California State Assembly

PUBLIC SAFETY

AGENDA

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

PART IV
AB 3108 (JONES-SAWYER) – AB 2923 (TA)

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3108 (Jones-Sawyer) – As Amended March 21, 2024

SUMMARY: Expands the situations under when person may be convicted of mortgage fraud and prohibits a person who originates a covered loan under the Covered Loan Law from committing mortgage fraud to avoid complying with specified rules. Specifically, **this bill**:

1) Expands the types of situations when a person may be convicted of mortgage fraud to include the following:

   a) When a mortgage broker or person who originates a loan instructs or otherwise causes a borrower to sign a document in conjunction with a loan, including a declaration of non-owner occupancy and a declaration of business purpose of loan proceeds, with the knowledge that the document contains information the broker or MLO knows to be a material misstatement, misrepresentation, or omission; or

   b) When a mortgage broker or person originates a loan causes a lender to finance a loan transaction with actual knowledge that the loan application or other documents signed in conjunction with the loan contain a material misstatement, misrepresentation, or omission.

2) Prohibits a person who originates a covered loan under California's Covered Loan Law (Law) from avoiding, or attempting to avoid, certain provisions of the Covered Loan Law by committing mortgage fraud, and applies this prohibition retroactively to any document signed on or after January 1, 2020.

EXISTING LAW:

1) States that a person commits mortgage fraud if, with the intent to defraud, the person does any of the following:

   a) Deliberately makes any misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.

   b) Deliberately uses or facilitates the use of any misstatement, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process

   c) Receives any proceeds or any other funds in connection with a mortgage loan closing that the person knew resulted from a violation of paragraph (a) or (b)

d) Files or causes to be filed with the recorder of any county in connection with a mortgage loan transaction any document the person knows to contain a deliberate material misstatement, misrepresentation, or omission (Pen. Code, § 532f, subd. (a).)

2) An offense involving mortgage fraud shall not be based solely on information lawfully disclosed pursuant to federal disclosure laws, regulations, or interpretations related to the mortgage lending process. (Pen. Code, § 532f, subd. (b).)

3) Notwithstanding any other provision of law, an order for the production of any or all relevant records possessed by a real estate record holder in whatever form and however stored may be issued by a judge upon a written ex parte application made under penalty of perjury by a peace officer stating that there are reasonable grounds to believe that the records sought are relevant and material to an ongoing investigation of a felony fraud violation. (Pen. Code, § 532f, subd. (c)(1).)

4) The ex parte application shall specify with particularity the records to be produced, which shall relate to a party or parties in the criminal investigation. (Pen. Code, § 532f, subd. (c)(2).)

5) Establishes the Covered Loan Law, which prohibits lenders who make "covered loans," as defined, from engaging in prohibited acts (Financial Code Section 4970 et seq.).

6) Includes in the list of "prohibited acts" when a person who originates a covered loan shall from avoiding, or attempting to avoid, the application of the Covered Loan Law by doing the following:

a) Structuring a loan transaction as an open-end credit plan for the purpose of evading the provisions of this division when if the loan would have been a covered loan if the loan had been structured as a closed end loan.

b) Dividing any loan transaction into separate parts for the purpose of evading the provisions of the Covered Loan Law. (Fin. Code, § 4973, subd. (m).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Predatory lending has evolved since the subprime mortgage crisis of 2008, but the statute has remained the same. Predatory brokers have developed new tactics to target vulnerable Californians and evade prosecution. Victims of predatory lending are almost always people of color, immigrants, the elderly, and low income households who lose everything when they are misled into a loan they can't afford. AB 3108 seeks to address current and future predatory mortgage lending by clarifying that a loan originator who knowingly causes a borrower to sign a loan or document containing misleading statements is committing mortgage fraud. In doing so, this bill helps attorneys better protect victims of predatory lending and prosecute predatory brokers."

2) **Ex Post Facto Laws**: The United States Constitution prohibits laws that impose criminal penalties for acts that were not punishable when committed. (Cal Const, Art. I § 9; *Bouie v.*

Columbia (1964) 378 U.S. 347) This bill would prohibit a person who originates a covered loan under California's Covered Loan Law from avoiding, or attempting to avoid, certain provisions of the Covered Loan Law by committing mortgage fraud, and applies this prohibition retroactively to any document signed on or after January 1, 2020. Because it does not punish conduct, it likely does not run afoul of the constitutional prohibition on ex post facto laws, at least with regards to criminal penalties.

3) **Background: Relevant licensing laws**: AB 3108 amends the Covered Loan Law, discussed in greater detail in Comment #3 below, which can apply to companies operating under a number of existing licensing laws. Those laws include:

   - ***California Financing Law (CFL).*** The CFL licenses and regulates finance lenders and brokers making and brokering consumer or commercial loans. The CFL prohibits misrepresentations, fraudulent and deceptive acts, and provides a range of administrative, civil and criminal remedies for violations of the law. CFL licensees can make unsecured or secured loans, and a secured loan may be secured by personal or real property.

   - ***Real Estate Law (REL).*** The REL, administered by the Department of Real Estate (DRE), requires the licensure of real estate brokers and real estate persons, some of whom may also have a mortgage loan originator endorsement that allows the licensee to originate residential mortgage loans.

   - ***California Residential Mortgage Lender Act (CRMLA).*** The CRMLA was enacted in 1994 to establish an alternative to the REL and the CFL. The primary purpose of the CRMLA is to provide mortgage bankers with a licensing law more appropriately tailored to their primary functions of originating and servicing residential mortgage loans.

     The CRMLA authorizes licensees to make federally related mortgage loans, to make loans to finance the construction of a home, to sell the loans to institutional investors, and to service such loans. Licensees may purchase and sell federally related mortgage loans or act as a servicer of those loans.

     Moreover, a CRMLA licensee may provide brokerage services to a borrower, by attempting to obtain a mortgage loan on behalf of the borrower from an institutional lender. Employees who engage in brokering activities on behalf of the CRMLA licensee must be licensed mortgage loan originators employed by the licensee.

4) **Background: California's Covered Loan Law**: In 2001, the California Legislature passed AB 489 (Migden), Chapter 732, Statutes of 2001 to curb predatory practices in real estate lending. AB 489 was a response to a number of disturbing practices affecting primarily low-income borrowers, including loan flipping (where an originator would refinance the loan repeatedly in a short period, charging prepayment penalties each time), excessive fees that were not properly communicated to the borrower, lending without the ability to repay, and outright fraud and abuse.

   The Covered Loan Law applies to a consumer loan that meets a number of specific and narrow criteria. The consumer loan must secured by a residential property used or intended to be used as consumer's principal dwelling unit, cannot exceed the most current conforming

loan limit established by the Federal National Mortgage Association (roughly $767,000 in 2024) and must meet one of the following two criteria:

a) For a mortgage or deed of trust, the annual percentage rate (APR) at consummation of the transaction will exceed by more than eight percentage points the yield on Treasury securities having comparable periods of maturity; or

b) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6 percent of the total loan amount.

The "consumer loan" also excludes a number of other products, including reverse mortgages and so-called "bridge loans," which are short-term loans designed for those who are purchasing a new primary residence and need temporary funding to help finance that purchase while they sell their existing home.

Because of the narrow definition of "consumer loan," it is unclear how meaningful the law's protections are for California borrowers. Even at the time of AB 489's passage, it was understood as applying to only a small subset of overall real estate lending and exclusively to the most predatory practices embraced by the subprime lenders. To the Legislature's credit, it identified major issues in the subprime lending market quite early and attempted to address them through AB 489, even though many of those problems would continue to fester until the 2007-08 financial crises. Today, to the extent there are still lending products out in the market that are covered by this area of law, these products are likely very high cost and far out of step with mainstream lending options.

Despite its limited scope, the Covered Loan Law contains robust enforcement mechanisms. It specifies that any licensee under the CFL, REL, the CRMLA, or under the Financial Institutions Law that violates the Covered Loan Law's provisions shall be deemed to have violated their respective licensing law. There is also a cause of action for "actual damages" suffered, and it makes a provision in a contract unenforceable if it violates specified provisions.

5) **What is AB 3108 in response to?**: AB 3108 is inspired by instances when a lender tricks or otherwise deceives a homeowner into taking out a high-cost, short-term supported by improper or misleading documentation. Supporters argue that in such cases, a lack of clarity in statute makes it difficult for victims to find recourse.

In one example provided to committee staff, an elderly homeowner contacted a nonprofit advertising mortgage payment relief for help with his mortgage, which he was struggling to make payments on. This nonprofit promised the victim he could save his home through a reverse mortgage. However, the organization connected the senior to a short-term loan that he did not understand and had no ability to pay, resulting $65,000 in up-front originated fees with a $300,000 balloon payment after the end of the loan's one-year term.

The above case is so obviously problematic and predatory, it is unclear how it was able to happen in the first place. According to legal aid attorneys, one strategy being deployed by unscrupulous actors is having the loan described as a "bridge loan" in accompanying documentation, thus ensuring the loan is not covered by existing consumer protection laws. A bridge loan a short-term loan used to construct or purchase a new home while the existing home is being sold, and in this case the broker convinces the homeowner to sign a document

saying the homeowner does not live at the property. The broker will also list the borrower's primary residence as a different address to give the impression that the loan will be used to secure a new primary residence.

AB 3108 expands the scenarios in which a person could be charged with mortgage fraud to include situations like the above. In these cases, the mortgage broker uses misleading documentation to help deliver the predatory loan to the borrower, such as a "declaration of non-owner occupancy." Importantly, AB 3108's would change the Penal Code apply to brokers and mortgage originators. The sponsor argues this is necessary because the existing provisions related to mortgage fraud may not be used to consider fraud originating from these entities.

Moreover, AB 3108 modifies the Covered Loan Law to ensure that it applies consumers who are steered by loan brokers into loans not typically covered by the law's provisions. This would help ensure that, at a minimum, the Covered Loan Law's existing enforcement provisions could apply in these cases.

6) **Argument in Support**: According to *Consumer Federation of California*, the bill's sponsor, "A recent report revealed that California ranks fourth of all states in mortgage fraud risk. The greatest risk identified involves loans and, far too often, their predatory nature. Predatory lending is the use of fraudulent, deceptive, and unfair tactics to sell a consumer a mortgage they cannot afford or mislead consumers about what they are signing. These lenders target financially vulnerable homeowners with low credit scores, those who do not speak English, or otherwise lack a clear understanding of loan terms. Often these are people of color, immigrants, the elderly, and low-income households that have put all of their life savings into purchasing a home.

"Mortgage fraud schemes vary widely, with some disguised as non-profit groups or "homeowner advocates" offering "free help". Predatory loans target distressed consumers, particularly vulnerable consumers who are most at risk of losing their home. Many at risk consumers fall prey to so-called "help" that is anything but. Instead, far too often the consumer is unknowingly steered towards unsuitable commercial loans rather than residential ones; these loans are designed to evade applicable consumer protections; they are designed to fail (i.e. there is no realistic possibility of repayment); and to generate extraordinary fees for the broker and lender, at the borrower's expense. The predatory cycle of high-cost loan refinancing can ultimately deplete the homeowner's equity and result in foreclosure.

"For example, after inheriting his late mother's home a 59-year-old adult on the autismspectrum with cognitive impairments was exploited in 2020 by predatory loan broker (pretending to be a "nonprofit" who would help him save his home) into signing a predatory loan he could not afford. The consumer lacked financial literacy. The purported nonprofit offered to help him, providing a "free loan modification," but instead directed the consumer into a high-cost loan, which cost the borrower $100,000 in prepaid fees and costs (much of which was directed to the "nonprofit's" directors and their for-profit corporations), and left the impoverished and vulnerable victim was left with a horrible illegal predatory loan he could not afford and a looming $645,866.67 balloon payment due at the end of the loan's one-year term.

"AB 3108 seeks to remedy this problem by clarifying the definition of mortgage fraud so that

advocates can fight for victims of predatory lending and hold predatory mortgage brokers accountable. It ultimately seeks to prevent future and current predatory mortgage lending for Californians. Specifically, AB 3108 clarifies the legal definition of mortgage fraud to include situations when a borrower signs a false document at the direction of their broker, who has knowledge that the document contains a material misstatement, misrepresentation, or omission."

7) **Prior Legislation**:

a) AB 2559 (Bauer-Kahan) Chapter 160, Statutes of 2020, authorized the Department of Business Oversight (DBO) to seek ancillary relief for consumers through administrative action related to violations of the California Financing Law.

b) AB 539 (Limon), Chapter 708, Statutes of 2019, prohibits California Financing Law (CFL) licensees from receiving charges on a consumer loan at a rate exceeding 36% per annum plus the Federal Funds Rate for loans with a principal amount from $2,500 to $10,000

c) SB 1201 (Jackson) Chapter 356, Statutes of 2018, required the DBO, under the California Residential Mortgage Lending Act (CRMLA), to hold an administrative hearing within 90 days of a request from a licensee whose license has been revoked for failure to file a certified financial statement.

REGISTERED SUPPORT / OPPOSITION:

Support

California Advocates for Nursing Home Reform
California Elder Justice Coalition
California Elder Justice Coalition (CEJC)
Consumer Federation of California
Elder Law & Advocacy
Housing and Economic Rights Advocates (HERA)
Justice in Aging
National Association of Consumer Advocates (NACA)
National Consumer Law Center
National Housing Law Project
Public Law Center
Rise Economy

Opposition

None

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3222 (Wilson) – As Amended April 1, 2024

SUMMARY: Establishes the Drug Court Success Incentives Pilot Program, which authorizes the Counties of Sacramento, San Diego, Contra Costa, and Solano to offer up to $500 per month of supportive services to adult defendants who participate in the county's drug court to encourage participation in, and successful completion of, drug court. Specifically, **this bill**:

1) Provides that the superior courts in the Counties of Sacramento, San Diego, Contra Costa, and Solano may offer a voluntary program under which adult defendants who participate in the county's drug court are offered supportive services to encourage participation and successful completion.

2) Requires the Judicial Council to administer the Drug Court Success Incentives Pilot Program.

3) Authorizes the Judicial Council to establish guidelines and reporting requirements for the drug courts participating in the program and to require one or more additional counties to provide specified data, as necessary.

4) Authorizes a judge presiding over a participating drug court to offer supportive services to a defendant who is eligible to be referred to, or who participates in, that drug court.

5) Grants a judge presiding over a participating drug court to have discretion to determine the appropriate amount of supportive services, with a value not to exceed $500 per calendar month, that are appropriate for a defendant to encourage participation in, and successful completion of, drug court.

6) Authorizes a judge presiding over a participating drug court to offer supportive services, as appropriate, based on their determination of each of the following:

    a) The needs of the defendant;

    b) The amount that is necessary and appropriate to encourage participation and successful completion;

    c) The amount of funds available;

    d) Other public funds available to the defendant; and,

    e) The defendant's progress and achievements in the program.

7) States the supportive services program does not create an entitlement for a defendant to receive supportive services or for any particular level, type, or amount of supportive services.

8) Authorizes the judge to review the probation report, evidence submitted by the defendant, or any other relevant evidence to determine what supportive services are appropriate for the defendant to receive.

9) Defines "supportive services" as goods and service with a value not to exceed $500 per calendar month but shall exclude cash payments.

10) Provides that supportive services include, but are not limited to, rental payments or other housing payment assistance, transit vouchers, reimbursement for vehicle repair, vehicle loan payment assistance, tuition payment assistance, child care expenses, reimbursement for expenses directly related to vocational or educational training, textbooks, program fees, gift cards, food, groceries, personal hygiene products, or other household expenses.

11) Excludes from "supportive services" payments or funds that may be used to pay for alcoholic beverages, tobacco products, or any other types of goods or services for which payment via an electronic benefits transfer cash payment would be prohibited and that are not enumerated as allowable supportive services, as specified.

12) Requires funding to be used to supplement, rather than supplant, funding for existing programs.

13) Requires the county probation department, or another court-designated county department, to be responsible for administering payments of, or reimbursement for, supportive services.

14) Authorizes the probation department to determine, as appropriate, whether direct payment to the defendant, a landlord, a vendor, or another person is appropriate.

15) Requires the probation department to determine, in consultation with the county department of social services, whether a defendant who participates in, or will participate in, the Drug Court Success Incentives Pilot Program is eligible for the Medi-Cal program or other benefits and services administered by the State Department of Social Services (CDSS), including, but not limited to, CalFresh, CalWORKS, and any other benefit program administered by CDSS.

16) Requires the drug court, if the defendant is eligible and appropriate for any benefits, to enroll the defendant in all eligible and appropriate services unless the defendant refuses to enroll, or is already enrolled, in one or more services.

17) Requires a participating drug court to collect, and to report to the Judicial Council pursuant to deadlines and according to criteria established by the Council, the following data:

    a) The number of defendants participating in the drug court in the 12 months prior to commencement of the pilot program;

    b) The number of defendants participating in drug court for each 12-month period after commencement of the pilot program;

c) The number of defendants who successfully completed the drug court program in the 12 months prior to commencement of the pilot program;

d) The number of defendants who successfully completed the drug court program for each 12-month period after commencement of the pilot program;

e) The number of defendants who were enrolled in but did not successfully complete the drug court program in the 12 months prior to commencement of the pilot program;

f) The number of defendants who were enrolled in but did not successfully complete the drug court program for each 12-month period after commencement of the pilot program, including a summary of the reasons for failure to successfully complete the program, the number of defendants who were removed from the program by the court, and the number of defendants whose term of probation expired and who did not agree to extend the probation period.

g) The amounts and description of the types of expenditures used for supportive services; and,

h) Any additional data that is relevant and appropriate to describe the activities conducted under the pilot program, a description of the challenges encountered in the implementation of the program, and any recommendations for changes.

18) Requires the Judicial Council, on or before January 1, 2028, to report to the Legislature and the Governor the data collected, as specified.

19) Require the report to compare the participating drug courts to similar data in one or more drug courts with a comparable total population and number of eligible defendants who may participate in drug court.

20) Authorizes the Judicial Council to issue interim reports, as appropriate, if data is available.

21) Grants the Judicial Council the authority to require a drug court to submit data as necessary to comply with the Drug Court Success Incentives Pilot Program requirements.

22) States that reporting of names, personal identifying information, or any other confidential information regarding defendants who participating in drug court or who receive supportive services under the program is not required.

23) Provides that the pilot program becomes operative only to the extent that funding is provided, by express reference, in the annual Budget Act or another statute.

24) Authorizes the Judicial Council to use up to 7.5 percent of the funds appropriated for the program each year for costs of administering the program, including, but not limited to, the employment of personnel, preparation of the report required, as specified, and evaluation of activities supported by the grant funding.

25) Provides a sunset date of January 1, 2029.

EXISTING LAW:

1) Authorizes the presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, to agree in writing to establish and conduct a pre-guilty plea drug court program wherein criminal proceedings are suspended without a plea of guilty for designated defendants. (Pen. Code, § 1000.5, subd. (a)(1).)

2) Requires the drug court program to include a regimen of graduated sanction and rewards, individual and group therapy, urinalysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or their designee, the district attorney and public defender. (Pen. Code, § 1000.5, subd. (a)(1).)

3) Requires the program, if there is no agreement in writing for a pre-guilty plea program by the presiding judge or their designee, the district attorney, and the public defender, to be operated as a pretrial diversion program, as specified. (Pen. Code, § 1000.5, subd. (a)(1).)

4) Requires the prosecuting attorney to review their file to determine with the defendant is eligible for drug court. (Pen. Code, § 1000, subd. (b).)

5) Requires the prosecuting attorney to file a declaration in writing with the court or state for the record the grounds upon which the determination of the defendant's fitness for drug court is based, and to make this information available to the defendant and their attorney. (Pen. Code, § 1000, subd. (b).)

6) Requires all referrals to drug court granted by the court, as specified, to be made only to programs that have been certified by the county drug program administrator or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. (Pen. Code, § 1000, subd. (c).)

7) Provides that any defendant who is participating in a drug court program may be required to undergo urinanalysis for testing for the presence of any drug as part of the program, but that urinalysis results shall not be admissible as a basis for any new criminal prosecution or proceeding. (Pen. Code, § 1000, subd. (c).)

8) Requires the prosecuting attorney, if they determine the defendant is eligible for drug court, to advise defendant and defense counsel in writing of that determination. (Pen. Code, § 1000.1, subd. (a).)

9) Requires the prosecuting attorney's notice to the defendant and their attorney to include:

   a) A full description of the procedures of drug court;

   b) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in the process;

c) A clear statement that the court may grant admittance to drug court with respect to specified offenses provided that the defendant pleads not guilty to the charge or charges, waives the right to a speedy trial, to a speedy preliminary hearing, and to a trial by jury, if applicable, and that upon the defendant's successful completion of the program, the positive recommendation of the program authority and the motion of the defendant, prosecuting attorney, the court, or the probation department, but no sooner than 12 months and no later than 18 months from the date of the defendant's referral to the program, the court shall dismiss the charge or charges against the defendant;

d) A clear statement that upon any failure of treatment or condition under the program, or under any of the specified circumstances, the prosecuting attorney or the probation department or the court on its own may make a motion to the court to terminate pretrial diversion and schedule further proceedings, as specified; and,

e) An explanation of criminal record retention and disposition resulting from participation in the pretrial diversion program and the defendant's rights relative to answering questions about their arrest and pretrial diversion following successful completion of the program. (Pen. Code, § 1000.1, subd. (a)(1)-(5).)

10) Authorizes the court, if the defendant consents and waives the right to a speedy trial, a speedy preliminary hearing, and to a trial by jury, if applicable, to refer the case to the probation department, or the court may summarily grant admittance to drug court. (Pen. Code, § 1000.1, subd. (b).)

11) Requires the probation department, when directed by the court, to make an investigation and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior controlled substance use, treatment history, if any, demonstrable motivation, and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation. (Pen. Code, § 1000.1, subd. (b).)

12) Requires the court to make the final determination regarding education, treatment, or rehabilitation for the defendant and, if the court determines that it is appropriate, to grant admittance to drug court if the defendant pleads not guilty to the charge or charges and waives the right to a speedy trial, to a speedy preliminary hearing, and to a trial by jury, if applicable. (Pen. Code, § 1000.1, subd. (b).)

13) Provides that a defendant's participation in drug court does not constitute a conviction or an admission of guilt for any purpose. (Pen. Code, § 1000.1, subd. (d).)

14) Requires the court to hold a hearing and, after consideration of any information relevant to its decision, to determine if the defendant consents to further proceedings and if the defendant should be granted admittance to drug court. (Pen. Code, § 1000.2, subd. (a).)

15) Provides that the period during which pretrial diversion is granted shall be for no less than 12 months nor longer than 18 months, unless the defendant requests, and the court grants, based on good cause, an extension of time to complete the program. (Pen. Code, § 1000.2, subd. (c).)

16) Provides that, if the defendant has completed drug court, at the end of that period, the criminal charge or charges shall be dismissed. (Pen. Code, § 1000.3(d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 3222 would create a pilot program to allow incentives to be used in drug courts. The incentives would include supportive services such as housing payment assistance, transit vouchers, tuition payment assistance, childcare expenses, and textbooks in order to encourage participants to complete the program. Incentives play a vital role in motivating participants as drug courts can provide tools to shed old habits and adopt healthier lifestyles."

2) **Drug Courts:** Drug Courts are specially designed court calendars that provide an alternative to traditional criminal justice prosecution for non-violent drug-related offenses. These courts combine close judicial oversight and monitoring with probation supervision and substance abuse treatment services. (https://www.courts.ca.gov/5979.htm) The primary objectives of drug courts are to reduce recidivism and substance abuse and to improve rehabilitation among drug court participants.

   Adult drug courts provide access to treatment for substance-abusing offenders in criminal, dependency, and family courts while minimizing the use of incarceration. They provide a structure for linking supervision and treatment with ongoing judicial oversight and team management. The majority of drug courts include initial intensive treatment services with ongoing monitoring and continuing care for a year or more. (*Id.*)

   There is some disagreement about the effectiveness of drug courts. According to the National Institute of Justice, "Research amassed and analyzed through NIJ research grants and other sources suggests that drug courts are generally beneficial in terms of reducing recidivism and drug relapse." (Haskins, *Problem-Solving Courts: Fighting Crime by Treating the Offender*, National Institute of Justice (Sept. 26, 2019) <https://nij.ojp.gov/topics/articles/problem-solving-courts-fighting-crime-treating-offender> [last visited Apr. 15, 2024].) Others observe that "[e]valuations repeatedly demonstrate that drug court clients are less likely to be arrested again and more likely to be employed than if they had been through the regular criminal justice system. Supporters can thus rightly note that drug courts work" with minor offenders. (Pollack et al., *How to make drug courts work*, The Washington Post (Apr. 26, 2013) <https://www.washingtonpost.com/news/wonk/wp/2013/04/26/how-to-make-drug-courts-work/> [last visited Apr. 15, 2024].)

   Nevertheless, some believe the drug court model should be abandoned. Opponents claim that drug courts do not meaningfully reduce incarceration rates. "While drug courts reduce initial sentences, that reduction in incarceration is offset by the time participants spend behind bars for sanctions as well as lengthier sentences imposed on people who fail to graduate from drug courts." (Krinsky et al. *Why It's Time to Abandon Drug Courts*, The Crime Report (Mar. 5, 2021) <https://thecrimereport.org/2021/03/05/why-its-time-to-abandon-drug-courts/> [last visited Apr. 17, 2024.]; see also Pollack et al., *supra*.) They observe that the number of people eligible for drug court is small and that people who fail drug court

programs often receive more severe sentences than other defendants with the same charges. (Krinsky et al., *supra*; see also Pollack et al., *supra*.) Critics argue that resources spent on drug courts would be more effective if allocated to community-based harm reduction services and treatment. (Krinsky et al., *supra*.)

This bill seeks to improve drug court outcomes by offering participants up to $500 per month in supportive services to complete the programs.

3) **Proposition 47's Effect on California Drug Courts:** Proposition 47 made simple drug possession a misdemeanor, thereby removing the threat of incarceration in most cases. Since then, participation in the state's drug courts has dropped dramatically. According to a 2020 report by the Center for Court Innovation:

> According to our survey of 67 adult drug courts across the state, 67 percent of courts reported that their caseloads were down following the legislation's approval, and 51 percent reported considerable decreases. The average caseload declined significantly, from 51 to 39.
>
> A reduction in drug court referrals explains much of this decline. Sixty-five percent of courts reported a decrease in referrals, and even among defendants who were referred, more refused to enroll. The surveys suggest that the decreased legal leverage under Proposition 47 influenced that decision. In over half the California courts, eligible defendants were more likely to refuse participation following the passage of the new law. The most common reason cited was that the program was too long and intensive. Other reasons for refusal were that better legal outcomes were available outside of drug court or that they were not ready to commit to treatment. Courts that accepted only misdemeanor drug defendants reported more refusals.

(Arnold et al., *Drug Courts in the Age of Sentencing Reform*, Center for Court Innovation (2020) p. 2 <Microsoft Word - Report_SentencingReform_02262020.docx (innovatingjustice.org)> [last visited Apr. 15, 2024]; see also, Duara, *Carrots but no stick: Participation in California drug courts has plummeted*, CalMatters (July 5, 2022) <https://calmatters.org/justice/2022/07/california-drug-courts-prop-47/> [last visited Apr. 15, 2024].)

This bill seeks to promote participation in, and completion of, drug court by authorizing the court to offer supportive services to program participants. The supportive services may include rental payments or other housing payment assistance, transit vouchers, reimbursement for vehicle repair, vehicle loan payment assistance, tuition payment assistance, child care expenses, reimbursement for expenses directly related to vocational or educational training, textbooks, program fees, gift cards, food, groceries, personal hygiene produces, or other household expenses. Program participants are eligible to receive up to $500 per month in supportive services.

4) **Practical Considerations:** While this bill's policies regarding individuals caught in the cycle of addiction and the criminal justice system is commendable, there may be some implementation issues. The Welfare and Institutions Code (WIC) Section 11157 has specific provisions regarding income and social services programs. The WIC Section states, in part, all lump-sum income received by an applicant or recipient shall be regarded as income in the

month received, except nonrecurring lump-sum social insurance payments, which shall include social security income, railroad retirement benefits, veteran's benefits, workers' compensation, and disability insurance. The author may wish to consider including a provision for the exemption of the proposed benefits proscribed in this bill in order not to jeopardize other benefits a participant is receiving.

In addition, WIC section 10503, states that only a merit or civil service employee of the county is allowed to determine eligibility requirements for specified persons. This bill would require the involvement of the probation department or the drug court, if the defendant is eligible and appropriate for any benefits, to enroll the defendant in all eligible and appropriate services. It may be prudent to have clarification as to who should be responsible for enrollment of appropriate services.

5) **Argument in Support**: According to *the ACLU California Action,* "AB 3222 will provide the support needed to successfully complete drug court diversion and assist with long-term rehabilitation. This bill authorizes the superior courts in the Counties of Sacramento, San Diego, Contra Costa, and Solano to conduct a pilot program to provide supportive services to adult defendants who participate in the county's drug court. This bill would additionally require the Judicial Council to administer the program and would authorize the council to establish guidelines and reporting requirements for the participating drug courts. This bill would require a participating drug court to enroll eligible defendants in specific supportive services unless a defendant refuses or is already enrolled in those services.

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

7) **Related Legislation**: SB 910 (Umberg), would update drug treatment court program standards and makes other conforming, nonsubstantive changes to language referencing those with mental health and substance use disorders. SB 910 is pending hearing in the Senate Committee on Public Safety.

8) **Prior Legislation**:

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

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

   c) SB 63 (Ochoa Bogh), of the 2023-2024 Legislative Session, would create the Homeless and Mental Health Court Grant Program, funds from which may be used for, among other things, establishing or expanding a mental health court, homeless court, or hybrid collaborative court. SB 63 was held in the Senate Appropriations Committee.

   d) AB 1077 (Eggman), of the 2019-2020 Legislative Session, would have required courts, at the time a defendant enters a collaborative court program, to waive all penalties assessed

over the base fine for current and prior violations, as specified. AB 1077 was held in the Assembly Appropriations Committee.

e) AB 542 (Waldron), of the 2017-2018 Legislative Session, would have authorized courts to collaborate with outside organizations to develop, implement, and administer a program to offer mental health and addiction treatment services to women who are charged in a complain that consists only of misdemeanor offenses or who are on probation for one or more misdemeanor offenses. The Governor vetoed AB 542.

f) SB 139 (Galgiani), Chapter 624, Statutes of 2016, would have provided that a person charged with a specified misdemeanor is eligible to participate in a preguilty plea drug court program, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Public Defenders Association

Opposition

None Submitted.

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3231 (Villapudua) – As Introduced February 16, 2024

SUMMARY: Adds felony hate crimes, or any felony in which a hate crime enhancement is imposed, to the list of violent felonies subject to additional penalties.

EXISTING LAW:

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

   a) Murder or voluntary manslaughter;

   b) Mayhem;

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

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

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

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

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

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

   i) Any robbery;

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

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

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

   m) Attempted murder;

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

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

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

q) Kidnapping;

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

s) Continuous sexual abuse of a child;

t) Carjacking, as defined;

u) Rape or sexual penetration in concert;

v) Felony extortion;

w) Threats to victims or witnesses, as specified;

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

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

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

2) Provides that where the current offense is one of the specified violent felonies, in addition and consecutive to any other prison terms, the court must impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the specified violent felonies. However, no additional term shall be imposed for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction. (Pen. Code, § 667.5, subd. (a).)

3) Provides that where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under realignment is imposed or is not suspended, in addition and consecutive to any other sentence, the court must impose a one-year term for each prior separate prison term for a sexually violent offense, as defined, provided that no additional term can be imposed for any prison term served prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under realignment or any felony sentence that is not suspended. (Pen. Code, § 667.5, subd. (b).)

4) Defines "hate crimes" as a criminal at committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

   a) Disability;

   b) Gender;

   c) Nationality;

   d) Race or ethnicity;

   e) Religion;

   f) Sexual orientation; and,

   g) Association with a person or group with one or more of these actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a)(1)-(7).)

5) Makes any other hate crime that is not punishable by imprisonment in the state prison a wobbler (punishable alternatively as a misdemeanor or county jail felony) if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any constitutional right under any of the following circumstances:

   a) The crime against the person either includes the present ability to commit a violent injury or causes actual physical injury;

   b) The crime against property causes damage in excess of $950; or,

   c) The person charged with a crime under this provision has been convicted previously of a hate crime or conspiracy to commit a hate crime, as specified. (Pen. Code, § 422.7.)

6) Provides that a person who commits a felony that is a hate crime or attempts to commit a felony that is a hate crime, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion. (Pen. Code, § 422.75, subd. (a).)

7) Provides that any person who commits a felony that is a hate crime, or attempts to commit a felony that is a hate crime, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion. (Pen. Code, § 422.75, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Hate crimes have intentions deeply rooted in misguided hatred for somebody's constitutional protections; those committing these crimes need ample time go through effective and necessary rehabilitation. By constituting that felony hate crimes are considered a violent felony, offenders will be limited in their access to

early release. These malicious acts of hate have lasting impacts on a population that may deter them from fully participating and engaging in our society. We must reject this form of intimidation in full force."

2) **Hate Crime Laws:** Hate crimes, referred to in some jurisdictions as "bias crimes," are generally defined as crimes that are "committed not out of animosity toward the victim as an individual, but out of hostility toward the group to which the victim belongs." (Pendo, *Recognizing Violence Against Women: Gender and the Hate Crimes Statistics Act* (1994) 17 Harv. Women's L.J. 157, 159.)

   According to Los Angeles County's 2021 Hate Crime Report, the county had 786 reported hate crimes, a 23% increase from the prior year; hate crimes have been trending upwards since 2013. (https://hrc.lacounty.gov/stop-violence-2.) The executive director of the county's Commission on Human Relations attributed part of the increase to having made it easier to report hate crimes in recent years. For example, the county launched its hate crimes reporting hot line in 2020. However, political polarization and violence likely also contributed to the uptick. (https://www.latimes.com/california/story/2022-12-07/hate-crimes-la-county.)

   While the county's report focuses on 2021, according to Los Angeles Police Department data analyzed by the Center for the Study of Hate and Extremism at Cal State San Bernardino, hate crimes in Los Angeles rose by 12% in the first 10 months of 2022 over the same period in 2021. Hate crimes targeting Black people rose 38% — to 168 from 122 — and anti-Jewish hate crimes went up 13%, to 80 from 71. (https://www.latimes.com/california/story/2022-12-07/hate-crimes-la-county.)

3) **California's Hate Crime Penalties**: Under Penal Code section 422.55, a hate crime is defined as a criminal act committed because of the victim's actual or perceived: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. These offenses can serve as a stand-alone crime (Pen. Code, § 422.6), as an aggravating factor (Pen. Code, § 422.7), or as a sentence enhancement (Pen. Code, § 422.75).

   California has serious penalties directed at hate crimes. For felony hate crimes, sentence increases can range from two, three, or four years in state prison up to life without parole for first degree murder that is a hate crime.

4) **Three Strikes Implications**: In general, violent felonies as specified in Penal Code section 667.5 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 "violent 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 felony hate crimes 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.

5) **Proposition 57**: In November 2016, California voters overwhelmingly approved Proposition 57. (Cal. Sect. of State, Statement of Vote Summary Pages (2016) p. 12; https://elections.cdn.sos.ca.gov/sov/2016-general/sov/06-sov-summary.pdf; https://www.cdcr.ca.gov/proposition57/ [as of November 30, 2021].) As relevant here, Proposition 57, authorized earlier parole consideration for people who are serving state prison terms for nonviolent offenses, and gave them more opportunities to earn sentence-reduction credits for good behavior. (https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020); see Cal. Const, Art. I, § 32.) For purposes of Proposition 57, violent offenses are those specified in Penal Code section 667.5, subdivision (c). (Cal. Code Regs., tit. 15, §§ 3490, subd. (c) & 3495, subd. (c).)

   This bill would make all felony hate crimes violent offenses under Penal Code section 667.5, subdivision (c), and subject to a state prison term, including offenses otherwise punishable as a county jail felony. (Pen. Code, § 1170, subd. (h)(3).) This would be so even if the felony hate crime involved no actual physical violence or injury. (See e.g., Pen. Code, § 422.7, subd. (b) [property damage in excess of $950].)

   As prison offenses, all felony hate crimes would be excluded from the CDCR's nonviolent parole consideration process under Proposition 57. A defendant convicted of a felony hate crime would be excluded from this early parole regardless of whether they had also been convicted of a nonviolent felony. (*In re Mohammad* (2022) 12 Cal.5th 518.)

6) **Credit Limitations for Violent Felonies with State Prison Sentences**: Under Penal Code section 2933.1, a defendant convicted of a violent felony as defined by Penal Code section 667.5, subdivision (c), has their presentence conduct credits limited to 15 percent of actual confinement time. (Cal. Code Regs., tit. 15, § 3043.1; *People v. Brown* (2012) 54 Cal.4th 314, 321.)

   A violent felony conviction also affects post-sentence credits. As previously discussed, Proposition 57 gave incarcerated persons in state prison the ability to earn additional, nonstatutory credits for sustained good behavior and for approved rehabilitative or educational achievements. The increased credit-earning opportunities incentivizes incarcerated people to take responsibility for their own rehabilitation. (https://www.cdcr.ca.gov/proposition57/, *supra*.) Under CDCR regulations, a violent felony limits good conduct credits (GCC) to 33.3 percent of the total incarceration time, as opposed to 50 percent for a non-violent felony. (*Ibid*; 15 Cal. Code of Regs. § 3043.2.)

   Additionally, under CDCR regulations, persons convicted of nonviolent crimes earn 66.6 percent GCC while housed in camp or Minimum Support Facility (MSF) settings. People convicted of violent crimes, however, earn 50 percent GCC in fire camp settings and 33.3 percent in MSF settings. (See (https://www.cdcr.ca.gov/proposition57/, *supra*.)

   By adding all felony hate crimes to the list of violent felonies in Penal Code section 667.5, subdivision (c), these offenses would be subject to the violent felony credit limitations. Again, this would be so even if the felony hate crime involved no actual physical violence or

injury. (See e.g., Pen. Code, § 422.7, subd. (b) [property damage in excess of $950].)

7) **Proposition 20**: Proposition 20 was a ballot initiative of the November 2020 election which, among other things, would have defined 51 crimes and sentence enhancements as violent in order to exclude them from Proposition 57's nonviolent offender parole program. Hate crimes were on this list. Californians voters overwhelming rejected Proposition 20, by almost 62 percent. (https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020), *supra.*) Arguably, this bill would ignore the will of the voters.

8) **Increased Penalties – Lack of Deterrent Effect:** The National Institute of Justice (NIJ) has looked into the concept of improving public safety through increased penalties. (https://nij.ojp.gov/about-nij.) As early as 2016, the NIJ has been publishing its findings that increasing punishment for given offenses does little to deter criminals from engaging in that behavior. ("Five Things About Deterrence," NIJ, May 2016, available at: https://www.ojp.gov/pdffiles1/nij/247350.pdf].) The NIJ has found that increasing penalties are generally ineffective and may exacerbate recidivism and actually reduce public safety. (*Ibid.*) 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 available at: https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs, [as of Feb. 25, 2022].) Rather than penalty increases, the NIJ, advocates for polices that "increase the perception that criminals will be caught and punished" because such perception is a vastly more powerful deterrent than increasing the punishment. ("Five Things About Deterrence," *supra.*)

9) **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. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

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

   CDCR's December 2022 quarterly report on the prison population notes that the state prison population is at 110.8% of design capacity. (https://www.cdcr.ca.gov/3-judge-court-update/ [as of January 31, 2023].)

   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. (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).)

Notably, Proposition 57 was a response to federal court orders requiring California to implement measures to reduce its prison population. (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) argument in favor of Prop. 57, p. 58.) This bill would create new violent felonies that are excluded from Proposition 57's nonviolent parole process and impose limitations on sentence-reduction credits.

10) **Argument in Support**: According to the *Association for Los Angeles Deputy Sheriffs*, "Existing law classifies certain felonies as violent felonies for purposes of various provisions of the Penal Code. Existing law imposes an additional one-year term for a sexually violent felony and a 3-year term for a violent felony for each prior separate prison term served for a violent felony.

"This bill would additionally define ***felony hate crimes*** as a violent felony."

11) **Argument in Opposition**: According to the *Ella Baker Center for Human Rights*, "Hate crimes are a scourge on our democracy and the civil freedoms we cherish as Americans. We share in the author's anger about the rising tide of hate crimes in our state and nationwide, which have in recent months and years disproportionately impacted the transgender community, Asian American and Pacific Islander (AAPI) communities, Palestinian and Arab Muslim communities, and Jewish communities. But we are steadfastly opposed to failed carceral approaches, especially ones that curtail the incentive for incarcerated people to invest in rehabilitation and education programming, which will undoubtedly lead to more prison overcrowding and lengthy sentences largely for Black and brown Californians. We must be focused on real solutions that prevent and respond to hate crimes such as community-based education, trauma services for survivors, expansion of restorative justice programming, and stronger labor and whistleblower protections.

"**The commission of a hate crime can already carry steep penalties**. Under Penal Code §422.6(a), which is the "stand-alone" hate crime provision, the penalty is up to one year in county jail and/or a $5,000 fine. Furthermore, there are also separate misdemeanor hate crime penalties under CPC §422.7, and felony hate crime penalties under CPC §422.75, which can carry up to a 3-year prison term and a fine of $10,000. This makes such crimes a wobbler, with additional enhancements possible depending on the degree of the crime.

"For example, depending on the context of the crime, prosecutors can tack on simple assault charges and simple battery charges, each of which carry an additional term of six months in county jail and $1,000 fines. If the hate crime was committed while disturbing a religious meeting, it can carry another 1 year jail sentence under CPC §302. Furthermore, if criminal threats were made in the commission of the hate crime, then a separate charge under CPC §422(a) can be brought, which carries up to an additional 3-year prison term and is also a strikeable offense under the Three Strikes Law.

"**Indeed, we are also concerned by how AB 3231 may undermine the intent and efforts of the Commission on the State of Hate, established under AB 1126** (Bloom, Ch. 712, Stat. 2021). That law, which outlined the responsibilities of the Commission, also charged it with developing comprehensive policy recommendations towards reducing hate crimes. In

fact, the Commission's 2022-2023 Annual Report highlighted how "*...the Commission is cognizant of the well-documented harms of incarceration and the criminal legal system, particularly for Black, Latin(x), and LGBTQ communities... As a result, the Commission will explore innovative practices for reducing recidivism, particularly non-carceral solutions.*"

"**AB 3231 will not support hate crime survivors - it is yet another ill-advised attempt at degrading Proposition 57 and the will of the majority of California voters who support rehabilitation**. Under Proposition 57, someone with a violent felony conviction is limited to good conduct credits equaling 33.3% of their total sentence, as opposed to 50% for serious or other non-violent felonies (Tit. 15 Cal. Code of Regs. § 3043.2.). Proposition 57 is not a 'get out of jail free' card as opponents claim it be - instead, it is 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, not curtailing access.

"**There is also mounting evidence that vulnerable communities do not report hate crimes to law enforcement to begin with for a variety of reasons including mistrust, prior negative encounters with police, and so forth.** This is especially true for the LGBTQ+ community and communities of color. In fact, Bureau of Justice Statistics' National Crime Victimization Survey (NCVS) data from 2011 to 2015 found that over half of hate crime victims didn't report the incident because they believed '*police would not want to be bothered or to get involved, would be inefficient or ineffective, or would cause trouble for the victim.*' It is unclear then, how AB 3231 would help provide a mechanism for addressing the needs of hate crime victims if those same victims do not feel safe reporting the incident in the first place.

"**Furthermore, significant research has found that lengthy prison terms do not have a strong deterrent effect on future crime, especially compared to other deterrence tools such as the certainty of apprehension.** Carceral approaches to addressing hate crimes will also exacerbate racial disparities in incarceration, as shown by the fact that in 2018, 45% of people arrested by the New York City Police Department for hate crimes were Black. We urge solutions. Namely, we recommend the following policies:

"**1) Invest in Restorative Justice programming that helps survivors of hate crimes heal and holds perpetrators accountable**

Restorative Justice programs are a time-tested practice rooted in Indigenous principles that provide safe and open spaces for victims to have their needs met and for perpetrators to both recognize and atone for the harm committed. Research shows greater satisfaction with the outcomes of Restorative Justice programming for victims.

"**2) Support community-based Victim Advocate Programs that provide critical services to hate crime victims**

Victim advocate programs can provide a variety of services, from navigating victim compensation applications to referrals for support services to accompanying people for court proceedings.

"**3) Fund security improvements and targeted resources for vulnerable institutions**

Recent hate crimes have targeted religious institutions, cultural events, and community centers, many of which often lack adequate security protocols. The Legislature can expand grant programs for these institutions to install security cameras, renovate facilities to expand emergency exits, hire unarmed security personnel, or other measures.

"**4) Strengthen access to culturally competent mental health support services for both prevention of hate crimes and as treatment for survivors**

Historically marginalized communities are both more likely to be victims of hate crimes and face challenges in accessing culturally appropriate mental healthcare and healing services. It is vital that lawmakers invest in linguistically and culturally appropriate mental health services to help hate crime victims heal from their trauma."

12) **Related Legislation**:

a) AB 2603 (Low), would expand the grounds upon which a search warrant may be issued to include when the property or things to be seized consist of evidence that tend to show that certain misdemeanor hate crimes have occurred or are occurring.

b) AB 2604 (Low), would change the definition of "in whole or in part because of," as the term relates to hate crimes, to mean that the bias motivation of the offense may include discriminatory selection of a victim based on a protected characteristic.

13) **Prior Legislation**:

a) AB 32 (S. Nguyen), of the 2023-2024 Legislative Session, would have added felony hate crimes to the list of violent felonies subject to enhanced penalties. AB 32 was never heard in this committee.

b) AB 266 (Cooper), of the 2021-2022 Legislative Session, would have added felony hate crimes to the list of violent felonies subject to enhanced penalties. AB 266 failed passage in this committee.

c) AB 786 (Kiley), of the 2019-2020 Legislative Session, would have added the crime of human trafficking, as specified, to the list of violent felonies and made it a "strike" under California's Three Strikes Law. AB 786 failed passage in this committee.

d) AB 197 (Kiley), of the 2017-2018 Legislative Session, would have added several offenses to the list of violent felonies and specifies that they are "strikes" under California's Three-Strikes Law. AB 197 was never heard in this committee.

e) AB 67 (Rodriguez), of the 2017-2018 Legislative Session, would have added human sex trafficking and specified sexual assault offenses to the list of violent. AB 67 was held on Suspense File in the Assembly Appropriations Committee.

f) AB 27 (Melendez), of the 2017-2018 Legislative Session, would have added specified sexual assault offenses to the list of violent felonies codified in the Penal Code. AB 27

was held on Suspense File in the Assembly Appropriations Committee.

g) SB 75 (Bates), of the 2017-2018 Legislative Session, would have added vehicular manslaughter, human trafficking involving a minor, assault with a deadly weapon, solicitation of murder, rape under various specified circumstances, and grand theft of a firearm as violent felonies for purposes of imposing specified sentence enhancements. SB 75 was held in the Senate Public Safety Committee.

h) SB 652 (Nielsen), of the 2017-2018 Legislative Session, would have defined the unlawful possession of a firearm by a person previously convicted of a violent felony. SB 652 was held in the Senate Public Safety Committee.

i) SB 770 (Glazier), of the 2017-2018 Legislative Session, would have added human trafficking, elder and dependent adult abuse, assault with a deadly weapon, rape under specified circumstances, discharge of a firearm at an occupied building, and specified crimes against peace officers and witnesses, as violent felonies. SB 770 was held in the Senate Public Safety Committee.

j) SB 1269 (Galgiani), of the 2015-2016 Legislative Session, would have included human trafficking in the list of violent felonies, for which Three Strike sentencing, sentencing credit limits, enhancements for prior violent felony prison terms and other consequences apply. SB 1269 failed passage in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Association for Los Angeles Deputy Sheriffs
Burbank Police Officers' Association
California District Attorneys Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles School Police Management Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Joaquin County District Attorney

Santa Ana Police Officers Association
Upland Police Officers Association

Oppose

ACLU California Action
Asian Americans Advancing Justice - Asian Law Caucus
Bend the Arc California
Buen Vecino
California Alliance for Youth and Community Justice
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
Friends Committee on Legislation of California
Immigrant Legal Resource Center
Initiate Justice
Initiate Justice Action
LA Defensa
Legal Services for Prisoner With Children
Pacific Juvenile Defender Center
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
South Bay People Power
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
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 3235 (Bryan) – As Introduced February 16, 2024

SUMMARY: Gives the California Department of Justice discretion to determine if conviction of a criminal offense bears upon a person's ability to perform the duties and responsibilities of a fingerprint roller or custodian of records with honesty and integrity. Specifically, **this bill**:

1) Requires individuals who roll fingerprint impressions for non-law enforcement purposes to submit information to the DOJ for the purpose of obtaining information about the existence and content of a record of state or federal arrests or convictions or state and federal arrests for which the DOJ establishes that the person is free on bail or their own recognizance pending trial or appeal.

2) Provides that the DOJ shall implement regulations to aid in determining whether an offense bears on an applicant's ability to perform the duties and responsibilities of fingerprint roller or custodian of records with honesty and integrity.

3) States that the criteria for determining whether an offense bears on an applicant's ability to perform the duties of a fingerprint roller or custodian of record with honesty and integrity shall include all of the following:

   a) The nature and gravity of the offense;

   b) The number of years elapsed since the date of the offense; and,

   c) Whether the applicant has offered credible evidence of rehabilitation.

4) Provides that the DOJ shall not deny certification or confirmation of a fingerprint roller or custodian of records based in whole or in part on a conviction without considering evidence of rehabilitation submitted by an applicant pursuant to established process.

EXISTING LAW:

1) Requires the DOJ to establish, implement, and maintain a certification program to process fingerprint-based criminal background clearances on individuals who roll applicant fingerprint impressions, manually or electronically, for non-law enforcement purposes. Except as specified, no person shall roll fingerprints for non-law enforcement purposes unless certified. (Pen. Code, § 11102.1, subd. (a).)

2) Exempts from certification the following persons if they have received training pertaining to applicant fingerprint rolling and who have undergone a criminal offender record information

background investigation:

a) Law enforcement personnel and state employees; and,

b) Employees of a tribal or a tribal gaming operation, provided that that the fingerprints are rolled and submitted to the DOJ for the purposes of compliance with a tribal-state compact. (Pen. Code, § 11102.1, subd. (a)(2)(A)(B).)

3) States that shall not accept fingerprint impressions for non-law enforcement purposes unless they were rolled by an individual unless they have been certified or exempted. Pen. Code, § 11102.1, subd. (a)(3).)

4) Individuals who roll applicant fingerprint impressions, manually or electronically, for non-law enforcement purposes must submit to the DOJ fingerprint images and related images along with the appropriate fees, as specified. (Pen. Code, § 11102.1, subd. (b).)

5) Requires the DOJ to retain fingerprint impressions for subsequent arrest notification, as specified.

6) Establishes criteria that individuals must meet in order to be certified as a fingerprint roller, including age of at least 18 years; legal residency; satisfactory completion of a notarized written application to determine fitness to roll fingerprints; and personal attributes including honesty, credibility, truthfulness, and integrity. (Pen. Code, § 11102.1, subd. (d).)

7) States that DOJ shall not certify any person convicted of any felony, or any other offense that involves both moral turpitude, dishonesty or fraud, and bears upon the applicant's ability to perform the responsibilities of a fingerprint roller. (Pen. Code, § 11102.1, subd. (f).)

8) States a number of bases upon which the DOJ may refuse to certify a person or revoke or suspend the certification of any fingerprint roller upon any of the following:

a) Substantial or material misstatement or omission in the application submitted to DOJ;

b) Conviction of a felony or awaiting adjudication for a felony or lesser offense involving moral turpitude, or a lesser offense incompatible with the duties of a fingerprint roller;

c) Revocation, suspension, or denial of a professional license, if the revocation, suspension or denial was for misconduct, dishonesty or any cause substantially related to the duties of a fingerprint roller;

d) Failure to discharge fully and faithfully any of the duties required of a fingerprint roller;

e) Liability for damages in any suit grounded in fraud, misrepresentation, or in violation of the state regulatory laws, or in any suit based upon a failure to discharge fully and faithfully any of the duties required of a fingerprint roller;

f) False or misleading advertising;

g) Commission of any act involving dishonesty fraud or deceit with the intent to substantially benefit the fingerprint roller or another, or to substantially injure another; and,

h) Failure to submit any remittance payable upon demand by the DOJ or failure to satisfy any court ordered money judgment, including restitution. (Pen. Code, § 11102.1, subd. (d),)

9) States that DOJ shall charge a fee sufficient to cover its costs under this law. (Pen. Code, § 11102.1, subd. (j).)

10) Defines "custodian of records" as the individual designated by an agency responsible for the security, storage, dissemination, and destruction of the criminal records furnished to the agency and who serves as the primary contact for the DOJ for ant related issues. Pen. Code, 11102.2, subd. (a)(1).)

11) Provides that commencing January 1, 2011 the DOJ shall establish, implement and maintain a confirmation program to process fingerprint-based criminal record background clearances on individuals designated by agencies as custodians of records. Commencing July1, 2011, no person shall serve as an agency custodian of records unless confirmed by the DOJ. Criminal Justice agency personnel who have undergone state and federal criminal record background check are exempt from the confirmation requirements. (Pen. Code, § 11102.2, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 3235 would provide the DOJ with discretion to certify applicants with prior criminal convictions who can sufficiently demonstrate rehabilitation, and align the DOJ's certification process with similar licensing practices. The Department receives roughly 5,000 of these applications per year and roughly, 8-10 percent of those applications are denied. While the number of people is not that large, the impact of those denials can be significant for the affected individuals and the organizations they work for.

"AB 3235 will ensure that for any crime to be disqualifying, it must bear on the duties and responsibilities of the position. AB 3235 also requires the DOJ to consider an applicant's rehabilitation, the passage of time since the offense, and other evidence bearing on whether the applicant is presently capable of fulfilling the responsibilities. This will remove barriers to certification for persons with past convictions, and bring the DOJ's certification process into line with other licensing processes in California."

2) **Argument in Support**: According to the *California Department of Justice*, "Currently, state law prohibits DOJ from certifying any applicant with any felony conviction. It also limits DOJ's authority to certify applicants with misdemeanor convictions involving moral turpitude, fraud, or dishonesty. In the past, this has resulted in applications being denied based on criminal convictions dating back decades, or where the applicant has presented significant evidence of rehabilitation.

"AB 3235 will ensure that for any crime—felony or misdemeanor—to be disqualifying, it must bear on the duties and responsibilities of the position. AB 3235 also requires DOJ to consider an applicant's rehabilitation, the passage of time since the offense, and other evidence bearing on whether the applicant is presently capable of fulfilling the responsibilities of a fingerprint roller or custodian of records. These changes will bring DOJ's certification process in line with other professional licensing schemes in California."

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Justice (Sponsor)
California Public Defenders Association

Opposition

None

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2609 (Ta) – As Introduced February 14, 2024

VOTE ONLY

As Proposed to be Amended in Committee

SUMMARY: Increases the punishment for a second of subsequent offense of "swatting" from a misdemeanor to a wobbler. Specifically, **this bill**:

1) Provides that second or subsequent offense of reporting an "emergency" to a government entity, knowing that the report is false, is punishable by up to one year in county jail, by a fine of up to $1,000, by both imprisonment and a fine, or of a felony punishable by 16 months, 2 years, or 3 years in county jail.

2) Provides that a second of subsequent offense of telephoning or using an electronic communication device to contact 911 with the intent to annoy or harass another person is a misdemeanor punishable by up to six months in county jail, by a fine of up to $1,000, by both imprisonment and a fine, or of a felony punishable by 16 months, 2 years, or 3 years in county jail.

3) Provides that the increased penalties for a second or subsequent offense for swatting does not apply to a person who was under 18 years of age at the time they committed the offense.

EXISTING LAW:

1) Makes reporting to a government agency that an emergency exists, knowing that the report is false, a misdemeanor punishable by imprisonment in county jail for up to one year, a fine of up to $1,000, or both. (Pen. Code, § 148.3, subd. (a).)

2) Makes knowingly making a false report of an emergency to a government agency, knowing that the response to the report is likely to cause death or great bodily injury, and great bodily injury or death results, a felony punishable by imprisonment in county jail for 16 months, 2 years, or 3 years. (Pen. Code, § 148.3, subd. (b).)

3) Provides that a person who telephones or uses an electronic communication device to initiate communication with the 911 emergency system with the intent to annoy or harass another person is guilty of a misdemeanor punishable by a fine of up to $1,000, by imprisonment in a county jail for up to six months, or both. (Pen. Code, § 653x, subd. (a).)

4) Provides that an intent to annoy or harass is established by proof of repeated calls or communications over a period of time, however short, that are unreasonable under the

circumstances. (Pen. Code, § 653x, subd. (b).)

5) Provides that an individual is liable to a public agency for the reasonable costs of the emergency response by that public agency when convicted of knowingly making a false report or calling 911 with the intent to annoy or harass another person. (Pen. Code, § 148.3, subd. (e); Pen. Code, § 653x, subd. (c).)

6) Makes knowingly allowing the use of or using the 911 emergency system for any reason other than an emergency an infraction, as specified. (Pen. Code, § 653y, subd. (a).)

7) Makes knowingly allowing the use of or using the 911 emergency system for the purpose of harassing another punishable by a fine of $250 or a misdemeanor punishable by up to six months in county jail, by a fine of up to $1,000, or both; a second or subsequent offense is a misdemeanor punishable by up to six months in county jail, by a fine of up to $1,000, or both. (Pen. Code, § 653y, subd. (b).)

8) Makes knowingly allowing the use of or using the 911 emergency system for the purpose of harassing another person, and that act is a hate crime or violation of a condition of probation, a misdemeanor punishable by up to one year in county jail, by a fine of between $500 and $2,000, or both. (Pen. Code, § 653y, subd. (c).)

9) States that every person who files a petition for a GVRO knowing the information in the petition to be false or with the intent to harass, is guilty of a misdemeanor. (Pen. Code, § 18200.)

10) Makes it a misdemeanor to file a report with law enforcement that that a felony or misdemeanor has been committed, knowing the report to be false. (Pen. Code, § 148.5, subd. (a)

11) Defines "emergency" as any condition that results in, or could result in, the response of a public official in an authorized emergency vehicle, aircraft, or vessel, any condition that jeopardizes or could jeopardize public safety and results in, or could result in, the evacuation of any area, building, structure, vehicle, or of any other place that any individual may enter, or any situation that results in or could result in activation of the Emergency Alert System, as specified. (Pen. Code, § 148.3, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Any person, including public servants, can easily be a target of swatting regardless of position or partisanship. This serious crime wastes public resources, leads to property damage, causes undue stress for the victims, including elected officials and staffers, and risks serious injury or death. Swatting is more than just a threat to the safety of individuals, including our public officials and their families – it's an affront to democracy."

2) **'Swatting'**: According to one security expert, "Swatting involves people making fraudulent 911 calls reporting serious-level criminal threats or violent situations like bomb threats, hostages, killing, etc. to fool the police into raiding the house or business of somebody who is not actually committing a crime." (Ward, *The FBI has formed a national database to track and prevent 'swatting'*, NBCNews.com (June 29, 2023) <https://www.nbcnews.com/news/us-news/fbi-formed-national-database-track-prevent-swatting-rcna91722> [last visited Mar. 27, 2024].)

   There have been numerous high-profile swatting instance in recent years. (See e.g., Cadelago, *California lieutenant governor 'swatted' after push to boot Trump from ballot*, Politico.com (Jan. 4, 2024) <https://www.politico.com/news/2024/01/04/california-lieutenant-governor-swatted-after-push-to-boot-trump-from-ballot-00133952> [last visited Mar. 27, 2024].) According to Politico, "A broad range of politicians and other public figures have been targeted by swatting calls for a variety of reasons that aren't always tied to Trump. The pranks are designed to fool unsuspecting police into responding with force, sometimes with their arms drawn. Callers have reported fake incidents at the homes of Boston Mayor Michelle Wu, a Democrat, and Republican Rep. Majorie Taylor Greene of Georgia has claimed multiple incidents, criticizing the FBI while lauding local police for their response." (*Ibid.*)

   The FBI recently launched a "Virtual Command Center" in partnership with state and local law enforcement to help track and prevent swatting incidents. (Ward, *supra.*) "The initiative allows police and intelligence fusion centers to share details of swatting incidents taking place within their jurisdictions, providing authorities nationwide with a "common operating picture" regarding the nature of the threat, and can assist in identifying whether the same perpetrator is responsible for multiple incidents." (Campbell, *High-profile political figures are the targets in latest wave of 'swatting' incidents. Why the trend is so alarming*, CNN.com (Jan. 15, 2024) <https://www.cnn.com/2024/01/14/us/swatting-incidents-trend-explained/index.html> [last visited Mar. 37, 2024].)

3) **This Bill is Inconsistent with Other Provisions of Law**: This bill would increases the punishment for "swatting" from a misdemeanor to a wobbler. However, allowing for an alternate misdemeanor-felony in swatting cases is arguably inconsistent with provisions of law intended to prohibit similar conduct and prevent similar harms.

   For example, AB 1775 (Jones-Sawyer), Chapter 327, Statutes of 2020, made a number of changes in criminal and civil law to discourage individuals from using 911 or other communications with law enforcement to harass people. That bill was an explicit response to a number of media reports on people calling 911 and making false claims to harass others, in part because the target individuals were members of a protected class. (See e.g., North, *Amy Cooper's 911 call is part of an all-too-familiar pattern*, Vox.com (May 26, 2020) <https://www.vox.com/2020/5/26/21270699/amy-cooper-franklin-templeton-christian-central-park> [last visited Mar. 27, 2024].) The threat posed by such reports is likely greater to communities of color, and particularly to Black men. (Cf. Premkumar, *Police Use of Force and Misconduct in California*, PPIC (Oct. 2021) <https://www.ppic.org/publication/police-use-of-force-and-misconduct-in-california/> [last visited Mar. 27, 2024].)

   Under existing law, it is a misdemeanor punishable by up to one year in county jail to use the

911 emergency system to harass another person if the conduct qualifies as a hate crime, as specified. (Pen. Code, § 653y, subd. (c).) Where no evidence of hate crime exists, knowingly using the 911 emergency system for the purpose of harassing another is an alternate infraction-misdemeanor for a first offense, and a straight misdemeanor for a second of subsequent offense. In these circumstances, a misdemeanor for a first offense would carry possible imprisonment in county jail for up to six months, whereas a second or subsequent offense carries a punishment of up to one year in county jail. (Pen. Code, § 653y, subd. (b)(1) & (2).)

Similarly, existing law makes it a misdemeanor to knowingly file a false police report (Pen. Code, § 148.5, subd. (a)); to file a petition for a gun violence restraining order knowing that the information in the petition is false or with the intent to harass (Pen. Code, § 18200); and, to willfully and maliciously sound a false alarm of fire (Pen. Code, § 148.4, subd. (a)). Like 'swatting,' these acts all require agencies to divert resources from legitimate duties to handle false reports; and, in many cases, these acts could cause potentially volatile interactions between emergency responders and those targeted by a false report.

Finally, existing law already provides for up to 3 years in county jail for 'swatting' when the false report results in death or great bodily injury if the person knew or should have known that that result was likely. (Pen. Code, § 148.3, subd. (b); see also Pen. Code, § 148.4, subd. (b) [false fire alarm resulting in serious bodily injury or death].) This bill would allow for felony punishment of up to 3 years for swatting even when there was no injury. As a result, a person convicted of swatting when no injury results could receive the same, or even longer, sentence as another person whose conduct resulted in great bodily injury or death.

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

5) **Argument in Support**: According to the *California District Attorneys Association*, "Swatting, and other false emergencies and misuse of the 911 system, are on the rise and are increasing in seriousness. These incidents have the very real potential for deadly consequences and are a threat to public safety. By permitting a felony to be charged in appropriate cases, judges will have the authority to impose punishment that fits the crime. A report of a fake emergency that results in a response by law enforcement, especially a special weapons and tactics team (SWAT) should not be chargeable as a misdemeanor only."

6) **Argument in Opposition**: According to *Ella Baker Center for Human Rights*, "Existing law currently provides two levels of punishment for the crime of making an emergency report to a government or government agency, knowing that such a report is false. The level of punishment is dependent on whether the person making the false report knows or should know that the response to the report is likely to cause death or great bodily injury, and great

bodily injury or death is sustained by any person as a result of the false report. Current law makes this distinction because the level of punishment connected to a crime should be proportional to the seriousness of the crime. This bill seeks to turn that principle of punishment on its head by making a crime of lower level consequences (false report) punishable to the same degree as a crime of false report that results in great bodily injury. The lower level crimes which are the subject of this bill are appropriately classified as misdemeanors and should remain as such.

"Extensive research proves that overly long sentences, and the threat of such sentences do not reduce or prevent crime. People do not calculate the number of years in prison before acting. In 2014, the National Academy of Sciences published a 444-page review of studies of sentencing policies and their positive and negative effects on crime rates and community safety. Among their conclusions were:

> 'Given the small crime prevention effects of long prison sentences and the possibly high financial, social, and human costs of incarceration, federal and state policy makers should revise current criminal justice policies to significantly reduce the rate of incarceration in the United States. In particular, they should re-examine policies regarding mandatory prison sentences and long sentences.'

"Wasting taxpayers' precious funds on policies that increase sentencing when the state is facing a massive budget deficit is shortsighted and bad public policy. California already spends too much money on mass incarceration, having built far more prisons than universities in the last 30 years. And the harms done to families and communities undermine the very intent of law to protect and enhance public safety.

"Additionally, a 2015 report by the Ella Baker Center for Human Rights, Forward Together, and Research Action Design *Who Pays, The True Cost of Incarceration on Families* details how incarceration destabilizes entire families and communities. Many people who return from incarceration face extreme barriers to finding jobs and housing and reintegrating into society. Family members of incarcerated people also struggle with overwhelming debt from court costs, visitation and telephone fees, and diminished family revenue. The longer the sentence, the more severe these problems."

7) **Related Legislation**: SB 970 (Ashby), would provide that the use of video or voice cloning technology with the intent to impersonate another is deemed to be false impersonation. SB 970 is pending hearing in the Senate Judiciary Committee.

8) **Prior Legislation**:

   a) AB 1775 (Jones-Sawyer), Chapter 327, Statutes of 2020, made a number of changes in criminal and civil law to discourage individuals from using 911 or other communications with law enforcement to harass a person because that person belongs to a protected class.

   b) AB 1695 (R. Bonta), Chapter 47, Statutes of 2016, expanded the existing misdemeanor of making a false report to law enforcement to include that a firearm has been lost or stolen, and institutes a 10-year ban on owning a firearm for those convicted of making a false report.

c) AB 1769 (Rodriguez) Chapter 96, Statutes of 2016, prohibited contacting the 911 system via electronic communication -such as texting- for the purpose of annoying, harassing, or any purpose other than an emergency.

d) SB 333 (Lieu) Chapter 284, Statutes of 2013, made a person convicted of filing a false emergency report liable for the costs of the emergency response.

e) AB 538 (Juan Arambula), of the 2009-2010 Legislative Session, would have authorized agencies that provide emergency medical services to report misuse of the 911 system to the public safety entity that originally received the call. Governor Brown vetoed AB 538.

f) AB 1976 (Benoit), Chapter 89, Statutes of 2008, increased the penalties for knowingly using the 911 system for any reason other than an emergency.

g) AB 2225 (Mountjoy), Chapter 227, Statutes 2006, added activation of the Emergency Alert System to the definition of "emergency" for which an individual making a knowingly false report is guilty of misdemeanor.

h) AB 911 (Longville), Chapter 295, Statutes of 2004, created a new infraction for using the 911 telephone system for purposes other than an emergency, as defined.

i) SB 2057 (O'Connell), Chapter 521, Statutes of 2002, required the felony offense of knowingly making a false emergency report to public officials that results in great bodily injury or death to include knowledge that great bodily injury or death was likely.

j) AB 2741 (Cannella), Chapter 262, Statutes of 1994, made it a misdemeanor to telephone the 911 emergency system with the intent to annoy or harass another person.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California District Attorneys Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association

Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association
Upland Police Officers Association

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
Initiate Justice
Initiate Justice Action
Legal Services for Prisoner With Children
Smart Justice California, a Project of Tides Advocacy

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

Amended Mock-up for 2023-2024 AB-2609 (Ta (A) , Alanis (A))

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

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

SECTION 1. Section 148.3 of the Penal Code is amended to read:

148.3. (a) An individual who reports, or causes a report to be made, to a city, county, city and county, or state department, district, agency, division, commission, or board, that an "emergency" exists, knowing that the report is false, is guilty of a misdemeanor and upon conviction shall be punishable by imprisonment in a county jail for a period not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), by both that imprisonment and fine.~~, or by imprisonment pursuant to subdivision (h) of Section 1170~~.

(b) A second or subsequent violation of subdivision (a) is punishable by imprisonment in a county jail for a period not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), by both that imprisonment and fine, or by imprisonment pursuant to subdivision (h) of Section 1170. This subdivision shall not apply to a person who was under 18 years of age at the time he or she committed the offense.

~~(b)~~ **(c)** An individual who reports, or causes a report to be made, to a city, county, city and county, or state department, district, agency, division, commission, or board, that an "emergency" exists, who knows that the report is false, and who knows or should know that the response to the report is likely to cause death or great bodily injury, and great bodily injury or death is sustained by any person as a result of the false report, is guilty of a felony and upon conviction shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.

(c) "Emergency" as used in this section means any condition that results in, or could result in, the response of a public official in an authorized emergency vehicle, aircraft, or vessel, any condition that jeopardizes or could jeopardize public safety and results in, or could result in, the evacuation of any area, building, structure, vehicle, or of any other place that any individual may enter, or any situation that results in or could result in activation of the Emergency Alert System pursuant to Section 8594 of the Government Code. An activation or possible activation of the Emergency Alert System pursuant to Section 8594 of the Government Code shall not constitute an "emergency" for purposes of this section if it occurs as the result of a report made or caused to be made by a parent, guardian, or lawful custodian of a child that is based on a good faith belief that the child is missing.

(d) This section does not preclude punishment for the conduct described in subdivision (a) or (b) under any other section that provides for greater punishment for that conduct.

(e) An individual convicted of violating this section, based upon a report that resulted in an emergency response, is liable to a public agency for the reasonable costs of the emergency response by that public agency.

SEC. 2. Section 653x of the Penal Code is amended to read:

653x. (a) **(1)** A person who telephones or uses an electronic communication device to initiate communication with the 911 emergency system with the intent to annoy or harass another person is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), by imprisonment in a county jail for not more than six months, **or** by both the fine and imprisonment~~., or by imprisonment pursuant to subdivision (h) of Section 1170.~~ This section shall not apply to telephone calls or communications using electronic devices made in good faith.

(2) A second or subsequent violation of paragraph (1) is punishable by imprisonment in a county jail for a period not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), by both that imprisonment and fine, or by imprisonment pursuant to subdivision (h) of Section 1170. This subdivision shall not apply to a person who was under 18 years of age at the time he or she committed the offense.

(b) An intent to annoy or harass is established by proof of repeated calls or communications over a period of time, however short, that are unreasonable under the circumstances.

(c) Upon conviction of a violation of this section, a person shall be liable for all reasonable costs incurred by any unnecessary emergency response.

SEC. 3. 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: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2923 (Jones-Sawyer) – As Amended April 17, 2024

VOTE ONLY

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

1) Provides that a person who files an allegation of misconduct against a peace officer, who knowingly and intentionally makes a false statement that is material to the allegation of misconduct by the officer and is made in bad faith and with the intent that the false statement will be used as a wrongful basis to investigate a peace officer or to harass or otherwise harm the officer, is guilty of a misdemeanor.

2) Modifies the written advisory that must be provided to complainants by law enforcement agencies receiving an allegation of misconduct against peace officers as follows:

   a) States that the law enforcement agency may find, after investigation, that there is sufficient evidence supporting the complaint and the department is required to take action and provide the complainant with notice of their decision.

   b) States that the complainant will not be punished or penalized for making a complaint.

   c) States that it is against the law to make a complaint that contains false statements material to the allegation of misconduct by the officer if the person knows the statements to be false and intentionally makes the false statements with the intent with that the statements will be used to improperly take action against the peace officer or to harass or otherwise harm the officer.

3) Requires peace officer complaint forms to include a provision inquiring whether the complaint includes an allegation of racial or identity profiling and a space to describe the allegation.

4) Requires each department or agency to develop a process whereby a member of the public may submit a concern about a policy, procedure, or practice of the department including, but not limited to, that the policy or procedure may violate a legal right of an individual, or may result in harm to an individual.

5) Specifies that if the department or agency investigating the policy or procedure discovers conduct that could be a basis for a complaint by a member of the public against a peace officer employed by such department, the investigator shall report this conduct to a

supervisor, and the issue shall be tracked and separately investigated. Concerns submitted pursuant to this process are not "complaints".

6) Defines a "complaint" to mean "a report, given either in writing or verbally, that brings to the attention of a department or agency an incident during which the complainant perceives that a department or agency employee engaged in criminal conduct, abusive or discriminatory behavior, inappropriate or discourteous conduct, or a violation of any law, rule, policy, or regulation of the department or agency."

EXISTING LAW:

1) Prohibits peace officers from engaging in racial or identity profiling. (Pen. Code, § 13519.4, subd. (f).)

2) *Defines "racial or identity profiling"* as the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. (Pen. Code, § 13519.4., subd. (e).)

3) Provides that a person who files an allegation of misconduct against any peace officer, knowing the allegation to be false, is guilty of a misdemeanor. (Pen. Code, § 148.6, subd. (a)(1).)

4) Provides that a law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign an advisory that states the following:

> "You have the right to make a complaint against a police officer for any improper police conduct. California law requires this agency to have a procedure to investigate civilians' complaints. You have a right to a written description of this procedure. This agency may find after investigation that there is not enough evidence to warrant action on your complaint; even if that is the case, you have the right to make the complaint and have it investigated if you believe an officer behaved improperly. Civilian complaints and any reports or findings relating to complaints must be retained by this agency for at least five years.
>
> It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing that it is false, you can be prosecuted on a misdemeanor charge.
>
> I have read and understood the above statement." (Pen. Code, § 148.6, subd. (a)(2).)

5) Requires the above advisory to be available in multiple languages. (Pen. Code, § 148.6, subd. (a)(3).)

6) Provides that person who files a civil claim against a peace officer or a lien against their property based on actions arising in the course and scope of the officer's duties, knowing it to

be false and with the intent to harass or dissuade the officer from carrying out their official duties, is guilty of a misdemeanor. (Pen. Code, § 148.6, subd. (b.)

7) *Requires a department or agency employing peace officers or custodial officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public. (Pen. Code, § 832.5, subd. (a).)*

8) Mandates a department or agency to release to the complaining party a copy of the complaining party's own statements at the time the complaint is filed. (Pen. Code, § 832.7, subd. (c).)

9) Requires the law enforcement agency to provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition. (Pen. Code, § 832.7, subd. (f)(1).)

10) *Requires the complaints and any reports or findings relating to these complaints to be retained for a period of at least five years for records where there was not a sustained finding of misconduct and for at least 15 years where there was a sustained finding of misconduct. (Pen. Code, § 832.5, subd. (b).)*

11) Provides all complaints may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency, as specified. *(Pen. Code, § 832.5, subd. (b).)*

12) States that a record of a civilian complaint, or the investigations, findings, or dispositions of that complaint, shall not be released if the complaint is frivolous or the complaint is unfounded. (Pen. Code, § 832.7, subd. (b)(9).)

13) *Provides that complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the CPRA. (Pen. Code, § 832.5, subd. (c).)*

14) States that except as specified, peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or any agency or department that employ these officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office. (Pen. Code, § 832.7, subd. (a).)

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

    a) Records relating to the report, investigation, or findings of any of the following:

i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.

iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

b) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency:

i) That a peace officer or custodial officer engaged in sexual assault of a member of the public.

ii) Involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime;

iii) That a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

iv) That the peace officer made an unlawful arrest or conducted an unlawful search. . (Pen. Code, § 832.7, subd. (b).)

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

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The civilian complaint process is meant to serve as a tool for law enforcement accountability. Under current law, this complaint form includes an advisory describing the potential of retaliation or other adverse action against a member of the public for filing a complaint. Rather than serving as a mechanism for accountability, this form may trigger fear in people and serve as a deterrent for reports

against police officers. In order to ensure a procedurally fair complaint process, AB 2923 updates state law to make clear that a person will not be prosecuted for filing a false complaint unless the false statement is material to the underlying incident, and the individual intended to falsely accuse a law enforcement officer."

2) **Racial Profiling:** Although racial profiling is prohibited, studies show that racial profiling by law enforcement does occur. According to the Public Policy Institute of California (PPIC), the first wave of RIPA data reflects that Black individuals are "notably overrepresented in police stops." (https://www.ppic.org/blog/african-americans-are-notably-overrepresented-in-police-stops/ [as of March 22, 2022].) In this first wave of data, eight agencies reported regarding stops between July 1, and December 31, 2018. The PPIC analyzed the RIPA data and found "[w]hile African Americans make up roughly 6% of the population in the [reported] jurisdictions, they made up slightly more than 15% of all stops. Those perceived to be Middle Eastern or South Asian make up about 1.8% of the population but represented 4.4% of all stops. In contrast, the state's two largest racial/ethnic groups—Latinos and whites— were slightly underrepresented, as they make up about 41% and 35% of the population, respectively, but around 40% and 33% of all stops. Asian Americans were even more underrepresented: they are roughly 12% of the population, but made up about 5.5% of all stops." (*Ibid.*) For African Americans, the racial inequities were the greatest, and existed among all eight of the agencies reporting. (*Ibid.*)

3) **The Racial and Identity Profiling Act (RIPA):** AB 953 (Weber), Chapter 466, Statutes of 2015, enacted RIPA. Among other things, RIPA requires law enforcement agencies employing peace officers to report their stop data annually to the Attorney General. RIPA guidelines define a "stop" as "any detention by a peace officer of a person or any peace officer interaction with a person in which the officer conducts a search. (Cal. Code Regs., tit. 11, § 999.224., subd. (a)(20).) The data elements are outlined by the regulations underlying RIPA and require officers to record their perception of the identity characteristics pertaining to each stopped person including their perceived race or ethnicity, gender, lesbian, gay bisexual or transgender (LGBT) status, age, English fluency, disability, and unhoused status, among other data requirements. (Cal. Code Regs., tit. 11, § 999.226.) Officers are prohibited from asking the person stopped to self-identify these characteristics (*Ibid.*)

4) **Civilian Complaints:** "RIPA agencies reported 10,088 complaints in total, and 10,490 complaints reached a disposition in the 2021 calendar year. (RIPA Board, Annual Report 2023), at p. 19. Available at: https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf [as of March 27, 2024].) Of the complaints that reached a disposition, 992 (9.5%) were sustained, 1,076 (10.3%) were not sustained, 3,496 (33.3%) were exonerated, and 4,926 (47%) were unfounded. (*Ibid.*) RIPA agencies reported 1,426 complaints alleging an element or elements of racial or identity profiling, constituting 14.1 percent of the total complaints reported by RIPA agencies in 2021. (*Ibid.*) Within those 1,426 complaints, there were 1,647 allegations of identity profiling. (*Ibid.*) This is because some civilians alleged more than one type of identity profiling, such as profiling based on both their nationality and religion. Complaints alleging race and ethnicity profiling constituted approximately 77 percent of the 1,647 allegations of identity profiling." (*Ibid.*)

5) **Effect of this Bill:** Among other things, AB 2923 strengthens the standard under which a person who files an allegation of misconduct against a peace officer can be charged for a misdemeanor for making false statements. Under existing law, and as noted on the advisory,

complainants must read when alleging peace office misconduct, a person is guilty of a misdemeanor if they "know[] the allegation to be false" (Pen. Code, § 148.6, subd. (a)(1).) AB 2923 clarifies that a person must not only know that the allegation is false but must also intentionally makes a false statement that is material to the allegation of misconduct by the officer and is made in bad faith and with the intent that the false statement will be used as a wrongful basis to investigate a peace officer or to harass or otherwise harm the officer. The additional intent language added by this bill is consistent with separate Penal Code provisions addressing false claims against peace officers. (*See* (Pen. Code, § 148.6, subd. (b.) [providing a person who files a civil claim against a peace officer or a lien against their property based on actions arising in the course and scope of the officer's duties, knowing it to be false and with *the intent to harass or dissuade the officer from carrying out their official duties*, is guilty of a misdemeanor] (emphasis added).)

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

Opposition has expressed concerns that opening the complaint process to include allegations of racial bias could lead to an increase in frivolous complaints. As noted above, clarifying that racial and identity profiling is a legitimate basis for a complaint may in fact increase the number of complaints against peace officers. This being said, the Penal Code already establishes a clear process for addressing, and shielding officers, from frivolous complaints. (*See* Pen. Code, § 832.7, subd. (b)(9) [providing records of civilian complaints shall not be released if the complaint is frivolous or unfounded]; *Pen. Code, § 832.5, subd. (c) [providing that frivolous complaints shall not be maintained in an officers personnel file.].) Given that racial profiling by peace officers is prohibited, but well-documented, by encouraging legitimate complaints pertaining to racial profiling this bill may improve police practices by deterring such behavior.*

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

6) **Argument in Support**: According to The Center for Policing Equity "AB 2923 proposes critical amendments to Penal Code section 148.6 concerning the offense of filing a false civilian complaint against law enforcement. The current statute, with its broad scope, has the potential to discourage community members from lodging genuine complaints for fear of

prosecution due to misunderstandings or minor inaccuracies. AB 2923 wisely aligns the standard for prosecuting false civilian complaints with that used for peace officers, focusing on material falsehoods made with the intent to accuse an officer wrongfully. This more rigorous standard will protect individuals from unwarranted legal action when raising legitimate concerns.

Additionally, AB 2923 enhances police accountability by providing a structured means for civilians to voice concerns about specific law enforcement policies or practices. The requirements for a supervisor to review such complaints and to furnish a direct response serve to bridge the gap between law enforcement agencies and the public, facilitating constructive dialogue and potentially expediting reformative measures.

AB 2923 is an effort to reform the process of filing civilian complaints against police officers, thus promoting transparency, and fostering trust between law enforcement and the communities they serve. These bills make specific changes to preexisting statutes, which have significant implications for how civilian complaints are processed and addressed, and they also impact policies and practices within law enforcement agencies."

7) **Argument in Opposition**: According to the Peace Officers Research Association "PORAC strongly supports the right of civilians to file complaints against peace officers for improper conduct. At the same time, such complaints must not contain knowingly false statements about the incident or peace officer. While AB 2923 retains this basic requirement, it adds numerous specific intent provisions that would permit complainants to make false statements against peace officers without violating Penal Code section 148.6. For example, AB 2923 states that the false statement must be "made with the intent that the false statement will be used as a basis to punish the peace officer," which would seemingly permit a complainant to make a knowingly false statement with the intent to impugn the peace officer's credibility in an effort to escape prosecution for their own criminal misconduct.

   AB 2923 also appears to impose new requirements regarding the procedures used to investigate civilian complaints. In vague terms, the bill suggests that departments are always required to "take action" against a peace officer whenever there is "sufficient evidence" supporting the complaint, and then report the department's decision to the complainant, even if that information is not otherwise disclosable under existing law. While the bill does not define the type of "action" that must be taken, any effort to statutorily force agencies to take action against their employees likely violates the "home rule" doctrine. Local agencies have the right to determine for themselves whether to take disciplinary action against their peace officer employees, not the Legislature. The state is limited to talking action on a peace officer's certification pursuant to Penal Code section 13510.8."

8) **Related Legislation**: None.

9) **Prior Legislation**:

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

b) SB 776 (Skinner), of the 2019-2020 Legislative Session, sought to expands the categories of police personnel records that are subject to disclosure under the CPRA. SB 776 died on the Senate inactive file.

c) AB 1428 (Low), of the 2017-2018 Legislature Session, would have required specified information to be posted by district attorneys' offices and law enforcement agencies related to serious use of force by peace officers, as specified, and would require an agency to provide complaint status notifications, as specified. AB 1428 was held in the Senate Appropriations Committee.

d) AB 2040 (Diaz), Chapter 391, Statutes of 2002, authorizes agencies and departments employing custodial officers to establish a procedure for the investigation of complaints by the public against those custodial officers.

e) AB 2133 (Polanco), Chapter 289, Statutes of 2000, requires the advisory statement informing citizens that filing a false complaint against a peace officer is a misdemeanor to be available in multiple languages.

f) AB 2637 (Bowler), Chapter 586, Statutes of 1996, makes it a misdemeanor to file a civil action against any peace officer or a lien against their property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out their official duties.

REGISTERED SUPPORT / OPPOSITION:

Support

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

Oppose

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles County Professional Peace Officers Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association

Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

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