California State Assembly

PUBLIC SAFETY

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AGENDA

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

PART III
AB 2846 (LACKEY) – AB 3094 (LOW)

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2846 (Lackey) – As Amended March 11, 2024

SUMMARY: Expands the list of unlawful substances classified as "synthetic cannabinoid compounds." Specifically, **this bill**:

1) Adds to the definition of "synthetic cannabinoid compound" the following substances:

   a) MDMB-4en-Pinaca and ADB-BUTINACA.

   b) Delta-8-tetrahydrocannabinol and delta-10-tetrahydrocannabinol, when produced artificially by chemical reaction.

   c) Any synthetic substance that, when ingested by a human, binds to or is intended to act as a cannabinoid receptor agonist to produce psychoactive effects or that is intended to mimic the effects of delta-9-tetrahydrocannabinol.

2) Clarifies that the definition of "synthetic cannabinoid compound" includes metabolites or the analog of metabolites of identified substances.

3) Defines "metabolite" as a product of any known biotransformations, including, but not limited to, oxidation, reduction, and conjugation, such as hydroxylation, hydrolytic dehalogenation, hydrolysis, dealkylation, glucuronidation, acetylation, sulfonation, amination, methylation, and glutathione conjugation.

4) Defines "synthetic" as a substance, material, compound, mixture, or preparation that contains any quantity of a substance made artificially by chemical reaction.

EXISTING LAW:

1) Provides that every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, or possesses for sale any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, to any person, is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six months, or by a fine not to exceed $1,000, or by both. (Pen. Code, § 11357.5, subd. (a).)

2) Provides that every person who uses or possesses any synthetic cannabinoid compound, or any synthetic cannabinoid derivative, is guilty of a public offense, punishable as follows:

   a) A first offense is an infraction punishable by a fine not exceeding $250.

b) A second offense is an infraction punishable by a fine not exceeding $250 or a misdemeanor punishable by imprisonment in a county jail not exceeding six months, a fine not exceeding $500, or by both that fine and imprisonment.

c) A third or subsequent offense is a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding $1,000, or by both. (Pen. Code, § 11357.5, subd. (b).)

3) Defines "synthetic cannabinoid compound" as any of the following substances or an analog of any of the following, as specified:

a) Adamantoylindoles or adamantoylindazoles;

b) Benzoylindoles;

c) Cyclohexylphenols;

d) Cyclopropanoylindoles;

e) Naphthoylindoles;

f) Naphthoylnaphthalenes;

g) Naphthoylpyrroles;

h) Naphthylmethylindenes;

i) Naphthylmethylindoles;

j) Phenylacetylindoles;

k) Quinolinylindolecarboxylates;

l) Tetramethylcyclopropanoylindoles;

m) Tetramethylcyclopropane-thiazole carboxamides;

n) Unclassified synthetic cannabinoids. (Pen. Code, § 11357.5, subd. (c).)

4) Provides that synthetic cannabinoid compounds or their analogs may be lawfully obtained and used for bona fide research, instruction, or analysis if that possession and use does not violate federal law. (Pen. Code, § 11357.5, subd. (d).)

5) Provides that "synthetic cannabinoid compound" does not include either of the following:

a) Any substance for which there is an approved new drug application or which is generally recognized as safe and effective for use, as specified; or

b) With respect to a particular person, any substance for which an exemption is in effect for investigational use for that person, as specified, to the extent that the conduct with respect to that substance is pursuant to the exemption. (Pen. Code, § 11357.5, subd. (e).)

6) Provides that, except as specified, the term "controlled substance analog" means either of the following:

(a) A substance the chemical structure of which is substantially similar to the chemical structure of specified controlled substances; or

(b) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of specified controlled substances. (Health & Saf. Code, § 11401, subd. (b)(1) & (2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "This bill adds MDMB-4en-Pinaca and ADB-BUTINACA to the enumerated HS 11357.5 synthetic cannabinoids, matches the definition of "analog" to the definition in section 11401, and specifies that synthetically manufactured delta-8 and delta-10 THC fall under the HS 11357.5 definition of synthetic cannabinoids as well."

2) **Synthetic Cannabinoids:** Cannabinoids are chemical components of cannabis that produce pharmacologic effects throughout the body. Two of the most well-known cannabinoids are THC and CBD. According to the National Institute of Health, CBD is a compound isolated from cannabis which does not cause psychoactive activity and has pain relieving, anti-inflammatory, anti-psychotic, and tumor-inhibiting properties. Cannabinoids can be ingested, inhaled, or sprayed under the tongue. There are currently over 100 clinical trials of CBD listed on the National Library of Medicine's website that are either active or recruiting or enrolling participants. These trials are testing CBD's utility in treating epilepsy, substance use disorders, pain, psychosis, anxiety, and COVID-19 pulmonary infections, among other disorders and conditions. (<https://www.clinicaltrials.gov/ct2/results?term=cannabidiol&Search=Apply&recrs=a&recrs=f&recrs=d&age_v=&gndr=&type=&rslt=> [as of Jul. 7, 2021].)

According to the U.S. Department of Justice,

> Synthetic cannabinoids are not organic, but are chemical compounds created in a laboratory. Since 2009, law enforcement has encountered hundreds of different synthetic cannabinoids that are being sold as "legal" alternatives to marijuana. These products are being abused for their psychoactive properties and are packaged without information as to their health and safety risks.
>
> Synthetic cannabinoids are sold at small convenience stores, head shops, gas stations, and via the Internet from both domestic and international sources. These products are labeled

> "not for human consumption" in an attempt to shield the manufacturers, distributors, and retail sellers from criminal prosecution. This type of marketing is nothing more than a means to make dangerous, psychoactive substances widely available to the public…
>
> Severe adverse effects have been attributed to the abuse of synthetic cannabinoids, including nausea, vomiting, agitation, anxiety, seizures, stroke, coma, and death by heart attack or organ failure. Acute kidney injury requiring hospitalization and dialysis in several patients reportedly having smoked synthetic cannabinoids has also been reported by the Centers for Disease Control and Prevention…
>
> Acute psychotic episodes, dependence, and withdrawal are associated with use of these synthetic cannabinoids. Some individuals have suffered from intense hallucinations. Other effects include severe agitation, disorganized thoughts, paranoid delusions, and violence after smoking products laced with these substances.

(https://www.dea.gov/sites/default/files/2023-04/K2-Spice 2022 Drug Fact Sheet.pdf)

According to the Drug Policy Alliance,

> Synthetic cannabinoids are mistakenly considered to closely mimic the effects of marijuana, but in fact there are significant differences. As their name suggests, synthetic cannabinoids, like THC and other substances in marijuana, affect the brain by stimulating activity at various cannabinoid receptors.13 Although research is limited, preliminary studies suggest that effects include feeling stimulated and energetic, increased appetite, and producing a dream-like state, but can also include nausea and vomiting, seizures, aggression and agitation, as well as respiratory failure and loss of consciousness.14 Whereas THC, the main psychoactive substance in marijuana, is a partial agonist, synthetic cannabinoids are full agonists.
>
> Adverse reactions to synthetic cannabinoids saw calls to poison control centers peak at just under 10,000 in 2015,15 and the number of emergency room visits in the tens of thousands16 (these figures have since gone down). One explanation for the high number of hospital visits is that other substances in marijuana known to protect against anxiety and psychotic symptoms17 likely balance out the direct effects of THC on the brain but are absent in synthetic cannabinoids.
>
> Until more research is done on individual synthetic cannabinoids specific causes for these effects will remain only partially understood…
>
> These substances are generally more harmful than plant-based marijuana. Many of the adverse reactions to synthetic cannabinoids have been reported to involve dangerous physical symptoms, whereas adverse reactions to natural marijuana typically involve symptoms resembling anxiety and panic, which though worrisome, are not lethal. In 2012, state public health department officials, poison control centers and CDC researchers identified 16 cases of acute kidney injury related to use of synthetic cannabinoids in six states (Kansas, Oklahoma, Oregon, New York, Rhode Island & Wyoming).22
>
> The sudden rise of synthetic cannabinoid related calls to poison centers, hospitalizations

and even instances of fatal reactions has never been seen with marijuana, which has only ever been indirectly associated with drug-related deaths, and never shown to result in a fatal overdose. Deaths linked to synthetic cannabinoids do not compare to numbers from drugs like heroin and cocaine,23 and while the brief rise in ER visits and poison center calls did signal a temporary cause for concern (these figures have since gone down),24 alarmist responses and harsh law enforcement crackdowns often overshadow the need for public education and harm reduction measures and ultimately cause more harm than good.

(https://drugpolicy.org/wp-content/uploads/2023/05/2023.04.10_syntheticcannabinoid_factsheet.pdf.)

3) ***NYT* Article on Delta-8 THC in hemp**. On February 27, 2021, *NYT* published an article, "This Drug Gets You High, and Is Legal (Maybe) Across the Country." This article suggested that a form of THC that is permissible in industrial hemp is being touted as an alternative to the psychoactive ingredient in cannabis. Under federal law, psychoactive Delta-9 THC is explicitly prohibited, but the law is silent on Delta-8 THC. According to this article, with Delta-8, entrepreneurs believe they have found a way to take advantage of the country's fractured and convoluted laws on recreational marijuana use, and have begun extracting and packaging it as a legal edible and smokable alternative. The article states that it's not quite that simple, and that federal agencies, including the Drug Enforcement Administration, are still considering their options for enforcement and regulation. According to the article, "Precisely what kind of high Delta-8 produces depends on whom you ask. Some think it as 'marijuana light,' while others are pitching it as pain relief with less psychoactivity." The article quotes an editor of Leafly.com, a popular source of information about cannabis, as saying that Delta-8 has become "extremely ascendant" and reflects "prohibition downfall interregnum," where consumer demand and entrepreneurial activity are exploiting the holes in rapidly evolving and fractured law. (https://www.nytimes.com/2021/02/27/health/marijuana-hemp-delta-8-thc.html)

4) **Argument in Support**: According to the *California Narcotic Officers' Association*, "Current law, H&S Code §11357.5, states that a person who sells or distributes "any synthetic cannabinoid compound, or any synthetic cannabinoid derivative" (as defined) is guilty of a misdemeanor. This law was passed in response to a number of deaths due to synthetic cannabinoid poisonings and the need to protect the health and safety of the public.

"Severe adverse effects of synthetic cannabinoid use include nausea, vomiting, agitation, anxiety, seizures, stroke, coma, and death by heart attack or organ failure. Acute kidney injury requiring hospitalization and dialysis in several patients reportedly having smoked synthetic cannabinoids has also been reported by the Centers for Disease Control.

"According to the United States Department of Justice, synthetic cannabinoids are not organic, but are chemical compounds created in a laboratory. These products are abused for their psychoactive properties and packaged without health and safety risk information. Synthetic cannabinoids are sold at small convenience stores, head shops, gas stations, and via the Internet from both domestic and international sources. These products are labeled "not for human consumption" in an attempt to shield the manufacturers, distributors, and retail sellers from criminal prosecution. This type of marketing is designed to make dangerous, psychoactive substances widely available to the public.

"The makers of these drugs also adjust their compounds from time to time, adding a single atom or other minor alteration to keep their products technically in compliance with the law.

"AB 2846 seeks to close these loopholes by updating the definition of a synthetic cannabinoid compound by adding some recently developed substances and a metabolite of specified substances to the prohibited list and defines "analog" by reference to H&S Code section §11401.

"This bill will also capture future compounds intended to side-step these prohibitions by including newly-created synthetic cannabinoid substances that, when ingested, are intended to act as a cannabinoid receptor agonist. By regulating not just the specific compounds but also the intended effects of these compounds, we can better protect the public and stop having to legislate for every newly created synthetic cannabinoid formula."

5) **Argument in Opposition:** According to *ACLU California Action*, "The ACLU has consistently maintained that attempts to address the public health problem of drug abuse through the criminal justice system is inappropriate, ineffective, costly, and leads to widespread violations of privacy and other civil liberties. The state's current reliance on criminalization of drug abuse does not work and adding new drugs to the list will do nothing to resolve the problems. While we can appreciate the effort to ensure the health and wellbeing of individuals who are incarcerated, we do not believe an expansion of California's Health and Safety Code section §11357.5 will appropriately address the underlying public health issue. We urge you to consider a public health response to deal with these particular drugs including greater access to quality rehabilitation programs and educational awareness of the harms associated with consuming synthetic cannabinoids."

6) **Prior Legislation**:

a) SB 139 (Galgiani), Chapter 624, Statutes of 2016, raised penalties for possession of synthetic cannabinoids and synthetic stimulants, and expanded the list of substances prohibited as synthetic cannabinoids.

b) SB 1283 (Galgiani), Chapter 372, Statutes of 2013, makes the use or possession of specified synthetic stimulant compounds or synthetic stimulant derivatives, punishable by a fine not exceeding $250.

c) AB 2420 (Hueso,) 2011-2012 Legislative Session, would have created infraction and misdemeanor penalties for possession or use of specified synthetic stimulants and synthetic cannabinoids. AB 2420 failed passage in the Assembly Public Safety Committee.

d) AB 486 (Hueso), Chapter 656, Statutes of 2011, prohibited the sale, dispensing, distribution, furnishment, administration or giving, or attempt to do so, of any synthetic stimulant compound of any specified synthetic stimulant derivative. Violation of this section is punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not exceeding $1,000, or by both that fine and imprisonment.

e) SB 420 (Hernandez), Chapter 420, Statutes of 2011, prohibited the sale, dispensing, distribution, administration or giving, or attempt to do so, of any synthetic cannabinoid compound or any synthetic cannabinoid derivative. Violation of this section is punishable by imprisonment in a county jail not exceeding 6 months, or by a fine not exceeding $1,000, or by both that fine and imprisonment.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Crime Laboratory Directors
California District Attorneys Association
California Narcotic Officers' Association
Peace Officers Research Association of California (PORAC)

Oppose

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

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2850 (Rodriguez) – As Amended March 21, 2024

SUMMARY: Creates a new felony for persons 18 to 20 years of age who plant, cultivate, harvest, dry, or process any cannabis plants. Specifically, **this bill:**

1) Makes it a felony, rather than an infraction, for a person 18 to 20 years of age who plants, cultivates, harvests, dries, or processes any cannabis plants.

2) Makes it a felony for any person at least 21 years old to plant, cultivate, harvest, dry, or process more than six living cannabis plants, irrespective of whether a person has prior convictions, or if the cultivation violates environmental laws pertaining to discharge of waste, water pollution, diversion of rivers, streams, or lakes, dumping of hazardous waste, endangered species, or harm to ground water, public lands, or public resources.

EXISTING LAW:

1) Provides that any person under 18 years of age who plants, cultivates, harvests, dries, or processes any cannabis plants is guilty of an infraction and shall be required to complete eight hours of drug education or counseling and up to 40 hours of community service for their first offense. (Health & Saf. Code, §11358, subd. (a), § 11357, subd. (1)(b).)

2) Provides that any person at least 18 years of age but less than 21 years of age who plants, cultivates, harvests, dries, or processes not more than six living cannabis plants is guilty of an infraction and a fine of not more than $100. (Health & Saf. Code, § 11358, subd. (b).)

3) Provides that the penalty for any person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants is imprisonment in a county jail for a period of not more than six months or by a fine of not more than $500, or both. (Health & Saf. Code, § 11358, subd. (c).)

4) Provides that a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants, or any part thereof, may be punished by imprisonment in a county jail for 16 months, or 2 or 3 years, if any of the following conditions exist:

    a) The person has one or more prior convictions for specified felonies or for an offense requiring sex offender registration;

    b) The person has two or more prior convictions for planting, cultivating, harvesting, drying, or processing more than six living cannabis plants; or,

c) The offense resulted in any of the following:

i. Illegal diversion of water;

ii. Violation of laws related to the discharge of waste;

iii. Violation of laws related to polluting waters of the state;

iv. Diversion or obstruction of the natural flow of rivers, streams, and lakes;

v. Dumping hazardous substances or other unlawful activity related to hazardous waste;

vi. Violations of law related to endangered and threatened species, the Migratory Bird Treaty Act, or the unlawful taking of fish and wildlife; or,

vii. Intentionally or with gross negligence causing substantial environmental harm to surface or ground water, public lands or other public resources. (Health & Saf. Code, § 11358, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Illegal cannabis cultivation in California is rampant. Widespread illicit operations undercut legal farmers and cause severe environmental damage. Workers in these illegal farms are exposed to unsafe conditions, inadequate housing, and wage theft. Due to the misdemeanor classification of illegally cultivating cannabis, growers are only cited and released, subsequently resuming operations soon after arrest. With no jail time and only a small monetary fine, illegal growers will only continue to harm the environment, unfairly compete against law-abiding cannabis businesses, and continue abusing their workers. AB 2850 seeks to address this issue by changing the penalty for illegal cannabis cultivation to a felony, making it more difficult for these operations to persist."

2) **This Bill Creates Multiple New Felonies for Cannabis Cultivation by Individuals:** Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), was adopted by the voters on November 8, 2016, and became effective the following day. (California Secretary of State (SOS), *Statement of the Vote* at p. 12 https://elections.cdn.sos.ca.gov/sov/2016-general/sov/2016-complete-sov.pdf> (June 20, 2023).)

Proposition 64 made several major changes including: decriminalizing the possession of up to one ounce of cannabis, and up to eight grams of cannabis concentrates; decriminalizing the cultivation of up to six cannabis plants; reducing the penalties for specified cannabis offenses from felonies to misdemeanors, and from misdemeanors to infractions; and creating a statutory framework to regulate the cultivation, distribution, sale and tax of cannabis products. (SOS, *Proposition 64* (2016), at pp. 178-210,

<https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf> [June 20, 2023].)

This bill would, create multiple new felonies associated with planting, cultivating, harvesting, drying, or processing marijuana.

First, AB 2850 makes it a felony, rather than an infraction, for a person 18 to 20 years of age to plant, cultivate, harvest, dry, or process any number of cannabis plants. Under existing law, 18 to 20 year olds who plant, cultivate, harvest, dry or process between one and six cannabis plants may face an infraction or a fine of $100. Further, persons 18 years or age or over who plant, cultivate, harvest, dry or process *more than six cannabis plants* can face a fine of $500 or up to six months in county jail. This bill would make it a felony for an 18 to 20 year old to plant, cultivate, harvest, dry or process any number of cannabis plants. For example, consider an 18 year old who plants a single cannabis plant in their backyard or agrees to trim or harvest a cannabis plant planted by their parent, neighbor, or friend, for $20. Rather than facing an infraction or $100 fine, the 18 year old would be require to be sentenced to 16 months, two years, or three years in county jail, or state prison if the person has prior specified convictions.

Second, AB 2850 makes it a felony for any person at least 21 years old to plant, cultivate, harvest, dry, or process more than six living cannabis plants, irrespective of prior convictions, or if the cultivation violates certain environmental laws. Proposition 64 allowed for a person over 18 who plants, cultivates, harvests, dries, or processes more than six living cannabis plants to be prosecuted with a felony in a narrow list of circumstances. Specifically, such persons could be charged with a felony, punishable by imprisonment in county jail (or state prison if certain conditions are met) for 16 months, or two or three years, if:

a) The person has one or more prior convictions for a specified felony;

b) The person has two or more prior convictions for cannabis cultivation;

c) The offense resulted in violations of the Water Code relation to illegal diversion and discharge of water, violations of the Fish and Game Code relating to water pollution and endangered species, fish and wildlife; violations of the Penal Code relating to pollution and environmental hazards; violations of the Health and/or Safety Code relating to hazardous waste; or,

d) The offence was done intentionally or with gross negligence causing substantial environmental harm to surface or ground water, public lands, or other public resources.

AB 2850 would make it a felony, for any person 21 years or older to plant, cultivate, harvest, dry, or process more than six cannabis plants. Specifically, it removes Prop 64's requirement that persons can only be charged with a felony for cultivating more than six cannabis plants if they have convictions for specified felonies, two or more prior convictions for cannabis cultivation, or if the cultivation violates specified environmental laws.

This significantly expands the types of persons that can be prosecuted with a felony for cannabis cultivation. For example, a 21 year old who adds a row of 7 cannabis plants to their backyard garden would be punished with up to three years in county jail. This would be the case even if the person has no criminal record and the cultivation of the plants does not create

any environmental harm. This constitutes a notable deviation from Prop 64, which only allows for cannabis cultivation to be prosecuted as a felony where a person had significant prior criminal history and where the cultivation caused harm to surrounding water systems and endangered specifies.

3) **Unintended Consequences: Overcrowding of County Jails, Deportations, Racial Disparities:** *First,* by creating a new felony, punishable by up to three years in county jail, for persons 18 to 20 who plant a single cannabis plant, and by making it a felony for any persons 21 years and older to plant more than six plants (regardless of prior convictions or resulting environmental harm) AB 2850 can be expected to increase the number of persons incarcerated in county jails.

This will likely exacerbate existing overcrowding issues and associated in-custody deaths in county jails, given jails have been grappling with their overcrowding issues, heightened by COVID-19. (PPIC, *California's Prison Population Drops Sharply, but Overcrowding Still Threatens Prisoner Health* (March 2, 2021) <https://www.ppic.org/blog/californias-prison-population-drops-sharply-but-overcrowding-still-threatens-prisoner-health/> [June 20, 2023].) This is particularly relevant, given that incarcerated persons are dying in county jails at record rates in California. According to the Department of Justice, "Since the passage of Public Safety Realignment in 2011 - which mandated that individuals sentenced for specific non-violent offenses be housed in county jails rather than state prisons - the share of deaths in custody reported from county sheriff's departments (who manage county jail systems) has grown from 17.1 percent in 2010 to 22.2 percent in 2014…." (Department of Justice, *Death in Custody from 2010 to 2019.* (July 5, 2023). Available at: <https://openjustice.doj.ca.gov/data-stories/2019/death-custody-2010-2019> [as of March 26, 20240.) The percentage of county jail deaths rose to 20.6 percent in 2019. (*Id.*) In 2022, 215 persons died in California jails, a record high considering data going back to 2005. (Duara and Kimelman, *California jails are holding thousands fewer people, but far more are dying in them.* (March 25, 2024). Available at <https://calmatters.org/justice/2024/03/death-in-california-jails/> [as of March 26, 2024].)

Second, the creation of new felonies for cannabis cultivation may have the unintended immigration consequences for low level employees of cannabis operations including migrant workers. This bill would also subject these individuals not only to fines, fees and incarceration, but also to numerous collateral consequences. For example, for non-U.S. citizens, the federal immigration consequences of a drug conviction are severe. Upon a drug conviction, a non-citizen may become automatically deportable and inadmissible, and the conviction may subject the defendant to mandatory immigration detention, without bond. (8 U.S.C. § 1227(a)(2)(B); 8 U.S.C. § 1182(a)(2)(A)(i)(II); 8 U.S.C. § 1226(c)(1).)

Third, the new felonies proposed by this bill can be expected to disproportionately impact people of color. According to the California Research Bureau "Despite the legalization of cannabis in the state [] Black people continue to be overrepresented in felony and misdemeanor marijuana arrests by roughly three (felony) and two times (misdemeanor) their representation in the population. According to California Department of Justice data, Hispanic people in California are also overrepresented in misdemeanor and felony marijuana arrests compared to their representation in the population (See Table 1). Marijuana arrest rates tend to be highest in marijuana-producing California counties such as Mendocino, where the arrest rate for Black people was nearly 10 times higher than the arrest rate for

white people in 2016." California Research Bureau, *Criminalization of Cannabis Led to Inequities. Now State Revenue Seek to Address* (May 2021). Available at: <https://www.library.ca.gov/wp-content/uploads/crb-reports/2021_05_Cannabis_Policy_Brief.pdf>[as of April 17, 2024].) In some counties, marijuana arrests for cannabis cultivation are brought almost exclusively against Asian Americans. Public Record Act Request data noted in ACLU Cal Action's letter provides "[t]oday, arrests for unpermitted cannabis cultivation are similarly racially skewed. In Siskiyou County, for instance, 93% of people arrested for illicit cultivation are Asian-American. In San Bernardino County, 86% of arrests were of Asian-Americans or Latin[] Americans."

Further, not only do communities of color continue to experience the negative impacts of cannabis prohibition, but they have largely remained locked out of the benefits of the legalized cannabis market. For example, concerns have been raised that policies aimed at water usage for unlawful cannabis cultivation have been used to targeted minority communities. (See, e.g., *"ro" Lo v. Cnty. of Siskiyou* (E.D. Cal. 2021) 558 F. Supp. 3d 850, 869 ["the dehydration and de facto expulsion of a disfavored minority community cannot be the price paid in an effort to stop illegal cannabis cultivation and any attendant harms]; Los Angeles Times, *A California county cuts off water to Asian pot growers. Is it racism or crime crackdown?* (Oct. 26, 2021) <https://www.latimes.com/california/story/2021-10-26/weaponizing-california-water-against-illegal-pot-growers> [June 20, 2023]; The Guardian, *Water, weed and racism: why Asians feel targeted in this rural California* county (April 8, 2022) <https://www.theguardian.com/us-news/2022/apr/08/california-asian-discrimination-water-rights-siskiyou> [June 20, 2023].)

4) **Numerous Criminal Penalties Already Address the Conduct this Bill Seeks to Prohibit**: According to the author, this bill intends to address the harms associated with illegal cannabis cultivation, including the environmental damage associated with unregulated illegal operations. To the extent this bill is aimed at increasing penalties, there are currently a number of laws that prosecutors can use to charge these crimes that call for increased penalties.

As noted earlier, existing law already makes it a felony for a person who plants, cultivates, harvest, dries, or processes more than six cannabis plants if the offense results in: 1) an illegal diversion and discharge of water; 2) violations of the Fish and Game Code relating to water pollution and endangered species; 3) fish and wildlife; violations of the Penal Code relating to pollution and environmental hazards; 4) violations of the Health and/or Safety Code relating to hazardous waste; and 5) intentional or gross negligence causing substantial environmental harm to surface or ground water, public lands, or other public resources.

Further, separate statutory provisions separately punish the environmental harms that may result from illegal cannabis operations.

***Violations of the Food and Agriculture Code*:** Food and Agriculture Code section 12996, already provides that any person who violates the code relating to pesticides is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $5,000 nor more than $50,000, or no more than six months imprisonment, or both fine and imprisonment. Subsequent convictions are subject to increased fines. If the offense involves an intentional or negligent violation that created or reasonably could have created a hazard to

human health or the environment, the person is subject to imprisonment for up to one year, as specified, or a fine or not less than $15,000 and no more than $100,000, or both the fine and imprisonment.

***Taking or Using Water without Permission*:** Further, a person who takes or uses water without permission, if the value is over $950, can be charged with grand theft, a felony. (Pen. Code, § 487.) A person who steals less than $950 worth of water can be charged with petty theft. (Pen. Code, § 490.2.) Further, the unauthorized diversion of water is trespass. (Wat. Code, § 1052.)

***Extraction or Use of Groundwater*:** As stated above, extracting water from a well without authorization could be charged as felony grand theft, or misdemeanor petty theft. (Pen. Code, §§ 487, 490.2.) In addition, any who causes water unnecessarily to flow from the well or to go to waste is guilty of a misdemeanor. (Wat. Code, § 307.) Digging a well without filing required report with the state is also a misdemeanor. (Wat. Code, § 13754.)

Water Pollution: Additionally, many penalties already apply to water pollution. Penal Code section 347 makes it a felony, punishable by imprisonment in the state prison for two, four, or five years to put any harmful substance in any spring, well, reservoir or public water supply. Further, any person who knowingly or negligently violates any water waste discharge requirements, violates provisions of the federal Clean Water Act, or introduces any pollutant or hazardous substance into a sewer system or a publically owned treatment works can be punished by exorbitant fines ranging from $5,000 to $2 million per day of violation, and such conduct could be charged as a felony, punishable by imprisonment for two, three, or four years. (Wat. Code, § 13387.) Further, the Fish and Game Code prohibits depositing any material deleterious to life in the waters of this state, a violation of which is punishable by a $25,000 fine and civil penalties. (Fish & Game Code, § 5650.)

5) **Increased Penalties Do Not Deter Crime**: It is unclear whether creating new felonies for cannabis cultivation will have any additional deterrent effect. Research shows that increasing the severity of the punishment does little to deter the crime. Unduly long sentences are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands. (*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018).)

   Increasingly punitive sentences add little to the deterrent effect of the criminal justice system; and mass incarceration diverts resources from program and policy initiatives that hold the potential for greater impact on public safety. (*Ibid.*) According to the National Institute of Justice, laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not "chasten" individuals convicted of crimes, and prisons may exacerbate recidivism. Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs. (National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [June 21, 2023].) "If the length of a prison term has little deterrent value, it may be time to forego the rationale of "sending a message." (*Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L. Rev., 1 (Nov. 5, 2018) (citations omitted).) These findings are consistent with

other research from national institutions of renown. (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine (April 2014) at pp. 130 -150 <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs> [June 21, 2023].)

6) **California Constitutional Limitations on Amending a Voter Initiative:** Because Proposition 64 was a voter initiative, the Legislature may not amend the statute without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. (*People v. Superior Court* (*Pearson*) (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd. (c).) The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." (Cal. Const., art. II, § 10, subd. (c).)

Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative. The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. As to the Legislature's authority to amend the initiative, Proposition 64 states: The Legislature may by majority vote amend, add, or repeal any provisions to further reduce the penalties for any of the offenses addressed by this act. Except as otherwise provided, the provisions of the act may be amended by a two-thirds vote of the Legislature to further the purposes and intent of the act. (*Proposition 64, supra,* § 10.)

The listed purposes and intent of Prop 64 include: 1) establish[ing] "a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax commercial growth and retail sale of marijuana"; 2) tak[ing] nonmedical marijuana production and sales out of the hands of the illegal market and bring them under a regulatory structure that prevents access by minors and protects public safety, public health, and the environment"; 3) permit[ing] adults 21 years and older to use, possess, purchase and grow nonmedical marijuana within defined limits for use by adults 21 years and older as set forth in this act"; 4) "prevent[ing] illegal production or distribution of marijuana"; 4) "preserv[ing] *scarce law enforcement resources to prevent and prosecute violent crime*"; and 5) "require[ing] minors who commit marijuana-related offenses to complete drug prevention education or counseling and community service." (*Proposition 64, supra,* § 3.) The stated purpose and intent does not include any mention of increasing penalties and creating new felonies associated with cannabis cultivation. (*Id.*, at § 3.) (emphasis added)

This bill makes it a felony, rather than an infraction, for a person 18 to 20 years of age to cultivate any cannabis plants and makes it a felony for any persons 21 years and older to plant more than six plants (regardless of prior convictions or resulting environmental harm) cannabis offenses addressed by Proposition 64. This conflicts with Prop 64's purposes to prioritize law enforcement reasons to address violent crime and generally permit the cultivation of marijuana for persons over 21. As such, AB 2850 is very likely inconsistent

with the purpose and intent of Proposition 64 and pursuant to the above-referenced provisions of the California Constitution, may require voters to authorize the provisions.

7) **Argument in Support**: According to the *California State Sheriff's Association* "Unfortunately, California's transition into a regulated cannabis industry has turned the marijuana cultivation industry into a lucrative illicit business. Illicit growers have been operating with impunity, which has had a tremendous impact on the allocation of law enforcement resources. This proposal would ensure that those who illegally cultivate cannabis are charged with a felony and held accountable for their illegal operations. These acts damage the environment and squeeze out participants in the regulated market. This bill will help law enforcement fight the illicit marijuana market. For these reasons, CSSA is pleased to support AB 2850."

8) **Argument in Opposition**: According to ACLU California Action "For decades, Black Californians were disproportionately arrested and jailed for marijuana offenses. Today, arrests for unpermitted cannabis cultivation are similarly racially skewed. In Siskiyou County, for instance, 93% of people arrested for illicit cultivation are Asian-American. In San Bernardino County, 86% of arrests were of Asian-Americans or Latin[] Americans. Currently, over two-thirds of cities and counties in California ban non-personal cannabis cultivation. The vast majority of these localities continue to ban any type of commercial cannabis activity in their jurisdictions. In many, any cultivation of more than six plants is impermissible. AB 2850 would reward their refusal to legalize cannabis, allowing them to return to full-scale felony prosecutions of cultivators.

In some of these localities, law enforcement officials have openly racist motivations for their continued War on Drugs – and have already been trying to find a way to jail people of color on felony charges for cultivating marijuana. For instance, in Siskiyou County, public records revealed that the District Attorney's office has explicitly attempted to use arcane Water Code sections to target Hmong-American cannabis cultivators with felony charges, with one prosecutor writing: "I think that the Hmongs will care about felony charges, so this should help." These prosecutions are occurring in a context where a county supervisor has compared the influx of Hmong-Americans to the area to "the rise of Sharia law in Europe" and the local sheriff has expressed racist concerns that Asian cultivators eat dogs. AB 2850 would only give more tools for local law enforcement and prosecutors to target minority cultivators with disparate penalties. AB 2850 would lead to a surge of local jail populations, diverting millions of dollars to incarceration in dangerous conditions rather than social services. In San Bernardino County, for instance, the Sheriff's Office cited 2,725 people with illicit cannabis cultivation in 2021 and 2022. Similar numbers of individuals could be charged with felonies in San Bernardino if AB 2850 passes."

9) **Related Legislation**:

a) SB 753 (Caballero), Chapter 504, Statutes of 2023, makes it a felony for an adult who plants, cultivates, harvests, dries, or processes more than six living cannabis plants to intentionally or with gross negligence cause substantial environmental harm to surface or groundwater.

a) SB 756 (Laird), Chapter 158, Statutes of 2023, enhanced the enforcement authorities of the State Water Resources Control Board (State Water Board) and the nine Regional

Water Quality Control Boards (regional water boards) as it relates to unlicensed cannabis cultivation.

b) AB 1684 (Maienschein), Chapter 477, Statutes of 2023, expands existing law that allows local agencies to immediately impose administrative fines or penalties for specified violations that exist as a result of the unlicensed cultivation of cannabis to also include the unlicensed manufacturing, processing, distribution, or retail sale of cannabis.

10) **Prior Legislation**:

a) SB 1426 (Caballero), of the 2021-2022 Legislative Session, makes it an alternate felony/misdemeanor (a "wobbler") to plant, cultivate, harvest, dry, or process more than 50 living cannabis plants when that activity involves unauthorized tapping into a water conveyance or storage infrastructure, or digging an unpermitted well. SB 1426 was held in the Senate Appropriations Committee.

b) AB 195 (Committee on Budget and Fiscal Review), Chapter 56, Statutes of 2022, among other things, authorized, for a violation resulting from unlicensed cannabis cultivation, a civil action brought by a county counsel or city attorney, as specified.

c) AB 2421 (Rubio), of the 2021-2022 Legislative Session, would have authorized a county counsel to file a civil action relating to unlawful water pollution and unauthorized water diversions due to unlicensed cannabis cultivation on behalf of the state. AB 2421 was referred to, but never heard in the Senate Judiciary Committee.

d) AB 1725 (Smith) of the 2021-2022 Legislative Session, makes it a felony, punishable by 16 months or 2 or 3 years in county jail to plant, cultivate, harvest, dry, or process more than 6 living cannabis plants. The bill would additionally make it a felony, punishable by 16 months or 2 or 3 years in county jail, for a person at least 18 years of age but less than 21 years of age to plant, cultivate, harvest, dry, or process less than 6 living cannabis plants. AB 1725 was never heard by Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association

Oppose

ACLU California Action
Asian Americans Advancing Justice - Asian Law Caucus
Big Sur Farmers Association
California Alliance for Youth and Community Justice
California Norml
California Public Defenders Association
Californians for Safety and Justice
Californians United for A Responsible Budget
Drug Policy Alliance

Ella Baker Center for Human Rights
Freedom 4 Youth
Humboldt County Growers Alliance
Initiate Justice
Initiate Justice Action
LA Defensa
Legal Services for Prisoners With Children
Mendocino Cannabis Alliance
Nevada County Cannabis Alliance
Origins Council
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
Team Justice
Trinity County Agriculture Alliance
Uncommon Law
Vera Institute of Justice
Young Women's Freedom Center

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2878 (Gabriel) – As Amended March 18, 2024

SUMMARY: Extends 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.

EXISTING LAW:

1) Prohibits states from passing ex post facto laws. (U.S. Const., art. I, § 10, cl. 1.)

2) Provides that prosecution for an offense punishable by death or by imprisonment in the state prison for life or for life without the possibility of parole, **or *for the embezzlement of public money***, may be commenced at any time. (Pen. Code, § 799.)

3) Provides that the prosecution for an offense punishable by imprisonment in the state prison for eight years or more or by imprisonment in the county jail for eight years or more shall be commenced within six years after commission of the offense. (Pen. Code, § 800.)

4) Provides that prosecution of a felony, except as specified, shall be commenced within three years after the commission of the offense. (Pen. Code, § 801.)

5) Provides that prosecution of misdemeanor, except as specified, shall be commenced within one year after the commission of the offense. (Pen. Code, § 802.)

6) Provides that prosecution for specified offenses, including grand theft, falsification of public records, welfare fraud, insurance fraud, which include a ***material element of fraud***, shall be commenced within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later. (Pen. Code, §§ 801.5, 803, subd. (c).)

7) Makes it a crime to commit identity theft. This offense is a wobbler, punishable as a misdemeanor by a year in county jail or a felony punishable up to 16 months, 2 years, or three years in county jail. (Pen. Code, § 530.5.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Extending the statute of limitations in cases related to pandemic-era EDD fraud will help ensure that we recapture the state funds that should be going to hardworking Californians in need. This bill, by extending the statute of

limitations in the criminal cases most commonly used in response to EDD fraud, will support prosecutors who seek to hold those responsible for that miscarriage of justice."

2) **This Bill is Unconstitutional**: This bill would apply retroactively only. This bill would extend the statute of limitations to offenses that occurred between March 19, 2020 and December 31, 2022. At the outset, a nonsensical unintended consequence of this bill is that it would create a disparate statute of limitations period for offences depending on the date that they were committed. For example, for an offense that occurred on January 1, 2023, the statute of limitations would expire January 1, 2027. For an offense that occurred one day earlier on December 31, 2022 however, the statute of limitations would not expire until December 31, 2034.

In addition, this bill is patently unconstitutional.

In *Stogner v. California*, (2003) 539 U.S. 607, the Supreme Court resolutely 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.) An ex post facto law is a law that imposes criminal liability or increases criminal punishment retroactively. Ex post facto laws are not only outright prohibited by the United States Constitution, but they also violate all notions of fundamental fairness and result in a substantial deprivation of defendant's due process rights. This Clause protects liberty by preventing governments from enacting statutes with "manifestly unjust and oppressive" retroactive effects. (*Calder v. Bull* (1978) 3 U.S. 386.) Extending a limitations period after the state has assured "a man that he has become safe from its pursuit . . . seems to most of us unfair and dishonest." (*Falter v. United States* (1928) 23 F.2d 420, 426.) In such a case, the government has refused "to play by its own rules." (*Carmell v. Texas* (2000) 529 U.S. 513, 533.) It deprives the defendant of the "fair warning," that might have led the defendant to preserve exculpatory evidence. (*Weaver v. Graham* (1981) 450 U.S. 24, 28.) And, permitting such an extension, allowing legislatures to pick and choose when to act retroactively, risks both "arbitrary and potentially vindictive legislation," and erosion of the separation of powers. (*Ibid.*)

This bill, if it were to be chaptered, would go into effect January 1, 2025. Thus, the statute of limitations for most of these cases, which under existing law range from one to four years, will have expired. As such, this bill unconstitutionally attempts to reset the clock and revive time-barred prosecutions. This bill will "produce the kind of retroactivity that the Constitution forbids." (*Stronger, supra*, at 607.)

Further, 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.) This bill would strip some defendants of this jurisdictional

defense, solely because the state has delayed filing charges.

3) **Statutes of Limitations Serve Crucial Purpose**: 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 for 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. (*People v. Turner*, *supra*, 134 Cal.App.4th 1591.)

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).)

It bears repeating, that as noted above, there is a strong public policy against extending the statute of limitations. Memories fade as time passes. Evidence that might have been gathered by the police is lost. Witnesses move or die. Fairness and due process demand prosecution be commenced in a reasonable time so the accused may be able to gather evidence to prove his or her innocence.

4) **Pandemic Unemployment Assistance**: Pandemic Unemployment Assistance was part of the federal assistance that helped unemployed Californians who were not usually eligible for regular unemployment insurance benefits. Pandemic Unemployment Assistance included up to 86 weeks of benefits, between February 2, 2020 and September 4, 2021.[1] According to the Employment Development Department, "During the COVID-19 pandemic, we experienced an unprecedented surge of fraud attempts, particularly in new, federal pandemic benefit programs, which lacked traditional safeguards in an effort to get benefits to workers who needed them."[2] Since 2020, over 2,000 investigations have opened, hundreds of suspects have been arrested, and many have been criminally charged and convicted.[3] As of February 2024, $5,990,220,491 in unemployment funds have been seized or recovered.[4]

5) **Argument in Support**: According to the *California Chamber of Commerce*, "AB 2878 will provide a critical opportunity for California to identify and pursue these fraudsters by allowing authorities the time necessary to locate, investigate, and potentially prosecute them.

"By way of background – the COVID-19 pandemic overwhelmed many institutional systems that, simply put, were not ready to address the unexpected crisis. Notable among them was California's EDD, which was suddenly pushed to process an unprecedented number of claims for unemployment and for the newly-created federal benefits, such as the Pandemic Unemployment Assistance program (known as "PUA" benefits). Because of well-documented failures in EDD's fraud-prevention systems, California paid out what was initially estimated at $20 billion in mistaken payments, but most recently was revised upward to $55 billion pursuant to the most recent California Auditor review. The scale of this fraud has created a new tidal wave of work for California's enforcement authorities, as EDD staff, District Attorneys, and others attempt to sort through the vast troves of documents and information related to these billions of dollars of potential fraud.

"However, the present 3-year statute of limitations would act as a shield for may fraudsters because law enforcement resources simply cannot address all this fraud in that time period. And, while legal consequences are always important as a deterrent, they are also particularly important here because such legal actions are a key method to recover the incorrectly-

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[1] Employment Development Department, *Pandemic Unemployment Assistance*. Available at: <https://edd.ca.gov/en/about_edd/coronavirus-2019/pandemic-unemployment-assistance/>.
[2] Employment Development Department, *The EDD's Response to Fraud*. Available at: <https://edd.ca.gov/en/about_edd/fraud-response/>.
[3] *Ibid.*
[4] *Ibid.*

distributed funds from fraudsters and re-pay both the federal government and California's UI Fund.

"Without such recovery, California employers will be forced to bear the cost of this fraud because the employer community is paying increased taxes to re-fill the California UI Fund. In other words, all traditional unemployment insurance benefits which were lost due to fraud during the pandemic were, effectively, lost from California's employers – as we will be required to replace those lost funds in the form of increased taxes."

6) **Related Legislation**:

a) AB 2984 (Gipson) would allow a fleeing the scene of an incident to be prosecuted at any time. AB 2984 is pending in this Committee.

b) AB 2295 (Addis), would allow the prosecution of specified sex offenses to be commenced at any time. AB 2295 is pending 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.

7) **Prior Legislation**:

a) AB 2274 (Rubio), Chapter 587,Statutes of 2022, extends the statute of limitations for failing to report child abuse, as specified, to no later than 4 years after the commission of the offense.

b) AB 1247 (Chau), Chapter 206, Statutes of 2021, extends the statute of computer-related felonies to be commenced within three years after discovery of the commission of the offense.

c) SB 610 (Nguyen), Chapter 74, Statutes of 2017, extends the statute of limitations for the crime of concealing an accidental death to no more than four years after the concealment.

d) SB 813 (Leyva), Chapter 777, Statutes of 2016, eliminated the statute of limitations for specified sex crimes.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chamber of Commerce
California District Attorneys Association

Opposition

None Submitted

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 2907 (Zbur) – As Introduced February 15, 2024

SUMMARY: Establishes additional steps courts and law enforcement make steps to ensure that a person subject to a protective order, as specified, relinquishes any firearm in their possession. Specifically, **this bill**:

1) Requires the court, in a case against a defendant for domestic violence, if an inquiry into the defendant's history reveals or if the court otherwise receives evidence that the defendant owns or possesses a firearm or ammunition, to make a written record as to whether the defendant has relinquished the firearm or ammunition and has provided proof of the required storage, sale, or relinquishment of the firearm or ammunition.

2) Requires the court, if evidence of compliance with firearms prohibitions is not provided, to order the clerk of the court to immediately notify appropriate law enforcement officials of the protective order, information about the firearm or ammunition, and of any other information obtained through the inquiry into the defendant's history, as required, that the court determines is appropriate.

3) Requires law enforcement officials notified by the court of the defendant's noncompliance to take all actions necessary to obtain those and any other firearms or ammunition owned, possessed, or controlled by the defendant and to address any violation of the order with respect to firearms or ammunition as appropriate and as soon as practicable.

4) Requires an arresting officer for an offense involving an act of domestic violence, as specified, to do all of the following:

   a) Query the Automated Firearms System through the California Law Enforcement Telecommunications System for any firearms owned or possessed by the arrestee;

   b) Ask the arrestee, victim, and any other household members, if applicable, about any firearms owned or possessed by the arrestee; and,

   c) Document in detail, in the arrest report, the actions taken to fulfil these obligations.

5) Requires the investigating or filing officer to include a copy of the Automated Firearms System report when filing the case with the district attorney or prosecuting city attorney.

6) Provides that it is the intent of the Legislature that the length of any restraining order, issued when a person is granted probation for an act of domestic violence, as specified, be based upon the seriousness of the facts before the court, the probability of future violations, the safety of the victim and their immediate family, and the information provided to the court

pursuant to the inquiry into the defendant's history required in domestic violence cases.

7) Requires a person subject to a protective order, as specified, to relinquish any firearm they possess or control pursuant to this section.

8) Requires the court, upon the issuance of a protective order, to order the restrained person to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, either by surrendering the firearm to the control of a local law enforcement agency, or by selling the firearm to a licensed firearms dealer, as specified. The court shall provide the person with specific local information to assist with compliance.

9) Authorizes the court, if a person refuses to relinquish a firearm or ammunition based on an assertion of the right against self-incrimination as provided by the Fifth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, to grant use immunity for the act of relinquishing the firearm or ammunition.

10) Authorizes a local law enforcement agency to charge a person subject to a protective order a fee for the storage of any relinquished firearm.

11) Provides that the fee shall not exceed the actual cost, as defined, incurred by the local law enforcement agency for the storage of the firearm.

12) Requires the protective order to state on its face that the restrained person is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order.

13) Requires the protective order to state on its face the expiration date for relinquishment.

14) States that the protective order shall prohibit the person from possessing or controlling any firearm for the duration of the order.

15) Provides that, at the expiration of the order, the local law enforcement agency shall return possession of any surrendered firearm to the restrained person, within five days after the expiration of the relinquishment order, unless the local law enforcement agency determines that (1) the firearm has been stolen, (2) the person is prohibited from possessing a firearm because they are in any prohibited class for the possession of firearms, as specified, or (3) another successive order has been issued against the person under this section.

16) Provides that, if the local law enforcement agency determines that the restrained person is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm, the person shall be entitled to sell or transfer the firearm to a licensed dealer; and requires, if the firearm has been stolen, the firearm to be restored to the lawful owner upon their identification of the firearm and proof of ownership.

17) Authorizes the court, as part of the relinquishment order, to grant an exemption from the relinquishment requirements for a particular firearm if the restrained person can show that a

particular firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary.

18) Require the order, if the employment exemption is granted, to provide that the firearm shall be in the physical possession of the restrained person only during scheduled work hours and during travel to and from their place of employment.

19) Authorizes a court, in any case involving a peace officer who as a condition of employment and whose personal safety depends on the ability to carry a firearm, to allow the peace officer to continue to carry a firearm, either on duty or off duty, if the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer and may require the peace officer to enter into counseling or other remedial treatment program to deal with any propensity for domestic violence.

20) Provides that, during the period of the relinquishment order, the restrained person is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency.

21) Provides that a licensed firearms dealer, who presents a local law enforcement agency with a bill of sale indicating that all firearms owned by the restrained person that are in the possession of the local law enforcement agency have been sold by the restrained person to the licensed firearms dealer, shall be given possession of those firearms, at the location where the firearms are stored, within five days of presenting the local law enforcement agency with the bill of sale.

22) Expands the protective orders for which a person is prohibited from possessing a firearm to include protective orders issued for inflicting corporal injury resulting in a traumatic injury upon a spouse, cohabitant, fiancé/fiancée, or mother or father of the offender's child; elder abuse; stalking; or one issued upon a grant of probation for domestic violence.

23) Makes conforming changes.

EXISTING LAW:

1) Requires the prosecutor, on any charge involving acts of domestic violence as specified, to perform or cause to be performed, by accessing the electronic databases, a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court. (Pen. Code, § 273.75, subd. (a).)

2) Requires the information from the investigation into the defendant's history to be presented for consideration by the court (1) when setting bond or when releasing a defendant on their own recognizance at the arraignment, if the defendant is in custody, (2) upon consideration of any plea agreement, and (3) when issuing a protective order, as specified. (Pen. Code, § 273.75, subd. (a).)

3) Requires the prosecutor to search the following databases, when readily available and reasonably accessible:

   a) The California Sex and Arson Registry (CSAR);

   b) The Supervised Release File;

   c) State summary criminal history information maintained by the Department of Justice, as specified;

   d) The Federal Bureau of Investigation's nationwide database; and,

   e) Locally maintained criminal history records or databases. (Pen. Code, § 273.75, subd. (b)(1)-(5).)

4) Provides that a record or database need not be searched if the information available in that record or database can be obtained as a result of a search conducted in another record or database. (Pen. Code, § 273.75, subd. (b).)

5) Requires the prosecutor, if the investigation in the defendant's history reveals a current civil protective or restraining order or a protective or restraining order issued by another criminal court and involving the same or related parties, and if a protective or restraining order is issued in the current criminal proceeding, to send relevant information regarding the contents of the order issued in the current criminal proceeding, and any information regarding a conviction of the defendant, to the other court immediately after the order has been issued. (Pen. Code, § 273.75, subd. (c).)

6) Provides that, when requested, the information revealed in the investigation into the defendant's history may be sent to the appropriate family, juvenile, or civil court; and,w when requested and upon a showing of a compelling need, the information may be sent to a court in another state. (Pen. Code, § 273.75, subd. (c).)

7) Makes it an alternate misdemeanor-felony for a person to purchase or receive, or attempt to purchase or receive, a firearm knowing that they are prohibited from doing so in any jurisdiction by a temporary restraining order or injunction, by a protective order, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a temporary restraining order, injunction, or protective order, that includes a prohibition from owning or possessing a firearm. (Pen. Code, § 29825, subd. (a).)

8) Makes it a misdemeanor for a person who owns or possesses a firearm knowing that the person is prohibited from doing so in any jurisdiction by a temporary restraining order or injunction, by a protective order, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a temporary restraining order, injunction, or protective order, that includes a prohibition from owning or possessing a firearm. (Pen. Code, § 29825, subd. (b).)

9) Requires Judicial Council to provide notice on all protective orders issued within the state that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that a firearm owned or possessed by the person shall be relinquished to the

local law enforcement agency for that jurisdiction, sold to a licensed firearms dealer, or transferred to a licensed firearms dealer for the duration of the period that the protective order is in effect, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment. (Pen. Code, § 29825, subd. (d).)

10) Requires a court to issue a restraining or protective order for convictions for inflicting corporal injury resulting in a traumatic injury upon a spouse, cohabitant, fiancé/fiancée, or mother or father of the offender's child (Pen. Code, § 273.5, subd. (j)); elder or dependent adult abuse (Pen. Code, § 368, subd. (l)); stalking (Pen. Code, § 646.9, subd. (k)(1)); or upon a grant of probation for domestic violence (Pen. Code, § 1203.097, subd. (a)(1)).

11) Authorizes a court to issue a restraining for convictions for domestic violence, human trafficking, specified sex crimes, or any crime that requires a person to register as a sex offender. (Pen. Code, § 136.2, subds. (h) & (i).)

FISCAL EFFECT: Unknown

COMMENTS: >

1) **Author's Statement**: According to the author, "The data makes one thing clear: in cases of domestic violence, preventing access to guns is crucial to preventing gun related deaths and injury. AB 2907 will enhance gun safety protections for people who have survived domestic violence, stalking, and elder abuse by imposing enhanced enforcement. The bill conforms the firearm surrender deadlines for criminal protective orders to the shorter firearm surrender periods for civil protective orders, closing a dangerous loophole in California state law. We know what needs to be done to prevent domestic violence, injury, and death from firearms – enact policies that prevent abusers from having access to firearms, and then fully implement and enforce those policies. Timely and safe relinquishment of firearms is an essential component of effective domestic violence policy."

2) **Consideration**: This bill requires an arresting officer to ask an arrestee for an offense involving an act of domestic violence about any firearms owned or possess by the arrestee. However, law enforcement must give Miranda warnings to an arrestee prior to questioning them. "Miranda warnings" are a series of admonitions that are typically given by police prior to interrogating a suspect of a crime—they do not apply to, among others, witnesses of crime, the family members of a criminal defendant, or the family members of a person killed by police. The purpose of Miranda warnings is to advise people that have been arrested of their constitutional right against self-incrimination. They are the product of the landmark Supreme Court decision *Miranda v. Arizona* (1966) 384 U.S. 436. If the arrestee asserts their Miranda rights, all questioning must cease. As such, because they warnings are given prior to questioning the arrestee, law enforcement may not be able to fulfill the requirement that they ask the arrestee about any firearms.

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

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

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

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

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

4) **Argument in Support**: According to the *California Partnership to End Domestic Violence*, "Existing law authorizes a criminal court to issue a 10-year protective order for victims of Domestic Violence (Penal Code Section 273.5(j)); Elder Abuse (Penal Code Section 368(l)); Stalking (Penal Code Section 646.9 (K)(1)); and Domestic Violence (Penal Code Section 1203.097(a)(2)).

"While well intentioned, existing law has not proven to be effective in safely taking possession of prohibited firearms in domestic violence criminal cases. Major gaps exist in both Penal Code Section 29810 and Code of Civil Procedure 527.9. California recently enacted SB 320 (Eggman) to better effectuate the requirement that a restrained party in a civil domestic violence restraining order (DVRO) relinquish their firearms.

"Under Family Code 6389, if a restrained party does not relinquish their firearms upon the request of law enforcement at the time of the service of a domestic violence restraining order, the restrained party has 24 hours to relinquish their firearms and 48 hours to provide proof of

the relinquishment to the court. Neither of these provisions apply to a domestic violence protective order issued by a criminal court.

"SB 320 also requires a court to immediately notify the appropriate law enforcement agency whenever a subject of a DVRO fails to provide the required proof of firearm relinquishment and directs law enforcement to take all steps necessary to obtain any firearm owned or possessed by the restrained party.

"Under existing law there is no requirement for a criminal court to notify law enforcement immediately when there is a failure to comply with a criminal protective order firearm prohibition, nor is there a requirement for law enforcement to take all necessary steps to enforce the firearm prohibition in a criminal protective order.

"As a result, victims of domestic violence crimes who have a protective order issued by a criminal court are not given the same protection, priority and urgency as victims given a civil restraining order and are unnecessarily at risk for a longer time-period.

"In order to better protect victims of domestic violence, stalking, and elder abuse, AB 2907 would require a defendant subject to a 10-year protective order who owns a firearm to notify the court when they relinquish the firearm an provide proof of the required storage, sale, or relinquishment. If evidence of compliance of the firearms prohibition is not provided, the court shall immediately notify the prosecuting attorney and law enforcement so they can take all actions necessary to address the violation of the protective order as soon as practicable.

"AB 2907 will also better protect domestic violence victims by requiring the arresting officer in domestic violence cases to question the arrestee, victim, and other household members (if applicable) about any firearms owned or possessed by the arrestee and to check the Automated Firearm System (AFS) to determine whether the arrestee owns or possesses any firearms prior to presenting the case to the prosecuting attorney for filing.

"AB 2907 will also help to better protect domestic violence, elder abuse and stalking victims ensuring that the courts, law enforcement and prosecutors receive information about the presence of firearms at the earliest possible stage to ensure the greatest protections to victims of domestic violence."

5) **Related Legislation**:

a) AB 667 (Mainschein), would increase the renewal period to a maximum of 10 years, instead of 5, for GVROs if the subject of the petition poses a significant danger of self-harm or harm to another in the near future by having a firearm. AB 667 is pending hearing in this Committee. AB 667 is pending referral in the Senate Rules Committee.

b) AB 2519 (Mainschein), would provide that a defendant who is diverted for a charged serious or violent misdemeanor, for which there would be a 10-year prohibition on possessing a firearm if convicted, shall be prohibited from possessing a firearm until they successfully complete diversion. AB 2519 will be heard today in this committee.

c) AB 3014 (Irwin), would authorizes a district attorney to petition for a GVRO, a GVRO after notice and a hearing, and a renewal of a GVRO. AB 3014 is pending vote by the

Assembly.

6) **Prior Legislation**:

a) AB 667 (Maienschein), of the 2023-2024 Legislative Session, would have required a court to issue a GVRO lasting the maximum time of five years if the subject of the petition displayed an extreme risk of violence within the prior 12 months.

b) AB 301 (Bauer-Kahan), Chapter 234, Statutes of 2023, provides that, in determining whether grounds for issuing a GVRO exist, the court may consider evidence of the acquisition of body armor.

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

d) AB 12 (Irwin), Chapter 724, Statutes of 2019, extended the duration of gun violence restraining orders (GVRO) and their renewals to a maximum of five years.

e) AB 61 (Ting), Chapter 725, Statutes of 2019, expanded the persons who could petition for a GVRO to include an employer, a coworker, as specified, and an employee or teacher of a secondary school, or postsecondary school, as specified.

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Partnership to End Domestic Violence
Los Angeles County District Attorney's Office
Los Angeles Unified School District
West Hollywood/hernan Molina, Governmental Affairs Liaison

Opposition

None

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 2917 (Zbur) – As Amended April 16, 2024

SUMMARY: Authorizes a court, when considering whether there exists grounds for granting a gun violence restraining order (GVRO), to consider evidence of stalking, evidence of animal cruelty, evidence of threats toward a person or group based on a protected characteristic, and evidence of threats of violence or destruction of property for the purpose of interfering with the free exercise of constitutional rights. Specifically, **this bill**:

1) Adds to the list of evidence a court must consider when determining whether grounds for a GVRO exist the following:

   a) Evidence of stalking;

   b) Evidence of cruelty to animals;

   c) Evidence of the respondent's oral or written threats toward any person or group because of their actual or perceived race or ethnicity, nationality, religion, disability, gender, or sexual orientation, as specified, including, but not limited to, threats using electronic means of communication, including social media postings or messages, text messages, or email;

   d) Evidence of the respondent's knowing defacement, damage, or destruction of the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or the Constitution or laws of the United States, as specified; or,

   e) Evidence of the respondent's threats of violence to advance a political objective or threats of violence to interfere with any other person's free exercise or enjoyment of any right or privilege secured to them by the Constitution or laws of this state or the United States, including, but not limited to, threats using electronic means of communication, including social media postings or messages, text messages, or email.

2) Provides that a court may consider as evidence of an increased risk of violence for the purpose of determining whether to grant a GVRO threats of violence or acts violence toward groups and locations, as well as individuals.

3) Clarifies that a court may consider as evidence of an increased risk of violence for the purpose of determining whether to grant a GVRO the reckless use, display, or brandishing of a firearm, including on social media, email, and other electronic communications.

4) Expands the evidence a court may consider when determining whether to grant a GVRO to include a history of a violation by the subject of the petition of a protective order, or comparable firearm-prohibiting protective orders, including extreme risk protection orders, issued by out-of-state courts.

5) Expands the evidence a court may consider when determining whether to grant a GVRO to include evidence of a recent attempted acquisition of firearms, ammunition, or other deadly weapons. While evidence of recent acquisitions is a factor the court may consider, the court may still issue a gun violence restraining order to temporarily prevent legal access to firearms even if the respondent does not own firearms, ammunition, or other deadly weapons at the time that the court is considering issuing a gun violence restraining order.

6) Expands the circumstances in which the Attorney General and state and local criminal justice agencies must furnish criminal history information to city attorneys or county counsel to include when city attorneys or county counsel are pursuing a GVRO.

EXISTING LAW:

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

2) Requires a petition for a GVRO to describe the number, types, and locations of any firearms and ammunition that the petition believes the subject of the petition possesses. (Pen. Code, § 18107.)

3) Requires the court to notify the Department of Justice (DOJ) when a GVRO is issued, renewed, dissolved, or terminated. (Pen. Code, § 18115.)

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

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

6) States that an officer serving a GVRO shall immediately request the surrender of all firearms and ammunition. Alternatively, if law enforcement does not make a surrender request, the person must surrender them within 24 hours of being served with the GVRO, as specified. (Pen. Code, § 18120, subd. (b)(2).)

7) Allows law enforcement to seek a temporary GVRO if the officer asserts, and the court finds, that there is reasonable cause to believe the following:

   a) The subject of the petition poses an immediate and present danger of causing injury to himself or another by possessing a firearm; and

   b) A temporary GVRO is necessary to prevent personal injury to the subject of the order or another because less restrictive alternatives have been tried and been ineffective or have been determined to be inadequate under the circumstances. (Pen. Code, § 18125, subd.

(a).)

8) States that a temporary GVRO shall expire 21 days from the date it is issued and requires the court to hold a specified hearing to determine whether to issue an extended GVRO. (Pen. Code, §§ 18125, subd. (b), & 18148.)

9) Allows an immediate family member, an employer, a coworker, an employee or teacher of a secondary or post-secondary school, law enforcement officer, a roommate, an individual who has a dating relationship or a child in common with the subject of the petition to file a petition requesting that the court issue an ex parte GVRO enjoining a person from possessing, owning, purchasing, or receiving a firearm or ammunition. (Pen. Code, § 18150, subd. (a)(1).)

10) Allows a court to issue an ex parte GVRO if there is a substantial likelihood that the subject of the petition poses a significant risk of injury to themselves, or to another by having under their custody and control, owning, purchasing, possessing, or receiving a firearm as determined by balancing specified factors, and that the order is necessary to prevent personal injury to the subject of the petition or to others. (Pen. Code, §§ 18150, subd. (b), & 18155.)

11) States that an ex parte GVRO shall expire 21 days from the date the order is issued and requires the court to hold a hearing to determine whether to issue an extended GVRO. (Pen. Code, §§ 18155, subd. (c), & 18165.)

12) States that at the hearing, the petitioner has the burden to establish by clear and convincing evidence that the person poses a significant danger of causing injury to themselves or to another by possessing, owning, purchasing, possessing, or receiving a firearm and that the order is necessary to prevent injury. (Pen. Code, § 18175, subd. (b).)

13) Enumerates factors which the court must consider in making a determination that grounds for a GVRO exist:

    a) A recent threat or act of violence toward themselves or another;

    b) A violation of an emergency stalking or emergency domestic violence restraining order, as specified;

    c) A recent violation of a domestic violence restraining order, criminal protective order, civil harassment restraining order, a restraining order regarding juveniles that are either dependents or wards of the court, or a restraining order regarding an elder or dependent adult, as specified;

    d) A conviction of certain misdemeanor offenses that result in a person losing their ability to possess a firearm for a period of 10 years; and,

    a) A pattern of violent acts or threats within the past 12 months. (Pen. Code, §§ 18155, subd. (b)(1), & 18175, subd. (a).)

14) Permits a court to consider any other evidence of an increased risk for violence, including:

a) The unlawful or reckless use or display of a firearm;

b) A history of use, attempted use, or threatened use of physical force against another person;

c) A prior arrest for a felony offense;

d) A history of violating emergency stalking or emergency domestic violence restraining orders;

e) A history of violating a domestic violence restraining order, criminal protective order, a civil harassment restraining order, a restraining order regarding juveniles who are either dependents or wards of the court, or a restraining order regarding an elder or dependent adult, as specified;

f) Documentary evidence demonstrating involvement with alcohol or controlled substances; or,

g) Recent acquisition of a firearm, ammunition, or other deadly weapon, or the acquisition of body armor. (Pen. Code, §§ 18155, subd. (b)(1), & 18175, subd. (a).)

15) Provides that the court shall issue a GVRO for a period between one to five years, subject to termination and renewal. (Pen. Code, § 18175, subd. (e)(1).)

16) Requires the court to consider the length of time that the subject poses a significant danger of causing injury to self or others and the time it is necessary to prevent injury because less restrictive alternatives have either been tried and found to be ineffective or are inadequate or inappropriate under the circumstances. (Pen. Code, § 18175, subd. (e)(2).)

17) Allows a restrained person to file one written request per year for a hearing to terminate the order. (Pen. Code, §18185.)

18) Allows a request for renewal of a GVRO at any time within three months of its expiration. (Pen. Code, § 18190, subd. (a)(1).)

19) Makes a violation of a GVRO a misdemeanor. (Pen. Code, § 18205.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2917 clarifies existing law to draw a court's attention to additional, important risk factors for consideration in the analysis of whether to issue a GVRO. The risk factors added to the statute by this bill include threats of violence made against groups and locations where groups gather, threats made against any person or group protected by California's hate crimes law, and threats of violence to advance a political objective or to interfere with another person's exercise of their constitutional rights like voting. When hate is armed with a gun, we cannot wait for these threats to be acted

upon. California's GVRO law provides a mechanism to act when these threats are clear and imminent – allowing for action to prevent a tragedy from occurring. If a person is giving warning signs that they intend to carry out violence in the name of extremist ideology and/or fueled by hate-driven motivations, action must be taken to disrupt their access to firearms. California has a tool in place which can help prevent tragedies before they occur: the Gun Violence Restraining Order."

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

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

   In contrast, an immediate family member[1], an employer, a coworker[2], an employee or teacher of a secondary or post-secondary school[3], law enforcement officer, a roommate, an individual who has a dating relationship or a child in common[4] with the subject of the petition can petition for either an ex parte GVRO or a GVRO after notice and a hearing.

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

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

   In determining for how long to issue the GVRO the court will be required to consider two

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

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

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

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

things: (1) the length of time that a person poses a significant danger of causing injury to self or others by owning, purchasing, or possessing a firearm; and (2) that the GVRO is necessary to prevent that injury because less restrictive alternatives either have been tried and been ineffective, or are inadequate or inappropriate for the circumstances. (Pen. Code, § 18175, subds. (b)(1) & (2).) When making the determination, the court must consider certain evidence, such as whether the subject of the petition has committed a recent threat or act of violence, violated specified court protective orders, has been convicted of misdemeanors which would result in firearm prohibitions, or has demonstrated a pattern of violent acts or threats within the prior 12 months. (Pen. Code, §§ 18175, subd. (a) & 18155, subd. (b)(1).) In addition, court may also consider any other evidence of an increased risk for violence, such as whether the subject of the petition unlawfully and reckless used or displayed a firearm, has a history of violating specified protective orders, has recently been using controlled substances or alcohol, and other enumerated factors. (Pen. Code, §§ 18175, subd. (a) & 18155, subd. (b)(2).)

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

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

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

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

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

4) **Argument in Support**: According to the Democratic Club of Claremont, "AB 2917 provides a practical and cost-effective way to meet this moment and remove firearms from dangerous situations before threats turn into tragedy. As our state navigates this moment of extreme risk for specific communities and our democratic institutions, California's "extreme risk protection order" law can be uniquely useful. A decade ago, California passed the nation's first modern extreme risk protection order law, creating the process for a civil court to issue a GVRO that temporarily restricts a person's access to firearms when there is evidence of significant risk. GVROs can be a powerful tool for preventing hate crimes and violent acts of armed extremism, but judges need to know that hate-based violence and extremism are areas of acute risk they should focus on when deciding whether to issue a gun violence restraining order. AB 2917 makes those risk factors more clear.

"AB 2917 also updates and modernizes California's GVRO law to improve implementation. In the decade since our GVRO law was first passed, city and county attorneys have proven to be key stakeholders and leaders in effective use and implementation of this law. City attorneys have successfully sought GVROs to prevent hate crimes. AB 2917 recognizes the role these stakeholders play in implementation by codifying their access to criminal history information for use in GVRO proceedings in civil court. The bill also codifies that evidence of electronic communications, including social media, can be used in GVRO proceedings.

"AB 2917 protects communities and our democratic institutions with a focus on prevention. When hate is armed with a gun, we cannot wait for threats to be acted upon. We must use every available tool to keep our communities safe."

5) **Argument in Opposition**: According to Gun Owners of California, "This legislation is problematic given that 'violent speech' – although highly distasteful – is not by any means considered 'objective.' Like it or not, the 1st Amendment protects freedom of speech, even if it is ugly. Without question, the definition of verbal or written threats of violence is extremely subjective especially regarding the advancement of a 'political agenda'. It is also a grand stretch to expand the use of GVROs when evidence of animal cruelty is involved. Many of the time-honored training techniques are now considered animal cruelty by animal rights activists, but not by the majority of professionals who work in that particular arena. Any nexus to such a connection is ambiguous at best.

"It's also important to note that the constitutionality of Gun Violence Restraining Orders (GVRO) is currently under review by the Supreme Court of the United States (SCOTUS) in *United States v. Rahimi* and is slated to be decided this year. Multiple federal courts across the country have ruled against the use of ex parte legal claims against another person where the accused does not know his accusers and is prevented the opportunity to immediately defend themselves before the court. The violation of a person's 1st, 4th, 5th and 14th Amendment rights under the U.S. Constitution does not justify the government's ability to remove a person's 2nd Amendment rights.

"If SCOTUS rules that GRVOs are unconstitutional the entire panoply of California's ever-

expanding Red Flag laws will become null and void. It is better for the Legislature to wait for guidance from the Supreme Court before further growing the scope of GVROs in California."

6) **Related Legislation**

a) AB 667 (Maienschein), would increase the renewal period to a maximum of 10 years, instead of 5, for GVROs if the subject of the petition poses a significant danger of self-harm or harm to another in the near future by having a firearm. AB 667 is pending hearing in this Committee. AB 667 is pending referral in the Senate Rules Committee.

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

d) AB 12 (Irwin), Chapter 724, Statutes of 2019, extended the duration of gun violence restraining orders (GVRO) and their renewals to a maximum of five years.

e) AB 61 (Ting), Chapter 725, Statutes of 2019, expanded the persons who could petition for a GVRO to include an employer, a coworker, as specified, and an employee or teacher of a secondary school, or postsecondary school, as specified.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Anti-defamation League (UNREG)
Brady California

Brady Campaign
California District Attorneys Association
Democratic Club of Claremont
Equality California
Everytown for Gun Safety Action Fund
Giffords Law Center to Prevent Gun Violence
Indivisible Sacramento
Los Angeles Unified School District
San Diego City Attorney's Office
Women Democrats of Sacramento County

Oppose

Gun Owners of California, INC.

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2964 (Hart) – As Amended March 21, 2024

SUMMARY: Provides that it shall be prima facie evidence of an intent to engage in cockfighting if any person keeps or raises more than 3 roosters per acre of property, or more than 25 roosters on any property, except as specified. Specifically, **this bill**:

1) Creates a rebuttable presumption that any person who keeps or raises more than the specified number of roosters intends to engage in an exhibition of fighting does not apply to the following:

   a) Commercial poultry ranches registered with the Department of Food and Agriculture that primarily produces eggs or meat for commercial sale of food;

   b) Public or private schools registered with the State Department of education;

   c) Government operated animal shelters;

   d) Nonprofit animal welfare organizations, as specified; and,

   e) A 4-H or Future Farmers of America (FFA) project that involves roosters, if written approval has been provided 4-H or FFA.

2) Defines "rooster" as any male chicken that is any of the following:

   a) Is six months or older;

   b) Has full adult plumage; and,

   c) Is capable of crowing.

EXISTING LAW:

1) Provides that any person who causes any animal to fight with another animal, or permits the same to be done on any property under his or her control, or aids or abets the fighting of any animal is present as a spectator is guilty of a misdemeanor, punishable by up to six months in the county jail; a by a fine not to exceed $1,000; or both. (Pen. Code, § 597b, subd. (a).)

2) Provides that any person who causes a cock to fight with another cock, or permits the same to be done on any property under his or her control, and any person who aid or abets the fighting of any cock or is present as a spectator is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed $5,000; or by

both. (Pen. Code, § 597b, subd. (b).)

3) Provides that any person who owns, possesses, or trains any animal with the intent that the animal engaged in an exhibition of fighting is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed six months; by a fine not to exceed $1,000; or by both. (Pen. Code, § 597c, subd. (a).)

4) Provides that any person who owns, possesses, or trains a cock, or other bird with the intent that the cock or other bird shall be engaged in an exhibition of fighting is guilty of a crime punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed $5,000; or by both. (Pen. Code, § 597c, subd. (b).)

5) Provides that any person who owns, possesses, or trains any bird or animal with the intent that the cock or other bird shall be engaged in an exhibition of fighting by his or her vendee or any other person is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceed six months; by a fine not to exceed $1,000; or by both. (Pen. Code, § 597j.)

6) Provides that any person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal or maliciously and intentionally kills an animal is guilty of either a misdemeanor or felony, punishable by imprisonment in a county jail for up to one year and/or by a fine up to $20,000; or by imprisonment in state prison for 16 months, 2 or 3 years and/or a fine up to $20,000. (Pen. Code, § 597, subd. (a).

7) Provides that any person who overdrives, overloads, overworks, tortures, torments, deprives of drink, cruelly beats, or mutilates an animal is guilty of either a misdemeanor or felony, punishable by imprisonment in a county jail for up to one year and/or by a fine up to $20,000; or by imprisonment in state prison for 16 months, 2 or 3 years and/or a fine up to $20,000. (Pen. Code, § 597, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Assembly Bill 2964 will deter illegal cockfighting in California by setting a clear criminal standard of evidence to prosecute violations of the State's cockfighting ban. The bill creates a rebuttable presumption of cockfighting for criminal prosecution, if an individual owns more than three roosters per acre, or exceeds 25 roosters on any property. The owner must prove through evidence and arguments that they are not engaging in cockfighting activities. AB 2964 will protect animal welfare and prevent the potential diseases associated with cockfighting."

2) **Presumption of Innocence and Burden of Proof**: Penal Code Section 1096 provides, "A defendant in a criminal case is presumed innocent until the contrary is proved, and in case of a reasonable doubt whether his or her guilt is satisfactorily shown he or she is entitled to an acquittal, but the effect of this presumption is only to **place upon the state the burden of proving** him or guilty beyond a reasonable doubt." It appears that the purpose of this bill is to shift the burden of proof from the prosecution to the defendant in cockfighting cases, as evidenced by the author's statement, "This bill creates a rebuttable presumption for cockfighting prosecution if an individual owns more than 3 roosters per acre, or exceeds 25

roosters on any property. **The owner must prove through evidence and argument that they are not engaged in cockfighting activities.**" This is clearly an unconstitutional shift of the burden of proof from the state to the defendant. Due to the burden of proof in criminal cases being on the state, California criminal does not allow rebuttable presumptions that shift the burden of proof to the defendant. Also, the prosecution must prove each every element of the charged offense beyond a reasonable doubt, this bill unconstitutionally lightens that burden.

3) **Argument in Support**: According to the *California District Attorneys Association,* "I am writing in support of your measure, AB 2964, which would make possession of a specified number of roosters prima facie evidence of cockfighting in violation of Penal Code section 597(j).

"Despite existing law criminalizing cockfighting, breeders continue to raise and sell roosters for fighting. They typically maintain significant numbers of birds in unsanitary conditions, increasing the risk of disease transmission, which can be detrimental to commercial and backyard poultry and public health. Additionally, prosecuting illegal breeders can be difficult, requiring significant resources to prove that the birds are possessed for the purpose of fighting. By creating a rebuttable presumption that a certain number of birds is prima facie evidence of cockfighting, this bill will strengthen our animal welfare laws and aid in deterring this illegal and inhumane practice."

4) **Argument in Opposition**: According to the *California Attorneys for Criminal Justice,* "CACJ disapproves of animal cruelty, including but not limited to cockfighting. However, CACJ also holds great respect for the presumption of innocence.

"The presumption of innocence is the "bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.'" (In re Winship (1970) 397 U.S. 358, 363.) As the high court has explained, mandatory presumptions unconstitutionally shift to defendant the burden of persuasion on element of intent once the state has proven certain predicate facts. (Sandstrom v. Montana (1979) 442 U.S. 510; Ulster County Court v. Allen (1979). 442 U.S. 140, 157–163.) A mandatory presumption instructs the jury that it must infer the presumed fact if the State proves certain predicate facts. (Francis v. Franklin (1985) 471 U.S. 307, 314.). These mandatory presumptions impermissibly infringe on the presumption of innocence and violate the due process clause because they relieve the State of the burden of persuasion on an element of an offense. (Ibid.) Once a mandatory presumption is created, even the fact that jury was informed that the presumption "may be rebutted" will not cure the infirmity in rule. A mandatory rebuttable presumption is "perhaps less onerous from the defendant's perspective [than an irrebuttable presumption], but it is no less unconstitutional." (Id. at p. 317.) Supreme Court law makes clear that "[s]uch shifting of the burden of persuasion with respect to a fact which the State deems so important that it must be either proved or presumed is impermissible under the Due Process Clause. [citation.]" (Ibid.)

"Penal Code section 597j has a clear requirement of intent that the animals be used for exhibition or fighting. By declaring that "It shall be prima facie evidence of a violation of this section [animal cruelty] for any person to keep or raise more than 3 roosters per acre of property, or more than 25 roosters on any property, regardless of total acreage" this law creates an unconstitutional presumption regarding animal cruelty by inferring unlawful

criminal intent merely based on possessing three roosters on an acre of property. That this evidence only creates a "prima facie" case (and may be rebuttable) it still violates the presumption of innocence and the due process clause. (to say nothing of the fact that owning three roosters on an acre of property is hardly strong evidence of intent to engage in illegal cockfighting)."

REGISTERED SUPPORT / OPPOSITION:

Support

The Humane Society of the United State (Sponsor)
California Animal Welfare Association
California District Attorneys Association
California Farm Bureau
Eggs Unlimited LLC
Humane Society Veterinary Medical Association
San Diego Humane Society and Spca
Social Compassion in Legislation
Spca Monterey County

Oppose

California Attorneys for Criminal Justice
California Public Defenders Association

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2984 (Gipson) – As Introduced February 16, 2024

SUMMARY: Eliminates the statute of limitations for hit and run, as defined, resulting in death or injury.

EXISTING LAW:

1) Provides that, notwithstanding any other limitation of time, if a person flees the scene of an accident that caused death or permanent, serious injury, as defined in the Vehicle Code, a criminal complaint may be filed within the applicable time period described in existing law setting the statute of limitations for offenses punishable in state prison or one year after the person is initially identified by law enforcement as a suspect in the commission of the offense, whichever is later, but in no case later than six years after the commission of the offense. (Pen. Code, § 803, subd. (j)(1).)

2) States that vehicular manslaughter is the unlawful killing of a human being without malice while driving a vehicle in the commission of an unlawful act, not amounting to a felony, and with gross negligence or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence. (Pen. Code, § 192, subd. (c)(1).)

3) States that violation of vehicular manslaughter is punishable by either imprisonment in the county jail for not more than one year or by imprisonment in the state prison for two, four or six years. (Pen. Code, § 193, subd. (c)(1).)

4) States that vehicular manslaughter also is the unlawful killing of a human being without malice while (i) driving a vehicle in the commission of an unlawful act, not amounting to a felony, but without gross negligence or (ii) driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence. [(Pen. Code, § 192, subd. (c) (2).)

5) States that violation of this offense is punishable by imprisonment in the county jail for not more than one year. (Pen. Code, § 193, subd. (c) 2).)

6) Requires that prosecution for an offense punishable by imprisonment in the state prison or county jail pursuant to realignment be commenced within three years after commission of the offense, except as specified. (Pen. Code, § 801.)

7) Requires that prosecution for a misdemeanor offense be commenced within one year after commission of the offense, except as specified. (Pen. Code, § 802, subd. (a).)

8) Allows a criminal complaint to be filed within the standard period, or one year after the person is initially identified by law enforcement as a suspect in the commission of the offense, whichever is later, but in no case later than six years after the commission of the offense, if a person flees the scene of an accident that caused death or permanent, serious injury. (Pen. Code, § 803, subd. (j).)

9) States that the driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and provide assistance and information. (Veh. Code, § 20001, subd. (a).)

10) Specifies that if the accident results in death or permanent, serious injury, the person shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by a fine of not less than $1,000 nor more than $10,000, or by both that imprisonment and fine. However, the court, in the interests of justice and for reasons stated in the record, may reduce or eliminate the minimum imprisonment. (Veh. Code, § 20001, subd. (b)(2).)

11) States that a person who flees the scene of the crime after committing a violation of vehicular manslaughter while intoxicated, or gross vehicular manslaughter upon conviction of any of those sections, in addition and consecutive to the punishment prescribed, shall be punished by an additional term of imprisonment of five years in the state prison. This additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. The court shall not strike a finding that brings a person within the provisions of this subdivision or an allegation made pursuant to this subdivision. (Veh. Code, § 20001, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement:** According to the author: "AB 2984's indefinite expansion of the statute of limitations for hit and runs resulting in vehicular manslaughter or serious injury, will disincentivize the perpetrator from fleeing the scene but also allow adequate time for families of victims and victims to seek justice. No family should be denied the opportunity to find justice for their loved ones."

2) **Statute of Limitations:** Criminal statutes of limitations are laws that limit the time during which a prosecution may be commenced. A prosecution is initiated by filing an indictment or information, filing a complaint, arraigning a defendant charged with a felony, or issuing an arrest or bench warrant. (Pen. Code, § 804.) If prosecution is not commenced within the applicable period of limitation, it 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. McGee* (1934) 1 Cal.2d 611, 613.) The defense may be waived only under limited circumstances for the benefit of the defendant. (*Cowan v. Superior Court* (1996) 14 Cal.4th 367, 370.)

Statutes of limitations have been in operation for over 350 years and are deeply rooted in the American legal system.

> There are several rationales underlying statutes of limitations. First, they ensure that prosecutions are based upon reasonably fresh evidence. The idea is that over time, memories fade, witnesses die or leave the area, and physical evidence becomes more difficult to obtain, identify, or preserve. In short, the possibility of erroneous conviction is minimized when prosecution is prompt. Second, statutes of limitations encourage law enforcement officials to investigate suspected criminal activity in a timely fashion. In addition, it is thought that (statutes of limitations) may reduce the possibility of blackmail based on threats to disclose information to prosecutors or law enforcement officials. Another rationale is that as time goes by, the likelihood increases that an offender has reformed, making punishment less necessary.
>
> In addition, society's retributive impulse may lessen over time, making punishment less desirable. Finally, there is the thought that statutes of limitations provide an overall sense of security and stability to human affairs.

(Lauren Kerns, *Incorporating Tolling Provisions into Sex Crimes Statutes of Limitations*, 13 Temp. Pol. & Civ. Rts. L. Rev. 325, 327 (2003) (internal quotations and citations omitted).)

In considering revisions to California's statutes of limitations, the California Law Revision Commission identified five factors to be considered by the Legislature in drafting a limitations statute:

> "(a) The *staleness* factor. A person accused of crime should be protected from having to face charges based on possibly unreliable evidence and from losing access to the evidentiary means to defend. (b) The *repose* factor. This reflects society's lack of a desire to prosecute for crimes committed in the distant past. (c) The *motivation* factor. This aspect of the statute imposes a priority among crimes for investigation and prosecution. (d) The *seriousness* factor. The statute of limitations is a grant of amnesty to a defendant; the more serious the crime, the less willing society is to grant that amnesty. (e) The *concealment* factor. Detection of certain concealed crimes may be quite difficult and may require long investigations to identify and prosecute the perpetrators."

(1 Witkin Cal. Crim. Law Defenses Section 234 (3rd ed. 2010), citing 17 Cal. L.Rev. Com. Reports, pp.308-311.)

This bill would eliminate the statute of limitations for a hit and run resulting in death or injury. As explained below, California only allows prosecutions at any time for murder, specified sex crimes like forcible rape, and public corruption. In general, even offenses that require registration as a sex offender are not subject to prosecution at any time. Any prosecution for a felony sex registerable offense must commence within 10 years of the crime, except where the victim was under 18-years-old at the time of the offense. In that case, the prosecution may commence at any time prior to the victim's 40th birthday. (Pen. Code, § 801.1, subd. (a) & (b).) It is unclear whether the elimination of the statute of

limitations for hit and run is appropriate when numerous other crimes, involving intentional conduct, do not allow prosecutions at any time.

3) **Vehicle Code section 20001**: Vehicle Code section 20001 is commonly known as "hit and run." To prove a violation of hit and run resulting in permanent, serious injury, or death the prosecution must establish that: (1) the defendant was involved in a vehicle accident while driving; (2) the accident caused permanent, serious injury or death to another; (3) the defendant knew that he or she was involved in an accident that injured another person, or knew from the nature of the accident that it was probable that another person had been injured; and, (4) the defendant willfully failed to perform one or more duties, including immediately stopping at the scene, providing reasonable assistance to any injured person, to provide specified identifying information, and showing driver's license upon request. (See CALCRIM No. 2140.)

> "The purpose of [the statute] is to prevent the driver of an automobile from leaving the scene of an accident in which he participates or is involved without proper identification and to compel necessary assistance to those who may be injured. The requirements of the statute are operative and binding on all drivers involved in an accident regardless of any question of their negligence respectively. In other words, it is not necessary to drive impaired, recklessly or negligently. These duties apply regardless of the fault of the accident. ." (*People v. Scofield* (1928) 203 Cal. 703, 708.)

Existing law only allows specified sex offenses, public corruption, and murder to be prosecuted at any time. Vehicle Code section 20001, subdivision (b)(2) is an alternate misdemeanor-felony. Hit and run really criminalizes leaving the scene of accident. Vehicular manslaughter is often used when a driver engaged in reckless or intoxicated driving. Hit and run may involve a person who hits someone accidentally and for whatever reason, flees the scene. It is a serious crime subject to up to four years in prison, but the type of crime that is ordinarily prosecuted years after the incident. (Veh. Code, § 20001, subd. (b)(2).) The current statute of limitation for this offense is six years. This bill would propose to eliminate the statute all together. There is probably no way to defend against a charge of hit and run decades after the offense occurred. Most people cannot recall even a couple days ago in great detail. This may increase the likelihood of wrongful convictions because defendants will have no way to dispute any evidence adduced by the district attorney.

4) **Arguments in Support**: According to *Peace Officers Research Association of California:* Current law requires the driver of a vehicle involved in an accident resulting in injury to a person, other than that driver, or in the death of a person to immediately stop the vehicle at the scene of the accident and provide specified personal information to the injured person or the occupants of the other vehicle and to any traffic or police officer at the scene of the accident. Current law prescribes the time after the commission of a crime in which a criminal action is required to be commenced, referred to as a statute of limitation. If a person flees the scene of an accident that caused death or permanent, serious injury, existing law prohibits a criminal complaint from being filed after 6 years after the commission of the offense, as specified. This bill would allow a criminal complaint to be filed for this crime at any time.

5) **Argument in Opposition**: According to *Smart Justice*: If a person flees the scene of an accident that caused death or permanent, serious injury a criminal complaint must be filed within six years after the commission of the offense. In circumstances where the driver is not identified immediately, the six year cap provides law enforcement an extended period of time to identify the driver, while also providing an outside limit to ensure the integrity of the criminal trial that would take place at a time far removed from the events. This statute of limitations is the same as that for gross vehicular manslaughter and provides the right balance, allowing time to investigate the offense while also ensuring the integrity of the criminal proceedings.

   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 the 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.

5) **Related Legislation:** AB 2295 (Addis) eliminates the statute of limitations for specified sex crimes where the victim was a minor at the time of the offense. AB 2295 is being heard in committee today.

6) **Prior Legislation:**

   a) AB 835 (Gipson), Chapter 338, Statutes of 2015 provides that, in addition to filing a criminal complaint within the existing statute of limitations, if a person flees the scene of an accident that results in a vehicular manslaughter, as specified, a criminal complaint may be filed within one year after the person is initially identified by law enforcement as a suspect in the commission of the offense.

   b) AB 184 (Gatto), Chapter 765, Statutes of 2013, provides that, notwithstanding any other limitation of time specified, if a person flees the scene of an accident that has caused death or permanent, serious injury, charges may be brought either one or 3 years after the completion of the offense, as specified, or one year after the person is initially identified as a suspect in the commission of the offense, whichever is later, but in no case later than 6 years after the commission of the offense.

   c) AB 2484 (Davis), of the 2011-2012 Legislative Session, would have provided that notwithstanding any other limitation of time, as specified, if a person flees the scene of an accident, a criminal complaint for the crimes described above may be filed either one or 3 years after the commission of the offense, as specified, or one year after the person is initially identified by law enforcement as a suspect in the commission of that offense, whichever is later. The bill was never heard in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Highway Patrolmen
California State Sheriffs' Association
Mothers Against Drunk Driving
Peace Officers Research Association of California (PORAC)

Opposition

California Public Defenders Association
California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
Californians United for A Responsible Budget
Drug Policy Alliance
Legal Services for Prisoners With Children
Milpa Collective
Smart Justice California, a Project of Tides Advocacy
Team Justice
Young Women's Freedom Center

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3032 (Hoover) – As Introduced February 16, 2024

SUMMARY: Adds child abuse offenses to the "serious felonies" list and makes any person convicted of specific child neglect offenses ineligible to earn credits for their service as an inmate firefighter. Specifically, **this bill**:

1) Adds the following offenses to the "serious felony" list:

   a) Child endangerment, if the four year sentence enhancement for great bodily injury is imposed [Penal Code sections 273a and 12022.95]; and,

   b) Assault causing death of a child under 8 years old [Penal Code section 273ab].

2) Prohibits any person convicted of the above-listed offense from earning credits for their service as a firefighter while incarcerated in county jail or state prison.

EXISTING LAW:

1) Provides that any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished as a misdemeanor by imprisonment in a county jail not exceeding one year, or as a felony punishable by imprisonment in the state prison for two, four, or six years. (Pen. Code, § 273a, subd. (a).)

2) Provides that any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor. (Pen. Code, § 273a, subd. (b).)

3) Provides that any person convicted of the above-described offense, who under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or injury that results in death, or having the care or custody of any child, under circumstances likely to produce great bodily harm or death, willfully causes or permits that child to be injured or harmed, and that injury or harm results in death, shall receive a four-year enhancement for each violation, in addition

to the sentence provided for that conviction. (Pen. Code, § 12022.95.)

4) Provides that any person, having the care or custody of a child who is under eight, who assaults the child by means of force that to a reasonable person would be likely to produce great bodily injury, resulting in the child's death, is guilty of a felony, punishable by imprisonment in the state prison for 25 years to life. (Pen. Code, § 273ab, subd. (a).)

5) Provides that any person, having the care or custody of a child who is under eight, who assaults the child by means of force that to a reasonable person would be likely to produce great bodily injury, resulting in the child becoming comatose due to brain injury or suffering paralysis of a permanent nature, is guilty of a felony, punishable by imprisonment in the state prison for life with the possibility of parole. (Pen. Code, § 273ab, subd. (b).)

6) List the offenses that are "serious felonies" for the purposes of the three-strikes law. (Pen. Code, § 1192.7, subd. (c) & 1192.8.)

7) Provides that persons sentenced to county jail are eligible to earn custody credits, as specified. (Pen. Code, § 4019.)

8) Provides that any person sentenced to county jail assigned to a conservation camp by a sheriff and who is eligible to earn the above-described credits, shall earn two days of credit for every one day of service. Any person who has completed training as an inmate firefighter or who is assigned to a county or state correctional institution as an inmate firefighter shall earn two days of credit for every one day served in that assignment or after completing that training. In addition, a person who has successfully completed training for firefighter assignments shall receive a credit reduction from their term of confinement. (Pen. Code, § 4019.2.)

9) Provides that persons sentenced to state prison are eligible to earn custody credits, as specified. (Pen. Code, § 2933.)

10) Provides that any person assigned to a conservation camp by CDCR, who is eligible to earn the above-described credits, shall earn two days of credit for every one day of service. Any person who has completed training as an inmate firefighter or who is assigned to a correctional institution as an inmate firefighter shall earn two days of credit for every one day served in that assignment or after completing that training. In addition, a person who has successfully completed training for firefighter assignments shall receive a credit reduction from their term of confinement pursuant to regulations adopted by CDCR. (Pen. Code, § 2933.3.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Child abuse is always heartbreaking but when it results in death it is the worst kind of tragedy. Unfortunately, child abuse happens far too frequently in our country and usually at the hands of a parent or caretaker. Under California law, child abuse is considered a 'non-serious, non-violent' offense. That means when an individual is found guilty of this crime, the offender qualifies for early release

programs. That is also true even when the abuse results in a child's death. This bill would prohibit a person whose abuse causes a child's death from being eligible to serve in a conservation/fire camp, which is the state's most generous early release program. Killing a child is a horrific crime and should be treated as such."

2) **Effect of Adding Offenses to the Serious Felony List**: This bill designates child endangerment, if the four-year sentence enhancement for great bodily injury is imposed, and assault on a child under eight years of age resulting in death or in the child becoming comatose due to brain injury, as "serious" felonies.

   Penal Code section 1192.7, subdivision (a)(2) prohibits plea bargaining in any case in which the indictment or information charges a "serious" felony unless there is insufficient evidence to prove the charge, the testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. The plea bargaining prohibition in "serious" felony cases may result in less cases being settled and more cases going to jury trial resulting in longer sentences. Additionally, any person convicted of a "serious" felony who has previously been convicted of a "serious" felony receives, in addition to the sentence imposed by the court, an additional and consecutive five-year enhancement for each such prior conviction. (Pen. Code, § 667, subd. (a)(1).)

   Notably, nothing prevents offenses causing death of a child from being charged as murder and voluntary manslaughter, which are already serious felonies. In addition, murder, voluntary manslaughter, and *any felony* in which the defendant inflicts great bodily injury on any person are all already on the "violent" felony list. (Pen. Code, § 667.5.) Thus, any person convicted of murder or voluntary manslaughter of a child, or who inflicts great bodily injury on a child, can already be convicted of a "serious" or "violent" felony.

3) **Three Strikes Implications**: In general, "serious" felonies as specified in Penal Code section 1192.7, subdivision (c), are considered "strikes" for purposes of California's Three Strikes Law. However, Proposition 36, which was passed by California voters on November 6, 2012, specifies that only the crimes that were included in the "serious" felonies list as of November 7, 2012, shall be treated as "strikes" for purposes of the Three Strikes law.

   > Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after November 7, 2012, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667 (Three Strikes Law), are to those statutes as they existed on November 7, 2012.

   (Pen. Code, § 667.1.)

   This bill would not make these offenses a "strike" under California law because the bill would not amend the date that defines the list of strikes to include the provisions of this bill. However, if the date that defines the list of strikes is updated in a future bill, these offenses would become a "strike."

4) **Prison Overcrowding**: In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with

constitutionally adequate healthcare. 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]

Thus, while CDCR is currently in compliance with the three-judge panel's order on the prison population, the state needs to maintain a "durable solution" to prison overcrowding "consistently demanded" by the court.[2] In addition, the State's commitment to closing prisons[3] demands that the Legislature are judicious about measures that will result in increased prison population.

Making these offenses a "serious" felony will result in increased prison sentences. Likewise preventing individuals convicted of these offenses from earning credits as an inmate firefighter would further add to the incarcerated population. This will put additional pressure on prison overcrowding.

5) **Inmate Firefighter Credits**: Most incarcerated fire crew members receive 2-for-1 credits, meaning they receive two additional days off their sentence for every one day they serve on a fire crew. Camp volunteers who work as support staff, but not on a fire crew, receive day-for day credits, meaning they receive one day off their sentence for every one day they serve as a firefighter.[4]

   Volunteers must have "minimum custody" status, or the lowest-security classification based on their sustained good behavior in prison, ability to follow rules, and participation in rehabilitative programming. Volunteers must have eight years or less remaining on their sentence to be considered. Some convictions automatically make someone ineligible for conservation camp assignment, even if they have minimum-custody status. Disqualifying convictions include rape and other sex offenses, arson, and escape history. Other disqualifiers include active warrants, medical issues, and high-notoriety cases.[5]

6) **Argument in Support**: According to *California District Attorneys Association (CDAA)*, "Your bill makes a person convicted of specific child endangerment or abuse crimes resulting in death of the child, ineligible to earn credits to reduce their term of imprisonment

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[1] CDCR, Three Judge Court Update. Available at: <https://www.cdcr.ca.gov/3-judge-court-update>.
[2] Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown*, *Plata v. Brown* (2-10-14).)
[3] 11) LAO, *The 2024-25 Budget, California Department of Corrections and Rehabilitation*. Available at: <https://lao.ca.gov/Publications/Report/4852#Prison_Capacity_Reduction>. see also, Penal Code section 17.5 [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].
[4] CDCR, *Fire Camp Program*. Available at: <https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program/>.
[5] *Ibid.*

for participation as an inmate firefighter or after completing inmate firefighting training.

"AB 3032 recognizes the horrific tragedy of causing a child's death and ensures enhanced credits are not available to offenders convicted of child endangerment and abuse offenses that result in a child's death."

7) **Argument in Opposition**: According to *Initiate Justice Action (IJ Action),* "this bill would prohibit plea bargaining from such cases and impose a 5-year enhancement for this conviction or future serious felony convictions if the person has previously been convicted of a serious felony. This bill would also prohibit someone convicted of this crime from participating in the firefighter program for currently incarcerated persons, limiting the good conduct credits an incarcerated person convicted of such crimes can earn through their participation in this program. [...]

"**The commission of such harm against a child already carries steep penalties**. Existing law makes it a crime for a person who has the care or custody of a child to willfully cause or permit the person or health of that child to be injured or willfully cause or permit that child to be placed in a situation where the child's health may be endangered. Existing law imposes a 4-year enhancement on a person who violates that provision and who willfully causes or permits a child to suffer, inflicts unjustifiable physical pain or injury that results in death, or, having the care or custody of a child, willfully causes or permits that child to be injured or harmed and that injury or harm results in death. Existing law also requires a person who, having the care or custody of a child who is under 8 years of age, assaults the child by means of force that to a reasonable person would be likely to produce great bodily injury, resulting in the child's death, to be punished by imprisonment in the state prison for 25 years to life.

"**AB 3032 will not prevent child neglect or support families - it is yet another ill-advised attempt at degrading the opportunity for rehabilitation and good conduct credits, which are strongly supported by California voters**. Under existing law, people in prison can earn 2 days of credit for every one day served as an incarcerated firefighter or upon completion of firefighter training. This bill would deny these credits altogether if someone has a child abuse related conviction as outlined by AB 3032. It is nonsensical and arbitrary to deny firefighter credits based on a certain conviction, especially when there is no legitimate connection between the conviction and participation in a fire program. Good conduct credits are not a "get out of jail free" card as opponents claim it be - instead, they are one of the most important investments into rehabilitation and education programming California has ever enacted. We should be incentivizing as many incarcerated people towards such programming as possible to help them turn their lives around, not curtailing access.

"**Furthermore, significant research has found that lengthy prison terms do not have a strong deterrent effect on future crime1, especially compared to other deterrence tools such as the certainty of apprehension.** Sentencing enhancements will not will not address violence in any demonstrable way. Enhancements are, however, one of the drivers of mass incarceration, a systematic means of economically and politically disenfranchising Black, Latinx and Indigenous families and communities. We urge the Committee to reject failed Carceral approaches, and to invest in proven community-based solutions."

8) **Prior Legislation**:

a) AB 1665 (Seyarto) of the 2022-2023 Legislative Session, would have added trafficking a minor to the "serious" felony list. AB 1665 failed passage in this committee.

b) AB 1746 (Hoover) of the 2022-2023 Legislative Session, was substantially similar to this bill. AB 1746 failed passage in this committee.

c) AB 945 (Reyes), of the 2023-2024 Legislative Session, would have required courts to report specified data to the Judicial Council regarding petitions for expungement relief filed on the basis of having successfully participated as an incarcerated fire camp member or at an institutional firehouse. AB 945 was vetoed by the Governor.

d) AB 3000 (Budget Committee), Chapter 1124, Statutes of 2002, as relevant here, provides that any inmate assigned to a conservation camp shall earn two days of work-time credit for every day of service.

e) AB 537 (Acosta), of the 2017-2018 Legislative Session, would added crimes, including human trafficking involving sexual exploitation, to the list of "serious" felonies. AB 537 failed passage in this committee.

f) AB 1321 (Stone), of the 2013-2014 Legislative Session, would have added crimes, including human trafficking, to the list of "serious" felonies. AB 1321 was held in this committee.

g) AB 1188 (Pan), of the 2011-2012 Legislative Session, would have added d five new offenses related to human trafficking and the abuse of a child to the "serious" felony list. AB 1188 failed passage in this committee.

h) AB 16 (Swanson), of the 2009-2010 Legislative Session, would have added human trafficking to the list of "serious" and "violent" felonies. AB 16 failed passage in the Assembly Appropriations Committee.

i) SB 440 (Denham), of the 2009-2010 Legislative Session, added the crimes of child abuse likely to produce great bodily injury or death, physical child abuse, killing, mutilating, or torturing a domestic animal, elder abuse for which the defendant was incarcerated in state prison, and escape or attempted escape by force or violence to the lists of "serious" felonies as well as to the list of "violent" felonies, as specified; and added the crimes of human trafficking, stalking, solicitation to commit murder, fleeing or attempting to elude a pursuing peace officer, willful flight or attempting to elude a pursuing peace officer, and felon in possession of a firearm, to the list of "serious felonies," as specified. SB 440 failed passage in the Senate Public Safety Committee.

j) AB 426 (Galgiani), of the 2007-2008 Legislative Session, would have added human trafficking to the list of "serious" and "violent" felonies. AB 426 failed passage in the Senate Public Safety Committee

REGISTERED SUPPORT / OPPOSITION:

Support

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

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 United for A Responsible Budget
Children's Defense Fund - CA
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Initiate Justice
Initiate Justice Action
Legal Services for Prisoners With Children
Pacific Juvenile Defender Center
San Francisco Public Defender
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: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3064 (Maienschein) – As Amended April 16, 2024

AS PROPOSED TO BE AMENDED IN COMMITTEE

SUMMARY: Requires the Department of Justice (DOJ), manufacturers of firearm safety devices (FSDs), and laboratories verifying the standards of FSDs, to take specified actions: Specifically, **this bill**:

1) Requires certified laboratories that verify compliance with standards for FSDs to, at the manufacturer's or dealer's expense, test a FSD and submit a copy of the final test report directly to the DOJ, regardless of whether the device has passed or failed to meet standards, and a prototype of the device that has passed such standards, to be retained by the DOJ.

2) Provides a FSD shall not be added to the roster of approved FSDs maintained by the DOJ, unless the entity seeking the listing has complied with specified provisions of the corporations code.

3) Authorizes the DOJ, by January 1, 2026, for each FSD listed on the roster, to charge the entity that manufactures, causes to be manufactured, or imports the device into the state for sale, an annual fee not to exceed the costs of research and development, report analysis, storage of prototype devices, and other program infrastructure costs necessary to implement the provisions of this division.

4) Provides that the above fee must be paid no later than the first business day of each calendar year, and authorizes the DOJ to remove any FSD from the roster if the fee has not been paid for the device.

5) Provides a FSD shall not be added to the DOJ's roster after January 1, 2025, unless the name of the manufacturer, the model number, and the model name, as they appear on the roster, are engraved or otherwise permanently affixed to the device.

6) Provides that if a FSD is removed from the roster due to a manufacture's failure to pay the fee authorized by this bill, the listing entity may request that the device be relisted by paying any delinquent fees and doing either of the following:

   a) Submitting a statement to the DOJ, signed under penalty of perjury, that the device to be relisted is identical to the device previously listed on the roster.

   b) Submitting a petition for reinstatement to the DOJ, along with a sample device to be relisted, the complete testing history of the device, and fees, as specified by the DOJ, sufficient to pay for the retesting and relisting of the device.

7) Provides if the above petition is submitted, the sample device shall be retested.

8) Provides if a FSD is retested, passes testing and is otherwise in compliance with this division, the DOJ shall relist the device on the roster.

9) Provides if a FSD is retested and does not pass testing, it shall not be relisted and shall not be retested.

10) Provides the DOJ may retest any listed FSD at any time

11) Provides the DOJ may approve an untested FSD and list that device on the roster if a model of the device made by the same manufacturer is already listed and the unlisted device differs from the listed device in only one or more of the following features:

    a) Finish, including, but not limited to, color or engraving.

    b) Any feature that does not in any way alter the material or functioning of any of the components of the device. Dimensional changes may be approved by the DOJ without additional testing on a case-by-case basis when the dimensional changes do not alter the device's ability to operate in the same manner demonstrated in the laboratory, including when the dimensional changes do not alter the size of the door or the locking bolts.

    c) Any change in name or model number that does not affect the design or function of the device.

    d) Any engraved or permanently affixed marking added pursuant to this bill.

12) Provides that any manufacturer seeking to have a FSD approved pursuant to the requirements specified above, shall provide the DOJ with all of the following:

    a) The model name and model number of the device that is already listed on the roster.

    b) The model name and model number of each firearm safety device the manufacturer seeks to have listed pursuant to this section.

    c) A statement, signed under penalty of perjury, that each unlisted device for which listing is sought differs from the listed device only in one or more of minor ways identified above and is in all other respects identical to the listed device.

13) Requires the DOJ to review each FSD submitted pursuant to this section on a case-by-case basis to determine whether new testing by a certified testing laboratory is required.

14) Authorizes the DOJ to require a manufacturer to provide to the DOJ a sample of any device model for which listing is sought under this bill.

15) Provides if a FSD on the roster is recalled by the United States Consumer Product Safety Commission, or by any other state or federal government entity, the manufacturer of that

firearm safety device must notify the DOJ of the recall within seven days of public notice of the recall.

16) Authorizes the DOJ to remove from the roster a FSD that is the subject of a recall by the United States Consumer Product Safety Commission or any other state or federal government entity.

17) Allows personal firearm importers, within 60 days of bringing a firearm into this state, to forward by prepaid mail or electronically submit to the DOJ, a report prescribed by the DOJ including information concerning that individual and a description of the firearm in question, and authorizes the DOJ to request photographs of the firearm to determine if the firearm is a generally prohibited weapon, assault weapon, or machinegun, or is otherwise prohibited.

18) Authorizes specified persons, within 30 days after taking possession of a firearm being transferred to them, to forward by prepaid mail or electronically submit to the DOJ, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question, and authorizes the DOJ to request photographs of the firearm to determine if the firearm is a generally prohibited weapon, assault weapon, or machinegun, or is otherwise prohibited. Reports forms submitted pursuant to this paragraph shall be provided by the DOJ.

19) Authorizes specified persons not required to report acquisition or ownership of a firearm or who moves out of the state with the person's firearm, to report that information (to be submitted by prepaid mail or electronically) to the DOJ, and shall include, without limitation:

    a) The name, gender, date and place of birth, address, and telephone number of the applicant.

    b) The country of citizenship of the applicant and, if not a citizen of the United States, proof of lawful presence.

    c) The make, model, caliber, barrel length, type, country of origin, and serial number of the firearm, or, if the firearm does not have a serial number, the identification number, or identification mark assigned to it.

    d) The applicant's valid California driver's license number or valid California identification card number issued by the Department of Motor Vehicles, or a copy of the applicant's military identification with orders indicating that the individual is stationed in California.

    e) The signature of the applicant and the date of signature.

20) Provides that furnishing a fictitious name or address, knowingly furnishing any incorrect information, or knowingly omitting any information required to be provided for the above form is punishable as a misdemeanor.

21) Requires the DOJ to establish a fee for the submission of the above form and an additional fee for each additional firearm. This fee shall not exceed the reasonable and actual costs of processing the form submitted pursuant to this section. The DOJ may annually review and adjust this fee to fully fund, but not exceed, these costs.

22) Authorizes the DOJ to request photographs of a firearm to determine if it is a generally prohibited weapon, assault weapon, or machinegun, or is otherwise prohibited.

23) Provides, that upon receipt of the above completed application and any required fee, the DOJ shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals to determine if the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

24) Provides a person may report the destruction or disposal of a firearm, or who moves out of this state with the person's firearms by prepaid mail or electronically to the DOJ in a manner and format prescribed by the DOJ.

25) Defines "device" as a firearm safety device as specified.

26) Defines "roster" as the roster of approved firearm safety devices maintained by the DOJ.

EXISTING LAW:

1) Requires the DOJ to certify laboratories to verify compliance with standards for firearm safety devices. (Pen. Code, § 23655.)

2) Authorizes the DOJ to charge any laboratory that is seeking certification to test firearm safety devices a fee not exceeding the costs of certification, including costs associated with the development and approval of specified regulations and standards. (Pen. Code, § 23655.)

3) Requires the certified laboratory shall, at the manufacturer's or dealer's expense, to test a firearm safety device and submit a copy of the final test report directly to the DOJ, along with the firearm safety device. (Pen. Code, § 23655.)

4) Requires the DOJ to notify the manufacturer or dealer of its receipt of the final test report and the DOJ's determination as to whether the FSD tested may be sold in this state. (Pen. Code, § 23655.)

5) Requires the DOJ to compile, publish, and maintain a roster listing all of the firearm safety devices that have been tested by a certified testing laboratory, have been determined to meet the department's standards for FSD, and may be sold in this state. (Pen. Code, § 23655.)

6) Provides that the roster shall list, for each FSD, the manufacturer, model number, and model name. (Pen. Code, § 23655.)

7) Authorizes the DOJ to randomly retest samples obtained from sources other than directly from the manufacturer of the FSD listed on the roster to ensure compliance with the requirements of this division. (Pen. Code, § 23655.)

8) Requires FSDs used for random sample testing and obtained from sources other than the manufacturer to be in new, unused condition, and still in the manufacturer's original and unopened package. (Pen. Code, § 23655.)

9) Provides that if the Attorney General determines that a gun safe or FSD does not conform with specified standards the Attorney General may order the recall and replacement of the gun safe or FSD, or order that the gun safe or FSD be brought into conformity with those requirements. (Pen. Code, § 23680.)

10) Provides that if the FSD can be separated and reattached to the firearm without damaging the firearm, the licensed manufacturer or licensed firearms dealer shall immediately provide a conforming replacement as instructed by the Attorney General. (Pen. Code, § 23680.)

11) Provides that if the FSD cannot be separated from the firearm without damaging the firearm, the Attorney General may order the recall and replacement of the firearm. (Pen. Code, § 23680.)

12) Requires, within 60 days of bringing a handgun or any firearm, into this state, a personal firearm importer to do one of the following:

    a) Forward by prepaid mail or deliver in person to the DOJ, a report prescribed by the department including information concerning that individual and a description of the firearm in question.

    b) Sell or transfer the firearm as specified.

    c) Sell or transfer the firearm to a licensed dealer.

    d) Sell or transfer the firearm to a sheriff or police department. (Pen. Code, § 27560, subd. (a).)

13) Provides a personal firearm importer is in compliance with California law if:

    a) The importer sells or transfers the firearm as specified.

    b) The sale or transfer cannot be completed by the dealer to the purchaser or transferee.

    c) The firearm can be returned to the personal firearm importer. (Pen. Code, § 27560, subd. (b).)

14) Provided that the requirement that parties to a transaction must complete the sale, loan, or transfer of a firearm through a licensed dealer when neither party holds a dealer's license does not apply to the sale, loan, or transfer of a firearm if all the following are met:

    a) The firearm is not a handgun.

    b) The firearm is a curio or relic, as defined.

    c) The person receiving the firearm has a current certificate of eligibility.

    d) The person receiving the firearm is licensed as a collector.

e) Within 30 days of taking possession of the firearm, the person to whom it is transferred shall forward by prepaid mail, or deliver in person to the DOJ, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this section shall be provided to them by the department. (Pen. Code, § 27966.)

15) Provides that a person who is exempt from having to complete sale, loan or transfer of a firearm through a licensed dealer, or who is otherwise not required by law to report acquisition, ownership, destruction, or disposal of a firearm, or who moves out of this state with the person's firearm, may report that information to the DOJ in a format prescribed by the DOJ. (Pen. Code, § 28000.)

16) Defines "assault weapon" as specified designated semiautomatic firearms. (Pen. Code, § 28000.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California has enacted strong firearm safety laws to reduce the number of accidental incidents involving guns and to help prevent children from accessing dangerous weapons. AB 3064 is a common sense measure to help Californians comply with the law. The bill requires all firearm safety devices to be labeled with make and model information. This helps consumers ensure they are purchasing an approved product that isn't counterfeit, and it aids law enforcement's work to verify firearms are stored appropriately with approved devices. AB 3064 will also help consumers in the event that a firearm safety device is recalled by ensuring they know the exact make of their device. Lastly, AB 3064 removes antiquated statutes that require individuals to file firearm transactions reports in hard-copy despite there being electronic reporting alternatives."

2) **Effect of this Bill:** AB 2064 seeks to improve the safety and reliability of FSDs and modernize the process of firearm-self reporting to the DOJ. Specifically, it makes several important changes to the laws governing firearm safety devices (FSDs) and firearm self-reporting. The most notable provisions include the following. *First*, it requires laboratories certifying FSDs to submit a copy of the final test report to DOJ regardless of whether the device passed or failed to meet applicable standards, and to also submit to the DOJ a prototype of the FSD for those FSDs that passed such standards. *Second*, it authorizes the DOJ to charge an annual fee on entities manufacturing or importing FSDs into the state for sale not to exceed research, development, storage, and other costs, to remove FSDs from the DOJ roster if the fee has not been paid, and to add a FSD back to the roster if delinquent fees are paid, the device is identical to the previous listing, and the device passes retesting. *Third*, it requires FSDs, after January 1, 2025, to permanently affix or engrave the manufacturer name, model number, and model name onto the device. *Fourth*, it allows the DOJ to approve an untested FSD if a FSD model made by the same manufacturer is already listed and the unlisted device differs from the listed device in specified minor ways. *Fifth,* in the event of a recall of a FSD, AB 3064 authorizes the DOJ to remove a FSD from the DOJ roster, and requires FSD manufactures to notify the DOJ of the recall within 7 days of the public notice of the recall. *Sixth*, it authorizes reports that are submitted to the DOJ by personal firearm

importer and other specified persons to be submitted electronically in addition to using prepaid mail (as permitted under existing law), and the DOJ to request photographs of firearms to determine if it's a generally prohibited weapon. *Lastly*, it clarifies the information that must be included on a form that specified persons may submit to the DOJ. In addition, it authorizes the DOJ to impose a fee for submitting this above form, and makes it a misdemeanor to knowingly submit false information on said form.

3) **Veto of AB 1009, of the 2019-2020 Legislative Session:** Governor Newsom has previously vetoed legislation allowing the DOJ to impose a surcharge of up to $20 on certain firearm transfer reports submitted by mail, rather than online. In his veto message Governor Newsom stated: "I believe we should encourage all methods of reporting these transactions. Not all law-abiding gun owners have access to the Internet, and those who submit their forms by mail should not be penalized for doing so." As proposed to be amended, this bill still permits specified firearm reports to be submitted by pre-paid mail (as currently permitted under existing law), while also authorizing electronic submissions to the DOJ. Thus, this bill may avoid the concerns identified in Governor Newsom's prior veto message.

4) **Argument in Support**: According to the California Attorney General's Office, "[t]he Department of Justice (DOJ) maintains a roster of safety laboratory tested, approved FSDs, which are listed by manufacturer, model name and model number. However, existing law does not require manufacturers to physically mark the devices with this same identifying information. Accordingly, approximately 75 percent of the over 2,300 devices on the DOJ roster are not marked with make and model information. As many of these devices look similar, the lack of identifying markers makes it nearly impossible for both law enforcement and consumers to tell whether a device is an approved model versus an ineffective lookalike. More importantly, if a consumer owns a FSD that has been recalled, is defective, or has a warranty issue, they are unable to identify if their particular device is affected, and this may result in the continued use of an unsafe or ineffective FSD.

   AB 3064 will require manufacturers of FSDs to start marking products with make and model information in a visible location to facilitate compliance inspections by law enforcement and to assist consumers in the event of a recall, warranty issue, or theft. It will also require manufacturers to report any recalls to the DOJ and authorizes the department to remove recalled FSDs from the roster.

   Importantly, AB 3064 will modernize the existing process for self-reporting certain firearms transactions to the DOJ such as interfamilial gifts, probate transfers, purchase of antiques, or importation of personal firearms by new residents. Even though the DOJ's systems can already accept these reports electronically, existing law specifically directs that the reports be submitted to DOJ on paper forms by mail or delivered in person. AB 3064 will allow the forms to be submitted electronically, making the process easier and more efficient."

5) **Argument in Opposition**: According to Gun Owners of California "Unfortunately, this bill will do little to chill the criminal use of firearms nor will it increase the overall safety of the public. Rather, it will force business entities to pay a fee to the state for the simple purposes of having a firearm safety device on the market in California. Further – and more significantly – the bill will place lawful, responsible gun owners in a precarious position of falling outside of the law should one of these devices no longer be on the certified list. The

recent amendments regarding voluntary reporting exempted transactions are completely unnecessary and serve no crime preventing purposes.

Finally – the Supreme Court has ruled that mandatory storage of firearms is a violation of the Constitution. As you are no doubt aware, the 2008 Heller v. Washington DC decision by SCOTUS made several things abundantly clear: the 2nd Amendment is an **individual** right (as opposed to a collective right). The primary element of the Heller ruling was that the federal government could **not** require that firearms be stored and locked in a manner where the gun was not immediately accessible. What's more, McDonald v. Chicago further ruled that *states and local governments* cannot require firearms to be similarly locked. *"SCOTUS affirmed that "the need for defense of self, family, and property is most acute" in the home and the Second Amendment "elevates above all other interests" the right "to use arms in defense of hearth and home."*

These are clear-cut legal decrees and yet the California Legislature continues to stiff arm rulings they find disagreeable. This is inappropriate and AB 3064 should be opposed. I believe that the scourge of criminal misuse of firearms can be solidly addressed without penalizing the lawful for the misdeeds of the unlawful – it will never have its anticipated resolution."

6) **Related Legislation**: None

7) **Prior Legislation**:

a) AB 1009 (Gabriel) of the 2019-2020 Legislative Session, allowed specified firearms transactions that are not required to be processed through a licensed firearms dealer to be reported to the DOJ via the web-based California Firearms Application Reporting System (CFARS), eliminates the ability to report such transactions in person, and allows the DOJ to charge up to a $20 surcharge for reports that are submitted by mail. AB 1009 was vetoed by the Governor.

b) AB 376 (Portantino), Chapter 738, Statutes of 2019, changed the definition of "infrequent" for purposes of specified firearms transfers.

c) SB 746 (Portantino), Chapter 780, Statutes of 2018, established procedures for return of ammunition that has been seized by law enforcement or has been transferred to a licensed firearms dealer because of a temporary prohibition on ammunition possession and required.

d) SB 880 (Hall), Chapter 48, Statutes of 2016, expanded the definition of an assault weapon for purposes of the assault weapon ban and required registration of weapons via California Firearms Application Reporting System (CFARS).

e) AB 1135 (Levine) Chapter 40, Statutes of 2016, expanded the definition of an assault weapon for purposes of the assault weapon ban and required registration of weapons via CFARS.

f) AB 1609 (Alejo), Chapter 878, Statutes of 2014, clarified the regulations for direct shipment requirements for transfer of ownership of firearms.

g) SB 683 (Block), Chapter 761, Statutes of 2013, extended the safety certificate requirement for handguns to all firearms and requires the performance of a safe handling demonstration to receive a long gun.

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Justice

Opposition

Gun Owners of California, INC.
Peace Officers Research Association of California (PORAC)

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

LEGISLATIVE COUNSEL'S DIGEST

AB 3064, as amended, Maienschein. ~~Firearms: safety devices.~~ *Firearms.*

~~Existing~~

(1) Existing law requires the Department of Justice to compile, publish, and maintain a roster listing all of the firearm safety devices that have been tested by a certified testing laboratory, have been determined to meet the department's standards for firearm safety devices, and therefore may be sold in this state.

This bill would, commencing on January 1, 2026, authorize the department to charge each entity that manufactures or imports into the state for sale any firearm safety device listed on the roster, an annual fee, as specified. The bill would additionally require that any device newly added to the roster have certain information engraved or otherwise permanently affixed to the device. The bill would also require any entity seeking to list a device to comply with specified business standards.

This bill would provide a process by which a device that has been removed from the roster for nonpayment of the fee, to be relisted. The bill would also provide a process for a device model that is identical to a listed model except for certain cosmetic differences to be listed without testing. These processes require the submission of certain statements signed under penalty of perjury.

By expanding the offense of perjury, this bill would impose a state-mandated local program.

This bill would also require the manufacturer of any device listed on the roster that becomes subject to a product recall, as specified, to notify the department, as specified. The bill would authorize the department to remove the device from the roster if the manufacturer fails to provide this notice.

(2) Existing law requires any person, within 60 days of bringing a firearm into the state, to mail or personally deliver to the Department of Justice a report, as prescribed by the department, describing the firearm and providing personal information.

Existing law requires any sale, loan, or transfer of a firearm to be processed through a licensed firearms dealer. Existing law exempts from this requirement the transfer of certain firearms that are curios or relics to a licensed firearm collector. Existing law requires a collector who receives a firearm pursuant to these provisions, within 30 days after taking possession, to mail or personally deliver to the Department of Justice a report, as prescribed by the department, describing the firearm and providing personal information.

This bill would instead require the person to ~~electronically~~ submit these reports by mail or electronically. The bill would also authorize the department to request photographs of the firearm to determine if it is a prohibited weapon, as specified.

(3) Existing law exempts certain other transactions from the requirement to be processed through a licensed firearms dealer and does not require these transactions to be reported to the

Department of Justice, including, without limitation, sales, deliveries, or transfers of firearms between importers and manufacturers of firearms, transfers of firearms to a gunsmith for repairs, loans of a firearm to a hunter, loans of a firearm to a person attending a police academy, and temporary transfers of a firearm for safekeeping, as specified. Existing law allows a person transferring or receiving a firearm pursuant to one of these provisions or a person moving out of state with a firearm to report that information to the department.

This bill would allow ~~*require*~~ *a report submitted pursuant to this provision to be submitted electronically and would prescribe the information to be included in the report. The bill would require the department to establish a fee for submission of this information, as specified. The bill would also authorize the department to request photographs of the firearm to determine if it is a prohibited weapon, as specified. The bill would make the filing of any false information pursuant to this provision a crime punishable as a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.*

This bill would also require the department, upon receipt of this information, to examine specified records to determine if the transferee is prohibited from possessing a firearm.

The bill would make other conforming changes.

~~The~~

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

This bill would provide that no reimbursement is required by this act for a specified reason.

~~This~~

(5) This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $^2/_3$ of the membership of each house of the Legislature.

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

SECTION 1.

Section 23630 of the Penal Code is amended to read:

23630.

(a) This division does not apply to the commerce of any antique firearm.

(b) (1) This division does not apply to the commerce of any firearm intended to be used by a salaried, full-time peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, for purposes of law enforcement.

(2) Nothing in this division precludes a local government, local agency, or state law enforcement agency from requiring its peace officers to store their firearms in gun safes or attach firearm safety devices to those firearms.

(c) As used in this division, the following terms have the following meanings:

(1) "Department" means the Department of Justice.

(2) "Device" means a firearm safety device as described in Section 23650.

(3) "Roster" means the roster of approved devices maintained by the department pursuant to Section 23655.

SEC. 2.

Section 23655 of the Penal Code is amended to read:

23655.

(a) The Department of Justice shall certify laboratories to verify compliance with standards for firearm safety devices set forth in Section 23650.

(b) The department may charge any laboratory that is seeking certification to test devices a fee not exceeding the costs of certification, including costs associated with the development and approval of regulations and standards pursuant to Section 23650.

(c) The certified laboratory shall, at the manufacturer's or dealer's expense, test a device and submit a copy of the final test report directly to the Department of Justice, regardless of whether the device has passed or failed to meet standards, along with, for those devices that have passed, one prototype of the firearm safety device to be retained by the department. The department shall notify the manufacturer or dealer of its receipt of the final test report and the department's determination as to whether the device tested may be sold in this state.

(d) (1) The department shall compile, publish, and maintain a roster listing all of the devices that have been tested by a certified testing laboratory, have been determined to meet the department's standards for devices, and may be sold in this state.

(2) A device shall not be added to the roster after January 1, 2025, unless the entity seeking the listing has complied with all applicable provisions of Sections 2105, 15909.02, 16959, and 17708.02 of the Corporations Code.

(3) Commencing on January 1, 2026, the department may, for each device listed on the roster, charge the entity that manufactures, causes to be manufactured, or imports the device into the state for sale, an annual fee not to exceed the costs of research and development, report analysis, storage of prototype devices, and other program infrastructure costs necessary to implement the provisions of this division.

(4) The fee described in paragraph (3) shall be paid no later than on the first business day of each calendar year.

(5) The department may remove from the roster any device for which the fee described in paragraph (3) has not been paid.

(e) (1) The roster shall list, for each device, the manufacturer, model number, and model name.

(2) A device shall not be added to the roster after January 1, 2025, unless the name of the manufacturer, the model number, and the model name, as they appear on the roster, are engraved or otherwise permanently affixed to the device.

(f) The department may randomly retest samples obtained from sources other than directly from the manufacturer of the device listed on the roster to ensure compliance with the requirements of this division.

(g) Devices used for random sample testing and obtained from sources other than the manufacturer shall be in new, unused condition, and still in the manufacturer's original and unopened package.

SEC. 3.

Section 23656 is added to the Penal Code, to read:

23656.

(a) If a device is removed from the roster pursuant to paragraph (5) of subdivision (d) of Section 23655, the listing entity may request that the device be relisted by paying any delinquent fees and doing either of the following:

(1) Submitting a statement to the department, signed under penalty of perjury, that the device to be relisted is identical to the device previously listed on the roster.

(2) Submitting a petition for reinstatement to the department, along with a sample device to be relisted, the complete testing history of the device, and fees, as specified by the department, sufficient to pay for the retesting and relisting of the device.

(b) If a petition is submitted pursuant to paragraph (2), the sample device provided shall be retested pursuant to Section 23650.

(c) If a device retested pursuant to paragraph (b) passes testing and is otherwise in compliance with this division, the department shall relist the device on the roster.

(d) (1) If a device retested pursuant to paragraph (b) does not pass testing, it shall not be relisted and shall not be retested.

(2) This subdivision does not prevent the department from retesting any listed device at any time.

SEC. 4.

Section 23658 is added to the Penal Code, to read:

23658.

(a) The department may approve an untested device and list that device on the roster if a model of the device made by the same manufacturer is already listed and the unlisted device differs from the listed device in only one or more of the following features:

(1) Finish, including, but not limited to, color or engraving.

(2) Any feature that does not in any way alter the material or functioning of any of the components of the device. Dimensional changes may be approved by the department without additional testing on a case-by-case basis when the dimensional changes do not alter the device's ability to operate in the same manner demonstrated in the laboratory, including when the dimensional changes do not alter the size of the door or the locking bolts.

(3) Any change in name or model number that does not affect the design or function of the device.

(4) Any engraved or permanently affixed marking added pursuant to subdivision (e) of Section 23655.

(b) Any manufacturer seeking to have a device approved pursuant to this section shall provide the department with all of the following:

(1) The model name and model number of the device that is already listed on the roster.

(2) The model name and model number of each firearm safety device the manufacturer seeks to have listed pursuant to this section.

(3) A statement, signed under penalty of perjury, that each unlisted device for which listing is sought differs from the listed device only in one or more of the ways identified in subdivision (a) and is in all other respects identical to the listed device.

(c) The department shall review each device submitted pursuant to this section on a case-by-case basis to determine whether new testing by a certified testing laboratory is required.

(d) The department may, at its discretion and at any time, require a manufacturer to provide to the department a sample of any device model for which listing is sought pursuant to this section.

SEC. 5.

Section 23680 of the Penal Code is amended to read:

23680.

(a) (1) If a device on the roster is recalled by the United States Consumer Product Safety Commission, or by any other state government entity, the manufacturer of that firearm safety device must notify the department of the recall within seven days of public notice of the recall.

(2) The department may remove from the roster a device that is the subject of a recall if the manufacturer has failed to provide the notice required pursuant to paragraph (1).

(b) If at any time the Attorney General determines that a gun safe or firearm safety device subject to the provisions of this division and sold after January 1, 2002, does not conform with the standards required by subdivision (a) of Section 23635 or Section 23650, the Attorney General may order the recall and replacement of the gun safe or firearm safety device, or order that the gun safe or firearm safety device be brought into conformity with those requirements.

(c) If the firearm safety device can be separated and reattached to the firearm without damaging the firearm, the licensed manufacturer or licensed firearms dealer shall immediately provide a conforming replacement as instructed by the Attorney General.

(d) If the firearm safety device cannot be separated from the firearm without damaging the firearm, the Attorney General may order the recall and replacement of the firearm.

SEC. 6.

Section 27560 of the Penal Code is amended to read:

27560.

(a) Within 60 days ~~of bringing a handgun, and commencing January 1, 2014, any firearm,~~ *after bringing any firearm* into this state, a personal firearm importer shall do one of the following:

(1) ~~Forward by prepaid mail or deliver in person~~ Forward by prepaid mail or ~~E~~*electronically submit* to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question. *The department may request photographs of the firearm to determine if the firearm is a generally prohibited weapon, assault weapon, or machinegun, or is otherwise prohibited.*

(2) Sell or transfer the firearm in accordance with the provisions of Section 27545 or in accordance with the provisions of an exemption from Section 27545.

(3) Sell or transfer the firearm to a dealer licensed pursuant to Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2.

(4) Sell or transfer the firearm to a sheriff or police department.

(b) If all of the following requirements are satisfied, the personal firearm importer shall have complied with the provisions of this section:

(1) The personal firearm importer sells or transfers the firearm pursuant to Section 27545.

(2) The sale or transfer cannot be completed by the dealer to the purchaser or transferee.

(3) The firearm can be returned to the personal firearm importer.

(c) (1) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law.

(2) However, an act or omission punishable in different ways by this article and different provisions of the Penal Code shall not be punished under more than one provision.

(d) The department shall conduct a public education and notification program regarding this section to ensure a high degree of publicity of the provisions of this section.

(e) As part of the public education and notification program described in this section, the department shall do all of the following:

(1) Work in conjunction with the Department of Motor Vehicles to ensure that any person who is subject to this section is advised of the provisions of this section, and provided with blank copies of the report described in paragraph (1) of subdivision (a), at the time when that person applies for a California driver's license or registers a motor vehicle in accordance with the Vehicle Code.

(2) Make the reports referred to in paragraph (1) of subdivision (a) available to dealers licensed pursuant to Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2.

(3) Make the reports referred to in paragraph (1) of subdivision (a) available to law enforcement agencies.

(4) Make persons subject to the provisions of this section aware of all of the following:

(A) The report referred to in paragraph (1) of subdivision (a) may be completed at either a law enforcement agency or the licensed premises of a dealer licensed pursuant to Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2.

(B) It is advisable to do so for the sake of accuracy and completeness of the report.

(C) Before transporting a firearm to a law enforcement agency to comply with subdivision (a), the person should give notice to the law enforcement agency that the person is doing so.

(D) In any event, the handgun should be transported unloaded and in a locked container and a firearm that is not a handgun should be transported unloaded.

(f) Any costs incurred by the department to implement this section shall be absorbed by the department within its existing budget and the fees in the Dealers' Record of Sale Special Account allocated for implementation of subdivisions (d) and (e) of this section pursuant to Section 28235.

SEC. 7.

Section 27966 of the Penal Code is amended to read:

27966.

If all of the following requirements are satisfied, Section 27545 shall not apply to the sale, loan, or transfer of a firearm:

(a) The firearm is not a handgun.

(b) The firearm is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, or its successor.

(c) The person receiving the firearm has a current certificate of eligibility issued pursuant to Section 26710.

(d) The person receiving the firearm is licensed as a collector pursuant to Chapter 44 of Title 18 of the United States Code and the regulations issued thereto.

(e) Within 30 days ~~of~~ *after* taking possession of the firearm, the person to whom it is transferred shall ~~forward by prepaid mail, or deliver in person~~ *forward by prepaid mail or electronically submit* to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm in question. ~~The report forms that individuals complete pursuant to this section shall be provided to them by the department.~~ *The report forms that individuals complete pursuant to this section shall be provided to them by the department. The department may request photographs of the firearm to determine if the firearm is a generally prohibited weapon, assault weapon, or machinegun, or is otherwise prohibited.*

SEC. 8.

Section 28000 of the Penal Code is amended to read:

28000.

(a) A person who is exempt from Section 27545 or is otherwise not required by law to report acquisition~~,~~ or ownership of a firearm, ~~destruction, or disposal of a firearm, or who moves out of this state with the person's firearm,~~ may ~~report~~ *report* ~~*electronically submit*~~ that information to the Department of Justice in a *manner and* format prescribed by the department.

(b) The form described in subdivision (a) ~~*shall*~~ *may be submitted by prepaid mail or electronically to the department and shall include, without limitation, all of the following information:*

(1) The name, gender, date and place of birth, address, and telephone number of the applicant.

(2) The country of citizenship of the applicant and, if not a citizen of the United States, proof of lawful presence including a permanent resident number or Arrival/Departure Record card (I-94) number.

(3) The make, model, caliber, barrel length, type, country of origin, and serial number of the firearm, or, if the firearm does not have a serial number, the identification number, or identification mark assigned to it.

(4) The applicant's valid California driver's license number or valid California identification card number issued by the Department of Motor Vehicles, or a copy of the applicant's military identification with orders indicating that the individual is stationed in California.

(5) The ~~*electronic*~~ *signature of the applicant and the date of signature.*

(c) Furnishing a fictitious name or address, knowingly furnishing any incorrect information, or knowingly omitting any information required to be provided for the form described in subdivision (b) is punishable as a misdemeanor.

(d) The department shall establish a fee for submission of the form described in this section and an additional fee for each additional firearm. This fee shall not exceed the reasonable and actual costs of processing the form ~~electronically~~ submitted pursuant to this section. The department may annually review and adjust this fee to fully fund, but not exceed, these costs.

(e) The department may request photographs of the firearm to determine if the firearm is a generally prohibited weapon, assault weapon, or machinegun, or is otherwise prohibited.

(f) Upon receipt of a completed application submitted pursuant to this section and any required fee, the department shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, to determine if the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(g) A person may report the destruction or disposal of a firearm, or who moves out of this state with the person's firearms by prepaid mail or electronically to the department in a manner and format prescribed by the department.

SEC. 9.

Section 30510 of the Penal Code is amended to read:

30510.

As used in this chapter and in Sections 16780, 17000, ~~and~~ 27555, *27560, 27966, and 28000,* "assault weapon" means the following designated semiautomatic firearms:

(a) All of the following specified rifles:

(1) All AK series including, but not limited to, the models identified as follows:

(A) Made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S.

(B) Norinco 56, 56S, 84S, and 86S.

(C) Poly Technologies AKS and AK47.

(D) MAADI AK47 and ARM.

(2) UZI and Galil.

(3) Beretta AR-70.

(4) CETME Sporter.

(5) Colt AR-15 series.

(6) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C.

(7) Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter.

(8) MAS 223.

(9) HK-91, HK-93, HK-94, and HK-PSG-1.

(10) The following MAC types:

(A) RPB Industries Inc. sM10 and sM11.

(B) SWD Incorporated M11.

(11) SKS with detachable magazine.

(12) SIG AMT, PE-57, SG 550, and SG 551.

(13) Springfield Armory BM59 and SAR-48.

(14) Sterling MK-6.

(15) Steyer AUG.

(16) Valmet M62S, M71S, and M78S.

(17) Armalite AR-180.

(18) Bushmaster Assault Rifle.

(19) Calico M-900.

(20) J&R ENG M-68.

(21) Weaver Arms Nighthawk.

(b) All of the following specified pistols:

(1) UZI.

(2) Encom MP-9 and MP-45.

(3) The following MAC types:

(A) RPB Industries Inc. sM10 and sM11.

(B) SWD Incorporated M-11.

(C) Advance Armament Inc. M-11.

(D) Military Armament Corp. Ingram M-11.

(4) Intratec TEC-9.

(5) Sites Spectre.

(6) Sterling MK-7.

(7) Calico M-950.

(8) Bushmaster Pistol.

(c) All of the following specified shotguns:

(1) Franchi SPAS 12 and LAW 12.

(2) Striker 12.

(3) The Streetsweeper type S/S Inc. SS/12.

(d) Any firearm declared to be an assault weapon by the court pursuant to former Section 12276.5, as it read in Section 3 of Chapter 19 of the Statutes of 1989, Section 1 of Chapter 874 of the Statutes of 1990, or Section 3 of Chapter 954 of the Statutes of 1991, which is specified as an assault weapon in a list promulgated pursuant to former Section 12276.5, as it read in Section 3 of Chapter 954 of the Statutes of 1991.

(e) This section is declaratory of existing law and a clarification of the law and the Legislature's intent which bans the weapons enumerated in this section, the weapons included in the list promulgated by the Attorney General pursuant to former Section 12276.5, as it read in Section 3 of Chapter 954 of the Statutes of 1991, and any other models that are only variations of those weapons with minor differences, regardless of the manufacturer. The Legislature has defined assault weapons as the types, series, and models listed in this section because it was the most effective way to identify and restrict a specific class of semiautomatic weapons.

(f) As used in this section, "series" includes all other models that are only variations, with minor differences, of those models listed in subdivision (a), regardless of the manufacturer.

~~SEC. 6.~~*SEC. 10.*

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3071 (Joe Patterson) – As Amended March 21, 2024

SUMMARY: Increases the penalties for a second or subsequent conviction of possession of fentanyl for sale or the transfer or distribution of fentanyl, and requires the imposition of a fine and incarceration as a condition of probation for those offenses. Specifically, **this bill**:

1) Provides that a subsequent conviction for the possession of fentanyl for sale or the transfer or distribution of fentanyl that occurs within 10 years of a prior conviction for either possession of fentanyl for sale or the transfer or distribution of fentanyl or its analogs shall be punished by imprisonment in county jail for 3, 4, or 5 years.

2) Provides that a subsequent conviction for transfer or distribution of fentanyl that occurs within 10 years of a prior conviction for either possession of fentanyl for sale or the transfer or distribution of fentanyl or its analogs shall be punished by imprisonment in county jail for 4, 5, or 6 years.

3) Provides that a subsequent conviction for the possession of fentanyl for sale or the transfer or distribution of fentanyl that occurs within 10 years of two or more separate convictions for those offenses related to fentanyl or its analogs shall be punished by imprisonment in county jail for 4, 6, or 9 years.

4) Requires a court, upon a grant probation to a person convicted of the possession of fentanyl for sale or the transfer or distribution of fentanyl, to impose as a condition of probation a fine of $390 to $1,000, and a term of incarceration in county of at least 90 days and up to 6 months.

5) Requires the court to also require as a condition of probation that the person enroll, participate in, and successfully complete a fentanyl awareness program, as designated by the court.

6) Requires the court to revoke the person's probation, except for good cause shown, for the failure to enroll in, participate in, or complete a fentanyl awareness program.

7) Requires the court to also impose as a condition of probation that the person submit their person, place, property, automobile, electronic storage devices, and any other objects under their control, including, but not limited to, cell phones and computers, to search and seizure by an law enforcement officer or probation officer, any time of the day or night, with or without a warrant, and with or without the person's presence or further consent.

8) Requires a court, upon a grant probation to a person convicted of the possession of fentanyl for sale or the transfer or distribution of fentanyl that occurred within 10 years of a conviction of either offense related to fentanyl or its analogs, to impose as a condition of

probation a fine of $390 to $1,000, and a term of incarceration in county jail of at least 180 days and up to 1 year.

9) Requires a court, upon a grant probation to a person convicted of the possession of fentanyl for sale or the transfer or distribution of fentanyl that occurred within 10 years of two or more convictions of either offense related to fentanyl or its analogs, to impose as a condition of probation a fine of $390 to $1,000, and a term of incarceration in county jail of 1 year.

EXISTING LAW:

1) Provides that a person who possess fentanyl for sale or purchases fentanyl for sale shall be punished by imprisonment in county jail for two, three, or four years. (Health & Saf. Code, § 11351.)

2) Provides that a person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to do any of these acts, shall be punished by imprisonment in county jail for three, four, or five years. (Health & Saf. Code, § 11352, subd. (a).)

3) Provides that a persons who transports fentanyl within this state from one county to another noncontiguous count shall be punished by imprisonment in county jail for three, six, or nine years. (Health & Saf. Code, § 11352, subd. (b).)

4) Provides that, except as specified, the term "controlled substance analog" means either of the following:

   a) A substance the chemical structure of which is substantially similar to the chemical structure of specified controlled substances; or,

   b) A substance which has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of specified controlled substances. (Health & Saf. Code, § 11401, subd. (b)(1) & (2).)

5) Specifies that the term "controlled substance analog" does not mean "any substance for which there is an approved new drug application as specified under the federal Food, Drug, and Cosmetic Act or which is generally recognized as safe and effective as specified by the federal Food, Drug, and Cosmetic Act." (Health & Saf. Code, § 11401, subd. (c)(1).)

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

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

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

9) Requires the court, when a defendant is granted probation by the trial court after conviction specified controlled substance violations any amount of fentanyl, carfentanil, benzimidazole opiate, or an analog thereof, to order that person to successfully complete a fentanyl and synthetic opiate education program, if one is available. (Health & Saf. Code, § 11373, subd. (a)(4)(A).)

10) A fee shall not be imposed for participation or enrollment in a fentanyl and synthetic opiate education program. (Health & Saf. Code, § 11373, subd. (a)(4)(B).)

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Having lost neighbors and family members to the fentanyl crisis, I am compelled to address the pressing issue of illicit fentanyl sales and its devastating impact on our communities. Fentanyl, a potent synthetic opioid, has emerged as a grave public health concern, contributing significantly to the opioid crisis gripping our State. While existing laws classify fentanyl as a Schedule II controlled substance, current penalties for offenses related to its sale and transportation may not be commensurate with the severity of the threat it poses. I firmly believe we need a three pronged approach: treatment for those with substance use disorder, education for everyone and, equally as important, accountability - especially for repeat offenders who know the risks. It is imperative that we take decisive action to curb the illicit distribution of fentanyl and hold perpetrators accountable for their actions."

2) **Fentanyl Awareness Program**: Under this bill, a court would be required to order a person as a condition of probation to enroll, participate in, and successfully complete a fentanyl awareness program, as designated by the court. Last year, AB 890 (Joe Patterson), Chapter 818, Statutes of 2023, required a court to order a defendant who is granted probation for the same offenses involving fentanyl and other specified opiates covered by this bill to complete a fentanyl and synthetic opiate education program. The difference between a fentanyl awareness program and a fentanyl education program is unclear. Further, one might reasonably question the value of a fentanyl education program that fails to make participants aware of the dangers of fentanyl, or provide any of the information covered by the fentanyl awareness program proposed by this bill. Perhaps an amendment clarifying that a person on probation need only attend the existing education program or the awareness program is warranted.

Further, AB 890 required a court refer defendants to fentanyl education programs that are available at no cost to participants. This does not have a similar provision for referrals to fentanyl awareness programs.

3) **Fines, Fees, and Assessments**: This bill would impose as a condition of probation for the conviction of possession of fentanyl or the transfer or distribution of fentanyl a fine of between $390 and $1,000. With additional fees and assessments, the actual cost to the defendant would be considerably higher than the base fine. For example, the minimum base fine under this bill 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 actual cost to the defendant of the fine would start at $1,674 and could exceed $4,000. The actually amount could far exceed $4,000 depending on the facts. (See e.g., Health & Saf. Code, § 11352.5, subd. (1) [imposing a $50,000 fine for possessing for sale 14.25 grams or more of a substance containing heroin, which is often mixed with fentanyl].) The total cost also does not account for cost of drug treatment and attending a fentanyl education program and/or a fentanyl awareness program, to the extent either of those programs even exist.

4) **Harsher Sentences for Drug Trafficking Unlikely to Reduce Drug Use or Deter Criminal Conduct:** 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 attempts to reduce the number of people dying of overdoses involving fentanyl by deterring people who sell fentanyl with increased penalties for subsequent convictions. Ample research on the impact of increasing penalties for drug offenses on criminal behavior has called into question the effectiveness of such measures. In a report examining the relationship between prison terms and drug misuse, PEW Charitable Trusts found "[n]o relationship between drug imprisonment rates and

states' drug problems," finding that "high rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths." (PEW, More Imprisonment Does Not Reduce State Drug Problems (Mar. 2018) p. 5 <https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf> [last viewed Feb. 6, 2023]; see generally, Przybylski, Correctional and Sentencing Reform for Drug Offenders (Sept. 2009) < http://www.ccjrc.org/wp-content/uploads/2016/02/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf> [last visited Mar. 20, 2023].) Put differently, imprisoning more people for longer periods of time for drug trafficking offenses is unlikely to reduce the risk of illicit drugs in our communities.

Unduly long sentences are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands. (Long-Term Sentences: Time to Reconsider the Scale of Punishment, 87 UMKC L.Rev. 1 (Nov. 5, 2018).) According to the U.S. Department 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." (National Institute of Justice, U.S. Department of Justice, Five Things About Deterrence (June 5, 2016) <https://nij.ojp.gov/topics/articles/five-things-about-deterrence> [last visited Feb. 2, 2023.]) 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. (Long-Term Sentence, supra.)

The Council on Criminal Justice reviewed the evidence on the effect of harsher punishments on criminal behavior and came to the same conclusion. It reported:

> The empirical evidence on selective incapacitation suggests that long sentences may produce short- and long-term public safety benefits for individuals engaged in violent offending, but may produce the opposite effect for those engaged in drug-related offending…where an incarcerated individual is quickly replaced by a new recruit. This "replacement effect" occurs—and undermines the overall crime-reducing effects of incapacitation—when there is "demand" for a particular criminal activity. The illicit drug business offers the most obvious example: when someone who plays a role in a drug trafficking organization is incarcerated, someone else must take his or her place…
>
> Additional analyses further indicate that incarcerating people for drug trafficking may result in increased crimes rates in general and increased rates of violent crime, specifically, because of organizational destabilization and the need for new recruits to prove themselves.

(Long Sentences Task Force, Council on Criminal Justice, The Impact of Long Sentences on Public Safety: A Complex Relationship (Nov. 2022) p. 8 https://councilоncj.org/wp-content/uploads/2022/11/Impact-of-Long-Sentences-on-Public-Safety.pdf [last visited Apr. 24, 2023] [internal citations omitted] [emphasis added].)

Additionally, as the Council on Criminal Justice's report notes, the harsher punishments for drug offenses may actually do harm. For example, they may push persons selling and using drugs to engage in riskier behaviors. (See Friedman et al., Relationships of deterrence and law enforcement to drug-related harms among drug injectors in US metropolitan areas (2006) AIDS Vol 20 No 1.)

According to PEW, "[A] large body of prior research…cast[s] doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations." (PEW, supra.) PEW concludes:

> Putting more drug-law violators behind bars for longer periods of time has generated enormous costs for taxpayers, but it has not yielded a convincing public safety return on those investments. Instead, more imprisonment for drug offenders has meant limited funds are siphoned away from programs, practices, and policies that have been proved to reduce drug use and crime. (Ibid.)

Based on this research, one might reasonably question whether increasing the penalties for drug trafficking fentanyl would meaningfully impact the drug's availability or the number of deaths resulting from its illicit fentanyl use.

5) **People Who Deal Drugs Are Often People Who Use Drugs:** Persons who participate in the drug trade often are themselves people who use drugs. According to the National Research Council: "Facing limited opportunities in legal labor markets and already in contact with drug-selling networks, users provide a ready low-wage labor pool for illegal markets." (https://nap.nationalacademies.org/read/12976/chapter/4 - 24). According to a Bureau of Justice Statistics report, 70% of persons serving time in state prison for drug trafficking offenses used drugs in the month before the offense, and 42.3% of those persons had been using drugs at the time of their offense. (Bureau of Justice Statistics, Special Report: Drug Use and Dependence, State and Federal Prisoners, 2004 (Oct. 2006) a p. 5 <https://bjs.ojp.gov/content/pub/pdf/dudsfp04.pdf> [last visited Mar. 20, 2023].)

According to one study, "[Street-involved youth implicated in the drug trade] appear to be motivated by drug dependence," finding: "Among participants who reported drug dealing, 263 (85.6%) individuals stated that the main reason that they sold drugs was to pay for their personal drug use." (Werb et al., Risks surrounding drug trade involvement among street-involved youth, Am. J. Drug Alcohol Abuse (2008) < https://pubmed.ncbi.nlm.nih.gov/19016187/> [last visited Feb. 2, 2023].)

Still another found that "White youths who misused prescription drugs were three times more likely to sell drugs, compared to White youths who did not misuse prescription drugs." (Floyd et al., Adolescent Drug Dealing and Race/Ethnicity: A Population-Based study of the Differential Impact on Substance Use on Involvement in Drug Trade, Amer. J. of Drug & Alcohol Abuse, Vol. 36, No. 2 (Mar. 2010) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2871399/ - R7> [last visited Mar. 17, 2022].)

Will the threat of a longer term of incarceration deter people already at a relatively high risk of death from illicit drug use?

6) **Argument in Support**: According to the *Placer County District Attorney*: The state of California, through the legislature and judiciary, has utilized similar legal frameworks in addressing the crime of impaired driving. The state has used a framework similar to AB 3071 to hold those who engage in dangerous behavior accountable and to deter behavior that we know could result in the loss of a life. AB 1931 [sic] creates a similar framework for the sales of illegal narcotics, including fentanyl.

   This committee is well aware of the dangers of fentanyl and how this poison is devastating our communities. From the child who is deceived, to the person who is struggling with addiction, this crisis is affecting everyone. It is robbing our residents of the ability to make mistakes or embark on a path to rehabilitation. Last year, this committee overwhelmingly supported a fentanyl education panel during probation, much like we see for DUIs. I also joined our Attorney General last year for the state's first ever fentanyl murder sentencing in Placer County, also a legal theory mirrored from DUIs.

   This bill simply asks that we bridge the current legal gap and create a legal framework to prevent deaths before they happen, while encouraging dealers to turn their lives around. When someone comes in to a community to sell this poison, they are either deceiving their buyer or exploiting someone's addiction – both abhorrent. Local communities should be given the tools to hold those who choose profit over people accountable. This is not about locking someone up; this is about saving lives. Further, a more robust legal framework for fentanyl dealers will allow our criminal justice system to utilize the rehabilitation tools that our state has invested millions of dollars in over the course of the past decade to give the defendants the resources they need to choose another path that does not exploit human life.

7) **Argument in Opposition**: According to the *Drug Policy Alliance*, "This bill presents a misguided, punitive, and counterproductive path that will not have any impact in the availability of fentanyl in California. Sentencing laws that dramatically increase penalties for drug offenses have been widely studied and what the research demonstrates is that these have resulted in the unnecessary confinement of low-level sellers, racial disparities in the criminal legal system, and a waste of public resources. Even more, imposing mandatory minimum jail terms that could range between 90 days to one year will not deter drug offenses or make communities safer. This has been corroborated by the National Research Council that concluded in a 2014 report that mandatory minimum sentences for drug and other offenders "have few if any deterrent effects." Other researchers have pointed out that "even if street-level drug dealers are apprehended and incarcerated, such offenders are easily replaced, ensuring that drug trafficking can continue." Based on these findings and relying on over 30 years of research, one can make the assumption that AB 3071 will result in a cycle of arrests that will only devastate communities and will fail to disrupt the drug trade.

   "In addition, the legislation ignores the reality that incarceration is associated with increased risk for overdose death. An investigating report last month, revealed that people are dying at record numbers in California jails, drug overdoses are among the top three causes of death. While AB 3071 focuses on drug offenses pertaining to sales, the truth is that people who sell are also users, the latest research shows that 87.5% of people who reported selling drugs also used drugs. The Prison Policy Institute notes in a recent brief that "at least two million people with substance use disorders are arrested annually." Data from 2007 to 2009's National Inmate Surveys estimated that 63 percent of people serving sentences in jails met the criteria for a substance use disorder. Exposing people with substance use disorder to jail even for

short period of times can be deadly, periods of abstinence, limited access to evidence based treatment and naloxone while incarcerated and when released, can disrupt the health and social supports. The days and weeks following release from incarceration are also a particularly high-risk period for overdose death. Doubling down on a punitive response to the fentanyl crisis will undoubtedly contribute to preventable overdose deaths.

"More troubling, the provision of AB 3071 of allowing courts to impose as a condition of probation that the person submit all objects under their control to searches and seizures by a law enforcement officer or probation officer, any time of the day or night, with or without a warrant, and with or without the person's presence or further consent, is a clear erosion of fourth amendment rights. This could lead to arbitrary and dangerous encounters with law enforcement, especially for people of color. For instance, Black people are nearly 12 times more likely than white people to experience police misconduct and during traffic stops, African American and Latinx individuals are the most likely groups to experience a search or arrest. These experiences are obscured by the proposed legislation, warrantless searches will not only disrupt the community's relationship and trust with the law enforcement officers but will also discourages people from employing lifesaving mechanism to prevent overdoses.

"In a year when California is facing a budget deficit in the billions of dollars and resources are limited, it's crucial that the legislature prioritizes investments on interventions that are in rooted in public health, grounded in science and evidence and are cost-effective. Nationally, jails cost taxpayers, $25 billion per year. This money could be allocated to other substance use programs that better serve the needs of the community. For instance, the approximate cost of a year of methadone treatment for an opioid dependent person is $6,552. The approximate cost of buprenorphine treatment is less than $6,000. It would be healthier, safer and better for public safety to send people to methadone treatment, or buprenorphine treatment, than to incarcerate them. Funding a robust, voluntary drug treatment system is a far more intelligent investment for public safety and for all Californians.

"It is time for bold action. We must follow the science and work towards implementing evidence-based approaches to achieve a transformative change in our approach to the overdose crisis. Instead of increasing penalties and imposing mandatory minimum sentences, the state should focus on allowing the implementation of overdose prevention services, protecting and expanding Good Samaritan Laws, increasing access to methadone, buprenorphine, drug checking services, harm reduction resources, naloxone, and fact-based drug education."

8) **Related Legislation**:

a) AB 1848 (Davies), would expand an existing one year sentencing enhancement for any person over the age of 18 who induces a minor to transport, carry, sell, give away, prepare for sale, or sell heroin, cocaine, or cocaine base on any church, synagogue, youth center, day care, or public swimming pool grounds to include the transport, carry, sell, give away, prepare for sale, or sell heroin, cocaine, cocaine base, and fentanyl either on the grounds of, or within 1000 feet from a church, synagogue, youth center, day care, or public swimming pool. The hearing on AB 1848 was canceled at the request of the author.

b) AB 2045 (Hoover), would add fentanyl to the list of controlled substance for which a defendant may be sentenced to an additional period of incarceration for using, inducing, or employing a minor to transport or possess specified controlled substances. AB 2045 is pending hearing in the Assembly Appropriations Committee.

c) AB 2782 (Jim Patterson), would impose an additional enhancement when a person is convicted of specified drug offenses involving fentanyl, including sale, possession for sale, and transportation, when the substance containing fentanyl exceeds a specified weight. The hearing on AB 2782 was canceled at the request of the author.

d) AB 3171 (Soria), would increase the penalties for selling, distributing, or transporting fentanyl, an analog of fentanyl, or a substance containing fentanyl or an analog of fentanyl, if the amount of fentanyl weighs more than 28.35 grams. AB 3171 is pending hearing in the Assembly Appropriations Committee.

9) **Prior Legislation**:

a) AB 701 (Villapudua), Chapter 540, Statutes of 2023, applied the existing weight enhancements that increase the penalty and fine for trafficking controlled substances containing heroin, cocaine base, and cocaine to fentanyl.

b) AB 955 (Petrie-Norris), of the 2023-2024 Legislative Session, would provide that a person who sells fentanyl on a social media platform in California shall be punished by imprisonment for a period of three, six, or nine years in county jail. This committee retained AB 955 of interim study.

c) AB 1058 (Jim Patterson), of the 2023-2024 Legislative Session, was identical to this bill. AB 1058 failed passage in this committee.

d) SB 62 (Nguyen), of the 2023-2024 Legislative Session, was substantially similar to AB 701 above. SB 62 failed passage in the Senate Public Safety Committee.

e) SB 237 (Grove), of the 2023-2024 Legislative Session, was identical to this bill. SB 237 failed passage in the Senate Public Safety Committee.

f) AB 1955 (Nguyen), of the 2021-2022 Legislative Session, was substantially similar to AB 701 above. AB 1955 failed passage in this committee.

g) AB 1351 (Petrie-Norris), of the 2021-2022 Legislative Session, was substantially similar to AB 701 above. The hearing on AB 1351 was canceled at the request of the author.

h) AB 2975 (Petrie-Norris), of the 2019-2020 Legislative Session, was substantially similar to AB 701 above. AB 2975 was not heard in this committee.

i) AB 2467 (Jim Patterson), of the 2017-2018 Legislative Session, was identical to this bill. SB 2467 failed passage in this committee.

j) SB 1103 (Bates), of the 2017-2018 Legislative Session, was substantially similar to AB 701 above. SB 1103 failed passage in the Senate Public Safety Committee.

k) SB 1323 (Bates), of the 2015-2016 Legislative Session, was substantially similar to AB 701 above. SB 1323 was held on the Assembly Appropriations Committee Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

Placer County District Attorney's Office

Oppose

ACLU California Action
California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
Californians for Safety and Justice
Californians United for A Responsible Budget
Drug Policy Alliance
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Initiate Justice
LA Defensa
Legal Services for Prisoner With Children
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Team Justice
Uncommon Law
Vera Institute of Justice
Young Women's Freedom Center

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 3094 (Low) – As Amended March 21, 2024

As Proposed to be Amended in Committee

SUMMARY: Provides that every person guilty of knowingly administering to another any chloroform, ether, laudanum, or any controlled substance, without that person's knowledge or consent, is guilty of a misdemeanor.

EXISTING LAW:

1) Provides administering to another any chloroform, ether, laudanum, or any controlled substance, anesthetic, or intoxicating agent, with intent to enable or assist themselves or any other person to commit a felony, is punishable by imprisonment in the state prison for 16 months, or two or three years. (Pen. Code, § 222.)

2) States that rape is an act of sexual intercourse accomplished where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused. Rape is generally punishable by imprisonment in state prison for three, six, or eight years. (Pen. Code, §§ 261, subd. (a)(3); 262, subd. (a)(2); 264.)

3) Specifies felony penalties for any person who commits an act of sodomy, oral copulation or sexual penetration where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused. (Pen. Code, §§ 286, subd. (i); 288a, subd. (i); 289, subd. (e).)

4) Provides that administering a controlled substance is punishable in county jail for three, four, or five years. (Health & Saf. Code, § 11352.)

5) Provides that every person who possesses a specified controlled substance with the intent to commit sexual assault is guilty of a felony punishable by imprisonment in county jail for 16 months, 2 years, or 3 years. (Health & Saf. Code, §§ 11377.5, subd. (a) & 13350.5, subd. (a).)

6) Provides that *every person who willfully combines any poison or harmful substance with any food, drink, medicine, or pharmaceutical product, where the person knows or should have known that it would be consumed by any human being, is guilty of a felony punishable by imprisonment in the state prison for two, four, or five years. (Pen. Code, § 347.)*

7) Provides that every person who knowingly sells or otherwise disposes of any article of food, drink, drug, or medicine, knowing that it is adulterated or has become tainted, or otherwise

unwholesome or unfit to be eaten or drunk, with intent to permit the same to be eaten or drunk, is guilty of a misdemeanor. (Pen. Code, § 383.)

8) Provides that every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, with the fraudulent intent to offer or sell the same, is guilty of a misdemeanor. (Pen. Code, § 382.)

9) States that a food is "adulterated" if it bears or contains any poisonous or deleterious substance that may render it injurious to health of any person or animal that may consume it. (Health & Saf. Code, § 110545.)

10) *Provides that every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished by imprisonment in the state prison or in a county jail, respectively for one-half the term of imprisonment prescribed upon a conviction of the offense attempted.* (Pen. Code, §§ *21a*, 663, 664, subd. (a) & (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "I am no stranger when it comes to issues like this. My track record of fighting for survivors' rights, from addressing rape kit backlogs to mending statutory rape laws, highlights the importance of this legislation. AB 3094 sends a clear message that non-consensual drugging will not be tolerated in California, promoting a safer and more just society for all."

2) **Need for the bill**: This bill provides that every person guilty of knowingly administering to another any controlled substance, without that person's knowledge or consent, is guilty misdemeanor. According to the author claims that this bill is need to "send[] a clear message that non-consensual drugging will not be tolerated in California[.]" However, non-consensual drugging is already prohibited by existing law.

   According to U.S. Department of Health & Human Services Office of Women's Health, the common date rape drugs include flunitrazepam (Rohypnol), gamma-hydroxybutyric acid (GHB), gamma-butyrolactone (GBL), and ketamine. This reality is reflected by SB 1182 (Galgiani), Chapter 893, Statutes of 2016, which made it felony possession of GHB, ketamine, or flunitrazepam, among other drugs, with the intent to commit sexual assault, a felony. (Health & Saf., §§ 11350.5, subd. (a), 11377.5, subd. (a).)

   Rohypnol is Schedule IV controlled substance under California Uniform Controlled Substance Act (UCSA) (Health & Saf., § 11057, subd. (d)(13)); GHB is a Schedule I or Schedule III controlled substance depending on whether or not it is contained in a FDA approved product (Health & Saf., §§ 11054, subd. (e)(3), 11056, subd. (c)(11)); Ketamine is Schedule III (Health & Saf., § 11056, subd. (g)); and GBL is Schedule I (Health & Saf., § 11054, subd. (e)(3)). Subdivision (a) of Health and Safety Code section 11352 states that administering any controlled substance in subdivision (e), among others, of USCA Schedule I, which includes GBL; and subdivision (a) of Health and Safety Code section 11379 prohibits administering "any controlled substance classified in Schedule III, IV, or V and which is not a narcotic drug," which includes Rohypnol, GHB, and Ketamine. Administering

any of these substances is punishable by incarceration in county jail for up to four or five years. (Health & Saf., §§ 11352, subd. (a), 11377, subd. (a).)

It is also a felony to willfully mingles any poison or harmful substance with food, drink, medicine, or pharmaceutical product, punishable by imprisonment in the state prison for two, four, or five years. (Pen. Code, § 347.) A poison is a substance or liquid that is "capable of destroying life." (*People v. Van Deleer* (1878) 53 Cal. 147, 149.) Rohypnol, Ketamine, GBH and GBL are "capable" of causing death.[1]

Further, a sentence enhancement can be imposed for an additional three to six years of imprisonment if the victim suffers great bodily injury. (Pen. Code, § 12022.7, subd. (f).) And the California Supreme Court has affirmed that a person administering a drugs to another who later overdoses is sufficient for a great bodily injury enhancement. (*People v. Ollo* (2019) 11 Cal.5th 682, 690.)

Administering or possessing a drug with the intent to commit another crime is felony. It is a felony to ***administer*** to another any chloroform, ether, laudanum, or any controlled substance, anaesthetic, or intoxicating agent, with intent to enable or assist themselves or any other person to commit a felony is punishable for up to three years in state prison. (Pen. Code, § 222.) It is also a felony to ***possesses*** specified controlled substances with the intent to commit sexual assault punishable by up to three years in county jail. (Health & Safe. Code, §§ 11377.5, subd. (a) & 13350.5, subd. (a).) It is a misdemeanor to sell or otherwise dispose of any article of food, drink, drug, or medicine, knowing that it is adulterated or has become tainted, with intent that it will be eaten or drunk. (Pen. Code, § 383.) A food or drink is "adulterated" if it contains any poisonous or deleterious substance that may render it injurious to the person who consumes it. (Health & Saf. Code, § 110545.)

3) **Governor's Veto Message to Similar Legislation**: SB 333 (Galgiani), of the 2015-2016 Legislative Session, made possession of gamma hydroxybutyric acid (GHB), ketamine, or flunitrazepam, also known as Rohypnol, with the intent to commit sexual assault, as defined, a felony. This bill was among several other criminal justice bills vetoed by the Governor signaling the Governor's push for sentencing reform. According to the Governor's veto message:

> Each of these bills creates a new crime - usually by finding a novel way to characterize and criminalize conduct that is already proscribed. This multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit.
>
> Over the last several decades, California's criminal code has grown to more than 5,000 separate provisions, covering almost every conceivable form of human misbehavior. During the same period, our jail and prison populations have exploded.

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[1] https://www.deadiversion.usdoj.gov/drug_chem_info/gbl.pdf
https://www.deadiversion.usdoj.gov/drug_chem_info/ketamine.pdf
https://www.dea.gov/factsheets/rohypnol -
:~:text=High%20doses%20of%20Rohypnol%C2%AE%2C%20particularly%20when%20combined%20with,that%20may%20be%20sufficient%20to%20result%20in%20death.

> Before we keep going down this road, I think we should pause and reflect on how our system of criminal justice could be made more human, more just and more cost-effective.

SB 1182 (Galgiana), which was virtually identical to SB 333, was later passed and signed into law.

As previously noted, this bill appears to duplicate provision of existing law that impose criminal penalties for the conduct proscribed in this bill, creating "increas[ed] complexity without commensurate benefit."

4) **Argument in Opposition**: According to the *San Francisco Public Defender*, "While we appreciate the author's goal of protecting people from the harms of nonconsensual administration of the enumerated substances, we believe existing law already adequately addresses these harms.

   "Penal Code section 222, subdivision (a) already punishes anyone who administers to another any chloroform, ether, laudanum, or any controlled substance, anaesthetic, or intoxicating agent with intent to enable or assist themselves or any other person to commit a felony. That crime is a felony, punishable by up to three years in state prison. A person who commits an enumerated sexual offense who administers a controlled substance to the victim in the commission of that offense can be punished by 15-years-to life in prison. (Penal Code, §667.61). It is already a felony for a person to unlawfully administer a controlled substance, punishable by three to five years. (Health and Safety Code, §§ 11352, subd. (a).) These are but a few of the existing laws that already address this behavior.

   While it is critical to deter individuals from causing harm by administering substances to other people without their consent, we believe existing law already creates such a deterrent and we believe existing law already adequately punishes this behavior.

   "The bill would result in more individuals serving long prison sentences at taxpayers' expense without adequate justification or safeguards. Currently, imprisoning an individual costs over $100,000 per year. Long sentences do not promote public safety, but they do hurt families. It is very expensive to have a loved one in prison or jail for a long time."

5) **Related Legislation**: AB 2402 (Lowenthal), requires the Department of Public Health (DPH), on or before January 1, 2026, to create and implement a public education campaign to raise awareness of the risks of drink spiking and the availability of drug testing devices.

6) **Prior Legislation**:

   a) AB 771 (Lowenthal), of the 2023-2024 Legislative Session, would have expanded the felony offense of administering a controlled substance, anaesthetic, or intoxicating agent to another person.

   b) SB 1182 (Galgiani), Chapter 893, Statutes of 2016, made possession of gamma hydroxybutyric acid (GHB), ketamine, or flunitrazepam, also known as Rohypnol, with the intent to commit sexual assault, as defined, a felony.

c) SB 333 (Galgiani), of the 2015-2016 Legislative Session, was identical to SB 1182. SB 333 was vetoed by the Governor.

d) AB 46 (Lackey), of the 2015-2016 Legislative Session, was substantially similar to SB 1182. AB 46 was held in suspense in the Committee on Appropriations.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Oppose

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
San Francisco Public Defender

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

Amended Mock-up for 2023-2024 AB-3094 (Low (A))

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

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

SECTION 1. Section 222 of the Penal Code is amended to read:

222. (a) Every person guilty of administering to another any chloroform, ether, laudanum, or any controlled substance, anaesthetic, or intoxicating agent, with intent thereby to enable or assist themselves or any other person to commit a felony, is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(b) Every person guilty of **knowingly** administering to another any chloroform, ether, laudanum, or any controlled substance, without that person's knowledge or consent, is guilty of a ~~felony punishable by imprisonment in the state prison for 12 months and one day.~~ **misdemeanor.**

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