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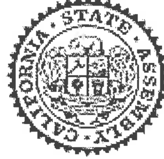
California State Assembly

PUBLIC SAFETY



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AGENDA

Tuesday, June 11, 2024
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	SB 53	Portantino	Firearms: storage.
2.	SB 905	Wiener	Crimes: theft from a vehicle.
3.	SB 982	Wahab	Crimes: organized theft.
4.	SB 1242	Min	Crimes: fires.
5.	SB 1253	Gonzalez	Firearms: firearm safety certificates.
6.	SB 1416	Newman	Sentencing enhancements: sale, exchange, or return of stolen property.
7.	SB 1484	Smallwood-Cuevas	Jurisdiction of juvenile court.
8.	SB 1502	Ashby	Controlled substances: xylazine.

Date of Hearing: June 11, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 53 (Portantino) – As Amended May 28, 2024

SUMMARY: Prohibits, beginning January 1, 2026, except when carried by or under the control of the owner or other lawfully authorized user, any person from keeping or storing a firearm in a residence owned or controlled by that person unless the firearm is stored in a locked box or safe included on the Department of Justice's (DOJ) list of approved firearms safety devices, as specified. Specifically, **this bill**:

1) Requires any approved firearms safety device to be properly engaged so that the firearm cannot be accessed.

2) Punishes a first violation of illegal storage of a firearm, as specified, as an infraction, and a second or subsequent violation punishable as a misdemeanor punishable by up to six months in county jail.

3) Requires DOJ to promptly engage in a public awareness and education campaign to inform residents about the firearms storage provisions in this bill.

4) Prohibits a person convicted of unlawful storage from owning, purchasing, receiving, or possessing a firearm within one year of the conviction, as specified.

5) States "authorized user" means an individual who meets both of the following requirements:

   a. *The individual is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.*

   b. *The* individual meets one of the following requirements:

      i. The individual is allowed to possess a firearm pursuant to an exemption outlined in existing law pertaining to affecting a sale through a lawful firearms dealer, where a firearm is transferred without a dealer.

      ii. The individual is the owner of the firearm.

6) Punishes possession of a firearm where a person is convicted of unlawful storage and is found guilty of possession of a firearm thereafter, by up to one year in county jail or three.

7) Removes exceptions in existing law related to child access to a firearm where there was no reasonable exceptions a child is likely to be present on the premises.

EXISTING LAW:

1) Prohibits the sale, lease or transfer of firearms unless the person has been issued a license by the California Department of Justice, and establishes various exceptions to this prohibition. (Pen. Code, §§ 26500 *et seq.*)

2) Provides that a firearm dealer may be assessed civil fines or may have their firearms license revoked for any violation of a number of specified prohibitions and requirements, with limited exceptions. (Pen. Code, § 26800.)

3) Provides that the business of a firearms dealer may only be conducted in buildings designated in the license as the firearm dealer's business premises, as specified, and that a dealer must display their license on the premises where it can easily be seen. (Pen. Code, §§ 26805 & 26810.)

4) Requires a dealer to conspicuously post a detailed list of all charges imposed by governmental agencies for processing firearm transfers and all the fees a dealer charges, as specified. (Pen. Code, § 26875.)

5) Requires DOJ to solicit input from any reputable association or organization, including any law enforcement association that has as one of its objectives the promotion of firearm safety, in the development of the firearm safety certificate instructional materials. (Pen. Code, § 31630, subd. (c).)

6) Requires the firearm safety instruction manual to prominently include the following firearm safety warning: "Firearms must be handled responsibly and securely stored to prevent access by children and other unauthorized users. California has strict laws pertaining to firearms, and you can be fined or imprisoned if you fail to comply with them. Visit the Web site of the California Attorney General at https://oag.ca.gov/firearms for information on firearm laws applicable to you and how you can comply." (Pen. Code, § 31630, subd. (d).)

7) Requires DOJ to develop a written, objective firearm-safety-certificate test, in English and in Spanish, and prescribe its content, form, and manner, to be administered by a DOJ-certified instructor. (Pen. Code, § 31640, subd. (a).)

8) Requires the firearm safety test to be administered orally if the person taking the test is unable to read. (Pen. Code, § 31640, subd. (b).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, " According to the author: "Gun violence is a public health epidemic that requires a multifaceted approach. This bill will further strengthen California's strong system of gun regulations by creating a standard for storage of firearms in all homes in the state to prevent unintentional shootings, mass shootings, gun suicide and gun theft. California has standards regarding access to firearms by minors and prohibited persons, and has prioritized public education and awareness of the importance of safe storage; however, there is no broad requirement for secure storage of firearms by gun owners. SB 53

builds off of existing laws. The reality is that safely storing a firearm should be as automatic as putting on a seat belt and SB 53 is an important step to making that a reality. Safe storage of firearms has a measurable impact on reducing the rate of suicide, in preventing unintentional shootings that result in injury or death, and in preventing gun theft.

2) **Need for the Bill**: According to the author, requiring safe storage for any firearm will help combat the apparent rising tide of gun violence in America, and California specifically. According to a Pew Study in 2021:

> "More Americans died of gun-related injuries in 2020 than any other year on record," according to a new Pew Research Center analysis of federal Centers for Disease Control and Prevention statistics. (The Pew Charitable Trusts funds the center and Stateline.) Of the 45,222 gun-related deaths, 54% were suicides and 43% were homicides, Pew found.[1] A RAND Corporation study in 2020 found child access prevention laws may decrease violent crime, suicide and unintentional injuries and deaths, but more study is needed."

Additionally, the author states: "California has laws regarding access to firearms by minors and prohibited persons, and has prioritized public education and awareness of the importance of safe storage; however, there is no broad requirement for secure storage of firearms by gun owners with specific standards for how and when they need to be stored. This is a huge gap in the law that is allowing for continued gun suicide, theft, and unintentional shootings. SB 53 builds off of existing laws. The reality is that safely storing a firearm should be as automatic as putting on a seat belt and SB 53 is an important step to making that a reality. Safe storage of firearms has a measurable impact on reducing the rate of suicide, in preventing unintentional shootings that result in injury or death, and in preventing gun theft."

3) **Existing Firearms Storage Laws:** Both California and federal law require any firearms purchase to include a "firearm safety device" that is approved by the DOJ. While there are several advisements and firearm safety device requirements, there is no requirement that any firearm be stored in a particular manner inside a person's home unless there are children or an otherwise prohibited person in the home. Federal law since 2005 has required licensed gun dealers to sell every handgun with a secure storage or safety device, but no federal law requires owners to use the devices.

However, local ordinances may require a person to store a firearm in a particular manner, even in a person's own home. Furthermore, a person may be prosecuted for storage in a place under a person's custody or control in a way that a person prohibited from possessing a firearm under state or federal law may gain access to it. Additionally, Penal Code section 25100 distinguishes between a first, second, and third degree violations of criminal storage of a firearm:

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[1] Located at https://dailymontanan.com/2022/02/27/gun-storage-safe-is-a-rare-moment-of-agreement-in-gun-control-debate/ [last visited May 22, 2024]

First degree criminal storage is any person who: (a) keeps any firearm within any premises that are under the person's custody or control; (b) knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm; or (c) the child obtains access to the firearm and thereby causes death or great bodily injury to the child or any other person, or the person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law obtains access to the firearm and thereby causes death or great bodily injury to themselves or any other person. (Pen. Code, § 25100, subd. (a)(1-3).)

Second degree criminal storage includes any person: (a) who keeps any firearm within any premises that are under the person's custody or control; (b) knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm; (c) the child obtains access to the firearm and thereby causes injury, other than great bodily injury, to the child or any other person, or carries the firearm either to a public place or who brandishes the firearm at another person; (d) or the person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law obtains access to the firearm and thereby causes injury, other than great bodily injury, to themselves or any other person, or carries the firearm either to a public place or brandishes a weapon at another person. (Pen. Code, § 25100, subd. (b)(1-4).)

Third degree criminal storage requires a person engaging in the following: (a) a person keeps any firearm within any premises that are under the person's custody or control; (b) knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm; or (c) the child obtains access to the firearm and thereby causes injury, other than great bodily injury, to the child or any other person, or carries the firearm either to a public place or in public, or the person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law obtains access to the firearm and thereby causes injury, other than great bodily injury, to themselves or any other person, or carries the firearm either to a public place or in public. (Pen. Code, § 25100, subd. (c)(1-4).)

According to the DOJ's explanation of safe storage requirements:

> If you decide to keep a firearm in your home you must consider the issue of how to store the firearm in a safe and secure manner. **California recognizes the importance of safe storage by requiring that all firearms sold in California be accompanied by a DOJ-approved firearms safety device or proof that the purchaser owns a gun safe that meets regulatory standards established by the Department.** There are a variety of safety and storage devices currently available to the public in a wide range of prices. Some devices are locking mechanisms designed to keep the firearm from being loaded or fired, but don't prevent the firearm from being handled or stolen.

> There are also locking storage containers that hold the firearm out of sight. For maximum safety you should use both a firearm safety device and a locking storage container to store your unloaded firearm. Two of the most common locking mechanisms are trigger locks and cable locks. Trigger locks are typically two-piece devices that fit around the trigger and trigger guard to prevent access to the trigger. One side has a post that fits into a hole in the other side. They are locked by a key or combination locking mechanism. Cable locks typically work by looping a strong steel cable through the action of the firearm to block the firearm's operation and prevent accidental firing.
>
> However, neither trigger locks nor cable locks are designed to prevent access to the firearm. Smaller lock boxes and larger gun safes are two of the most common types of locking storage containers. One advantage of lock boxes and gun safes is that they are designed to completely prevent unintended handling and removal of a firearm. Lock boxes are generally constructed of sturdy, high-grade metal opened by either a key or combination lock. Gun safes are quite heavy, usually weighing at least 50 pounds. **While gun safes are typically the most expensive firearm storage devices, they are generally more reliable and secure**.[2] (Emphasis added.)

Penal Code section 25200 specifies various criminal penalties for allowing a child to access a firearm in the home, regardless of whether the firearm was loaded or unloaded. However, if there are no children or anyone otherwise prohibited from possessing a firearm in the home, the law only encourages firearm

A person may be sentenced to a misdemeanor and punished by imprisonment in the court jail for up to one year and a fine of up to $1,000, or both if:

(a) The person keeps a firearm, loaded or unloaded, within any premises that are under the person's custody or control.

(b) The person knows or reasonably should know that a child is likely to gain access to that firearm without the permission of the child's parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm.

(c) The child or the prohibited person obtains access to that firearm and thereafter carries that firearm off-premises. (Pen. Code, §

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[2] Located at https://oag.ca.gov/firearms/tips. Last visited on May 14, 2024.

25200, subd. (a)(1-3).)

A person may be sentenced to a one year misdemeanor and a fine of up to $5,000 if:

(a) The person keeps any firearm within any premises that are under the person's custody or control.

(b) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian, or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm.

(c) The child or the prohibited person obtains access to the firearm and thereafter carries that firearm off-premises to any public or private preschool, elementary school, middle school, high school, or to any school-sponsored event, activity, or performance, whether occurring on school grounds or elsewhere. (Pen. Code, § 25200, subd. (b)(1-3).)

The Attorney General of California website offers a search engine based on a firearm make and model to determine which safety device is approved by the DOJ.[3] However, the DOJ also regularly updates its approved firearm safety devices as many no longer comply with DOJ regulations. This often creates a lot of uncertainty for firearms owners trying to comply with these provisions.

This bill prohibits any person from keeping or storing a firearm, except as specified, in a residence unless the firearm is stored in a locked box or safe that is included on the Department of Justice's (DOJ) list of approved firearms safety devices, as specified.[4] This bill also criminalizes failure to secure a firearm with an approved firearms safety device, except as specified, and states it is punishable as an infraction, and a second or subsequent violation punishable as a misdemeanor punishable by up to six months in county jail.

As explained above, existing criminal storage laws restrict firearm possession in the home when there is a child present or person otherwise prohibited from possessing a firearm. However, this bill states a person must keep a firearm in a DOJ-approved lock box or safe unless it is *"carried by or under the control of the owner"* or lawfully authorized user. It is not clear pursuant to the terms of this bill whether a person may just keep their firearm on their nightstand or in an easily accessible area at night, but not necessarily "under their control" meaning holding or carrying the gun.

A lack of clarity may result in prosecutions of, perhaps, a person who the victim of a crime and chooses to sleep with a gun or keep a gun nearby for protection, and is later determined to be illegally storing a gun. As explained below, that is precisely the conduct the Second Amendment has been interpreted to protect.

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[3] See https://oag.ca.gov/firearms/certified-safety-devices/search
[4] See https://oag.ca.gov/firearms/fsdcertlist

As explained above, Penal Code section 25100, subdivision (a) – first degree criminal storage – prohibits keeping a firearm (whether loaded or unloaded) within any premises that are ***under a person's custody or control*** and knows or reasonably should know that a child (any person under 18) is likely to gain access to the firearm without permission, or a prohibited person is likely to gain access to the firearm, or a child obtains access to the firearm and thereby causes death or great bodily injury to themselves or any other person.

This proposed statute uses the phrase "custody or control" much broader and has, at least in part, been interpreted as any area over which a person owns or has a right to access. (See *Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1317, fn. 13 ["Under Penal Code section 25100, … a person commits the crime of 'criminal storage of a firearm' if he or she 'keeps any loaded firearm within any premises that are **under the person's custody or control**,' 'knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian' and '[t]he child obtains access to the firearm and thereby causes death or great bodily injury to the child or any other person.' However, there is no criminal violation when '**[t]he firearm is carried on the person or within close enough proximity thereto that the individual *can readily retrieve* and use the firearm as if carried on the person**." (Emphasis added.)].)

Whether the firearm is ***"readily retrievable"*** will be an issue of fact for the jury[5] – but may lead to troubling consequences given the politics of the Second Amendment – a person in El Dorado County may have the right to keep their guns in a box on their dresser if they live alone, but someone in San Francisco may not.

Oregon Law: Oregon passed a storage law similar to the proposed statute. It states:

> (1)(a) An owner or possessor of a firearm shall, at all times that the firearm is not carried by or under the control of the owner, possessor or authorized person, secure the firearm:
>
> (A) With **an engaged trigger or cable lock;**
>
> (B) In a locked container; or
>
> (C) In a gun room.
>
> (b) For purposes of paragraph (a) of this subsection, a firearm is not secured if:
>
> **(A) A key or combination to the trigger or cable lock or the container is readily available to a person the owner or possessor has not authorized to carry or control the firearm.**
>
> (B) The firearm is a handgun, is left unattended in a vehicle and is within view of persons outside the vehicle. (OR Rev Stat § 166.395 (2021).)

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[5] There is no CalCRIM instruction for violation of Penal Code section 25100

However, Oregon's safe storage requirement does not apply if a gun owner is either alone in their home or with other people allowed to use the gun.[6] This law may face litigation at some point, but Oregon passed, by voter initiative, a restrictive law pertaining to gun permits and magazine capacities. That law has been the subject of considerable protracted litigation and is on appeal to the Ninth Circuit.[7]

Massachusetts Law: Massachusetts also requires safe storage at home. The law states:

> "It shall be unlawful to store or keep any firearm, rifle or shotgun including, but not limited to, large capacity weapons, or machine gun **in any place unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user.** It shall be unlawful to store or keep any stun gun in any place unless such weapon is secured in a locked container accessible only to the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept if carried by or under the control of the owner or other lawfully authorized user."[8]

Massachusetts ruled in 2010, before *Heller* and *Bruen*, that "the legal obligation to safely secure firearms (in the Massachusetts law) is not unconstitutional ... and that the defendant may face prosecution on this count." (*Commonwealth v. Runyan* (2010) 456 Mass. 230 [922 N.E.2d 794].) This statute was re-litigated following Heller, and in 2013, the Massachusetts Supreme Court held:

> In addressing the defendant's argument, we agree with his observation that our decision in *Commonwealth v. Runyan*, 456 Mass. 230, 922 N.E.2d 794 (2010) (*Runyan*), was limited to whether the storage statute infringed on one's right to possess a firearm for self-defense in the home. Our decision in *Runyan* did not, however, address whether *Heller* applied with equal force to circumstances outside the home, nor have we ever specifically held this to be the case. We decline to do so here. Yet, even assuming for the purposes of this analysis only that *Heller* applied to firearm possession outside the home, our analysis in Runyan, supra at 235-237, leads us to conclude that the storage statute would pass constitutional muster. The storage statute plainly does not bar the defendant from carrying a firearm on his person or under his control without a trigger lock

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[6] Located at https://www.statesmanjournal.com/story/news/2021/09/25/oregon-new-gun-law-goes-into-effect-what-know/5863197001/ [Last visited May 28, 2024].
[7] Located at https://www.courthousenews.com/judge-rules-oregon-gun-measure-is-unconstitutional/#:~:text=The%20ruling%20prevents%20the%20state,gun%20restrictions%20in%20the%20nation.&text=PORTLAND%2C%20Ore.,it%20violates%20the%20state's%20constitution [last visited May 28, 2024.]
[8] Located at https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXX/Chapter140/Section131L [located at May 28, 2024.]

> or the need to secure it in a locked container either inside or outside of a motor vehicle.18 See G. L. c. 140, § 131C (a)-(b) (specifically permitting gun owner holding class A license to carry to possess or carry firearm on his person for all lawful purposes). Here, as in *Runyan*, the storage statute would not infringe on the defendant's Second Amendment right ***to self-defense because it only imposes storage restrictions where the firearm is not within the gun owner's possession or control."*** (Emphasis added.) (*Commonwealth v. Reyes* (2013) 464 Mass. 245, 257 [982 N.E.2d 504, 513-514].)

The Court ruled that the criminal storage laws do not prevent someone from possessing a firearm, for example, on a nightstand or dresser, assuming it is within the person's possession or control. That phrase seems to be interpreted more broadly than "carried by or under the control of the owner or other lawfully authorized user."

4) **Second Amendment:** Any Second Amendment restriction must be consistent with the nation's historical tradition of firearms regulation. After the Court's ruling in 2011 in *District of Columbia v. Heller* (2008) 554 U.S. 570, courts coalesced around a two-step inquiry for analyzing laws that might impact the Second Amendment. (See *United States v. McGinnis* (5th Cir. 2020) 956 F.3d 747, 753.) ***First***, the court asks whether the conduct at issue fell within the scope of the Second Amendment right. (*Id.* at 754.) If the conduct falls outside the scope of the Second Amendment, the challenged law is constitutional. (*Id.*) But if the conduct falls within the scope of the right, a court will consider the ***second*** step of the analysis, which applies either intermediate or strict scrutiny. (*Id.* at 754, 757 [expressly applying means-end scrutiny in 2020].)

   The Court in *Heller* relied heavily on the judicial concept of originalism and considered the intent of the Founding Fathers, for better or worse, in considering whether a person has an individual right to possess a firearm for self-defense. Numerous legal scholars have opined, however, that the Second Amendment at the time of the Framers, "was neither an individual right of self-defense nor a collective right of the statutes, but rather a civic right that guaranteed that citizens would be able to keep and bear those arms needed to meet their legal obligation to participate in a well-regulated militia."[9] Originalist critics suggest that this amendment was nothing more than a select services process to ensure any male citizen is prepared to be pressed into military service. Some historians argue if the Second Amendment were truly interpreted in a manner consistent with the Framers' intent, it would guarantee the right of locals or states to force males to serve in a militia if necessary for defense of the republic.[10]

   In *McGinnis* – decided prior to the Court's 2022 holding in *New York Rifle & Pistol Association v. Bruen* (2022) 597 U.S. 1 - upheld 22 U.S.C. § 922, subdivision (g)(8)

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[9] See Saul Cornell, *A well-regulated militia: The Founding Fathers and the Origins of Gun Control in America,* New York, Oxford University Press, 2006 p. p. 2-3.
[10] *Ibid*; See Stephen P. Halbrook, *That Every Man Be Armed: The Evolution of a Constitutional Right* (Oakland, CA: Independent Institute 1994; See Campbell, *The Original Intent of the Second Amendment: What the Debates at the Constitutional Convention and the First Congress Say about the Right to Bear Arms*, Oklahoma State University, 2012.

pertaining to firearms restrictions following domestic violence restraining orders. However, following the Court's holding in *Bruen*, the 5th Circuit ruled as obsolete its prior holding regarding domestic violence restraining orders and firearms restrictions. The 5th Circuit, three years later, held:

> "Enter *N.Y. State Rifle & Pistol Ass'n v. Bruen* (2022) 597 U.S. 1. Expounding on *Heller*, the Supreme Court [in *Bruen*] held that '[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, 142 S. Ct. at 2129-30. **In that context, the Government bears the burden of "justify[ing] its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.' Put another way, 'the [G]overnment must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.'** In the course of its explication, the Court expressly repudiated the circuit courts' means-end scrutiny—the second step embodied in *Emerson* and applied in *McGinnis*. To the extent that the Court did not overtly overrule *Emerson* and *McGinnis*—it did not cite those cases but discussed other circuits' similar precedent—**Bruen clearly "fundamentally change[d]" our analysis of laws that implicate the Second Amendment rendering our prior precedent obsolete.** (Emphasis added.) (*United States v. Rahimi* (5th Cir. 2023) 61 F.4th 443, 450-451.)

The jurisprudence of the Second Amendment has significantly changed since 2011, but most certainly since 2022. This bill mandates certain storage requirements for a firearm in someone's home – even if that person lives alone. The U.S. Supreme Court made clear in *Heller* and *Bruen* that restrictions on possession of a firearm within a person's home must meet strict scrutiny. In the context of Second Amendment jurisprudence, the state must "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." (*Rahimi*, 61 F.4th at 450.)

> The inherent right of self-defense has been central to the Second Amendment right. The [D.C. ordinances restricting possession of a handgun even in one's home] amounts to a prohibition of an entire class of "arms" that is overwhelmingly chosen by American society for that lawful purpose. The prohibition extends, moreover, to the home, where the need for defense of self, family, and property is most acute. Under any of the standards of scrutiny that the United States Supreme Court has applied to enumerated constitutional rights, banning from the home the most preferred firearm in the nation to "keep" and use for protection of one's home and family would fail constitutional muster. (*District of Columbia v. Heller* (2008) 554 U.S. 570, 628-29.)

In accordance with jurisprudence following *Heller* and *Bruen*, on or about May 9, 2024, the 9th Circuit ruled that 18 U.S.C. § 922, subdivision (g)(1) ***violates*** the Second Amendment. 18 U.S.C. 922, subdivision (g) prohibits any person sentenced to prison or jail for longer than one year from possessing a firearm. (See *United States v. Duarte* (9th Cir. May 9, 2024, No. 22-50048) 2024 U.S. App. LEXIS 11323, at *12.) Specifically, the 9th Circuit invalidated a prior 9th Circuit opinion approving such conduct-based restrictions because the *Bruen* decision substantially changed the standard for determining if a state statute infringes on the Second Amendment.[11] The Court applied the now accepted test from *Bruen*:

> If the Second Amendment's 'bare text' covers the person, his arm, and his conduct, 'the government must [then] demonstrate that the [challenged] regulation is consistent with this Nation's historical tradition of firearm regulation.' (Citation omitted.) To meet its burden, the Government must 'identify a well-established and representative historical analogue' to the challenged law. As to courts, 'th[e] historical inquiry that [we] must [now] conduct' requires 'reasoning by analogy,' in which the two 'central considerations' will be whether 'how' the proffered historical analogue burdened the Second Amendment right, and 'why' it did so, are both sufficiently comparable to the challenged regulation. **'Only if' the Government proves that its 'firearm regulation is consistent [in this sense] with th[e] Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'"** (Emphasis added.) (*United States v. Duarte* (9th Cir. May 9, 2024, No. 22-50048) at *12-13, citing *Bruen*, 597 U.S. at 28-29.)

Given the changes to Second Amendment jurisprudence over the past decade, it is unclear whether the U.S. Supreme Court will approve a restriction on personal firearms ownership in one's own home even where there are no children or otherwise prohibited persons present. However, what the courts have most certainly telegraphed is that possession of a firearm in a home is a right rooted in the bedrock of the Second Amendment.

5) **Argument in Support**: According to the *Silicon Valley Alliance for Gun Safety*: Numerous research studies have shown that safe store of firearms decreases the incidence of unintentional shootings, gun suicides, and gun theft. Gun violence against another or oneself is often an impulsive act. Having firearms stored in a locked container creates time to reconsider or time for someone to intervene. Silicon Valley Alliance for Gun Safety has been working with our local cities to pass safe storage legislation. Our efforts have been successful in many cities, but we need all cities to adopt this life saving policy. A state law encompassing all Californians has the added advantage of a single, uniform law for all citizens. We know that new laws can only be effective if people are made aware of them. Therefore, we ask for this bill to include financial resources for a systematic public

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[11] See *United States v. Vongxay* (9th Cir. 2010) 594 F.3d 1111 [holding the government may restrict a felon's right to keep and bear arms pursuant to a pre-Heller standard for the Second Amendment.].

awareness campaign before the law goes into effect.

6) **Argument in Opposition**: According to the *Gun Owners of California*: "This is not a new issue; storage laws such as this have been introduced across the nation and have, in fact, been declared unconstitutional by the Supreme Court of the United States in *Heller v. DC.* The California Legislature, however, continues to disregard this decision. Unfortunately, pursuing policies of this nature will only force the State to re-litigate something that has already been decided, which would be a costly endeavor borne yet again by the taxpayers of California. Please note the following quotes which have been pulled directly from the Supreme Court's landmark decisions of *Heller v Washington DC* and *McDonald v Chicago*:

   - ...the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock makes it impossible for citizens to use arms for the core lawful purpose of self-defense and is hence unconstitutional." *Heller v DC*
   - In sum, we hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." Heller v DC
   - The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon. " *Heller v. DC*
   - In Heller, we held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense…We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in Heller." *McDonald v Chicago.* "

7) **Related Legislation**:

   a) AB 3064 (Maienschein) requires certified laboratories that verify compliance with standards for firearms safety devices to, at the manufacturer's or dealer's expense, test a FSD and submit a copy of the final test report directly to the DOJ, regardless of whether the device has passed or failed to meet standards, and a prototype of the device that has passed such standards, to be retained by the DOJ. AB 3064 is pending in the Senate.

   b) SB 2 (Portantino), Chapter 249, Statutes of 2023 restructures and recasts provisions of law related to carrying concealed firearms and concealed carry licenses (CCWs) in response to a recent United States Supreme Court decision invalidating a concealed carry law in New York similar to California's.

   c) SB 368 (Portantino), Chapter 251, Statutes of 2023 establishes a process by which firearms can be temporarily transferred to licensed firearm dealers for storage in order to prevent them from being used to attempt suicide.

8) **Prior Legislation**:

   a) SB 1384 (Min), Chapter 995, Statutes of 2022, among other things, required licensed firearm vendors to ensure that its business premises are monitored by a digital video and

audio surveillance system and requires any license vendor to carry a general liability insurance policy providing at least one million dollars of coverage per incident.

b) AB 1621 (Gipson), Chapter 76, Statutes of 2022, among other things, updated firearm dealer signage requirements.

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

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

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

f) Proposition 63 of the November 2016 general election, in part, required that every firearm dealer to include on their posted sign a statement informing firearm owners that they must report the theft or loss of their firearm, as specified.

g) AB 231 (Ting) Chapter 730, Statutes of 2013, among other things, modified the firearm ownership sign that firearm dealers are required to post to include a statement regarding negligent storage and reporting parameters for lost or stolen firearms.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady California
Brady Campaign
Everytown for Gun Safety Action Fund
Giffords Law Center to Prevent Gun Violence
Los Angeles Unified School District
Safe- Scrubs Addressing the Firearm Epidemic
Silicon Valley Alliance for Gun Safety
Wave

Oppose

California Association of Highway Patrolmen
California Rifle and Pistol Association, INC.
California Waterfowl Association
Gun Owners of California, INC.
Peace Officers Research Association of California (PORAC)

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

Date of Hearing: June 11, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 905 (Wiener) – As Amended May 16, 2024

As Proposed to be Amendment in Committee

SUMMARY: Creates a new alternate felony-misdemeanor for any person who forcibly enters a vehicle, with the intent to commit a theft or any felony therein. Specifically, **this bill**:

1) States any person who forcibly enters a vehicle, as defined, with the intent to commit a theft or a felony therein is guilty of a crime punishable by imprisonment in a county jail for a period not to exceed one year or imprisonment in a county jail for 16 months, two, or three years.

2) Creates a new alternate felony-misdemeanor punishable by either one year in county jail or a sentence of 16 months, two years, or three years in county jail for a person to unlawfully possess property that was acquired through one or more acts of theft from a vehicle, unlawful entry of a vehicle, burglary of a locked vehicle, or vehicle tampering, if:

   a) The property is not possessed for personal use and the person has the intent to sell or exchange the property, or the intent to act with another person to sell or exchange the property; and

   b) The value of the possessed property exceeds $950, as specified.

3) States in determining the value of the property, any unlawfully possessed property may be considered in aggregation with any of the following:

   a) Any other property for which a person intended to unlawfully possess or unlawfully possessed within the last two years;

   b) Any property possessed by another person acting in concert with the first person to sell or exchange the property for value, when that property was acquired through one or more acts of theft from a vehicle, unlawful entry of a vehicle, burglary of a locked vehicle, or vehicle tampering regardless of the identity of the person committing the acts of theft, burglary, or vehicle tampering.

4) Provides that for the purpose of determining, in any proceeding, whether the defendant had the intent to sell or exchange the property for value, the trier of fact may consider any competent evidence, including, but not limited to, the following:

   a) Whether the defendant has in the past two years sold or exchanged for value any property acquired through theft from a vehicle, burglary of a locked vehicle, or vehicle tampering, or through any related offenses, including any conduct that occurred in other

jurisdictions, if relevant to demonstrate a fact other than the defendant's disposition to commit the act.

b) Whether the property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption, including use or consumption by one's immediate family.

5) States if the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this bill shall become inoperative on the date that the Secretary of State certifies that the initiative was approved by the voters, and shall be repealed on January 1, 2025.

6) Adds an urgency clause to take effect immediately based on the need address the increase in community-based crime, including retail theft and to provide broader public safety.

EXISTING LAW:

1) States that any person who enters any house, room, apartment,...shop, warehouse, store,... outhouse or other building, tent, vessel, ... *vehicle ...when the doors are locked*, aircraft ... or mine ... with the intent to commit grand or petit larceny or any other felony is guilty or burglary. (Pen. Code, § 459 [emphasis added].)

2) States that burglary of an inhabited dwelling is first degree burglary, and that all other kinds of burglary are of the second degree. (Pen. Code, § 460.)

3) Provides that the punishment for first degree burglary is imprisonment in the state prison for two, four, or six years. (Pen. Code, § 461, subd. (a).)

4) Provides that the punishment for second degree burglary is either confinement of up to one year in the county jail, or confinement in the county jail for 16 months, two, or three years pursuant to criminal justice realignment. (Pen. Code, §§ 18, subd. (a), 461, subd. (b), 1170, subd. (h).)

5) Provides that no person shall willfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner. (Veh. Code, § 10852.)

6) Provides that the punishment for vehicle tampering is confinement of up to six months in the county jail, a fine not to exceed $1,000, or both. (Veh. Code, §§ 42002, 40000.9.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Senate Bill 905 closes the "locked door loophole", a nonsensical barrier to holding auto burglars accountable. Under current law, the fact that a car window was broken is insufficient to convict a suspect of auto burglary—prosecutors must prove that the door was locked, which requires victims to be physically

present in court to testify as such. This requirement can sabotage clear cases of guilt, particularly for situations where someone if visiting a city for tourism and is unable to return just to testify that they locked their car door. SB 905 instead eliminates this gratuitous hurdle, this legislation makes forcible entry sufficient to prove the crime of auto burglary and makes California safer for everyone. SB 905 also address the problem of organized resale of goods stolen from cars. Auto burglars seek valuable items such as laptops, cameras, and cell phones and then resell them. Under the bill, individuals could be prosecuted for holding more than $950 of stolen goods intended for resale, whether those goods were stolen in one or multiple incidents, and whether the individual played the role of thief, middleman, or seller.

2) **Automobile Burglary:** In order to convict a person pursuant to the current auto burglary statute, Penal Code section 459, the prosecutor must prove: (a) the defendant entered a locked vehicle; and (b) they intended to commit theft (or any other felony) when the defendant entered the locked vehicle. (See CALCRIM No. 1700, see also *People v. Teamer* (1993) 20 Cal.App.4th 1454, 1457–1461.)

   The common law element of "breaking" has never been an essential element of statutory burglary in California. The only exception is auto burglary, which requires the doors of a vehicle be locked. In fact, that is the key element of auto burglary. While locked doors is an element, forced entry or use of burglary tools is not. (*In re James B.* (2003) 109 Cal.App.4th 862, 868.)

   The element of "locked doors" has been interpreted to mean that the defendant must unlawfully alter the vehicle's locked state in some manner. (*In re James B.*, supra, 109 Cal.App.4th at p. 868.) On one end of the spectrum this could be accomplished by unlocking the vehicle without consent of the owner. At the opposite end, auto burglary could be committed by smashing a window. (*Ibid.*)

   Some prosecutors argue that, particularly in cases where a victim is unavailable, such as with tourists who cannot return to court, while there may be concrete evidence of a break in, it may prove difficult to establish that a vehicle was locked. And yet, convictions have been upheld based on circumstantial evidence to prove the requisite element of locking. For example, in *People v. Rivera* (2003) 109 Cal.App.4th 1241, the court upheld a conviction where there was evidence of forced entry even though there was no evidence that the doors were locked or sealed. Circumstantial evidence that the car's doors were locked was based on the car's windows being broken. (*Id.* at pp. 1244-1245.)

3) **Multiple Convictions**: This creates a new crime of unlawful entry of a vehicle with intent to steal, it does not repeal the current auto burglary statute, Penal Code section 459. Having two statutes involving similar conduct presents the possibility of double convictions for a single entry into a car. For example, when there is evidence that a person breaks into a locked car in a forcible manner, (i.e. smashing a window), if this bill is enacted, the prosecutor is likely able to establish the elements for both crimes. Convictions for two crimes for a singular act raises fairness concerns.

   The concern is best illustrated with the crimes of theft and receiving stolen property. Common law principles prohibit dual convictions for both stealing and receiving the same property. This rule is based on the notion that a person who has stolen property cannot buy or receive that property from themselves. (*People v. Ceja* (2010) 49 Cal.4th 1, 4-5, citing

People v. Allen (1999) 21 Cal.4th 846, 850.) The Legislature codified this rule in 1992. (*People v. Ceja, supra*, 49 Cal.4th at p. 3.) Penal Code section 496 was amended to state, "No person may be convicted pursuant to this section and of the theft of the same property." (Pen. Code, §496, subd. (a).)

Similarly to the language contained in the receiving stolen property statute, this bill specifies that a person cannot be convicted of both this new crime and of auto burglary based on the act of breaking into a single car. A prosecutor will have discretion to charge a defendant with both crimes and will be able to present alternative theories of liability; however, the defendant may only be convicted of one crime or the other.

4) **Aggregation:** In addition to creating a new auto burglary crime, this bill creates a new alternate felony-misdemeanor for the crime of "unlawfully possessed property" acquired through theft or burglary, even if the person possessing the property is not the person who stole it. Additionally, this bill proposes to allow aggregation for multiple alleged thefts occurring within an unspecified number of years and even in the possession of a third party alleged to have acted in concert. As a general matter, aggregation requires a showing of a common plan or scheme. This bill instead allows a prosecutor to charge any person with an alternate misdemeanor-felony for "unlawful possession of property acquired through theft" by aggregation with any other property if: (a) the defendant is in possession of any other unlawfully possessed property with intent to sell or exchange the property within an unspecified period of time; or (b) the alleged unlawfully possessed property in the possession of another who acted in concert with the defendant with the intent to sell or exchange. This bill also creates a se

   Aggregation means a prosecutor may examine several smaller thefts as part of a common plan or scheme in order to aggregate the total value of a theft and increase the penalty. Petty theft means any theft with a value less than $950. (Pen. Code, § 484.) Grand theft is any theft where the value of the item(s) stolen is $950 or greater. (Pen. Code, § 487, subd. (a).) Grand theft is an alternate misdemeanor-felony; petty theft is a misdemeanor.

   Aggregation under the current law works like this: if a person were steal beauty products for resale at multiple drug stores, each individual theft may be small, i.e., less than $50, but if a prosecutor is able to prove a common plan or scheme behind all the thefts, they may be aggregated so as to charge a felony or impose a greater sentence. (*People v. Bailey* (1961) 55 Cal.2d 514, 518-519.)

> Several recent cases involving theft by false pretenses have held that where as part of a single plan a defendant makes false representations and receives various sums from the victim the receipts may be cumulated to constitute but one offense of grand theft. (People v. Robertson, 167 Cal.App.2d 571, 576-577 [fraudulent charge accounts]... The test applied in these cases in determining if there were separate offenses or one offense ***is whether the evidence discloses one general intent or*** **separate and distinct intents. The same rule has been followed in larceny and embezzlement cases, and it has been held that where a number of takings, each less than $ 200 but aggregating more than that sum, are all motivated by one**

> **intention, one general impulse, and one plan, the offense is grand theft.**[1] (*People v. Bailey* (1961) 55 Cal.2d 514, 518-519.)

The defendant in *Bailey* made a single fraudulent misrepresentation about her household income that caused her to receive a stream of welfare payments. (*Id.* at pp. 515–516.) While each individual payment fell below the felony threshold, the aggregated total constituted grand theft. *(Id.* at p. 518.) The Supreme Court concluded that the payments could be aggregated because "the evidence established that there was only one intention, one general impulse, and one plan." (*Id.* at p. 519; see also CALCRIM No. 1802 [Theft: As Part of Overall Plan].)

The California Supreme Court addressed the *Bailey* rule in *People v. Whitmer* (2014) 59 Cal.4th 733. In *Whitmer*, the defendant arranged for the fraudulent sale of 20 motorcycles, motorized dirt bikes, all-terrain vehicles, and similar recreational vehicles. The defendant was convicted of multiple thefts. (*Id.* at pp. 735-736.) The defendant appealed, arguing that under *Bailey* he should have been convicted of a single theft. The Supreme Court distinguished the facts in *Whitmer* from what occurred in *Bailey,* and found that multiple theft convictions were appropriate because each count of theft was based on a separate and distinct fraudulent act. (*Whitmer, supra.* at p. 740.)

The court in *Whitmer* pointed out that *Bailey* concerned a single fraudulent act followed by a series of payments. In a concurring opinion, Justice Liu distinguished acts committed with a common scheme from acts committed as part of a single impulse. (*Whitmer, supra,* at p. 748, concur. opn. J. Liu.) Justice Liu went on to state that ". . ., separate and distinct takings do not fall under *Bailey*'s aggregation rule simply because, as here, they were all done the same way. But neither does the mere fact that multiple takings are separate and distinct entail a finding of multiple thefts in every case. If the takings were committed pursuant to a single intention, impulse, and plan, then under *Bailey* they amount to only one theft."

Courts are split as to whether aggregation is allowable where there are multiple victims, even where there is evidence of a single plan or intent. In *People v. Columbia Research Corp.* (1980) 103 Cal.App.3d Supp. 33, the court applied *Bailey* and approved aggregation where the defendant was charged with grand theft based on a series of petty thefts that occurred over a 10-month period, pursuant to a single plan and intent, and involved different victims. (*Id.* at p. 40.) In *People v. Garcia* (1990) 224 Cal.App.3d 297, the defendant filed fraudulent bonds at different times involving different victims and allowed one charge per victim. (*Id.* at pp. 308-309.)

5) **Deterrence**: Several statistical studies conducted over the past ten years have shown there is little connection between a threat of prosecution and incarceration and a decrease in crime. (See Steve Aos and Elizabeth Drake, Washington Institute for Public Policy, November 2013, *Prison, Police and Programs: Evidence-Based Options that Reduce Crime and Save Money*; National Research Council (2014), *The Growth of Incarceration in the United States: Exploring Causes and Consequences Committee on Causes and Consequences of High Rates*

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[1] See *People v. Yachimowicz* (1943) 57 Cal.App.2d 375, 381 [larceny]; *People v. Dillon* (1934) 1 Cal.App.2d 224, 228-229 [larceny].)

of Incarceration, J. Travis, B. Western, and S. Redburn.) In a February 2014 report, the Little Hoover Commission (LHC) determined incarceration rates did not reduce crime. Rather, the LHC proposed several evidence based options to reduce crime including addressing underlying criminogenic needs such as poverty, homeless, mental health issues and substance and alcohol abuse disorders.

6) **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*

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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].

them," Cal Matters (March 25, 2024).)[4]

7) **Immigration Consequences:** A conviction of the new crime created by this bill poses potential immigration consequences for noncitizen defendants. A theft offense is an aggravated felony for immigration purposes if a one-year sentence is imposed. (8 USC § 1101(a)(43)(G) & (U).) Thus, if a term of one-year or more is imposed for this new offense, it will be a theft-related "aggravated felony" for immigration purposes. This triggers a host of immigration consequences, including deportability. (8 USC § 1227(a)(2)(A)(iii).) By contrast, a Ninth Circuit case has held that auto burglary under Penal Code section 459 is not a theft-related aggravated felony because it is an indivisible statute which can be violated by entering the locked vehicle with the intent to commit theft *or any felony*. (*Rendon v. Holder* (9th Cir. 2014) 764 F.3d 1077, 1084.)

   The new theft offense created by this bill may be considered a crime of moral turpitude for immigration purposes which can pose consequences for noncitizen defendants. (*United States v. Esparza-Ponce* (9th Cir. 1999) 193 F.3d 1133, 1136 [theft is a crime of moral turpitude for immigration purposes].) Among other possible consequences, a crime of moral turpitude can render a noncitizen inadmissible (8 USC § 1182(a)(2)(A)(i)(I)) or deportable (8 USC § 1227(a)(2)(A)(i) & (ii)).

   However, in the 2010 U.S. Supreme Court case of *Kentucky v. Padilla*, the Court ruled that criminal defense lawyers must advise their clients of the potential immigration consequences of a criminal conviction. Failure to advise a client on the immigration consequences of a criminal conviction could constitute ineffective assistance of counsel under the Sixth Amendment. (*Kentucky v. Padilla* (2010) 559 U.S. 356.) In California, a defendant may seek to withdraw a plea if a defendant did not know and understand the immigration consequences of their crimes. (See Pen. Code, § 1473.7.)

8) **Proposed Amendments:** This bill is being amended in this committee to specify: (a) a two year look back period wherein a person may be aggregated based on another theft; (b) the terms of this bill will become inoperative if the voters approve the pending retail theft initiative; and (c) adds an urgency clause to the bill.

   The pending initiative on retail crime includes massive criminal penalties on low level offenses like petty theft and drugs that may have a catastrophic impact on California's criminal justice system and countless underserved communities. These types of initiatives in the past, specifically the three strikes initiative in 1994, disseminated communities of color, resulted in oppressive and gravely dangerous prison conditions, and cost the State hundreds of millions of dollars in litigation changes.

9) **Argument in Support**: According to *League of California Cities*: "According to the U.S. Census Bureau, from January to October 2021 San Francisco lead the nation in automobile burglaries, and in 2018 lead the state in property crime with a rate double the rest of the state. The State of California has seen around a 33% increase in auto-burglaries in its major cities, with just San Francisco alone reporting over 16,500 vehicle burglaries in 2023. These burglaries vary greatly across different neighborhoods in the city, with the highest

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[4] Located at https://calmatters.org/justice/2024/03/death-in-california-jails/ [last visited March 16, 2024.]

concentrations in neighborhoods that attract tourist activity such as North Beach, Pier 39, Lombard Street, and others have been growing since 2019. Under existing law there are loopholes and barriers to securing arrests and convictions for the crime of auto-burglary, such as the "locked door" clause.

Current law requires the prosecution to prove beyond a reasonable doubt the vehicle's doors were locked, the fact that an individual's windows were broken do not prove this fact. Often it is required for a victim to come testify that their doors were all locked, which places an undue burden on the victim, especially if they are tourists visiting the state and now must return to testify. Prosecutors currently face high barriers to succeed in securing convictions for these offenses which has contributed to the high rate of reported incidents in California's major cities."

10) **Argument in Opposition**: According to *California Public Defenders Association*: "We appreciate the author's willingness to work with us and to ameliorate some of the harsh immigration consequences by amending proposed new Penal section 465. We are additionally seeking these amendments to proposed new section 465.5 to mitigate the effect on our noncitizen communities. (Internal emphasis removed).

496.5. (a) A person who unlawfully possesses property that was acquired through one or more acts of theft from a vehicle, unlawful entry of a vehicle, burglary of a locked vehicle, or vehicle tampering as defined in Section 10852 of the Vehicle Code, whether or not the person committed the act of theft, burglary, or vehicle tampering, is guilty of automotive property theft for resale when both of the following apply: (1) The property is not possessed for personal use and the person has the intent to sell or exchange the property for value, or the intent to act in concert with one or more persons to sell or exchange the property for value, or the intent to deprive the owner temporarily of the benefit of the property. …. (e). A negotiated plea to Penal Code § 372.5(e) shall be punishable by imprisonment in the county jail for up to one year or pursuant to subdivision (h) of Section 1170."

We are also asking that this language be added. Add PC 372.5(e) (e) Notwithstanding Section 372, if a defendant is sentenced for a violation of Section 370 based on a disposition negotiated between the defendant and the prosecution, a term of which includes the dismissal of one or more charges that allege conduct under Section 496.5, public nuisance is punishable by imprisonment in the county jail for up to one year or pursuant to subdivision (h) of Section 1170

SB 905 does two things. First, it adds Penal Code section 465 to create the crime of unlawful entry of a vehicle. The bill also adds Penal Code section 496.5 to create the crime of automotive property theft for resale. Both of these crimes are presently and adequately punished under current law in Penal Code sections 459 and 496 and the new statutes are unnecessary.

UNLAWFUL ENTRY UNNECESSARY

It has been said that new section 465 eliminates the "loophole" in Penal Code section 459, which requires that a vehicle be locked in order for a person to be found guilty of vehicle burglary.

This requirement is hardly a "loophole." All crimes consist of what are called elements – those are the factors that must be proven by the prosecution in order to obtain a conviction for a particular offense. No "element" is a loophole; it is an essential part of the definition of a particular crime. It is true that for a person to be found guilty of auto burglary the car must have been locked. But if it is not locked, the person does not walk away free. If the property stolen from an unlocked vehicle is worth less than $950, the crime is petty theft. If the property value exceeds $950, then the crime is grand theft, which can be prosecuted as a felony. If the car is locked, of course, then the crime is vehicle burglary, which is an alternate felony/misdemeanor. In all cases, a court must order a convicted person to pay restitution for the value of any property stolen or any damage caused. Whether or not a car is locked for the burglary statute to apply is most often proven by the direct testimony of a victim or witness who testifies that the person locked the car when they left it. Vehicle locking, however, can also be proven through circumstantial evidence. Indeed, the very issue this section is intended to rectify, the fact that a forcible entry was made, is circumstantial proof that a vehicle was locked, evidence that can lead to an auto burglary conviction. SB 905 creates the new crime of forcible entry of a vehicle.

One has to note, though, that if a person simply opens an unlocked car door or enters through an open window, then this crime would not apply – just as the crime of auto burglary would not apply if the car were not locked. Thus, this bill does not eliminate the locking "loophole.' In addition, under current law if a person damages a vehicle (locked or not) then the person could be guilty of vandalism (Penal Code section 594), which is a felony if the amount of damage is $400 or more. Or the person could be guilty of auto tampering in violation of Vehicle Code section 10852, a misdemeanor. The element that a vehicle be "locked" in Penal Code section 459 is necessary to distinguish the less serious offense of simple theft from the more serious offense of burglary. Existing law adequately punishes those who steal from or damage cars, even though those cars be unlocked. The punishment is equivalent to the punishment found in this bill.

ADMISSION OF ANCIENT PRIOR CRIMES IS UNJUST

New section 496.5 has the same punishment as the existing crime of receiving stolen property in violation of Penal Code section 496. It appears that a main purpose of the new law is to allow aggregation of prior instances to come up with a value of stolen property greater than $950. As presently drafted, this look-back does not contain a time limit. A person who has been charged, convicted and punished for prior crimes should not once again have to face those prior charges in a new case. The same type of prior evidence is also allowed when relevant to show the person's intent to sell or exchange the property for value. Again, there is no temporal limitation. Although there is purported limitation that the evidence cannot be used to demonstrate criminal propensity, it is well known that prosecutors introduce these prior instances in front of the jury to dirty up the defendant. A classic example of this is gang evidence – which prosecutors put in front of juries to prejudice the jurors. Prior crimes evidence is extremely prejudicial and should not be allowed. This bill opens the floodgates to an unending stream of very prejudicial prior crimes evidence."

11) **Related Legislation**:

a) AB 1794 (McCarty) states the standard for aggregating multiple thefts to charge grand theft, and establishes CAL-Fast Pass Program, authorizing district attorney's offices to

operate a program allowing retailers to submit details of alleged retail theft directly to the district attorney through an online portal to determine whether to further investigate and file charges. AB 1794 is pending hearing in the Senate.

b) AB 2943 (Zbur), among other things, clarifies the law on aggregating theft offenses and creates the new offense of "criminal deprivation of a retail business opportunity," relating to receipt of stolen property. AB 2943 is pending hearing in the Senate Committee on Public Safety.

12) **Prior Legislation**:

a) AB 1921 (Diep), of the 2019-2020 Legislative Session, would have created an alternate felony-misdemeanor for forcibly entering a vehicle with the intent to commit a theft therein.

b) AB 395 (Lackey), of the 2021-2022 Legislative Session, would have created an alternate felony-misdemeanor for forcibly entering a vehicle with the intent to commit a theft therein. AB 395 was held on the Appropriations suspense file.

c) SB 23 (Weiner) of the 2019-2020 Legislative Session, would have would have created an alternate felony-misdemeanor for forcibly entering a vehicle with the intent to commit a theft therein. SB 23 was held on the Appropriations suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

America First Policy Institute - California
Arcadia Police Officers' Association
Bay Area Council
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California Contract Cities Association
California District Attorneys Association
California Downtown Association
California Hispanic Chamber of Commerce
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
California Retailers Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
California Travel Association (CALTRAVEL)
Chief Probation Officers' of California (CPOC)
City and County of San Francisco, Board of Supervisors

City of Carlsbad
City of La Verne
City of Norwalk
City of Oakland Mayor Sheng Thao
City of Pico Rivera
City of Santa Clarita
City of Union City
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Downtown Santa Monica
Emeryville; City of
Fullerton Police Officers' Association
League of California Cities
Los Angeles County Division, League of California Cities
Los Angeles County Sheriff's Department
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Mayor of City & County of San Francisco London Breed
Mayor Todd Gloria, City of San Diego
Murrieta Police Officers' Association
Newport Beach Police Association
Norwalk; City of
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
San Francisco Board of Supervisors
Santa Ana Police Officers Association
Santa Clarita; City of
Tri-valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of Danville
Tustin, City of
Upland Police Officers Association

Opposition

California Public Defenders Association

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

Amended Mock-up for 2023-2024 SB-905 (Wiener (S))

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

SECTION 1. Section 465 is added to the Penal Code, to read:

465. (a) A person who forcibly enters a vehicle, as defined in Section 670 of the Vehicle Code, with the intent to commit a theft or any felony therein is guilty of unlawful entry of a vehicle.

(b) Unlawful entry of a vehicle is punishable by imprisonment in a county jail for a period not to exceed one year or imprisonment pursuant to subdivision (h) of Section 1170.

(c) As used in this section, forcible entry of a vehicle means the entry of a vehicle accomplished through any of the following means: the use of a tool or device that manipulates the locking mechanism, including, without limitation, a slim jim or other lockout tool, a shaved key, jiggler key, or lock pick, or an electronic device such as a signal extender, or force that damages the exterior of the vehicle, including, but not limited to, breaking a window, cutting a convertible top, punching a lock, or prying open a door.

(d) A person may not be convicted both pursuant to this section and pursuant to Section 459.

(e) If the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become inoperative on the date that the Secretary of State certifies that the initiative was approved by the voters, and shall be repealed on January 1, 2025.

SEC. 2. Section 496.5 is added to the Penal Code, to read:

496.5. (a) A person who unlawfully possesses property that was acquired through one or more acts of theft from a vehicle, unlawful entry of a vehicle, burglary of a locked vehicle, or vehicle tampering as defined in Section 10852 of the Vehicle Code, whether or not the person committed the act of theft, burglary, or vehicle tampering, is guilty of automotive property theft for resale when both of the following apply:

(1) The property is not possessed for personal use and the person has the intent to sell or exchange the property for value, or the intent to act in concert with one or more persons to sell or exchange the property for value.

(2) The value of the possessed property exceeds nine hundred fifty dollars ($950). For purposes of determining the value of the property, the property described in paragraph (1) can be considered in the aggregate with any of the following:

(A) Any other such property possessed by the person with such intent within the last **two** years.

(B) Any property possessed by another person acting in concert with the first person to sell or exchange the property for value, when that property was acquired through one or more acts of theft from a vehicle, unlawful entry of a vehicle, burglary of a locked vehicle, or vehicle tampering as defined in Section 10852 of the Vehicle Code, regardless of the identity of the person committing the acts of theft, burglary, or vehicle tampering.

(b) For the purpose of determining, in any proceeding, whether the defendant had the intent to sell or exchange the property for value, the trier of fact may consider any competent evidence, including, but not limited to, the following:

(1) Whether the defendant has in the past **two** years sold or exchanged for value any property acquired through theft from a vehicle, burglary of a locked vehicle, or vehicle tampering as defined in Section 10852 of the Vehicle Code, or through any related offenses, including any conduct that occurred in other jurisdictions, if relevant to demonstrate a fact other than the defendant's disposition to commit the act, as provided by subdivision (b) of Section 1101 of the Evidence Code.

(2) Whether the property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption, including use or consumption by one's immediate family.

(c) A violation of subdivision (a) is punishable by imprisonment in the county jail for up to one year or pursuant to subdivision (h) of Section 1170.

(d) This section does not preclude or prohibit prosecution under any other law.

(e) If the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become inoperative on the date that the Secretary of State certifies that the initiative was approved by the voters, and shall be repealed on January 1, 2025.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To address the increase in community-based crime, including retail theft, in order to provide broader public safety, it is necessary that this act take effect immediately.

Date of Hearing: June 11, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 982 (Wahab) – As Amended May 16, 2024

As Proposed to be Amended in Committee

SUMMARY: Eliminates the sunset date for the crime of organized retail theft and for the existence of a taskforce established by the California Highway Patrol to analyze organized retail theft and vehicle burglary and to assist local law enforcement in counties identified as having elevated property crime unless voters approve the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1).

EXISTING LAW:

1) 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).)

2) Provides that organized retail theft is punishable as follows:

   a) If a person acts in concert or as an agent and commits violations on two or more separate occasions within a 12-month period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that 12-month period exceeds nine hundred fifty dollars ($950), the offense is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Penal Code section 1170.

   b) Any other violation when a person acts in concert or as an agent that is not described in paragraph (1) of this subdivision is punishable by imprisonment in a county jail not exceeding one year.

c) A violation of organized retail theft by act of recruiting, coordinating, organizing, supervising, directing, managing, or financing another to commit acts of organized retail theft is punishable by imprisonment in a county jail not exceeding one year, or as a felony pursuant to subdivision (h) of Penal Code section 1170. (Pen. Code, § 490.4, subd. (b)(1)-(3).)

3) States that, for the purpose of determining whether the defendant acted in concert with another person or persons in any proceeding, the trier of fact may consider any competent evidence, including, but not limited to, all of the following:

   a) The defendant has previously acted in concert with another person or persons in committing acts constituting theft, or any related offense, including any conduct that occurred in counties other than the county of the current offense, if relevant to demonstrate a fact other than the defendant's disposition to commit the act;

   b) That the defendant used or possessed an artifice, instrument, container, device, or other article capable of facilitating the removal of merchandise from a retail establishment without paying the purchase price and use of the artifice, instrument, container, or device or other article is part of an organized plan to commit theft; or,

   c) The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption and the property is intended for resale. (Pen. Code, § 490.4, subd. (c).)

4) States that, in a prosecution for the crime of organized retail theft, the prosecutor shall not be required to charge any other co-participant of the organized retail theft. (Pen. Code, § 490.4, subd. (d).)

5) Provides that, upon conviction for organized retail theft, the court shall consider ordering, as a condition of probation, that the defendant stay away from retail establishments with a reasonable nexus to the crime committed. (Pen. Code, § 490.4, subd. (e).)

6) Repeals this crime on January 1, 2026. (Pen. Code, § 490.4, subd. (f).)

7) Requires the Department of the California Highway Patrol (CHP) to, in coordination with the Department of Justice, convene a regional property crimes task force to assist local law enforcement in counties identified by the CHP as having elevated levels of property crime, including, but not limited to, organized retail theft and vehicle burglary. The task force shall 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 Commissioner of the California Highway Patrol in consultation with task force members. (Pen. Code, § 13899.)

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

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "While we must always create pathways for restorative justice and rehabilitation, we must also hold people accountable as they violate the rights of others. With the rise of retail theft and robberies in our communities, we must provide prosecutors the necessary tools to address the lawlessness that is threatening our quality of life."

2) **Retail Theft in California:** A report by the Public Policy Institute of California (PPIC), (see <Retail Theft and Robbery Rates Have Risen across California - Public Policy Institute of California (ppic.org)> [as of April 3, 2024]) took a look at the problem of retail theft and robbery across the state by examining changes and differences across 15 large counties. The report states in part, "the 2022 data shows that while California's shoplifting rate jumped notably in 2022, it remains lower than it was at any point in the decade before the pandemic. The commercial burglary rate, however, reached its highest level since 2008, and the commercial robbery rate rose to roughly where it was in 2017. The challenges of retail theft and robbery appear to be widespread, but they vary across the state.

   "Organized retail theft is frequently cited as a driver of recent trends across the country, but particularly in California. Like many other states, California has launched efforts to curb organized retail theft. AB 331 (2021) toughens penalties and includes funding for a California Highway Patrol task force to identify trouble spots and assist local law enforcement. In June 2023, Attorney General Bonta, announced an information-sharing partnership with a number of large retailers.

   "The impact of these efforts will depend partly on the extent to which organized retail theft is actually driving recent trends. It will be important to continue monitoring retail theft and robbery rates and examining other possible contributing factors."

   This bill would eliminate the sunset date of the organized retail theft code unless voters approve the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1).

3) **Proposed Committee Amendments:** This bill will be amended to contain an urgency clause, allowing the bill's provisions to take effect immediately upon approval of the Governor. This bill will also be amended to contain an inoperability clause stating that its provisions will become inoperative if the proposed initiative measure titled, "The Homelessness, Drug Addition, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024.

4) **Argument in Support**: According to *America First Policy Institute-California*, "Organized retail theft poses a significant threat to the economic stability and public safety of our communities. Existing law, which remains in place until January 1, 2026, has made strides in addressing this issue, but its temporary nature leaves room for future vulnerability. It is incumbent on the legislature to rectify this by ensuring that the crime of organized retail theft remains an adequately punishable offense, thereby deterring individuals from engaging in such criminal activities."

5) **Argument in Opposition**: According to *The Vera Institute of Justice*, ""When we blame the wrong problems, we miss the right solutions. While sensational claims about organized retail theft have been debunked and data shows that *retail theft is not rising statewide*, the

legislature should respond to concerns from the community and local businesses with evidence-backed solutions.

"Increasing penalties for non-violent offenses like retail theft will do little to make our communities safer. Study after study has shown that neither lengthening sentences nor increasing charges and punishments based on a second or third offense meaningfully deters crime. Finally, evidence indicates that SB 982 is likely to worsen racial disparities in California's criminal system by sending more Black and Latinx people to prison. And unlike the community-based programs funded by Proposition 47, which have reduced recidivism, sending people to jail and prison makes them more likely to reoffend, while costing taxpayers dearly amid a budget deficit." (internal citations omitted)

6) **Related Legislation**:

a) AB 1772 (Ramos), would require the DOJ to submit a report to the Legislature regarding the number of retail theft convictions during the COVID-19 State of Emergency, as specified. AB 1772 was held on the Assembly Committee on Appropriations Suspense file.

b) AB 1779 (Irwin), would allow, a prosecutor to bring a case in any county where theft offenses occurred for offenses that occur in multiple jurisdictions, as specified. AB 1779 is pending hearing in the Senate Public Safety Committee.

c) AB 1787 (Villapudua), would among other things, repeal the sunset provision in the organized retail theft statute, thereby extending the crime indefinitely. AB 1787 is pending in this Committee.

d) AB 1794 (McCarty), would clarify the standard for aggregating multiple thefts to charge grand theft, and establishes CAL-Fast Pass Program, authorizing district attorney's offices to operate a program allowing retailers to submit details of alleged retail theft directly to the district attorney through an online portal to determine whether to further investigate and file charges. AB 1794 is pending hearing in the Senate Public Safety Committee.

e) AB 1802 (Jones-Sawyer), eliminates the sunset date for organized retail theft. AB 1802 is pending in the Senate Public Safety Committee.

f) AB 1845 (Alanis), would establish the Identifying, Apprehending, and Prosecuting of Resale of Stolen Property Grant Program (IAPRSP Grant Program). AB 1845 was held on the Assembly Committee on Appropriations Suspense file.

g) AB 1972 (Alanis) would include the railroad police and cargo theft in CHP's regional property crimes task force. AB 1972 is pending hearing in the Senate Public Safety Committee.

h) AB 1960 (Soria) would reenact sentence enhancement for theft offenses when the loss exceeds specified dollar amounts. AB 1960 is pending hearing in the Senate Public Safety Committee.

i) AB 1990 (W. Carrillo) would authorize peace officers to make a warrantless arrest for misdemeanor shoplifting, as specified. AB 1990 is pending referral in the Senate Rules Committee.

j) AB 2406 (Davies) would make it a felony, punishable by imprisonment in state prison, to use two or more minors to engage in theft related offenses. AB 2406 was returned to the Assembly Desk.

k) AB 2438 (Petrie-Norris) would make any person who acts in concert with two or more persons to take, attempt to take, damage, or destroy any property in the commission or attempted commission of a felony punishable by an additional and consecutive term of imprisonment of one, two or three years. AB 2438 was returned to the Assembly Desk.

l) AB 2790 (Pacheco) would define organized retail theft to include acting in concert with one or more persons to steal specified types of merchandise, including infant formula, baby food, over-the-counter medications, and blood glucose testing strips, with the intent to sell those items. AB 2790 is pending in this Committee.

m) 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 the Senate Public Safety Committee.

n) SB 923 (Archuleta) would revise the definition of shoplifting to require an intent to steal retail property or merchandise and would require a person convicted of petty theft or shoplifting, if the person has two or more prior convictions for specified theft-related offenses, to be punished by imprisonment in the county jail for up to one year, or for 16 months, or two or three years. SB 923 is pending in the Senate Public Safety Committee.

o) SB 928 (Niello) would remove the sunset date for organized retail theft. SB 928 is pending in Senate Public Safety Committee.

p) SB 1416 (Newman) would create sentencing enhancements for selling, exchanging, or returning for value, or attempting to sell, exchange, or return for value, any property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property value exceeds specified amounts and would make these enhancements apply to any person acting in concert with another person to commit these offenses. SB 1416 is pending in this committee.

7) **Prior Legislation**:

a) AB 23 (Muratsuchi), of the 2023-2024 Legislative Session, would have decreased the threshold amount for grand theft from $950 to $400. The hearing on AB 23 was canceled the request of the author.

b) AB 75 (Hoover), of the 2023-2024 Legislative Session, would have reinstated the offense of petty theft with a prior as it existed before it was eliminated by Prop. 47 and makes it applicable to the offense of shoplifting created by Prop.47, subject to approval by the voters. AB 75 failed passage in this committee.

c) AB 329 (Ta), of the 2023-2024 Legislative Session, would have expanded the territorial jurisdiction in which the Attorney General can prosecute specified theft offenses and associated offenses connected together in their commission to include cargo theft. AB 329 failed passage in this Committee.

d) AB 335 (Alanis), of the 2023-2024 Legislative Session, would have required the Little Hoover Commission to submit a report to the Legislature describing the reported retail thefts, as specified. AB 335 was held under submission in Assembly Appropriations Committee.

e) AB 2294 (Jones-Sawyer), Chapter 856, Statutes of 2022, authorized the misdemeanor arrest of a person that has a prior arrest, citation or conviction for theft, as specified, and authorized a city or county prosecuting authority or county probation department to create a diversion or deferred entry of judgment program for persons who commit a theft offense or repeat theft offenses.

f) AB 2356 (Rodriguez), Chapter 22, Statues of 2022, expanded the definition of "grand theft" where the aggregate amount taken by all participants exceeds $950.

g) SB 101 (Senate Committee on Budget), Chapter 12, Statutes of 2023, allocated 85,000,000 million dollars for a grant program to combat organized retail theft that law enforcement agencies could apply and compete for; and 10,000,000 million dollars for a grant program for organized retail theft vertical prosecution that district attorneys could apply and compete for; and for both grant programs to be administered by BSCCC. This budget bill also included other programs and budget allocations relating to Budget Act of 2023.

h) SB 316 (Niello), of the 2023-2024 Legislative Session, would have reinstated the offense of "petty theft with a prior" as it existed prior to the passage Proposition 47 and includes shoplifting in the list of eligible prior crimes.

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

j) AB 1597 (Waldron), of the 2021-2022 Legislative Session, would have amended Proposition 47 by reinstating the offense of petty theft with a prior. AB 1597 failed passage in this Committee.

k) AB 1599 (Kiley), of the 2021-2022 Legislative Session, would have repealed the changes made by Proposition 47, except those related to reducing the penalty for possession of concentrated cannabis, subject to approval of the voters. AB 1599 failed passage in this Committee.

l) AB 1603 (Salas), of the 2021-2022 Legislative Session, would have amended Proposition 47 by reducing the threshold amount for petty theft and shoplifting to be punished as a misdemeanor from $950 to $400. AB 1603 failed passage in this Committee.

m) AB 2390 (Muratsuchi), of the 2021-2022 Legislative Session, would have amended Proposition 47 by authorizing the aggregation of the value of property from one or more acts of theft or shoplifting, as specified. AB 2390 failed passage in this Committee.

n) SB 1108 (Bates), of the 2021-2022 Legislative Session, would have amended Proposition 47 by reinstating the offense of petty theft with a prior. SB 1108 failed passage in Senate Public Safety Committee.

o) AB 3234 (Ting), Chapter 334, Statutes of 2020, created a court-initiated misdemeanor diversion program.

p) AB 1810 (Budget Committee), Chapter 34, Statutes of 2018, allows trial courts to divert mentally ill defendants into pre-existing treatment programs, where the proposed program is consistent with the needs of the defendant and the safety of the community.

q) 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.

r) AB 2369 (Patterson), of the 2015-2016 Legislative Session, would have amended Proposition 47 by making persons convicted of crimes reduced to misdemeanors eligible for felony prosecution and sentencing if convicted of specified offenses two times within a three-year period. AB 2369 failed passage in this Committee.

s) SB 1227 (Hancock), Chapter 658, Statutes of 2013, created a diversion program for veterans who commit misdemeanors or county jail-eligible felonies and who are suffering from service-related trauma or substance abuse.

t) AB 994 (Lowenthal), of the 2013-2014 Legislative Session, would have required each county to establish and maintain a pretrial diversion program, to be administered by the district attorney of that county, and authorizes either the district attorney or the superior court to offer diversion to a defendant. AB 994 was vetoed.

u) AB 1844 (Fletcher), Chapter 219, Statutes of 2010, amended petty theft with a prior to require three prior theft-related convictions.

REGISTERED SUPPORT / OPPOSITION:

Support

America First Policy Institute - California
Arcadia Police Officers' Association
Buena Park; City of
Burbank Police Officers' Association

California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California District Attorneys Association
California Downtown Association
California Hispanic Chamber of Commerce
California Narcotic Officers' Association
California Police Chiefs Association
California Problem Solvers Caucus
California Reserve Peace Officers Association
California Retailers Association
Chief Probation Officers' of California (CPOC)
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 Fremont
City of Grand Terrace
City of La Mirada
City of La Verne
City of Lakeport
City of Lakewood CA
City of Los Alamitos
City of Manteca
City of Moorpark
City of Oakdale
City of Paramount
City of Port Hueneme
City of Rancho Palos Verdes
City of Rohnert Park
City of Rolling Hills Estates
City of Rosemead
City of San Jose
City of San Luis Obispo
City of Santa Clarita
City of Soledad
City of Stanton
City of Union City
City of Vista
City of Whittier
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Downtown Santa Monica
Fullerton Police Officers' Association

Fullerton; City of
League of California Cities
Los Angeles City Attorney's Office
Los Angeles County District Attorney's Office
Los Angeles County Sheriff's Department
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Mission Viejo; City of
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Target Corporation
Town of Apple Valley
Upland Police Officers Association

Oppose

San Francisco Public Defender
Underground Scholars Initiative At UC Berkeley
Vera Institute of Justice

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

Amended Mock-up for 2023-2024 SB-982

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

SECTION 1. Section 490.4 of the Penal Code is amended to read:

490.4. (a) A person who commits any of the following acts is guilty of organized retail theft and shall be punished pursuant to subdivision (b):

(1) 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.

(2) Acts in concert with two or more persons to receive, purchase, or possess merchandise described in paragraph (1), knowing or believing it to have been stolen.

(3) 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.

(4) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of the acts described in paragraph (1) or (2) or any other statute defining theft of merchandise.

(b) Organized retail theft is punishable as follows:

(1) If violations of paragraph (1), (2), or (3) of subdivision (a) are committed on two or more separate occasions within a 12-month period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that 12-month period exceeds nine hundred fifty dollars ($950), the offense is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170.

(2) Any other violation of paragraph (1), (2), or (3) of subdivision (a) that is not described in paragraph (1) of this subdivision is punishable by imprisonment in a county jail not exceeding one year.

(3) A violation of paragraph (4) of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170.

(c) For the purpose of determining whether the defendant acted in concert with another person or persons in any proceeding, the trier of fact may consider any competent evidence, including, but not limited to, all of the following:

(1) The defendant has previously acted in concert with another person or persons in committing acts constituting theft, or any related offense, including any conduct that occurred in counties other

than the county of the current offense, if relevant to demonstrate a fact other than the defendant's disposition to commit the act.

(2) That the defendant used or possessed an artifice, instrument, container, device, or other article capable of facilitating the removal of merchandise from a retail establishment without paying the purchase price and use of the artifice, instrument, container, or device or other article is part of an organized plan to commit theft.

(3) The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption, and the property is intended for resale.

(d) In a prosecution under this section, the prosecutor shall not be required to charge any other coparticipant of the organized retail theft.

(e) Upon conviction of an offense under this section, the court shall consider ordering, as a condition of probation, that the defendant stay away from retail establishments with a reasonable nexus to the crime committed.

(f) If the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become inoperative on the date that the Secretary of State certifies that the initiative was approved by the voters, and shall be repealed on January 1, 2025.

SECTION 2. Section 490.4 of the Penal Code is **added** to read:

(a) A person who commits any of the following acts is guilty of organized retail theft, and shall be punished pursuant to subdivision (b):

(1) 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.

(2) Acts in concert with two or more persons to receive, purchase, or possess merchandise described in paragraph (1), knowing or believing it to have been stolen.

(3) 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.

(4) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of the acts described in paragraph (1) or (2) or any other statute defining theft of merchandise.

(b) Organized retail theft is punishable as follows:

(1) If violations of paragraph (1), (2), or (3) of subdivision (a) are committed on two or more separate occasions within a 12-month period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that 12-month period exceeds nine hundred fifty dollars ($950), the offense is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170.

(2) Any other violation of paragraph (1), (2), or (3) of subdivision (a) that is not described in paragraph (1) of this subdivision is punishable by imprisonment in a county jail not exceeding one year.

(3) A violation of paragraph (4) of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170.

(c) For the purpose of determining whether the defendant acted in concert with another person or persons in any proceeding, the trier of fact may consider any competent evidence, including, but not limited to, all of the following:

(1) The defendant has previously acted in concert with another person or persons in committing acts constituting theft, or any related offense, including any conduct that occurred in counties other than the county of the current offense, if relevant to demonstrate a fact other than the defendant's disposition to commit the act.

(2) That the defendant used or possessed an artifice, instrument, container, device, or other article capable of facilitating the removal of merchandise from a retail establishment without paying the purchase price and use of the artifice, instrument, container, or device or other article is part of an organized plan to commit theft.

(3) The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption and the property is intended for resale.

(d) In a prosecution under this section, the prosecutor shall not be required to charge any other coparticipant of the organized retail theft.

(e) Upon conviction of an offense under this section, the court shall consider ordering, as a condition of probation, that the defendant stay away from retail establishments with a reasonable nexus to the crime committed.

(f) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

(g) If the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become operative on the date that the Secretary of State certifies that the initiative was approved by the voters.

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

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To address the increase in community-based crime, including retail theft, in order to provide broader public safety, it is necessary that this act take effect immediately.

Date of Hearing: June 11, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1242 (Min) – As Amended May 16, 2024

As Proposed to be Amended in Committee

SUMMARY: Provides that for the crime of reckless fire setting, if the offense was carried out within a merchant's premises in order to facilitate organized retail theft, it shall be a factor in aggravation at sentencing. Specifically, **this bill:**

1) States that for the crime of reckless fire setting, if the fire was set within a merchant's premises in order to facilitate organized retail theft, it shall be a factor in aggravation at sentencing.

2) States that if the initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction ACT" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, the provision of law added by this bill to the existing reckless fire setting statute will become inoperative.

3) Contains an urgency clause.

EXISTING LAW:

1) States that when a statute prescribes three possible terms of imprisonment, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term, except when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term, and the facts underlying those circumstances have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, § 1170, subd. (b).)

2) Provides that a person who commits any of the following acts is guilty of organized retail theft, shall be punished as prescribed:

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

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

d) Recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake acts of theft. (Pen. Code, § 490.4, subd. (a).)

3) States that organized retail theft is punished as follows:
   a) If violations of the above provisions, except the recruiting, coordinating, organizing, supervising, directing, managing, or financing another provision, are committed on two or more separate occasions within a one-year period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that period exceeds $950 the offense is punishable as either a misdemeanor by imprisonment in a county jail not exceeding one year or as a jail-eligible felony;

   b) Any other violation of the above provisions, except the recruiting, coordinating, organizing, supervising, directing, managing, or financing another provision, is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year; and,

   c) A violation of the recruiting, coordinating, organizing, supervising, directing, managing, or financing another provision is punishable as either a misdemeanor by imprisonment in a county jail not exceeding one year or as a jail-eligible felony. (Pen. Code, § 490.1, subd. (b).)

4) Provides that a person is guilty of unlawfully causing a fire when he or she recklessly sets fire to or causes to be burned any structure, forestland, or property.

   a) Unlawfully causing a fire that causes great bodily injury is a felony, punishable by imprisonment in the state prison for two, four, or six years, or by imprisonment in the county jail not to exceed one year, or by a fine, or by both imprisonment and a fine.

   b) Unlawfully causing a fire that causes an inhabited structure or property to burn is a felony, punishable by imprisonment in the state prison for two, three, or four years, or by imprisonment in the county jail not to exceed one year, or by a fine, or by both imprisonment and a fine.

   c) Unlawfully causing a fire of a structure or forestland is a felony punishable by imprisonment in the state prison for 16 months, 2, or 3 years, or by imprisonment in the county jail not to exceed one year, or by a fine, or by both imprisonment and a fine.

   d) Unlawfully causing a fire of property is a misdemeanor. For purposes of this section unlawfully causing a fire of property does not include one burning or causing to be burned his own personal property unless there is injury to another person or to another person's structure, forest land or property.

   e) In the case of any person violating this section while confined in a state prison, in a state prison road camp, prison forestry camp, or other prison camp, or prison farm, or confined in a county jail while serving a term of imprisonment for a felony or misdemeanor conviction, any sentenced imposed shall be consecutive to the sentence for which the person was then confined. (Pen. Code, § 452.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Retail theft has become increasingly sophisticated in recent years with scenarios where fire is being used as a tactic to hide and distract from criminal activity. SB 1242 is part of a comprehensive strategy to hold criminals accountable, while giving law enforcement the tools they need to successfully prosecute these heinous crimes that put both local communities and retailers at risk. The higher sentences authorized under this bill will help deter crime and put a stop to this destructive trend that costs businesses millions in damages, on top of investigative costs to local fire officials."

2) **Background**: In 1977, California adopted the Determinate Sentencing Law, moving away from a system of indeterminate sentences with high maximum terms and broad parole discretion to specified set terms of imprisonment. Under a determinate sentencing system, the court selects from one of the three statutorily specified terms of imprisonment. This is generally referred to as sentencing triad, which specifies a lower, middle, and higher term of incarceration for violation of the offense.

   Prior to 2007, the law provided a statutory presumption that the middle term was to be imposed unless aggravating or mitigating factors supported the imposition of the upper or lower term. The Rules of Court provides lists of both aggravating factors and mitigating factors. In each category there are factors relating to the crime and factors relating to the defendant. (CITE) In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California's determinate sentencing law violated a defendant's right to trial by jury guaranteed under the Sixth Amendment to the U.S. Constitution. (*Id.* at p. 274.) Specifically the Court held that "[b]ecause circumstances in aggravation are found by the judge, not the jury, and need only be established by a preponderance of the evidence, not beyond a reasonable doubt, . . . the DSL violates *Apprendi's* bright-line rule: Except for a prior conviction, 'any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.'" (*Id.* at pp. 288-289, relying on *Apprendi v. U.S.* (2000) 530 U.S. 466.)

   The Supreme Court provided direction as to what steps the Legislature could take to address the constitutional infirmities of the DSL:

   > As to the adjustment of California's sentencing system in light of our decision, the ball . . . lies in [California's] court. We note that several States have modified their systems in the wake of *Apprendi* and *Blakely* to retain determinate sentencing. They have done so by calling upon the jury - either at trial or in a separate sentencing proceeding - to find any fact necessary to the imposition of an elevated sentence. As earlier noted, California already employs juries in this manner to determine statutory sentencing enhancements. Other States have chosen to permit judges genuinely to exercise broad discretion . . . within a statutory range, which, everyone agrees, encounters no Sixth Amendment shoal. California may follow the paths taken by its sister States or otherwise alter its system, so long as the State observes Sixth Amendment limitations declared in this Court's decisions."
   > (*Cunningham*, *supra*, 549 U.S. at pp. 293-294.)

Following *Cunningham*, the Legislature amended the determinate sentencing law, specifically Penal Code sections 1170 and 1170.2, to make the choice of lower, middle, or upper prison terms one within the sound discretion of the court. (SB 40 (Romero), Ch. 3, Stats. 2007.) This approach was embraced by the California Supreme Court in *People v. Sandoval* (2007) 41 Cal.4th 825, 843-852. The procedure removes the mandatory middle term and the requirement of weighing aggravation against mitigation before imposition of the upper term. Under the amended sections, the sentencing court was permitted to impose any of the three terms in its discretion, and need only state reasons for the decision so that it will be subject to appellate review for abuse of discretion.

SB 40 (Romero), the first of a series of legislation to provide a fix to the constitutional shortcomings of the determinate sentencing law, contained a sunset provision so that the amendment to the determinate sentencing law would be repealed on a certain date if further legislative action was not taken before that date. According to intent language contained in SB 40, "It is the intent of the Legislature in enacting this provision to respond to the decision of the United States Supreme Court in *Cunningham v. California*, 2007 U.S. LEXIS 1324 (U.S. 2007). It is the further intent of the Legislature to maintain stability in California's criminal justice system while the criminal justice and sentencing structures in California sentencing are being reviewed." Following SB 40 (Romero), several bills extended the sunset on the amended DSL to continue allowing judges the discretion to impose the lower, middle or upper term of imprisonment authorized by statute.

However, in 2021, instead of extending the sunset on the amended determinate sentencing law that gives broad discretion to the court to make the choice between the three terms, the Legislature enacted legislation to authorize a court to impose the upper term only if the defendant admits the aggravating circumstance or found true beyond a reasonable doubt at trial by a jury. (SB 567 (Bradford), Ch. 731, Stats. 2024.) The purpose of this change in approach was to give the jury a chance weigh in on the truthfulness of the circumstances that would increase a person's sentence. The Rules of Court provides lists of both aggravating factors and mitigating factors. (Cal. Rules of Court, Rule 4.421.) In each category there are factors relating to the crime and factors relating to the defendant.

Additionally, some statutes specify factors in aggravation that may be relied upon to increase a person's sentence beyond the middle term. This bill would specify that the fact that the offense was carried out within a merchant's premises in order to facilitate organized retail theft, as defined in Section 490.4, shall be a factor in aggravation for purposes of sentencing a person found guilty of reckless arson.

3) **Incidents of setting Fire in Retail Stores**: As noted in the author's statement, the impetus for this bill is the recent reported incidents of fires being set in retail stores to create a distraction while committing theft within the store.

On September 13, 2023, a woman was arrested for starting a fire in a Target store in Buena Park as a distraction so she could steal baby formula. It was unclear to investigators whether she was stealing the formula for personal use or as part of a retail theft scheme to resell the product. The fire cause $500,000 in damage to the store's building and $1 million damage to products.

On April 16, 2023, two men were arrested for setting a fire inside a North Highlands Target

to create a distraction to commit retail theft. The men were booked on felony charges of burglar, grand theft, arson and conspiracy.

4) **Efforts to Combat Retail Theft:** "The Homelessness, Drug Addition, and Theft Reduction Act" is a new initiative that would make specific changes to laws enacted by Proposition 47. Specifically, the initiative would reenact felony sentencing for petty theft with two prior thefts, allow multiple petty thefts to be aggregated to meet the $950 threshold without a showing that the acts were connected, and create new enhancements depending on the amount of property stolen or damaged. The initiative would also increase penalties for certain drug crimes, mandate treatment for certain offenders, and require courts to warn people convicted of drug distribution that they may be charged with murder in the future if someone dies after taking an illegal drug provided by that person.

   The initiative is supported by various law enforcement, public officials, district attorneys, and retail corporations. (*Id.*) To qualify for the November 2024 ballot, the law requires 546,651 valid signatures by June 27, 2024; as of January 25, 2024, the campaign had notified the Secretary of State that 25% of the required signatures had been collected. (*Id.*)

   On January 9, 2024, Governor Newsom called for legislation to crack down on large scale property crimes committed by organized groups who profit from resale of stolen goods. The proposals include: 1) creating new penalties targeting those engaged in retail theft to resell, and those that resell the stolen property; 2) clarifying existing arrest authority so that police can arrest suspects of retail theft, even if they didn't witness the crime in progress; 3) clarifying that theft amounts may be aggregated to reach the grand theft threshold; 4) creating new penalties for professional auto burglary, increasing penalties for the possession of items stolen from a vehicle with intent to resell, regardless of whether the vehicle was locked; 5) eliminating the sunset date for the organized retail crime statute; and 6) increasing penalties for large-scale resellers of stolen goods.

   Both houses of the Legislature have announced legislative packages that contain portions of the Governor's proposal.

5) **Argument in Support**: According to the *League of California Cities* "SB 1242 would address the issue of fires being started to facilitate organized retail theft an aggravating factor to increase the sentence of the offender.

   "Specifically, SB 1242 would address the issue of fires being started to facilitate an organized retail theft incident while staff must attend to the fire created as a diversion. This bill would increase penalties from these brazen acts by designating them as an aggravating factor making this eligible for increased sentencing.

   "As you may know, retail theft continues to be a problem in all California communities. For example, commercial burglary is at the highest rate since 2008. In fact, according to the PPIC, commercial burglary increased statewide since 2020, especially in larger counties with an increase of 13% among 14 of the 15 largest counties. Rising theft is impacting every corner of California, and city officials need additional tools to reduce crime and improve the safety of their neighborhoods.

"While SB 1242 is important to make progress on retail theft, this bill is only one part of a comprehensive solution that needs to include prevention, enforcement, and supervision. Cal Cities is part of a larger coalition of business, labor, law enforcement and local governments trying to address the increase in theft that is impacting so many Californians. Addressing the issue of arson in conjunction with retail theft is one of the issues that can help address this growing problem, however additional changes are needed to make our communities safer."

REGISTERED SUPPORT / OPPOSITION:

Support

Buena Park; City of
California Downtown Association
California Retailers Association
Chief Probation Officers' of California (CPOC)
City of Agoura Hills
City of Artesia
City of Buena Park
City of Citrus Heights
City of Cypress
City of El Cerrito
City of Fountain Valley
City of Fullerton
City of Grand Terrace
City of La Mirada
City of Lakeport
City of Lakewood CA
City of Los Alamitos
City of Mission Viejo
City of Oakdale
City of Paramount
City of Port Hueneme
City of Rancho Palos Verdes
City of Rancho Santa Margarita
City of Rolling Hills Estates
City of Rosemead
City of San Luis Obispo
City of Stanton
City of Whittier
Downtown Santa Monica
League of California Cities
Stockton; City of
Town of Apple Valley

Opposition

None

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

Amended Mock-up for 2023-2024 SB-1242 (Min)

The people of the State of California do enact as follows:

SECTION 1. Section 452 of the Penal Code is amended to read:

452. A person is guilty of unlawfully causing a fire when they recklessly set fire to, burn, or cause to be burned any structure, forest land, or property.

(a) Unlawfully causing a fire that causes great bodily injury is a felony punishable by imprisonment in the state prison for two, four, or six years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(b) Unlawfully causing a fire that causes an inhabited structure or inhabited property to burn is a felony punishable by imprisonment in the state prison for two, three, or four years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(c) Unlawfully causing a fire of a structure or forest land is a felony punishable by imprisonment in the state prison for 16 months, two or three years, or by imprisonment in the county jail for not more than six months, or by a fine, or by both such imprisonment and fine.

(d) Unlawfully causing a fire of property is a misdemeanor. For purposes of this paragraph, unlawfully causing a fire of property does not include one burning or causing to be burned their own personal property unless there is injury to another person or to another person's structure, forest land, or property.

(e) In the case of any person convicted of violating this section while confined in a state prison, prison road camp, prison forestry camp, or other prison camp or prison farm, or while confined in a county jail while serving a term of imprisonment for a felony or misdemeanor conviction, any sentence imposed shall be consecutive to the sentence for which the person was then confined.

(f) For purposes of sentencing for a violation of this section, the fact that the offense was carried out within a merchant's premises in order to facilitate organized retail theft, as defined in Section 490.4, shall be a factor in aggravation.

(g) If the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become inoperative on the date that the Secretary of State certifies that the initiative was approved by the voters, and shall be repealed on January 1, 2025.

(PU Amended by Stats. 1982, Ch. 1133, Sec. 2. Effective September 17, 1982.)

SEC. 2. Section 452 is added to the Penal Code, to read:

452. A person is guilty of unlawfully causing a fire when they recklessly sets fire to or burns or causes to be burned, any structure, forest land or property.

(a) Unlawfully causing a fire that causes great bodily injury is a felony punishable by imprisonment in the state prison for two, four or six years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(b) Unlawfully causing a fire that causes an inhabited structure or inhabited property to burn is a felony punishable by imprisonment in the state prison for two, three or four years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(c) Unlawfully causing a fire of a structure or forest land is a felony punishable by imprisonment in the state prison for 16 months, two or three years, or by imprisonment in the county jail for not more than six months, or by a fine, or by both such imprisonment and fine.

(d) Unlawfully causing a fire of property is a misdemeanor. For purposes of this paragraph, unlawfully causing a fire of property does not include one burning or causing to be burned their own personal property unless there is injury to another person or to another person's structure, forest land or property.

(e) In the case of any person convicted of violating this section while confined in a state prison, prison road camp, prison forestry camp, or other prison camp or prison farm, or while confined in a county jail while serving a term of imprisonment for a felony or misdemeanor conviction, any sentence imposed shall be consecutive to the sentence for which the person was then confined.

(f) If the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become operative on the date that the Secretary of State certifies that the initiative was approved by the voters.

~~SEC. 2.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB 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 XIIIB of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article

IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To address the increase in community-based crime, including retail theft, in order to provide broader public safety, it is necessary that this act take effect immediately.

Date of Hearing: June 11, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1253 (Gonzalez) – As Amended May 16, 2024

As Proposed to be Amended in Committee

SUMMARY: Requires a personal firearm importer to obtain a firearm safety certificate ("FSC") within 120 days of bringing any firearm, except an antique firearm, into the state and makes violation of this requirement a misdemeanor.

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) Defines a "personal firearm importer" as: 1) a non-licensed individual; 2) who is at least 18 years of age; 3) has moved into California; 4) owns a firearm that was acquired outside California; 5) the firearm is a legal weapon in California; 6) intends to possess that firearm within California; 7) the firearm was not delivered to the individual by a specified licensed dealer; and 8) the individual, while a resident in California, has not previously reported ownership of that firearm to the Department of Justice ("DOJ") including information about the individual and a description of the firearm. (Pen. Code, § 17000.)

2) 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 DOJ 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).)

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

4) 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.)

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

6) Requires the DOJ to develop FSCs to be issued by instructors certified by the DOJ to those persons who have complied with specified requirements regarding firearm safety, and which expire five years after the date of issuance. (Pen. Code, § 31655, subds. (a), (c).)

7) Provides that a FSC shall include, but not be limited to, the following:

   a) A unique handgun safety certificate identification number;

   b) The holder's full name;

   c) The holder's date of birth;

   d) The holder's driver's license or identification number;

   e) The holder's signature;

   f) The signature of the issuing instructor; and

   g) The date of issuance. (Pen. Code, § 31655, subd. (b).)

8) Provides that a licensed firearm dealer shall not deliver a firearm unless the person receiving the firearm presents to the dealer a valid FSC, or in the case of a handgun, an unexpired handgun safety certificate. The firearm dealer shall retain a photocopy of the FSC as proof of compliance. (Pen. Code, § 26840, subd. (a).)

9) Provides that a person shall not purchase or receive any firearm, except an antique firearm, without a valid FSC, except that in the case of a handgun, an unexpired handgun safety certificate may be used, and makes violation of this provision a misdemeanor. (Pen. Code, §31615, subd. (a)(1).)

10) Provides that a person shall not sell, deliver, loan, or transfer any firearm, except an antique firearm, to any person who does not have a valid FSC, except that in the case of a handgun, an unexpired handgun safety certificate may be used, and makes violation of this provision a misdemeanor. (Pen. Code, §31615, subd. (a)(2).)

11) Provides that a DOJ-certified instructor shall not issue a FSC to any person who has not complied with specified safety requirements or who is under 18 years of age, a violation of which is grounds for the revocation of the instructor's certification to issue FSCs. (Pen. Code, § 31625.)

12) Requires the DOJ to develop a FSC instruction manual in specified languages. (Pen. Code, § 31630.)

13) Requires the DOJ to prescribe a minimum level of skill, knowledge and competency to be required of all FSC instructors, as specified. (Pen. Code, § 31635.)

14) Requires the DOJ to develop a written objective test in specified languages, passage of which is a prerequisite to obtaining a FSC, and to develop a study guide for that test. (Pen. Code, §§ 31640, 31641, 31645.)

15) Provides that the test must be administered by a DOJ-certified instructor, and shall cover, but is not limited, to the following: 1) laws applicable to carrying and handling firearms, particularly handguns; 2) responsibilities of ownership of firearms, particularly handguns; 3) laws pertaining to the private sale and transfer of firearms; 4) laws pertaining to the permissible use of lethal force; 5) what constitutes safe firearm storage; 6) reasons for and risks of owning a firearm and bringing a firearm into the home, including the increased risk of death to someone in the household by suicide, homicide, or unintentional injury; 7) prevention strategies to address the risks associated with bringing firearms into the home; 8) current law as it relates to eligibility to own or possess a firearm, gun violence restraining orders, domestic violence restraining orders, and privately manufactured firearms. (Pen. Code, § 31640, subd. (c).)

16) Exempts certain persons from the FSC requirement, including active and honorably retired peace officers and federal officers, licensed firearm dealers, federally licensed collectors, concealed carry permit holders, specified hunting license holders, and specified individuals who receive a firearm via operation of law. (Pen. Code § 31700.)

17) 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.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "California has some of the most effective firearm safety laws in the nation, which has resulted in significant reductions in firearm incidences over the last few decades. Today, individuals who purchase firearms in California

must first receive a FSC, including a written test and demonstration, to ensure they can safely handle and store the firearm, and that they are appraised of best practices and current laws. However, there is a loophole in current state law such that individuals who move to California with a firearm from another state do not have to receive a California FSC. This presents a danger to California communities since almost every other states have a worse firearm safety record than California, and many states do not have a FSC requirement whatsoever. Senate Bill (SB) 1253 will close this loophole and keep California communities safe by requiring individuals moving to California with firearms to receive a FSC in 120 days upon their arrival."

2) **Background on Firearm Safety Certificates**: Beginning in 1993, possession of a handgun safety certificate was required to transfer firearms, and the DOJ was required to develop the process for individuals to obtain a handgun safety certificate. Exemptions were provided for specific classes of individuals who did not need to obtain a FSC, such as peace officers, persons with concealed carry permits, and for specific firearm transfers.[1] Senate Bill 52 (Scott), Chapter 942, Statutes of 2001, repealed the basic firearms safety certificate scheme and replaced it with the more stringent handgun safety certificate scheme. SB 52 provided that, effective January 1, 2003, no person may purchase, transfer, receive, or sell a handgun without a Handgun Safety Certificate (HSC). SB 1080 (Committee on Public Safety, Ch. 711, Statutes of 2010), required DOJ to prepare a pamphlet that summarizes California firearms laws as they pertain to a person other than law enforcement officers of members of the armed services. This pamphlet included, but was not limited to, the following: lawful possession, licensing procedures, transportation and use of firearms, the acquisition of hunting licenses, and other provisions as specified.

   Senate Bill 683 (Block, Ch. 761, Stats. of 2013), which took effect January 1, 2015, changed the name of the Handgun Safety Certificate program to the Firearm Safety Certificate program and applied the requirements to all firearms, including handguns and long guns. Under SB 693, the DOJ was required to develop a FSC instruction manual and make the manual available to licensed firearms dealers, who were in turn required to provide the manual to the general public.[2] These materials educate the public about their legal responsibilities and risks related to firearm ownership and includes information on firearm accidents and misuse.

   A person must generally obtain an FSC before purchasing or receiving any firearm except an antique firearm and requires the recipient of the sale, delivery, loan or transfer of any firearm except an antique firearm to possess a valid FSC.[3] A violation of these requirements is punishable as a misdemeanor.[4] Moreover, existing law exempts from this requirement concealed carry permit holders, active and retired peace officers, licensed firearm dealers, federally licensed collectors, hunting licensees, and specified individuals who receive a firearm via operation of law.[5] To obtain an FSC, an applicant 18 years of age or older must pass an objective written test developed by DOJ and administered by a DOJ-certified

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[1] Pen. Code, §§ 31700 et. seq.
[2] *FSC Publications*, California Department of Justice (accessed June 6, 2024), available at: https://oag.ca.gov/firearms/fsc
[3] Pen. Code, § 31615, subd. (a)(1); Pen. Code, §31615, subd. (a)(2).)
[4] *Ibid.*
[5] Pen. Code § 31700.

instructor, that covers laws pertaining to handling, using, and storing firearms, among other topics.[6] Applicants must secure with a passing grade of at least 75%.[7] FSCs are issued by the instructors that administer the FSC test and are valid for 5 years from the date of issue.[8]

3) **Effect of this Bill:** Non-licensed individuals that bring firearms into California are subject to several restrictions. Such persons are known as "personal firearm importers," which is defined as a non-licensed individual at least 18 years of age who has moved into California, owns a firearm that was acquired outside California that is legal to own in California and intends to possess that firearm within California.[9] This does not apply to such persons if the out of state firearm is delivered to the new resident by a specified licensed dealer.[10] Further, a person can only be a personal firearm importer if the individual, while a resident of California, had not previously reported ownership of that firearm to the DOJ.[11] Within 60 days of bringing any firearm into this state, a personal firearm importer must either forward to the DOJ a report outlining information concerning the individual and a description of the firearm in question or sell or transfer their firearm to a licensed dealer or law enforcement agency.[12] The requiring of forwarding a report to the DOJ identifying the individual and firearm is met by submitting a New Resident Report of Firearm Ownership (BOF 4010A) and paying a $19 fee to the California DOJ, Bureau of Firearms.[13]

   Existing law does not, however, require a personal firearm importer to obtain an FSC for firearms obtained out of state that they bring the firearm into California. Thus, while persons who purchase or receive firearms in California are required to obtain a FSC proving their knowledge of California's firearm laws and the associated responsibilities and risks of owning a firearm, there is no such requirement for guns previously purchased outside of California that are brought into this state by personal firearm importers. This bill would expand the type of persons required to obtain firearm safety certificates for guns owned in California to include personal firearm importers. Specifically, it requires a personal firearm importer to obtain an FSC within 120 days of bringing any firearm, except an antique firearm, into California, and makes a violation of this provision a misdemeanor.

   This bill reasonably attempts to expand California's FSC laws to ensure gun owners in California must have a competent understanding of California's firearm laws and the associated responsibilities and risks of firearm ownership even if that gun is obtained out-of-state and brought into California. While the author contends that this closes a "loophole" the effect of this bill may be limited. This bill does not apply to any person who brings an out of state firearm into California, but to "personal firearm importers" which, under Penal Code section 17000, subdivision (a)(9) *only applies to individuals, that while a resident of [California], had not previously reported ownership of that firearm to the [DOJ]…* include[ing] information about the individual and a description of the firearm."[14] Therefore, a

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[6] Pen. Code, § 31640, subd. (c).
[7] Pen. Code, § 31645.
[8] Pen. Code, § 31655.
[9] Pen. Code, § 17000.
[10] *Id.* at § 17000, subd. (a)(8).
[11] *Id.* at § 17000, subd. (a)(9).
[12] Pen. Code, § 27560, subd. (a).)
[13] *Firearms Information for New California Residents*, California Department of Justice, (accessed June 6, 2024), available at: https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/ab991frm.pdf
[14] *Id.* at § 17000, subd. (a)(9) (emphasis added).

person who moves to California with an out-of-state firearm, becomes a resident (e.g. leases a home or registers to vote in CA) and submits a New Resident Report of Firearm Ownership to the DOJ within 60 days (as required by PC 27560 if that person wishes to keep their out-of-state-firearm), would *not* be considered a personal firearm importer after that point since they had already reported firearm to the DOJ as a new resident. Phrased differently, once an individual moves to California with an out-of-state firearm, establishes residency, and registers their firearm within 60 days as required, *that person would no longer meet the definition of a personal firearm importer* and SB 1253 may not apply to them. The author may wish to consider amendments addressing the limited application of the bill.

4) **Exempt Persons:** The California Association of Highway Patrolmen opposes this bill asserting it "does not exempt current and retired law enforcement officers that are trained in the use and safe storage of firearms." This concern is no longer applicable. SB 1253, as proposed to be amended, places the requirement that personal firearm importers obtain a FSC within 120 days of moving into the state in PC 31615 (a)(3). PC 31700 specifically exempts active and honorably retired peace officers and federal officers, licensed firearm dealers, federally licensed collectors, concealed carry permit holders, specified hunting license holders, and specified individuals who receive a firearm via operation of law from the FSC requirement of PC 31615(a) – where SB 1253's requirement is now placed. Therefore, such current and honorably retired peace officers are exempt from SB 1253's application.

5) **Potential Perverse Incentives:** SB 1253 makes it a misdemeanor for a personal firearm importer to fail to obtain a FSC within 120 day of bringing their firearm into California. Indeed, a personal firearm importer is required, within 60 days of bringing a firearm into this state, to either register their firearm or sell or transfer the firearm to dealers or law enforcement agencies. Inspections stations on the California border are also required to provide signs that California-specific procedures apply to firearms being brought into the state, providing notice for such persons to take action to comply with such laws.

   However, obtaining a FSC is arguably more burdensome and time-consuming than registering or transferring a firearm. To obtain a FSC, a person must take the time to study for, and pass (minimum score of 75%), a test with a DOJ-certified instructor covering California's firearm laws. Persons bringing firearms into this state may not be aware of SB 1253's requirement to obtain an FSC within 120 days. Additionally, there are many other time-consuming tasks and responsibilities when moving to a new state (finding new homes, enrolling children in schools, registering to vote, etc.) As such, it is reasonable to expect that some personal firearm importers may unintentionally fail to meet this 120 deadline. This could create an incentive for such persons to never attempt to obtain an FSC or never register their gun entirely, since attempting to obtain a FSC after 120 days of moving to the state would mean admitting to a misdemeanor. The author may wish to consider amendments permitting a grace period or post-deadline opportunities to comply with SB 1253, in order to encourage accidently non-complying persons to obtain FSCs even if they fail to meet the initial 120 day deadline.

6) **Argument in Support**: According to *Brady United Against Gun Violence*: "FSCs were established so every firearm owner could understand and follow firearm safety practices,

have basic familiarity with the operation and handling of their firearm, and be fully aware of the responsibility of firearm ownership. Current law requires any person who acquires a firearm to have an FSC, unless statutorily exempt from the FSC requirements. A person must pass a Department of Justice (DOJ) written test on firearm safety, administered by DOJ instructors (often located at firearm dealerships). The FSC course also provides warning information regarding safe storage, proper transfer of firearm ownership, and suicide prevention. FSCs expire after five years of issuance.

Current law only requires new firearm owners that acquire a firearm within California to have an FSC. There is no requirement for persons who bring in firearms from out of state to complete the FSC requirements. SB 1253 will close this loophole and require persons who bring in firearms outside of California to acquire a FSC within SB 1253 will help create a more educated firearm owner population in California and reduce the unnecessary and unintentional firearm injuries the people of California suffer every day. For the above reasons, we support SB 1253."

7) **Argument in Opposition**: According to the *California Rifle & Pistol Association*: "[t]his legislation does not further firearms safety, especially in the area of children. The author of this bill along with her colleagues in the Assembly point out that firearms are a serious threat to the lives of children. Instead of focusing on education to youth about firearms, she chooses to focus on another layer of processes on the law-abiding citizen. The processes began with a Basic Firearms Safety Certificate (BFSC) in 1993, then the Handgun Safety Certificate (2001), the Firearms Safety Certificate which has been repeatedly updated and yet according to the arguments presented there has been no demonstrable impact on improving firearms safety.

The proposed legislation requires an individual moving into the State of California to obtain the firearms safety certificate within 120 days of arrival. Many law-abiding firearms owners from other states will be charged with a crime because there is no notification system within this bill as to how people moving to the state will be notified this is a process that needs to be complete if passed.

This bill calls for the violation of this bill to be a misdemeanor thus charging an un-notified law abiding citizen with a crime. There are also many non-citizens who come to California and are lawfully allowed to own a firearm that will be placed at risk due to the lack of proper notification of this requirement. This seems antithetical to the Legislatures current focus on not criminalizing Californians unnecessarily."

8) **Related Legislation**: None

9) **Prior Legislation**:

   a) AB 645 (Irwin), Chapter 729, Statutes of 2019, requires, among other things, the written test for the handgun safety certificate to cover the topic of suicide.

   b) AB 1525 (Baker), Chapter 825, Statutes of 2017, requires a specified statement regarding suicide to be printed on the packaging and descriptive materials accompanying the sale of any firearm, requires a licensed firearms dealer to conspicuously post a specified suicide

warning statement on its premises, and requires the written test for the handgun safety certificate to cover the topic of suicide.

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

d) AB 809 (Feuer), Chapter 745, 2011, among other things expands the requirement for a personal handgun importer to report certain information relative to bringing a handgun into the state, as specified.

e) AB 52 (Scott), Chapter 942, Statutes of 2001, repeals the Basic Firearms Safety and Certificate (BFSC) program administered by the Department of Justice (DOJ) and replaces it with a Handgun Safety Licensing Program funded from fees.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady California
California Academy of Preventive Medicine
Center for Public Interest Law/children's Advocacy Institute/university of San Diego
City of Alameda
Cleanearth4kids.org
Consumer Protection Policy Center/usd School of Law
Giffords Law Center to Prevent Gun Violence
LA Care Health Plan
San Diego City Attorney's Office
San Francisco Marin Medical Society
Smart Justice California, a Project of Tides Advocacy

Oppose

California Association of Highway Patrolmen
California Rifle and Pistol Association, INC.
California State Sheriffs' Association
Delta Waterfowl
Gun Owners of California, INC.
National Rifle Association - Institute for Legislative Action
Peace Officers Research Association of California (PORAC)

Analysis Prepared by: Ilan Zur

Amended Mock-up for 2023-2024 SB-1253 (Gonzalez (S))

Mock-up based on Version Number 96 - Amended Senate 5/16/24
Submitted by: Staff Name, Office Name

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

SECTION 1.
Section 31615 is amended to the Penal Code, and Section 31615.1 is deleted, to read:

31615.

(a) A person shall not do ~~either~~ *any* of the following:

(1) Purchase or receive any firearm, except an antique firearm, without a valid firearm safety certificate, except that in the case of a handgun, an unexpired handgun safety certificate may be used.

(2) Sell, deliver, loan, or transfer any firearm, except an antique firearm, to any person who does not have a valid firearm safety certificate, except that in the case of a handgun, an unexpired handgun safety certificate may be used.

(3) Bring any firearm, except an antique firearm, into this state as a personal firearm importer, as defined in PC 17000, without obtaining a valid firearm safety certificate within 120 days of bringing that firearm into this state.

(b) Any person who violates subdivision (a) is guilty of a misdemeanor.

(c) 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.

~~(d) This section shall become operative on January 1, 2015.~~
~~*(Repealed (in Sec. 16) and added by Stats. 2013, Ch. 761, Sec. 17. (SB 683) Effective January 1, 2014. Section operative January 1, 2015, by its own provisions.)*~~

~~***31615.1.***~~
~~*(a) Within 120 days of bringing any firearm, except an antique firearm, into this state, a personal firearm importer shall obtain a firearm safety certificate.*~~
~~*(b) A violation of this section is punishable as a misdemeanor.*~~

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

Date of Hearing: June 11, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1416 (Newman) – As Amended June 4, 2024

As Proposed to be Amendment in Committee

SUMMARY: Creates new sentencing enhancements of 1, 2, 3, or 4 years respectively for selling, exchanging, or returning for value, or attempting to sell, exchange, or return for value, any property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, if the property value exceeds $50,000, $200,000, $1,000,000, or $3,000,000. Specifically, **this bill**:

1) Provides that the court shall impose an additional term when a person sells, exchanges, or returns for value, or attempts to sell, exchange, or return for value, property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, whether or not the person committed the act of shoplifting, theft, or burglary, as follows:

   a) If the property value exceeds fifty thousand dollars ($50,000), the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of one year.

   b) If the property value exceeds two hundred thousand dollars ($200,000), the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of two years.

   c) If the property value exceeds one million dollars ($1,000,000), the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of three years.

   d) If the property value exceeds three million dollars ($3,000,000), the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of four years.

   e) For each property value of three million dollars ($3,000,000), the court shall impose a term of one year in addition to the term specified in paragraph (4).

2) Provides that when a person acts in concert with another to sell, exchange, or return for value, or attempts to sell, exchange, or return for value, property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, the court shall impose the additional term whether or not the person committed the act of shoplifting, theft, or burglary.

3) Provides that, in an accusatory pleading involving multiple charges of sales, exchanges, or returns for value, or attempts to do the same, the additional term may be imposed when the aggregate value of the property involved exceeds the specified amount and arises from a

common scheme or plan.

4) Provides that the additional terms shall not be imposed unless the facts relating to the amounts are charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

5) Provides that the court may impose additional term and another enhancement under a different statute on a single count.

6) Provides a sunset date of January 1, 2030.

7) Includes an urgency clause.

EXISTING LAW:

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

2) Defines grand theft as any theft where the money, labor, or real or personal property taken is of a value exceeding $950. (Pen. Code, § 487, subd. (a).)

3) States that petty theft is punishable by a fine not exceeding $1,000, by imprisonment in the county jail not exceeding six months, or both. (Penal Code § 490.)

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

5) States that any act of shoplifting must be charged as such, and that a person charged with shoplifting cannot also be charged with burglary or theft of the same property. (Pen. Code, § 459.5, subd. (b).)

6) Punishes shoplifting as a misdemeanor, except where a person has a prior "super strike" or a registrable sex conviction, in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment. (Pen. Code, § 459.5, subd. (a).)

7) Defines organized retail theft as committing any of the following acts:

   a) Acting 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) Acting in concert with two or more persons to receive, purchase, or possess merchandise, as specified, knowing or believing it to have been stolen;

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

d) Recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake any of the specified acts. (Pen. Code, § 490.4, subd. (a).)

8) Defines burglary as entering a specified structure or vehicle with intent to commit grand or petit larceny or any felony. (Pen. Code, § 459.)

9) States that burglary of an inhabited dwelling is first degree burglary, and that all other kinds of burglary are of the second degree. (Pen. Code, § 460.)

10) Provides that the punishment for first degree burglary is imprisonment in the state prison for two, four, or six years. (Pen. Code, § 461, subd. (a).)

11) Provides that the punishment for second degree burglary is either confinement of up to one year in the county jail, or confinement in the county jail for 16 months, two, or three years pursuant to criminal justice realignment. (Pen. Code, §§ 18, subd. (a), 461, subd. (b), 1170, subd. (h).)

12) Defines receiving stolen property as buying or receiving property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained. (Pen. Code, § 496, subd. (a).)

13) Provides that, notwithstanding the punishment for petty theft, if a person is required to register as a sex offender, has a prior "super strike conviction," or has a conviction for a specified theft-related offense against an elder or dependent adult, and also has been convicted of a specified theft-related offense for which he or she was imprisoned, and is subsequently convicted of petty theft, then the person is to receive an enhanced punishment of imprisonment in the county jail not to exceed one year, or in the state prison. (Pen. Code, § 666.)

PRIOR LAW:

1) Provided that when any person takes, damages or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows:

   a) If the loss exceeds $65,000, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of one year;

   b) If the loss exceeds $200,000, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of two years;

   c) If the loss exceeds $1.3 million, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years; and,

d) If the loss exceeds $3.2 million, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of four years. (Former Pen. Code, § 12022.6 [Repealed as of January 1, 2018].)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1416 is an important step in more effectively combating retail theft as part of the "Working Together for a Safer California" legislative package. When passed, it will impose progressively stronger penalties for crimes involving the sale, exchange, return, or attempted resale of items acquired through retail theft, depending on the aggregate value of those items. Organized retail theft is an expanding criminal trend in California, and law enforcement faces significant challenges in prosecuting the organizers of these crimes. SB 1416 will give law enforcement another important tool to effectively prosecute, as well as deter, those who would seek to coordinate and benefit from large-scale organized retail theft."

2) **Background: Enhancements**: Existing law contains a variety of enhancements that can be used to increase the term of imprisonment a defendant will serve. Enhancements add time to a person's sentence for factors relevant to the defendant such as prior criminal history or for specific facts related to the crime. Multiple enhancements can be imposed in a single case and can range from adding a specified number of years to a person's sentence, or doubling a person's sentence or even converting a determinate sentence into a life sentence.

   A recent report on sentencing enhancements found that about 40% of individual prison admissions since 2015 have sentences lengthened by a sentence enhancement. Among the currently incarcerated, the prevalence of enhanced sentences is much higher, impacting the sentences of approximately 70% of people incarcerated as of 2022. Data shows that enhancements have been applied a total of 167,340 times to new prison admissions since 2015, and have been applied 197,274 times in the cases of those incarcerated as of July 2022. (Mia Bird et al., *Sentence Enhancements in California*, California Policy Lab (Mar. 2023) <https://www.capolicylab.org/wp-content/uploads/2023/03/Sentence-Enhancements-in-California.pdf> [as of Mar. 27, 2024].)

   According to the report, there are over 100 separate code sections in California law that can be used to enhance a person's sentence and the most common enhancement is for a previous prison or jail sentence. (*Ibid.*) The report noted several recent legislative changes to enhancements that were enacted based on the recommendation of the Committee on the Revision of the Penal Code. (See *Annual Report and Recommendations 2020*, Committee on Revision of the Penal Code http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf [as of Mar. 27, 2024].)

   > AB 333 made updates to the gang enhancements which narrowed the definition of gang involvement. SB 483 built on legislation repealing one- and three-year enhancements for prior convictions and applied the repeal to people who were incarcerated and had the enhancements as part of their sentences. Finally, SB 81 provided guidance to judges that allowed them discretion in whether to dismiss

sentence enhancements, unless in the judge's perspective, not enhancing a sentence could endanger public safety (PC § 1385)

The enhancement reforms enacted by the legislature since 2018 have curtailed the frequency with which enhancements have been applied to prison terms. We observe this both in overall trends, as well as in analysis of specific reforms on specific enhancement categories. Figure 3 shows the number of admissions with enhancements (the blue line) for each month from the beginning of 2015 through the end of 2022 as well as the total number of enhancements (the orange line) imposed on these terms (each admission may include more than one enhancement). There is a clear drop in admissions with enhancements coinciding with the onset of the COVID-19 pandemic and the corresponding drop in admissions to CDCR. Given the unpredictable nature of the pandemic, and the rates at which people were released from prison to help slow the spread, it is difficult to tease apart which declines after 2020 are due to enhancement reforms or are pandemic related.

3) **Repealed "Excessive Takings" Enhancement**: Until the law sunset in 2018, California had an "excessive takings" enhancement that would apply to taking or damaging of property that exceeded specified value thresholds. (Former Penal Code Section 12022.6.) The law was enacted in 1977 and subsequently a sunset provision was included in the statute for the purpose of allowing the Legislature to consider the effects of inflation on the property value thresholds in the law. The sunset was extended several times through legislation until the law was allowed to sunset in 2018. The law as it read in 2017 required the court to apply an enhancement of 1, 2, 3, or 4 years respectively whenever any person was convicted of a felony involving taking or damaging property that exceeded losses of $65,000, $200,000, $1,300,000 and $3,200,000.

   AB 1511 (Low), of the 2017-2018 legislative session, would have reauthorized the enhancement statute with higher value thresholds, starting at $75,000 and going up to $3.7 million in property loss, and would have made the statute permanent. The bill was vetoed. Then Governor Brown's veto message stated:

   > AB 1511 now seeks to re-enact this repealed enhancement, but omits any sunset provision similar to those that have been included with this statute since 1990. I see no reason to now permanently re-enact a repealed sentencing enhancement without corresponding evidence that it was effective in deterring crime. As I have said before, California has over 5,000 criminal provisions covering almost every conceivable form of human misbehavior. We can effectively manage our criminal justice system without 5,001.

   AB 1960 (Soria), scheduled for a hearing today in the Senate Public Safety Committee, would re-enact the excessive takings enhancement but lowers the amounts to below 2017 levels.

This bill creates new enhancements that would apply to some of the same conduct that would have been covered by former Penal Code section 12022.6. This bill requires the court to apply specified additional terms of imprisonment when the value of property acquired through one or more acts of exceeds the following amounts: $50,000, $200,000, $1 million, and $3 million. The threshold value amounts contained in this bill are lower than the values contained in Penal Code section 12022.6 when the law was allowed to sunset. Specifically, that statute, which was last adjusted for inflation in 2007 for the law to go into effect January 1, 2008, contained the following threshold amounts: $65,000, $200,000, $1.3 million, and $3.2 million.

4) **Renewed Efforts to Combat Property Crimes**: "The Homelessness, Drug Addition, and Theft Reduction Act" is a new initiative that would make specific changes to laws enacted by Proposition 47. Specifically, the initiative would reenact felony sentencing for petty theft with two prior thefts, allow multiple petty thefts to be aggregated to meet the $950 threshold without a showing that the acts were connected, and create new enhancements depending on the amount of property stolen or damaged. The initiative would also increase penalties for certain drug crimes, mandate treatment for certain offenders, and require courts to warn people convicted of drug distribution that they may be charged with murder in the future if someone dies after taking an illegal drug provided by that person. (https://ballotpedia.org/California_Drug_and_Theft_Crime_Penalties_and_Treatment-Mandated_Felonies_Initiative_(2024) [as of Mar. 27, 2024].) The initiative is supported by various law enforcement, public officials, district attorneys, and retail corporations. (*Id.*) To qualify for the November 2024 ballot, the law requires 546,651 valid signatures by June 27, 2024; as of January 25, 2024, the campaign had notified the Secretary of State that 25% of the required signatures had been collected. (*Id.*)

   On January 9, 2024, Governor Newsom called for legislation to crack down on large scale property crimes committed by organized groups who profit from resale of stolen goods. (https://www.gov.ca.gov/2024/01/09/property-crime-framework/ [as of Mar. 27, 2024).) The proposals include: 1) creating new penalties targeting those engaged in retail theft to resell, and those that resell the stolen property; 2) clarifying existing arrest authority so that police can arrest suspects of retail theft, even if they didn't witness the crime in progress; 3) clarifying that theft amounts may be aggregated to reach the grand theft threshold; 4) creating new penalties for professional auto burglary, increasing penalties for the possession of items stolen from a vehicle with intent to resell, regardless of whether the vehicle was locked; 5) eliminating the sunset date for the organized retail crime statute; and 6) increasing penalties for large-scale resellers of stolen goods.

   Both houses of the Legislature have announced legislative packages that include parts of the Governor's proposals. (See https://www.latimes.com/california/story/2024-02-26/senate-leaders-respond-to-states-fentanyl-crisis-and-organized-retail-theft-problem-with-new-legislation [as of Mar. 27, 2024) and https://www.latimes.com/california/story/2024-02-15/democratic-lawmakers-introduce-legislation-to-target-organized-retail-theft-online-resellers#:~:text=If%20passed%2C%20the%20bill%20would,if%20there%20were%20separate%20victims [as of Mar. 27, 2024].)

5) **Research on the Deterrent Effect and Impact on State Prisons:** According the U.S. Department of Justice, "Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little

about the sanctions for specific crimes. More severe punishments do not 'chasten' individuals convicted of crimes, and prisons may exacerbate recidivism." (National Institute of Justice, U.S. Department of Justice, Five Things About Deterrence (June 5, 2016) <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>)

In a 2014 report, the Little Hoover Commission also addressed the disconnect between science and sentencing – that is, putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. (Little Hoover Commission, *Sensible Sentencing for a Safer California* (2014) at p. 4 https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf.) Additionally, the Commission also explained how California's sentencing structure and enhancements contributed to a 20-year state prison building boom: "California policymakers enacted hundreds of laws increasing sentence length, adding sentence enhancements and creating new sentencing laws. The end result was that every new prison the state built was quickly filled to capacity." (*Id.* at p. 9.)

6) **Committee Amendments:** The committee amendments add an urgency clause, allowing the bill's provisions to take effect immediately upon approval of the Governor. Additionally, the amendments contain an inoperability clause stating that its provisions will become inoperative if the proposed initiative measure titled, "The Homelessness, Drug Addition, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024.

7) **Argument in Support**: According to the *League of California Cities, Los Angeles County Division*, "Specifically, SB 1416 (Newman) would allow the court to impose one-to-four-year terms of incarceration as additional consecutive terms, when a person sells, exchanges, or returns for value property that was obtained by theft from a retail business, or when they attempt to commit any of the aforementioned offenses. These enhancements, which are added to the sentence for the underlying crime, will be based on the monetary amount of the stolen property recovered.

   "As you may know, retail theft continues to be a problem in all California communities. For example, commercial burglary is at the highest rate since 2008. In fact, according to the Public Policy Institute of California (PPIC), commercial burglary has increased statewide since 2020, especially in larger counties which had an increase of 13% among 14 of the 15 largest counties. Rising theft is impacting every corner of California, and city officials need additional tools to reduce crime and improve the safety of their neighborhoods.

   "While SB 1416 (Newman) is an important tool in the effort to combat retail theft, this bill is only one part of a comprehensive solution that needs to include many other tools that will assist in the prevention and enforcement of retail theft and will provide for adequate supervision of those convicted of retail theft-related offenses. These additional changes are needed to make our communities safer."

8) **Argument in Opposition**: According to the *Ella Baker Center for Human Rights*, "Sentencing enhancements do not prevent crime, and will not will not address violence in any demonstrable way. Enhancements are, however, one of the drivers of mass incarceration, a systematic means of economically and politically disenfranchising Black, Latinx and Indigenous families and communities. Mass incarceration is a human rights and economic

disaster for California families, and was built one bad bill at a time.

"There is extensive research that proves that overly long sentences, and the threat of such sentences do not reduce or prevent crime. In 2014, the National Academy of Sciences published a 444-page review of studies of sentencing policies and their positive and negative effects on crime rates and community safety. Among their conclusions were:

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

"Additionally, a 2015 report by the Ella Baker Center for Human Rights, Forward Together, and Research Action Design *Who Pays, The True Cost of Incarceration on Families* details how incarceration destabilizes entire families and communities. Many people who return from incarceration face extreme barriers to finding jobs and housing and reintegrating into society.

"Family members of incarcerated people also struggle with overwhelming debt from court costs, visitation and telephone fees, and diminished family revenue. The longer the sentence, the more severe these problems.

"Subject only to prosecutorial fiat, enhancements serve during the plea bargain phase to bully low income defendants into admitting guilt even in weak cases, and/or accepting unjustly long sentences. If a defendant asserts their Constitutionally guaranteed right to a trial by jury, the prosecutor may threaten to stack charges and enhancements. The US Department of Justice published a research summary on plea bargain and charging practices in the US, and among their findings is that those who go to trial are more likely to receive harsher sentences, and that the majority of research found that Black Americans are punished more harshly than whites.

"Again – harsher sentences do not deter crime. People do not calculate the number of years in prison before acting. They are only deterred by fear of apprehension.5 California already spends too much money on mass incarceration, having built far more prisons than universities in the last 30 years. And the harms done to families and communities undermine the very intent of law to protect and enhance public safety."

9) **Related Legislation**: AB 1960 (Soria) would re-enact a sentence enhancement for felony offenses for a person who intentionally takes, damages, or destroys property, when the loss exceeds specified dollar amounts, but lowers the amounts to below 2017 levels when the enhancement sunset. AB 1960 will be heard today in the Senate Public Safety Committee.

10) **Prior Legislation**:

    a) AB 484 (Gabriel), of the 2023-2024 Legislative Session, would have re-enacted a sentence enhancement for specified property-related offenses for a person who intentionally takes, damages, or destroys property, when the loss exceeds specified dollar amounts, but would have authorized, rather than required, the court to impose the

enhancement. AB 484 was held in the Assembly Appropriations Committee.

b) SB 985 (Portantino), of the 2019-2020 Legislative Session, was substantially similar to AB 1960 (Soria) above. SB 985 did not receive a hearing in the Senate Public Safety Committee.

c) AB 1511 (Low), of the 2017-2018 Legislative Session, would have re-enacted the enhancement for taking or destroying property during commission of a felony and raised the dollar amounts, based on inflation, required to trigger the enhancement. AB 1511 was vetoed by the Governor.

d) AB 1705 (Niello), Chapter 420, Statutes of 2007, raised the dollar limits required to impose specified enhancements for taking, damaging, or destroying property and set a sunset date of January 1, 2018.

e) AB 293 (Cunneen), Chapter 551, Statutes of 1997, extended the sunset date of the excessive takings enhancement for 10 years, from 1998 to 2008.

REGISTERED SUPPORT / OPPOSITION:

Support

Buena Park; City of
California Downtown Association
California Police Chiefs Association
California Retailers Association
Chief Probation Officers' of California (CPOC)
City of Agoura Hills
City of Artesia
City of Buena Park
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 Merced
City of Oakdale
City of Paramount
City of Port Hueneme
City of Rocklin
City of Rohnert Park
City of Rolling Hills Estates

City of Rosemead
City of San Luis Obispo
City of Santa Clarita
City of Stanton
Downtown Santa Monica
Fullerton; City of
League of California Cities
Los Angeles County Division, League of California Cities
Mission Viejo; City of
Oakley; City of
Town of Apple Valley

Opposition

ACLU California Action
Ella Baker Center for Human Rights
San Francisco Public Defender

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

Amended Mock-up for 2023-2024 SB-1416 (Newman (S))

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

SECTION 1. Section 12022.10 is added to the Penal Code, to read:

12022.10. (a) When a person sells, exchanges, or returns for value, or attempts to sell, exchange, or return for value, property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, whether or not the person committed the act of shoplifting, theft, or burglary, the court shall impose an additional term as follows:

(1) If the property value exceeds fifty thousand dollars ($50,000), the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of one year.

(2) If the property value exceeds two hundred thousand dollars ($200,000), the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of two years.

(3) If the property value exceeds one million dollars ($1,000,000), the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of three years.

(4) If the property value exceeds three million dollars ($3,000,000), the court, in addition and consecutive to the punishment prescribed for the crime of which the defendant has been convicted, shall impose an additional term of four years.

(5) For each property value of three million dollars ($3,000,000), the court shall impose a term of one year in addition to the term specified in paragraph (4).

(b) When a person acts in concert with another to sell, exchange, or return for value, or attempts to sell, exchange, or return for value, property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, whether or not the person committed the act of shoplifting, theft, or burglary, the court shall impose the additional term specified in subdivision (a).

(c) In an accusatory pleading involving multiple charges of sales, exchanges, or returns for value, or attempts to do the same, the additional terms provided in this section may be imposed when the aggregate value of the property involved exceeds the amounts specified in this section and arises from a common scheme or plan. All pleadings under this section are subject to the rules of joinder and severance stated in Section 954.

(d) The additional terms provided in this section shall not be imposed unless the facts relating to the amounts provided in this section are charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(e) Notwithstanding any other law, the court may impose an enhancement pursuant to this section and another section on a single count.

(f) It is the intent of the Legislature that the provisions of this section be reviewed within five years to consider the effects of inflation on the additional terms imposed. For that reason, this section shall remain in effect only until January 1, 2030, and as of that date is repealed unless a later enacted statute, that is enacted before January 1, 2030, deletes or extends that date.

(g) If the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become inoperative on the date that the Secretary of State certifies that the initiative was approved by the voters, and shall be repealed on January 1, 2025.

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

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To address the increase in community-based crime, including retail theft, in order to provide broader public safety, it is necessary that this act take effect immediately.

The people of the State of California do enact as follows:

SECTION 1. Section 452 of the Penal Code is amended to read:

452. A person is guilty of unlawfully causing a fire when they recklessly set fire to, burn, or cause to be burned any structure, forest land, or property.

(a) Unlawfully causing a fire that causes great bodily injury is a felony punishable by imprisonment in the state prison for two, four, or six years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(b) Unlawfully causing a fire that causes an inhabited structure or inhabited property to burn is a felony punishable by imprisonment in the state prison for two, three, or four years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(c) Unlawfully causing a fire of a structure or forest land is a felony punishable by imprisonment in the state prison for 16 months, two or three years, or by imprisonment in the county jail for not more than six months, or by a fine, or by both such imprisonment and fine.

(d) Unlawfully causing a fire of property is a misdemeanor. For purposes of this paragraph, unlawfully causing a fire of property does not include one burning or causing to be burned their own personal property unless there is injury to another person or to another person's structure, forest land, or property.

(e) In the case of any person convicted of violating this section while confined in a state prison, prison road camp, prison forestry camp, or other prison camp or prison farm, or while confined in a county jail while serving a term of imprisonment for a felony or misdemeanor conviction, any sentence imposed shall be consecutive to the sentence for which the person was then confined.

(f) For purposes of sentencing for a violation of this section, the fact that the offense was carried out within a merchant's premises in order to facilitate organized retail theft, as defined in Section 490.4, shall be a factor in aggravation.

(g) If the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become inoperative on the date that the Secretary of State certifies that the initiative was approved by the voters, and shall be repealed on January 1, 2025.

(PU Amended by Stats. 1982, Ch. 1133, Sec. 2. Effective September 17, 1982.)

SEC. 2. Section 452 is added to the Penal Code, to read:

452. A person is guilty of unlawfully causing a fire when they recklessly sets fire to or burns or causes to be burned, any structure, forest land or property.

(a) Unlawfully causing a fire that causes great bodily injury is a felony punishable by imprisonment in the state prison for two, four or six years, or by

imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(b) Unlawfully causing a fire that causes an inhabited structure or inhabited property to burn is a felony punishable by imprisonment in the state prison for two, three or four years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(c) Unlawfully causing a fire of a structure or forest land is a felony punishable by imprisonment in the state prison for 16 months, two or three years, or by imprisonment in the county jail for not more than six months, or by a fine, or by both such imprisonment and fine.

(d) Unlawfully causing a fire of property is a misdemeanor. For purposes of this paragraph, unlawfully causing a fire of property does not include one burning or causing to be burned their own personal property unless there is injury to another person or to another person's structure, forest land or property.

(e) In the case of any person convicted of violating this section while confined in a state prison, prison road camp, prison forestry camp, or other prison camp or prison farm, or while confined in a county jail while serving a term of imprisonment for a felony or misdemeanor conviction, any sentence imposed shall be consecutive to the sentence for which the person was then confined.

(f) If the proposed initiative measure titled "The Homelessness, Drug Addiction, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become operative on the date that the Secretary of State certifies that the initiative was approved by the voters.

~~SEC. 2.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB 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 XIIIB of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To address the increase in community-based crime, including retail theft, in order to provide broader public safety, it is necessary that this act take effect immediately.

Date of Hearing: June 11, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1484 (Smallwood-Cuevas) – As Introduced February 16, 2024

SUMMARY: This bill clarifies that a minor must be between 12 and 17 years of age, inclusive, to be within the jurisdiction of the Informal Juvenile and Traffic Court and Expedited Youth Accountability Program.

EXISTING LAW:

1) Provides that any minor between 12 years of age and 17 years of age, inclusive, who persistently or habitually refuses to obey the reasonable and proper orders or directions of the minor's parents, guardian, or custodian, or who is beyond the control of that person, or who is a minor between 12 years of age and 17 years of age, inclusive, when the minor violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court. (Welf. & Inst. Code, § 601, subd. (a).)

2) Provides that any minor who is between 12 and 17 years of age that violates any law of this state or of the United States or any ordinance of any city or county other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, and may be adjudged to be a ward of the court, except as provided. (Welf. & Inst. Code, § 602, subd. (a).)

3) Establishes the Expedited Youth Accountability Program operative within the superior court in Los Angeles County. Provides that it is also operative in any other county in which a committee consisting of the sheriff, the chief probation officer, the district attorney, the public defender, and the presiding judge of the superior court votes to participate in the program, upon approval by the board of supervisors. (Welf. & Inst. Code, § 660.5, subd. (a).)

4) Provides that is the intent of the Legislature to hold nondetained, delinquent youth accountable for their crimes in a swift and certain manner. (Welf. & Inst. Code, § 660.5, subd. (b).)

5) Provides that each county participating in the Expedited Youth Accountability Program is required to establish agreed upon time deadlines for law enforcement, probation, district attorney, and court functions which must assure that a case which is to proceed as part of this program is ready to be heard within 60 calendar days after the minor is cited to the court. (Welf. & Inst. Code, § 660.5, subd. (c).)

6) Provides that if a minor is not detained for any misdemeanor or felony offense and is not cited to Informal Juvenile and Traffic Court, the peace officer or probation officer releasing the minor is required to issue a citation and obtain a written promise to appear in juvenile

court, or record the minor's refusal to sign the promise to appear and serve a notice to appear in juvenile court. Prohibits the appearance from being set for more than 60 calendar days or less than 10 calendar days from the issuance of the citation. Requires the date set for the appearance of the minor to allow for sufficient time for the probation department to evaluate eligible minors for informal supervision or any other disposition provided by law. (Welf. & Inst. Code, § 660.5, subd. (d)(1).)

7) Provides that in the event that the probation officer places a minor on informal probation or cites the minor to Informal Juvenile and Traffic Court, or elects some other lawful disposition not requiring a hearing, as specified, the probation officer is required to inform the minor and the minor's parent or guardian no later than 72 hours, excluding nonjudicial days and holidays, prior to the hearing, that a court appearance is not required. (Welf. & Inst. Code, § 660.5, subd. (i).)

FISCAL EFFECT: None

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1484 furthers the intent of SB 439 (Mitchell, Stats. of 2018) by clarifying that those restrictions on the juvenile court's jurisdiction for youth under 12 are applicable to other Welfare and Institutions sections that apply to informal or expedited processes and programs to adjudicate offenses by youth. Although SB 439 clearly intended to limit completely the juvenile court's jurisdiction in these circumstances and to prevent youth under 12 from contact with the court system, this law did not specifically amend the additional WIC sections that establish informal or expedited procedures for adjudicating youth charged of non-violent crimes (see WIC 255-257, 660.5). This unintentional omission has created confusion regarding the minimum age limits for youth who may be subject to such informal or expedited processes.

   SB 1484 would clarify current law to limit the juvenile court's jurisdiction when it comes to youth under the age of 12 who have allegedly committed a non-violent offense, even in the context of informal or expedited proceedings. Specifically, this bill amends WIC sections 256 and 257 (relating to the Informal and Juvenile Traffic Court) and WIC section 660.5 (relating to the Expedited Youth Accountability Program), to ensure that young children are protected from the negative impacts of justice-system involvement, and to ensure their rights, health, and well-being are promoted through alternative child-serving systems.

2) **Expedited Youth Accountability Program**. AB 1105, Hertzberg, Chapter 679, Statutes of 1997, established a five-year Expedited Youth Accountability Program which authorized peace officers and probation officers in Los Angeles County to cite minors accused of specified misdemeanors directly to juvenile court in lieu of filing a petition or informal probation proceeding. Unlike the regular juvenile court procedures, the Expedited Youth Accountability Program required that the initial juvenile court hearing be held within 60 days of a minor's arrest. The program's sunset was removed in 2002. At the time the sunset for the program was removed, proponents argued:

"[R]educing the time between arrest and hearing is essential in reducing juvenile crime as most recidivism occurs within the first three months after the commission of the crime … [and] that the program ensures that preventive measures are taken at an early stage and shows minors that there are consequences for their actions and must take responsibility for the choices they make." (Sen. Com. on Public Safety, Analysis of Assem. Bill 2154 (2001-2002 Reg. Sess.) as introduced Feb. 20, 2002, pp. 3-4.).

3) **Informal Juvenile and Traffic Court**. Welfare and Institutions Code section 256 establishes the Informal and Juvenile Traffic Court. The types of cases heard in the Informal and Juvenile Traffic Court are primarily limited to infractions, misdemeanor traffic offenses not including DUIs, and specified misdemeanors associated with young people, such as skateboarding in a public transit facility or parking garage, playing music too loudly on public transit, possession of spray paint in a prohibited place, trespassing, loitering, public intoxication, and using a fake ID to obtain alcohol, among others.

4) **SB 439 (Mitchell), Chapter 1006, Statutes of 2018**. In 2018, the Legislature enacted SB 439 (Mitchell, Chapter 1006, Statutes of 2018) which established 12 years of age as the minimum age for which the juvenile court has jurisdiction and may adjudge a person a ward of the court. Welfare and Institutions Code section 602 does provide an exception to this general minimum age of jurisdiction. Specifically, Welfare and Institutions Code section 602, subdivision (b), provides that a minor under 12 years of age who is alleged to have committed any of the following offenses is within the jurisdiction of the juvenile court: murder; rape by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; and sexual penetration by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

   The purpose of SB 439 was to keep young children out of the juvenile justice system and to employ developmentally appropriate, non-criminal responses to their behavior. The sponsor of this bill asserts that there is confusion in some counties regarding whether minors under 12 are under the jurisdiction of the courts described in Welfare and Institution Code sections 256 and 660.5. To that end, this bill amends Welfare and Institution Code sections 256, 257, and 660.5 to clarify that a minor must be between 12 and 17 years of age, inclusive, to be within the jurisdiction of those courts.

Argument in Support: According to the *Ella Baker Center for Human Rights* "This bill would amend the Welfare and Institutions Code sections that apply to informal and expedited processes and programs to adjudicate offenses by youth.

"Additionally, DOJ's review of the 2022 Racial and Identity Profiling Act (RIPA) data, which is the most recent data publicly available and includes stop data reported by all law enforcement agencies statewide, identified 1,610 stops of young people aged 2-11 that led to a citation. Most of these (approximately 94 percent) were stops initiated for traffic violations. However, 82 of those stops were conducted on the grounds that the officer had reasonable suspicion that the youth committed an offense, and may have led to a citation directing the youth to an informal or expedited proceeding.

"SB 1484 would clarify the current law established by SB 439 to limit the juvenile court's jurisdiction when it comes to youth under the age of 12 who have allegedly committed a non-violent offense, even in the context of informal or expedited proceedings. Specifically, this bill amends WIC sections 256 and 267 (relating to the Informal and Juvenile Traffic Court) and WIC section 660.5 (relating to the Expedited Youth Accountability Program)."

REGISTERED SUPPORT / OPPOSITION:

Support

Office of Attorney General Rob Bonta (Sponsor)
ACLU California Action
Alliance for Boys and Men of Color
California Public Defenders Association
Center on Juvenile and Criminal Justice
Ella Baker Center for Human Rights
Pacific Juvenile Defender Center
Root & Rebound
Sister Warriors Freedom Coalition

Opposition

None

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

Date of Hearing: June 11, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1502 (Ashby) – As Amended June 6, 2024

SUMMARY: Makes xylazine, also known as "tranq," a Schedule III drug under California's Uniform Controlled Substances Act (UCSA). Specifically, **this bill**:

1) Makes xylazine, including its salts, isomers, and salts of its isomers and any substance that contains xylazine, a Schedule III controlled substance under the USCA.

2) Provides that, if an animal drug containing xylazine that has been approved under the federal Food, Drug and Cosmetic Act is not available for sale in California, this subdivision does not apply to a substance that is intended to be used to compound an animal drug pursuant to the federal Food and Drug Administration's industry guidance on compounding animal drugs from bulk drug substances, or an animal drug compound containing xylazine that is compounded pursuant to this guidance.

3) Provides that compounding an animal drug shall not be deemed unprofessional conduct, as specified.

EXISTING LAW:

1) Lists controlled substances in five "schedules" - intended to list drugs in decreasing order of harm and increasing medical utility or safety - and provides penalties for possession of and commerce in controlled substances. Schedule I includes the most serious and heavily controlled substances, with Schedule V being the least serious and most lightly controlled substances. (Health & Saf. Code, §§ 11054-11058.)

2) Makes possession of a non-narcotic Schedule III controlled substance a misdemeanor subject to imprisonment in county jail for up to one year. (Health & Saf., § 11377, subd. (a).)

3) Makes possession of a non-narcotic Schedule III controlled substance a felony subject to 16 months, 2 years, or 3 years in county jail where the person has one or more prior convictions for an offense classified as a violent felony or one that requires registration as a sex offender. (Health & Saf., § 11377, subd. (a).)

4) Makes possession for sale of a non-narcotic Schedule III substance a felony subject to imprisonment in county jail for 16 months, 2 years or 3 years. (Health & Saf., § 11378.)

5) Makes trafficking of a non-narcotic Schedule III substance a felony subject to imprisonment in county jail for 2, 3, or 4 years. (Health & Saf., § 11379.)

6) Makes manufacturing, producing, or preparing a non-narcotic Schedule III controlled substance either directly or indirectly by chemical extraction or independently by means of chemical synthesis a felony punishable by imprisonment in county jail for 3, 5, or 7 years and a fine of up to $50,000. (Health & Saf., § 11379.6, subd. (a).)

7) Makes offering to manufacturing, producing, or preparing a non-narcotic Schedule III controlled substance either directly or indirectly by chemical extraction or independently by means of chemical synthesis a felony punishable by imprisonment in county jail for 3, 4, or 5 years. (Health & Saf., § 11379.6, subd. (e).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "California is in the midst of an opioid crisis, with over seven thousand deaths attributed to opioid overdose in our state in 2021 alone. This crisis is exacerbated by a growing trend of mixing fentanyl with xylazine, making it the deadliest drug threat in the United States. According to a DEA report, xylazine-related deaths have drastically increased nationwide, more than tripling from 2020 to 2021.

   "Commonly referred to as 'tranq' or the 'zombie drug,' xylazine is a potent veterinary sedative that is increasingly being trafficked into our country. Xylazine is unsafe for human use and can cause severe wounds and necrosis, potentially leading to amputation or fatal overdose. Unlike opioid overdoses, a xylazine overdose cannot be reversed with naloxone. In fact, there is no drug approved to reverse the effects of xylazine use in humans.

   "To combat this growing threat, SB 1502 will classify xylazine as a Schedule III substance, enabling the DEA to restrict access to this medication. It is crucial that we protect Californians from the negative impacts of Xylazine, and SB 1502 ensures the health and safety of our communities by regulating its availability and preventing misuse."

2) **Xylazine:** According to CDPH, xylazine (also known as "tranq") is a non-opioid animal tranquilizer that has been connected to an increasing number of overdose deaths nationwide. Some people who use drugs intentionally take fentanyl or other drug mixed with xylazine; in other circumstances, drug sellers cut fentanyl or heroin with xylazine to extend product's effect without disclosing the adulterant. (https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/Xylazine.aspx)

   The extent to which xylazine has proliferated in California drug markets is unclear. In 2022, the Drug Enforcement Administration (DEA) reported that its identification of xylazine-positive overdose deaths in the western United States increased by 750% in recent years, from four such deaths in 2020 to 34 in 2021. (https://www.dea.gov/sites/default/files/2022-12/The Growing Threat of Xylazine and its Mixture with Illicit Drugs.pdf) However, the DEA also noted comprehensive data on xylazine-related deaths is not available because xylazine is not routinely included in postmortem testing or data reporting in all jurisdictions. (*Ibid.*) In April 2023, based in part on the DEA's report, the White House Office of National Drug Control Policy designated fentanyl mixed with xylazine as an emerging threat, recognizing its "growing role in overdose deaths in every region in the United States." (https://www.whitehouse.gov/ondcp/briefing-room/2023/04/12/biden-harris-administration-

designates-fentanyl-combined-with-xylazine-as-an-emerging-threat-to-the-united-states/ - :~:text=Xylazine%20is%20a%20non%2Dopioid,region%20of%20the%20United%20States.) On the other hand, in November 2023 in a letter to California health care facilities, CDPH described xylazine as "present" in California, but noted that the drug had not penetrated the state's drug supply as extensively as it has in other regions. (https://www.cdph.ca.gov/Programs/CCDPHP/sapb/Pages/Xylazine.aspx)

3) **The California Uniform Controlled Substances Act**: In 1970, Congress passed the Comprehensive Drug Abuse Prevention and Control Act, which established a framework for federal regulation of controlled substances. Title II of the act is the Controlled Substances Act (CSA), which placed controlled substances in one of five "schedules."

> The schedule on which a controlled substance is placed determines the level of restriction imposed on its production, distribution, and possession, as well as the penalties applicable to any improper handling of the substance… [W]hen DEA places substances under control by regulation, the agency assigns each controlled substance to a schedule based on its medical utility and its potential for abuse and dependence.

(The Controlled Substances ACT (CSA): A Legal Overview for the 118th Congress, Congressional Research Service (Jan. 19, 2023) p. 2 <https://crsreports.congress.gov/product/pdf/r/r45948> [last visited Mar. 28, 2024].)

Substances are added to or removed from schedules through agency action or by legislation. (*Id.* at p. 9.)

State laws generally follow the federal scheduling decisions, and "they are relatively uniform across jurisdictions because almost all states have adopted a version of a model statute called the Uniform Controlled Substances Act (UCSA)." (*Id.* at 4.) California adopted the UCSA in 1972. (Stats. 1972, ch. 1407, § 3.)

Congress has not yet placed xylazine on a schedule under the Controlled Substances Act. There are currently two bills pending in Congress that would make xylazine a Schedule III substance. (H.R. No. 1839, 118th Cong., 1st Sess. (2023) & Sen. No. 993, 118th Cong., 1st Sess. (2023).) According to information author's office provided to this committee, this bill is based on H.R. No. 1839.

California generally has aligned its Uniform Controlled Substances Act (UCSA) with the federal government's scheduling decisions. (See *People v. Ward* (2008) 167 Cal.App.4th 252, 259 ["In the California Uniform Controlled Substances Act, California adopted the five schedules of controlled substances used in federal law and in the Uniform Controlled Substances Act"]; *Williamson v. Bd. Of Medical Quality Assurance* (1990) 271 Cal.App.3d 1343, 1352, fn. 1. ["Effective January 1, 1985, Schedules I through V of the California Uniform Controlled Substances Act were revised so as to generally parallel the five schedules contained in the Federal Controlled Substances Act."].) As such, this bill would make xylazine a Schedule III drug under UCSA contingent on the federal government adding xylazine to Schedule III of the federal CSA.

Because this bill is based on a federal bill, and because California generally aligns the UCSA with the federal CSA, the author should consider amending this bill to make placement of

xylazine in Schedule III of the USCA contingent on xylazine's placement in Schedule III of the federal CSA. AB 3029 (Bains), a bill substantially similar to this one, did precisely that.

4) **Argument in Support**: According to *California Veterinary Medical Association*, "Xylazine's importance in veterinary medicine cannot be understated as it is easily one of the top 10 most critical medications in livestock, equine, and wildlife veterinary medicine, providing sedation and pain control to animals. The drug is also used by animal control officers in order to subdue wild animals and to provide veterinary care to exotic animals in zoos in California.

   "According to the Veterinary Medical Board, there is no evidence of diversion of xylazine from veterinarians in California. Rather the drug is reportedly being trafficked in from Australia and China and is making its way into the hands of drug dealers for wholly illicit purposes. SB 1502 places guardrails around the continued application of the drug in the veterinary medicine space, while creating a blanket prohibition on its use for non-veterinary medicine purposes."

5) **Argument in Opposition**: According to the *Drug Policy Alliance*, "By placing the substance on Schedule III of the Controlled Substances Act (CSA), SB 1502 will criminalize xylazine, including simple possession. We are concerned that by placing xylazine on the CSA, the state is setting a dangerous precedent.

   1. This provision will inadvertently create research restrictions at a time when we need *more* research to understand xylazine's effects on humans.
   2. Placing xylazine on the CSA will result in the disproportionate prosecution and sentencing of people struggling with substance use, including people who may not know xylazine is in their drug supply.

   Rather than punitive responses to drug use, the state should invest in xylazine research to find medical solutions to xylazine harm. It should also scale-up evidence-based public health interventions and harm reduction services for people who use drugs.

   Science and Research Must Lead the Way

   We are concerned that with this component in the bill, California will preemptively be placing xylazine on the CSA before scientific studies have been completed. Experts agree that there is a need for *further* research to better understand overdose risk and response, pathophysiology, patterns of xylazine use, clinical treatment and withdrawal management, wound treatment and management, harm reduction response, regulation, and potential racial disparities in drug enforcement, among other research topics.

   Preliminary research on xylazine shows that xylazine is in fact an agonist at kappa opioid receptors.2 Several notable kappa opioid agonists FDA-approved for human use include: pentazocine (Schedule IV), butorphanol (Schedule IV), and nalbuphine (not scheduled). Given the range in scheduling for similar drugs, it is unclear how one could justify placing it as Schedule III without further research.

   We call attention to dexmedetomidine which is nearly identical to xylazine, and is unscheduled. Dexmedetomidine is widely used as a medicine in hospital intensive care units

and for treating mental health disorders. Scheduling dexmedetomidine would be massively disruptive, but by establishing the precedent with xylazine scheduling, this disruption is almost inevitable.

We all want our loved ones and communities to be safe, but scheduling xylazine does not prevent overdose deaths. For example, a ban on xylazine in Florida illustrates that criminalizing the substance does not reduce overdose deaths. Florida placed xylazine on Schedule I of the state CSA in 2018.3 In 2018, there were 3,727 opioid overdose deaths in Florida; in 2021 that number had grown to 6,442.

There are a number of potential criminal justice implications of scheduling that do not account for the realities of when and why people use xylazine.

1. **Most people who use drugs are not actively seeking xylazine** because they prefer heroin or other opioid drugs for their effects. Criminalization will impact many people who do not know they possess the substance and who were not seeking it out.
2. **Xylazine is predominantly found in conjunction with fentanyl, for which severe criminal penalties already exist.** It is estimated that 99.5% of xylazine-involved deaths substances that are already criminalized.
3. Further, we have strong concerns that **criminalizing xylazine will disproportionately impact people struggling with substance use** and those involved at the lowest level of the drug distribution chain- who need help and access to health services. The majority of people at the lowest drug distribution level report using drugs (87.5%) and 43.1% meet the criteria for substance use disorder. Imposing severe penalties on these individuals without addressing the root causes of problematic drug use perpetuates social disparities.
4. Moreover, **sending people with substance use disorder into the criminal justice system makes them more vulnerable to overdose**. Data shows that people recently released from incarceration are twenty-seven times more likely to experience an overdose in their first two weeks of release than the general public.
5. **Criminalizing xylazine will not keep people safe.** Historical evidence shows that prohibiting substances does not reduce overdose rates. Instead, it creates a dangerous cycle that exposes people who use drugs to newer and potentially more dangerous alternatives from unknown sources. In fact, this trend gave rise to xylazine through the criminalization of various opioids. As restrictions were placed on prescription opioids, people turned to the underground heroin supply. Subsequent crackdowns on heroin prompted suppliers to produce fentanyl, and harsh fentanyl penalties fueled an explosion of fentanyl analogs. Now, xylazine is appearing as a consequence of thecrackdown on fentanyl, and it follows that **criminalizing xylazine will only lead to the emergence of other - potentially more potent substances - in the illicit drug supply**.

We know that supply-side strategies fail to keep our communities safe. This is precisely why California must address demand by investing in evidence-based public health interventions. Relying on a criminal approach will not yield different results for xylazine.

Policy Solutions

To prevent overdoses and mitigate the harms of the illicit drug supply, the state must prioritize science-based decision-making and research, as well as harm reduction strategies and comprehensive public health approaches to the overdose epidemic. **Instead of hastily criminalizing xylazine as a controlled substance, lawmakers should focus on allowing the implementation of overdose prevention services, Good Samaritan Laws, access to methadone, buprenorphine, and naloxone, and evidence-based drug education and treatment.**

Additionally, efforts should be made to study and collect data on the presence and distribution of xylazine, expand access to xylazine test strips. Other solutions include:

- **Research:** Investing in work to scientifically understand xylazine and its effects, including into medications to treat xylazine withdrawal.
- **Drug Checking:** Providing services that help people identify whether their drugs contain xylazine, including in real-time situations.
- **Education:** Training healthcare professionals to recognize and treat xylazine skin wounds and other harms.
- **Overdose Prevention:** Teaching first responders and community members how to care for a xylazine-fentanyl overdose, and researching overdose-reversing medication for xylazine.
- **Harm Reduction:** Making sure that people who use drugs have access to harm reduction services, including overdose prevention centers. Connecting at-risk people with support systems, rather than arresting them.

6) **Related Legislation**:

a) AB 3029 (Bains) would make xylazine, also known as "tranq," a Schedule III drug under California's UCSA, contingent on the federal government adding xylazine to Schedule III of the federal CSA. AB 3029 is pending a hearing in the Senate Public Safety Committee.

b) AB 1859 (Alanis), would require coroners to report to the State Department of Public Health (DPH) and to the Overdose Detection Mapping Application Program (ODMAP) whether an autopsy revealed the presence of xylazine at the time of a person's death. AB 1859 is currently pending in the Assembly Appropriations Committee.

c) AB 2018 (Rodriguez), would remove fenfluramine as a controlled substance under the UCSA. AB 2018 is pending a vote by the Assembly.

d) AB 2871 (Maienschein), would authorize a county to establish an interagency overdose fatality review team to assist local agencies in identifying and reviewing overdose fatalities. AB 2871 is pending hearing in the Assembly Health Committee.

e) AB 3073 (Haney), would, among other things, require the State Department of Public Health to develop protocols for implementing wastewater surveillance for high-risk substances, including xylazine. AB 3073 is pending hearing in the Assembly Committee on Environmental Safety and Toxic Materials.

7) **Prior Legislation**:

a) AB 1399 (Friedman), Chapter 475, Statutes of 2023, prohibited, among other things, a veterinarian from ordering, prescribing, or making available xylazine unless the veterinarian has performed an in-person physical examination of the animal patient or make medically appropriate and timely visits to the premises where the animal patient is kept.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California Narcotic Officers' Association
California Reserve Peace Officers Association
California Veterinary Medical Association
Chief Probation Officers' of California (CPOC)
City of Laguna Niguel
City of Norwalk
City of San Diego
City of San Jose
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
League of California Cities
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Mayor Todd Gloria, City of San Diego
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
The Veterinary Medical Board
Upland Police Officers Association

Opposition

Drug Policy Alliance

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