Council, and the Department of Justice to report disaggregated data by county annually. Furthermore, the bill would require law enforcement agencies to release all arrest records and probation reports, regardless of the date they were prepared, to a licensed attorney investigating and RJA claim. The bill also includes provisions to protect confidential, privileged, and sensitive information. By improving meaningful data access and removing institutional barriers, AB 2065 will ensure that legitimate, statistics based RJA claims can be brought in court while reducing the burden on agencies.

6) **Arguments in Opposition:** According to the *California District Attorneys Association*: This bill creates changes to 1170.45, 2069, and 13012.3 which require various agencies to share data regarding the race, ethnicity, and gender of all defendants without specifying how such data is to be gathered. This lack of guidance leaves open many questions for the agencies to puzzle out: Do these new data requirements impose upon a court the duty to ask each defendant what race, ethnicity, and gender they identify as? What if a defendant declines to answer? Should such information be made as a best guess by the arresting agency, prosecuting agency, or a judicial officer? If there is disagreement among these sources, whose best guess is to be recorded? These are just some of the procedural oversights that this bill fails to address. These issues are secondary, however, when compared to the changes to the Racial Justice Act.

The CDAA's primary concern with this bill is its addition of Penal Code section 745.1. This section would create an end-run around the discovery procedures already enshrined in the Racial Justice Act, which require a showing of good cause to obtain discovery. This bill would allow any request for information, over any time period, with no good cause nor any showing that the requested records are actually relevant to an actual client's issue. The agencies will need to provide these records to any attorney who requests them, potentially imperiling active investigations, violating victims' privacy rights, violating suspects' privacy rights (even in closed or sealed cases), and violating juveniles' privacy rights, just to name a few.

This bill would allow any attorney to access presentence reports created by probation despite the fact that these reports are confidential and that probation is currently prohibited from disclosing them. Though the bill provides for potential redaction, this can only be accomplished if the agency identifies each and every potential privacy right implicated, and then petitions the court to redact documents to prevent dissemination of that confidential information. This bill also provides no mechanism whatsoever to prevent wide dissemination of these records by the requesting attorney once they have been received, further exacerbating the privacy issues implicated by this procedure.

These limitless requests for production and redaction will heavily burden law enforcement agencies and the judiciary with overbroad requests that could have no relevance to any violation of an actual defendant's rights. These agencies will receive no state funding to comply with these discovery requests, which require them to catalog, produce, and redact all data from any timeframe.

This means that agencies can be required to produce well over 100 years of arrest records, despite the fact that such records have no bearing whatsoever on an analysis of current arrest or prosecution procedures, and therefore no bearing on a claim under the Racial Justice Act. This bill ensures that there is no arbiter to determine whether such a request is seeking only relevant information. Agencies must comply with the request regardless of how overbroad it may be. To give some context as to the cost of such a process, Santa Clara County recently calculated that to produce and redact arrest data and prosecution data for the last 8 years, on a single statutory offense, PC 148(a)(1). Santa Clara calculated that it would take approximately 15,200 hours, and cost the county approximately $760,000.

These numbers were generously conservative in every metric, and do not even factor in the time spent preparing for and appearing in court proceedings. This is for a single request, in a limited time period, for relatively recent data, regarding violations of a single statute. Of course, requests under this new statute could easily encompass lengthy time periods, request data from decades of un-digitized records, and seek arrest data for any number of violations simultaneously, all without any mechanism by the agency to challenge any aspect of the request. It is no exaggeration to say that even a single demand from this proposed scheme could cost an agency tens of millions of dollars to fulfill, and they will have no mechanism whatsoever to petition for a review of such a request.

This analysis only covers a single request for information, let alone the fact that a single agency may receive dozens or hundreds of these requests. The cost to agencies will be staggering. Without state funding to cover such requests, this bill will single-handedly

bankrupt law enforcement and probation agencies across the state, affecting smaller agencies even more severely than larger ones.

The good cause requirement currently used by the Racial Justice Act is designed to provide defendants with all discovery that can reasonably be expected to inform a claim under the Racial Justice Act. This bill does away with reasonable oversight, and allows for rampant abuse and exploitation of law enforcement agencies with no limits and no recourse whatsoever. Agencies will have to attempt to comply with this onerous process without any reimbursement from the state government. This will certainly create delays in production of the records and exact a heavy toll on city, county, and state resources, inevitably delaying legitimate claims under the Racial Justice Act. In allowing for such unchecked record requests to grind the system to a halt, this bill harms those it tries to help; true claimants under the Racial justice Act who already have a speedy, meaningful remedy at law.

This bill proposes logistical and budgeting challenges with no guardrails whatsoever, in order to solve a problem that doesn't exist. Defendants already have a right to all discovery which is relevant to their particular Racial Justice Act claim. This bill will cause confidential information to be disclosed, imperil active criminal investigations, bankrupt local agencies, and delay true claims under the Racial Justice Act which are lost in a deluge of immaterial requests."

7) **Prior Legislation:**

a) AB 256 (Kalra) makes the California Racial Justice Act of 2020 (CRJA), which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin, applicable to cases in which judgment was entered prior to January 1, 2021, and makes other technical changes.

b) AB 2542 (Kalra), Chapter 317, Statutes of 2020, created the CRJA which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin, applicable to all cases regardless of the date of conviction.

c) AB 3070 (Weber), Chapter 318, Statutes of 2020, prohibits a party from using a peremptory challenge to remove a prospective juror on the basis of race, ethnicity, gender, and other specified characteristics, and outlines a court procedure for objecting to, evaluating, and resolving improper bias in peremptory challenges.

d) AB 1798 (Levine), of the 2019-2020 Legislative Session, would have prohibited a person from being executed pursuant to a judgment that was either sought or obtained on the basis of race – i.e., where race was a significant factor in the decision to either seek or impose the death penalty. AB 1798 was held in the Assembly Committee on Appropriations.

REGISTERED SUPPORT / OPPOSITION:

Support

Ella Baker Center for Human Rights (Co-Sponsor)
ACLU California Action

Alliance for Boys and Men of Color
California Alliance for Youth and Community Justice
California Coalition for Women Prisoners
California for Safety and Justice
California Innocence Coalition
California Public Defenders Association
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice (CURYJ)
Cure California
East Bay Community Law Center
Empowering Women Impacted by Incarceration
Felony Murder Elimination Project
Freedom 4 Youth
Friends Committee on Legislation of California
Haywood Burns Institute
Initiate Justice
Initiate Justice Action
Milpa Collective
Nextgen California
Peace and Justice Law Center
Prosecutors Alliance of California, a Project of Tides Advocacy
San Francisco Public Defender
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
Southeast Asia Resource Action Center
University of San Francisco School of Law | Racial Justice Clinic
Young Women's Freedom Center
Youth Leadership Institute

Opposition

California District Attorneys Association

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

Date of Hearing: April 23, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2136 (Jones-Sawyer) – As Amended April 15, 2024

SUMMARY: Makes it lawful for controlled substance checking service providers and harm reduction service providers to provide controlled substance checking services, and prohibits arrest and criminal prosecution for the use of those services. Specifically, **this bill**:

1) Provides that it is not a violation of this division for a controlled substance checking service provider or a harm reduction service provider to do any of the following solely for the purpose of providing controlled substance checking services:

   a) Receive voluntarily provided samples of substance potentially containing controlled substances or controlled substance analogs;

   b) Possess, transport, transfer, or store a sample of a controlled substance or a controlled substance analog solely for the purpose of analyzing the substance to determine its chemical composition;

   c) Use available technologies to analyze the contents of samples to obtain timely and accurate information regarding the composition of controlled substances or controlled substance analogs;

   d) Provide results of analysis obtained from controlled substance checking equipment to the person requesting controlled substance checking services;

   e) Provide information and harm reduction services and advice to help individuals make informed decisions about use of controlled substances and controlled substance analogs;

   f) Disseminate data containing only the results of analysis and containing no personally identifiable information to community members at risk of overdose;

   g) If necessary, arrange for a sample of a substance to be tested by a laboratory for secondary verification, including transportation of samples;

   h) Purchase, obtain, possess, provide, transport, distribute, use, or evaluate the use of controlled substance checking equipment;

   i) Provide training and technical assistance concerning controlled substance checking equipment, the process of controlled substance checking, and the purpose of controlled substance checking; and,

j) Work in collaboration with a county health officer, the state Department of Public Health, or a research institution to conduct or engage in the above activities.

2) Provides that, in operating a controlled substance checking service, personally identifiable information may be collected from a service user providing a controlled substance or a controlled substance analog to a controlled substance checking service provider or harm reduction service provider only as necessary to communicate controlled substance checking results to the user. Personally identifiable information collected solely for the purposes of communicating controlled substance checking results shall not be retained after delivery of results.

3) Provides that a program, employee, contractor, volunteer, owner, or other person acting in the good faith provision of controlled substance checking services and acting in accordance with established protocols shall not be subject to any of the following:

   a) Arrest or prosecution for a violation of this division, including for attempting to, aiding and abetting in, or conspiracy to commit a violation of this division.

   b) Forfeiture of property.

   c) Any civil or administrative penalty or liability of any kind, including disciplinary action by a professional licensing board, credentialing restrictions, contractual or civil liability, or employment action.

   d) Denial of a right or privilege for actions, conduct, or omissions relating to the operation of a controlled substance checking service in compliance with this article and any rules adopted pursuant to this article.

4) Provides that an individual possessing a controlled substance or a controlled substance analog who provides any portion of the substance to a controlled substance checking service provider or harm reduction service provider pursuant to this section for the purpose of obtaining controlled substance checking services shall not be subject to any criminal or civil penalty, forfeiture of property, or investigation based solely on the individual's utilization of a controlled substance checking service or actions authorized by this act, including, but not limited to, any of the following:

   a) Arrest.

   b) Criminal prosecution, including a violation or revocation of a grant of probation, parole, pretrial release, or any other form of community supervision.

   c) Civil, disciplinary, or administrative action.

   d) Detention, referral, or transfer to United States Immigration and Customs Enforcement.

5) Prohibits a government agency from collecting, maintaining, using, or disclosing any personal information relating to an individual from whom the agency receives a controlled substance or controlled substance analog for checking or disposal and from providing such

information to law enforcement.

6) Provides that collection and disclosure of aggregate information that is not linked to an individual and does not contain a person identifier may be released to clinicians, public health officials, researchers, or other local and state agencies as requested and may be stored or uploaded onto an internal website.

7) Defines "controlled substance checking" as the process of identifying, analyzing, or testing a substance, controlled or otherwise or residue on drug paraphernalia or controlled substance packaging, to determine its chemical composition to assist in determining whether the substance contains contaminants, toxic substances, hazardous compounds, or other adulterants within a substance.

8) "Controlled substance checking equipment" means equipment, products, technologies, or materials used, designed for use, or intended for use to perform chemical analysis of controlled substances or controlled substance analogs, including materials and items used by the person operating the equipment or products to store, measure, or process samples for analysis. Controlled substance checking equipment includes, but is not limited to, fentanyl test strips, other controlled substance or controlled substance analog immunoassay strips, colorimetric reagents, spectrometers such as Fourier transform infrared and Raman spectrometers, and equipment that uses high-performance liquid chromatography, gas chromatography, mass spectrometry, or nuclear magnetic resonance techniques.

9) "Controlled substance checking service provider" means an individual or group that provides controlled substance checking services.

10) "Controlled substance packaging" means the materials or items used by persons selling, buying, or ingesting controlled substances or controlled substance analogs to store, contain, cover, or transport small amounts of one or more controlled substances or controlled substance analogs.

11) "Harm reduction service provider" as a community-based organization, nonprofit organization, homeless service organization, mutual aid group, harm reduction organization, or outreach worker that works with individuals who use controlled substances or controlled substance analogs.

12) Defines "person" as an individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal, commercial, or informal entity or group.

13) Makes conforming changes.

EXISTING LAW:

1) Defines "Drug paraphernalia" as all equipment, products and materials of any kind which are designed for use or marketed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human a body a controlled substance.

(Health & Saf. Code, §§ 11014.5, subd. (a), & 11364.5, subd. (a).)

2) Provides that drug paraphernalia includes, but is not limited to:

   a) Kits designed for use or marketed to use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

   b) Kits designed for use or marketed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

   c) Isomerization devices designed for use or marketed for use in increasing the potency of any species of plant which is a controlled substance;

   d) Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances;

   e) Scales and balances designed for use or marketed for use in weighing or measuring controlled substances;

   f) Containers and other objects designed for use or marketed for use in storing or concealing controlled substances;

   g) Hypodermic syringes, needles, and other objects designed for use or marketed for use in parenterally injecting controlled substances into the human body; or

   h) Objects designed for use or markets for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body, such as:

      i) Carburetion tubes and devices;

      ii) Smoking and carburation masks;

      iii) Roach Clips, meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held I the hand;

      iv) Miniature cocaine spoons, and cocaine vials;

      v) Chamber pipes;

      vi) Carburetor pipes;

      vii) Electric pipes;

      viii) Air-driven pipes;

      ix) Chillums;

x) Bongs; or,

xi) Ice pipes or chillers. (Health &Saf. Code, § 11014.5, subd. (a).)

3) States that no person shall maintain or operate any place of business in which drug paraphernalia is kept, displayed or offered in any manner, sold, furnished, transferred or given away unless such drug paraphernalia is completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of 18 years not accompanied by a parent or legal guardian are excluded. (Health &Saf. Code, §11364.5. subd. (a).)

4) Provides that drug paraphernalia also includes, but is not limited to:

a) Kits designed for use or marketed to use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

b) Kits designed for use or marketed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

c) Isomerization devices designed for use or marketed for use in increasing the potency of any species of plant which is a controlled substance;

d) Testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances;

e) Scales and balances designed for use or marketed for use in weighing or measuring controlled substances;

f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, intended for use or designed for use in cutting controlled substances;

g) Separation gins and sifters intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining, cannabis;

h) Blenders, bowls, containers, spoons, and mixing devices intended for use or designed for use in compounding controlled substances;

i) Capsules, balloons, envelopes, and other containers intended for use or designed for use in packaging small quantities of controlled substances.;

j) Containers and other objects intended for use or designed for use in storing or concealing controlled substances;

k) Hypodermic syringes, needles, and other objects intended for use or designed for use in parenterally injecting controlled substances into the human body;

l) Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body , such as the

following:

i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

ii) Water pipes'

iii) Carburation tubes and devices;

iv) Smoking and carburation masks;

v) Roach Clips, meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held I the hand;

vi) Miniature cocaine spoons, and cocaine vials;

vii) Chamber pipes;

viii) Carburetor pipes;

ix) Electric pipes;

x) Air-driven pipes;

xi) Chillums;

xii) Bongs; or,

xiii) Ice pipes or chillers. (Health &Saf. Code, §11364.5, subd. (d).)

5) Makes it unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking a controlled substance as specified. (Health &Saf. Code, §11364.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2136 would clarify existing law to protect individuals obtaining or providing drug checking services. Drug checking refers to the use of technology to gain insight into the chemical composition of a controlled substance in order to determine whether the substance contains contaminants.

"As the state continues to address the unprecedented fentanyl crisis, our response must be guided by evidence, and AB 2136 clears the path for a proven strategy to help us reduce drug related mortality and other harmful consequences related to the adulterated drug supply. Drug checking will lead to long-term public health monitoring to continue informing our response to the ongoing overdose crisis that continues to claim the lives of members of our

community at an alarming rate."

2) **Need for the Bill:** The number of deaths involving opioids, and fentanyl in particular, has increased significantly over the course of the last decade. In California, between 2019 and 2022, the number of opioid-related deaths in the state increased by 121 percent. (Ibarra et al., *California's opioid deaths increased 121% in 3 years. What's driving the crisis?*, CalMatters.org (July 25, 2023) <https://calmatters.org/explainers/california-opioid-crisis/> [last visited Feb. 21, 2024].) In 2022, the year for which the most recent data is available, there were 21,316 emergency room visits resulting from an opioid overdose, 7,385 opioid-related overdose deaths, and 6,473 overdose deaths from fentanyl. (CDPH, Overdose Surveillance Dashboard <https://skylab.cdph.ca.gov/ODdash/?tab=Home> [last visited Feb. 21, 2024].)

   This bill seeks to reduce the number of overdoses and overdose deaths by authorizing access to controlled substance checking services, giving people who use drugs valuable information about the contents of the substances they consume. Controlled substance checking services can also serve a vital link between people who use drugs and health care and social service providers.

3) **Prevention and Public Health Concerns**: Prevention of the harmful results of drug use has changed much over the last 20 years. The most recent example is in the use of clean needles. In 2020, AB 2077 (Ting) authorized physicians or pharmacists to furnish hypodermic needles and syringes to those 18 years of age or older, and for those 18 years of age and older to obtain hypodermic needles and syringes without a prescription or license solely for personal use permanent. The goal of the needle program was to prevent the spread diseases. The concern for public health pushed this legislation forward. According to the Centers for Disease Control (CDC) "Nearly 30 years of research has shown that comprehensive Syringe Services Programs (SSPs) are safe, effective, and cost-saving, do not increase illegal drug use or crime, and play an important role in reducing the transmission of viral hepatitis, HIV and other infections."

   To that end, this bill would authorize controlled substance checking service providers and harm reduction service providers to provide services that give people who use drugs potentially life-saving information about the drugs they use.

4) **Harm Reduction Approach to Drug Use**: Initially developed for adults with substance use disorders for whom abstinence was not feasible, harm reduction is a public heath strategy in which the primary objective is to minimize the adverse consequences of the c behavior. Examples of harm reduction strategies employed by the state to address the ongoing opioid epidemic include the expansion of access to medication-assisted treatment services and the naloxone distribution program. The legalization of pharmacists to furnish hypodermic needles and syringes without a prescription or a permit to a person who is 18 or older as well as the legalization of a person who is 18 or older to obtain hypodermic needles and syringes from a physician or pharmacist without a prescription or license are additional examples of harm reduction strategies designed to minimize the spread of HIV, hepatitis B, and hepatitis C among people who inject drugs.

   Fentanyl test strips (FTS), used to detect fentanyl in illicit or unregulated drugs, are another harm reduction strategy that can reduce the risk of overdose. FTS can be used to test

injectable drugs, powders, and pills. (https://harmreduction.org/issues/fentanyl/) Their use has become more common in recent years as drug overdose deaths, often attributable to fentanyl, have increased significantly. In 2021, the CDC and Substance Abuse and Mental Health Services Administration announced that federal funding could be used by grantees, including state, county, and city health departments, to purchase FTS. (https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html)

5) **Argument in Support**: According to the *Harm Reduction Institute*, "HRI is a community-based harm reduction organization in Orange County. Every day we are out in the streets providing naloxone, naloxone training, fentanyl test strips, and xylazine test strips to people who use drugs. However, being able to implement a more robust drug checking initiative to our program would be incredibly helpful in keeping people from overdosing. Since January 2024, we have recorded over 500 overdose reversals from the naloxone that we've distributed. Overdoses in our community have skyrocketed, and increasing access to drug checking is another tool that we could use to keep people safe and alive.

"Across the country, approximately more than 150 people die every single day from issues related to synthetic substances like fentanyl. In the state of California, this number has skyrocketed due to an increase in adulterants found in the drug supply, such as fentanyl, and the emergence of xylazine. Since 2017, fentanyl-related deaths have increased 1,027% with 2021 overseeing one of the highest fentanyl overdose-related deaths, resulting in the deaths of about 6,054 Californians. The impact of the overdose falls across racial lines, African Americans, Hispanics/Latinos, and Native Americans have experienced 208%, 201%, and 150% increases in overdose mortality rate since 2017, respectively. These disparities demonstrate the urgency to increase low barrier access to life saving interventions in communities of color. This demonstrates a clear disparity and urgency for a health-based approach to the overdose crisis that could eliminate barriers to proven interventions to reduce the risk of an unregulated drug market.

"Drug checking is integral to developing a public health response to the overdose crisis. Fentanyl testing strips which are now commonly used fail to provide a complete picture of the substance, active ingredients or contaminants. In contrast, drug checking through a spectrometer, for instance, can provide a more complete picture of the substance and identify active ingredients. These services can complement and enhance public health approaches, so substance users can test their drugs to lower the risk of unintentional overdose and mitigate other harms associated with drug use. Studies have found that accessibility to drug checking services is associated with positive changes in overdose risk behaviors. AB 2136 seeks to codify legal protections for drug checking services so more individuals and entities across California can engage in these services to increase accurate and timely information about local drug supplies and keep people alive and communities safe.

"California must lead on adopting evidence-based public health measures proven to reduce the impacts of the ever-changing drug supply in real time."

6) **Argument in Opposition**: According to the *California Narcotic Officers' Association*, "Recent legislation exempted drug testing kits/strips enacted for the purpose of preventing accidental overdose deaths related to the unintentional ingestion of fentanyl. People using illicit substances would be able to check to make sure there is no fentanyl in their drugs.

"AB 2136 seeks to legalize product and quality control testing equipment for all controlled substances, not simply for determining if a specific deadly poison like fentanyl has been added to the drug.

"This bill allows dealers to improve their sales and increase the purity and potency of their illegal drugs by permitting such legal testing.

"One dealer could show their product was 80% pure while another could show 90% purity with similar pricing. The legislature, in effect, would giving their stamp of approval while helping drug dealers increase their sales and profits.

"We are also concerned about the potential conflict in law that may occur where our officers encounter this testing equipment and it's covered with controlled substances. What result? If there is controlled substance residue on the equipment, can the owner/possessor be found in violation of current law? Does owning such equipment permit it to be used as evidence of drug sales?"

7) **Prior Legislation**:

a) AB 1598 (Davies), Chapter 201, Statutes of 2022, excluded from the definition of "drug paraphernalia" any testing equipment that is designed, marketed, used, or intended to be used, to analyze for the presence of fentanyl or any analog of fentanyl, ketamine, or gamma hydroxybutyric acid.

b) SB 94 (Committee on Budget & Fiscal Review), Chapter 27, Statutes of 2017, created the framework for the Uniform Controlled Substances Act in the Health and Safety Code, which includes the regulations for testing equipment designed for use or marketed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Any Positive Change INC.
Apla Health
Bienestar Human Services
California Public Defenders Association
Californians United for A Responsible Budget
Drug Policy Alliance
Ella Baker Center for Human Rights
Face to Face
Friends Committee on Legislation of California
Glide
Harm Reduction Institute
Healthright 360
Hiv Education and Prevention Project of Alameda County (HEPPAC)

Initiate Justice
Initiate Justice Action
Legal Aid At Work
National Harm Reduction Coalition
Prc/black Leadership Council
R Street Institute
San Francisco Public Defender
Sister Warriors Freedom Coalition
Slo Bangers Syringe Exchange and Overdose Prevention
Smart Justice California, a Project of Tides Advocacy
Tenderloin Neighborhood Development Corporation
The Gubbio Project
The Sidewalk Project
Treatment on Demand Coalition
Vera Institute of Justice
Young Women's Freedom Center

11 Private Individuals

Opposition

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Narcotic Officers' Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

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

Date of Hearing: April 23, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2160 (McKinnor) – As Amended February 28, 2024

SUMMARY: Establishes the California Women's Care Act that outlines best practices and procedures for an incarcerated pregnant and postpartum person. Specifically, **this bill**:

1) Establishes the California Women's Care Act within the penal code.

2) Defines the following terms:

   a) "Newborn" means a person who has been born and who is less than one year of age.

   b) "Postpartum period" means a period of one year after the end of a pregnancy, regardless of the pregnancy outcome.

   c) "Pregnant or postpartum defendant" means a person who is pregnant or in a postpartum period who has been accused or convicted of a crime.

   d) "Stay of execution" means delaying the imposition of a sentence of the incarceration portion of the sentence for a pregnant or postpartum defendant after the sentence is announced by the court.

3) Provides that there is a rebuttable presumption against detention and incarceration of a pregnant or postpartum defendant if the defendant provides the court and district attorney with notice of the defendant's status as a pregnant or postpartum defendant at each applicable stage of the proceedings.

4) Requires the court, when exercising its discretion, apply the rebuttable presumption of a pregnant or postpartum defendant in determining to do the one of following:

   a) Issue bail or own recognizance release, as specified;

   b) Accept a diversion agreement;

   c) Accept or continue a deferred entry of judgement;

   d) Impose a sentence, including whether to grant probation; or

   e) Grant a stay of execution, as specified.

5) Provides that a court shall not use a pregnant or postpartum period as a basis for imposing a greater restriction on the defendant's liberty than similarly situated defendant who is not

pregnant or postpartum, including if a pregnant or postpartum defendant has a substance use disorder.

6) Requires a court to make specific findings on the record if the incarcerated pregnant or postpartum defendant is detained and after weighing the applicable legal standards and considerations set forth above that the risk to public safety or any other factor the court is required to consider is substantial enough to outweigh the risk of incarceration.

7) Allows a person who is pregnant or postpartum who is arrested or in custody in a county jail or state prison to request a pregnancy test upon or following admission to the county jail or state prison.

8) Requires staff at the county or state prison to provide a pregnancy test upon request and allow the person to take the pregnancy test within 24 hours after the request.

9) States that requesting a pregnancy test, taking a pregnancy test, and the results of the pregnancy test are confidential medical information.

10) States that medical information shall not be disclosed to outside parties unless the information is required for the person to receive medical care or to allow staff at the county jail or state prison to provide necessary care.

11) Requires a county jail or state prison to give notice to a person's attorney, if they are represented by an attorney in a criminal proceeding and the county jail and state prison has a signed medical release from the person, within 48 hours, excluding state holidays and weekends, concerning the person's request for a pregnancy test, as specified.

12) Allows a pregnant or postpartum defendant to raise the issue of their pregnancy or postpartum period at any time during their criminal proceedings or while serving a sentence.

13) Provides that if the pregnancy or postpartum period is raised, the pregnant or postpartum defendant shall provide notice to the district attorney by providing evidence of the pregnancy or the start of the postpartum period with a limited waiver of privilege.

14) Provides that a positive pregnancy test, or medical record confirming pregnancy or the end of the pregnancy, or a birth certificate of a newborn, is prima facie evidence of pregnancy or the start of a postpartum period.

15) Requires a court to hold a hearing as soon as possible, but no later than 14 days after the issue is raised, if the prosecution contests that the defendant is pregnant or in a postpartum state, unless the defendant requests the hearing be held later than 14 days after the issue is raised.

16) Requires a court to hold the hearing immediately if the circumstances of the defendant or the defendant's newborn require it.

17) Requires the defendant to prove, by preponderance of the evidence, that the defendant is a pregnant or postpartum defendant.

18) Requires a court to protect medical information provided to the court regarding a defendant's pregnancy and postpartum status and states that the defendant's wavier of medical privilege is limited, as specified.

19) Allows a pregnant or postpartum defendant to request a stay of execution by filing a written request to the court if the pregnant or postpartum defendant is detained or incarcerated in a county jail or state prison for any period of time through the end of the pregnancy or the postpartum period.

20) Requires a court to hold a hearing for a pregnant or postpartum defendant to determine a request for a stay of executive as soon as practicable, but no later than 14 days unless the pregnant or postpartum defendant requests a later hearing.

21) Requires a court to make the determination of a later hearing in the timeline requested when a pregnant or postpartum defendant makes the request.

22) Requires a court to hold the hearing immediately if the circumstances of the pregnant or postpartum defendant or the newborn require it.

23) Requires a defendant to prove, by preponderance of the evidence, that the defendant is a pregnant or postpartum defendant.

24) Requires the court, during this hearing, to apply a rebuttable presumption against the detention of the incarcerated pregnant or postpartum.

25) Requires the district attorney and the court to comply with the requirements in Proposition 8 of 1982, also known as the "Right to Truth in Evidence" in the California Constitution.

26) Allows the court to order a stay of execution of the sentence, after determining eligibility, for any period of time through the end of the pregnancy or postpartum period.

27) Requires a court to order a date, time, and place for the defendant to appear to serve the sentence upon completion of the stay of execution.

28) Requires a court that grants a stay of execution to order the bail and the conditions of bail to remain in effect until the date the pregnant or postpartum defendant is ordered to start serving the defendant's sentence.

29) States that notwithstanding the provisions above, a pregnant or postpartum defendant who is ineligible for bail is not eligible to a stay of execution.

30) Requires the court to set a hearing if the pregnant or postpartum defendant is charged with a new violation or the court receives a verified motion from the district attorney that establishes a prima facie case that the pregnant or postpartum defendant has violated conditions of the stay of execution and presents a substantial risk to the public safety that the pregnant or postpartum defendant must appear.

31) Allows a court, after the hearing described above, to end the stay of execution, add new conditions, issue a warrant, or continue the stay of execution.

EXISTING LAW:

1) Requires the Board of State Community Corrections (BSCC) to establish minimum standards for state and local correctional facilities, including standards for pregnant individuals incarcerated at the CDCR. (Pen. Code, § 6030.)

2) Provides that every woman upon being committed to CDCR shall be examined mentally and physically, and shall be given the care, treatment and training adapted to her particular condition. (Pen. Code, § 3403.)

3) Provides that any incarcerated person shall have the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice in order to determine whether they are pregnant. (Pen. Code, § 3406.)

4) States that, if the incarcerated person is found to be pregnant, they are entitled to a determination of the extent of the medical and surgical services needed and to the receipt of these services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice. (Pen. Code, § 3406, subd. (b).)

5) States that a person who is incarcerated in state prison who is identified as possibly pregnant or capable of becoming pregnant during an intake health examination or at any time during incarceration shall be offered a test upon intake or by request. (Pen. Code, § 3408, subd. (a).)

6) States that an incarcerated person with a positive pregnancy test result shall be offered comprehensive and unbiased options counseling that includes information about prenatal health care, adoption, and abortion. (Pen. Code, § 3408, subd. (b).)

7) Requires a person incarcerated in prison who is confirmed to be pregnant to, within seven days of arriving at the prison, be scheduled for a pregnancy examination with a physician, nurse practitioner, certified nurse-midwife, or physician assistant. The examination shall include all of the following:

   a) A determination of the gestational age of the pregnancy and the estimated due date;

   b) A plan of care, including referrals for specialty and other services, isolation practices, level of activities, and bed assignments, social and clinical needs, among other services; and,

   c) Prenatal labs and diagnostic studies, as needed based on gestational age or existing or newly diagnosed health conditions. (Pen. Code, § 3408, subd. (d).)

8) States that an eligible incarcerated pregnant person or person who gives birth after incarceration shall be provided notice of, access to, and written application for, community-based programs serving pregnant, birthing, or lactating incarcerated persons. (Pen. Code, § 3408, subd. (j).)

9) Provides that each incarcerated pregnant person shall be referred to a social worker who shall do all of the following:

a) Discuss with the incarcerated person the options available for feeding, placement, and care of the child after birth, including the benefits of lactation;

b) Assist the incarcerated pregnant person with access to a phone in order to contact relatives regarding newborn placement; and,

c) Oversee the placement of the newborn child. (Pen. Code, § 3408, subd. (k).)

10) States that an incarcerated pregnant person shall be temporarily taken to a hospital outside the prison for the purpose of childbirth. (Pen. Code, § 3408, subd. (l).)

11) Allows an incarcerated pregnant person to elect to have a support person present during labor, childbirth, and during postpartum recovery while hospitalized. (Pen. Code, § 3408, subd. (m).)

12) Provides that the support person may be an approved visitor or the prison's staff designated to assist with prenatal care, labor, childbirth, lactation, and postpartum care. The approval for the support person must be made by the administrator of the prison. Upon receipt of a written denial, the incarcerated pregnant person may choose the approved institution staff to act as the support person. (Pen. Code, § 3408, subd. (m).)

13) Requires CDCR to establish a community treatment program for incarcerated women who have one or more children under age six to participate. The program shall provide for the release of the mother and child or children to a public or private facility in the community and which will provide the best possible care for the mother and child. (Pen. Code, § 3411.)

14) Provides that every female inmate who is pregnant and who is not eligible for participation in the community treatment program shall have access to complete prenatal care, which shall include a balanced, nutritious diet approved by a doctor. (Pen. Code, § 3424.)

15) State that any amendments to existing CDCR regulation which may impact the visitation of incarcerated persons shall recognize the role of visitation in establishing and maintaining a meaningful connection with family and community. (Pen. Code, § 6400.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2160 stands as a landmark solution to California's reevaluation of the impact of incarceration on maternal and infant well-being. This bill introduces a rebuttable presumption against the detention and incarceration of pregnant and postpartum women, forging a path toward a more compassionate legal process."

2) **Incarcerated Pregnant Individuals at CDCR**: Recent estimates indicate that eight to ten percent of women who enter prison are pregnant. (Legal Services for Prisoners with Children, *Pregnant Women in California Prisons and Jails: A Guide for Prisoners and Legal Advocates,* <https://www.courts.ca.gov/documents/BTB_23_4K_5.pdf>.) State law provides incarcerated pregnant individuals a minimal level of pre-and-post partum services, such as

access to a social worker, regular prenatal care visits with a health care provider, and the right to have delivery take place in a hospital outside of the institution. (Pen. Code, §§ 3408, 4203.8.)

In addition, some incarcerated women can apply to the Community Prison Mother Program (CPMP) within CDCR's Female Offender Programs and Services. Pursuant to California Penal Code Sections 3410 through 3424, the CPMP provides an opportunity for pregnant individuals and mothers with one or more children, six years of age or younger, the opportunity to be housed with their children in a supervised facility away from the prison setting. The primary focus of the CPMP is to reunite mothers with their children and re-integrate them back into society as productive citizens by providing a safe, stable, wholesome and stimulating environment. CPMP also looks to establish stability in the parent-child relationship, provide the opportunity for mothers who are incarcerated individuals to bond with their children, and strengthen the family unit. (CDCR, *Community Participant Mother Program,* <https://www.cdcr.ca.gov/rehabilitation/pre-release-community-programs/community-prisoner-mother-program/>.)

This bill seeks to create The California Women's Care Act to help pregnant or postpartum defendants navigate the criminal justice system and to provide stays of execution.

3) **Argument in Support**: According to the *Young Women's Freedom Center*, "For more than 30 years, Young Women's Freedom Center has provided support, mentorship, training, employment, and advocacy to young women and trans youth of all genders in California who have grown up in poverty, experienced the legal and foster care systems, have had to survive living and working on the streets, and who have experienced significant violence in their lives.

"Pregnancy during incarceration remains perilously compromised, with systemic failures in providing timely and adequate healthcare to mothers and newborns. Compounding this, the unlawful and dangerous practice of shackling pregnant incarcerated people alongside harmful isolation in segregated housing could elevate the risks associated with pregnancy.

"Moreover, the immediate separation of newborns from their incarcerated mothers within 24 to 48 hours of birth, starkly contradicts research establishing the essential nature of an early bond between mother and child. These conditions underscore a pressing need for a humane reevaluation of incarceration's impact on maternal and infant well-being.

"In California, the care provided to incarcerated pregnant individuals across jails, prisons, and youth facilities is glaringly insufficient, both in terms of policy and implementation.

"This is underscored by a 2023 report from the California Department of Justice, which highlights a pervasive lack of adherence to reproductive healthcare standards within the state's correctional system. Particularly concerning is the impact of current practices on Black women, who face disproportionate challenges related to healthcare access, incarceration rates, and family separation. The prevailing inclination towards incarceration exacerbates these disparities and fails to address the root causes of recidivism. Diversion programs, stays of execution, and other forms of alternative sentencing present a more equitable and successful approach. Therefore, there is an urgent need for a rebuttable presumption against the incarceration of pregnant and postpartum individuals, aimed at

protecting the health and well-being of both mothers and their children." (citations omitted)

4) **Argument in Opposition**: *The California District Attorney's Association* argues, "Our laws already provide judges with ample discretion to consider a defendant's pregnancy or postpartum status and to design terms of release or penalties that serve both the defendant and her child as well as the ends of justice. For example, convicted defendants may be placed on probation or required to serve time in home detention. (See, Pen. Code § 1170, subd. (h).) In our experience judges use these alternatives routinely, especially in the exceedingly rare case of a non-dangerous pregnant or postpartum defendant.

"Given the rarity of persons for whom your bill would apply, and the existing array of suitable options which are already in use in California, your bill is unnecessary as a means of ensuring access to maternal and fetal health care."

5) **Related Legislation**:

a) AB 280 (Holden), would limit the use of segregated confinement and would prohibit placing individuals who are pregnant in segregated confinement. AB 280 is pending on the Assembly inactive file.

b) AB 1810 (Bryan), would require an incarcerated person to have ready access to materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, without having to request them. AB 1810 is pending in the Assembly Appropriations Committee.

c) AB 2527 (Bauer-Kahan), would require incarcerated pregnant persons to be provided with free and clean bottled water and daily high-quality and high caloric nutritional meals and would prohibit incarcerated pregnant persons from being placed in solitary confinement or restrictive housing units during their pregnancy or for 12 weeks postpartum. AB 2572 is pending in the Assembly Appropriations Committee.

d) AB 2740 (Waldron), would require incarcerated pregnant persons in state prison to be referred to a social worker to discuss options for parenting classes and other classes relevant to caring for newborns and options for placement and visiting the newborn. AB 2740 is pending in the Assembly Appropriations Committee.

6) **Prior Legislation**:

a) AB 583 (Wicks), of the 2023-2024 Legislative Session, would have established a pilot program to fund community-based doula groups, local public health departments, and other organizations to provide full-spectrum doula care to members of communities with high rates of negative birth outcomes who are not eligible for Medi-Cal and incarcerated people. AB 583 failed passage in Assembly Appropriations Committee.

b) AB 2632 (Holden), of the 2021-2022 Legislative Session, was substantially similar to AB 280. AB 2632 was vetoed.

c) AB 2321 (Jones-Sawyer), Chapter 781, Statutes of 2022, prohibits confinement of a minor in a locked single-person room or cell in a juvenile facility for a period lasting longer than one hour when room confinement is necessary for institutional operations.

d) AB 1225 (Waldron), of the 2021-2022 Legislative Session, would have prohibited an incarcerated woman from being placed in solitary confinement for medical observation. AB 1225 was held in the Assembly Appropriations Committee.

e) AB 2717 (Waldron), of the 2021-2022 Legislative Session, would have expanded the community prison mother treatment program within CDCR. AB 2717 was vetoed.

f) AB 732 (Bonta), Chapter 321, Statutes of 2020, requires specified medical treatment and services for county jail and state prison inmates who are pregnant, and requires that incarcerated persons be provided with materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system, upon request.

g) SB 1433 (Mitchell), Chapter 311, Statutes of 2016, requires that any person incarcerated in state prison who menstruates shall, upon request, have access to and be allowed to use materials necessary for personal hygiene with regard to their menstrual cycle and reproductive system.

h) AB 2530 (Atkins), Chapter 726, Statutes of 2012, prohibits the shackling of inmates and wards incarcerated by the CDCR who are known to be pregnant or in recovery after delivery, with leg irons, waist chains, or handcuffs behind the body.

a) AB 568 (Skinner), of the 2011-2012 Legislative Session, would have prohibited inmates and wards in the custody of the CDCR, CDCR's Division of Juvenile Facilities, and local correctional and juvenile facilities, who are known to be pregnant, from being shackled by the wrists, ankles, around the abdomen, or to another person, unless deemed necessary for safety, and if necessary for safety, be restrained in the least restrictive way possible. AB 568 was vetoed.

b) AB 478 (Lieber), Chapter 608, Statutes of 2005, set minimum standards for the medical care of incarcerated individuals who are pregnant during their incarceration.

c) SB 617 (Speier), of the 2005-2006 Legislative Session, would have required CDCR to house pregnant female prison inmates separately from other female inmates and be given appropriate health care and nutrition.

i) AB 1530 (McLeod), Chapter 297, Statutes of 2004, required CDCR to ensure that female prisoners have notice of and access to parenting programs and required CDCR to accept pregnant mothers into the program.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Reentry Project
ACLU California Action
Anti Recidivism Coalition
Aouon Orange County
Black Women for Wellness Action Project
Black Women Organized for Political Action (BWOPA)
California Attorneys for Criminal Justice
California Catholic Conference
California for Safety and Justice
California Public Defenders Association
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Dream.org
Ella Baker Center for Human Rights
Glide
Grip Training Institute
Initiate Justice (UNREG)
Initiate Justice Action
LA Defensa
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Los Angeles Dependency Lawyers, INC.
Los Angeles Regional Reentry Partnership (LARRP)
Prison Ftio
Public Counsel
Reproductive Freedom for All CA
Restoreher Us.america INC
Rubicon Programs
Smart Justice California, a Project of Tides Advocacy
Vera Institute of Justice
Young Women's Freedom Center

Oppose

California District Attorneys Association

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

Date of Hearing: April 23, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2178 (Ting) – As Amended March 21, 2024

SUMMARY: Requires the Secretary of the Department of Corrections and Rehabilitation (CDCR) to ensure that state prisons maintain average daily empty bed thresholds, as specified. Specifically, **this bill**:

1) Requires CDCR to ensure that state prisons do not maintain more empty beds in operation, on an average daily population basis, pursuant to specified thresholds.

2) Allows the number of empty beds to exceed the specified thresholds if necessary to address exigent circumstances.

3) Requires, no later than 30 days after the Secretary determines it will be necessary to exceed the specified thresholds, the Secretary to provide a written explanation of the circumstances and resulting need to maintain additional empty beds to the Joint Legislative Budget Committee.

4) Specifies the average daily empty bed thresholds for each fiscal year as follows:

   a) 11,300 for FY 2025-26;

   b) 9,900 for FY 2026-27;

   c) 8,400 for FY 2027-28;

   d) 5,900 for FY 2028-29; and,

   e) 2,500 for FY 2029-30 and thereafter.

5) Makes legislative findings and declarations.

EXISTING LAW:

1) Establishes CDCR and provides that CDCR is to be headed by a secretary. (Gov. Code, §12838.)

2) Vests the authority to supervise, manage and control state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein, in the Secretary of CDCR. (Pen. Code, § 5054.)

3) Provides that the Secretary of CDCR shall serve as the Chief Executive Officer of CDCR and shall assure compliance with the terms of any state plan, memorandums of understanding,

administrative order, interagency agreements, assurances, single state agency obligations, federal statute and regulations, and any other form of agreement or obligation that vital government activities rely upon. (Gov. Code, § 12838.7.)

4) Vests the authority to prescribe and amend rules and regulations for the administration of the prisons to the Secretary of CDCR. (Pen. Code, § 5058.)

5) Requires CDCR, pursuant to a federal court order, to reduce the population of state prisons to 137.5 percent of their design capacity by February 28, 2016. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE; *Brown v. Plata* (2011) 131 S.Ct. 1910, 1939.)

6) Provides that, in order to avoid the release of prisoners by federal court order, CDCR shall have the authority to award credits for good behavior and approved rehabilitative or educational achievement. (Cal. Const. art. I § 32.)

7) Requires CDCR to begin reducing private in-state male contract correctional facilities in a manner that maintains sufficient flexibility to comply with the federal court order to maintain the prison population at or below 137.5 percent of design capacity. (Pen. Code, § 2067.)

8) Prohibits CDCR from entering into a contract with a private, for-profit prison facility located in or outside of the state to provide housing for state prison inmates. (Pen. Code, § 5003.1.)

9) Requires CDCR to remove all incarcerated persons from, cease operations of, and close, the California Correctional Center located in the Town of Susanville, California, no later than June 30, 2023. (Pen. Code, § 5003.7.)

10) States the intent of the Legislature to close additional prisons in the state prison system. (Pen. Code, § 5033.)

11) States that criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety. (Pen. Code, § 17.5)

12) Provides that maintaining prison capacity beyond what is necessary for safety, operational flexibility, and to support rehabilitation is not cost effective and reducing excess capacity of the prison system would create savings that may be used for rehabilitative and other purposes. (Pen. Code, § 5033.)

13) Requires the Secretary of CDCR to provide written notification to any county impacted by the opening, closing, or changing of location of any reception center that accepts prisoners from county facilities, or by the opening, closing, or changing of the location of a parole office, as specified. (Pen. Code, § 5003.2.)

14) Provides that, to help inform decisions relating to prison closures, CDCR shall prepare and submit to the budget committees of both houses of the Legislature, a preliminary assessment on or before August 15, 2023, and a completed assessment on or before November 15, 2023, of systemwide capacity, including an estimate of CDCR's overall housing needs based on its

population projections. (Pen. Code, § 5033.)

15) Provides that specified provisions of the Public Resources Code do not apply to the closure of a prison or juvenile facility operated or leased by CDCR, or to any activity or approval necessary for, or incidental to, the closure of a prison or juvenile facility operated or leased CDCR. (Pen. Code, § 5032.)

16) States that CDCR has jurisdiction over all of the following prisons and institutions:

a) The San Quentin Rehabilitation Center;

b) The California State Prison at Folsom;

c) The California Institution for Men;

d) The California Institution for Women;

e) The Deuel Vocational Institution;

f) The California Medical Facility;

g) The Correctional Training Facility;

h) The California Men's Colony;

i) The California Correctional Institution at Tehachapi;

j) The California Rehabilitation Center;

k) The California Correctional Center at Susanville;

l) The Sierra Correctional Center;

m) The Richard J. Donovan Correctional Facility at Rock Mountain;

n) Mule Creek State Prison;

o) Northern California Women's Facility;

p) Pelican Bay State Prison;

q) Avenal State Prison;

r) California State Prison—King's County at Corcoran;

s) Chuckawalla Valley State Prison; and,

t) Other institutions and prison facilities that the Secretary of the CDCR is authorized by law to establish, including, but not limited to, prisons in the Counties of Imperial

Kern, Los Angeles, and Madera. (Pen. Code, § 5003.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Thousands of prison beds aren't in use right now. Beds are empty because the State's prison population has steadily declined over the years. According to CDCR, the number of people incarcerated in 2019 was nearly 130,000. Today, the population sits at roughly 93,000. In February, the LAO released a report estimating we could save roughly $1 billion annually if California closes five prisons. If we don't close the facilities, per the LAO report roughly one fifth of the prison capacity will go unused. Further, by closing prisons, the State could save up to roughly $2 billion over the next ten years on capital outlay projects. AB 2178 is a structured approach to addressing the state's empty prison bed issue, allowing for the State to use saved dollars for other critical needs such as education, housing, and other integral services, as opposed to sustaining empty beds."

2) **Court-Ordered Population Limit**: Prisons are subject to a federal court order related to prison overcrowding that limits the total number of people they can house to 137.5 percent of their collective design capacity. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

   After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016.

   CDCR's most recent monthly report on the prison population notes that the state prison population is at 90,331. CDCR's institutional design capacity is 75,530 as of March 13, 2024. Accordingly, CDCR is currently occupying 119.6 percent of design capacity.[1]

   Design capacity generally refers to the number of beds CDCR would operate if it housed only one person per cell and did not use bunk beds in dormitories. Currently, this means that the state is prohibited from housing more than a total of 103,853 people in state-owned prisons. ***It also means that when prisons or yards are activated or deactivated, this population limit is increased or decreased*** by 137.5 percent of the design capacity of the affected prison or yard.[2]

   As opponents of this bill point out, "Mandating the shuttering of even more capacity with AB

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[1] CDCR, Three Judge Court Update. Available at: <https://www.cdcr.ca.gov/3-judge-court-update>.
[2] LAO, *The 2024-25 Budget, California Department of Corrections and Rehabilitation*. Available at: <https://lao.ca.gov/Publications/Report/4852#Prison_Capacity_Reduction>.

2178 continues to force the remaining inmates into tighter quarters. Reducing the available design capacity to comply with this bill will only succeed in halting any progress made with the warehousing of inmates." There is also a need for space within prison walls for all programming, recreational, educational, and career technical programs, which could be reduced due to lack of available space.

3) **Prison Closures**: CDCR's prison population has declined by more than 78,000 since 2010 due to a range of measures, including state legislation, voter initiatives, federal court orders, and administrative actions by CDCR.[3] As outlined in the 2020-21 California Budget, CDCR and California Correctional Health Care Services (CCHCS) have closed two state prisons. The first prison, Deuel Vocational Institution (DVI), closed on September 30, 2021. The second, California Correctional Center (CCC), closed in 2023. In December 2022, CDCR announced the planned closure of Chuckawalla Valley State Prison (CVSP) by March 2025.[4] . In addition to the closure of CVSP additional facilities within other state prisons will be deactivated, including Folsom Women's Facility (deactivated January 2023), West Facility in California Men's Colony, Facility C in Pelican Bay State Prison, Facility A in California Rehabilitation Center, Facility D in California Institution for Men, and Facility D in California Correctional Institution.[5]

   After prisons close they enter a "warm shutdown" phase, meaning minimal staff will remain on-site to maintain basic facility operations so they do not deteriorate while the building is unused, such as electrical systems, heating/ventilation equipment, and the exterior grounds. Generally a warm shutdown lasts for a couple of years, at which time the property is transferred to the Department of General Services as surplus property and evaluated for other potential state uses.[6]

4) **LAO Recommendations**: The prison population has declined significantly in recent years and is expected to remain low through June 2028.[7] Given this decline, the Legislative Analyst's Office (LAO) recommended the legislature direct CDCR to deactivate prisons:

   > 5) We recommend that the Legislature direct CDCR to begin planning to reduce capacity by the end of 2028. Deactivating whole prisons would create greater savings than deactivating yards at various prisons. We estimate that deactivating five prisons, for example, could allow the state to save nearly $1 billion in ongoing General Fund costs. This would not only help reduce the state's structural budget shortfall in the years to come but would bring CDCR into compliance with PC 2067.
   >
   > We recommend that the Legislature direct CDCR to report by January 10, 2025 on (1) which specific prisons it plans to deactivate, (2) any specific concerns it identifies with these

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[3] *Ibid.*
[4] CDCR, *Reduction/Closure Information.* Available at: <https://www.cdcr.ca.gov/prison-closures/>.
[5] *Ibid.*
[6] *Ibid.*
[7] LAO, *The 2024-25 Budget, California Department of Corrections and Rehabilitation.* Available at: <https://lao.ca.gov/Publications/Report/4852#Prison_Capacity_Reduction>.

> deactivations, as well as (3) strategies for and estimated costs of mitigating those concerns.
>
> Deactivation of multiple prisons by 2028 would likely reduce CDCR's need for new correctional officers over the period when the prisons are being deactivated. To ensure savings associated with this reduced need are captured, we recommend that the Legislature direct CDCR to report by January 10, 2025 on (1) the projected impact of deactivations on its need for new correctional officers and (2) plans to scale back academy operations accordingly.
>
> We recommend the Legislature approve the proposed adjustments related to the previously approved deactivations, including the savings related to centralized services and the planned deactivation of CVSP by March 2025. This will help address the state's budget problem in the budget and future years. [8]

6) **Argument in Support**: According to *Californians for Safety and Justice*, "According to the Legislative Analyst's Office's (LAO) February report on the California Department of Corrections and Rehabilitation (CDCR), in 2019, the number of individuals incarcerated was nearly 130,000. As of January 2024, the total number of people incarcerated is roughly 93,000 people. The prison population has steadily declined and is expected to remain on a steady decline through June 2028. Per the LAO, by 2028, the State could have nearly 19,000 empty prison beds, equal to about one-fifth of the state's total prison capacity. The report additionally notes that if we close five prisons, we could save roughly $1 billion annually.

   "Investment should be focused on reallocation of dollars to communities to build a shared safety infrastructure, to support survivors of crime, and to make second chances real. [...]

   "AB 2178 helps save State dollars that are currently being used to sustain empty prison beds for opportunities to redirect spending to other critical needs such as education, housing, and other social services."

7) **Argument in Opposition**: According to *California Correctional Peace Officers Association* (CCPOA), "Instituting a bed vacancy cap across California's state prison system would further perpetuate several existing problems within our prisons. Even with the reported vacancies, the state's inmate population is still far beyond the current available design capacity of the system. Despite significant population reductions over the past decade, our current inmate population is at 116.3% of its design capacity. We have 93,116 inmates being housed in a prison system designed for only 78,994 inmates.

   Mandating the shuttering of even more capacity with AB 2178 continues to force the remaining inmates into tighter quarters. Reducing the available design capacity to comply with this bill will only succeed in halting any progress made with the warehousing of inmates. Higher densities of inmates pose substantial risks to CCPOA's membership, as well

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[8] *Ibid.*

other staff and inmates. The denser the population, the greater the risk of assaults and other acts of violence.

There are also constant battles of interests competing for space within prison walls. With no additional prison or facility closures, there is insufficient space for all the inmate programming. Even if fully funded, recreational, educational, and career technical programs are regularly sacrificed, primarily due to lack of available space. More closures will only worsen this issue and reduced programming opportunities also leads to an increased risk of violence for our members, staff, and inmates.

Additionally, the shift in the state's incarceration policies toward the "California Model" will continue to require additional space to accommodate the enhanced programming and environmental changes to daily life within prison. These conflicting efforts pose problems and likely limit the effectiveness of each other."

8) **Prior Legislation**:

a) SB 418 (Padilla), of the 2023-2024 Legislative Session, would have established the California Prison Redevelopment Commission to prepare a report with the commission's findings and recommendations that deliver a set of clear and credible recommendations for creative uses of closed prison facilities that will turn those sites into community assets. SB 418 was held under submission in Assembly Appropriations Committee.

b) AB 134, (Committee on Budget), Chapter 47, Statutes of 2023, stated the intent of the Legislature to close additional prisons in the state prison system.

c) SB 118 (Committee on Budget), Chapter 859, Statutes of 2020, requires the identification of a state owned and operated prison for closure by January 10, 2021 and second state owned and operated prison for closure by January 10, 2022 and requires the consideration of factors, including costs associated with operations and capital outlay needs, and operational flexibility.

d) Proposition 57 of 2016, allowed parole consideration for nonviolent felons and authorized rehabilitation credits in order to provide fairer sentencing and reduce state prison populations.

e) Proposition 47 of 2014, reclassified specified felony offenses in order to reduce prison overcrowding for nonviolent theft and drug offenses.

f) Proposition 36 of 2012, allowed resentencing of certain offenses in order to reduce prison sentences served under the three strikes law.

g) AB 109 (Committee on Budget), Chapter15, Statutes of 2011, the Public Safety Realignment Act, requires defendants convicted of specified felonies to serve their sentence in a local county jail rather than in state prison in order to reduce prison populations.

REGISTERED SUPPORT / OPPOSITION:

Support

A - Check Global
A New Path
ACLU California Action
Alianza
Bend the Arc: Jewish Action, California
California Coalition for Women Prisoners
California for Safety and Justice
California Immigrant Policy Center
California Public Defenders Association
Californians United for A Responsible Budget
Caravan 4 Justice
Communities United for Restorative Youth Justice (CURYJ)
Community Health Project LA
Correctional Association of New York
Courage California
Critical Resistance, Los Angeles
Critical Resistance, Oakland
Cure California
Decarcerate Sacramento
Dignity and Power Now
Dignity Not Detention Coalition
Drop Lwop Coalition
Ella Baker Center for Human Rights
Empowering Women Impacted by Incarceration
Essie Justice Group
Fair Chance Project
Flying Over Walls
Friends Committee on Legislation of California
Human Impact Partners
Immigrant Legal Resource Center
Indivisible CA Statestrong
Initiate Justice
Initiate Justice Action
Interfaith Movement for Human Integrity
Just Advocate, INC.
LA Defensa
Legal Services for Prisoners With Children
Milpa Collective
Riverside All of Us or None
Root & Rebound
Sacramento Homeless Union
San Francisco Public Defender
Showing Up for Racial Justice (SURJ) Bay Area
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
South Bay People Power
Southern California Library

The Place4grace
The Sentencing Project
Uncommon Law
White People 4 Black Lives
Young Women's Freedom Center

Oppose

California Correctional Peace Officers Association (CCPOA)

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

Date of Hearing: April 23, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

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

SUMMARY: Removes the discretion of the court to only order an ignition interlock device (IID) for a first time DUI offender when appropriate based on an individualized evaluation of the facts. Specifically, **this bill**: Requires the court to order, for a period of six months, installation of a functioning, certified IID on any vehicle that the person operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified IID.

EXISTING LAW:

1) Provides it is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle. (Veh. Code, § 23152 subds. (a), (f), & (g).)

2) Provides that it is unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in their blood to drive a vehicle. (Veh. Code, § 23512(b).)

3) States that a person who is convicted of a first DUI is subject to the following penalties when given probation:

   a) Possible 48 hours to 6 months in jail;

   b) A fine of $390 to $1,000 plus penalty assessments;

   c) Completion of a 3-month treatment program or a 9-month program if the BAC was .20% or more; and,

   d) Six month license suspension or 10 month suspension if 9-month program is ordered, and;

   e) States that a restricted license may be sought upon proof of enrollment or completion of program, proof of financial responsibility and payment of fees. However, the court may disallow the restricted license. (Veh. Code, §§ 13352 subd. (a)(1), 13352.1, 13352.4, 23538(a)(3).)

4) Authorizes the court to order a first-time DUI offender to install a functioning, certified ignition interlock device on any vehicle that the person operates and prohibit that person from operating a motor vehicle for up to six months unless that vehicle is equipped with a functioning, certified ignition interlock device. (Veh. Code, § 23575.3, subd. (h)(1)(A)(i).)

5) Requires the DMV, if the court orders the installation of an IID, to place the restriction on the driver's license record of the person that states the driver is restricted to driving only vehicles equipped with a functioning, certified ignition interlock device for the applicable term. (Veh. Code, § 23575.3, subd. (h)(1)(A)(i).)

6) Provides that a person convicted of a first DUI offense may apply to the DMV for a restricted license, as specified. (Veh. Code, § 23575.3, subd. (h)(1)(A)(ii) & (iii).)

7) Provides that a person convicted of a first-time DUI may apply for a restricted license for driving to and from work and to and from a driver-under-influence program if specified requirements are met, paying all applicable fees, submitting proof of insurance and proof of participation in a program. (Veh. Code, § 13352.4.)

8) States that a person convicted of a first DUI offense, if not given probation, faces punishment of up to six months in jail, 96 hours of which is required, a suspension of their driver's license contingent upon completion of a specified DUI program, and applicable fines and penalty assessments. (Veh. Code, §§ 13352 subd. (a)(1), 13352.1, 13352.4, 23536.)

9) States that if a first time DUI offender is found to have a blood concentration of .20% BAC or above, or refused to take a chemical test, the court shall refer the offender to participate in a 9-month licensed program. (Veh. Code, § 23538 subd. (b)(2).)

10) States that a first-time DUI offender sentenced to a 9-month program because of a high BAC or a refusal shall have their license suspended for 10 months. The license may not be reinstated until the person gives proof of insurance and proof of completion of the required program. (Veh. Code, § 13352.1.)

11) Provides that a person who is convicted of a first DUI with injury, if not given probation, faces punishment with 16 months, 2 or 3 years state prison, or 90 days to one year in county jail. Applicable fines and penalty assessments, a specified DUI program, and a one year driver's license suspension also apply. (Veh. Code, §§ 13352 subd. (a)(2), 23554.)

12) Provides that a person who is convicted of a first DUI with injury, if given probation, faces punishment of 5 days to one year in jail, applicable fines and penalty assessments, applicable DUI programs, and a one year driver's license suspension. (Veh. Code §§ 13352, subd. (a)(2), 23554.)

13) Creates a pilot project that requires a person convicted of a second or subsequent DUI or DUI causing injury to install and maintain an IID for 12 months for a second offense, 24 months for a third offense and for 36 months for a fourth or subsequent offense. Proof of installation of the IID, along with other requirements, permits a person to get a restricted license after a specified period of time. (Veh. Code, §§ 13352; 13352.4; 13353.3; 13353.6; & 13353.75.)

14) Provides that the existing IID pilot project shall sunset on January 1, 2026. (Veh. Code, §§ 13352; 13352.4; 13353.3; 13353.6; & 13353.75.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "DUI statistics offer a somber reminder of the dangers intoxicated drivers pose to our communities.

"Nearly 105,000 drivers in California were arrested for DUI in 2022. In its most recent report, the Office of Traffic Safety cited a 16.1% increase in alcohol-impaired crashes vs. previous years and that nearly 1 out of 3 traffic fatalities involved drivers above the .08 blood alcohol legal limit.

"Drivers suspended for highway safety reasons are three times more likely to be involved in a crash, due in part to the lack of effective accountability for their initial unsafe behavior.

"According to the CDC and Mothers Against Drunk Driving, up to 75% of convicted drunk drivers continue to drive on a suspended license.

"Current law in California requires Judges to order Ignition Interlock Devices (IIDs) only for all repeat (2nd or more) offenders. This is despite the fact that a DMV study from 2016 found that ignition interlocks are 74% more effective in reducing DUI recidivism than license suspension alone for first offenders during the first 6 months after conviction. In addition, 35 other states plus Washington D.C. require IIDs for all offenders.

"AB 2210 would align California's laws with these other states and require that first time DUI offenders be required to install an Ignition Interlock Device on their vehicle for a period of 6 months. This is an important step in our fight against drunk driving and will help keep our roads safe."

2) **Required Use of IIDs**: Existing law gives courts discretion to impose an IID upon a first time DUI offender. (Veh. Code, § 23575.3.) By allowing the courts discretion to impose an IID on first time offenders, it provides the court an opportunity to tailor the sentence in the appropriate manner to the facts of the crime, the person's history, and the person's current circumstances.

A judge may determine that an IID is not the most appropriate remedy when a person has been convicted of a first time DUI and there is no evidence of alcohol abuse or other history of poor judgment. A court might find that imposition of an IID is not the best remedy if the defendant is part of a household where a single car is shared between the defendant and other family members and requiring an IID on that car will burden family members that have engaged in no wrongdoing.

"Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case. Only the trial judge has the knowledge, ability and tools at hand to properly individualize the treatment of the offender." (*People v. Williams* (1970) 30 Cal.3d 470,482, citation and internal quotation marks omitted.)

A June 17, 2016 DMV report on the IID pilot project evaluated the project from two perspectives—an "intent to treat" evaluation and "the restricted license evaluation." "Intent to Treat" was the group of individuals subject to the requirement that they install and IID, regardless of whether they installed an IID and complied with the law. "The restricted

license evaluation" consisted of the individuals that were subject to the IID mandate and complied with the requirements of the program. DMV found that the IID-restricted license program had "mixed traffic safety impacts."

For first time DUI offenders in the pilot project, the study found in the Intent-to-Treat Evaluation:

- The AB 91 program is not associated with an increase or decrease in the odds or hazards of a subsequent DUI conviction over the 12-month time period.
- The AB 91 program is not associated with a reduction or increase in the odds or hazards of a subsequent DUI incident over the 12-month time period.

First offenders in non-pilot counties have a 6.1% lower hazards or odds of a subsequent crash relative to those in the pilot counties over the 12-month time period. (California DMV. *Specific Deterrent Evaluation of the Ignition Interlock Pilot Program in California.* p. xi, June 17, 2016" https://www.dmv.ca.gov/portal/wcm/connect/b1eba1e5-9155-40ba-9a74-0e6e19a0d1bc/S5-251.pdf?MOD=AJPERES

For first offenders in the Restricted License Evaluation portion the study found that for people with an IID, while there was an initial lower rate DUI in the first 182 days following their conviction, that lower rate diminished over time. In addition, there was a higher rate of hazards or subsequent crashes with those with the IID and that trend increased over the 12 month period. (*Id.* p. xii)

The study also found that:

> The study findings indicate a negative association between having an IID-restricted license and subsequent crash involvement for all DUI offender groups. For the first and second DUI offenders, higher crash risk among those with the AB 91 IID-restricted license increases over time relative to DUI offenders with a suspended license. Therefore, although the AB 91 IID program is associated with a significant reduction in DUI recidivism among all DUI offender groups, the program is also associated with an increase in crash involvement among all DUI offenders that are subject to the program. This is particularly problematic since a substantial proportion of these crashes are those involving injuries and/or fatalities (of the overall crash involvement measured in the study, the proportion of fatal/injury crashes ranged from mid-30% to low-40% for different DUI offender groups—which is consistent with what prior California evaluations have reported for these offender groups). (*Id.* p. xv)

This bill would require that an IID be installed for a period of 12 months for those diverted. The question posed by this requirement is whether an IID would be necessary in all cases given the findings by the DMV.

1) **Existing IID pilot project:** In 2009, AB 91 (Feuer) created an IID pilot project in four counties which mandated the use of an IID for all DUI offenders. DMV issued a report in June 2016 on the specific deterrent of the pilot project.

The rationale for a pilot project was to see what impact a mandatory IID program has on recidivism in California. While the impact of IID has been studied elsewhere, with mixed results, the comparisons are not perfect because while some of the other states began mandating IID at the same time they strengthened other sanctions, California has had a complex group of sanctions including high fines, jail time, licensing sanctions, mandatory drinker-driver treatment programs and optional IID in place since the mid-1980's with sanctions being evaluated, changed and strengthened on an ongoing basis since. The thought was that with a pilot project, DMV can evaluate how best a mandatory IID system should work in California. By evaluating four counties, the counties without the mandatory programs act like a control group for the researchers at DMV. Evaluating how the DUI sanctions work is something DMV researchers have been doing with great success since 1990. DMV's reports have helped inform the Legislature on where changes needed to be made and have helped reduce recidivism in California.

SB 1046 (Hill) deleted the four county pilot project when it created a statewide IID pilot project for **repeat** offender DUI.

2) **DUI Sanctions:** Most people convicted of a first DUI are given probation. As part of probation, as well as a condition for getting relicensed a person must attend a licensed treatment program, in addition to fines, fees, and license sanctions. The fine for a first-time DUI is between $390 and $1,000. (Veh. Code, § 23536.) However, with additional fees and assessments, the cost of a first-time DUI is almost always considerably higher than the base fine. For example, a base fine of $390 would be subject to the following additional fees and assessments:

    Penal Code section 1464 state penalty on fines: $390 ($10 for every $10)
    Penal Code section 1465.7 state surcharge: $78 (20% surcharge)
    Penal Code section 1465.8 court operation assessment: $40 ($40 fee per criminal offense)
    Government Code section 70372 court construction penalty: $195 ($5 for every $10)
    Government Code section 70373 assessment: $35 ($35 for each infraction)
    Government Code section 76000 penalty: $273 ($7 for every $10)
    Government Code section 76000.5 EMS penalty: $78 ($2 for every $10)
    Government Code section 76104.6 DNA fund penalty: $39 ($1 for every $10)
    Government Code section 76104.7 additional DNA fund penalty: $156 ($4 for every $10)

As such, after additional fees and assessments, the minimum fine for a first-time DUI could end up costing $1,674. This amount does not include the cost of the required DUI program, lasting either three or nine months depending on the person's blood alcohol level. (Veh. Code, § 23538, subd. (b).) A 3 months DUI program generally costs between $500 and $800; a 9-month program can cost upwards of $1,500. Most programs charge for missed activities, transfers, and late payments. (https://www.dhcs.ca.gov/individuals/Pages/DUI-Program-Fees.aspx) A DUI program participant may receive a program fee reduction after a financial assessment. (*Ibid.*) For a restricted license with an IID, the DMV also charges a $55 reissue fee, a $15 restriction fee, and an additional IID restriction fee. (https://www.dmv.ca.gov/portal/file/1st-offender-alcohol-non-injury-pdf)

In addition to the base fine and the cost the DUI program, this bill would require the installation of an ignition interlock device for a first time DUI conviction. Existing law provides a fee scale for the payment of "the costs of the certified ignition interlock device" that limits "program costs" based on a person's income. (Veh. Code, § 23575.3, subd. (k)(1).) In practice, these costs likely exclude the cost of installing an IID and ongoing costs for calibration and maintenance of the device.

3) **Argument in Support**: According to *National Transportation Safety Board*, "Progress addressing alcohol-impaired driving has stalled. In fact, the problem has gotten worse. In 2022, there were 13,542 alcohol-impaired driving fatalities in the United States—only a .7-percent decrease from 2021, which saw the highest number of alcohol-impaired driving fatalities since 2008. The state of California alone lost 1,479 lives to alcohol-impaired driving in 2022, accounting for 33 percent of all motor vehicle fatalities.

"In our 2013 report, Reaching Zero-Actions to Eliminate Alcohol-Impaired Driving, we reiterated our recommendation that ignition interlock devices (IIDs) be installed in the vehicles of all drivers convicted of driving while intoxicated (DWI). This was part of a comprehensive set of targeted interventions and supporting research that included stronger laws, swifter enforcement, and expanded use of technology.

"Evaluation of ignition interlock programs over the last two decades has found that IIDs effectively reduce recidivism among DUI/DWI offenders, sometimes by as much as 62 to 75 percent. Additionally, a study released by the Insurance Institute for Highway Safety found that the number of impaired drivers involved in fatal crashes decreased by 16 percent for states that require IIDs for all DUI offenders comparted to states with no interlock law.

"Progress toward eliminating impaired-driving fatalities has unnecessarily stagnated. More can—and should—be done to prevent these tragedies. The NTSB believes that the only acceptable number of deaths on our roads is zero, and it has been our charge since our founding to determine how to eliminate transportation fatalities. Deaths due to impaired driving are 100-percent preventable, and mandating the use of IIDs for all DUI offenders will prevent impaired driving and save lives on California roads."

4) **Argument in Opposition**: According to *Root & Rebound*, "The financial consequences of a DUI conviction are considerable and are disproportionately burdensome for low-income drivers. Furthermore, DUI convictions and the consequences that follow are unequally levied on Black and Brown drivers. In addition to the standard penalty fines, drivers also face the – often much more burdensome - costs of DUI class fees, high-cost insurance premiums, DMV licensing fees, and other charges. This bill would add the cost of an ignition interlock device to this list for all first-time convictions. For low-income drivers who are *trying* to comply with their legal obligations, the cumulative financial costs often prevent them from meeting these obligations and leave them with an indefinitely suspended license. Because of both the racial disparities in convictions as well as the racial wealth gap, the financial costs result in the form of racialized wealth extraction. Importantly, the public safety impact of mandatory IIDs is questionable. A recent study by the DMV on the impact of AB 91 (Fauer) that created a pilot for mandatory installation of IIDs found that 'mandatory ignition interlock installation did not reduce county-wide DUI recidivism below that of comparison counties.'

"Without a license, individuals face decreased employment opportunities and obstacles in caring for family members or getting to medical appointments. Individuals who have no other choice but to drive face additional consequences of driving on a suspended license - *not* because they want to violate the law, but simply because they cannot afford to comply. The inequities of the mandate will also disproportionately impact low-income and marginalized communities of color, who are overrepresented in traffic stops. Without addressing the financial and logistical barriers, the result will be two different systems: one for higher income drivers who can easily pay to comply with the heightened consequences and one of lower income drivers who cannot afford to pay them and therefore will have longer suspensions and bear collateral economic and criminal consequences.

"Even though current law provides a sliding scale for ignition interlock devices it is inadequate. The scale does not provide significant enough reductions, especially given the cumulative costs a driver convicted of a DUI is required to pay. Current law does not make clear that all costs of the device are subject to the fee reduction, including the regular maintenance and calibration cost charged by installers. Current law also does not require adequate notification of the right to request a reduced fee for an ignition interlock device. Individuals often report not knowing that a sliding scale was available that could make the device affordable or how to request it.

"Imposing additional consequences without accounting for the financial and logistical barriers of these consequences will undermine the public safety goals of the bill, cause economic hardship, and result in low-income drivers shouldering a different and more severe punishment than individuals who can afford the device in addition to the other fines and fees imposed for a DUI."

5) **Related Legislation**: AB 2823 (Joe Patterson), would require the period of probation for a person granted probation for vehicular manslaughter while intoxicated to be at least three years. AB 2823 is pending hearing in this committee.

6) **Prior Legislation**:

   a) SB 1021 (Bradford), of the 2021-2022 Legislative Session, would have permitted a diversion program including an IID requirement. This bill was not heard in Assembly Public Safety.

   b) SB 421 (Bradford) of the 2021-2022 legislative session, would have authorized diversion for specified DUI offenses. SB 421 was held in the Senate Appropriations Committee.

   c) AB 282 (Lackey) of the 2021-2022 legislative session, would have explicitly prohibited diversion for specified DUI offenses. AB 282 was held in the Senate Public Safety Committee.

   d) AB 3234 (Ting) Chapter 334, Statutes of 2020, created diversion for most misdemeanor offenses, as specified.

   e) SB 545 (Hill) of the 2019-2020 legislative session, would have required IIDs to be installed for a period of six months for first time convicted DUI offenders. The hearing SB 545 in the Assembly Public Safety Committee was cancelled at the request of the

author.

f) SB 1046 (Hill), Chapter 783, Statutes of 2016, extended the IID pilot program in certain counties and required installation of IIDs for specified DUI offenses.

REGISTERED SUPPORT / OPPOSITION:

Support

AAA Northern California, Nevada & Utah
Advocates for Highway and Auto Safety
Automobile Club of Southern California
California Association of Highway Patrolmen
California Police Chiefs Association
Foundation for Advancing Alcohol Responsibility (RESPONSIBILITY.ORG)
Merced County District Attorney's Office
Mothers Against Drunk Driving
National Transportation Safety Board
Peace Officers Research Association of California (PORAC)
Sacramento County District Attorney's Office
Safe: Safety and Advocacy for Empowerment
Streets for All

Opposition

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Debt Free Justice California
Legal Services for Prisoners With Children
San Francisco Public Defender
Root & Rebound
Western Center on Law & Poverty, Inc.

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

Date of Hearing: April 23, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2295 (Addis) – As Introduced February 12, 2024

As Proposed to be Amended in Committee

SUMMARY: Eliminates the statute of limitations for specified sex crimes where the victim was a minor at the time of the offense. Specifically, **this bill**:

1) Provides that prosecution for the following specified sex crimes may be commenced on or after the victim's 40th birthday if committed on or after January 1, 2025, or for which the statute of limitations that was in effect prior to January 1, 2025, has not run as of January 1, 2025.

2) Provides that the above applies only if all of the following occur:

   a) The limitation period, as specified, has expired;

   b) The criminal complaint is filed within one year of the date of a report to a California law enforcement agency by a person;

   c) The crime involved substantial sexual conduct, as specified; and,

   d) There is independent evidence that clearly and convincingly corroborates the victim's allegation.

3) Provides that the prosecuting agency may nevertheless provide victim assistance to the person, including support with pursing restorative justice.

EXISTING LAW:

1) Provides that prosecution for a felony offense that requires registration as a sex offender must comment within 10 years of the commission of the offense, except where the victim was under 18-years-old at the time of the offense, in which case the prosecution may be commenced at any time prior to the victim's 40th birthday. (Pen. Code, § 801.1, subd. (a) & (b).)

2) Provides that the above only applies to crimes that were committed on or after January 1, 2015, or for which the statute of limitations that was in effect prior to January 1, 2015, has not run as of January 1, 2015. (Pen. Code, § 801.1, subd. (a)(2).)

3) Provides that prosecution for the following offenses, where the victim was a minor at the time of the offense, may commence at any time:

a) Rape, as specified (Pen. Code, § 261);

b) Sodomy, as specified (Pen. Code, § 286);

c) Oral copulation, as specified (Pen. Code, § 287);

d) Lewd acts upon a child involving "substantial sexual conduct," as specified (Pen. Code, § 288.);

e) Continuous sexual abuse of a child (Pen. Code, § 288.5); or,

f) Sexual penetration, as specified (Pen. Code, § 289).

4) Provides that a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that the person, while under 18 years of age, was the victim of specified sex crimes if all of the following occur:

a) The limitation period, as specified, has expired;

b) The crime involved substantial sexual conduct, excluding masturbation that is not mutual; and,

c) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation. (Pen. Code, § 803, subd. (f)(1) & (2).)

5) Provides that evidence shall not be used to corroborate the victim's allegation if that evidence would otherwise be inadmissible during trial. Independent evidence excludes the opinions of mental health professionals. (Pen. Code, § 803, subd. (f)(3).)

6) Provides that a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

a) The crime is one that requires registration as a sex offender; and,

b) The offense was committed before January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense. (Pen. Code, § 803, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "For many survivors, disclosing abuse is a long and painful process. Numerous factors prevent survivors, especially those abused as children, from reporting their abuse including: feelings of shame, lacking trusted adults and opportunities to disclose, and fear of additional victimization or not being believed. Even when survivors become adults, various societal, institutional, and psychological barriers impede their ability to report their abuser. Many survivors miss the deadline to obtain justice because trauma affects them in a way that causes them to delay disclosure of their abuse until they are older. It is an unacceptable tragedy that victims of abuse are unable to hold their abuser accountable simply because the law arbitrarily says their time to report has run out.

   "AB 2295 ends California's cruel and arbitrary criminal statute of limitations for minors who have experienced sexual abuse, removing barriers that prevent survivors from seeking justice. AB 2295 will codify a survivor's right to justice, regardless of their age or how long it took them to come forward. In doing so, California will stand with all survivors, at all ages."

2) **Statute of Limitations Generally**: The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Pen. Code, § 804.)

   The statute of limitations serves several important purposes in a criminal prosecution, including staleness, prompt investigation, and repose. The statute of limitations protects persons accused of crime from having to face charges based on evidence that may be unreliable, and from losing access to the evidentiary means to defend against the accusation. With the passage of time, memory fades, witnesses die or otherwise become unavailable, and physical evidence becomes unobtainable or contaminated.

   The statute of limitations also imposes a priority among crimes for investigation and prosecution. The deadline serves to motivate the police and to ensure against bureaucratic delays in investigating crimes.

   Additionally, the statute of limitations reflects society's lack of desire to prosecute crimes committed in the distant past. The interest in repose represents a societal evaluation of the time after which it is neither profitable nor desirable to commence a prosecution.

   These principals are reflected in court decisions. The United States Supreme Court has stated that statutes of limitations are the primary guarantee against bringing overly stale criminal charges. (*United States v. Ewell* (1966) 383 U.S. 116, 122.) There is a measure of predictability provided by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced. Such laws reflect legislative assessments of relative interests of the state and the defendant in administering and receiving justice.

   In *Stogner v. California* (2003) 539 U.S. 607, the United States Supreme Court underscored the basis for statutes of limitations: "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns – for example, concern that the passage of time has eroded memories or made witnesses or other evidence

unavailable." (*Id.* at p. 615.)

The amount of time a prosecuting agency may charge an alleged defendant varies based on the crime. In general, the limitations period is related to the seriousness of the offense as reflected in the length of punishment established by the Legislature. (*People v. Turner* (2005) 134 Cal.App.4th 1591, 1594-1595; see, e.g., Pen. Code, §§ 799-805.) After a comprehensive review of criminal statutes of limitation in 1984, the Law Revision Commission recommended that the length of a "limitations statute should generally be based on the seriousness of the crime." (17 Cal. Law Revision Com. Rep. (1984) p. 313.) The Legislature overhauled the entire statutory scheme with this recommendation in mind. In *People v. Turner*, *supra*, 134 Cal.App.4th 1591, the court summarized the recommendations of the Law Revision Commission:

> The use of seriousness of the crime as the primary factor in determining the length of the applicable statute of limitations was designed to strike the right balance between the societal interest in pursuing and punishing those who commit serious crimes, and the importance of barring stale claims. It also served the procedural need to provid[e] predictability and promote uniformity of treatment for perpetrators and victims of all serious crimes. The commission suggested that the seriousness of an offense could easily be determined in the first instance by the classification of the crime as a felony rather than a misdemeanor. Within the class of felonies, a long term of imprisonment is a determination that it is one of the more serious felonies; and imposition of the death penalty or life in prison is a determination that society views the crime as the most serious. (*People v. Turner*, *supra*, 134 Cal.App.4th at pp. 1594-1595, citations omitted.)

The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. (*People v. Morris* (1988) 46 Cal.3d 1, 13.) The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The prosecution bears the burden of proving, by a preponderance of the evidence, that a charged offense was committed within the applicable period of limitations. (*People v. Lopez* (1997) 52 Cal.App.4th 233, 248.) The court is required to construe application of the statute of limitations strictly in favor of the defendants. (*People v. Zamora* (1976) 18 Cal.3d 538, 574; *People v. Lee* (2000) 82 Cal.App.4th 1352, 1357-1358.)

For most types of offenses, the statute of limitations begins to run on the day that the offense was actually committed. However, the statute of limitations period does not commence as to continuing offenses until the entire course of conduct is complete. (*People v. Zamora*, *supra*, 18 Cal.3d 538.) And in cases involving crimes such as fraud or embezzlement the statute of limitations may begin to run at the point that the offense is discovered. (See e.g. Pen. Code, § 803, subd. (c).)

This bill would extend the statute of limitations for specified sex crimes alleged to have been committed when the victim was under 18-years-old.

3) **Statute of Limitations for Sex Crimes**: The prosecution for a felony sex offense subject to mandatory sex offender registration must be commenced within 10 years after the commission of the offense. (Pen. Code, § 801.1, subd. (b).) Additionally, the statute of limitations for the sex offenses implicated in this bill (rape, sodomy, lewd and lascivious acts, continuous sexual abuse of a child, oral copulation, or forcible sexual penetration) is until the victim's 40th birthday, if the crime was committed when the victim was under 18. (Pen. Code, § 801.1, subd. (a).)

   In addition to these two statutes of limitations, there are two tolling provisions for prosecution of specified sex offenses. (See Pen. Code, § 803.)

   First, a prosecution can be commenced within one year of the date a person of any age reports to California law enforcement that he or she, while under the age of 18 years, was a victim of a sex crime, as specified, if all of the following occur:

   (1) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired;

   (2) The crime involved substantial sexual conduct, as specified, excluding masturbation that is not mutual; and,

   (3) There is independent evidence that corroborates the victim's allegation. (Pen. Code, § 803, subd. (f).)

   Alternatively, a prosecution can be commenced within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

   (1) The crime is one that is subject to mandatory sex offender registration; and

   (2) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense. (Pen. Code, § 803, subd. (g).)

   Finally, the statute of limitations can be extended indefinitely if the sex crime is charged under an alternate sentencing scheme or penalty provision. So, if a sex crime is prosecuted under the One Strike Law, it is not subject to a statute of limitations but can be commenced at any time. (See *People v. Hale* (2012) 204 Cal.App.4th 961 [for a sex crime punishable by life there is no limitation].)

4) **Ex Post Facto:** In *Stogner v. California, supra*, 539 U.S. 607 the Supreme Court ruled that a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution. (*Id.* at pp. 610-611, 616.) However, extension of an existing statute of limitations is not ex post facto as long as the prior limitations period has not expired. (*Id.* at pp. 618-619.)

   This bill states that the provisions eliminating the statute of limitations for the specified

crimes will apply either only to crimes committed after its effective date, or to crimes for which a statute of limitations that was in effect before its effective date has not run as of that date. In other words, the bill extends current limitations periods, but does not try to revive time-barred cases. Therefore, there do not appear to be any ex post facto concerns raised by this bill.

5) **Argument in Support**: According to *Survivors Network of Those Abused by Priests*, "We are writing to you today to express our support for Assembly Bill 2295, which would eliminate the criminal statute of limitations for all child sexual assault crimes in California going forward. SNAP is grateful to Assemblymember Dawn Addis for this effort to make California safer for our children.

"Statistics tell us that one in four girls and one in five boys are sexually abused before they reach the age of 18. Due to the trauma of such assaults, the young victims suffer the effects for the rest of their lives. Yet, delayed disclosure is common. Over half of survivors who come forward first disclose at age 50 or older. 30% never come forward.

"In addition, the legal system is bent in favor of the perpetrators, not the victims. When survivors finally report these crime, the courts often turn them away due to an arbitrary statute of limitations (SOL). Murder has no statute of limitations, and child sex abuse is similarly a heinous crime. Many victims refer to it as 'soul murder.'

"As we noted above, the impact of sexual assault as a child continues to traumatize the survivors throughout their lives. The inability to hold perpetrators accountable further compounds the pain of the victims. Many acquire alcohol or drug addictions, and others commit suicide.

"Child abusers are familiar with the SOL laws and find comfort in knowing that most victims are not likely to report their crimes until well after the SOL has passed. The short SOL also renders useless other child protection measures such sex offender registries. If those who sexually assault children are never convicted in a criminal case, they remain anonymous to parents, youth organizations or communities.

"AB 2295 would eliminate the arbitrarily SOLs for criminal child sex abuse cases going forward. This will allow child victims to seek justice, to help get these perpetrators off the streets, and thereby to prevent more child sexual assaults. It will also create a public record of these offenders so parents, churches, youth organizations, and communities can take the appropriate steps to prevent these criminals from accessing children."

6) **Argument in Opposition**: According to *Uncommon Law*, "AB 2295 would remove that statute of limitation and allow the prosecution to start at any time regardless of how far removed the commencement date of the prosecution is from the date of offense. Existing law provides a statute of limitations which is much longer than normal to account for the fact that victims of sex crimes that occur when the victim is a child might not come to light until those victims are adults and are in a position to contact authorities regarding the crimes. To account for that fact, existing law allows prosecutions to be brought in these cases up until the victim turns 40. This is already a substantial departure from the statute of limitations in other offenses and provides more than enough time to commence a prosecution.

"Maintaining statutes of limitations is important because evidence deteriorates over time and erroneous decisions are more likely to occur if the gap in time between underlying events and trial is lengthy. Statutes of limitation preserve the integrity of the justice system by precluding prosecution when evidence has been lost, memories have faded, and witnesses have disappeared. This helps ensure that innocent people are not convicted. By removing the statute of limitation completely, AB 2295 eliminates necessary guardrails for justice and greatly increases the risks of wrongful prosecution and conviction."

7) **Related Legislation**:

a) AB 2878 (Gabriel), would extend the statute of limitations for offenses involving Pandemic Unemployment Assistance fraud that occurred between March 19, 2020 and December 31, 2022, from three or four years, to 12 years.

b) AB 2984 (Gipson), would eliminate the statute of limitations for fleeing the scene of an accident that caused death or permanent, serious injury. AB 2984 will be heard today in this committee.

c) SB 690 (Rubio), would extends the statute of limitations for the crime of domestic violence from 5 years to 15 years. SB 690 is pending in Assembly Appropriations Committee.

d) SB 1343 (Min), would toll the statute of limitation for specified offenses, including the willful or negligent cutting, destroying, mutilating, or removing of plant material growing upon state or county highway rights-of-way or the unlawful importation, transportation, possession, or release into this state of specified wild animals, until the offenses have been discovered or could have reasonably been discovered. SB 1343 is pending in Senate Public Safety Committee.

8) **Prior Legislation**:

a) AB 452 (Addis), Chapter 655, Statutes of 2023, eliminated the statute of limitations for civil actions for damages as a result of childhood sexual assault.

b) SB 558 (Rubio), Chapter 877, Statutes of 2023, expanded the definition of childhood sexual assault to include specified violations of Penal Code Sections 311.1 and 311.2, which provide criminal penalties for the sale, production, distribution, or exhibition of obscene matter depicting children engaging in or simulating sexual conduct.

c) AB 1547 (McKinnor), of the 2023-2024 Legislative Session, would have revived, for one year, claims seeking to recover damages arising out of a sexual assault by an employee of a juvenile probation camp or detention facility owned and operated by a county or of a youth facility owned and operated by the Division of Juvenile Justice, that would otherwise be barred because the statute of limitations has expired. AB 1547 on suspense in the Assembly Appropriations Committee.

d) AB 2959 (Committee on Judiciary), Chapter 444, Statutes of 2022, provided that claims for childhood sexual assault are not required to be presented to any governmental entity

prior to the commencement of an action.

e) AB 1455 (Wicks), Chapter 595, Statutes of 2021, amended the statute of limitations for seeking damages arising out of a sexual assault committed by a law enforcement officer, eliminated the claim presentation requirements for such claims, and revived such claims that would otherwise be barred by the existing statute of limitations.

f) AB 218 (Gonzalez), Chapter 861, Statutes of 2019, extended the time for commencement of actions for childhood sexual assault to 40 years of age or five years from discovery of the injury; provided enhanced damages for a cover up of the assault; and provided a three-year window in which expired claims are revived.

g) AB 1510 (Reyes), Chapter 462, Statutes 2019, revived otherwise time-barred claims for damages arising from sexual assault and other inappropriate conduct of a sexual nature.

h) AB 3120 (Gonzalez), of the 2018-2019 Legislative Session, was nearly identical to AB 218. It passed the Legislature, but was vetoed by the Governor.

i) SB 1053 (Beall), Chapter 153, Statutes of 2018, provided that the procedures authorized to be prescribed by Section 935 relating to claims for money or damages against local public entities do not apply to claims of childhood sexual abuse made as described in Section 905(m).

j) SB 813 (Leyva), Chapter 813, Statutes of 2016, eliminated any statute of limitation for specified sex offenses.

k) SB 1779 (Burton), Chapter 149, Statutes of 2002, provided that an action for recovery of damages suffered as a result of childhood sexual abuse may be commenced on or after the plaintiff's 26th birthday if the third party defendant person or entity knew, had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps and implement reasonable safeguards to avoid future acts of unlawful sexual conduct.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association
California State Sheriffs' Association
Child USA
Consumer Attorneys of California
Peace Officers Research Association of California (PORAC)
Survivors Network of Those Abused by Priests (SNAP)

9 Private Individuals

Opposition

California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Fair Chance Project
Felony Murder Elimination Project
Friends Committee on Legislation of California
Legal Services for Prisoners With Children
San Francisco Public Defender
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
Team Justice
Uncommon Law
Young Women's Freedom Center

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

Amended Mock-up for 2023-2024 AB-2295 (Addis (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 801.1 of the Penal Code is amended to read:

801.1. (a) (1) Notwithstanding any other limitation of time described in this chapter, prosecution for a felony offense described in Section 261, 286, 287, 288, 288.5, or 289, or former Section 288a, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object, that is alleged to have been committed when the victim was under 18 years of age, may be commenced any time prior to the victim's 40th birthday.

(2) Paragraph (1) shall only apply to crimes that were committed on or after January 1, 2015, or for which the statute of limitations that was in effect prior to January 1, 2015, has not run as of January 1, 2015.

(3) Notwithstanding paragraphs (1) and (2), prosecution for crimes described in paragraph (1) may also be commenced on or after the victim's 40th birthday for crimes that were committed on or after January 1, 2025, or for which the statute of limitations that was in effect prior to January 1, 2025, has not run as of January 1, 2025.

(i)This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800 or 801, whichever is later, has expired.

(B) The criminal complaint is filed within one year of the date of a report to a California law enforcement agency by a person

(C) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066.

(D) There is independent evidence that clearly and convincingly corroborates the victim's allegation.

(ii) If the requirements of subdivision (i) are not met, the prosecuting agency may nevertheless provide victim assistance to the person, including support with pursing restorative justice.

(b) Notwithstanding any other limitation of time described in this chapter, if either subdivision (a) of this section or subdivision (b) of Section 799 does not apply, prosecution for a felony offense described in subdivision (c) of Section 290 shall be commenced within 10 years after commission of the offense.

Date of Hearing: April 23, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2296 (Villapudua) – As Introduced February 12, 2024

SUMMARY: Adds "concentrated cannabis" to the existing sentence enhancement applicable when a person is convicted of manufacturing a controlled substance and any child under 16 is present, punishable by an additional and consecutive term of two years in state prison, or an additional term of five years in the state prison if any child under 16 suffers great bodily injury.

EXISTING LAW:

1) Makes it a crime to manufacture any controlled substance, as specified. This offense if a felony, punishable by imprisonment in the county jail for a period of three, five, or seven years and by a fine not exceeding $50,000. (Health & Safe. Code, § 11379.6, subd. (a).)

2) Provides that concentrated cannabis is a controlled substance. (Health & Safe. Code, § 11007.)

3) Provides that using a volatile solvent to chemically extract concentrated cannabis within 300 feet of an occupied residence or any structure where another person was present at the time the offense was committed may be considered a factor in aggravation by the sentencing court. (Health & Safe. Code, § 11379.6, subd. (d).)

4) Provides that a person convicted of, or convicted of an attempt to, manufacture methamphetamine or phencyclidine (PCP), when the crime occurs in a structure where any child under 16 present, shall, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of two years in the state prison. (Health & Safe. Code, § 11379.7, subd. (a).)

5) Provides that a person convicted of, or convicted of an attempt to, manufacture methamphetamine or PCP, when the crime causes a child under 16 to suffer great bodily injury, shall, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of five years in the state prison. (Health & Safe. Code, § 11379.7, subd. (b).)

6) Defines "structure" as a house, apartment building, shop, warehouse, barn, building, vessel, railroad car, cargo container, motor vehicle, housecar, trailer, trailer coach, camper, mine, floating home, or other enclosed structure capable of holding a child and manufacturing equipment. (Health & Safe. Code, § 11379.7, subd. (c).)

7) Defines "great bodily injury" has the same meaning as defined in of the Penal Code. (Health & Safe. Code, § 11379.7, subd. (d); Pen. Code, § 12022.7.)

8) Defines "Concentrated cannabis" as the separated resin, whether crude or purified, obtained from cannabis. (Health & Safe. Code, § 11006.5.)

9) Provides that it is lawful for persons 21 or older to possess, process, transport, purchase, obtain or give away to persons 21 or older not more than eight grams of cannabis in the form of concentrated cannabis. (Health & Safe. Code, § 1136.21.)

10) Makes it a crime to possess more than eight grams of concentrated cannabis. This offense is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months or by a $500 fine, or by both. (Health & Safe. Code, § 11357.)

11) Makes it a crime for any person over 18 to import, offer to import, or attempt to import into this state or transport for sale, offer to transport for sale, or attempt to transport for sale out of this state more than four grams of concentrated cannabis. This offense is a felony, punishable by imprisonment in county jail for a period of two, three or four years. (Health & Safe. Code, § 11360, subd. (a)(3)(D).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In February 2022, a father illicitly manufacturing concentrated cannabis, or "butane honey oil," in a Stockton hotel room with his three-month-old baby and the baby's mother present suffered severe burns when the lab exploded, as is wont to occur with such volatile manufacturing operations. The mother threw herself over the baby, thus absorbing the injuries that otherwise likely would have occurred to the child.

   "Because Health and Safety Code section 11379.7 only applies to illicit methamphetamine and PCP labs, prosecutors were unable to enhance the manufacturing charge with the allegation that a child under 16 was in the structure. This meant that this child was not given the same dignity and protection under the law as children in meth and PCP labs, even though the latter labs are not found as frequently in California as are BHO labs since the tightening of regulations on methamphetamine precursors.

   "This bill would treat offenders who endanger children by manufacturing concentrated cannabis indoors with minors under 16 present the same as those who commit similar crimes but with methamphetamine or PCP. Such is appropriate under the law, given the similar outcomes for those in the structures who have to breathe the noxious fumes or suffer the horrific burns and other damages from explosions."

2) **Effect of this Bill**: "Concentrated cannabis" is the separated resin (whether crude or purified) obtained from the marijuana plant. It is commonly referred to as "hashish" or "hash," "resin," "honey oil," "rosin," or "wax." It is legal in California for adults age 21 and older to use and possess up to 8 grams of concentrated cannabis due to the passage of Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA). Proposition 64 was adopted by the voters on November 8, 2016, and became effective the following day. Proposition 64 made several major changes including decriminalizing the possession of up to one ounce of cannabis, and up to 8 grams of cannabis concentrates and created a statutory

framework to regulate the cultivation, distribution, sale and tax of cannabis products, including concentrated cannabis. Possession of more than eight grams of concentrated cannabis for personal use ("simple possession") is a misdemeanor. (Health & Safe. Code, § 11357.)

Unlawful manufacture of concentrated cannabis is generally a misdemeanor. (Health & Safe. Code, § 113585.) However, if chemical extraction is used to manufacture concentrated cannabis, the offence is a felony, punishable by three, five, or seven years in state prison, and/or a $50,000 fine. (Health & Safe. Code, § 11379.6.) If the offense involving the use of a chemical to extract concentrated cannabis occurred within 300 feet of an occupied residence or any structure where another person was present at the time the offense was committed may be considered a factor in aggravation by the sentencing court. (Health & Safe. Code, § 11379.6, subd. (d).)

Under existing law, there is a sentence enhancement of an additional term of two years in the state prison for a person who is convicted of manufacturing methamphetamine or PCP using chemical extraction, when the commission or attempted commission of the crime occurs in a structure where any child under 16 years of age is present. The enhancement is an additional five-year if the commission causes a child under 16 to suffer great bodily injury. (Health & Safe. Code, § 11379.7.) This bill would add concentrated cannabis to this enhancement.

Given the existing provision allowing the location of the offense occurring within 300 feet of an occupied structure to be considered an aggravating factor, this bill would add additional time to an already significant sentence. Notably, there is no requirement on the amount of concentrated cannabis being manufactured and there is no requirement that the substance is being manufactured to sell. A person could be convicted of this offence and subject to the enhancement even if they are manufacturing a small quantity for personal use.

Proponents of this bill claim, "the law should be updated to adequately protect our children and distinguish between those perpetrators who clearly put children in harm's way when manufacturing." However, existing law is sufficient. Under Penal Code section 12022.7, any person who inflicts great bodily injury on any person, including a child, in the commission of a felony or attempted felony, such as manufacturing concentrated cannabis with a volatile chemical, shall be punished by an additional and consecutive term of imprisonment in the state prison for three years. Any person who personally inflicts great bodily injury on a child under the age of five years in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for four, five, or six years. Under existing law, a person who harms a child when manufacturing concentrated cannabis, could already receive a sentence of up to 13 years in state prison. Accordingly, this bill is not necessary.

Proponents also point to a February 2022 incident in Stockton, where parents of an infant child were allegedly manufacturing concentrated cannabis in a motel room and the lab exploded. What the proponents fail to point out, is that the mother was booked on charges of manufacturing a controlled substance and willful cruelty to a child and the child was released

to the care of social services.[1] The penalties for willful cruelty to a child can range from one year in county jail or up to four years in state prison. (Pen. Code, § 273a.)

3) **Sentence Enhancements**: Sentence enhancements add time to an individual's base sentence. California uses over 100 unique enhancements. According to data from California Department of Corrections and Rehabilitation (CDCR), enhancements are more likely to impact the sentences of men and Black and American Indian people who are sentenced to prison, application varies by county, and that enhancements contribute to the overall size of the state prison population.[2]

   Sentence enhancements are typically applied at the discretion of both prosecutors and judges, and the threat of an enhancement can play an important role in the plea-bargaining process. Subject to prosecutorial discretion, enhancements can be used during the plea bargain phase to potentially cajole low-income defendants into admitting guilt in weak cases and accepting unjustly long sentences.[3]

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

4) **Long Sentences Do Not Deter Crime**: under this bill, a person could be serve a term of imprisonment in state prison for up to 13 years for manufacturing any amount of concentrated cannabis. Unduly long sentences, like those proposed by this bill, are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands.[4]Increasingly punitive sentences add little to the deterrent effect of the criminal justice system; and mass incarceration diverts resources from program and policy initiatives that hold the potential for greater impact on public safety. (*Ibid.*)

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[1] ABC News, *Butane honey oil lab explosion at Stockton hotel injures 2, deputies say*. Available at: <https://www.abc10.com/article/news/local/stockton/explosion-stockton-people-injured/103-16ac92ab-bb6a-4b4a-8087-da412837b64d>; CBS News, *Sheriff: Butane Honey Oil Lab Caused Explosion At Stockton Motel.* Available at: <https://www.cbsnews.com/gooddaysacramento/news/stockton-san-joaquin-co-e-waterloo-road-explosion/>.
[2] Committee on Revision of the Penal Code, *Sentence Enhancements in California* (2023). Available at: <https://www.capolicylab.org/wp-content/uploads/2023/03/Sentence-Enhancements-in-California.pdf>.

[3] Bureau of Justice Assistance, *US Department of Justice (2011) Plea and Charge Bargaining Research Summary* (2011). Available at: <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>.
[4] *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018).

Research shows that increasing the severity of the punishment does little to deter the crime. According to the National Institute of Justice, laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not "chasten" individuals convicted of crimes, and prisons may exacerbate recidivism. Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs.[5]

> This finding makes intuitive sense. Consider a person who is thinking about stealing a car or burglarizing a local business. If he is thinking rationally, he will take into account a variety of factors when considering how to commit the crime, including time of day, ease of entry, presence of security personnel or technology, or his ability to leave the crime scene. He does this to avoid being caught in the act because being arrested and prosecuted will impose significant burdens on him. Additionally, because he is not planning on being apprehended, he is unlikely to be thinking about how much time he might spend in prison and whether his sentence will be three, five, or seven years.
>
> Notably, this example looks at the behavior of a rational person, which rarely fits the picture of a substantial portion of those who actually commit a crime. Many are teenagers seeking peer approval for their illegal behavior, individuals under the influence of alcohol or drugs at the time of the offense, or are motivated by economic challenges. Many of these individuals are not even thinking about the risk of being caught, let alone know how much prison time they may face.
>
> The limited impact of extending sentence length becomes even more attenuated for long-term incarceration. If the penalty for a second robbery conviction is twenty years and a legislative body increases that penalty to twenty- five, few would-be robbers undeterred by the prospect of "only" a twenty year sentence would balk at an additional five years.
>
> Again, there are multiple possible reasons for imposing a given prison term, depending on the circumstances of the crime. But policymakers and judges should be cognizant of the evidence to support any particular goal of sentencing. If the length of a prison term has little deterrent value, it may be time to forego the rationale of "sending a message."[6]

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[5] National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.
[6] *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018) (citations omitted).

An analysis of 116 studies showed that incarceration does not deter people from committing future crimes and, in fact, incarceration can actually make someone more likely to be arrested and commit crimes later (due to heightened barriers to securing employment, identification, housing, and other basic services necessary to successfully reenter society).[7] These findings are consistent with other research from national institutions of renown.[8]

Not only would the incarceration provided for in this bill fail to deter crime, it would come at a significant expense to the State. According to the Legislative Analyst's Office (LAO), it costs taxpayers $106,131 to incarcerate a person in state prison for one year.[9]

This bill could increase a term of imprisonment for manufacturing concentrated cannabis by an additional two to five years in state prison. Could money spent to incarcerate a person be better spent on strategies proven to deter crime?

5) **Argument in Support**: According the *California District Attorneys Association (CDAA)*, "Health and Safety Code section 11379.7 is already on the books to provide protection for children, giving additional penalties to those who manufacture methamphetamine and PCP in a structure with a child under 16 present. This is because of the known and extreme volatility of the manufacturing process involving those substances, and because children have indeed been harmed and even killed during such clandestine lab explosions.

"An anachronism exists within the current law, however, in that it fails to list concentrated cannabis as one of the controlled substances for which additional penalties are triggered when its clandestine manufacture is done in a structure with a minor present. Indeed, so-called "BHO labs" or concentrated cannabis labs are more frequent in California than are meth labs and PCP labs these days, yet present just as much danger due to their volatility. Gigantic explosions can and indeed do occur with the illicit manufacture of concentrated cannabis, and the law should be updated to adequately protect our children and distinguish between those perpetrators who clearly put children in harm's way when manufacturing.

"In February 2022 in Stockton, a mother and father of a newborn baby were in a motel room when the "BHO lab" (concentrated cannabis lab) the father was running exploded. This resulted in major structure damage to the motel, as well as devastating injuries to the father. The mother received injuries as well as she threw herself across the three-month-old infant to protect the baby."

6) **Argument in Opposition**: According to *California NORML*, "One of the sections the bill seeks to amend, H&SC §11379.6, already provides for a sentence of up to seven years for the manufacture of cannabis using volatile solvents. According to attorneys on our legal committee, this section has been used to "re-felonize" cannabis, arguably in opposition to the intent of Proposition 64, the voter-approved measure that legalized cannabis for adult

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[7] Brookings, *Retail Theft In US Cities: Separating Fact from Fiction* (March 6, 2024). Available at: <https://www.brookings.edu/articles/retail-theft-in-us-cities-separating-fact-from-fiction/>.
[8] National Research Council of the National Academies of Sciences, Engineering, and Medicine, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, (April 2014) at pp. 130 -150. Available at: <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs>.
[9] LAO, *How Much Does it Cost to Incarcerate an Inmate*? (2022). Available at <https://lao.ca.gov/policyareas/cj/6_cj_inmatecost>.

recreational use in 2016.

"In addition, the current statute is being abused to felonize simple ethanol (rubbing alcohol) extractions even though DCC regulations consider ethanol "nonvolatile." There have also been cases where Californians have been convicted under this statute for using carbon dioxide to extract cannabis, another safe and nonvolatile method.

"The history of the statutes AB 2296 would amend reveals they were aimed at labs manufacturing methamphetamine and PCP, both of them much more dangerous drugs than cannabis. Given this, and the history of how H&SC §11379.6 has been enforced, we must oppose any sentencing enhancements to these statutes.

"In general, ratcheting up sentences is not an effective way to deter crimes, particularly drug crimes. Offenders are rarely aware of what kind of sentences they might face until after they are arrested. Not a single minor is likely to be protected by AB 2296. The only likely effect of AB 2296 will be to raise the costs of imprisonment to the state.

"The legislature would do better to focus on lowering barriers to entry for licensed cannabis manufacturing, and reducing the over taxation and regulation of the cannabis market that has sent Californians back to the illicit market to meet their needs for medical cannabis, or exercise their right as adults to use it for recreational purposes."

7) **Related Legislation**:

a) AB 2846 (Lackey) would expand the list of unlawful substances classified as "synthetic cannabinoid compound." AB 2846 is pending in this Committee.

b) AB 2850 (Rodriguez) would make it a felony, punishable by 16 months or 2 or 3 years in county jail, for a person over 18 years of age, but under 21 years of age to plant, cultivate, harvest, dry, or process any quantity of living cannabis plants. AB 2850 is pending in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California District Attorneys Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Murrieta Police Officers' Association

Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Oppose

ACLU California Action
California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
California for Safety and Justice
California Norml
California Public Defenders Association
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Drug Policy Alliance
Felony Murder Elimination Project
Initiate Justice
Initiate Justice Action
Legal Services for Prisoners With Children
San Francisco Public Defender
Silicon Valley De-bug
Team Justice
Uncommon Law
Vera Institute of Justice
Young Women's Freedom Center

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

Date of Hearing: April 23, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2309 (Muratsuchi) – As Amended April 17, 2024

SUMMARY: Authorizes any city attorney of a general law city or charter law city to prosecute any misdemeanor committed within the city arising out of a violation of state law notwithstanding the requirement that a county district attorney consent to any city attorney prosecuting a misdemeanor, provided that the legislative body of a city passes an ordinance granting prosecutorial authority to the City Attorney.

EXISTING LAW:

1) States the city attorney of any general law city or chartered city within the county, with the consent of the district attorney, may prosecute any misdemeanor committed within the city arising out of violation of law. (Gov. Code, § 41803.5, subd. (a).)

2) Provides that in any case in which the district attorney is granted any powers or access to information with regard to the prosecution of misdemeanors, this grant of powers or access to information shall be deemed to apply to any other officer charged with the duty of prosecuting misdemeanor charges in the state, as authorized by law. (Gov. Code, § 41803.5, subd. (b).)

3) Requires whenever a city charter creates a city prosecutor office, or provides that a deputy city attorney shall act as city prosecutor, and charges such prosecutor with the duty, when authorized by law, of prosecuting misdemeanor offenses arising out of violations of state laws, the city prosecutor may exercise the following powers:

    a) The city prosecutor shall prosecute all such misdemeanors committed within the city, and handle all appeals arising from it. The city prosecutor shall draw complaints for such misdemeanors, and shall prosecute all recognizances or bail bond forfeitures arising from or resulting from the commission of such offenses. (Gov. Code, § 72193, subd. (a).)

    b) Whenever any person applying for a writ of habeas corpus is held in custody by any peace officer of such city, charged with having committed within the city any misdemeanor, a copy of the application for such writ shall be served upon such city prosecutor at the time and in the manner provided by law for the service of writs of habeas corpus upon district attorneys. (Gov. Code, § 72193, subd. (c).)

    c) On behalf of the people, the prosecutor shall conduct all proceedings relating to such application. If the constitutionality of any law is questioned in any such habeas corpus proceeding, the city prosecutor shall immediately notify the city attorney who may take

charge of the proceedings on behalf of the people, or become associated with the city prosecutor in the proceedings. (Gov. Code, § 72193, subd. (c).)

4) States the district attorney is the public prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses. (Gov. Code, § 26500.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author, "Currently, cities cannot prosecute state misdemeanors that occur within their city without consent from the District Attorney. In 2020, Los Angeles County District Attorney George Gascon issued a directive which specified that certain misdemeanors would be dismissed before arraignment unless "exceptions" or "factors for consideration" exist.

"In response to this directive, the City of Manhattan Beach attempted to contract with the City of Redondo Beach for prosecutorial services in order to prosecute the misdemeanors that the District Attorney's Office would be dismissing. This is an arrangement that the City of Hermosa Beach has had with the City of Redondo Beach since 2014. Despite having the willingness and ability to contract for prosecutorial services, the City of Manhattan Beach's request for consent to prosecute was denied.

"Cities possess a unique understanding of the public safety challenges within their jurisdictions. However, in California, many cities do not have the ability to prosecute their own misdemeanors and must report to the county's District Attorney's Office if a city attorney does not have consent to prosecute misdemeanors. AB 3209 empowers our cities and restores autonomy to local governments by allowing city attorneys to prosecute state misdemeanors to respond swiftly and appropriately to the public safety challenges they face. Granting prosecutorial authority to cities is an acknowledgment of their ability to tailor law enforcement responses to the specific needs and priorities of their communities.

2) **Prosecutorial Authority:** Government code section 41803.5 only allows a city attorney to prosecute statewide crimes when the district attorney of a county consents. However, Government Code section 72193 grants city attorneys the authority to prosecute misdemeanors. It states:

> Whenever the charter of any city creates the office of city prosecutor, or provides that a deputy city attorney shall act as city prosecutor, and charges such prosecutor with the duty, when authorized by law, of prosecuting misdemeanor offenses arising out of violations of state laws, the city prosecutor may exercise the following powers:
>
> **(a)** The city prosecutor shall prosecute all such misdemeanors committed within the city, and handle all appeals arising from it. The city prosecutor shall draw

> complaints for such misdemeanors, and shall prosecute all recognizances or bail bond forfeitures arising from or resulting from the commission of such offenses. (Gov. Code, 732193, subd. (a).)

However, there has been a great deal of consternation in counties like Los Angeles and San Francisco where progressive district attorneys opted not to prosecute lower level crimes. In response, city attorneys began calling for the authority to prosecute misdemeanors themselves.

In 1996, the Attorney General issued an opinion explaining city attorney prosecutorial authority. Charter cities have governing documents adopted by City voters. General law cities mostly operate via municipal codes that are approved by the City Council. (See Cal. Const., art. XI, §§ 3, 5; Gov. Code, §§ 34450- 34462.)

> "While the prosecution of city ordinances is a local matter, the prosecution of all state laws, including state misdemeanor offenses, is a matter of statewide concern, wherever committed. ***Accordingly, it is only through legislative authorization that a city prosecutor, whether in a general law or charter city, may prosecute state misdemeanors***. (See *Montgomery v. Superior Court* (1975) 46 Cal.App.3d 657; *City of Merced v. County of Merced* (1966) 240 Cal.App.2d 763; *Oppenheimer v. Tamblyn* (1959) 167 Cal.App.2d 158; 65 Ops.Cal.Atty.Gen. 330, 332-333 (1982).) The prosecution of state misdemeanor offenses is assigned generally to the district attorney of each county. (Gov. Code, § 26500; 20 Ops.Cal.Atty.Gen. 234 (1952).) However, city attorneys may also be authorized to prosecute such offenses within their respective cities. Section 41803.5, subdivision (a), applicable to both general law and charter cities, provides:
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> > "With the consent of the district attorney of the county, the city attorney of any general law city or chartered city within the county may prosecute any misdemeanor committed within the city arising out of violation of state law. . . ."
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> Section 72193, applicable only to charter cities, states:
>
> > "Whenever the charter of any city situated within a district for which a municipal court has been established creates the office of city prosecutor, or provides that a deputy city attorney shall act as city prosecutor, and charges such prosecutor with the duty, when authorized by law, of prosecuting misdemeanor offenses arising out of violations of state.

> Consequently, when the provisions of section 72193 are implemented by a charter city, the city attorney has the primary duty of prosecuting state misdemeanors within the city, with the district attorney acting in a subsidiary or "backup" role. (See Menveg v. Municipal Court (1964) 226 Cal.App.2d 569, 571-572, quoting with approval our 1952 opinion, but noting that the Legislature may give the district attorney exclusive jurisdiction to prosecute violations of particular state laws. (1996 Cal. AG LEXIS 8, *1, 79 Ops. Cal. Atty. Gen. 46, 46.)

Existing law authorizes general law and charter cities may allow a city attorney to prosecute any statewide misdemeanor, however, charter cities may pass an amendment to the charter to specify whether a city attorney may prosecute any or all misdemeanors. However, Government Code section 72193 is specific to charter cities and expressly authorizes charter city attorneys from prosecuting all misdemeanors. This bill allows locals to determining whether city attorneys may prosecute statewide misdemeanors.

3) **Arguments in Support:** According to the *South Bay Association of Chambers of Commerce*: "As representatives of the business community in the South Bay region, comprising 17 local chambers of commerce, we recognize the importance of effective governance and legislation that promotes the well-being of our communities and businesses alike. AB 2309 addresses critical issues related to the prosecution of misdemeanors and the enforcement of public health standards, both of which are vital components of maintaining public safety and fostering economic prosperity. The proposed amendments outlined in AB 2309 offer practical solutions to streamline legal processes and enhance accountability in the prosecution of misdemeanors arising from violations of state law within our cities. By granting city attorneys broader authority to prosecute misdemeanors without the need for prior consent from district attorneys, this bill facilitates more efficient legal proceedings, thereby reducing bureaucratic hurdles and ensuring timely justice.

   "Furthermore, AB 2309 strengthens the reporting obligations of health officers regarding violations of standards at public beaches. By requiring health officers to report such violations directly to both the district attorney and city attorney without restrictions, the bill enhances transparency and expedites the remediation of environmental hazards, safeguarding the health and well-being of our residents and visitors. We also commend the inclusion of provisions for state reimbursement to local agencies and school districts for any mandated costs associated with implementing AB 2309. This demonstrates a commitment to fiscal responsibility and ensures that local jurisdictions are adequately supported in fulfilling their responsibilities under the proposed legislation. AB 2309 aligns with the SBACC's mission to advocate for policies that promote economic growth, community development, and public safety. We urge you to support this important legislation, which will benefit our region and the state of California as a whole."

4) **Arguments in Opposition**: According to the *Felony Murder Elimination Project*: "Under existing law, county district attorneys have jurisdiction to prosecute state offenses allegedly occurring in their counties. (Government Code, §26500.) Government Code, section 41803 permits a city attorney to prosecute misdemeanor offenses arising out of a violation of state law – but only with the consent of the county district attorney. We believe the current

arrangement strikes the correct balance, leaving decisions about whether and how to prosecute state misdemeanors carrying county jail time to one county agency. This avoids inconsistent charging practices and policies between agencies, and limits charging disparities based on the location of an alleged crime.

"In contrast, AB 2309 would allow city attorneys to prosecute misdemeanors even if the district attorney has already determined that charges are not appropriate or are not in the interest of justice. Given racial and economic disparities across counties – particularly between urban, suburban, and rural areas within the same county – we fear divergent charging practices between the district attorney and the city attorney could have discriminatory results, with lower income Black and Brown defendants who live in inner cities being prosecuted differently than their wealthier white counterparts who live in other parts of the county.

"Because state misdemeanor offenses carry possible incarceration in county jails and/or county probation supervision, we believe that authorization to prosecute such offenses should remain a county responsibility. Decisions about the use or misuse of scarce county resources factor into district attorneys' prosecutorial decision making. When a district attorney has determined that such resources are not warranted, that decision should not be overridden by the city attorney."

5) **Prior Legislation:** SB 2139 (Lockyer), Chapter 931, Statutes of 1998 enacted various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment. The California Constitution initially provided for the establishment of superior and municipal courts, as specified, in each county. SCA 4 of the 1995-96 Regular Session, as approved by the voters on June 2, 1998, abolished municipal courts within a county, and for the establishment of a unified superior court for that county, upon a majority vote of superior court judges and a majority vote of municipal court judges within the county; provides for the qualification and election of the judges; and revises the number of jurors required in certain civil actions. This bill would make various statutory changes to implement and conform to the unification of trial courts pursuant to the constitutional amendment.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Santa Clarita
City of Manhattan Beach
Los Angeles County Police Chiefs Association
South Bay Association of Chambers of Commerce

Oppose

ACLU California Action
California Alliance for Youth and Community Justice
California Public Defenders Association
Felony Murder Elimination Project
Silicon Valley De-bug
Team Justice
Uncommon Law

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Date of Hearing: April 23, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2391 (Vince Fong) – As Introduced February 12, 2024

SUMMARY: Amends the definition of "public safety" to include protection from physical or economic injury for the purpose of the court determining whether a defendant should be released on their own recognizance in a misdemeanor case.

EXISTING LAW: Provides that any person who been arrested for, or charged with an offense other than a capital offense may be released on his or her own recognizance by a court or magistrate who could release a defendant from custody upon the defendant giving bail, including a defendant arrested on an out-of-county warrant. A defendant who is in custody and is arraigned on a complaint alleging an offense that is a misdemeanor, and a defendant who appears before a court or magistrate on an out-of-county warrant arising out of a case involving only misdemeanors, shall be entitled to an own recognizance release unless the court makes a finding on the record, as specified, that a release will compromise public safety or will not reasonably assure the appearance of the defendant as required. Public safety shall be the primary consideration. If the court makes one of those findings, the court shall then set bail and specify the conditions, if any, under which the defendant shall be released. (Pen. Code §1270, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California is plagued with financial scams and fraud that targets vulnerable people who sometimes lose their life savings to these crimes. AB 2391 will create universal clarity and uniformity to the bail-setting structure to ensure that judges consider the economic and financial safety of the community when determining bail for a defendant. Through redefining the definition of safety to include economic safety, California's courts will be better equipped to set bail across the state and keep the public safe. AB 2391 will ensure that Californians will be better protected from fraudsters, scam artists, and white-collar criminals who are at a higher risk to re-offend prior to their court hearing.

2) **Argument in Support**: According to the *California State Sheriffs' Association*, "Assembly Bill 2391, which would, in certain situations related to pretrial releases, specify that the term "public safety" includes protection from physical or economic injury.

   "When determining whether to release an arrested person on their own recognizance or to set bail, in certain circumstances, a court must consider whether a release will compromise public safety. There is concern that the term "public safety" may be vague and not interpreted to include financial risk to persons or the community.

"AB 2391 makes this important clarification so that protection from potential economic injury is considered in addition to the risk of physical injury."

3) **Argument in Opposition**: According to the *California Public Defenders Association*, "Neither the Constitution, nor the case law interpreting it provide "economic injury" as a consideration when assessing "public safety." The California legislature's role is not to interpret the California Constitution, and further it is arguably a violation of separation of powers for the legislature to attempt to do so. This is the job of the courts, and the courts are best in a position to interpret the law. Indeed, the California Supreme Court has granted review in a case in which the issue of the meaning of public safety and the right to bail/own recognizance release will be addressed. See In re Kowalczyk (2022) 85 Cal.App.5th 667 (review granted).

"Moreover, this bill targets individuals accused of theft related misdemeanors who have not been convicted of any crime. Holding people in custody pending adjudication of their cases does not prevent crime, and indeed may increase recidivism. When people are jailed before trial, they are needlessly separated from their families and communities; they stand to lose their jobs and housing, and are forced to face the unsanitary, traumatic, and sometimes fatal conditions in county jails. Detaining more people pretrial in county jails is bad policy. The families of the people detained suffer and may fall into homelessness as a result."

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California District Attorneys Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
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
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Oppose

ACLU California Action
California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Public Defenders Association
Californians for Safety and Justice
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Fair Chance Project
Felony Murder Elimination Project
Freedom 4 Youth
Friends Committee on Legislation of California
Initiate Justice
LA Defensa
Legal Services for Prisoners With Children
San Francisco Public Defender
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
Uncommon Law
Vera Institute of Justice
Young Women's Freedom Center

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: April 23, 2024
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2406 (Davies) – As Amended April 15, 2024

SUMMARY: Creates a new crime of persuading a minor to commit theft, as specified. Specifically, **this bill**:

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

2) Provides that this new crime shall be punishable as a misdemeanor, by imprisonment in the county jail not exceeding one year or, as a felony, by imprisonment in the county jail for 16 months, or two or three years, if the theft-related offense is any of the following:

    i. Shoplifting;

    ii. Petty theft;

    iii. Organized retail theft;

    iv. Grand theft;

    v. Cargo theft;

    vi. Theft from an elder or dependent adult;

    vii. The theft or unauthorized use of a vehicle;

    viii. Burglary;

    ix. Carjacking;

    x. Robbery;

    xi. Receiving stolen property; or,

    xii. Identity theft and mail theft.

3) Provides that this new crime does not apply to a person under 18.

EXISTING LAW:

1) Provides that ***all persons counseling, advising, or encouraging children under the age of fourteen years***, to commit any crime, or who, by threats, menaces, command, or coercion,

compel another to commit any crime, are principals in any crime so committed. A person who aids and abets in any crime faces the same punishment at the person who directly commits the crime. (Pen. Code, § 31.)

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

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

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

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

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

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

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

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

10) Defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding $950 dollars, except as specified; other cases of theft are petty theft. Grand theft is

punishable as a misdemeanor, by imprisonment in the county jail not exceeding one year, or as a felony by imprisonment in the county jail for in the county jail for 16 months, two years, or three years. (Pen. Code §§487-488.)

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

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

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

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

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

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

13) Punishes organized retail theft, as follows:

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

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

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

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

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

16) States that any person who drives or takes a vehicle not their own, without the consent of the owner, and with intent to permanently or temporarily deprive the owner thereof, shall be

punished with a misdemeanor by imprisonment in a county jail for not more than one year or with a felony by imprisonment in a county jail for a term of two, three, or four years, or by a fine of not more than $5,000, or by both. (Veh. Code, § 10851.)

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

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

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

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

FISCAL EFFECT: Unknown

COMMENTS:

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

2) **Effect of this Bill:** The background material provided by the author contains no information or data whatsoever to suggest that there is a rising trend among adults enticing minors to steal. However, this bill would treat low-level theft offenses like shoplifting and petty theft, as a felony if a minor is involved.

   This bill ignores the dynamics of theft and poverty. Desperation and inequality lead to an increase in stealing.[1] This bill would create draconian penalties for petty theft and

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[1] Radkani S, Holton E, de Courson B, Saxe R, Nettle D., *Desperation And Inequality Increase Stealing: Evidence From Experimental Microsocieties* (July 19, 2023). Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10354492/>.

shoplifting, without regard to the value of the property stolen. To be clear, an impoverished parent who encouragers their hungry child to steal a loaf of bread from the supermarket, could, under this bill be guilty of a felony, and could be sentenced to a term of imprisonment for up to three years. Under this bill, a 19 year old who dares a 16 year old to steal a pack of gum from the store could be imprisoned for a felony.

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

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

3) **This Bill Would Create a New Felony:** A person convicted of the new felony created by this bill could serve a term of imprisonment ranging from sixteen months to three years, even for petty theft. Unduly long sentences, like those proposed by this bill, are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands.[2]Increasingly punitive sentences add little to the deterrent effect of the criminal justice system; and mass incarceration diverts resources from program and policy initiatives that hold the potential for greater impact on public safety. (*Ibid.*)

Research shows that increasing the severity of the punishment does little to deter the crime. According to the National Institute of Justice, laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not "chasten" individuals convicted of crimes, and prisons may exacerbate recidivism. Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs.[3]

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[2] *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018).
[3] National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.

> This finding makes intuitive sense. Consider a person who is thinking about stealing a car or burglarizing a local business. If he is thinking rationally, he will take into account a variety of factors when considering how to commit the crime, including time of day, ease of entry, presence of security personnel or technology, or his ability to leave the crime scene. He does this to avoid being caught in the act because being arrested and prosecuted will impose significant burdens on him. Additionally, because he is not planning on being apprehended, he is unlikely to be thinking about how much time he might spend in prison and whether his sentence will be three, five, or seven years.
>
> Notably, this example looks at the behavior of a rational person, which rarely fits the picture of a substantial portion of those who actually commit a crime. ***Many are teenagers seeking peer approval for their illegal behavior,*** individuals under the influence of alcohol or drugs at the time of the offense, ***or are motivated by economic challenges. Many of these individuals are not even thinking about the risk of being caught, let alone know how much prison time they may face.***
>
> The limited impact of extending sentence length becomes even more attenuated for long-term incarceration. If the penalty for a second robbery conviction is twenty years and a legislative body increases that penalty to twenty- five, few would-be robbers undeterred by the prospect of "only" a twenty year sentence would balk at an additional five years.
>
> Again, there are multiple possible reasons for imposing a given prison term, depending on the circumstances of the crime. But policymakers and judges should be cognizant of the evidence to support any particular goal of sentencing. If the length of a prison term has little deterrent value, it may be time to forego the rationale of "sending a message."[4]

An analysis of 116 studies showed that incarceration does not deter people from committing future crimes and, in fact, incarceration can actually make someone more likely to be arrested and commit crimes later (due to heightened barriers to securing employment, identification, housing, and other basic services necessary to successfully reenter society).[5] These findings are consistent with other research from national institutions of renown.[6]

Not only would the incarceration provided for in this bill fail to deter crime, it would come at

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[4] *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018) (citations omitted).

[5] Brookings, *Retail Theft In US Cities: Separating Fact from Fiction* (March 6, 2024). Available at: <https://www.brookings.edu/articles/retail-theft-in-us-cities-separating-fact-from-fiction/>.

[6] National Research Council of the National Academies of Sciences, Engineering, and Medicine, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, (April 2014) at pp. 130 -150. Available at: <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs>.

a significant expense to the State. According to the Legislative Analyst's Office (LAO), it costs taxpayers $106,131 to incarcerate a person in state prison for one year.[7]

This bill would allow a person convicted of a felony created by this bill to serve a term of imprisonment ranging of up to three years. Could money spent to incarcerate a person be better spent on strategies proven to deter crime?

4) **Reports of Exaggerated Losses by Retailers – Separating Fact from Fiction:** Some complaints of retail theft were overstated. For example, in 2021, Walgreens closed five stores in San Francisco purportedly due to retail theft. However, the San Francisco Police Department's data on shoplifting did not support this explanation for the closures. Recently, the chief financial officer of Walgreens acknowledged the shoplifting threat had probably been overstated. The company likely spent too much on security measures and mischaracterized the amount of theft at stores. In fact, shrinkage (the inventory that was bought but could not be sold primarily due to shoplifting) actually decreased to around 2.5 to 2.6 percent of sales, compared to 3.5 percent the prior year.[8]

Others say retail theft, while an issue, might be overstated as an excuse to write off mediocre sales and historic inflation might be a key reason why we're seeing any theft bump at all Things have become expensive – "we are in an economy right now where some everyday staples have risen in price six times faster than the overall rate of inflation. Until July of this year, American paychecks grew at a slower rate than inflation as a whole." Some retailers lump theft in with heavy discounting, soft sales and macroeconomic conditions as other factors that cut into their margins.[9]

What's more, the National Retail Federation has not solidified any data around increased rates of organized retail theft or what percentage of external theft is organized crime. Retailers are not required to break down how much they actually lose to theft. "Retailers and trade associations are increasingly using their positions to influence lawmakers to pass new legislation that benefits them, hurts competitors and could disproportionally affect marginalized people." [10]

Additionally, the Federal Trade Commission recently reported that retail stores likely inflated

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[7] LAO, *How Much Does it Cost to Incarcerate an Inmate*? (2022). Available at <https://lao.ca.gov/policyareas/cj/6_cj_inmatecost>.

[8] See New York Times, *Walgreens Executive Says Shoplifting Threat Was Overstated* (Jan. 6, 2023) <https://www.nytimes.com/2023/01/06/business/walgreens-shoplifting.html> ; see also Los Angeles Times, *Retailers Say Thefts Are at Crisis Level. The Numbers Say Otherwise* (Dec. 15, 2021) <https://www.latimes.com/business/story/2021-12-15/organized-retail-theft-crime-rate>; CNN Business, '*Maybe We Cried Too Much' Over Shoplifting, Walgreens Executive Says* (Jan. 7, 2023) <https://www.cnn.com/2023/01/06/business/walgreens-shoplifting-retail/index.html>; The Atlantic, *The Great Shoplifting Freak-Out* (Dec. 203, 2021) <https://www.theatlantic.com/health/archive/2021/12/shoplifting-holiday-theft-panic/621108/>.)

[9] (Freight Waves, *What's Behind the Reports of 'Unprecedented' Retail Theft* (Oct. 2023). Available at: <https://www.freightwaves.com/news/whats-behind-the-reports-of-unprecedented-retail-theft>; see also Bloomberg, *Thieves Target Donuts and Ham as Food Prices Jump* (Feb. 2024). Available at: <https://www.bloomberg.com/news/newsletters/2024-02-23/supply-chain-latest-food-theft-rises-on-grocery-inflation>.

[10] CNBC, *Companies say organized retail crime is on the rise, but there's no data to prove it.* (Aug. 2023). Available at < https://www.cnbc.com/2023/08/09/claims-about-organized-retail-theft-are-nearly-impossible-to-verify.html>.

prices to accommodate for lost revenue resulting from the pandemic. The FTC states, in summary, that:

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

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

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

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

> The new fourth-quarter numbers [for 2023] show a 13% decline in murder in 2023 from 2022, a 6% decline in reported violent crime and a 4% decline in reported property crime.
>
> After a terrible period of underfunding and understaffing caused by the pandemic, local governments have, by most measures, returned to pre-pandemic levels," wrote John Roman, a criminologist at the University of Chicago. In an interview, Roman said, 'The courts were closed, a lot of cops got sick, a lot of police agencies told their officers not to interact with the public. Teachers were not in schools, not working with kids.[11]

Given that claims of massive retail theft appear to be inconsistent with the data, the Legislature should consider evidence-based solutions to address property crimes.

5) **Immigration and Other Collateral Consequences**: A conviction for any crime where the penalty following conviction is a year or more and specified crimes "of moral turpitude" will likely bar a person from receiving lawful permanent residence status and may result in deportation.[12] Hence, undocumented Californians may potentially be uniquely penalized

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[11] FTC, *Report on Grocery Supply Chain Disruptions* (March 2024). Available at: <https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-releases-report-grocery-supply-chain-disruptions>.
[12] Dadhania, *Deporting Undesirable Women* (2018) 9 U.C. Irvine L.Rev. 53, 56.

because an arrest or conviction for this crime may result in deportation or other serious immigration consequences. Additionally, if a person is unlawful at entry, they will likely be immediately deported in summary proceedings. According to the American Immigration Council in August of 2021:

> Tens of thousands of migrants and asylum seekers are subjected to criminal prosecution for these crimes every year. Prosecutions for entry-related offenses reached an all-time high of 106,312 in Fiscal Year (FY) 2019, near the end of the Trump administration, before falling to 47,730 in FY 2020 after the government began rapidly expelling most people crossing the border in March 2020 rather than referring them for prosecution.[13]

Any time an undocumented person interacts with law enforcement, the risk of incarceration and deportation is significant.[14]

Further, the collateral consequence of a felony are substantial. A criminal conviction exposes individuals to thousands of collateral consequences that will follow them long after the successful completion of their sentence. These collateral consequences serve as substantial, lifelong barriers to stability. A recent survey found that 76% of individuals with a criminal conviction report instability in finding a job or housing, obtaining a license, paying for fines or fees, and having health issues. A National Institute of Justice study found that having a criminal record reduced the chance of getting a job offer or callback.[15]

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

"NFIB supports the robust penalties in AB 2406 for those who recruit, organize, supervise, direct, manage or finance another to act in concert with another to steal merchandise from one or more merchant's premises or who acts in concert with two or more to receive or purchase stolen property. Not only will the implementation of this bill as law send a strong

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[13] American Immigration Council *Fact Sheet, Prosecuting People for Coming to the United States*. Available at: <https://www.americanimmigrationcouncil.org/research/immigration-prosecutions>.
[14] L.A. Times, *Orange County Sheriff's cooperation with ICE sees spike in inmate transfers*, (Mar. 26, 2024) Available at: <https://www.latimes.com/socal/daily-pilot/entertainment/story/2024-03-26/orange-county-sheriffs-cooperation-with-ice-sees-spike-in-inmate-transfers>.
[15] SAMHSA, *Survey of California Victims and Populations Affected by Mental Health, Substance Issues, and Convictions*. Available at: <https://www.samhsa.gov/data/sites/default/files/reports/rpt32885/2019NSDUHsaeSpecStates/NSDUHsaeCalifornia2019.pdf>; see also National Inventory of Collateral Consequences of Conviction. Available at: <https://niccc.nationalreentryresourcecenter.org/consequences>; Brennan Center, *Employment after Incarceration: Ban the Box and Racial Discrimination.* Available at: <https://www.brennancenter.org/our-work/analysis-opinion/employment-after-incarceration-ban-box-and-racial-discrimination>.

message to those exploiting California's youth and assist small business owners in preserving their ability to conduct business in California, but it will also help to prevent our youth from committing that first crime that might lead them down the perilous path of potential recidivism."

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

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

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

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

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

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

8) **Related Legislation**:

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

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

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

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

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

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

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

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

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

9) **Prior Legislation**:

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

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

Committee.

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

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

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

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

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

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California District Attorneys Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association

League of California Cities
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
National Federation of Independent Business (NFIB)
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
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 Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
California Public Defenders Association
Californians for Safety and Justice
Californians United for A Responsible Budget
Children's Defense Fund - CA
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Fair Chance Project
Felony Murder Elimination Project
Initiate Justice
Initiate Justice Action
LA Defensa
San Francisco Public Defender
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
Team Justice
Uncommon Law
Vera Institute of Justice
Young Women's Freedom Center

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