California State Assembly

PUBLIC SAFETY

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AGENDA

Tuesday, June 4, 2024
9 a.m. -- State Capitol, Room 126

HEARD IN SIGN-IN ORDER

REGULAR ORDER OF BUSINESS

1.	SB 92	Umberg	Courts: remote proceedings for criminal cases.
2.	SB 254	Skinner	Correctional facilities: media access.
3.	SB 349	Roth	PULLED BY THE AUTHOR.
4.	SB 379	Umberg	Victim services: restorative justice.
5.	SB 442	Limón	Sexual battery.
6.	SB 733	Glazer	Solitary confinement.
7.	SB 758	Umberg	Firearms.
8.	SB 796	Alvarado-Gil	Threats: schools and places of worship.
9.	SB 1005	Ashby	Juveniles.
10.	SB 1122	Seyarto	Peace officers: educational requirements.
11.	SB 1353	Wahab	Youth Bill of Rights.
12.	SB 1381	McGuire	Property crimes: regional property crimes task force.
13.	SB 1473	Laird	Sex offenders.
14.	SB 1489	McGuire	Peace officers: Peace Officer Standards Accountability Advisory Board.

Date of Hearing: June 4, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 92 (Umberg) – As Amended January 3, 2024

SUMMARY: Extends the sunset dates for provisions allowing remote proceedings in criminal cases. Specifically, **this bill:**

1) Extends the sunset date from January 1, 2025 to January 1, 2026 for the following provisions that:

   a) Prohibit trial courts from retaliating against official reporters who notify judicial officers that technology or audibility issues are interfering with the creation of the verbatim record for a remote proceeding.

   b) Authorize defendants, in misdemeanor proceedings other than domestic violence and driving under influence (DUI) cases, to appear remotely for their initial court appearance, arraignment, plea, and all other proceedings, except for jury and court trials.

   c) Authorize defendants, in felony cases, to file a written waiver with the court to appear remotely during criminal proceedings, except for jury trials, court trials, and sentencing hearings other than post-conviction relief hearings.

   d) Authorize defendants, in misdemeanor or felony cases, to appear remotely for a jury or court trial for noncritical portions of the trial where no testimonial evidence is taken.

   e) Permit attorneys representing defendants to appear remotely if remote technology allows for private communication between the defendant and their attorney, unless otherwise requested by defense counsel.

   f) Permit courts to allow defendants to appear by counsel at trial or other proceedings if the court makes specified findings by clear and convincing evidence.

   g) Permit a prosecuting attorney or defense counsel to participate in a criminal proceeding remotely, unless technological issues are present and cannot be resolved in a reasonable amount of time.

   h) Permit witnesses to appear remotely at any misdemeanor or felony criminal proceeding, except for felony trials, with the consent of the parties and the court, and provided that the defendant's waiver was made knowingly, voluntarily, and intelligently.

   i) Permit witnesses to testify remotely, as otherwise provided in statutes regarding the examination of victims of sexual crimes and conditional examinations of witnesses.

j) Provide that the provision of law permitting hearings to continue in the defendant's absence in a preliminary hearing where the defendant is voluntarily absent, and in specified instances of disruptive behavior by the defendant, does not restrict the defendant's right to appear remotely.

k) Provides that when a court conducts remote proceedings that will be reported by an official reporter, the official court reporter shall be physically present in the courtroom.

l) Requires courts to have a process for specified persons to alert the judicial officer of technological or audibility issues that arise during the hearing.

2) Extends the effective date of specified statutory provisions that will take effect when the above provisions sunset, from January 1, 2025, to January 1, 2026.

EXISTING LAW:

1) Provides that persons charged with a misdemeanor only may appear by counsel, except in cases involving domestic violence or DUIs. (Pen. Code, § 977, subd. (a)(1).)

2) Provides that, in misdemeanor cases, if the accused agrees, the initial court appearance, arraignment, plea, and all other proceedings, except jury and court trials, may be conducted remotely. (Pen. Code, § 977, subd. (a)(1).)

3) Provides that in cases in which a felony is charged, the accused shall be physically present at the arraignment, at the time of plea, during the preliminary hearing, during the portions of the trial when evidence is taken before the trier of fact, and at the time of imposition of the sentence, unless the defendant waives their right to be physically present and opts for the use of remote technology. (Pen. Code, § 977, subd. (b)(1).)

4) Provides in felony cases, the accused shall be physically or remotely present at all other proceedings unless they waive their right to be physically or remotely present, with leave of the court and with approval of defendant's counsel. (Pen. Code, § 977, subd. (b)(1).)

5) Provides that a defendant's waiver of their right to be physically or remotely present may be made in writing and filed with the court, or, with the court's consent, may be entered personally by the defendant or by their counsel. (Pen. Code, § 977, subd. (b)(2).)

6) Provides a defendant's personal waiver of the right to be physically or remotely present shall be on the record and state that the defendant has been advised of the right to be physically or remotely present for the hearing at issue and agrees that notice to the attorney that the defendant's physical or remote presence in court at a future date and time is required is notice to the defendant of that requirement. (Pen. Code, § 977, subd. (b)(2)(A).)

7) Provides that a waiver of the defendant's physical or remote presence may be entered by counsel, after counsel has stated on the record that the defendant has been advised of the right to be physically or remotely present for the hearing at issue, has waived that right, and agrees that notice to the attorney that the defendant's physical or remote presence in court at a future date and time is required is notice to the defendant of that requirement. (Pen. Code, § 977, subd. (b)(2)(B).)

8) Authorizes a court to direct the defendant to be physically or remotely present at any particular proceeding or portion thereof, including upon request of a victim, to the extent required by the Victim's Bill of Rights in the California Constitution. (Pen. Code, § 977, subd. (b)(2)(C).)

9) Specifies the applicable format and content of a defendant's waiver of physical or remote presence. (Pen. Code, § 977, subd. (b)(3.)

10) Provides that upon waiver of the right to be physically present by the defendant, criminal proceedings may be conducted through the use of remote technology, except a defendant charged with a felony or misdemeanor shall not appear remotely for a jury trial or court trial and a defendant charged with a felony shall not appear remotely at sentencing, except for post-conviction relief proceedings. The defendant may withdraw the waiver at any time (Pen. Code, § 977, subd. (c)(1) (A)(D)(E)))

11) Provides that the court may specifically direct the defendant, either personally or through counsel to be present at a particular felony proceeding or portion thereof. (Pen. Code, § 977, subd. (c)(1)(B).)

12) Provides that if the defendant is represented by counsel, the attorney shall not be required to be physically present with the defendant if remote technology allows for private communication between the defendant and attorney prior to and during the proceedings, unless, upon the request of defense counsel, the court allows the appearance without private communication. (Pen. Code, § 977, subd. (c)(1)(C).)

13) Provides that a witness may appear remotely at a misdemeanor or felony criminal proceeding, with the consent of the parties and the court, except for a felony trial. (Pen. Code, § 977, subd. (c)(1)(F).)

14) Provides that a felony defendant who does not wish to be physically or remotely present for noncritical portions of the trial when no testimonial evidence is taken may make an oral waiver in open court prior to the proceeding, or may submit a written request to the court, which the court may grant in its discretion. (Pen. Code, § 977, subd. (c)(2)(A).)

15) Provides that, notwithstanding any other provision, the court may allow a defendant to appear by counsel at trial or any other proceeding, if the court finds by clear and convincing evidence that:

    a) The defendant is in custody and refusing, without good cause, to appear;

    b) The defendant has been informed of their right to be personally present;

    c) The defendant has been informed that the trial or other proceeding proceed without them;

    d) The defendant has been informed of their right to remain silent;

    e) The defendant has been informed their absence, without good cause, will constitute a voluntary waiver of their right to testify or confront witnesses against them; and

f) The defendant has been informed whether defense counsel will be present. (Pen. Code, § 977, subd. (d)(1).)

16) Provides that a court may, as appropriate and practicable, allow a prosecuting attorney and defense counsel to participate in a criminal proceeding through the use of remote technology without being physically present in the courtroom. (Pen. Code, § 977, subd. (e).)

17) Provides that except as provided by law, the court shall require a prosecuting attorney, defense counsel, defendant, or witness to appear in person at a proceeding, if any of the following conditions are present and cannot be resolved in a reasonable amount of time:

a) The court does not have the technology necessary to conduct the proceeding remotely.

b) Although the court has the requisite technology, the quality of the technology or audibility prevents the effective management or resolution of the proceeding.

c) The quality of the technology or audibility at a proceeding inhibits the court reporter's ability to accurately prepare a transcript of the proceeding.

d) The quality of the technology or audibility at a proceeding prevents defense counsel from being able to provide effective representation to the defendant.

e) The quality of the technology or audibility at a proceeding inhibits a court interpreter's ability to provide language access, including the ability to communicate and translate directly with the defendant and the court during the proceeding. (Pen. Code, § 977, subd. (f).)

18) Provides that before the court conducts a remote proceeding, the court shall have a process for a defendant, defense counsel, prosecuting attorney, witness, official reporter, court interpreter, or other court personnel to alert the judicial officer of technological or audibility issues that arise during the proceeding. (Penal Code § 977, subd. (g)(1).)

19) Provides that when a court conducts remote proceedings that will be reported, the reporter shall be physically present in the courtroom. (Pen. Code, § 977, subd. (g)(2).)

20) Requires the court to make findings on the record that any waiver entered is knowingly, voluntarily, and intelligently made by the defendant. (Pen. Code, § 977, subd. (h.)

21) Provides that the above provisions authorizing remote proceedings in criminal cases shall sunset on January 1, 2025. (Pen. Code, § 977, subd. (j.)

22) Provides a witness may testify in any misdemeanor or felony criminal proceeding, except for felony trials, through the use of remote technology with the written or oral consent of the parties on the record and with the consent of the court. The defendant shall waive the right to have the witness testify in person on the record. (Pen. Code, § 977.3, subd. (a).)

23) Provides that the court may allow a witness to testify through the use of remote technology as otherwise provided by statutes regarding the examination of victims of sexual crimes and conditional examinations of witnesses. (Pen. Code, § 977.3; subd. (b).)

24) Provides that the court shall make findings on the record that any waiver is made knowingly, voluntarily, and intelligently by the defendant. (Pen. Code, § 977.3, subd. (c.)

25) Provides that the above provisions allowing remote witness testimony for certain criminal proceedings shall sunset on January 1, 2025. (Pen. Code, § 977.3, subd. (e.)

26) Requires, generally, a defendant to be personally present at a preliminary hearing. (Pen. Code, § 1043.5., subd. (a).)

27) Provides that the absence of the defendant in a preliminary hearing after the hearing has commenced in their physical presence, as specified, shall not prevent continuing the hearing for prosecutions for offenses not punishable by death where the defendant is voluntarily absent, and in specified instances of disruptive behavior by the defendant. (Pen. Code, § 1043.5., subd. (b).)

28) Provides this does not limit the right of the defendant to waive the right to be physically present or to appear through the use of remote technology. (Pen. Code, § 1043.5., subd. (d).)

29) Provides that the above provisions permitting defendant's to appear remotely in preliminary hearings, shall sunset on January 1, 2025.

30) Provides that a trial court shall not retaliate against an official reporter or official reporter pro tempore who notifies the judicial officer that technology or audibility issues are interfering with the creation of a verbatim record for a remote proceeding. This provision is repealed effective January 1, 2025. (Gov. Code, § 71651.1)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "[t]he use of remote proceedings in state court was not a novel development during the Covid-19 pandemic. Remote access to the courts has existed for many years through platforms like Court Call, which have increased access to justice for Californians. In fact, the benefits of remote access are undeniable. Four years removed from the 2020 pandemic, courts have studied their continuous use of remote options in court and have found that the reception is almost unanimously positive. Remote options have led to an easier access to the courts for vulnerable litigants, reduction of case backlog, trial length, and cost reductions for litigants and the court.

   "The legislature has authorized the use of remote access in criminal proceeding again and again. Most recently, in last year's SB 135 with sunsets at the end of 2024. Therefore, SB 92 simply continues to extend the use of remote technology for certain proceedings in state court for one more year."

2) **Background**: Prior to COVID-19, with the exception of appearances that could be waived, defendants in criminal cases generally appeared in person, with the option of remote appearances limited to in-custody defendants. In response to the COVID-19 pandemic, Judicial Council adopted Emergency Rules to the California Rules of Court in April 2020, to allow defendants and attorneys to appear remotely in proceedings with the consent of the defendant. These rules were set to sunset on June 30, 2022. The Legislature has since extended this sunset date for remote criminal proceedings on two separate occasions via the budget. AB 199 (Committee on Budget), Chapter 57, Statutes of 2022, extended remote court hearings in specified criminal proceedings until January 1, 2024 with some additional changes to the Emergency Rules. SB 135 (Committee on Budget), Chapter 190, Statutes of 2023, further extended the sunset date to January 1, 2025. Remote civil proceedings have similarly been re-authorized and extended.[1]

3) **Effect of this Bill:** This bill will extend the sunset date of the below proceedings permitting remote appearances in criminal proceedings from January 1, 2025, to January 1, 2026. The most notable provisions, currently in place, that will be extended by SB 92, are summarized below:

   a) Defendants charged with misdemeanors may appear remotely for their initial court appearance, arraignment, plea, and all other proceedings, except jury and court trials.

   b) Defendants charged with felonies may appear remotely during criminal proceedings if they waive the right to be physically present, except for jury and court trials, and sentencing hearings other than post-conviction relief.

   c) Defendants in misdemeanor or felony cases may appear remotely for a jury or court trial for noncritical portions of the trial where no testimonial evidence is taken.

   d) Defendants' attorneys may appear remotely as long as the technology allows for private communication between the defendant and their attorney.

   e) Attorneys may participate in a criminal proceeding remotely, unless specified technological issues are present and cannot be resolved in a reasonable amount of time.

   f) Witnesses may appear remotely, except for felony trials, with the consent of the parties and the court.

   g) Requires court reporters to be physically present in a courtroom during remote proceedings and prohibits retaliation against reporters for reporting technology and audibility issues.

4) **Remote Criminal Proceedings in the COVID-19 Pandemic:** As previously mentioned, during the COVID-19 pandemic Judicial Council adopted Emergency Rules to the California Rules of Court to allow defendants and attorneys to appear remotely in proceedings with the

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[1] *See* SB 241 (Umberg), Chapter 214, Statutes of 2021 (extending remote proceedings in civil and juvenile dependency proceedings until July 1, 2023). *See also* SB 133 (Committee on Budget and Fiscal Review), Chapter 34, Statutes of 2023 (extending the sunset on remote civil court proceedings to January 1, 2026).

consent of the defendant. A Public Policy Institute of California (PPIC) report on the use of remote court proceedings during the Covid-19 pandemic provides some helpful insight into how remote criminal proceedings may impact conviction and sentencing trends, and how these outcomes differ by race. The most notable findings are summarized below:

- Uneven adoption of policies, coupled with geographic differences in where people live, meant that Black and Latino defendants had greater potential than people of other races to experience pandemic policies.

- When remote hearing policies were in place, courts were less likely to convict defendants within 6 months of arrest.

- Misdemeanor convictions, under remote hearings, were more likely to result noncustodial sentences such as probation and money sanctions, rather than jail, primarily for white, Latino, and Black people.

- Felony convictions, under remote hearings, were more likely to lead to jail than prison time for Black people.[2]

This indicates that remote criminal proceedings may impact whether a person is convicted and how they are sentenced. That being said, these outcomes must be considered in the broader context of the COVID-19 pandemic and other court pandemic policies that were implemented at this time (e.g. arraignment extension policies and zero bail policies), making it uncertain if these trends will hold true for post-pandemic remote criminal proceedings.

5) **Benefits of Remote Criminal Proceedings:** Permitting defendants, witnesses, and attorneys to appear remotely in criminal cases has several advantages. This includes increasing access to courts for under-resourced defendants by reducing the time and financial costs associated with attending court proceedings.[3] For example, appearing remotely, an out-of-custody defendant can avoid the financial costs associated with paying for transportation to the courthouse, or associated parking costs. [4] Further, time saved avoiding travelling to a courthouse and waiting for their case to be called allows defendants to avoid paying for child care or risk losing their employment or housing by taking work off.[5]

The option for witnesses to appear remotely can also increase party access to expert witnesses, who otherwise would not be available or whose appearance is a significant financial burden. Allowing for remote appearances for routine criminal proceedings may improve judicial efficiency and court availability. Research from the pandemic suggests that

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[2] Harris and Barton, *Pandemic Policymaking and Changed Outcomes in Criminal Courts*, Public Policy Institute of California (April 2023), available at: https://www.ppic.org/publication/policy-brief-pandemic-policymaking-and-changed-outcomes-in-criminal-courts/

[3] Senate Public Safety Committee, *2023-2024 Informational/Oversight Hearings*, March 7, 2023, available at: https://spsf.senate.ca.gov/hearings/2023-2024-informational-oversight-hearings

[4] *Id.*

[5] *Id.*

utilizing remote proceedings helps courts improve their case clearance rates and reduce case backlog.[6]

As noted in Judicial Council's letter of support, a survey from Judicial Council of California indicates that court users and court workers have had a very positive experience utilizing remote technology. A survey of 64,369 court users and court workers from September 1, 2022 and August 31, 2023, found that 90% of court users and 98.3% of court workers have had a positive experience with remote proceedings.[7] However, this survey was limited to experiences of remote technology civil proceedings. Given that this bill would expand the sunset date for use of remote technology in *criminal* proceedings and some concerns with this bill specifically pertain to the rights of criminal defendants, the findings of this survey, as applied to informing the merits of SB 92, should be taken with a grain of salt.

6) **Racial and Geographic Inequities in Access to Internet and Remote Technology:** SB 92 provides misdemeanor and felony defendants to appear remotely except during jury and court trials, and other than noncritical portions of the trial where no testimonial evidence is taken. However, disparities in access to the technologies (e.g. high speed internet, computers, etc.) that allow for effective remote participation in court proceedings may exacerbate existing racial inequities in court access. Research has found that only 62% of Americans in households making under $30,000 a year use the internet, compared with 90% of persons making between $50,000 and $74,999, and 97% of those making more than $75,000.[8] Research from a 2011 survey further indicates that approximately 66% of white Americans have access to high speed internet at home, compared with 49% of African Americans and 51% of Hispanics.[9] Therefore, the above-mentioned benefits of remote proceedings in criminal cases may disproportionately advantage wealthier white defendants.

   Additionally, technological issues associated with remote participation may interfere with meaningful participation in a hearing or create sound-quality issues that can interfere with the official record and the right of parties to appeal their cases.[10] These issues can be expected to negatively impact under-resourced defendants with less sophisticated remote technology (e.g. poor internet access), elderly defendants unfamiliar with remote technology, and those in shared living spaces that do not have access to private spaces free of background noise.

7) **Right to Confront Witnesses**: SB 92 authorizes remote witness testimony in any misdemeanor or felony criminal proceeding, except for felony trials, with the consent of the parties and the court, and provided that the defendant's waiver was made knowingly,

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[6] Merril Balasson, *Study shows remote proceedings increase efficiency, access*, California Courts Newsroom (Sept. 20, 2021), available at: https://newsroom.courts.ca.gov/news/study-shows-remote-proceedings-increase-efficiency-access

[7] *Report on the Use of Remote Technology in Civil Actions by the Trial Courts*, Judicial Council of California (Dec. 22, 2023), available at: https://www.courts.ca.gov/documents/lr-2023-tc-remote-technology-civil-actions-civ367.8.pdf

[8] Zickuhr and Smith, *Digital differences*, Pew Research Center (April 13, 2012), available at: https://www.pewresearch.org/internet/2012/04/13/digital-differences/#:~:text=Currently%2C%2088%25%20of%20American%20adults%20age%2018%20and%20older%20have,with%20one%20of%20those%20devices.

[9] *Id.*

[10] Senate Public Safety Committee, *2023-2024 Informational/Oversight Hearings*, March 7, 2023, available at: https://spsf.senate.ca.gov/hearings/2023-2024-informational-oversight-hearings

voluntarily, and intelligently. The Sixth Amendment of the U.S. Constitution provides defendants with the right to confront witnesses against them. (U.S. Const., 6th Amendment). This right may be undermined by the continuous re-authorization of remote witness testimony. Specifically, it may be more difficult to assess the authenticity and credibility of a witness who is providing remote, rather than in-person, testimony. It may also be easier for witnesses to be coached or coerced by third parties when their immediate surroundings are not visible, which can reduce the reliability of the evidence being presented.

SB 92 attempts to protect this constitutional right by prohibiting remote witness testimony in felony trials, and by only permitting remote witness testimony with "the written or oral consent of the parties on the record and with the consent of the court" and by providing that defendants must "waive this right to have a witness testify in person on the record." Additionally, this waiver must be made knowingly, voluntarily, and intelligently by the defendant. While defendants are permitted to waive their right to confront witnesses against them,[11] and SB 92 only permits remote witness testimony with a defendant's consent, it is very easy to imagine a defendant being encouraged or pressured into consenting to hostile remote witness testimony for the purpose of facilitating judicial efficiency. As once noted by the late Justice Scalia in 2002 in response to proposed changes to Federal Rules of Criminal Procedure, "[v]irtual confrontation might be sufficient to protect virtual constitutional rights; I doubt whether it is sufficient to protect real ones."[12] Although SB 92 may avoid clear constitutional violations by requiring defendants to consent to remote witness testimony, continuing to re-authorize remote witness testimony in criminal cases might undermine the Confrontation Clause's purpose of ensuring reliable evidence by subjecting witness testimony to cross examination.

The author might consider adding additional protections for defendants, by giving defendants the options to have in-person court proceedings with *all* parties present (including and especially witnesses) unless extenuating circumstances demand otherwise.

8) **Court Reporters and Interpreters:** SB 92 re-authorizes remote appearances for defendants, attorneys, and witnesses, but court reporters, for remote proceedings that will be reported, must still be physically present in a courtroom. As noted earlier, technological issues (e.g. background noise, cross-talking, etc.) associated with remote technology can interfere with the creation of accurate verbatim transcripts and accurately recording the nuances of communication between parties. SB 92 attempts to protect against this concern by requiring a court to require parties to appear in person if remote technologies issues "inhibits a reporter's ability to accurately prepare a transcript…" That being said, it is reasonable to expect that an occasional glitch, freeze, or cross-talking in an otherwise well-functioning remote appearance (that nonetheless reduces the accuracy of the official record) will not necessarily result in the court ordering a shift to in-person proceedings.

These same concerns exist for court interpreters. SB 92 similarly allows for courts to require in person proceedings where technology issues "inhibit[] a court interpreter's ability to provide language access." However, the inability for interpreters to be present with a person

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[11] *In re Hannie* (1970) 3 Cal.3d 520, 526.
[12] Order of the Supreme Court, 207 F.R.D. 89, 94 (2002).

requiring translation and have one-on-one conversations with the participant may inhibit court access and meaningful engagement for persons requiring translation.[13]

9) **Argument in Support**: According to *Judicial Council of California* "The Judicial Council has seen the many benefits of giving people the ***option*** to participate remotely in criminal proceedings. The remote option helps preserve access to justice for many Californians and vulnerable court users by reducing time and expense for them when they are hospitalized or would otherwise lose time from work or childcare and would incur travel and parking costs for short hearings and appearances. It also preserves equal access to justice and increases the efficiency of court services by continuing to allow courts the flexibility to require in-person court proceedings when it is more appropriate.

   Further, participants in collaborative justice court programs and diversion programs especially benefit from the ability to appear remotely. Unlike other courts, collaborative courts and diversion courts meet on a frequent basis, making remote proceedings very helpful, while at the same time allowing judicial officers the discretion to balance the benefits of in-person participation with the efficiencies of remote proceedings for more routine matters. Program participants are not in custody, and remote appearances allow them to participate in court proceedings while not interrupting programming, schooling, or work obligations. Remote proceedings are also helpful to the many justice partners (behavioral health experts, probation, etc.) that help participants successfully graduate from collaborative court programs and diversion programs.

   Moreover, the remote option is helpful for witness testimony in criminal proceedings, making appearances more affordable and efficient for court participants when the defendant consents."

10) **Argument in Opposition**: According to *SEIU California* "Remote technology offers convenience and flexibility. However, it cannot adequately replicate the essential components of in-person proceedings. The inherent risks of technical issues, the reliability of evidence, and the lack of secure and private environments can undermine the fairness and accuracy of the legal process. These factors must be considered when determining whether remote proceedings do not compromise the judicial process's integrity. However, SB 92 would extend procedures intended to navigate an emergency without any modifications to account for the shortcomings of remote technology.

    "Technical glitches, unstable internet connections, audio distortions, video lag, and background noise impede clear communication during remote proceedings. These issues also hinder the assessment of witness credibility, which requires close observation of subtle nuances in voice and body language. When witnesses participate in remote locations, our justice system becomes more vulnerable to witness tampering and false impersonation. Moreover, remote technology lacks the necessary safeguards to ensure confidentiality and privacy during sensitive proceedings. The risk of unauthorized access or interception of confidential information poses a significant threat to the integrity and trustworthiness of the

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[13] Senate Public Safety Committee, *2023-2024 Informational/Oversight Hearings*, March 7, 2023, available at: https://spsf.senate.ca.gov/hearings/2023-2024-informational-oversight-hearings

legal process. All of these issues interfere with the ability to determine the truth and maintain accurate verbatim transcripts.

"Accurate verbatim transcripts are essential to ensuring fairness and due process. One wrong word can irreversibly impact someone's life during a criminal proceeding. Disruptions caused by technical issues, background noise, overlapping speech, and cross-talk increase the potential for errors. Additionally, verbatim transcripts also capture the nuances of communication, including pauses, tone, emphasis, and non-verbal cues. During a remote proceeding, video quality and cameras limit a court reporter's ability to capture these details in transcripts."

11) **Related Legislation**:

a) SB 135 (Committee on Budget), Chapter 190, Statutes of 2023, extended specified remote court proceedings for criminal matters set to expire on January 1, 2024, until January 1, 2025.

b) SB 97 (Wiener), Chapter 381, Statutes of 2023, refines the process by which those who are wrongfully convicted can prove their innocence and have their convictions reversed, including clarifying that petitioners incarcerated in state prison may chose not to appear in person and may appear remotely.

c) SB 99 (Umberg), of the 2023-2024 Legislative Session, would have extended the sunset for provisions relating to remote proceedings in criminal cases from January 1, 2024, to January 1, 2028. SB 99 was held in Assembly Public Safety Committee.

d) AB 1214 (Maienschein), of the 2023-2024 Legislative Session, among other things, provides that a trial court shall not retaliate or threaten to retaliate against an official reporter or official reporter pro tempore who notifies the judicial officer that technology or audibility issues are impeding the creation of the verbatim records of a proceeding that includes participation through remote technology. AB 1214 was not heard in Senate Judiciary Committee.

12) **Prior Legislation**:

a) AB 199 (Committee on Budget), Chapter 57, Statutes of 2022, extends remote court hearings until January 1, 2024 with specified limitations, including but not limited to, requiring consent of the court user or defendant and limiting remote hearings to noncritical portions of a felony trial.

b) SB 241 (Umberg) Chapter 214, Statutes of 2021, establishes a framework for conducting court proceedings in civil cases through the use of remote technology, and requires courts to electronically transmit documents issued by the court where parties have consented to, or are required to use, electronic service; and requires courts to hear minors' compromise petitions within 30 days of filing and to issue a decision at the conclusion of the hearing if the petition is uncontested.

c) SB 133 (Committee on Budget and Fiscal Review), Chapter 34, Statutes of 2023, extended the sunset on remote civil court proceedings from July 1, 2023 to January 1, 2026, among other things.)

d) SB 848 (Umberg) of the 2021-2022 Legislative Session, would have extended, to January 1, 2026, the sunset on the statutory authorization for specified remote appearances in specified civil court proceedings, extended the use of remote appearances to adoption finalization hearings, prohibited the use of remote appearances for testimony, hearings, and proceedings in juvenile justice cases and specified commitment proceedings. SB 848 failed passage on concurrence.

e) AB 700 (Cunningham) Chapter 196, Statutes of 2021, allows a defendant who is in custody to appear by counsel in criminal proceedings, with or without a written waiver, if the court makes specified findings on the record by clear and convincing evidence.

REGISTERED SUPPORT / OPPOSITION:

Support

California Judges Association
Judicial Council of California

Oppose

Los Angeles County Court Reporters Association
Orange County Employees Association
California Attorneys for Criminal Justice
California Court Reporters Association
California Public Defenders Association
California State Council of Service Employees International Union (seiu California)
San Francisco Public Defender

Analysis Prepared by: Ilan Zur

Date of Hearing: June 4, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 254 (Skinner) – As Amended January 24, 2024

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to allow representatives of the media to conduct prearranged interviews with specified prisoners, and, also, they would be allowed to document conditions that exist within the prison that are accessible by the inmates. Specifically, **this bill**:

1) Requires CDCR to permit representatives of the news media to tour a facility or interview incarcerated people in person, including prearranged interviews with specified incarcerated people and individuals encountered by a representative of the news media while covering a facility tour, activity, event, or program.

2) Requires that representatives of the news media also be allowed to document conditions that exist within the prison that are accessible by incarcerated people.

3) Provides that during any tour or interview with an incarcerated person, a representative of the news media may use materials and equipment necessary to conduct the tour or interview, including, but not limited to, pens, pencils, papers, and audio and video recording devices. Provides that these items may be subject to search only for the purpose of protecting against an immediate and direct threat to the security of the institution. Prohibits the contents of the information that representatives of the news media collect during a tour or interview, including notes, papers, and audio and video recordings, to be reviewed or copied by representatives of the institution.

4) Requires a news media representative who desires to tour or conduct an interview at an institution to make the request prior to the tour or interview in writing to the warden, or director of corrections, through contact with the institution's public relations office.

5) Requires staff to notify an incarcerated person of each interview request, and prohibits an interview from being permitted without the incarcerated person's consent.

6) Prohibits an incarcerated person from receiving compensation for interviews with the news media.

7) Provides that the warden may deny a tour or interview with a particular incarcerated person if it is determined that the tour or interview would pose an immediate and direct threat to the security of the institution or the physical safety of a member of the public. Requires this notification to be given to the requestor within 48 hours of receiving the request. Requires the representative of the news media to receive an explanation of the specific reasons for the denial no later than five days after the notification.

8) Authorizes CDCR in order to ensure the security of the institution, the physical safety of the public, and the efficient administration of news media interviews, to establish reasonable time, place, and manner restrictions for prison interviews, including limitations on the number of interviews per prisoner in a specified time period, limitations on the amount of audio, video, and film equipment entering the facility for the interview, and arrangements for pool interviews if the number of journalists requesting to interview any one prisoner is excessive.

9) Prohibits an incarcerated person or parolee from having their visitation limited or revoked because of a visit or potential visit from a representative of the news media. Prohibits an incarcerated person or parolee from being punished, reclassified, disciplined, transferred to another prison against their wishes, or otherwise retaliated against, for participating in a visit by, or communicating with, a representative of the news media.

10) Prohibits interviews, whether in person or via phone or video conferencing, from being subject to audio or video monitoring or recording by anyone other than the representative of the news media.

11) Defines "representative of the news media" as a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network.

12) Provides that the following persons are authorized to visit at their pleasure all CDCR facilities and county jails and meet with incarcerated people upon request:

    a) The Governor and all Cabinet members;

    b) Members of the Legislature and up to one staff member per legislator;

    c) Current and retired judges of the State of California; and,

    d) Members of the Committee on the Revision of the Penal Code and committee staff.

EXISTING LAW:

1) Vests the Secretary of the CDCR with the supervision, management and control of state prisons. Provides that the Secretary is also responsible for the care, custody, treatment, training, discipline and employment of a person confined in those prisons. (Pen. Code, § 5054.)

2) Provides that the Secretary may prescribe and amend the rules and regulations for the administration of the prisons. (Pen. Code, § 5058.)

3) Provides that a person sentenced to imprisonment in a state prison or who are imprisoned pursuant to Penal Code section 1170(h) may only be deprived of such rights, and only such rights, as is related to legitimate penological interests. (Pen. Code, § 2600.)

4) Delineates the civil rights that persons incarcerated in the state's prisons or who are imprisoned pursuant to Penal Code section 1170(h) possess. (Pen. Code, § 2601.)

5) Provides that correctional facilities and programs are operated at public expense for the protection of society. Provides that the public has a right and a duty to know how such facilities and programs are being conducted. Provides that it is the policy of CDCR to make known to the public, through the news media, through contact with public groups and individuals, and by making its public records available for review by interested persons, all relevant information pertaining to operations of the department and facilities. Provides that due consideration will be given to all factors which might threaten the safety of the facility in any way, or unnecessarily intrude upon the personal privacy of inmates and staff. Provides that the public must be given a true and accurate picture of department institutions and parole operations. (Cal. Code Regs., tit. 15, § 3260.)

6) Requires prior approval for access to a CDCR facility or contract facility for a news media representative, as defined, by either the institution head or the Assistant Secretary of Communications or designee. Requires prior approval of both the institution head and the Assistant Secretary of Communications or their designees for access to a CDCR facility for a non-news media representative, as defined. (Cal. Code Regs., tit. 15, § 3261.1, subd. (a).)

7) Requires the institution head or the Office of Public and Employee Communications to provide an initial response back within two working days for each request for access from a news media representative or a non-news media representative. Requires the institution head to secure advance authorization from the Secretary of CDCR or designee in order to deny an access request for a news media or a non-news media representative. (Cal. Code Regs., tit. 15, § 3261.1, subd. (a).)

8) Permits the institution head or designee to impose limitations on or set conditions for access should any news media or non-news media representative access to a facility constitute an immediate threat to safety and security, or generate serious operational problems. (Cal. Code Regs., tit. 15, § 3261.1, subd. (a)(2).)

9) Requires news media and non-news media representatives within a facility to be under the direct supervision of the facility's or regional Public Information Officer or their designee as determined by the institution head, except as provided. (Cal. Code Regs., tit. 15, § 3261.1, subd. (b).)

10) Prohibits an incarcerated person from having his or her visitation limited or revoked solely because of a visit or potential visit from a news media or non-news media representative. Prohibits an incarcerated person from being punished, reclassified, disciplined, transferred to another prison against his or her wishes, or otherwise retaliated against, solely for participating in a visit by, or communicating with, a news media or non-news media representative. (Cal. Code Regs., tit. 15, § 3261.5, subd. (b)(1).)

11) Requires that phone calls to news media and non-news media representatives from incarcerated persons are allowed, as provided, and may be recorded by the media representative with the incarcerated individual's consent. (Cal. Code Regs., tit. 15, § 3261.5, subd. (c).)

12) Requires prior approval for access by news media and non-news media representatives to department institutions and contract facilities and equipment, except as provided. (Cal. Code Regs., tit. 15, § 3261.5, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The news media plays a vital role in providing information to the public and policymakers about how our government operates. California used to allow the news media much greater access to state prisons, enabling us to learn more about prison conditions. But for the past three decades, California prisons have been among the least transparent in the nation. SB 254 would restore media access to prisons so we can collect more — and better — information about how one of our largest state programs functions.

   "SB 254 also would apply to local jails and would bring California back up to par with other states that provide the media and public officials with greater access to carceral facilities. SB 254 would also open access for California legislators and other state officials to provide policymakers with the information they need for effective oversight.

   "Specifically, SB 254 would allow news media representatives to tour prisons and jails and interview incarcerated people during tours or in prearranged interviews — as long as the incarcerated person consents to being interviewed and unless the tour or interview would pose an immediate and direct threat to the security of the institution. It would also allow representatives of the news media to use video cameras and other recording devices, which are now mostly prohibited.

   "California prides itself on operating a transparent and open government. SB 254 will allow us to live up to that ideal when it comes to our prisons and jails."

2) **Background**: In 1971, CDCR adopted a regulation prohibiting media access to specifically named incarcerated individuals. This restriction was imposed following an escape attempt at San Quentin during which three staff members and two incarcerated individuals were killed. Corrections officials believed that the incident was at least partially attributable to the prior media access policy which "had resulted in press attention being concentrated on a relatively small number of inmates, who, as a result, became virtual 'public figures' within the prison society and gained a disproportionate degree of notoriety and influence among their fellow inmates… [and that] these inmates often became the source of severe disciplinary problems." (*Pell v. Procunier* (1974) 417 U.S. 817, 831-32.) The regulation was upheld by the U.S. Supreme Court which found that an incarcerated person retains those First Amendment rights that are not inconsistent with his or her status as an incarcerated person and with the legitimate penological objectives of the corrections system, and the rights of the media under the First and Fourteenth Amendments are not infringed since the media can still tour prisons and talk to incarcerated individuals at random. (*Id.* at pp. 828, 835.)

   In 1975, the Legislature repealed some provisions of law and enacted Penal Code sections 2600 and 2601. (Sen. Com. on Pub. Safety, Analysis of Sen. Bill 1164 (2003-2004 Reg.

Sess.) as introduced Mar. 2, 2004, p. 6.) The new Penal Code section 2600 provided that during any periods of confinement, incarcerated individuals may only be deprived of rights "as is necessary in order to provide for the reasonable security of the institutions . . . and for the reasonable protection of the public." (*Ibid.*) After this section was enacted, CDCR again allowed media access to specifically named incarcerated individuals. (*Id.* at p. 7.) For nearly twenty years, a "deprivation of rights" analysis was used to evaluate the claims of incarcerated individuals alleging that their civil rights had been violated.

In 1994, Penal Code section 2600 was amended to adopt a different test for evaluating restrictions imposed on incarcerated individuals' rights. (*Ibid.*) As amended, Section 2600 read: "A person sentenced to imprisonment in a state prison may during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests." This change in statute prompted CDCR to issue emergency regulations in 1996 that deleted news media from the confidential correspondence authority and deleted authority for "specific person" media interviews along with the procedures that had existed to facilitate such interviews (and added language that "inmates may not participate in specific-person face-to-face interviews"). (*Id.* at pp.7-8.)

3) **Prearranged Interviews by Media Representatives**. Current CDCR regulations prohibit an incarcerated person from participating in specific-person face-to-face interviews. (Cal.Code Regs., tit. 15, § 3261.5, subd. (f)(2).) The only exception is that an incarcerated person may participate in an interview that takes place during a visit and complies with the department's visitation policy. (*Id.*) Pre-arranged interviews by the institutions are prohibited. Journalists who would like to interview a specific incarcerated person may write to the individual and become an approved visitor to meet face-to-face or arrange a video visit, or provide a phone number to the incarcerated person where the journalist can be reached. (https://www.cdcr.ca.gov/media-policies/)

This bill requires CDCR to permit representatives of the news media to tour facilities and interview incarcerated people in person, including prearranged interviews with specified incarcerated people. The bill permits the warden, sheriff, chief or director of corrections, or chief of police or their designee to deny a tour or interview with a particular incarcerated person if it is determined that the tour or interview would pose an immediate and direct threat to the security of the institution or the physical safety of a member of the public. The bill additionally requires notification of the denial of a tour or interview to the requestor within 48 hours of receiving the request, and the representative of the news media must receive an explanation of the specific reasons for the denial no later than five days after the notification.

This bill also permits CDCR to establish reasonable time, place, and manner restrictions for interviews, including limitations on the number of interviews per prisoner in a specified time period, limitations on the amount of audio, video, and film equipment entering the facility for the interview, and arrangements for pool interviews if the number of journalists requesting to interview any one prisoner is excessive.

This bill prohibits interviews, whether in person or via phone or video conferencing, from being subject to audio or video monitoring or recording by anyone other than the representative of the news media. This bill additionally defines "representative of the news media" as a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network. This definition was codified by SB 98

(McGuire, Chapter 759, Statutes of 2021) and found in Penal Code section 409.7.

4) **Argument in Support**: According to *Initiate Justice*, "SB 254 will reopen media access to prisons so that the press can report on a wide range of prison issues. California prisons currently are among the least transparent in the nation. But prior to the1990's, state prisons were much more accessible to the news media, enabling the public and policymakers to know more about prison conditions.

"By restoring media access to prisons, SB 254 will once again allow the press to report on the effectiveness of rehabilitation programs, the quality and accessibility of health care and mental health care, and the use of solitary confinement and disciplinary practices – high profile issues that have become increasingly controversial and need more transparency."

5) **Prior Legislation**:

a) SB 304 (Romero), of the 2007-08 Legislative Session, was identical to this bill and would have allowed representatives of the news media to conduct prearranged interviews with specified prisoners incarcerated in the CDCR. SB 304 was vetoed.

b) SB 1521 (Romero), of the 2005-06 Legislative Session, was identical to this bill and would have allowed representatives of the news media to conduct prearranged interviews with specified prisoners incarcerated in the CDCR. SB 1521 was vetoed.

c) SB 239 (Romero), of the 2005-06 Legislative Session was identical to this bill and would have allowed representatives of the news media to conduct prearranged interviews with specified prisoners incarcerated in the CDCR. SB 239 was vetoed.

d) SB 1164 (Romero), of the 2003-04 Legislative Session, would have allowed representatives of the news media to conduct prearranged interviews with specified prisoners incarcerated in the CDCR. SB 1164 was vetoed.

e) AB 1440 (Migden), of the 1999-2000 Legislative Session, would have repealed regulations issued by the CDCR restricting media access to prisoners. AB 1440 was vetoed.AB 2101 (Migden), of the 1999-2000 Legislative Session, was identical to AB 1440. AB 2101 was vetoed.

f) AB 2101 (Migden), of the 1999-2000 Legislative Session, was identical to AB 1440. AB 2101 was vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Black Media
California Broadcasters Association
California News Publishers Association
California Public Defenders Association

Californians Aware
Californians Aware: the Center for Public Forum Rights
Californians for Safety and Justice
Ccnma: Latino Journalists of California
Communities United for Restorative Youth Justice
Disability Rights California
East Bay Community Law Center
Ethnic Media Services
Families Against Mandatory Minimums Foundation
Famm
First Amendment Coalition
Friends Committee on Legislation of California
Grip Training Institute
Initiate Justice
Interfaith Movement for Human Integrity
LA Defensa
Media Alliance
National Association of Social Workers, California Chapter
National Press Photographers Association
National Writers Union
Nlgja: Association of Lgbtq+ Journalists
Oakland Privacy
Orange County Press Club
Pacific Media Workers Guild, the Newsguild-communications Workers of America Local 39521
Radio Television Digital News Association
Riverside All of Us or None
Rubicon Programs
San Diego Pro Chapter of The Society of Professional Journalists
Sister Warriors Freedom Coalition
Smart Justice California
Smart Justice California, a Project of Tides Advocacy
Society of Professional Journalists, Greater Los Angeles Chapter
Society of Professional Journalists, Northern California Chapter
Starting Over, INC.

Opposition

None

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

Date of Hearing: June 4, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 349 (Roth) – As Amended May 30, 2024

PULLED BY THE AUTHOR.

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

Date of Hearing: June 4, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 379 (Umberg) – As Amended April 29, 2024

SUMMARY: Requires the California Department of Corrections (CDCR) to establish and maintain a voluntary Accountability Letter Bank (ALB) program and a Victim Offender Dialogue (VOD) program with the goal of providing state prison inmates with an opportunity to be accountable for the harm they caused. Specifically, **this bill**:

1) States that CDCR shall establish and maintain an ALB program, and the goals of the program shall be both of the following:

   a) To allow victims, survivors, and next of kin to receive a letter of accountability from an incarcerated person when, and if, they choose to receive a letter that is addressed to them; and,

   b) To provide an opportunity for incarcerated persons under the jurisdiction of CDCR to express accountability and remorse for the harm they have caused.

2) Requires that all letters submitted to the ALB letters be reviewed by an ALB program facilitator to ensure that they are not harmful to the victim, survivor, or next of kin.

3) Requires the ALB program facilitator to make the letter available via email or mail if a victim, survivor, or next of kin wishes to receive the letter.

4) Allows, upon request by a victim, survivor, or next of kin, an ALB program facilitator to read the letter in person or by telephone.

5) States that if an incarcerated person decides to participate in a program to draft and submit a letter to the ALB, the program shall be administered by a community-based nonprofit organization, as these organizations are uniquely qualified to provide support to incarcerated people in expressing remorse, developing empathy, and accepting responsibility for causing harm.

6) Provides that the ALB program shall be voluntary, and incarcerated people shall be able to opt out of having letters they submit to the ALB be included in their central file.

7) Requires CDCR to establish and maintain a voluntary VOD program.

8) States that the goal of the VOD program is to provide opportunities for restorative justice processes between victims, survivors, and next of kin of victims of crime and people who are incarcerated or on parole which often culminate in a dialogue between the parties.

9) Requires that all VOD processes be facilitated by nonprofit, community-based restorative justice organizations. CDCR's Office of Victim and Survivor Rights and Services shall receive VOD requests from victims, survivors, and next of kin and refer all cases to restorative justice organizations that provide VOD facilitation services.

EXISTING LAW:

1) Establishes CDCR to administer the state prison system under the direction of the Secretary. (Pen. Code, § 5000 et seq.)

2) States that the primary objective of incarceration in the CDCR shall be to facilitate the successful reintegration of the individuals in CDCR's care back to their communities equipped with the tools to be drug-free, healthy, and employable members of society by providing education, treatment, and rehabilitative and restorative justice programs, all in a safe and humane environment, set forth in the findings and declarations, as specified. (Penal Code, § 5000, subd. (b).)

3) Provides that the Secretary of CDCR may prescribe and amend the rules and regulations for the administration of the prisons. (Pen. Code, § 5058.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Restorative justice is a response to crime that prioritizes repairing harm and recognizes that maintaining positive relationships with others is a core human need. By bringing the involved parties together in a safe and voluntary dialogue with well-trained facilitators, restorative justice creates an opportunity for those human needs following crime to be met. In order to facilitate this pursuit of justice, this bill would provide the Department of Corrections and Rehabilitation statutory authority for an Accountability Letter Bank program, with the goal of providing an opportunity for incarcerated persons to be accountable for the harm they have caused and to express remorse to those they have harmed. This letter bank allows for an escrow of letters which can be accessed by victims should they want to view the accountability letter of the incarcerated person. The program would require the letters to be reviewed to ensure they are not harmful to the victim, survivor, or next of kin and would make the letters available to the victim, survivor, or next of kin, if they wish to receive the letter, by mail or email."

2) **Background:** Prior to 2013, CDCR operated an informal program through which incarcerated individuals could submit letters of remorse to the CDCR's Office of Victim and Survivor Rights and Services (OVSRS). This informal process ended due to the lack of appropriate resources and review. After receiving feedback from groups representing victims and offenders indicating a desire to revive an apology letter process, CDCR established a formal apology letter program overseen by OVSRS, the Accountability Letter Bank, in 2019. Incarcerated individuals began submitting letters to OVSRS in 2022.

   According to CDCR, the Accountability Letter Bank is intended to provide an opportunity for an incarcerated person to write a thoughtful, appropriate apology letter to their victim or victim's family with the assistance of approved program facilitators. (CDCR, *Accountability*

Letter Bank <https://www.cdcr.ca.gov/victim-services/alb/.) Incarcerated individuals are discouraged by the CDCR from corresponding directly or through a third party with their victim or victim's family. The Accountability Letter Bank recognizes that "[a]pology letters are an important part of the restorative justice process and can serve a vital role in the healing of the victims, as well as the rehabilitation of the offender. … Accountability and remorse can help those incarcerated accept responsibility and gain a true understanding of the emotional, physical and financial losses caused by the offense." (*Ibid.*)

The stated goals of the Accountability Letter Bank are to:

- Allow the incarcerated population to reach out through a qualifying program to those they have harmed and be accountable for the crime they have committed.
- Encourage interested incarcerated individuals to express remorse, develop empathy and accept full responsibility for the harm caused to the victim and the victim's family.
- Allow a safe place for the victim, survivor, or next of kin to receive the letter of accountability from the incarcerated person, including deciding when and if they may want to receive the letter.
- Reduce the likelihood of possible re-victimization. (*Ibid.*)

CDCR policy requires that all accountability letters submitted to the Accountability Letter Bank be reviewed by the facilitators of approved victim impact programs through which incarcerated individuals have written letters to ensure that they are not harmful to the victim or victims. (*Ibid.*) All approved accountability letters from qualifying programs must be sent to OVSRS which will then notify the victim and victim's family members that a letter addressed to them has been received. (*Ibid.*) The victim, survivor, or next of kin will choose if and when to receive the accountability letter from OVSRS. (*Ibid.*) The victim or victim's family member may choose whether to receive the letter via mail or email, and OVSRS will scan the letter and keep an electronic copy on file in the event the victim or victim's family member decides to receive the letter at a later date or requests another copy of the letter. (*Ibid.*) If there is an active restraining order against the incarcerated person to protect the victim, survivor, or next of kin, OVSRS will not reach out to the individual and will store the letter instead.

This bill codifies the existing Accountability Letter Bank program, its goals, and the general process of review by CDCR and contact with the victim or next of kin

REGISTERED SUPPORT / OPPOSITION:

Support

California Catholic Conference

Opposition

None

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

Date of Hearing: June 4, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 442 (Limón) – As Amended May 18, 2023

SUMMARY: Expands misdemeanor sexual battery to include when a person for the purpose of sexual arousal causes another, against their will, to masturbate or touch an intimate part of either of those persons or a third person.

EXISTING LAW:

1) Requires persons convicted of specified sexual battery offenses to register as a sex offender. (Pen. Code, § 290, subd. (d)(3).)

2) Provides that any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched, and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. (Pen. Code, § 243.4, subd. (a).)

3) Provides that any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. (Pen. Code, § 243.4, subd. (b).)

4) Provides that any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery. (Pen. Code, § 243.4, subd. (c).)

5) Provides that any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. (Pen. Code, § 243.4, subd. (d).)

6) Provides that a violation of any of the above-listed offenses is a wobbler, punishable either as a misdemeanor by imprisonment in a county jail for not more than one year, and by a fine not exceeding $2,000; or as a felony by imprisonment in state prison for two, three, or four years, and by a fine not exceeding $10,000. (Pen. Code, § 243.4, subds. (a)-(d).)

7) Provides that, for the above-listed offenses, "touches" means physical contact with the skin of another person, whether accomplished directly or through the clothing of the person

committing the offense, or through the clothing of the victim. (Pen. Code, § 243.4, subd. (f).)

8) Provides that in the case of a felony conviction, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing. (Pen. Code, § 243.4, subd. (i).)

9) States that any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of *misdemeanor sexual battery*, punishable by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding six months, or by both. (Pen. Code, § 243.4, subd. (e)(1).)

10) Provides that "touches," for the purpose of the misdemeanor sexual battery, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (Pen. Code, § 243.4, subd. (e)(2).)

11) Defines "intimate part" as the sexual organ, anus, groin, or buttocks of any person, and the breast of a female. (Pen. Code, § 243.4, subd. (g)(1).)

12) Provides that battery is any willful and unlawful use of force or violence upon the person of another. (Pen. Code, § 242.)

13) Provides that a battery is a misdemeanor, punishable by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding six months, or by both. (Pen. Code, § 243, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "[c]urrent law defines a misdemeanor violation of sexual battery as the unwanted touching of the intimate body part of another. Missing from this definition of misdemeanor sexual battery is the situation where a perpetrator causes the victim to touch an intimate body part of the perpetrator. This gap in the law is creating real world examples of sexual abuse, where no charges of sexual battery can be brought.

   "In one recent incident, an employer took an employee's hand against her will and placed it on his groin area over his clothes. Because the physical contact was done by the victim's hand- not the perpetrators- the perpetrator could not be charged with misdemeanor sexual battery. Under current law, the perpetrator could only be charged with simple battery, the same charge that would apply to a simple push on the shoulder. This change ensures that all individuals that seek to commit sexual battery are held accountable. Victims feel no less violated when their hands are forced to touch another person than when another person touches the victim."

2) **Types of Sexual Battery**: Penal Code Section 243.4, the sexual battery statute, includes five subdivisions (a)-(e) that define sexual battery based on the defendant's conduct and set the punishment for each respective situation.

Subdivisions (a), (b), and (c) only apply to situations where the *defendant* touches the intimate parts of the *victim*, not the other way around. (*People v. Elam* (2001) 91 Cal.App.4th 298, 310.) They require that the touching be against the will of the person touched and that the victim be unlawfully restrained, institutionalized for medical treatment or seriously disabled, or not conscious of the sexual nature of the act because of a fraudulent representation that the touching served professional purpose. (Pen. Code, § 243.4.)[1] These offenses require that the touching involve physical contact with the *skin* of another person, whether accomplished directly or through the clothing of the perpetrator or victim. (Pen. Code, § 243.4, subd. (f).)These crimes are "wobblers", meaning they can be prosecuted as a misdemeanor or a felony. (*Id.*)

Subdivision (e) is misdemeanor sexual battery. Similar to subdivisions (a), (b), and (c), misdemeanor sexual battery requires that the touching be against the will of the person touched and is only chargeable where the *defendant* touches the intimate parts of the victim. However, unlike subdivisions (a), (b), and (c), which can be charged as a felony, misdemeanor sexual battery contains no requirement that the victim be unlawfully restrained, institutionalized for medical treatment, or not conscious of the sexual nature of the act. Additionally, the touching element of misdemeanor sexual battery does not require contact with the *skin* of another person. This makes misdemeanor sexual battery more broadly applicable to sexual touching of a victim against their will, even where the victim is not unlawfully restrained.

Subdivision (d) proscribes conduct different from the other sexual batteries. Subdivision (d) covers the situation where the *defendant causes the victim* to masturbate or touch the intimate part of the defendant or another person. Subdivision (d) is a wobbler, and like the other wobblers, subdivision (d) requires that the touching is against the victim's will, that the victim is unlawfully restrained or institutionalized for medical treatment, and the "touching" requires the victim to touch the skin of the defendant or another person's intimate parts. (Pen. Code, § 234.4, subds. (d) & (f).)

3) **Against A Person's Will:** Both wobbler sexual battery and misdemeanor sexual battery require that the touching is against the will of the victim, regardless of whether the defendant is touching the victim, or the defendant causes the victim to touch the defendant under subdivision (d). The Penal Code defines consent as "positive cooperation in act or attitude pursuant to an exercise of free will… [where the] person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. (Pen. Code, § 261.6, subd. (a).) While "against a victim's will" is not defined in statute, the California Supreme Court has noted that in the context of sexual assault "it is settled that 'without the victim's consent" has the same meaning as 'against the victim's will'." (*People v. Robinson* (2016) 63 Cal.4th 200, 208). Thus, the definition of "consent" in Penal Code section 261.6 informs when touching is "against a victim's will" for purposes of sexual battery.

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[1] Except where the victim is unconscious of the nature of act due to fraudulent representation, where there is no requirement that the touching be against the will of the person's touched. (Pen. Code, § 234.4(c).)

4) **Unlawful Restraint**: As noted above, unlike misdemeanor sexual battery, wobbler sexual battery under subdivision (a) [defendant touching the victim] and subdivision (d) [victim touching the defendant or another], both require that the victim be unlawfully restrained.

The California Penal Code does not define "unlawful restraint," however, this term has been the interpreted by case law.

In *People v. Alford* (1991), 235 Cal.App.3d 799, 803 the court explained that the purpose of the sexual battery statute is to provide appropriate punishment for sexually abusive conduct that is physically traumatic and psychologically terrifying, even though it falls short of rape. Accordingly, the statute allows for felony prosecution when a touching occurs against the victim's will while the victim is unlawfully restrained. (*Ibid.*) The term unlawful restraint "can be viewed as distinguishing the 'nonsexual physical element' of sexual battery from the more wanton 'force, violence, or fear element of rape.'" (*People v. Arnold* (1992) 6 Cal.App.4th 18, 26.) Phrased differently, unlawful restraint is something more "than the mere exertion of physical effort necessary to commit the prohibited sexual act." (*Ibid.*) "This may be because the essence of the offense is seen as the touching." (*People v. Pahl* (1991) 226 Cal.App.3d 1651, 1660, fn. 4.)

This standard was articulated most clearly in *People v. Arnold* (1992) 6 Cal.App.4th 18, where the defendant contended that "unlawful restraint" required a "significant limitation" on the personal liberty of the victim. (*Id.* at p. 24). The court disagreed, holding that a person is unlawfully restrained when their "liberty is being controlled by words, acts, or authority of the perpetrator aimed at depriving the person's liberty, and *such restriction is against the person's will*." (*Id.*, at p. 28) (emphasis added.) The court noted that unlawful restraint does not require the prosecution to affirmatively establishing a victim's unwillingness "when the circumstances suggest that the restraint was clearly unwelcome." (*Id.* at p. 29). For example, a "victim's unwillingness may be implied if grabbed by a stranger who proceeds to improperly touch the victim .... Such a restraint is clearly unwelcome and unlawful." (*Ibid.*)

Notably, "unlawful restraint" *does not require physical restraint, force, or threat of force with personal violence*. (*People v. Grant* (1992) 8 Cal.App.4th 1105, 1110, 1112.) Rather, conduct that forces the victim to remain where they do not voluntarily wish to be constitutes unlawful restraint within the meaning of the statute. (*Ibid.*) The court explained, "[t]here are many situations where one is compelled, i.e., forced, to do something against one's will but the compulsion does not involve personal violence or threats of personal violence. This is especially true when the person involved in the compulsion is an authority figure or posing as a person in authority. The force is a psychological force compelling the victim to comply with the orders of the authority figure." (*Id.*, at 1112.) Unlawful restraint does not require a victim to say "'I am afraid, please stop,' *when it is the defendant who has created the circumstances that have so paralyzed the victim in fear and thereby submission.*" (*People v. Perez-Robles* (2023) 95 Cal.App.5th 222, 232.) (quoting *People v. Iniguez* (1994) 7 Cal.4th 847, 859.) For example, unlawful restraint can occur where a defendant's actions create a situation where a victim "fre[eezes] in fear" and feels compelled to involuntarily remain in a situation (*Ibid.*)

The standard of unlawful restraint has been interpreted by state courts as follows:

In *People v. Knight* (Aug. 29, 2018, No. A150989) ___Cal.App.5th___ [2018 Cal. App. Unpub. LEXIS 5912, at *20-21], a court found unlawful restraint occurred when a defendant grabbed the victim by the hip and restricted her freedom of movement.

In *People v. Krause* (Apr. 19, 2007, C050840) ___Cal.App.4th___ [2007 Cal. App. Unpub. LEXIS 3140, at *9-10], a court found unlawful restraint occurred where a defendant roommate entered the victim's bedroom while she was sleeping, knelt on the victim's bed, and held the victim's hand on his intimate parts.

In *People v. Zaheer* (2020) 54 Cal.App.5th 326, 354, a court found unlawful restraint occurred when a defendant grabbed a victims hand in a closed car and said "[d]on't do it" in response to the victim's attempting to open a car door.

In *People v. Hughey* (Jan. 12, 2018, No. A150114) ___Cal.App.5th___ [2018 Cal. App. Unpub. LEXIS 259, at *40], a court found unlawful restraint occurred when a defendant entered the victims hotel room uninvited and "shushed" the victim prior to unwanted sexual touching.

In *In re J.V.* (Sep. 10, 2009, No. F056619) ___Cal.App.4th___ [2009 Cal. App. Unpub. LEXIS 7301, at *17], a court found unlawful restraint occurred where the defendant pushed the victim onto the couch and subjected her to unwanted sexual touching.

In *People v. Perez-Robles* (2023) 95 Cal.App.5th 222, 232), a court found unlawful restraint occurred when a defendant massage therapist unlawfully restrained a patient in a closed room by moving her body and requesting that she remove her clothes, where the defendant had difficulty moving due to her advanced state of pregnancy.

5) **Effect of this Bill**: Under existing law, a defendant who causes a victim to touch an intimate part of the victim, defendant, or third party, can be charged with wobbler sexual battery, as long as: 1) the touching is against the victim's will; and 2) the victim is unlawfully restrained. This bill would expand the scope of misdemeanor sexual battery to similarly apply to situations where a defendant causes another person to touch the intimate parts of the defendant or another person, where the conduct is against the victim's will, even if there is no unlawful restraint. For example, if a defendant grabbed a victim's hand and placed it on the defendant's intimate parts, where the victim did not act freely or voluntarily, did not indicate positive acts or attitudes indicating cooperation, or did not have knowledge of what the defendant was doing, then the defendant would be guilty of misdemeanor battery. This would be true even if there are no actions taken to control, restrain, or deprive a person's liberty, and where the victim does not feel compelled to involuntarily remain in the situation, as required by unlawful restraint. Notably, defendant actions that are against a victim's will can be expected to overlap with situations where those same actions cause the victim to freeze in fear or have their liberty controlled, i.e. be unlawfully restrained. Therefore, as noted below, the conduct this bill attempts to prohibit likely can already be prosecuted under existing law.

6) **The Cited Conduct of Concern Can Likely Already be Prosecuted**: This bill is intended to address conduct "where a perpetrator causes the victim to touch an intimate body part of the perpetrator." The sponsor of this bill, writing in support, describes an incident where the perpetrator, an employer, "took an employee's hand against her will and placed it on his groin area over his clothes." The sponsor contends that, "[b]ecause the physical contact was

done by the victim's hand- not the perpetrators- the perpetrator could not be charged with misdemeanor sexual battery."

However, such conduct can likely already charged as either felony or misdemeanor sexual battery under Penal Code section 243.4 subdivision (d). As noted earlier, wobbler sexual battery of this nature requires that: (1) the defendant unlawfully restrained the victim; (2) the defendant caused the victim to touch the intimate part of the defendant or someone else; and (3) the touching was done against the victim's will. (Pen. Code, § 234.4, subd. (d). The example at issue appears to meet all of the requisite elements of the offense:

> (1) The victim was unlawfully restrained [i.e., the defendant took the victim's hand thereby controlling the victim's liberty. The hand taking is a "nonsexual physical act" that is something more than the mere exertion of physical effort necessary to commit the prohibited sexual touching (*See, e.g., People v. Arnold* (1992) 6 Cal.App.4th 18, 28 [explaining that being "grabbed by a stranger" "is clearly unwelcome and unlawful"].)];
>
> (2) The victim's hand touched the employer's groin [i.e., an intimate part of the defendant]; and,
>
> (3) The touching was against the victim's will.

Further, in the case of a felony conviction, the fact that the defendant was an employer and the victim was an employee of the defendant would be a factor in aggravation in sentencing. (Pen. Code, § 243.4, subd. (i).) Alternatively, this offense could also be charged as battery, a misdemeanor, which is any "willful and unlawful use of force or violence upon the person of another," although simple battery does not require sex offender registration as is required with sexual battery (Pen. Code, §§ 242 & 243.)

In sum, while this conduct is likely already chargeable, by clarifying that misdemeanor sexual battery applies to situations where a defendant causes a victim to touch an intimate part of that defendant, this bill would promote accountability by ensuring misdemeanor sexual battery can be charged in such situations where a victim is not necessarily unlawfully restrained, but the touching is still against their will.

7) **Argument in Support**: According to the California District Attorneys Association "The current definition of misdemeanor sexual battery in Penal Code section 243.4 omits the situation where a perpetrator causes the victim to touch an intimate body part of the perpetrator or other person without applying restraint or force in excess of the act that causes the touching. Common examples include a perpetrator who thrusts their groin against a victim or places a victim's hand on the perpetrator's groin area. This gap in the law lets perpetrators remain unaccountable for what is objectively offensive and criminal behavior.

   "Victims feel no less violated when they are forced to touch another person than when another person touches the victim, and thus sexual batterers need to be held accountable, irrespective of whether the perpetrator touches the victim's intimate body part or forces the victim to touch the body part of another."

8) **Arguments in Opposition:** None submitted

9) **Related Legislation**: AB 1039 (Rodriguez) of the 2023-2024 Legislative Session, would have expanded definition of the type sexual touching that, when done by an employee or agent of a public entity detention or health facility with a consenting adult who is confined in the facility, qualifies as criminal sexual activity and increases the penalty for this type of criminal sexual touching from a misdemeanor to an alternative felony-misdemeanor. AB 1039 was held in Assembly Appropriations Committee.

10) **Prior Legislation**:

a) AB 1033 (Cristina Garcia) of the 2017-2018 Legislative Session, would have made it a crime for a person, without consent of the other person, to remove or tamper with a condom when there was an agreement that a condom would be used, or to knowingly make a misrepresentation to the other person that a form of contraception other than a condom is being used, during sexual intercourse. AB 1033 was held in Senate Appropriations Committee.

b) AB 2078 (Daly) of the 2017-2018 Legislative Session, would have expanded the crimes of rape, sodomy, oral copulation, and sexual penetration when committed by a professional while performing professional services on another person that entail having access to the other person's body and increased the punishment for sexual battery by a person who performs professional services that entail having access to another person's body, as specified. AB 2078 was held in Senate Appropriations Committee.

c) SB 1421 (Romero), Chapter 302, Statutes of 2002, made touching an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, if the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, a sexual battery.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California State Sheriffs' Association
Los Angeles County District Attorney's Office
Ventura County Office of The District Attorney

Opposition

None

Analysis Prepared by: Ilan Zur

Date of Hearing: June 4, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 733 (Glazer) – As Amended January 3, 2024

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to collect and report to the Legislature specified data on solitary confinement. Specifically, **this bill**:

1) Requires CDCR to collect data to track CDCR's progress toward improving solitary confinement, also known as restricted housing, standards.

2) Requires CDCR to report to the Legislature, on or before January 1, 2026 and annually thereafter, all of the following data points on persons housed in solitary confinement:

   a) Name;

   b) Race;

   c) Sex;

   d) Age disaggregated by those placed in solitary confinement;

   e) Specific description of the types of offenses inmates are held in solitary confinement in the institution;

   f) The types of placement similar to solitary confinement, including, but not limited to, lockdown and quarantine;

   g) The types of rehabilitative programs made available to inmates in each solitary confinement unit;

   h) Staffing ratios for solitary confinement units;

   i) The number of times individuals were kept in solitary confinement for that year;

   j) The total time individuals placed in solitary confinement were kept in solitary for that year;

   k) The number of solitary confinement units in use of an institution within the previous calendar year;

   l) Existing mental health diagnoses of individuals placed in solitary confinement;

m) Whether individuals developed mental health diagnoses or required mental health treatment during or soon after placements in solitary confinement;

n) Whether individuals experienced medical or psychiatric emergencies while in solitary confinement;

o) Whether individuals committed or attempted to commit suicide or engaged in serious self-harm during, or soon after, placement in solitary confinement;

p) Whether there were appeals of the decision to place an individual in solitary confinement and the outcome of those appeals;

q) Whether the term of solitary confinement was shorter than originally ordered and the reason for the shortened placement; and,

r) The number of individuals who received reductions in their restrictive housing terms based on successful completion of rehabilitative programs.

3) Provides that any reference to "solitary confinement" shall also mean and include "restricted housing."

EXISTING STATE LAW:

1) Prohibits the infliction of cruel and unusual punishment. (Cal. Const., art. I, § 17.)

2) Establishes rights for persons sentenced to imprisonment in a state prison, and provides that a person may, during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. (Pen. Code, § 2600.)

3) Prohibits the use of any cruel, corporal or unusual punishment or to inflict any treatment or allow any lack of care whatever which would injure or impair the health of the prisoner, inmate, or person confined. (Pen. Code, § 2652.)

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

5) Requires the Secretary of CDCR to classify and assign prisoners to the institution of the appropriate security level and gender population nearest the prisoner's home, unless other classification factors make such a placement unreasonable. (Pen. Code, § 5068.)

6) Requires the sheriff to receive all persons committed to jail by competent authority and the board of supervisors to provide the sheriff with necessary food, clothing, and bedding, for those prisoners, which shall be of a quality and quantity at least equal to the minimum standards and requirements prescribed by the BSCC for the feeding, clothing, and care of prisoners in all county, city, and other local jails and detention facilities. (Pen. Code, § 4015.)

7) Requires the BSCC to establish minimum standards for local correctional facilities. (Pen. Code, § 6030.)

8) Requires private local detention facilities to operate pursuant to a contract with the city, county or city and county. (Pen. Code, § 6031.6.)

9) Requires private local detention facilities to follow the minimum standards for local correctional facilitates established by the BSCC. (Pen. Code, § 6031.6, subd. (c).)

10) Limits the confinement of a minor in a locked room or cell with minimal or no contact with persons, as specified, and sets forth the guidelines for the use of room confinement of a minor in a juvenile facility. (Welf. & Inst. Code, § 208.3.)

11) Requires the California Attorney General to conduct reviews of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings. (Gov. Code § 12532, subd. (a).)

12) Prohibits a city, county or public agency from contracting with a private facility for the purpose of civil immigration facilities, except as specified. (Civ. Code, § 1670.9.)

13) Prohibits private detention facilities in California, as specified. (Pen. Code, §§ 5003.1 & 9501.)

EXISTING FEDERAL LAW:

1) Prohibits the infliction of cruel and unusual punishment. (U.S. Const., 8th Amend.)

2) Makes the laws of the United States and the U.S. Constitution "the supreme Law of the Land." (U.S. Const. art. VI, cl. 2.)

3) Vests the control and management of federal penal and correctional institutions in the U.S. Attorney General, who shall promulgate rules for the government thereof. (18 U.S.C. § 4001, subd. (a).)

4) Authorizes the U.S. Attorney General to classify inmates and provide for their proper government, discipline, treatment, care, rehabilitation and reformation. (18 U.S.C. § 4001, subd. (b).)

5) Provides that the Bureau of Prisons (BOP), under the direction of the U.S. Attorney General, shall have charge of the management and regulation of all federal penal and correctional institutions and shall provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States. (18 U.S.C. § 4042.)

6) Requires the BOP to designate the place of the prisoner's imprisonment, and subject to bed availability, the prisoner's security designation, the prisoner's programmatic needs, the prisoner's mental and medical health needs, any request made by the prisoner related to faith-based needs, recommendations of the sentencing court, and other security concerns. (18 U.S.C. § 3621.)

7) Requires the U.S. Attorney General to arrange for appropriate places of detention for immigrants pending removal decision or removal. (8 U.S.C. § 1231, subd. (g)(1).)

8) Requires the U.S. Attorney General to ensure that undocumented criminals incarcerated in federal facilities are held in facilities that provide a level of security appropriate to the crimes for which they were convicted. (8 U.S.C. § 1231, subd. (h)(4)(B).)

9) Prohibits the use of room confinement for juveniles in federal custody for any reason other than as a temporary response to the juvenile's behavior that poses a serious and immediate risk of physical harm to any individual. (18 U.S.C. § 5043.)

10) Prohibits the use of segregated confinement in federal penal or corrections institutions for individuals who are pregnant or in post-partum recovery, unless the individual presents an immediate risk of harm to the individual or others. Any placement in a segregated housing unit must be limited and temporary. (18 U.S.C. § 4051, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "This proposal, amended from a previous iteration of the bill, requires the CDCR to track data related to their use of solitary confinement, which the department typically labels "restricted housing." Additionally, CDCR must submit an annual report to the Legislature, starting on or before January 1, 2026, detailing several data points. The data points include demographic information, mental health diagnoses, the outcomes of appeals, and participation in rehabilitative programs. These data points will provide the Legislature and the public a holistic understanding of the experiences of individuals in solitary confinement. Additionally, these data points can help identify patterns, assess the effectiveness of existing policies and practices, and highlight where improvement is needed. This proposal brings visibility to the conditions and practices within correctional institutions. This transparency is vital for advocacy groups, policymakers, and the public to assess the solitary confinement's impact on incarcerated individuals."

2) **Mental, Psychological, and Physical Effects of Segregated Confinement**: There is an increasing body of evidence that suggests that segregated housing produces unwanted and harmful outcomes, for the mental and physical health of those placed in isolation, for the public safety of the communities to which most will return, and for the corrections budgets of jurisdictions that rely on the practice for facility safety. When individuals are placed into segregated housing, it affects access to programming (e.g., education, treatment), the nature and extent of contact they can have with family and friends, and can even impact terms of community supervision. (U.S. DOJ Office of Justice Programs' (OJP) National Criminal Justice Reference Service (NCJRS), *Examining Race and Gender Disparities in Restrictive Housing Placements* (Sept. 2018) <https://www.ojp.gov/pdffiles1/nij/grants/252062.pdf> [as of March 3, 2023].) According to a report by the Vera Institute of Justice, "nearly every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies." (Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* (May 2015) <https://www.vera.org/downloads/publications/solitary-

confinement-misconceptions-safe-alternatives-report_1.pdf>[as of March 3, 2023].)

Further research has shown that there is an increased prevalence of hypertension in persons who have been in solitary condiment, which results in millions in additional future health care costs. (*The Cardiovascular Health Burdens of Solitary Confinement* (2019) J. Gen. Intern. Med. 34, 1977–1980.) Also, vulnerable populations like pregnant women are far more susceptible to the potential dangers of solitary confinement. (*Unjust Isolation: The Diminishing Returns of Solitary Confinement of Pregnant Women and California's Need to Regulate It* (2021) 2 Hastings J. Crime & Punish. 122.)

The World Health Organization, United Nations, and other international bodies have recognized solitary confinement as greatly harmful and potentially fatal. In 2015, the United Nations General Assembly ratified the Nelson Mandela Rules, prohibiting any period of segregation beyond 15 days and defining it as torture. (*The United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), (2015).) The American Medical Association (AMA) recently called for the elimination of solitary confinement of any length, for the mentally ill, citing its mental health harms. (MA House of Delegates, *Reducing the Use of Restrictive Housing in Prisoners with Mental Illness: Resolution 412* (2018) at p. 641.)

3) **Ineffectiveness of Segregated Confinement as a Penological Tool**: Prison and jail administrators consider segregated confinement as a necessary tool to maintain safe and orderly correctional facilities and to promote the safety of staff and incarcerated people within prisons and jails. However, use of segregated confinement is not associated with reductions in facility or system wide misconduct and violence. Several studies on segregated confinement have found that its use does not decrease misconduct or violence, including staff assaults, and therefore does not improve the safety of the facility. (Benjamin Steiner and Calli M. Cain, *The Relationship Between Inmate Misconduct, Institutional Violence, and Administrative Segregation: A Systematic Review of the Evidence*, U.S. Department of Justice, National Institute of Justice (2016) <https://perma.cc/BCJ3-HYK3>[as of April 5, 2022].)

Further empirical and anecdotal evidence suggests that segregated housing may have little influence on improving the behavior of incarcerated people and deterring violence. (Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives, supra,* (May 2015).) There is little evidence to support the claim that segregated housing increases facility safety or that its absence would increase in-prison violence. (*Ibid.*)

In addition, a report by the ACLU indicates that there is little evidence or research about the goals, impacts or cost-effectiveness of solitary confinement as a corrections tool. (ACLU, *ACLU Briefing Paper: The Dangerous Overuse of Solitary Confinement in the United States* (2014) <https://www.aclu.org/report/dangerous-overuse-solitary-confinement-united-states> [as of Feb. 15, 2023].) Data from some states suggest that recidivism rates for incarcerated people who have been held in segregated housing, regardless of whether they are released directly to the community, is significantly higher than for those who have not spent time in segregated housing while in prison. (*Ibid.*) Research from California suggests that rates of return to prison are 20% higher for solitary confinement prisoners. (*Ibid.*)

4) ***Ashker v. Governor of State of California*:** In 2015, California settled *Ashker v. Governor*, a historic class-action lawsuit brought by the Center for Constitutional Rights (CCR) on behalf of a group of Pelican Bay State prisoners who had each spent at least a decade in isolation. (CCR, *Summary of Ashker v. Governor of California Settlement Terms* <https://ccrjustice.org/sites/default/files/attach/2015/08/2015-09-01-Ashker-settlement-summary.pdf> [as of Feb. 15, 2022].) The settlement intended to end the practice of isolating prisoners who have not violated prison rules, cap the length of time a prisoner can spend in solitary confinement, and provide a restrictive but not isolating alternative for prisoners who violate prison rules on behalf of a gang. (*Ibid.*)

   The *Ashker* agreement was first extended in 2019 by the federal court, based on a finding that CDCR was "effectively frustrating the purpose" of the settlement agreement by systemically violating due process rights. (CCR, *Court Finds Continued Systemic Constitutional Violations in California Prisons,* CCR (Feb. 3, 2022) <https://ccrjustice.org/home/press-center/press-releases/court-finds-continued-systemic-constitutional-violations-california> [as of Feb. 15, 2023].) In February 2022, the court determined that CDCR continues to violate the due process rights of incarcerated persons despite the *Ashker* agreement. The court found that CDCR is relying on inaccurate and fabricated confidential information to place individuals in solitary confinement and holding individuals in a restricted unit in the general population without adequate procedural safeguards. (*Ibid.*) Citing these violations, the court extended the *Ashker* agreement for a second one-year term. (*Ibid.*) CDCR appealed the orders extending the settlement agreement. The appeals were consolidated, and in August 2023, the Ninth Circuit reversed the district court's order granting the first extension of the settlement agreement and vacated the order granting the second extension of the settlement agreement on jurisdictional grounds.

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

6) **Argument in Opposition**: According to *Oakland Privacy*, "Senate Bill 733 is a day late and an inch short. The California Legislature has already expressed its commitment to ending lengthy solitary confinement in California with the passage of Assembly Bill 2632 in 2022 . That bill, re-introduced as AB 280 in 2023 and also passed again by the State Assembly, limits consecutive days in solitary confinement to 15 and ends its use entirely for some vulnerable inmate populations, including youth, elders and pregnant and post-partum people.

   "AB 2632 passed the Senate with 23 votes and the Assembly with 51 votes in 2022 and AB 280 passed the CA Assembly with 56 votes in 2023.

   "Senate Bill 733 asks for the state to collect information on the use of solitary confinement. The state's own publications refer to the Compstat data already collected from CDCR on inmate confinement levels.

   "SB 733 says in its legislative findings:

   "*SECTION 1.*
   The department shall collect data to track the department's progress toward improving solitary confinement, also known as restricted housing, standards.

   "However, the Legislature has already defined the goal, not as improving solitary

confinement, but instead to eliminate entirely its use on vulnerable communities (youth, the elderly, pregnant and post-partum individuals, and the mentally and physically disabled) and significantly restrict use on others.

"The net impact of the bill's language is to implement redundant paperwork that is unnecessary to end indeterminate solitary confinement and will, largely, tell the Legislature what we already know.

"Namely, that solitary confinement exacerbates existing, and creates new, mental and physical health issues and behavioral problems for inmates in California jails and prisons.

"With all due respect, it is time for the Legislature to move beyond collecting data and take affirmative action to restrict solitary confinement and end its use on vulnerable populations.

"We believe the author of the Mandela Act (Assembly member Holden) should be allowed to proceed with negotiations with the Governor's office to find a mutually acceptable way to implement the Mandela Act, and that the Legislature and the committee should stand behind Assembly Bill 280.

"Senate Bill 733 is a distraction from this necessary work."

7) **Related Legislation**: AB 2527 (Bauer-Kahan), would prohibit incarcerated pregnant person from being placed in solitary confinement or restrictive housing units during their pregnancy or for 12 weeks postpartum. AB 2527 is currently pending referral in the Senate.

8) **Prior Legislation**:

   a) AB 280 (Holden), of the 2023-2024 Legislative Session, would limit the use of segregated confinement and requires facilities in the State in which individuals are subject to confinement or involuntary detention to follow specified procedures related to segregated confinement. AB 280 was placed on the inactive file in the Assembly.

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

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

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

   e) SB 759 (Anderson), Chapter 191, Statutes of 2016, repealed provisions of law that made incarcerated persons housed in segregation units ineligible to earn credits.

   f) SB 124 (Leno), of the 2015-2016 Legislative Session, would have established standards and protocols for the placement of juveniles in solitary confinement. SB 124 was held in

the Assembly Appropriations Committee.

g) SB 1289 (Lara), of the 2015-2016 Legislative Session, would have, among other things, prohibited an immigration detention facility from involuntarily placing a detainee in segregated housing because of his or her actual or perceived gender, gender identity, gender expression, or sexual orientation. SB 1289 was vetoed.

h) SB 892 (Hancock), of the 2013-2014 Legislative Session, would have declared the intent of the Legislature that long-term segregated housing as a prison management strategy should be used only as a last resort and should be limited in duration. SB 892 failed passage on the Assembly Floor.

i) SB 970 (Yee), of the 2013-2014 Legislative Session, would have prohibited a minor who is detained in, or sentenced to, any juvenile facility or other secure state or local facility from being subject to solitary confinement. SB 970 died in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None submitted.

Opposition

ACT
Alianza
Alianza Sacramento
American Friends Service Committee
Amnesty International USA
Asian Americans Advancing Justice - Asian Law Caucus
California Alliance for Youth and Community Justice
California Collaborative for Immigrant Justice
California Families Against Solitary Confinement
California United for A Responsible Budget (CURB)
Californians for Safety and Justice
Communities United for Restorative Youth Justice (CURYJ)
Community Legal Services in East Palo Alto
Cure California
Disability Rights California
Ella Baker Center for Human Right
Empowering Women Impacted by Incarceration
End Solitary Santa Cruz County
Fair Chance Project
Freedom for Immigrants
Friends Committee on Legislation of California
Halt Solitary Campaign
Immigrant Defenders Law Center
Immigrant Defense Advocates

Immigrant Legal Defense
Indivisible Ca: Statestrong
Initiate Justice
Interfaith Refugee & Immigration Service (IRIS)
LA Cosecha
Law Foundation of Silicon Valley
Law Office of Helen Lawrence
Lawyers Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoners With Children
National Lawyers Guild San Francisco Bay Area Chapter
National Religious Campaign Against Torture
Nextgen California
Nikkei Progressives
Oakland Privacy
Orange County Equality Coalition
Plymouth United Church of Christ - Oakland
Prison Law Office
Psychologists for Social Responsibility
San Francisco Public Defender's Office
Silicon Valley De-bug
Sister Warrior Freedom Coalition
Social Workers & Allies Against Solitary Confinement
Sunita Jain Anti-trafficking Initiative
T'ruah: the Rabbinic Call for Human Rights
Temple Beth El Aptos Jewish Community Center
Underground Scholars Initiative At UC Berkeley
Universidad Popular
Unlock the Box
USF Immigration and Deportation Defense Clinic
Young Women's Freedom Center

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

Date of Hearing: June 4, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 758 (Umberg) – As Amended May 23, 2024

As Proposed to be Amended in Committee

SUMMARY: Increases the penalty from a misdemeanor to a wobbler for specified transfers of centerfire semiautomatic rifles; and clarifies that it is a crime to bring a firearm into the state with the intent to violate specific laws regarding the illegal transfer of firearms. Specifically, **this bill**:

1) Increases the penalty from a misdemeanor to an alternate misdemeanor-felony punishable by up to 3 years in county jail for any of the following:

   a) Transfer of a centerfire semiautomatic rifle to a minor, as specified;

   b) Transfers of a centerfire semiautomatic rifle to a person under 21 years of age, as specified;

   c) Transfers of a centerfire semiautomatic rifle in violation of specified dealer delivery requirements, as specified;

   d) Transfers of a centerfire semiautomatic rifle in violation of the requirement that private party transactions be completed through a licensed firearms dealer;

   e) Transfers of a centerfire semiautomatic rifle in violation of specified restrictions on the importation of a firearm purchased outside California by a resident of California, as specified.

2) Makes it a crime for a person, corporation or dealer to bring a firearm into the state with the intent to violate specific laws regarding the transfer of firearms.

3) Makes technical changes to gun notices posted at inspection stations maintained at or near the California border by the director of the California Department of Food and Agriculture (CDFA).

EXISTING FEDERAL LAW:

1) States that "[A] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." (U.S. Const., 2nd Amend.)

2) Provides that notwithstanding any other provision of law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully

possess and carry such firearm to any other place where he may lawfully possess and carry such firearm, as specified. (18 U.S.C. § 926A.)

EXISTING STATE LAW:

1) Requires the Secretary of the CDFA to maintain plant quarantine inspection stations at such places as they deem necessary for the purpose of inspecting all conveyances which might carry plants or other things which are, or are liable to be, infested or infected with any pest. (Food & Agr. Code, § 5341.)

2) Requires the placement of conspicuous signs at or near each inspection station which disclose the existence of the station. (Food & Agr. Code, § 5343.)

3) Provides that at any inspection station maintained at or near the California border, a sign shall be conspicuously posted in block letters that includes the following notification: "Notice: If you are a California resident, the federal gun control act may prohibit you from bringing with you into this state firearms that you acquired outside of this state. In addition, if you are a new California resident, state law regulates your bringing into California handguns and other designated firearms and mandates that specific procedures be followed. If you have any questions about the procedures to be followed in bringing firearms into California or transferring firearms within California, you should contact the California Department of Justice (DOJ) or a local California law enforcement agency." (Food & Agr. Code, § 5343.5.)

4) Prohibits the sale, lease, or transfer of firearms unless the person has been issued a license by the DOJ, except for various exceptions to this prohibition. (Pen. Code, §§ 26500 – 26625.)

5) Provides that a license to sell firearms is subject to forfeiture for any violation of a number of specified prohibitions and requirements, with limited exceptions. (Pen. Code, §§ 26800 – 26915.)

6) Provides that where neither party to a firearms transaction holds a dealer's license (i.e. a "private party transaction"), the parties shall complete the transaction through a licensed firearms dealer. (Pen. Code, § 27545.)

7) Provides that a licensed firearms dealer shall not sell, supply, deliver or give possession or control of a firearm to any person who is under 21 years of age. (Pen. Code, § 27510, subd. (a).)

8) Specifies that the prohibition above does not apply to or affect the sale, supplying, delivery, or giving possession or control of a firearm that is not a handgun, semiautomatic centerfire rifle, completed frame or receiver or firearm precursor part to a person 18 years of age or older who has a valid hunting license, or is a military veteran or peace officer. (Pen. Code, § 27510, subd. (b).)

9) Requires that, within 60 days of bringing, any firearm, into this state, a personal firearm importer shall do one of the following:

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

firearm in question;

b) Sell or transfer the firearm, as specified;

c) Sell or transfer the firearm to a licensed dealer, as specified; or

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

10) Defines a "personal firearm importer" as a non-licensed individual who has moved into the State of California, owns a firearm that is legal within the state, and intends to possess that firearm within the state, as specified. (Pen. Code, § 17000.)

11) Requires a resident of this state who is importing into this state, bringing into this state, or transporting into this state, any firearm that he or she purchased or otherwise obtained from outside of this state, to have the firearm delivered to a licensed dealer in this state for redelivery to the resident, as specified. (Pen. Code, § 27585, subd. (a).)

12) Establishes various requirements dealers must adhere to in conducting firearms transactions and delivering firearms, including, among others, a 10-day waiting period, purchaser background check, and possession of a handgun safety certificate by the purchaser. (Pen. Code, § 27540.)

13) Provides that no dealer shall acquire a firearm for the purpose of selling, loaning, or transferring the firearm, if the dealer has the intent to violate the prohibition on the sale of a firearm to someone under 21 years of age or any of the specified requirements to firearms transactions or delivery of firearms. (Pen. Code, § 27520, subd. (a).)

14) Provides that no person or corporation shall acquire a firearm for the purpose of selling, loaning, or transferring the firearm, if the person or corporation has the intent to avoid the requirement that private party transactions be completed through a licensed dealer or any exemptions to that requirement. (Pen. Code, § 27520, subd. (b).)

15) Provides that, unless otherwise specified, crimes related to the sale, lease, or transfer of firearms, as specified, are misdemeanors. (Pen. Code, §27690, subd. (a).)

16) Specifies several circumstances related to illegal transfers of a firearm that would make the violation punishable as a felony. (Pen. Code, § 27590, subd. (b).)

17) Specifies that the following illegal firearm transfers may be punished as either a misdemeanor or a felony:

a) Transfers of a handgun to a person who is not the actual purchaser or transferee, when the seller or transferor knows or has cause to know that the person is not the actual purchaser or transferee.

b) Transfers of a handgun with the intent to violate or avoid other specified provisions of law.

c) Transfers of a handgun to a prohibited person when the transferor has cause to believe the person is prohibited.

d) Transfers of a handgun to a minor, as specified.

e) Transfers of a handgun to a person under 21 years of age, as specified.

f) Transfers of a handgun in violation of the several processes required for the delivery of a firearm, as specified.

g) Transfers of a handgun in violation of the requirement that private party transactions be completed through a licensed firearms dealer.

h) Transfers of any firearm involving an act of collusion, as specified.

i) Transfers of a handgun in violation of specified restrictions on the importation of a firearm purchased outside California by a resident of California, as specified. (Pen. Code, § 27590, subd. (c).)

18) Prohibits a person from making an application to purchase more than one handgun or semiautomatic centerfire rifle within any 30-day period. (Pen. Code, § 27535, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "By strengthening border controls and increasing the penalties for those caught attempting to smuggle guns into California, law enforcement can reduce the supply of illegal guns that end up in the hands of criminals.

"Additionally, stricter state border laws can help to disrupt trafficking networks that transport illegal firearms across state lines. By increasing surveillance and coordination with law enforcement agencies in neighboring states, California can better track and intercept illegal guns before they reach their intended destinations.

"Therefore, SB 758 will require that signage be placed at inspection sites at or near the state border which specify that state law prohibits bringing certain firearms into the state that were acquired outside of the state."

2) **Transporting Firearms into California:** California law imposes several restrictions on non-licensed individuals bringing a firearm into the state.[1] Firearm owners that move to California, also known as "personal firearm importers," must either register their residency and firearm(s) with the DOJ, sell or transfer their firearm(s) to a licensed dealer or another eligible individual, or sell or transfer the firearm to a law enforcement agency. (Pen. Code,

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[1] For federally licensed gun dealers and manufacturers (FFLs) receiving shipments of weapons, California law contains a separate set of restrictions which, principally, requires mass importers to be on DOJs centralized list of eligible licensees. See Penal Code §§ 27555, 28465.

§§ 17000, 27560.) California residents are prohibited from bringing a firearm into California that was purchased outside the state, unless the resident arranges for the delivery of the firearm through a licensed firearm dealer. Individuals wishing to enter California temporarily while possessing a legal firearm are not subject to any registration or notification requirements, and may transport handguns provided they are unloaded and locked in the vehicle's trunk or in a locked container. (Pen. Code, § 25610.) As California tends to have stricter firearms laws than many other states, signs posted at inspection stations along California's border display a notice informing individuals entering the state that firearms acquired outside the state may be prohibited and that new residents are subject to specific procedures. (See Food & Agr. Code, § 5343.5.)

Despite California's relatively strict gun laws, gun trafficking remains a persistent problem. According to the Author:

> […] Many incidents of gun violence [in California] have resulted from firearms acquired outside of the state. According to 2021 data from the Bureau of Alcohol, Tobacco, Firearms, and Explosives [ATF], 50.4% of traced guns in California were sold by an out-of-state retailer, which is the eighth highest rate in the country. Firearms traced by the ATF typically have been used, or are suspected to have been used, to commit a crime. Of these guns, the most significant contributors are Arizona and Nevada, which are border states.

ATF data shows that of all guns traced in California, 14.9% came from Arizona, the largest out-of-state source. Nevada and Texas accounted for the second and third largest shares, at 7.2% and 5.2% respectively. In 2021, of the top 15 states with the highest percentage of guns from out-of-state, California had the highest total number of traced guns that originated outside the state, with 15,942, with Illinois in a distant second at 7,837.[2]

This bill makes a minor change to the verbiage of the signs posted at inspection stations coming into California. More significantly, the bill makes it a crime for a person, corporation, or dealer to bring a firearm into the state with the intent to violate specific prohibitions related to the transfer of firearms. Particularly, for dealers, the bill makes it a crime to bring a firearm into the state with the intent to transfer the firearm to someone under 21 years of age (with exceptions) or to violate certain requirements related to the delivery of a firearm after it has been sold. For people and corporations, the bill makes it a crime to bring a firearm into the state with the intent to engage in a private party transaction without the involvement of a licensed firearm dealer, which is a requirement under existing law. This bill makes violation of these prohibitions punishable either an alternate misdemeanor-felony.

3) **Wobblers Related to Firearm Transfers**: Existing law prescribes the punishment for prohibited firearm transfers, most of which are only punishable as misdemeanors. (Pen. Code, § 27590, subd. (a).) However, existing law also sets forth several circumstances under which a prohibited transfer may be punishable as a wobbler, most of which specifically

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[2] "California Has a Gun Trafficking Problem." 24/7 Wall Street. 30 December 2022. California Has a Gun Trafficking Problem – 24/7 Wall St. (247wallst.com)

involve the illegal transfer of a handgun. Currently, transfers of handguns to minors and most individuals under the age of 21, transfers of handguns in violation of specified delivery requirements, private party transfers of handguns completed without a licensed dealer, and prohibited importations of handguns by California residents are all punishable as wobblers. This bill provides that the illegal transfer of semiautomatic centerfire rifles in violation of these prohibitions can also be punished as wobblers.

4) **Increasing Penalties:** This bill increases the penalty from a misdemeanor to a wobbler for specified transfers of centerfire semiautomatic rifles. 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*.)

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

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

7) **Prior Legislation**:

   a) SB 1375 (Umberg), of the 2019-2020 Legislative Session, was substantially similar to this bill. SB 1375 was referred to the Senate Public Safety Committee but did not receive a hearing.

   b) SB 61 (Portantino), Chapter 737, Statutes of 2019, prohibited the sale of a semiautomatic centerfire rifle to any person under 21 years of age, and prohibits a person from making an application to purchase more than one long gun in any 30-day period, except as specified.

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

   d) AB 740 (Alejo), of the 2013-2014 Legislative Session, would have clarified the definition of infrequent transactions as they apply to all firearms transactions, specify the regulations for direct shipment sales of firearms, and requires electronic notification to the Department of Justice for specified conditions by state courts. AB 740 died in Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None.

Opposition

None

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

Amended Mock-up for 2023-2024 SB-758 (Umberg (S))

Mock-up based on Version Number 98 - Amended Assembly 5/23/24
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 5343.5 of the Food and Agricultural Code is amended to read:

5343.5. At any inspection station maintained at or near the California border by the director pursuant to Section 5341, the following sign shall be conspicuously posted in block letters not less than four inches in height:

"NOTICE: IF YOU ARE A CALIFORNIA RESIDENT, CALIFORNIA LAW AND THE FEDERAL GUN CONTROL ACT MAY PROHIBIT YOU FROM BRINGING WITH YOU INTO THIS STATE FIREARMS THAT YOU ACQUIRED OUTSIDE OF THIS STATE AND MANDATE THAT SPECIFIC PROCEDURES BE FOLLOWED.

IN ADDITION, IF YOU ARE A NEW CALIFORNIA RESIDENT, STATE LAW REGULATES YOUR BRINGING INTO CALIFORNIA FIREARMS AND MANDATES THAT SPECIFIC PROCEDURES BE FOLLOWED.

IF YOU HAVE ANY QUESTIONS ABOUT THE PROCEDURES TO BE FOLLOWED IN BRINGING FIREARMS INTO CALIFORNIA OR TRANSFERRING FIREARMS WITHIN CALIFORNIA, YOU SHOULD CONTACT THE CALIFORNIA DEPARTMENT OF JUSTICE OR A LOCAL CALIFORNIA LAW ENFORCEMENT AGENCY.

FOR MORE INFORMATION, VISIT OAG.CA.GOV/FIREARMS."

SEC. 2. Section 27520 of the Penal Code is amended to read:

27520. (a) A person, corporation, or dealer shall not acquire within this state or bring into this state a firearm for the purpose of selling, loaning, or transferring the firearm, if the person, corporation, or dealer has either of the following:

(1) In the case of a dealer, intent to violate Section 27510 or 27540.

(2) In any other case, intent to avoid either of the following:

(A) The provisions of Section 27545.

(B) The requirements of any exemption to the provisions of Section 27545.

(b) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of this code shall not be punished under more than one provision.

~~**SEC. 3.** Section 27580 is added to the Penal Code, to read:~~

~~**27580.** (a) A person shall not purchase or receive a firearm from a dealer, knowing that the delivery of that firearm to that person violates subdivision (a), (c), or (d) of Section 27540.~~

~~(b) The prohibitions of this section are cumulative and do not restrict the application of any other law. However, an act or omission punishable in different ways by this section and different provisions of this code shall not be punished under more than one provision.~~

~~**SEC. 4.**~~ **SEC. 3** Section 27590 of the Penal Code is amended to read:

27590. (a) Except as provided in subdivision (b), (c), or (e), a violation of this article is a misdemeanor.

(b) If any of the following circumstances apply, a violation of this article is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years:

(1) If the violation is of subdivision (a) of Section 27500.

(2) If the defendant has a prior conviction of violating the provisions, other than Section 27535, Section 27560 involving a firearm that is not a handgun, or Section 27565 involving a firearm that is not a handgun, of this article or former Section 12100 of this code, as Section 12100 read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, or Section 8101 of the Welfare and Institutions Code.

(3) If the defendant has a prior conviction of violating any offense specified in Section 29905 or of a violation of Section 32625 or 33410, or of former Section 12560, as that section read at any time from when it was enacted by Section 4 of Chapter 931 of the Statutes of 1965 to when it was repealed by Section 14 of Chapter 9 of the Statutes of 1990, or of any provision listed in Section 16590.

(4) If the defendant is in a prohibited class described in Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) A violation of this article by a person who actively participates in a "criminal street gang" as defined in Section 186.22.

(6) A violation of Section 27510 involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(c) If any of the following circumstances apply, a violation of this article shall be punished by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment:

(1) A violation of Section 27515, 27520, or subdivision (b) of Section 27500.

(2) A violation of Section 27505 involving the sale, loan, or transfer of a handgun or a centerfire semiautomatic rifle to a minor.

(3) A violation of Section 27510 involving the delivery of a handgun or a centerfire semiautomatic rifle.

(4) A violation of subdivision (a), (c), (d), (e), or (f) of Section 27540 involving a handgun or a centerfire semiautomatic rifle.

(5) A violation of Section 27545 involving a handgun or a centerfire semiautomatic rifle.

(6) A violation of Section 27550.

~~(7) A violation of Section 27580 involving a handgun or a centerfire semiautomatic rifle.~~

~~(8)~~ **(7)** A violation of Section 27585 involving a handgun or a centerfire semiautomatic rifle.

(d) If both of the following circumstances apply, an additional term of imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed:

(1) A violation of Section 27510 or subdivision (b) of Section 27500.

(2) The firearm transferred in violation of Section 27510 or subdivision (b) of Section 27500 is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

(e) (1) A first violation of Section 27535 is an infraction punishable by a fine of fifty dollars ($50).

(2) A second violation of Section 27535 is an infraction punishable by a fine of one hundred dollars ($100).

(3) A third or subsequent violation of Section 27535 is a misdemeanor.

(4) (A) Until July 1, 2021, for purposes of this subdivision, each application to purchase a handgun in violation of Section 27535 is a separate offense.

(B) Commencing July 1, 2021, for purposes of this subdivision, each application to purchase a handgun or semiautomatic centerfire rifle in violation of Section 27535 is a separate offense.

SEC. 5. 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: June 4, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 796 (Alvarado-Gil) – As Amended April 27, 2023

SUMMARY: Creates an alternate misdemeanor-felony for willfully threatening to commit a crime which would result in death or great bodily injury to any person who may be on the grounds of a school or place of worship, as specified, and if the threat causes a person or persons to reasonably sustain fear for their own safety or the safety of another person. Specifically, **this bill**:

1) States any person who, by any means, including, but not limited to, an electronic act, *willfully* threatens to commit a crime which would result in death or great bodily injury to any person who may be on the grounds of a school or place of worship *with the specific intent* that the statement is to be taken as a threat, even if there is no intent to carry it out, if the threat, on its face, and *under circumstances in which it is made, so unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose and an immediate prospect of execution of the threat, **and*** if the threat causes a person or persons to *reasonably sustain fear* for their own safety or safety of another person, shall be guilty of an alternate felony-misdemeanor punishable by a maximum of one year in county jail or three years in county jail or state prison depending on the defendant's criminal history.

2) Provides that any person under the age of 18 may be guilty of this offense and may be charged with a misdemeanor.

3) States this offense is not meant to preclude prosecution under any other law, except a person shall not be convicted for the same threat pursuant to the hate crimes statute.

4) Defines the following terms:

   a) "Electronic act" means the same as it does in the Education Code: a creation or transmission originated on or off the school site, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including texts, sounds, video, images, or posting.

   b) "Place of worship" means any church, synagogue, temple, mosque, or other building where religious services are regularly conducted.

   c) "School" means a state preschool, a private or public elementary, middle, vocational, junior high, or high school, a community college, a public or private university, or a location where a school-sponsored event is or will be taking place and the treat is related to both the school-sponsored event and to the time period during which the school-sponsored event will occur.

EXISTING LAW:

1) States any person who *willfully threatens* to commit a crime which will result in death or great bodily injury to another person, with the *specific intent* that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is *so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat,* and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, ***shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison not to exceed three years.*** (Pen. Code, § 422, subd. (a).)

2) Defines "electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code. (Pen. Code, § 422, subd. (c).)

3) Defines "hate crime" as a criminal act 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; or

   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).)

4) Provides that all state and local agencies shall use the definition of "hate crime" stated above except as other explicit provisions of state or federal law may require otherwise. (Pen. Code, § 422.9.)

5) Specifies "hate crimes" include, but are not limited to violating or interfering with the exercise of civil rights, or knowingly defacing, destroying, or damaging property because of actual or perceived characteristics of the victim that fit the "hate crime definition." (Pen. Code, §§ 422.55, subd. (b). & 422.6., subd. (a) and (b).)

6) Defines "Nationality" as country of origin, immigration status, including citizenship, and national origin. (Pen. Code, § 422.56, subd. (e).)

7) Defines "Race or ethnicity" as ancestry, color, and ethnic background. (Pen. Code, § 422.56, subd. (f).)

8) Defines "Religion" as all aspects of religious belief, observance, and practice and includes agnosticism and atheism. (Pen. Code, § 422.56, subd. (g).)

9) Defines "Sexual orientation" as heterosexuality, homosexuality, or bisexuality. (Pen. Code, § 422.56, subd. (h).)

10) Specifies that "Victim" includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense. (Pen. Code, § 422.56, subd. (i).)

11) Requires DOJ, on or before July 1st of each year, to update the OpenJustice Web portal with information obtained from local law enforcement agencies regarding hate crimes. (Pen. Code, § 13023, subd. (b).)

12) Requires POST, in consultation with subject-matter experts, including, but not limited to, law enforcement agencies, civil rights groups, academic experts, and the DOJ, to develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. (Pen. Code, § 13519.6, subd. (a).)

13) Requires the POST course to include instruction in each of the following:

    a) Indicators of hate crimes;

    b) The impact of these crimes on the victim, the victim's family, and the community, and the assistance and compensation available to victims;

    c) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes;

    d) Law enforcement procedures, reporting, and documentation of hate crimes;

    e) Techniques and methods to handle incidents of hate crimes in a non-combative manner;

    f) Multi-mission criminal extremism, which means the nexus of certain hate crimes, antigovernment extremist crimes, anti-reproductive-rights crimes, and crimes committed in whole or in part because of the victims' actual or perceived homelessness;

    g) The special problems inherent in some categories of hate crimes, including gender-bias crimes, disability-bias crimes, including those committed against homeless persons with disabilities, anti-immigrant crimes, and anti-Arab and anti-Islamic crimes, and techniques and methods to handle these special problems; and,

h) Preparation for, and response to, possible future anti-Arab/Middle Eastern and anti-Islamic hate crime waves, and any other future hate crime waves that the AG determines are likely. (Pen. Code, § 13519.6, subd. (b).)

14) Requires POST guidelines to include a framework and possible content of a general order or other formal policy on hate crimes that all state law enforcement agencies shall adopt and the commission shall encourage all local law enforcement agencies to adopt. (Pen. Code, § 13519.6, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 796 would make it unlawful to threaten to commit a crime that is reasonably likely to cause death or great bodily injury at a school or place or worship, even though a specific victim of the crime is not named. Those who receive threats like the ones described, especially those who are or will be at a school or place of worship, may suffer from the fear and trauma of the threatened crime. These threats cause extensive disruption to the community. These kinds of threats require immediate law enforcement response, often with specialized units, in order to gauge whether the threats are credible.

   This gap in the law makes it difficult to fully investigate and prosecute these cases, despite the damage caused to communities when an individual conveys a threat to kill or cause great bodily injury. Given the reality in California and around the country of mass shootings at schools and religious centers, our laws must be updated to reflect the devastating impact of such threats. This statute fills a gap in the law, allowing clarity for investigating officers and prosecutors, who can now hold individuals accountable for the terror and disruption their words cause."

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

   "To achieve First Amendment protection, a plaintiff must show that [t]he[y] possessed: (1) a message to be communicated; and (2) an audience to receive that message, regardless of the medium in which the message is to be expressed." (*Hurley v. Irish-American Gay, Lesbian & Bisexual Group* (1995) 515 U.S. 557.) Legislation that regulates the content of protected speech is subject to strict scrutiny, sometimes referred to by the courts as "exacting scrutiny" in this context. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2226.) To survive strict scrutiny, state action must be narrowly tailored to address a compelling government interest. (*Ibid.*) However, true threats of violence are outside the bounds of First Amendment

protection and punishable as crimes. (See generally, *Brandenburg v. Ohio* (1969) 395 U.S. 444, 447; *Virginia v. Black* (2003) 538 U.S. 343, 359.)

True threats is defined by the court as "serious expression[s]" conveying that a speaker means to "commit an act of unlawful violence." (See *Black*, 538 U. S., at 359.) Whether the speaker is aware of, or intends to convey, the threatening aspect of the message is not part of what makes a statement a threat, as this Court recently explained. (See Elonis v. United States (2015) 575 U. S. 723, 733.). The existence of a threat depends not on "the mental state of the author," but on "what the statement conveys" to the person on the other end. (*Ibid.*")

> "When the statement is understood as a true threat, all the harms that have long made threats unprotected naturally follow. True threats subject individuals to 'fear of violence' and to the many kinds of 'disruption that fear engenders.'" (See *Black*, 538 U. S., at 360.)

Most recently, in *Counterman v. Colorado,* the U.S. Supreme Court refined the true threat test in determining whether the state must show a subjective understanding by the defendant that the statements constituted a threat. ***The Court held the state must show the defendant's subjective intent to threaten in order to impose criminal penalties, however, a showing of a mental state of recklessness is sufficient.*** (See *Counterman v. Colorado* (2023) 143 S.Ct. 2106, 2112.)

> "Again, guided by our precedent, we hold recklessness standard is enough. Given that a subjective standard here shields speech not independently entitled to protection – and indeed posing real dangers – we do not require that the State prove the defendant had any more specific intent to threat the victim." (*Counterman, supra*, at 143 S.Ct. at 2113.)

In this case, the author proposes a new statute that requires showing, beyond a reasonable doubt, that the defendant intended to threaten a school or place of worship with conduct that would result in death or great bodily injury. It requires much more than general intent – meaning knowledge that something may be a crime.

This statute is very similar to the existing criminal threats statute and requires the same elements. The proposed statute requires specific intent, meaning the reason the defendant committed the crime. In the *Counterman* case, the Court considered whether the defendant was aware of the threatening nature of the comments he made online to a local musician. (See *Counterman*, 143 S.Ct. at 2113.) However, the Supreme Court upheld Counterman's conviction because, at the very least, his conduct was reckless.

> "…Recklessness offers the right path forward. We have so far mostly focused on the constitutional interest in free expression, and on the correlative need to take into account threat prosecutions' chilling effect. But the precedent we have relied on has always recognized and insisted on accommodating the competing value in regularly historically unprotected speech. … [The] standard again, is recklessness. It offers enough breathing

> space for protected speech without sacrificing too many of the benefits of enforcing laws against true threats. (*Counterman*, *supra*, at 2116.)

It seems likely that this statute will not be viewed as violating the First Amendment. California's criminal threats statute has been ruled constitutional. (See *People v. Maciel* (2003) 113 Cal.App.4th 679, 684, citing *People v. Heilman* (1994) 25 Cal.App.4th 391, 401 ["A criminal statute that prohibits a threat made with the specific intent to place the victim reasonably in fear of death or great bodily injury is not unconstitutionally vague."].) Given this statute is so similar to the existing criminal threats statute, it seems more likely than not a court would not view this statute as violating the First Amendment. However, as explained below, there are numerous other statutes, including the criminal threats statute that may, in some circumstances, provide greater penalty.

3) **Interpreting Penal Code section 422 [Criminal Threats]:** In order to convict a person pursuant to Penal Code section 422, the primary criminal threats statute, the trier of fact must find the following beyond a reasonable doubt:

   a) the defendant *willfully threatened* to commit a crime which will result in death or great bodily injury to another person;

   b) the defendant made the threat;

   c) the defendant *intended* that the statement is to be taken as a threat, even if there is no intent of actually carrying it out;

   d) the threat was so *unequivocal, unconditional, immediate, and specific* as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat;

   e) the threat *actually caused* the person threatened to be in sustained fear for his or her own safety or for his or her immediate family's safety; and,

   f) the threatened person's fear was reasonable under the circumstances. (Pen. Code, §422; CALCRIM No. 1300; see also *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.)

Penal Code section 422 applies to all criminal threats which will result in death or great bodily injury regardless of location or the exact type of violence that is threatened. As with the proposed statute in this bill, it requires a showing of specific intent to threaten, meaning not only was the defendant aware the action was criminal, but made the threat with the intent that it be taken as a threat.

As noted above, Penal Code section 422, subdivision (a) may be charged as a felony and punished by up to three years in state prison. Penal Code section 422 is not a Realignment

offense.[1] If a defendant is charged with a felony, they may be sentenced to state prison even if they do not have a serious or violent felony conviction, or required to register as a sex offender, as required by Penal Code section 1170, subdivision (h). This bill just creates a specific criminal threats statute for conduct aimed at schools or places of worship.

According to the author, Penal Code section 422 does not prohibit criminal threats when it is levied against a group of people or institution – it only criminalizes threatening a person. Penal Code section 422, subdivision (a) states in part, "any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific ***as to convey to the person threatened***, a gravity of purpose and an immediate prospect of execution of the threat, and ***thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety***, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison." (Pen. Code, § 422, subd. (a).)

Penal Code section 422, subdivision (a) criminalizes threats that will result in death or great bodily injury to another person – not just toward another person. The statute focuses on the seriousness of the threat – not just who reads or hears the threat. In the case of *In re George T.*, although a court did not find the student engaged in criminal threats, the court was not impressed that it could not find in favor of the People because the student threatened a group of students at a school.

In that case, the juvenile drafted several "dark poems" that alluded to threats of mass violence at their high school. (*In re George* (2004) 33 Cal.4th 620, 626.) The respondent was convicted of a felony violation of Penal Code section 422, subdivision (a). While the California Supreme Court did not agree the statements in the poem constituted threats, the court did not make any findings that the respondent could not be convicted of this offense because his threats were toward the school, not the students that read the poem. (*Id.*, at 634-35.)

The Court's reasoning indicates that the students that read the poems may have believed they were at risk because they were students at that school. The Court allowed testimony from one of the students that read the poem that she believed she and the other students were being threatened. (*In re George T.*, 33 Cal.4th at 635-36.) That appeared sufficient to satisfy the requirements of the statute assuming the respondent actually threatened anyone.

> "Only the final two lines of the poem could arguably be construed to be a criminal threat: 'For I can be the next kid to bring guns to kill students at school. So parents watch your children cuz I'm BACK!!' Mary believed this was a threat, but her testimony reveals that her conclusion rested upon a considerable amount of interpretation: 'I feel that when he said, 'I can be the next person,' that he meant that he will be, because

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[1] See Existing Law, supra, at (1).

> also he says that he's dark, destructive, and dangerous person. And I'd describe a dangerous person as someone who has something in mind of killing someone or multiple people.' The juvenile court's finding that minor threatened to kill Mary and Erin likewise turned primarily on its interpretation of the words, 'For I can be the next kid to bring guns to kill students at school' (italics added) to mean not only that minor could do so, but that he would do so. In other words, the court construed the word 'can' to mean 'will.' But that is not what the poem recites. (*In re George T.* (2004) 33 Cal.4th 620, 635-636.)

As noted above, the Court did not dismiss the case outright because the respondent threatened a group of people. Presumably, if a person emails a place of worship that they *"will blow up the building NOW and kill everyone inside today just to get you all out!"* will very likely be viewed as a violation of Penal Code section 422 even though the threat is not levied specifically at the religious institution employee that read the email. It seems as if prosecutors may present as evidence the testimony of the person that received the threat, as well as others present on the school grounds or place of worship, in order to prove the required elements.

In contrast, some courts may be viewing Penal Code section 422, subdivision (a) more narrowly resulting in an inability to charge a person who threatens an institution, rather than a specific person. It is conceivable that a court may view this statute narrowly despite existing case law interpreting Penal Code section 422. Most certainly, calling in a bomb threat or threatening to discharge a firearm at people attending a place of worship or school may be prosecuted for it. To suggest otherwise, seems as if it would require a court to interpret this statute in an absurd way and contrary to the rules of statutory construction. (*People v. Valdez* (2018) 28 Cal.App.5th 308, 308 ["The first step in statutory construction is to examine the statutory language and give it a plain and commonsense meaning, a reasonable and common sense interpretation, consistent with the apparent purpose and intention of the Legislature."].)

Penal Code section 422 is a strike:

Penal Code section 1192.7, subdivision (c)(38) states Penal Code section 422, subdivision (a) is a "serious felony" meaning any defendant convicted of Penal Code section 422 will be subject to a strike. Since criminal threats is a "serious felony," as that term is defined in statute, a defendant convicted of criminal threats may receive an enhanced sentence and prohibited from receiving probation.

In comparison to this legislation:

This bill also requires a ***specific intent to threaten death or great bodily injury and with the intent to threaten.*** The statute appears to be directed at a defendant to who perhaps calls in a bomb threat or threatens students or parishioners on social media or via email.

While the person may not have intended to carry out the threat, they intended to make the receiver feel threatened. The ***proposed statute*** in this bill requires a prosecutor to demonstrate the defendant engaged in the following, beyond a reasonable doubt:

a) *willfully* threaten to commit a crime which would result in death or great bodily injury to any person;

b) who may be on the grounds of a school or place of worship;

c) *with the specific intent* that the statement is to be taken as a threat, even if there is no intent to carry it out, if the threat, on its face, and

d) *under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose and an immediate prospect of execution of the threat,* ***and***;

e) the threat causes a person or persons to *reasonably sustain fear* for their own safety or safety of another person.

The elements above are very similar to the requirements of Penal Code section 422. It also requires specific intent. However, the penalty is arguably lower than Penal Code section 422 since, theoretically, a defendant convicted of a felony 422(a) may be sentenced to state prison whereas this penalty is an alternate misdemeanor-felony punishable in state prison only if the defendant has a prior serious or violent felony or is required to register as a sex offender.

Specific Intent: When the definition of a crime consists of only the description of a particular act, without reference to intent to do a further act or achieve a future consequence, a court asks whether defendant intends to do the proscribed act. This intention is deemed to be a general criminal intent.

> **When the definition refers to defendant's intent to do some further act or achieve some additional consequence, the crime is deemed to be one of specific intent. There is no real difference, however, only a linguistic one, between an intent to do an act already performed and an intent to do the same act in the future.** ... A classification of a crime as a specific intent crime is necessary only when the court must determine whether a defense of voluntary intoxication or mental disease, defect, or disorder is available; whether evidence thereon is admissible; or whether appropriate jury instructions are thereby required. (Emphasis added.) (*People v. Hering* (1999) 20 Cal.4th 440, 442.)

Demonstration of specific intent here would include evidence the defendant contacted the school or place of worship for the express purpose of threatening harm and that the threat be viewed as threatening and real. This bill states that a court not rely on the same threats to punish a defendant under both this statute and the hate crimes statute. Presumably, Penal Code section 654 would prohibit prosecution for both offenses, "An act or omission that is punishable in different ways by different provisions of law may be punished under either of such provisions, **but in no case shall the act or omission be punished under more than**

one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other." (Pen. Code, § 654, subd. (a).)

> "To resolve [questions of multiple punishments], courts must look to the particular characteristics of the crime at issue, including both (1) the factual circumstances of the defendant's criminal conduct and (2) the elements of the crime as defined by the Legislature in the relevant statute. Sometimes, multiple convictions are appropriate for similar acts during a single course of conduct. Even a single act can result in two convictions under the same statute if the Legislature intends such a result. On the other hand, some statutes were written by the Legislature to authorize only a single conviction for a wrongful course of conduct, or an act victimizing more than one person or violating the statute in more than one way. (*People v. Wilson* (2015) 234 Cal. App. 4th 193, 200-201.)

Specifically, Penal Code section 422 may not be charged with other credible threats-related statutes in most circumstances. Penal Code 654 prohibits multiple convictions based on multiple threats toward a single victim during a single encounter.

Finally, this crime adds a new statute to the Penal Code rather than amending Penal Code section 422; therefore, it is not a strike. A defendant charged with this new statute will not be subject to a strike.

4) **Other Offenses and Lesser Included Offenses**: There are several other statutes that criminalize threats to either a school or religious institution. ***Penal Code section 71,*** which may be applied to a person under the age of 18, punishes any person who, with intent to cause, attempts to cause, or causes, any officer or employee of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out, is guilty of a crime. (Pen. Code, § 71, subd. (a).) The first conviction is punishable as an alternate misdemeanor-felony and subject to a county jail commitment of up to three years in county jail, or state prison if a defendant has a prior serious or violent felony, or is required to register as a sex offender. (See Pen. Code, §§ 71, subd. (a)(1); 1170, subd. (h)(3).) A second or subsequent conviction is a felony, punishable by a maximum penalty of three years in county jail or state prison depending on the defendant's criminal history. (Pen. Code, § 71, subd. (a)(2).)

Penal Code section 302 criminalizes disturbing a religious meeting. It states "every person who intentionally disturbs or disquiets any assemblage of people met for religious worship at a tax-exempt place of worship, by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where the meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment."

A second or subsequent conviction for disrupting a religious meeting, or any violation of disturbing any other type of meeting, shall also be sentenced to community service of not less than 120 hours and not exceeding 160 hours. (Pen. Code, § 302, subd. (c).)

Finally, any person who threatens a place a worship because it is a place of worship may be charged with a hate crime in violation of ***Penal Code section 422.6.*** To prove interference with another's civil rights, including the right to free exercise of religion, by threat of force, a prosecutor must establish the following elements:

a) The defendant, by threat of force, injured, intimidated, interfered with, oppressed, or threatened another person in the free exercise or enjoyment of any legally protected right or privilege.

b) The threat of force, if consisting of speech alone, threatened violence against a specific person or group.

c) The defendant had the apparent ability to carry out the threat (the threat must be one that would reasonably tend to induce fear in the alleged victim).

d) The defendant did so in whole or in part because of the other person's actual or perceived protected characteristic(s), or because of the other person's association with a person or group having one or more of these characteristics.

e) The defendant did so with the specific intent to deprive the other person of the free exercise or enjoyment of the legally protected right or privilege. (See CALCRIM No. 1350.)

The penalty for interfering with the exercise of a constitutional right is an alternate felony-misdemeanor. However, if the district attorney can show evidence of bias even on a misdemeanor conviction, the court may sentence the defendant to up to three years, rather than just one year. (Pen. Code, § 422.7.)

There are numerous other statutes that cover the conduct criminalized in this bill. In many cases, the penalty may be more severe where the defendant threatened a school or place of worship for any biased reason and Penal Code section 302 specifically criminalizes threats to schools. Given the very onerous requirements of this statute, it seems more likely a local prosecutor would choose from among one of the easier to prove statutes currently in law.

5) **County Jail Impact:** In January 2010, a 9th Circuit 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 CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata v. 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.)

AB 109, The Criminal Justice Realignment Act, was implemented in 2011 in response to prison overcrowding. In part, it shifted to county jails the responsibility for incarcerating lower-level offenders previously incarcerated in state prison. (Pen. Code, § 1170, subd. (h).) This, however, increased the pressure on county jails to house larger populations and to make difficult decisions about how to manage their growing jail populations. These pressures manifest differently by county based on a number of factors including jail capacity and whether the county jail system is operating under a court-mandated population cap. Such caps have been in place in some counties long before *Brown v. Plata* addressed state prison overcrowding. (Sarah Lawrence, Court-Ordered Population Caps in California County Jails (Dec. 2014).)[2]

Recently, CalMatters published an article explaining that jails are facing increasing death rates even as the population may be declining in the short term. As the article explains, most of the people who died were pre-trial inmates – meaning they have not been convicted of a crime, but could not afford to post cash bail. Aside from natural causes, the two major causes of death for inmates in county jail were suicide, followed by overdoses, particularly fentanyl.[3]

The Board of State and Community Corrections ("BSCC") have repeatedly warned about failures in the county jails and refusal by locals to adhere to required state standards. Until recently, BSCC was not even notified about deaths inside the county-run lockups. Nor was the pandemic the driving factor: California in 2022 had the smallest share of deaths due to natural causes in the past four decades. A surge in overdoses drove the trend of increasing deaths. And almost every person who died was waiting to be tried. A previous CalMatters investigation found that three-quarters of those held in county jails had not been convicted or sentenced, with many awaiting trial more than three years. (Duara and Kimelman, *"California jails are holding thousands fewer people but far more people are dying in them,"* Cal Matters (March 25, 2024).)[4]

Given the law already has numerous penalties for threatening schools or places of worship and the escalating pressures on county jails, it begs the question of whether it makes sense to add another crime to the Penal Code largely unneeded to address the issues.

6) **Argument in Support**: According to the *Los Angeles District Attorney's Office:* "Existing law does not adequately protect against threats to shoot up a place or event because a specific person is not named in those threats. Schools shut down and events are disrupted without anyone being held accountable as mass shootings become an all too familiar reality

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[2] Located at https://law.stanford.edu/search-sls/?q_as=california%20county%20jails [last visited March 26, 2024].
[3] See recent article about Los Angeles County Sheriff's Deputy Michael Meiser smuggling drugs into Los Angeles County Jail. KTLA 5, *"Los Angeles County deputy accused of smuggling heroin into jail,"* May 7, 2024, located at https://ktla.com/news/local-news/los-angeles-county-deputy-accused-of-smuggling-heroin-into-jail/#:~:text=A%20Los%20Angeles%20County%20deputy,Department's%20Internal%20Criminal%20Investigations%20Bureau [last visited May 20, 2024].
[4] Located at https://calmatters.org/justice/2024/03/death-in-california-jails/ [last visited March 16, 2024.]

nationwide. These threats cause significant trauma and fear in the community even though a specific individual is not the target of the threats. SB [796] proposes to create a new "wobbler" offense where a person "willfully threatens to commit a crime which will result in death or great bodily injury to any person who may be on the grounds of a school or place of worship, with the specific intent that the statement is to be taken as a threat, even if there is no intent of carrying it out, if the threat on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose and an immediate prospect of execution of the threat, and if the threat causes a person or persons reasonably to be in sustained fear for their own safety or the safety of another person."

7) **Argument in Opposition**: According to the *California Public Defenders Association:* "Making a criminal threat (in any setting) is conduct that is already covered by the Penal Code in Section 422. Nearly all of the conduct described in this bill falls well within the definition of that section. For the most part, this bill is unnecessary even to achieve its stated aims. To the extent that SB 796 loosens the restrictions of Section 422, it is even more concerning. Penal Code Section 422 is a statute that is often misused to penalize conduct that does not truly belong in the criminal justice system. This is particularly true for our clients with mental health conditions, who often suffer from crippling paranoia and delusions. The fear these clients experience can lead them to say things that are easily misinterpreted or are simply a product of their illness.

"SB 796 is a similar bill to SB 522 and AB 907, which respectively failed to pass out of the Senate Public Safety Committee in the previous legislative session and AB 907 which was held in Senate Appropriations in 2019. Penal Code Section 422 is a statute that requires only words – no actions in furtherance of the threat – and it applies even if the person who is saying the words has "no intent of actually carrying it out." Creating a new offense that loosens this already expansive definition will, we fear, only ensnare more people with mental health conditions in the criminal justice system. We are certainly sympathetic to the intent behind this bill, but creating a new crime is not the answer, and it will end up causing more harm than it prevents."

8) **Related Legislation**:

   a) AB 1064 (Low), would define "bias against" as a preexisting negative attitude toward actual or perceived characteristics of a person, and states that bias motivation may include, among other things, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, and thrill-seeking. AB 1064 was held on the Assembly Committee suspense file.

   b) AB 2099 (Bauer-Kahan) increases penalties for violations of the California Freedom of Access to Clinics and Church Entrances ("FACCE") Act. AB 2099 is pending in the Senate.

   c) SB 89 (Ochoa Bogh) expands the crime of stalking to include making a credible threat with the intent to place a person in reasonable fear for the safety of their pet, service animal, emotional support animal, or horse. SB 89 is pending in this committee.

d) SB 596 (Portantino) makes it a misdemeanor to threaten or harass a school employee off school grounds or after school hours for reasons related to their duties of employment. SB 596 was vetoed.

9) **Prior Legislation**:

a) AB 907 (Grayson), of the 2019-2020 Legislative Session, was identical to this bill. AB 907 was held in the Senate Appropriations Committee.

b) AB 2768 (Melendez), of the 2017-2018 Legislative Session, was similar to AB 907 (Grayson). AB 2768 was held in the Assembly Appropriations Committee.

c) SB 110 (Fuller), of the 2015-2016 Legislative Session, would have made it an alternate felony-misdemeanor offense for any person to willfully threaten unlawful violence that will result in death or great bodily injury to occur on the grounds of a school, as defined, where the threat creates a disruption at the school. SB 110 was vetoed by the Governor.

d) SB 456 (Block), of the 2015-2016 Legislative Session, would have specified that any person who threatens to discharge a firearm on the campus of a school, as defined, or location where a school-sponsored event is or will be taking place, is guilty of an alternate felony-misdemeanor. SB 456 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Agudath Israel of America
Anti-defamation League (UNREG)
California Association of Joint Powers Authorities
California District Attorneys Association
California Police Chiefs Association
California School Employees Association
California State Sheriffs' Association
California Teachers Association
City of Long Beach
Crime Victims United of California
Giffords Law Center to Prevent Gun Violence
Hindu American Foundation, INC.
Los Angeles County District Attorney's Office
Marshall Medical Center
National Asian Pacific Islander Prosecutors Association (NAPIPA)
San Diego County District Attorney's Office
San Francisco District Attorney Brooke Jenkins
Santa Clara County District Attorney's Office
Visalia; City of
Whittier; City of

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Ella Baker Center for Human Rights
San Francisco Public Defender

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

Date of Hearing: June 4, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1005 (Ashby) – As Amended March 19, 2024

SUMMARY: Authorizes a probation officer to refer a minor to a youth, peer, or teen court. Specifically, **this bill**:

1) Authorizes a probation officer with the consent of the minor and the minor's parent or guardian to refer a minor to a youth, peer, or teen court that is established and maintained by the probation officer or by a community-based organization, Indian tribe, tribal court, or public agency, to implement restorative justice practices.

2) Provides referral offenses include, but are not limited to, infractions and misdemeanors, as specified in Section 48900 Education Code.

3) Provides that a probation officer may determine a minor appropriate for referral that includes other violations.

4) Requires these provisions to be implemented and be consistent with specified Education Code provisions.

EXISTING LAW:

1) Provides that in any case in which a probation officer concludes that a minor is within the jurisdiction of the juvenile court, or would come within the jurisdiction of the court if a petition were filed, the probation officer may, in lieu of filing a petition to declare a minor a ward of the court or requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court, and with consent of the minor and the minor's parent or guardian, refer the minor to services provided by a health agency, community-based organization, local educational agency, an appropriate non-law-enforcement agency, or the probation department. (Welf. & Inst. Code, § 654, subd. (a).)

2) Provides that if the services are provided by the probation department, the probation officer may delineate specific programs of supervision for the minor, not to exceed six months, and attempt to adjust the situation that brings the minor within the jurisdiction of the court. (Welf. & Inst. Code, § 654, subd. (a).)

3) Requires the probation officer shall make a diligent effort to proceed with informal supervision when the interest of the minor and the community can be protected. (Welf. & Inst. Code, § 654, subd. (a).)

4) Allows a probation officer to request a prosecuting attorney to file a petition at any time within the six-month period or a 90-day period thereafter. (Welf. & Inst. Code, § 654, subd.

(a).)

5) Provides that if the probation officer determines that the minor has not participated in the specific programs within 60 days, the probation officer may file a petition or request that a petition be filed by the prosecuting attorney. (Welf. & Inst. Code, § 654, subd. (a).)

6) Provides that the program of supervision of the minor may call for the minor to obtain care and treatment for the misuse of, or addiction to, controlled substances from a county mental health service or other appropriate community agency. (Welf. & Inst. Code, § 654, subd. (b).)

7) Requires the program of supervision to encourage the parents or guardians of the minor to participate with the minor in counseling or education programs, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court, as described. (Welf. & Inst. Code, § 654, subd. (c).)

8) Provides that a probation officer with consent of the minor and the minor's parent or guardian may provide the following services in lieu of filing a petition:

   a) Maintain and operate sheltered-care facilities, or contract with private or public agencies to provide these services. Provides that the placement is limited to a maximum of 90 days. Requires counseling services to be extended to the sheltered minor and the minor's family during this period of diversion services. Provides that referrals for sheltered-care diversion may be made by the minor, the minor's family, schools, any law enforcement agency, or any other private or public social service agency;

   b) Maintain and operate crisis resolution homes, or contract with private or public agencies offering these services. Provides that residence at these facilities is limited to 20 days during which period individual and family counseling shall be extended to the minor and the minor's family. Provides that failure to resolve the crisis within the 20-day period may result in the minor's referral to a sheltered-care facility for a period not to exceed 90 days. Requires referrals to be accepted from the minor, the minor's family, schools, law enforcement, or any other private or public social service agency; or

   c) Maintain and operate counseling and educational centers, or contract with community-based organizations or public agencies to provide vocational training or skills, counseling and mental health resources, educational support, and arts, recreation, and other youth development services. Provides that these services may be provided separately or in conjunction with crisis resolution homes to be operated by the probation officer. Provides that the probation officer is authorized to make referrals to those organizations when available. (Welf. & Inst. Code, § 654, subd. (d)(1)-(3).).

9) Requires the probation officer to prepare and maintain a follow up report of the actual program measures taken at the conclusion of the program of supervision. (Welf. & Inst. Code, § 654, subd. (d).)

10) Delineates the types of conduct that may result in a student's suspension or recommendation for an expulsion, which includes, but is not limited to: causing, attempting to cause, or threatening to cause physical injury to another person; possessing an imitation firearm;

engaging in, or attempted to engage in hazing. (Ed. Code, § 48900.)

11) Prohibits a suspension or expulsion from being imposed against a student based solely on the fact that the student is truant, tardy, or otherwise absent from school activities. (Ed. Code, § 48900, subd. (w)(1).)

12) Provides that it is the intent of the Legislature that the Multi-Tiered System of Supports, which includes restorative justice practices, trauma-informed practices, social and emotional learning, and school wide positive behavior interventions and support, be used to help pupils gain critical social and emotional skills, receive support to help transform trauma-related responses, understand the impact of their actions, and develop meaningful methods for repairing harm to the school community. (Ed. Code, § 48900, subd. (w)(2).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1005 gives statutory authority for minors to waive traditional juvenile court system hearing and sentencing procedures and experience a court of their peers, commonly known as a youth court, overseen by a presiding judge. Specifically, this bill gives probation departments and juvenile courts another tool to help youth.

   Many youth court programs already exist throughout the state but range in implementation. Programs are under the supervision of a presiding judge and are part of a restorative justice system. Youth courts are used for juveniles who have been charged with minor violations or any other violation the probation officer determines to be appropriate. These programs keep low-level youth out of a formal juvenile justice courtroom and instead empowers youth and their peers to engage in restorative justice opportunities."

2) **Youth Courts**: The Juvenile Court Judges of California, the sponsor of this bill, provided this committee with background on youth court programs.

   "Youth courts are a valuable community investment to help reduce crime and empower youth. With referrals from probation, law enforcement and schools, youth offenders are diverted away from the juvenile justice system and toward a community based system.....

   Although research on youth courts is still emerging, individual research conducted on youth court programs across the nation has found outcomes at least as positive as other diversionary alternatives, and some that were superior to other alternatives. Recent studies show that youth court participation produces the following benefits:

   Accountability: Youth court helps ensure that juvenile offenders are held accountable for their illegal behavior, even when their offenses are relatively minor and would not likely result in sanctions from the traditional juvenile justice system.

   Timeliness: An effective youth court can move juvenile offenders from arrest to sanctions within few days rather than the months that may pass with traditional juvenile courts. This expedited response may increase the positive impact of court sanctions, regardless

of their severity.

Cost savings: Youth court is a cost-effective alternative to traditional juvenile court for some young offenders because youth court workers are volunteers, and because of reduced recidivism. If managed properly, a youth court may handle a substantial number of offenders at relatively little cost to the community.

Civic engagement: A successful youth court may affect the entire community by increasing public appreciation of the legal system, enhancing community-court relationships, encouraging greater respect for the law among youth, and promoting volunteerism among both adults and youth. Civic engagement is strengthened through accountability and education rather than detention and incarceration.

Youth Influence Youth: Teens respond better to pro-social peers than to adult authority figures; hence, they react positively to the youth court program. Youth court provides young people with avenues for positive development and personal success. Youth volunteers learn from each other and gain a deeper understanding of the legal system.

Prevention: Youth courts prevent further delinquent acts by empowering and educating youth."[1]

3) **Argument in Support**: According to *Initiate Justice*, "Youth courts are a type of diversion program where a minor accused of committing a certain offense can opt-into an alternative court-like setting where youth volunteers play a variety of roles in the judicial process – such as district attorney, public defender, bailiff, or juror. Generally, only juveniles charged with minor violations such as shoplifting, vandalism, truancy, or disorderly conduct are eligible for youth courts.

Many youth court programs already exist throughout the state and range in structure. The earliest "programs in California date back to the mid-1980s. These programs keep low-level youth offenders out of the formal juvenile justice system, allowing resources to be better allocated, and youth to be more adequately served.

Initiate Justice fights to end mass incarceration by activating the political power of those directly impacted by it. With more than 45,000 members currently incarcerated in California's state prisons and hundreds of trained organizers on the outside, we advocate for policy change by sponsoring legislation, campaigning for state ballot initiatives, and leading strategic campaigns to ensure policy implementation in line with our goals. Our efforts are directly informed and led by people who are most impacted by our state's criminal legal system. Through this knowledge and expertise, Initiate Justice knows that community-based, restorative justice programs are most effective for reducing recidivism and keeping our communities safe.

"The current law's lack of clear statutory guidance may keep jurisdictions from utilizing cost saving measures, as many youth court programs are primarily funded through non-public resources and community-based organizations. SB 1005 simply gives counties the statutory

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[1] (Youth Court Fact Sheet (ca.gov), as of May 29, 2024,

authority to develop youth court programs and implement a proven successful restorative justice program."

4) **Prior Legislation**: AB 901, Chapter 323, Statutes of 2020, repeal the jurisdiction of the juvenile criminal court over minors who habitually refuse to obey the reasonable and proper orders or directions of school authorities. Require a peace officer to refer a minor who habitually refuses to obey the reasonable and proper orders of the minor's parents or has four or more truancies within one school year to a community-based resource, the probation department, a health agency, a local educational agency, or other governmental entities that may provide services

REGISTERED SUPPORT / OPPOSITION:

Support

California Judges Association
California Public Defenders Association
Initiate Justice
Los Angeles County District Attorney's Office

Opposition

None

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

Date of Hearing: June 4, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1122 (Seyarto) – As Amended March 18, 2024

SUMMARY: Clarifies a bachelor's or associate's degree required for employment as a peace officer may be obtained after the completion of the Peace Officer Standards and Training Program and within 36 months of employment as a peace officer. Specifically, **this bill:**

1) Provides that any requirement for the completion of a bachelor's degree or associate's degree adopted pursuant to the recommendations issued by the Office of the Chancellor of the California Community Colleges may be satisfied after the completion of the Peace Officer Standards and Training Program.

2) States an individual may complete a bachelor's degree **or** associate's degree within 36 months of their employment as a peace officer.

EXISTING LAW:

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

2) Establishes the powers of POST, including among others, to develop and implement programs to increase the effectiveness of law enforcement, to secure the cooperation of state-level peace officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs. (Pen. Code, §§ 830-832.10; 13500 et seq.)

3) Requires every peace officer in the state to satisfactorily complete an introductory training course prescribed by POST. (Pen. Code, § 832, subd. (a).)

4) Provides that each class of public officers or employees declared by law to be peace officers shall meet specified minimum standards, including that they be a high school graduate, pass the General Education Development Test or other high school equivalency test, or have attained a two-year, four-year or advanced degree from an accredited college or university, as specified. (Gov. Code § 1031.)

5) Specifies that it shall not be construed to preclude the adoption of additional or higher standards. (Gov. Code § 1031, subd. (g).)

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

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

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

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

10) Requires the report above to include the following:

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

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

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

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

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

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

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "According to the author: "SB 1122 adds clarity to education requirements for [peace officer candidates] including the timeline for completion of upcoming degree requirements under the PEACE Act. Currently, police officers would be required to complete a bachelor and associate degree within 24 months of

their appointment as a [peace officer]. Adding flexibility to the timeline for completion allows officers to secure their employment and establish their career before being required to complete a degree. As California faces law enforcement shortages in rural and urban areas adding more flexibility will aid the hiring of more high quality officers."

2) **Law Enforcement Minimum Standards:** Government Code section 1031 generally requires a California peace officer be: at least 18 years of age, legally authorized to work in the U.S., be of good moral character, as determined by a background investigation, and be free from any physical, emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation, that might adversely affect the exercise of the powers of a peace officer. (Gov. Code, § 1031, subd. (a-e).)

   AB 89 (Jones-Sawyer) Chapter 405, Statutes of 2021, as originally introduced, required a prospective peace officer to be at least 25 years of age or, if the prospective officer is under the age of 25, have a bachelor's degree. However, that bill was ultimately amended to change the age requirement from 18 to 21 years of age, and to require the Office of the Chancellor of California Community Colleges (OCCC) to develop a modern policing degree program with the Commission on Peace Officer Standards and Training (POST) and other stakeholders.

   AB 89 also required a stakeholder group to submit a report to the Legislature outlining a plan to implement that a modern policing program by June 1, 2023. AB 89 further specified that the OCCC's recommendations must include both the modern policing degree program and bachelor's degree in the discipline of the work group's choosing as minimum education requirements for employment as a peace officer. Finally, AB 89 also required POST to adopt the education criteria for peace officers within two years of the submission of the report to the Legislature by the OCCC.

   Last year, AB 458 (Jones-Sawyer), Chapter 440, Statutes of 2023, as originally introduced, would have codified that expected recommendation and required prospective officers to obtain a modern policing degree or bachelor's degree prior to receiving their basic certificate from POST, unless the officer was already employed by a public agency or enrolled in a basic academy. In November 2023, the OCCC task force released its final report and recommendations as required by AB 89. The OCCC task force recommended the inclusion of "both the modern policing degree program and bachelor's degree in the discipline of their choosing as minimum education requirements for employments as a peace officer."

   Additionally, as part of this broader recommendation, the OCCC task force proposed a modern policing degree as either an Associate of Arts or Associate of Sciences in Policing to be completed prior to obtaining a POST basic certificate or within 24 months of initial appointment as a peace officer. Given the other recommendations regarding minimum educational standards, the OCCC task force likely did not intend to require prospective officers to obtain ***both*** an associate's degree ***and*** a bachelor's degree. That is, the report recommends that "the California Community Colleges should develop the Modern Policing Degree with transferability into a baccalaureate degree in mind," and should "develop a baccalaureate degree in Policing." This bill provides the needed clarity to the task force's recommendations and gives at least some effect to AB 89's requirement that the Legislature adopt the task force requirements within 2 years of their submission to the Legislature.

3) **Law Enforcement Hiring and Staffing:** In the past several years, law enforcement agencies have struggled to recruit and retain sworn personnel. A survey conducted by the Police Executive Research Forum in June 2021 found that the departments surveyed were, on average, filling only 93% of the authorized number of positions available.[1] California has not been immune from officer recruitment and retention challenges. Between September 2021 and February 2022, San Diego lost over 100 officers, with 2022 being the first year the city expects to see retirements and departures outpace new hires.[2] Similarly, as of August 2021, the Los Angeles Police Department had 296 empty officer positions and almost 500 fewer officers on duty than it did the previous year, and as of November 2021, San Francisco was short 533 officers relative to full staffing levels.[3] According to a recent study conducted by the Public Policy Institute of California, between 2020 and 2021, the state lost 2,100 sworn staff and about 1,100 civil staff, and the number of sworn officers per 100,000 residents is the lowest since 1995.[4]

   To address the staffing shortfall, law enforcement agencies have pursued a variety of potential solutions, such as increasing pay and benefits, scaling back job requirements, and hiring more non-sworn support staff. Some states, including California, have sought to address the problem and expand the applicant pool by removing or modifying officer citizenship requirements or raising the maximum age for eligibility.[5]

4) **Argument in Support**: According to the *City of Fullerton Police Officers Association*: Pursuant to AB 89 (Statutes of 2021, Chapter 405), police officers are required to complete a bachelor and associate degree within 24 months of their appointment. Adding flexibility to the timeline for completion allows officers to secure their employment and establish their career before being required to complete a degree. Currently, the ratio of patrol officers per 100,000 Californians reached its lowest rate since 1991 with the state's 10 largest departments all seeing decreases varying from 5% to 20%.

   These reductions come at a time when violent crime and robbery are up 26.4% from 2014. Since 2012, POST has certified an average of 3,200 officers each year. This means the applicant has completed a POST academy, a field training program, and a probationary period as an employee with a hiring agency, usually under the guidance of a more experienced officer. As new requirements for law enforcement education are enforced, maximum flexibility in completing the degree is imperative. Completing POST requirements is difficult and investing the time and finances to get a specialized Modern Policing Degree is a decision candidates should have the flexibility to make after completing the other requirements to be a police officer. Although California continues to face law enforcement

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[1] "Survey on Police Workforce Trends." *Police Executive Research Forum Special Report.* 11 June 2021. https://www.policeforum.org/workforcesurveyjune2021

[2] "San Diego facing new police officer vacancy crisis blamed partly on vaccine mandate." *The San Diego Union-Tribune.* 3 February 2022. https://www.sandiegouniontribune.com/news/politics/story/2022-02-03/san-diego-facing-new-police-officer-vacancy-crisis-blamed-partly-on-vaccine-mandate

[3] "LAPD is short about 300 officers but the chief hopes to fill the gap." *Los Angeles Daily News.* 20 August 2021. https://www.dailynews.com/2021/08/20/lapd-is-short-about-300-officers-but-the-chief-plans-to-fill-the-gap/ ; "SFPD could be short 533 officers amid staffing strains from the vaccine mandate." *ABC 7 News.* 1 November 2021. https://abc7news.com/san-francisco-vaccine-mandate-sfpd-sf-city-workers-on-leave/11188916/

[4] "Law Enforcement Staffing in California." PPIC. February 2023. https://www.ppic.org/publication/law-enforcement-staffing-in-california/

[5] See SB 960 (Skinner, Ch. 825, Stats. of 2022), and AB 1435 (Lackey, 2023), vetoed by the Governor.

shortages in rural and urban areas, adding more flexibility will aid the hiring of more high quality officers.

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

6) **Related Legislation**: AB 390 (Haney) would require the POST to partner with academic researchers to conduct an assessment of existing officer training and report to the Legislature about its findings. AB 390 would also require, no later than January 1, 2026, that POST provide updates to the Legislature regarding its work on peace officer training requirements.

7) **Prior Legislation**:

   a) AB 89 (Jones-Sawyer), Chapter 405, Statutes of 2021, requires all peace officers employed by agencies that participate in the Peace Officer Standards and Training (POST) program, who are not employed in or enrolled in academy for that position as of 2024, to be at least age 21 and meet specified education requirements.

   b) AB 458 (Jones-Sawyer), Chapter 440, Statutes of 2022, requires an officer to attain either of the following degrees prior to receiving a basic certificate beginning on January 1, 2028: a modern policing degree from a California Community College; or, a bachelor's degree or other advanced degree from an accredited college or university. AB 458 was amended in the Senate to relate only to mobility devices.

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

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

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California Community Colleges Chancellor's Office

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 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' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

None

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

Date of Hearing: June 4, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1353 (Wahab) – As Amended May 29, 2024

SUMMARY: Adds mental health services to the list of rights of confined youth. Specifically, **this bill** would require a youth confined in a juvenile facility to have timely access to mental and behavioral health services, including counselors and therapists and any related services.

EXISTING LAW:

1) Grants all people certain inalienable rights, including pursing and obtaining safety, happiness, and privacy. (Cal. Const., art. I, § 1.)

2) Prohibits the deprivation of life, liberty, or property without due process of law or the denial of equal protection of the laws. (U.S. Const., 5th & 14th Amends.; Cal. Const., art. I, § 7.)

3) Prohibits the infliction of cruel and unusual punishment. (U.S. Const., 8th Amend.; Cal. Const., art. I, § 17.)

4) States that the purpose of the juvenile court system is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and that minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment and guidance consistent with their best interest and the best interests of the public. (Welf. & Inst. Code, § 202, subds. (a) & (b).)

5) Provides that juvenile halls shall not be deemed to be, nor be treated as, penal institutions and that juvenile halls shall be safe and supportive homelike environments. (Welf. & Inst. Code, § 851.)

6) Establishes the Youth Bill of Rights, which applies to youth confined in a juvenile facility, and provides that these youth have the following rights, which are established by law and regulation:

   a) To live in a safe, healthy, and clean environment conducive to treatment, positive youth development, and healing and where they are treated with dignity and respect.

   b) To be free from physical, sexual, emotional, or other abuse, or corporal punishment.

   c) To receive adequate and healthy meals and snacks, clean water at any time, timely access to toilets, access to daily showers, sufficient personal hygiene items, clean bedding, and clean clothing in good repair, including clean undergarments on a daily basis, and new underwear that fits. Requires clothing, grooming, and hygiene products be adequate and

respect the child's culture, ethnicity, and gender identity and expression.

d) To receive adequate, appropriate, and timely medical, reproductive, dental, vision, and mental health services provided by qualified professionals and consistent with current professional standards of care.

e) To refuse the administration of psychotropic and other medications consistent with applicable law or unless immediately necessary for the preservation of life or the prevention of serious bodily harm.

f) To not be searched for the purpose of harassment or humiliation, a form of discipline or punishment, or to verify the youth's gender. To searches that preserve the privacy and dignity of the person and to have access to a written search policy at any time, including the policy on who may perform searches.

g) To maintain frequent and continuing contact with parents, guardians, siblings, children, and extended family members, through visits, phone calls, and mail. Authorizes youth to be provided with access to computer technology and the internet for maintaining relationships with family as an alternative, but not as a replacement for, in-person visiting.

h) To make and receive confidential phone calls, send and receive confidential mail, and have confidential visits with attorneys and their authorized representatives, ombudspersons, including the Division of the Ombudsperson of the Office of Youth and Community Restoration (OYCR), and other advocates, holders of public office, state and federal court personnel, and legal service organizations.

i) To have fair and equal access to all available services, housing, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnicity, ancestry, national origin, language, color, religion, sex, sexual orientation, gender identity, gender expression, mental or physical disability, immigration status, or HIV status.

j) To have daily opportunities for age-appropriate physical exercise and recreation, including time spent outdoors and access to leisure reading, letter writing, and entertainment.

k) To contact attorneys, ombudspersons, including the Division of the Ombudsperson of OYCR, and other advocates, and representatives of state or local agencies, regarding conditions of confinement or violations of rights, and to be free from retaliation for making these contacts or complaints.

l) To exercise the religious or spiritual practice of their choice and to participate in or refuse to participate in religious services and activities.

m) To not be deprived of any of the following as a disciplinary measure: food, contact with parents, guardians, family, or attorneys, sleep, exercise, education, bedding, clothing, access to religious services, a daily shower, clean water, a toilet, hygiene products, medical services, reading material, or the right to send and receive mail; to not be subject

to room confinement as a disciplinary measure; to access written disciplinary policies, including the right to be informed of accusations against them, have an opportunity to be heard, present evidence and testimony, and their right to appeal disciplinary decisions.

n) To receive a rigorous, quality education that complies with state law, and the abilities of students and prepares them for high school graduation, career entry, and postsecondary education; to attend appropriate level school classes and vocational training; to have access to postsecondary academic and career technical education courses and programs; to have access to computer technology and the internet for the purposes of education and to continue to receive educational services while on disciplinary or medical status; and to have access to information about the educational options available to youth.

o) To information about their rights as parents, including available parental support, reunification advocacy, and opportunities to maintain or develop a connection with their children; to access educational information or programming about pregnancy, infant care, parenting, and breast-feeding, and childhood development; to proper prenatal care, diet, vitamins, nutrition, and medical treatment; to counseling for pregnant and post partum youth; to not be restrained by the use of leg irons, waist chains, or handcuffs behind the body while pregnant or in recovery after delivery; to not be restrained during a medical emergency, labor, delivery, or recovery unless deemed necessary for their safety and security, and to have restraints removed when a medical professional determines removal is medically necessary; and to access written policies about pregnant, post partum, and lactating youth.

p) To attend all court hearings pertaining to them.

q) To have counsel and a prompt probable cause hearing when detained on probation violations.

r) To make at least two free phone calls within an hour after initially being placed in a juvenile facility following an arrest. (Welf. & Inst. Code, § 224.71)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Mental and behavioral health amongst our youth continues to be a high-priority, and we must make it a priority for youth whom the State of California is responsible for. Data shows that juvenile justice-involved youth have a higher prevalence of trauma and Adverse Childhood Experiences than their peers. Diagnoses often include behavior disorders, substance use disorders, anxiety disorder, attention deficit/hyperactivity disorder (ADHD), and mood disorders. We also know that African American and Hispanic children are least likely to be referred for services until they display major behavioral problems, meaning they go undiagnosed and untreated until their disorder becomes unmanageable and unbearable. Incarceration may be the first opportunity a youth has to receive the mental health support and services they need to live whole, healthy, and productive lives. If we want to reduce the long-term interactions youth have with the justice systems as adults, we have to prioritize mental and behavioral health.

2) **Juvenile Justice and Mental Health**: According to the Office of Juvenile Justice and Delinquency Prevention, a federal agency overseen by U.S. Department of Justice, "Multiple studies confirm that a large proportion of youths in the juvenile justice system have a diagnosable mental health disorder. Studies have suggested that about two thirds of youth in detention or correctional settings have at least one diagnosable mental health problem, compared with an estimated 9 to 22 percent of the general youth population. The 2014 National Survey on Drug Use and Health found that 11.4 percent of adolescents aged 11 to 17 had a major depressive episode in the past year, although the survey did not provide an overall measure of mental illness among adolescents. Similarly, a systematic review…found that youths in detention and correctional facilities were almost 10 times more likely to suffer from psychosis than youths in the general population.

"These diagnoses commonly include behavior disorders, substance use disorders, anxiety disorder, attention deficit/hyperactivity disorder (ADHD), and mood disorders. The prevalence of each of these diagnoses, however, varies considerably among youths in the juvenile justice system. For example, the Pathways to Desistance study (which followed more than 1,300 youths who committed serious offenses for 7 years after their court involvement) found that the most common mental health problem was substance use disorder (76 percent), followed by high anxiety (33 percent), ADHD (14 percent), depression (12 percent), posttraumatic stress disorder (12 percent), and mania (7 percent). A multisite study… across three justice settings (system intake, detention, and secure post-adjudication) found that over half of all youths (51 percent) met the criteria for one or more psychiatric disorders. Specifically, one third of youths (34 percent) met the criteria for substance use disorder, 30 percent met the criteria for disruptive behavior disorders, 20 percent met the criteria for anxiety disorders, and 8 percent met the criteria for affective disorder." [1]

This bills seeks to provide greater access to confined youth to mental health services including counselors, therapists, and mentors in a timely manner.

3) **Argument in Support**: According to *The Prosecutor's Alliance*, the Sponsor of this bill, "SB 1353 promotes public safety by adding to the Youth Bill of Rights the right to access mental health resources including timely access to counselors, therapists, mentors, and other services necessary for mental well-being and rehabilitation while detained in a juvenile facility. Addressing mental health issues will support these youth in leading whole, healthy, and productive lives upon release.

"A July 2020 policy statement published in *Pediatrics* (a publication from the American Academy of Pediatrics) estimates that between 50% and 80% of justice-involved youth have a mental health disorder. A 2017 review from the U.S. Office of Juvenile Justice and Delinquency Prevention concluded that, "having a mental health problem while involved in the system can increase youths' likelihood of recidivating or engaging in other problem behavior."

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[1] (<Intersection between Mental Health and Juvenile Justice System Literature Review (ojp.gov)> as if May 28, 2024, at p. 3 [internal citations omitted].)

4) **Prior Legislation**:

a) AB 2417 (Ting), Chapter 786, Statutes of 2022, makes the Youth Bill of Rights applicable to youth confined in any juvenile justice facility.

b) SB 518 (Migden), Chapter 649, Statutes of 2007, enacted the Youth Bill of Rights for youths confined at DJJ.

REGISTERED SUPPORT / OPPOSITION:

Support

Prosecutors Alliance (Sponsor)
American Academy of Pediatrics, California
California Coalition for Youth
California Public Defenders Association
California Youth Empowerment Network
Californians for Safety and Justice
Communities United for Restorative Youth Justice (CURYJ)
Disability Rights California
Ella Baker Center for Human Rights
Equality California
Felony Murder Elimination Project
Friends Committee on Legislation of California
Initiate Justice
LA Defensa
Legal Services for Prisoner With Children
Los Angeles County District Attorney's Office
Pacific Juvenile Defender Center
Prosecutors Alliance of California, a Project of Tides Advocacy
Rubicon Programs
San Francisco Public Defender
San Mateo County Bar Association, Private Defender Program
Santa Clara County Office of Education
Smart Justice California, a Project of Tides Advocacy
Steinberg Institute
Young Women's Freedom Center

Opposition

None

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

Date of Hearing: June 4, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1381 (McGuire) – As Amended March 20, 2024

SUMMARY: Adds the sale of stolen goods to the Retail Theft Prevention Program's list of crimes that the regional property crimes task force, which is administered by the Department of Highway Patrol (CHP), should investigate.

EXISTING LAW:

1) Requires CHP, in coordination with the Department of Justice (DOJ), to convene a regional property crimes task force to assist local law enforcement in counties identified by CHP as having elevated levels of property crime, including but not limited to, organized retail theft, vehicle burglary and theft of vehicle parts and accessories. (Pen. Code, § 13899.)

2) Instructs the regional property crimes task force to provide local law enforcement in the identified region with logistical support and other law enforcement resources, including, but not limited to, personnel and equipment, as determined to be appropriate by the CHP commissioner in consultation with task force members. (Pen. Code, § 13899.)

3) Repeals the property crimes task force on January 1, 2026. (Pen. Code, § 13899.1.)

4) Divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)

5) Defines "grand theft" as when the money, labor, or real or personal property taken is of a value exceeding $950 dollars or when the property is taken from a person, or when the property stolen is an automobile or firearm. (Pen. Code, § 487)

6) Defines "petty theft" as obtaining any property by theft where the value of the money, labor, or real or personal property taken does not exceed $950. (Pen. Code, § 490.2, subd. (a).)

7) Defines "receiving stolen property" as buying or receiving any property that has been stolen knowing the property is stolen, or concealing, selling, or withholding any property from the owner, knowing the property is stolen. (Pen. Code, § 496, subd. (a).)

8) Provides that receiving stolen property that exceeds $950 is a wobbler, punishable as a misdemeanor or a felony. (Pen. Code, § 496, subds. (a), (d).)

9) Provides that receiving stolen property that does not exceed $950 is a misdemeanor, but may be charged as a felony if a person has a prior "super strike," or a registerable sex conviction, as specified. (Pen. Code, § 49, subd. (a).)

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

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

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

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

   d) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of the acts described, or any other statute defining theft of merchandise. (Pen. Code, § 490.4, subd. (a)(1)-(4).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, ">

2) **Efforts to Combat Retail Theft:** On December 19, 2023, Governor Newsom announced, as part of Governor Newsom's Real Public Safety Plan, "in the first 11 months of the year alone, the California Highway Patrol (CHP) — through its Organized Retail Crime Task Force (ORCTF) — increased proactive organized retail crime operations by over 310%, made more than 1,000 arrests (a 109% year-over-year increase) and recovered 187,515 items stolen from retailers (38,600 more items than last year)." (<Combating Organized Retail Crime: California Highway Patrol Increases Operations by Over 310% | California Governor> [as of Apr. 3, 2024].)

   The Governor's Public Safety Plan was originally unveiled on December 17, 2021, and identified three major goals, two of which were bolstering local law enforcement response to stop and apprehend criminals and having more prosecutors to hold perpetrators accountable.

   The Public Safety Plan breaks down these goals as follows:

   "BOLSTERING LOCAL LAW ENFORCEMENT RESPONSE TO STOP AND APPREHEND CRIMINALS:

   - **Increased Local Law Enforcement to Combat Retail Theft**: The Real Public Safety Plan includes $255 million in grants for local law enforcement over the next three years to increase presence at retail locations and combat organized, retail crime so Californians and small businesses across the state can feel safe.

- **Smash and Grab Enforcement Unit:** Governor Newsom's Plan includes a permanent Smash and Grab Enforcement Unit. Operated by the California Highway Patrol, the unit will consist of enforcement fleets that will work with local law enforcement to crack down on organized retail, auto and rail theft in the Bay Area, Sacramento, San Joaquin Valley, Los Angeles and San Diego regions.

- **Keeping Our Roads Safe:** With the Real Public Safety Plan, CHP will now be able to strategically deploy more patrols based on real-time data to help keep our roads safe. Governor Newsom will also work with the Legislature to upgrade highway camera technology to gather information to help solve crimes.

- **Support for Small Businesses Victimized by Retail Theft**: Governor Newsom's Plan will create a new grant program to help small businesses that have been the victims of smash-and-grabs to get back on their feet quickly.

"MORE PROSECUTORS TO HOLD PERPETRATORS ACCOUNTABLE:

- **Dedicated Retail Theft Prosecutors**: The plan will ensure District Attorneys are effectively and efficiently prosecuting retail, auto and rail theft-related crime by providing an additional $30 million in grants for local prosecutors over three years.

- **Fighting Crime Statewide**: The Real Public Safety Plan will allow the Attorney General to continue leading anti-crime task forces around the state, including High Impact Investigation Teams, LA interagency efforts and task forces to combat human trafficking and gangs.

- **Statewide Organized Theft Team**: Governor Newsom's plan includes $18 million over three years for the creation of a dedicated state team of special investigators and prosecutors in the Attorney General's office to go after perpetrators of organized theft crime rings that cross jurisdictional lines." (<Governor Newsom Unveils Public Safety Plan to Aggressively Fight and Prevent Crime in California | California Governor> [as of April 3, 2024].)

Currently, the Organized Retail Theft Crime Task Force is responsible for assisting law enforcement agencies with the crimes associated with retail theft. This bill would add sale of stolen goods to the list of crimes to be considered in identifying geographic areas experiencing elevated levels of property crime, in the organized retail theft prevention program.

3) **Argument in Support**: According to *The Town of Apple Valley*, "These bills propose several methods of addressing resale of stolen property and fencing locations that facilitate this illegal sale of stolen property. These methods range from providing funding and task forces for law enforcement to identify and crack down on these fencing operations, to creating sentencing enhancements for individuals convicted of selling property acquired through theft."

4) **Related Legislation**:
   a) AB 1802 (Jones-Sawyer) would extend the sunset date for organized retail theft to January 1, 2031. AB 2943 is pending in Senate Public Safety Committee.

b) AB 2943 (Zbur) would, among other things, extend the organized retail theft statute until January 2031, and make it a crime for any person to possess property unlawfully that was acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property is not possessed for personal use and the person has intent to sell, exchange, or return the merchandise for value, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value, and the value of the possessed property exceeds $950. AB 2943 is pending in Senate Public Safety Committee.

5) **Prior Legislation**:

a) AB 1653 (Patterson), Chapter 13, Statutes of 2022, added theft of vehicle parts and accessories to the property crimes that the California Highway Patrol's Regional Property Crimes Task Force should prioritize.

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

c) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft and expanded jurisdiction to prosecute cases of theft or receipt of stolen merchandise. This law was set to expire on January 1, 2021.

d) AB 2372 (Ammiano), Chapter 693, Statutes of 2010, raised the general value threshold for grand theft from $400 to $950.

REGISTERED SUPPORT / OPPOSITION:

Support

Buena Park; City of
California Association of Highway Patrolmen
City of Agoura Hills
City of Artesia
City of Buena Park
City of Citrus Heights
City of Cypress
City of El Cerrito
City of Fontana
City of Fountain Valley
City of Grand Terrace
City of Jackson
City of La Mirada
City of Lakeport
City of Lakewood CA
City of Los Alamitos
City of Manteca
City of Oakdale
City of Paramount
City of Port Hueneme

City of Rohnert Park
City of Rolling Hills Estates
City of Rosemead
City of San Luis Obispo
City of Stanton
Fullerton; City of
League of California Cities
Los Angeles County District Attorney's Office
Mission Viejo; City of
Oakley; City of
Town of Apple Valley

Opposition

None

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

Date of Hearing: June 4, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1473 (Laird) – As Introduced February 16, 2024

SUMMARY: Requires a sex offender management professional who administers a State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) to send the test subject's score directly to the Department of Justice (DOJ) within thirty days of the assessment, and eliminates the requirement that the test score must initially be forwarded to the subject's parole or probation officer.

EXISTING LAW:

1) Establishes the Sex Offender Management Board (the Board), as specified. (Penal Code § 9000 et seq.)

2) Requires the board to "address any issues, concerns, and problems related to the community management of adult sex offenders. The main objective of the board, which shall be used to guide the board in prioritizing resources and use of time, is to achieve safer communities by reducing victimization." (Penal Code § 9002.)

3) Establishes the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as specified. (Penal Code § 290.04.)

4) Provides that commencing January 1, 2007, the SARATSO for adult males required to register as sex offenders shall be the STATIC-99 risk assessment scale, which shall be the SARATSO static tool for adult males. (Penal Code § 290.04 (b)(1).)

5) Requires the SARATSO Review Committee to determine whether the STATIC-99 should be supplemented with an actuarial instrument that measures dynamic risk factors or whether the STATIC-99 should be replaced as the SARATSO with a different risk assessment tool. (Penal Code § 290.04 (b)(2).)

6) Requires registered sex offenders to participate in an approved sex offender management program while on parole or "formal supervised probation," as specified. (Penal Code §§ 290.09 and 1203.067.)

7) Provides that the sex offender management professionals certified by the Board who provide sex offender management programs for any probation department or CDCR shall assess each registered sex offender on formal probation or on parole using the SARATSO dynamic tool when a dynamic risk factor changes and shall do a final dynamic assessment within six months of the offender's release from supervision. The management professional shall also assess the sex offenders in the program with the SARATSO future violence tool. (Penal Code §290.09 (b)(2).)

FISCAL EFFECT: Unknown

COMMENT:

1) **Author's Statement**: According to the author, "California is required to score sexual offenders based on predicted risk of re-offense and maintain a record of these scores. The current process for submitting scores to the California Sex and Arson Registry (CSAR) database is redundant and inefficient. Under existing law, certified sex offender management professionals determine the score and submit it to parole and probation officers. Parole and probation officers are then required to submit these score to the Department of Justice (DOJ), and the DOJ will then manually input scores into the database.

   "Senate Bill 1473 streamlines and standardizes CSAR reporting methods by allowing certified treatment providers to submit scores directly to the database, and removing reporting requirements for the DOJ, probation officers, and parole officers. This also ensures accurate, complete, and timely reporting of risk assessment scores to the database that law enforcement agencies and courts rely on."

2) **Sex Offender Management Board**. On September 20, 2006, Governor Arnold Schwarzenegger signed Assembly Bill 1015, which created the California Sex Offender Management Board (CASOMB). The bill had been introduced by Assembly Members Judy Chu and Todd Spitzer and passed the California Legislature with nearly unanimous bipartisan support.

   Because California is the most populated state in the Union and has had lifetime registration for its convicted sex offenders since 1947, California has more registered sex offenders than any other state with about 88,000 identified sex offenders (*per Department of Justice, August 2007*). Currently, the California Department of Corrections and Rehabilitation (CDCR) supervises about 10,000 of those 88,000 sex offenders, of which about 3,200 have been designated as High Risk Sex Offenders (*CDCR Housing Summit, March 2007*). Additionally, there are about 22,500 adult sex offenders serving time in one of 32 state prisons operated by CDCR (*California Sex Offender Management Task Force Report, July 2007*).

   While it is commonly believed that most sexual assaults are committed by strangers, the research suggests that the overwhelming majority of sex offenders victimize people known to them; approximately 90 percent of child victims know their offenders, as do 80 percent of adult victims [per *Kilpatrick, D.G., Edmunds, C.N., & Seymour, A.K. (1992) Rape in America: A Report to the Nation. Arlington, VA: National Victim Center*]. (https://casomb.org/)

3) **SARATSO**. The term SARATSO refers to evidence-based, state authorized risk assessment tools used for evaluating sex offenders.

   Existing law requires a certified sex offender management professional to assess sex offenders with the SARATSO future violence tool. They are then required to report the person's SARATSO score to the person's parole agent or probation officer and that that person is required to report the score to the DOJ. The score is then accessible to

law enforcement through the DOJ California Sex and Arson registry.

This bill instead has the sex offender management professional report the score directly to the DOJ database. The intent is to streamline the process.

4) **Argument in Support.** According to the *Chief Probation Officers of California*, "State law currently requires certified treatment providers to use the State Authorized Risk Assessment Tools for Sex Offenders (SARATSO) for individuals registered as a sex offender. Certified sex offender management professionals are then required to provide these scores to probation and parole officers, who then submit the scores to the California Department of Justice (DOJ). The DOJ is then required to make SARATSO risk assessment scores accessible to law enforcement through the California Sex and Arson Registry (CSAR) database.

"SB 1473 seeks to enhance and better facilitate these processes by requiring the certified treatment providers to submit scores directly to the Department of Justice. In this area of practice, we believe that making these specific changes to report directly to DOJ better facilitates processes for probation and the various entities involved and helps to streamline submission of scores to DOJ."

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Rob Bonta
Chief Probation Officers' of California (CPOC)

Opposition

None

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

Date of Hearing: June 4, 2024
Consultant: Samarpreet Kaur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1489 (McGuire) – As Amended March 20, 2024

SUMMARY: Requires the Peace Officer Standards Accountability Advisory Board to prepare its annual report on the activities of the Commission on Peace Officer Standards and Training (POST), regarding peace officer certification, no later than February 1 of each year.

EXISTING LAW:

1) Establishes the Peace Officer Standards Accountability Advisory Board, hereafter referred to as the board. The purpose of the board shall be to make recommendations on the decertification of peace officers to POST. (Pen Code, § 13509.6, subd. (a)(b).)

2) Provides that POST shall make such inquiries as may be necessary to determine whether every city, county, city and county, and district receiving state aid pursuant to this chapter is adhering to the standards for recruitment, training, certification, and reporting established pursuant to this chapter. (Pen. Code, § 13512, subd. (a).)

3) Requires that the board to prepare an annual report on the activities of POST, the board, division, and subject agencies regarding peace officer certification under this chapter. The report shall include, without limitation, all of the following:

    a) The number of applications for certification and the number of certifications granted or denied;

    b) The number of events, as specified below, reported:

        i. The employment, appointment, or termination or separation from employment or appointment, by that agency, of any peace officer. Separation from employment or appointment includes any involuntary termination, resignation, or retirement;

        ii. Any complaint, charge, or allegation of conduct against a peace officer employed by that agency that could render a peace officer subject to suspension or revocation of certification by POST, as specified;

        iii. Any finding or recommendation by a civilian oversight entity, including a civilian review board, civilian police commission, police chief, or civilian inspector general, that a peace officer employed by that agency engaged in conduct that could render a peace officer subject to suspension or revocation of certification by POST, as specified;

iv. The final disposition of any investigation that determines a peace officer engaged in conduct that could render a peace officer subject to suspension or revocation of certification by POST, as specified, regardless of the discipline imposed; and,

v. Any civil judgment or court finding against a peace officer based on conduct, or settlement of a civil claim against a peace officer or an agency based on allegations of officer conduct that could render a peace officer subject to suspension or revocation of certification by POST, as specified. (Pen. Code, § 13510.9, subd. (a)(1-5).)

c) The criteria and process for review and investigation by the division, the number of reviews, and the number of investigations conducted by the division;

d) The number of notices sent by the division, the number of requests for review received, and the number of suspensions or revocations or denials made, specifically:

i. When, upon the completion of a serious misconduct investigation conducted, the division finds reasonable grounds for the denial, revocation, or suspension of a peace officer's certification, it shall take the appropriate steps to promptly notify the peace officer involved, in writing, of its determination and reasons therefore, and shall provide the peace officer with a detailed explanation of the decertification procedure and the peace officer's rights to contest and appeal; and,

ii. Upon notification, the peace officer may, within 30 days, file a request for a review of the determination by the board and commission. If the peace officer does not file a request for review within 30 days, the peace officer's certification shall be suspended or revoked, consistent with the division's determination, without further proceedings. If the peace officer files a timely review, the board shall schedule the case for hearing. (Pen. Code, § 13510.85, subd. (a)(1-2).)

e) The number of review hearings held by the board and POST and the outcomes of those review hearings;

f) The number of administrative hearings held on suspensions or revocations and the number of suspensions or revocations resulting from those hearings;

g) Any cases of judicial review of commission actions on suspension or revocation and the result of those cases;

h) The number of certifications voluntarily surrendered and the number placed on inactive status;

i) Any compliance audits or reviews conducted pursuant to this chapter and the results of those audits; and,

j) Any other information the board deems relevant to evaluating the functioning of the certification program, the decertification process, and the staffing levels of the division. (Pen. Code, § 13512, subd. (b)(1-10).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Peace Officer Standards and Training (POST) Certification Reporting:** POST was created by the Legislature in 1959 to set minimum selection and training standards for California law enforcement. As of January 1, 2023, POST is also required to provide information regarding reasons as to why a California peace officer had to be decertified. According to the POST Website, "Information relative to peace officer certification is a matter of public record. In the interest of providing timely data regarding the certification actions taken by POST, this report includes data related to peace officer appointments and separations, the issuance of Proofs of Eligibility and Basic Certificates, and actions taken by POST to suspend or revoke a peace officer's certification. In addition, POST is publishing and maintaining data regarding the reporting and processing of allegations of serious misconduct to keep the public informed of the review of such reports by POST." (POST, *Peace Officer Certification Reporting*; <https://post.ca.gov/Peace-Officer-Certification-Reporting>.) This bill would require the annual report to be prepared by no later than February 1 of each year.

2) **Author's Statement**: According to the author, "Under Senate Bill 2 (Bradford & Atkins), the Peace Officer Standards and Training Commission is required to annually report the activities of the Commission, board, division, and subject agencies regarding peace officer certification.

   "In the 2022-23, and the 2023-24 Budget Acts, the Legislature approved positions and resources, both ongoing and limited-term funding, for the POST Commission on implementation of SB 2, based on POST's initial staffing workload estimates.

   "Although these workload estimates have been significant, it is unclear whether these estimates will change as implementation moves forward.

   "In order to allow the Legislature, including the Senate Budget Committee, sufficient time to review these issues and to anticipate the timeline of its annual report, SB 1489 specifies that the POST SB 2's annual report be due in February."

3) **Prior Legislation**:

   a) SB 2 (Bradford), of the 2021-2022 Legislative Session, Chapter 409, Statutes of 2021, Grants new powers to the Commission on Peace Officers Standards and Training (POST) by creating Peace Officer Standards Accountability Advisory Board and requiring the board to prepare an annual report on the activities of POST.

REGISTERED SUPPORT / OPPOSITION:

Support

None Submitted.

Opposition

None Submitted.

Analysis Prepared by: Samarpreet Kaur / PUB. S. / (916) 319-3744