California State Assembly

PUBLIC SAFETY

KEVIN MCCARTY
CHAIR

1020 N Ste, Room 111
(916) 319-3744
FAX: (916) 319-3745

AGENDA

Tuesday, June 18, 2024
9 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	SB 899	Skinner	Protective orders: firearms.
2.	SB 902	Roth	Firearms: public safety.
3.	SB 910	Umberg	Treatment court program standards.
4.	SB 926	Wahab	Crimes: distribution of intimate images.
5.	SB 933	Wahab	Crimes: child pornography.
6.	SB 950	Skinner	Reentry from incarceration: programs and benefits.
7.	SB 965	Min	Firearms.
8.	SB 989	Ashby	Domestic violence: deaths.
9.	SB 1019	Blakespear	Firearms: destruction.
10.	SB 1020	Bradford	Law enforcement agency regulations: shooting range targets.
11.	SB 1025	Eggman	Pretrial diversion for veterans.
12.	SB 1069	Menjivar	State prisons: Office of the Inspector General.
13.	SB 1317	Wahab	Inmates: psychiatric medication: informed consent.
14.	SB 1400	Stern	Criminal procedure: competence to stand trial.
15.	SB 1518	Public Safety	Public safety omnibus.

Date of Hearing: June 18, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 899 (Skinner) – As Amended June 11, 2024

SUMMARY: Extends firearm and ammunition relinquishment procedures that exist for purposes of domestic violence restraining orders ("DVROs") to other specified protective orders. Specifically, **this bill**:

1) Extends the firearm and ammunition relinquishment procedures that currently apply to DVROs to gun violence restraining orders ("GVROs"), civil harassment, workplace violence or postsecondary violence temporary restraining orders and injunctions, elder abuse restraining orders, and protective orders issued during the pendency of criminal proceedings and following specified criminal convictions.

2) Specifies that if the court is presented with relevant information at any noticed hearing that a restrained party has a firearm, the court should hold a review hearing within 10 court days after the noticed hearing in which the information was presented, as provided.

3) Requires the court to provide the person with information on how any firearms or ammunition still in the restrained party's possession are to be relinquished, according to local procedures, and the process for submitting a receipt to the court showing proof of relinquishment.

4) States that a court holding a hearing on this matter shall review the file to determine whether the receipt has been filed and inquire of the respondent whether they have complied with the requirement.

5) States that violations of the firearms prohibition of any restraining order under this section shall be reported to the prosecuting attorney in the jurisdiction where the order has been issued within two business days of the court hearing unless the restrained party provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.

6) Provides that if the person does not file a receipt with the court within 48 hours after receiving the order for a firearm in their possession, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of the issuance and contents of a protective order, information about the firearm or ammunition, and of any other information the court deems appropriate.

7) States that if the respondent declines to relinquish possession of a firearm or ammunition based on the assertion of the right against self-incrimination, as provided by the Fifth Amendment to the United States Constitution and the California Constitution, the court may grant use immunity for the act of relinquishing the firearm or ammunition.

8) States that when relevant information is presented to the court at a noticed hearing that a restrained person has a firearm or ammunition, the court shall consider that information and determine, by a preponderance of the evidence, whether the person subject to a protective order has a firearm or ammunition in, or subject to, their immediate possession or control in violation of the firearm and ammunition prohibition, and requires the court to follow specified procedures around making a written record of the determination, setting a review hearing, and extending the date of the hearing for good cause.

9) Specifies that a peace officer shall, upon request of the petitioner, serve any temporary restraining order, order after hearing, or protective order issued pursuant to provisions on GVROs, civil harassment, workplace violence or postsecondary violence temporary restraining orders and injunctions, elder abuse restraining orders, and protective orders issued during the pendency of criminal proceedings on the respondent, as provided.

10) Adds "ammunition" to the provision authorizing the issuance of a search warrant when the property or things to be seized include a firearm possessed or owned by a person who is prohibited by a civil restraining order and the person has failed to relinquish the firearm as required.

11) Additionally allows a search warrant to be issued for ammunition that a person is prohibited from owning due to a civil harassment, workplace violence or postsecondary education violence temporary restraining order, elder abuse restraining orders, or a protective order issued during the pendency of a criminal case and following specified criminal convictions, and the person has failed to relinquish the firearm or ammunition as required.

12) Makes conforming changes and non-substantive changes.

EXISTING LAW:

1) Authorizes protective orders to be issued in domestic violence cases. (Fam. Code, § 6380 et seq.)

2) States that a person who is the subject of a DVRO order issued by the court shall not own, possess, purchase, or receive a firearm or ammunition while the protective order is in effect. A violation of this prohibition is punishable as either a misdemeanor (owning or possessing a firearm when prohibited from doing so by a restraining order) or a wobbler (purchasing or receiving or attempting to purchase or receive a firearm when prohibited from doing so by a restraining order). (Fam. Code § 6389; Pen. Code § 29825.)

3) States that upon issuance of a DVRO, the court shall order the respondent to relinquish any firearm in the respondent's immediate possession or control or subject to the respondent's immediate possession or control. (Fam. Code § 6389, subd. (c)(1).)

4) Requires the relinquishment to occur by immediately surrendering the firearm or ammunition in a safe manner, upon request of a law enforcement officer, to the control of the officer, after being served with the protective order. Alternatively, if the request is not made by a law enforcement officer, the relinquishment shall occur within 24 hours of being served, by either surrendering the firearms or ammunition in a safe manner to the control of local law

enforcement, or by selling, transferring, or relinquishing for storage to a licensed gun dealer. (Fam. Code § 6389, subd. (c)(2).)

5) Requires a receipt to be issued to the person relinquishing the firearm or ammunition at the time of relinquishment and requires, within 48 hours after being served the order, the person to file the receipt with the court that issued the protective order and file a copy of the receipt with the law enforcement agency that served the protective order. (Fam. Code § 6389, subd. (c)(2)(A) and (B).)

6) Provides that a court holding a hearing on the matter of relinquishment shall review the file to determine whether the receipt has been filed and inquire of the respondent whether they have complied with the requirement. (Fam. Code § 6389, subd. (c)(4).)

7) Requires a violation of the firearms prohibition of a DVRO to be reported to the prosecuting attorney in the jurisdiction where the order has been issued within two business days of the court hearing unless the restrained party provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court. (Fam. Code, § 6389, subd. (c)(4).)

8) Requires a person who is the subject of a civil harassment, workplace violence or postsecondary violence temporary restraining order or injunction, elder abuse restraining order, or a restraining order issued during the pendency of criminal proceedings or following specified criminal convictions, to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, either by surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified. (Code Civ. Proc., § 527.9, subd. (a)-(b).)

9) Requires a person ordered to relinquish any firearm pursuant to the above provision to file with the court a receipt showing the firearm was surrendered to the local law enforcement agency or sold to a licensed gun dealer within 48 hours after receiving the order. (*Ibid.*)

10) States that where both parties are present in court for a DVRO, the court shall inform both the petitioner and the respondent of the terms of the order, including notice that the respondent is prohibited from owning, possessing, purchasing, or receiving or attempting to own, possess, purchase, or receive a firearm or ammunition, and including notice of the penalty for violation. Information provided shall include how any firearms or ammunition still in the restrained party's possession are to be relinquished, according to local procedures, and the process for submitting a receipt to the court showing proof of relinquishment. (Fam. Code, § 6304.)

11) Provides that if the results of a search of all records and databases readily available and reasonably accessible by the court indicate that the subject of the order owns a registered firearm or if the court receives evidence of the subject's possession of a firearm or ammunition, the court shall make a written record as to whether the subject has relinquished the firearm or ammunition and provided proof of the required storage, sale, or relinquishment of the firearm or ammunition. (Fam. Code, § 6306, subd. (f).)

12) States that if evidence of compliance is not provided as required, the court shall order the court of the court to immediately notify law enforcement officials and law enforcement officials shall take all actions necessary to obtain those and any other firearms or ammunition owned, possessed, or controlled by the restrained person and to address the violation of the order as appropriate and as soon as practicable. (*Ibid.*)

13) States that if evidence of compliance with firearms prohibitions is not provided as required, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of the issuance and contents of a protective order, information about the firearm or ammunition, and of any other information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to obtain those and any other firearms or ammunition owned, possessed, or controlled by the restrained person and to address any violation of the order with respect to firearms or ammunition as appropriate and as soon as practicable. (*Ibid.*)

14) States that when relevant information is presented to the court at a noticed hearing that a restrained person has a firearm or ammunition, the court shall consider that information and determine, by a preponderance of the evidence, whether the person subject to a protective order has a firearm or ammunition in, or subject to, their immediate possession or control in violation of the firearm and ammunition prohibition. (Fam. Code, § 6322.5, subd. (a).)

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

16) Establishes a civil restraining order process to prohibit and enjoin the subject of a GVRO from having in his or her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition. (*Id.*)

17) Authorizes the issuance of a search warrant when the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or controlled by, a person who is prohibited by a civil DVRO that has been lawfully served, and the restrained person has failed to relinquish the firearm as required. (Pen. Code, §1524, subd. (a)(11).)

18) Requires a law enforcement agency to enter or cause to be entered into the Department of Justice (DOJ) Automated Firearms System each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, surrendered or relinquished within 7 calendar days after being notified of the precipitating event. (Pen. Code, § 11108.2, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Prohibiting people who are a danger to themselves or others from having firearms has proven to be a very effective tool at curbing firearm violence. However, we need to ensure that when people are ordered to turn over their firearms, that they know how to do this and that if they fail to comply, courts are following up and when necessary, alerting law enforcement. Prior legislation has created a process for

this in the context of DVROs. This process has been successful at getting more people who should not have firearms to turn in their weapons. This bill extends this successful process to all firearm restraining orders, including, for example, gun violence (aka "red flag") restraining orders, civil harassment restraining orders, and workplace violence restraining orders. SB 899 will further the goal of ensuring that people who should not have firearms comply with lawful court orders, and making our communities safe."

2) **Background on Prop 63:** Proposition 63, the "Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative," was approved by California voters on the November 8, 2016 ballot. This initiative (1) requires individuals to pass a background check and obtain DOJ authorization to purchase ammunition, (2) requires most ammunition sales to be made through licensed ammunition vendors and reported to DOJ, (3)prohibits possession of large-capacity magazines and requires their disposal, (4) requires lost or stolen firearms and ammunition to be reported to law enforcement, (5) prohibits persons convicted of stealing a firearm from possessing firearms, (6) establishes new procedures for enforcing laws prohibiting firearm possession, and (7) requires DOJ to provide information about prohibited persons to federal National Instant Criminal Background Check System.[1]

The Legislature may not amend the statute enacted by voter initiative without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers.[2] The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval."[3] Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative. As to the Legislature's authority to amend Proposition 63, Section 13 of the initiative states:

> This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a vote of 55 percent of the members of each house of the Legislature and signed by the Governor so long as such amendments are consistent with and further the intent of this Act.

This bill would amend Proposition 63 to exempt the sale of ammunition to a licensed ammunition vendor by a person required to relinquish that ammunition due to specified protective orders. As such, this bill requires approval from 55 percent of members of the Legislature.

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[1] California Proposition 63, Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban (2016), Ballotpedia [accessed June 14, 2024], available at: https://ballotpedia.org/California_Proposition_63,_Background_Checks_for_Ammunition_Purchases_and_Large-Capacity_Ammunition_Magazine_Ban_(2016)

[2] *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568; see also Cal. Const., art. II, § 10, subd. (c).

[3] Cal. Const., art. II, § 10, subd. (c).

3) **Effect of this Bill:** In 2022, the Legislature strengthened firearm relinquishment procedures that would apply to persons who are the subject of a DVRO.[4] Specifically, courts are required to provide information about how any firearms or ammunition still in the restrained party's possession are to be relinquished, according to local procedures, and the process for submitting a receipt to the court showing proof of relinquishment. If evidence of relinquishment has not been provided to the court, the court must notify law enforcement, and law enforcement must take all necessary actions to obtain the firearms and ammunition unlawfully in the possession of the restrained person. The law also requires that if the court finds at a noticed hearing that the subject of the restraining order has violated the firearms prohibition, the violation shall be reported to the prosecuting attorney within two business days of the court hearing unless the respondent provides a receipt showing compliance at a subsequent hearing or by direct filing with the clerk of the court.

   This bill extends such DVRO procedures to ensure the relinquishment of firearms and ammunition owned or in the possession of a person who is subject to a GVRO, or a civil harassment, workplace violence or postsecondary violence temporary restraining order and injunction, elder abuse restraining orders, or a protective order issued during the pendency of criminal proceedings and following specified criminal convictions.

4) **Argument in Support**: According to the California Department of Justice "Attorney General Rob Bonta is pleased to support your bill, SB 899, which will improve firearm relinquishment procedures across all of California's vital civil and criminal protective/restraining order processes. California has been a national leader in developing an array of court protection order processes that can increase safety for survivors and the public. All of these processes generally include vital gun safety provisions to disarm individuals found to have engaged in violent or abusive conduct and prevent them from passing background checks to acquire firearms and ammunition as long as the protective order is in effect against them. These processes are vital to gun violence prevention efforts in our state. But too often, challenges in serving, implementing, and enforcing protective orders allow restrained parties to remain in unlawful possession of firearms. This legislation, SB 899, will help promote consistency across all of California's protective order processes and assist in implementing lifesaving remedies by extending key best practices and firearm relinquishment procedures from California's Domestic Violence Restraining Order (DVRO) laws to all other civil and criminal protective orders available in California.

   In recent years, California has adopted new laws mandating that courts and local law enforcement take more proactive steps to ensure that DVROs are promptly served, that people who become subject to DVROs are promptly separated from their firearms and ammunition, and that law enforcement initiate prompt compliance and enforcement efforts to recover firearms from people who illegally retain weapons in violation of a DVRO. However, most of these requirements and best practices have not been extended to other court protection orders that also include firearm prohibitions. As such, survivor advocates warn that ensuring prompt service of protection orders is a challenge; even when protective orders are promptly served,, every year, thousands of people subject to protection orders illegally retain access to weapons, endangering survivors and adding significant burdens to the Department of Justice's Armed and Prohibited Persons System (APPS).

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[4] SB 320 (Eggman), Ch. 685, Stats. 2021.

By expanding the DVRO relinquishment framework to other types of protective orders, SB 899 will save lives by ensuring that firearm relinquishment orders are followed and that individuals found by a court to have engaged in violent or abusive conduct are more consistently separated from their weapons as close to the time of prohibition as possible. Specifically, this bill: requires the court to provide people served with protective orders information on how to fulfill compliance with firearms and ammunition prohibitions; requires law enforcement to serve protective orders on respondents upon petitioners' request and take action to immediately recover the respondent's firearms at the time of service; and most importantly, provides steps for courts and law enforcement to take if relinquishment does not occur as required, including authority to issue search warrants to recover firearms from an individual who illegally possesses them in violation of the court protection order and state law.

This bill will also reduce the number of persons in APPS. In 2006, California became the first and only state to track individuals who legally acquired firearms and later failed to relinquish those firearms after they became legally prohibited from owning or possessing them. Individuals only enter the APPS database if they become prohibited and the firearm is *not* immediately relinquished. The best time to remove a firearm from a prohibited person is at or near the time they become prohibited as it reduces the opportunity to hide or illegally dispose of the guns and to use those weapons to intimidate, abuse, or harm a survivor who sought help and protection from the courts."

5) **Argument in Opposition**: None

6) **Related Legislation**:

a) AB 818 (Petrie-Norris) Chapter 242, Statutes of 2023, expands the requirement for law enforcement officers to serve domestic violence orders upon request of a petitioner in order to more efficiently help victims of domestic violence.

b) AB 36 (Gabriel) of the 2023-2024 Legislative Session, would have prohibited a person from possessing, purchasing, or receiving a firearm within three years of the expiration of a protective order issued against the person. AB 36 died in the Assembly Appropriations Committee.

c) AB 3083 (Lackey) of the 2023-2024 Legislative Session, requires a court to conduct a search of available databases to determine whether a person subject to a proposed domestic violence restraining order owns a firearm, regardless of whether the Judicial Council has determined they have the resources necessary to do so; and regardless of whether an appropriation has been made for that purpose. AB 3083 is pending in Senate Judiciary Committee.

d) AB 2822 (Gabriel) of the 2023-2024 Legislative Session, requires a law enforcement agency to include, in its incident report for domestic violence calls, a space for officers to document whether a firearm or deadly weapon was removed from the location of the domestic violence call. AB 2822 is pending on the Senate Floor.

e) AB 2759 (Petrie-Norris) of the 2023-2024 Legislative Session, clarifies the applicability of an existing exemption to domestic violence protective order firearm relinquishment requirements that generally pertains to individuals who must use firearms in the course of their employment, including peace officers. AB 2759 is pending in Senate Judiciary Committee.

7) **Prior Legislation**:

a) SB 320 (Eggman), Chapter 685, Statutes of 2021, codifies existing Rules of Court related to the relinquishment of a firearm by a person subject to a civil domestic violence restraining order and requires the courts to notify law enforcement and the county prosecutor's office when there has been a violation of a firearm relinquishment order.

b) AB 465 (Eggman), Chapter 137, Statutes of 2020, was substantially similar to SB 320 (above), prior to being gut and amended to a different subject matter.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady California
Brady Campaign
Brady United Against Gun Violence
California Department of Justice
California Partnership to End Domestic Violence
City of Alameda
Civil Prosecutors Coalition
Everytown for Gun Safety Action Fund
Family Violence Appellate Project
Futures Without Violence
Giffords
Giffords Law Center to Prevent Gun Violence
Legislative Coalition to Prevent Child Abuse
Los Angeles County District Attorney's Office
Los Angeles County Sheriff's Department
National Women's Political Caucus of California
Neveragainca
Prosecutors Alliance of California, a Project of Tides Advocacy
San Diegans for Gun Violence Prevention
San Diego City Attorney's Office
San Francisco Board of Supervisors
Smart Justice California
Women Against Gun Violence
Women for American Values and Ethics

Opposition
None

Analysis Prepared by: Ilan Zur

Date of Hearing: June 18, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 902 (Roth) – As Amended April 3, 2024

SUMMARY: Creates a 10-year prohibition on the possession of firearms for individuals convicted of animal cruelty. Specifically, **this bill**: Makes it a misdemeanor for any person who is convicted on or after January 1, 2025 of a misdemeanor violation of animal cruelty to own, purchase, receive or possess any firearm within 10 years of their conviction.

EXISTING FEDERAL LAW:

1) States that the right of the people to keep and bear arms shall not be infringed. (U.S. Const., 2nd Amend.)

2) Provides that no state shall deprive any person of life, liberty, or property, without due process of law. (U.S. Const., 14th Amend.)

EXISTING LAW:

1) Makes it a wobbler to maliciously and intentionally main, mutilate, torture or wound a living animal, or maliciously and intentionally kill an animal. (Pen. Code, § 597, subds. (a) & (d).)

2) Prohibits any person who has been convicted of a felony from owning, purchasing, receiving or possessing a firearm, a violation of which is punishable as a felony. (Pen. Code, § 29800.)

3) Provides that persons convicted of specified serious or violent misdemeanors are prohibited from possession of firearms for a period of 10 years and that a violation of that prohibition is punishable as a misdemeanor with imprisonment up to one year or as a state prison felony. (Pen. Code, § 29805, subd. (a).)

4) Includes within the list of misdemeanors triggering a 10 year firearm prohibition the crimes of stalking, sexual battery, assault with a deadly weapon, battery with serious bodily injury, brandishing a firearm of deadly weapon, assault with force likely to produce great bodily injury, battery on a peace officer, corporal injury to spouse, cohabitant or fellow parent, child abuse, elder abuse, unsafe storage of a firearm, and threats of bodily injury or death, among other misdemeanors. (Pen. Code, § 29805, subd. (a).)

5) Requires any person subject to a firearm prohibition based on a conviction of a felony or specified misdemeanor to relinquish any firearms they own, possess or have under their control or custody within 48 hours if the defendant is out of custody or within 14 days if the defendant is in custody. (Pen. Code, § 29810, subd. (a).)

6) Provides that persons with the knowledge that they have an outstanding warrant for any of the specified serious or violent misdemeanors that result in a 10-year prohibition are guilty of a crime if they possess a firearm while the warrant is outstanding. A violation is punishable as a misdemeanor, with imprisonment up to one year, or as a state prison felony. (Pen. Code, §§ 29805, subd. (a), 29851.)

7) Prohibits a person that is subject to specified restraining orders related to domestic violence from possessing or owning a firearm and punishes a violation of the prohibition as a misdemeanor with a maximum sentence of one year in the county jail. (Pen. Code, § 29825.)

8) Contains an exception to the 10-year firearm ban based on a conviction of specified misdemeanors for individuals who took the firearm from someone committing a crime against them and delivered it to law enforcement. (Pen. Code, § 29850.)

9) Authorizes specified peace officers who have been convicted of a specified misdemeanor subject to a 10-year firearm prohibition to petition for relief. In deciding the petition, a court must consider the petitioner's continued employment, the interest of justice, any relevant evidence, whether the petitioner is otherwise not prohibited, and the totality of the circumstances. (Pen. Code, § 29855.)

10) Permits any person convicted of a specified misdemeanor, before that misdemeanor was added to the list of misdemeanors triggering a 10-year prohibition, to petition for relief. In deciding the petition, a court must ensure the petitioner is not otherwise prohibited, and may consider the interest of justice, any relevant evidence, and the totality of the circumstances. (Pen. Code, § 29860.)

11) Requires the Attorney General to establish and maintain an online database to be known as the Prohibited Armed Persons File; the purpose of which is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1996, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Pen. Code § 30000, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "California has led the country in ensuring firearms do not fall into the hands of those that have demonstrated violent tendencies in an attempt to prevent future violence against others. Given the numerous studies showing that animal abuse is a predictor of violence against humans, California needs to ensure dangerous people with a history of animal abuse are prohibited from owning and possessing firearms for at least 10 years.

"Animal cruelty is a predictor of current and future violence, including crimes of assault, rape, murder, arson, domestic violence, and sexual abuse of children. For example, the majority of interpersonal violence (IPV) victims who report co-occurring animal cruelty are also concerned the abuser eventually will kill them and should be considered at extremely high risk of suffering severe injury or death .

"By ignoring such a blatant warning sign, California is putting people at risk. Misdemeanor animal abuse is a major indicator that someone is capable of serious violence against humans, and they should be prohibited from owning or possessing deadly firearms for at least 10 years."

2) **Crimes Against Animals as a Risk Factor**: Some available research indicates a link between animal mistreatment and violence against humans. According to a recent publication by the U.S. Department of Justice, "animal cruelty crimes can serve as a precursor to more violent crimes, as a co-occurring crime to other types of offenses, and as an interrelated crime to offenses such as domestic violence and elder abuse."[1] Indeed, some research has shown that 41% of intimate partner violence offenders had histories of animal cruelty, which, in addition to mental health issues, low education levels, and substance abuse issues, ranks as a top risk factor for becoming a batterer.[2] Moreover, as referenced in this bill's findings, a 2019 study of women who had been in abusive intimate relationships found that 90.7% of the study group reported that children in the household experienced animal maltreatment through direct exposure to threats and violence against animals, and in some instances, the child tried to protect their companion animals by intervening and putting themselves at risk.[3] In 2016, the FBI amended the National Incident-Based Reporting System (NIBRS) to start collecting data on animal abuse.[4]

3) **Individuals Prohibited from Possessing Firearms in California:** California has several laws that prohibit certain persons from purchasing firearms. All felony convictions lead to a lifetime prohibition, while a conviction of specified misdemeanors result in a 10 year prohibition. A person also may be prohibited from possessing a firearm due to a protective order or as a condition of probation. If a person communicates to his or her psychotherapist a serious threat of physical violence against a reasonably-identifiable victim or victims, the person is prohibited from owning or purchasing a firearm for five years, starting from the date the psychotherapist reports to local law enforcement the identity of the person making the threat. (Welf. & Inst. Code, § 8100, subd. (b)(1).) If a person is admitted into a facility because that person is a danger to himself, herself, or to others, the person is prohibited from owning or purchasing a firearm for five years. (Welf. & Inst. Code, § 8103, subd. (f).)

Misdemeanors that result in a 10-year firearm prohibition include the crimes of stalking, sexual battery, assault with a deadly weapon, battery with serious bodily injury, brandishing a firearm or deadly weapon, assault with force likely to produce great bodily injury, battery on a peace officer, and threats of bodily injury or death. (Penal Code, § 29805, subd. (a).) This bill would add misdemeanor convictions for animal cruelty to that list.

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[1] "Animal Cruelty as a Gateway Crime." Community Oriented Policing Services, U.S. Department of Justice. Published 2018. Animal Cruelty as a Gateway Crime (sheriffs.org)
[2] Domestic Violence and The Link | National Link Coalition
[3] McDonald, Shelby et. al. "Intimate Partner Violence Survivors' Reports of Their Children's Exposure to Companion Animal Maltreatment: A Qualitative Study." July 2019; Journal of Interpersonal Violence 34(14):2627-2652. (PDF) Intimate Partner Violence Survivors' Reports of Their Children's Exposure to Companion Animal Maltreatment: A Qualitative Study (researchgate.net)
[4] "Tracking Animal Cruelty: FBI Collecting Data on Crimes Against Animals." Tracking Animal Cruelty — FBI

4) **Armed and Prohibited Persons System (APPS) Mandates on DOJ, Existing and Growing Backlog**: By creating new misdemeanor triggers for placing a person on the APPS list, this bill implicates an ongoing issue: the list is ever-growing and Department of Justice (DOJ) has limited resources to clear the list by ensuring the removal of guns from prohibited persons that possess them. The APPS is a database that checks gun sales against records of criminal convictions, mental health holds and domestic violence restraining orders to flag prohibited owners. DOJ cross-references APPS with five other databases including the California Restraining and Protective Order System (CARPOS), a statewide database of individuals subject to a restraining order. New individuals are added to the APPS database on an ongoing basis as the system identifies and matches individuals in California who are prohibited from purchasing or possessing firearms. DOJ is required to complete an initial review of a match in the daily queue of APPS within seven days of the match being placed in the queue. (Pen. Code, § 30020.)

   The DOJ has long been working to seize the guns and ammunition of persons on the APPS list. However, the list is always growing as new individuals are added to APPS for committing qualifying crimes. Thus, the burden on DOJ to clear the list is ever growing. In addition, the Legislature and voter initiatives have added new categories of individuals who are prohibited from possessing firearms. For example, as of July 1, 2019, the Background Checks for Ammunition Purchases and Large-Capacity Ammunition Magazine Ban Initiative (Proposition 63 of 2016) requires that DOJ confirm whether an individual seeking to purchase ammunition is authorized to do so, and in the process, DOJ will likely identify additional cases requiring APPS investigations.

5) **Argument in Support**: According to the *California Police Chiefs Association*, "According to research from the Humane Society of the U.S., intentional cruelty to animals is strongly correlated with other crimes, including violence against people. In one survey, 71 % of domestic violence victims reported that their abuser also targeted pets. In another study, researchers found that pet abuse had occurred in 88 % of the families under supervision for physical abuse of their children.

   "The FBI has also conducted studies of correlations between cruelty towards animals and humans, and in one study, children were often present as observers in close proximity to violence and threats against their companion animals. Firearms or household objects were often mentioned in the context of threats against pets or used as weapons to harm the animal.

   "SB 902 would help prevent those convicted of animal abuses from owning firearms and endangering Californians."

6) **Argument in Opposition**: According to *Ella Baker Center for Human Rights*, "EBC does not disagree that it would be appropriate to prohibit gun possession for persons convicted of the offense of malicious and intentional maiming, mutilation or torture of an animal. Ella Baker Center is, however, strongly opposed to incarcerating a person as the means of discouraging gun ownership or punishing gun possession of a person with a prior misdemeanor conviction.

   "There are other means to allow lawful confiscation of a firearm from a person deemed unsafe to own a firearm. There are smarter, safer ways to discourage gun possession by those with red flag mental health issues than relapsing to incarceration, which has limited utility

and proven harms.

"Incarceration of an individual not only leads to their own loss of liberty, loss of employment, loss of income, and sometimes loss of home, but it also leads to economic distress for their family. Having a loved one incarcerated causes intense financial stress on low income families. Furthermore, given the disparity in punishment of low income Californians compared to their richer neighbors who can afford private attorneys, this bill would contribute to further community and family impoverishment."

7) **Related Legislation**: AB 2519 (Maienschein), would provide that a defendant who is diverted for a charged serious or violent misdemeanor, for which there would be a 10-year prohibition on possessing a firearm if convicted, shall be prohibited from possessing a firearm until they successfully complete diversion. AB 2519 is currently pending hearing in the Senate Public Safety Committee.

8) **Prior Legislation**:

a) AB 2239 (Maienschein), Chapter 143, Statutes of 2022, created a 10-year firearm prohibition for individuals convicted of child abuse and elder and dependent adult abuse involving violence.

b) SB 723 (Jones), Chapter 306, Statutes of 2020, clarified that an individual must have knowledge of an outstanding warrant in order to be charged with unlawful possession of a firearm.

c) SB 701 (Jones), of the 2019-2020 Legislative Session, would have lowered the penalty to make it a misdemeanor for a person with an outstanding arrest warrant, as specified, to own or possess a firearm. SB 701 was vetoed by the Governor.

d) AB 1121 (Bauer-Kahan), of the 2019-2020, would have prohibited a person who is granted pretrial diversion based on a mental health disorder from owning or possessing a firearm, or other dangerous or deadly weapon for an indefinite period of time. AB 1121 was held in the Suspense File in the Assembly Appropriations Committee.

e) AB 3129 (Rubio), Chapter 883, Statutes of 2018, added an warrants and petty theft of a firearm on to the list of misdemeanors that result in a ban on the right to possess a firearm for 10 years.

f) AB 785 (Jones-Sawyer), Chapter 784, Statutes of 2017, added two hate crimes to the list of misdemeanors that result in a ban on the right to possess a firearm for 10 years.

g) AB 1084 (Melendez), of the 2013-2014 Legislative Session, would have increased the penalties to two, three, or four years in the state prison when an individual possesses a gun, who has been prohibited from gun possession because the person has been held for specified mental health findings. AB 1084 failed passage in the Assembly Public Safety Committee.

h) SB 580 (Jackson), of the 2013-2014 Legislative Session, would have would appropriated the sum of $5,000,000 from the FSESF to the DOJ to contract with local law enforcement

agencies to reduce the backlog of individuals who are identified by APPS as illegally possessing firearms. SB 580 died in the Assembly Committee on Appropriations.

i) SB 140 (Leno), Chapter 2, Statutes of 2013, appropriated $24 million from the DROS Special Account to the DOJ for costs associated with regulatory and enforcement of illegal possession of firearms by prohibited persons.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance for Hope International
Arcadia Police Officers' Association
Brady California
Brady Campaign
Burbank Police Officers' Association
California District Attorneys Association
California Police Chiefs Association
California Protective Parents Association
California Reserve Peace Officers Association
City of Alameda
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Giffords Law Center to Prevent Gun Violence
Los Angeles County District Attorney's Office
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
Rainbow Services, Ltd.
Riverside County District Attorney
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Social Compassion in Legislation
Upland Police Officers Association
Women Against Gun Violence

Opposition

Ella Baker Center for Human Rights

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

Date of Hearing: June 18, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 910 (Umberg) – As Amended June 6, 2024

SUMMARY: Requires counties and courts that opt to have treatment court programs to ensure the programs are designed and operated in accordance with specified standards. Specifically, **this bill:**

1) Requires counties and courts that opt to have treatment court programs to ensure the programs are designed and operated in accordance with the state and national guidelines incorporating the "Adult Treatment Court Best Practice Standards" developed by All Rise, (formerly National Association of Drug Court ("NADC").

2) Modifies the legislative intent of the key components of the programs to ensure such programs to conform to the new standards, such as referencing evidence-based services that meet the needs of participants and working to ensure equitable access, services, and outcomes for all sociodemographic and sociocultural groups.

3) Makes other conforming, non-substantive changes to legislative intent language referencing those with mental health and substance use disorders.

4) Requires the Judicial Council, no later than January 1, 2026, to revise the standards of judicial administration to reflect state and nationally recognized best practices and guidelines for collaborative programs, including the above treatment court programs.

EXISTING LAW:

1) Establishes the Drug Court Programs Act and permits any county, at its option, to provide such a program. (Health and Saf. Code, §§ 11970.5, 11971.)

2) Requires, if a county chooses to provide a drug court program, a county alcohol and drug program administrator and the presiding judge in the county to develop, as part of the contract for substance use disorder ("SUD") services, a plan for the operation of a drug court program that includes the information necessary for the state to ensure a county's compliance with the provisions for receipt of federal grant funds for prevention and treatment of SUDs. (Health and Saf. Code, § 11971, subd. (a).)

3) Requires the above plan to do all of the following:

   a) Describe existing programs that serve substance abusing adults, juveniles, and parents of children who are detained by, or are dependents of, the juvenile court;

b) Provide a local action plan for implementing cost-effective drug court systems, including any or all of specified drug court systems;

c) Develop information-sharing systems to ensure that county actions are fully coordinated, and to provide data for measuring the success of the local action plan in achieving its goals; and

d) Identify outcome measures that will determine the cost effectiveness of the local action plan. (Health & Saf. Code, § 11971, subd. (c).)

4) States that it is the intent of the Legislature that drug court programs be designed and operated in accordance with the document entitled "Defining Drug Courts: The Key Components," developed by the NADCP and Drug Court Standards Committee (reprinted 2004), and that key components of the programs include:

a) Integration by drug courts of alcohol and other drug treatment services with justice system case processing;

b) Promotion of public safety, while protecting participants' due process rights, by prosecution and defense counsel using a non-adversarial approach;

c) Early identification of eligible participants and prompt placement in the drug court program;

d) Access provided by drug courts to a continuum of alcohol, drug, and other related treatment and rehabilitation services;

e) Frequent alcohol and other drug testing to monitor abstinence;

f) A coordinated strategy to govern drug court responses to participants' compliance;

g) Ongoing judicial interaction with each drug court participant is essential;

h) Monitoring and evaluation to measure the achievement of program goals and gauge effectiveness;

i) Continuing interdisciplinary education to promote effective drug court planning, implementation, and operations; and,

j) Forging partnerships among drug courts, public agencies, and community-based organizations to generate local support and enhance drug court program effectiveness. (Health & Saf. Code, § 11972.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 910 would require that drug court programs (also known as Collaborative Courts) be designed and operated in accordance with

"Adult Treatment Court Best Practices Standards" developed by All Rise. It would also revise key components in the program, requiring a system of incentives, sanctions and service adjustments to achieve participant success.

"Collaborative Courts are courts that promote accountability by combining judicial supervision with rigorously monitored rehabilitation and treatment in lieu of detention. These courts divert defendants from traditional criminal justice proceedings to alternative programs that provide social services or attempt to address underlying drivers of crime. California has more than 400 collaborative courts including community, DUI, mental health, and drug courts. Each operates in a slightly different way with varying eligibility criteria.

"Drug courts provided an alternative to criminal adjudication for individuals struggling with substance use disorder. Participants usually attend after pleading guilty to a drug-related crime. If the participant graduates, the original charges can be reduced or dismissed. However, the standards by which they operate and the success rate at which individuals complete a drug court program also varies depending on the county or jurisdiction. Without statewide standardization, it can be difficult for participants to reap the benefits of these courts and rectify any instances of subpar implementation.

"All Rise is a non-profit organization devoted to furthering the treatment court model. In the fall of 2023, All Rise published an updated version of their "Adult Treatment Court Best Practices Standard" which creates a standardized and widely applicable set of guidelines for drug court implementation."

2) **All Rise/NADCP and Treatment Courts:** All Rise is a 501(c)(3) non-profit organization that provides training, membership and advocacy for justice system innovation addressing substance use and mental health.[1] All Rise was initially founded in 1994 as the National Association of Drug Court Professionals, and recently changed their name to All Rise to capture better the intent and nature of their work.[2] All Rise is comprised of four divisions, the Treatment Court Institute, Impaired Driving, Justice for Vets, and the newly established Center for Advancing Justice, to provide comprehensive treatment court training and empower emerging justice system innovations that promote recovery.[3] According to All Rise "treatment courts are considered the most successful justice intervention for people with [MH/SUDs]. For three decades, treatment courts have proven that a combination of treatment and compassion can lead people with MH/SUDs into lives of stability, health, and recovery. This is a public health approach to justice reform in which treatment providers ensure individuals before the courts receive personalized, evidence-based treatment, and they work as a team with law enforcement, community supervision, defense, prosecution, and the judge to provide ongoing support and recovery services."[4] SB 910 updates existing law to reflect the rebranding of All Rise (formerly NDCP) and updated treatment court standards.[5]

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[1] All Rise [accessed June 13, 2024], available at: https://allrise.org/about/
[2] All Rise, *We are All Rise*, [accessed June 13, 2024], available at: https://allrise.org/news/we-are-all-rise/
[3] All Rise [accessed June 13, 2024], available at: https://allrise.org/about/
[4] All Rise, *About Treatment Courts* [accessed June 13, 2024], available at: https://allrise.org/about/treatment-courts/
[5] All Rise, *Adult Treatment Court Best Practice Standards* (2023), available at: https://allrise.org/wp-content/uploads/2023/12/All-Rise-Adult-Treatment-Court-Best-Practice-Standards-2nd-Ed.-I-VI_final.pdf

3) **Broader Efforts to Address the Opioid Crisis:** Fentanyl is a synthetic opioid that is a major contributor to drug overdose deaths. According to the California Department of Justice, in 2020, the most recent year for which statistics are available, 5,502 Californians died due to opioid overdose, and 3,946 died due to fentanyl overdose. The United States has experienced the overdose epidemic in three distinct but interconnected waves: an increase in deaths stemming from prescription opioid overdoses beginning in the 1990s, an increase in heroin deaths starting in 2010, and a more recent surge in deaths from other illicit opioids, primarily fentanyl and its analogues."[6] This bill is part of the California Senate's Safer California package related to fentanyl and other controlled substances that will increase access to treatment and enhanced addiction services for those in the criminal justice system.

4) **Argument in Support**: According to Smart Justice California "Collaborative courts promote accountability by combining judicial supervision with rigorously monitored rehabilitation and treatment in lieu of detention. These courts divert defendants from traditional criminal justice proceedings to alternative programs that provide social services or attempt to address underlying drivers of crime. However, each of these courts operates in a slightly different way with varying eligibility criteria.

"SB 910 would require that collaborative drug court programs be designed and operated in accordance with the "Adult Treatment Court Best Practices Standards" and require Judicial Counsel to revise the standards of judicial administration to reflect state and nationally recognized best practices and guidelines for collaborative programs by January 2026."

5) **Argument in Opposition**: None

6) **Related Legislation**: None

7) **Prior Legislation**:

a) AB 208 (Eggman), Chapter 778, Statutes of 2017, converts the existing deferred entry of judgment (DEJ) program for specified drug-possession offenses into a pretrial drug diversion program.

b) SB 1014 (Committee on Budget), Chapter 36, Statutes of 2012, provides the statutory changes necessary to implement the Department of Alcohol and Drug Programs Realignment portions of the 2012 Budget Act.

c) SB 1369 (Kopp), Chapter 1132, Statutes of 1996 makes deferred entry of judgment, instead of diversion, available to a person who pleads guilty to a drug offense and agrees to attend drug counseling

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[6] *Addressing the Fentanyl Crisis*, California Department of Justice [accessed June 13, 2024], available at: https://oag.ca.gov/fentanyl

REGISTERED SUPPORT / OPPOSITION:

Support

California Consortium of Addiction Programs and Professionals
Mayor Todd Gloria, City of San Diego
Smart Justice California, a Project of Tides Advocacy

Opposition: None

Analysis Prepared by: Ilan Zur

Date of Hearing: June 18, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 926 (Wahab) – As Amended May 16, 2024

SUMMARY: Creates a new crime for a person to intentionally create and distribute any sexually explicit image of another identifiable person that was created in a manner that would cause a reasonable person to believe the image is an authentic image of the person depicted, under circumstances in which the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress. Specifically, **this bill**:

1) Creates a new crime punishable as a misdemeanor for a person who:

   a) Intentionally creates and distributes or causes to be distributed any photo realistic image, digital image, electronic image, computer image, computer-generated image, or other pictorial representation of an intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates;

   b) That was created in a manner that would cause a reasonable person to believe the image is an authentic image of the person depicted;

   c) Under circumstances which in which the person distributing the image knows or should know that distribution of the image will cause serious emotional distress; and,

   d) The person depicted suffers that distress.

2) Applies the existing exceptions in the existing revenge porn statute to the provisions of this bill, including the prohibition against applying this law to issues pertaining to public concern or public interest.

3) Defines "digitization" as altering an image in a realistic manner using an image or images of a person, other than the person depicted, or computer-generated images.

EXISTING LAW:

1) Provides that every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press. (Cal. Const., art. I, § 2.)

2) Makes it a misdemeanor to look through a hole or opening, into, or otherwise view, by means of any instrumentality, including, but not limited to, a camera, motion picture camera, camcorder, mobile phone, electronic device, or unmanned aircraft system, the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. (Pen. Code, § 647, subd. (j)(1).)

3) Makes it a misdemeanor to use a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy. (Pen. Code, § 647, subd. (j)(2).)

4) Makes it a misdemeanor to use a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person. (Pen. Code, § 647, subd. (j)(3).)

5) Makes it a misdemeanor to intentionally distribute an image of another identifiable person's intimate body parts or depicting the person engaged in one of several specified sex acts, under circumstances in which the persons agree or understand that the image shall remain private, when the person distributing the image knows, or should know, that its distribution will cause serious emotional distress, and where the person depicted suffers that distress. (Pen. Code, § 647, subd. (j)(4)(A).)

6) Provides that a person intentionally distributes an image when that person distributes the image or arranges, specifically requests, or intentionally causes another person to distribute that image. (Pen. Code, § 647, subd. (j)(4)(B).)

7) Defines "intimate body part" as any portion of the genitals, the anus, and in the case of a female, also includes any portion of the breasts below the top of the areola that is either uncovered or clearly visible through clothing. (Pen. Code, § 647, subd. (j)(4)(C).)

8) Makes distribution of the image exempt from prosecution if:

   a) It is made in the course of reporting an unlawful activity;

   b) It is made in compliance with a subpoena or other court order for use in a legal proceeding;

   c) It is made in the course of a lawful public proceeding; or,

d) It is related to a matter of public concern or public interest. (Pen. Code, § 647, subd. (j)(4)(D)(i)-(iv).)

9) Specifies a second or subsequent violation of the misdemeanors described above, also known as invasion of privacy, is punishable by imprisonment in the county jail not exceeding one year, and/or a fine not exceeding $2,000. (Pen. Code, § 647, subd. (k)(1).)

10) Specifies that if the victim of the invasion of privacy, as described above, was a minor at the time of the offense, the violation is punishable in a county jail not exceeding one year, and/or a fine not exceeding $2,000. (Pen. Code, § 647, subd. (k)(2).)

11) States that the invasion of privacy provisions do not preclude punishment under any section of law providing for greater punishment. (Pen. Code, § 647, subd. (j)(5).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 926 is a crucial step towards addressing the growing threat of artificially created sexually explicit images distributed without consent. By building on existing legislation, SB 926 serves as a critical tool in creating effective legal protections for victims and empowering law enforcement agencies to combat digital harassment and exploitation. SB 926 strengthens current law by making it clear that unauthorized distribution of sexually explicit images will be considered a misdemeanor. The bill establishes a clear legal framework that creates safeguards to protect the rights and dignity of victims.

SB 926 provides law enforcement agencies with the necessary tools and authority to effectively prosecute cases involving the distribution of artificially created sexually explicit images without consent. The bill empowers law enforcement to respond to digital harassment and exploitation by creating legal consequences for perpetrators.

SB 926 is needed to protect all victims of this type of crime, especially young women. Sensity AI, an organization that monitors the number of deepfakes online, found that 90-95% of all online deepfakes are non-consensual intimate media, and 90% of those feature women. These images are another form of gender-based violence meant to humiliate and harass women. SB 926 represents an important step towards creating a safer digital landscape where individuals are protected from non-consensual dissemination of sexually explicit images. The bill reaffirms California's commitment to upholding the rights and well-being of its citizens in the face of evolving technology."

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

535 U.S. 564, 573.) Legislation that regulates the content of protected speech is subject to strict scrutiny, sometimes referred to by the courts as "exacting scrutiny" in this context. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2226.) To survive strict scrutiny, state action must be narrowly tailored to address a compelling government interest. (*Ibid.*)

Nevertheless, First Amendment protections are not absolute. Restrictions on the content of speech have long been permitted in a few limited areas including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. (*United States v. Stevens* (2010) 559 U.S. 460, 130 S.Ct. 1577, 1584 [citations omitted].) The First Amendment permits "restrictions upon the content of speech in a few limited areas which are 'of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the societal interest in order and morality.'" (*R.A.V. v. City of St. Paul* (1992) 505 U.S. 377, 382-383.)

While some lower courts have grappled with First Amendment challenges to state "revenge porn" laws generally, the California Supreme Court has yet to weigh in. (Paul, *Is Revenge Porn Protected Speech? Lawyers Weigh in, and Hope for a Supreme Court Ruling*, The Washington Post (Dec. 26, 2019).[1]

A former version of California's "revenge porn" law (Pen. Code, § 647, subd. (j)(4)(iii)) survived First Amendment scrutiny in *People v. Iniguez* (2016) 247 Cal.App.4th Supp. 1 (*Iniguez*). There, the defendant argued the statute was overbroad in violation of the First Amendment.

Overbreadth means a defendant "may challenge a statute not because their own rights of free expression are violated, but because the very existence of an overbroad statute may cause others not before the court to refrain from constitutionally protected expression. [Citations.]" (*In re M.S.* (1995) 10 Cal.4th 698, 709.) To avoid being overbroad, "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." (*Broadrick v. Oklahoma* (1973) 413 U.S. 601, 611–612 [citations omitted].)

Without deciding whether a person has a free speech right to distribute such images, the *Iniguez* court concluded former subdivision (j)(4)(iii) of Penal Code section 647.6[2] was not constitutionally overbroad because it required specific intent to distribute sexually explicit material, with the intent to cause serious emotional distress. (*People v. Iniguez*, *supra*, 247 Cal.App.4th Supp. at pp. 7-8.) Accordingly, the statute would not apply if a person acted by mistake or accident. (*Id.* at pp. 7-8.)

The *Iniguez* court also explained that "it is not just *any* images that are subject to the statute, but only those which were taken under circumstances where the parties agreed or understood the images were to remain private. The government has an important interest in protecting the substantial privacy interests of individuals from being invaded in an intolerable manner."

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[1] Located at < https://www.washingtonpost.com/nation/2019/12/26/is-revenge-porn-protected-speech-supreme-court-may-soon-weigh/> [as of April 5, 2024].

[2] Penal Code section 647, subdivision (j)(4)(A-D.)

(*People v. Iniguez, supra*, 247 Cal.App.4th Supp. at p. 8 [citation omitted].) The court stated, "It is evident that barring persons from intentionally causing others serious emotional distress through the distribution of photos of their intimate body parts is a compelling need of society." (*Ibid.*)

This proposed statute simply tracks the existing revenge porn statute without the requirement that the victimized party knows about the intimate image. Additionally, the provision is still subject to the requirements of the revenge porn statute.

3) **Torts and Federal Law:** Code of Civil Procedure section 1708.85 allows a person to file a private right of action (i.e., lawsuit) against any person who intentionally distributes sexually explicit photographs or other images or recordings of another person, without the consent of that person. Under California law, intentional infliction of emotional distress requires "extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress." (See *Hughes v. Pair* (2009) 46 Cal. 4th 1035, 1050.) "A defendant's conduct is 'outrageous' when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Id.* at pp. 1050–51.)

A person may also sue a former spouse, domestic partner, or person with whom the plaintiff cohabites for infliction of emotional distress pursuant to Civil Code section 1714.01. A person may recover up to $250,000 for non-economic injuries like pain or suffering. A plaintiff is also entitled to receive attorneys' fees (which are often significantly more than the actual damages) and economic damages, including medical (i.e., mental health) bills, costs of removing the images from the internet, lost wages, etc. This bill, as it pertains to images that may have been taken surreptitiously and disseminated without someone's consent, may be remedied at civil law pursuant to a private right of action or injunctive relief. In certain circumstances, prosecutors charge individuals posting revenge porn with cyberstalking. (Indictment, *United States v. Sayer* (1st Cir. 2014) 748 F.3d 425 (No. 2:11-cr-113-DBH) (indicting defendant Shawn Sayer with one count of cyberstalking and one count of identity theft).[3]

Cyberstalking occurs when an individual intentionally uses an interactive computer service or electronic communication system to act in a way that "causes, attempts to cause, or would reasonably be expected to cause substantial emotional distress" to another person, their immediate family, or their intimate partner. If an individual repeatedly posts revenge porn online with sufficient contact information to allow viewers to contact the person depicted and thereby causes the victim to suffer substantial emotional distress, prosecutors may charge the individual with cyberstalking. (See *United States v. Sayer* (Ist Cir. 2014) 748 F.3d 425, 428-429 (recounting the defendant's stalking and harassment of the victim by placing intimate images of the victim online with her contact information). Finally, prosecution may be possible under the Video Voyeurism Prevention Act of 2004. (18 U.S.C. § 1801 (2012).) If an individual "has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy," prosecutors can charge the individual capturing the image under the Act. (*Id.*)

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[3] See 18 U.S.C. § 2261A, subd. (2) (2012) (requiring that an individual engaging in cyberstalking must also have an "intent to kill, injure, harass, intimidate, or place under surveillance with the intent to kill, injure, harass or intimidate . . . .").

If an individual, including an intimate partner, captures revenge porn images, the individual could face voyeurism charges. (*Id.*) However, the Video Voyeurism Act may not apply to situations where a couple produced the image consensually with an expectation of privacy.[4] In this case, the author and sponsors point out that the existing revenge porn statute requires the person whose image is being distributed to know about the image, but in an era of deepfakes and rising AI, the victim may not know anything about the image.

4) **Argument in Support**: According to the *Los Angeles District Attorney's Office*: Existing law makes revenge porn a crime pursuant to Penal Code Section 647(j)(4). In order to have a successful prosecution under this section it must be proven that there was an image of an intimate body part of another identifiable person or an image of the person depicted engaged in specified sexual acts that was distributed by a person who either agreed or understood the image was to remain private and the person distributing the image knew or should have known that the distribution of the image would cause the victim serious emotional distress, and the victim did in fact suffer that distress.

   With the rapid advancement in both the quality of computer technology and the easy availability of this technology to the general public, there has been an increase in the use of this technology to create highly realistic images of individuals to appear as if they are nude or engaged in sexual activity. Many of these images are of such quality that special computer software is needed to verify that the image is not real. Today's technology allows images to be generated that are virtually indistinguishable from actual images. As technology advances the ability to distinguish between actual images and artificially generated images will become harder for law enforcement to detect and will be nearly impossible for the general public to distinguish.

   Our Office consulted prosecutors from our High Tech Crimes and Appellate Divisions, it was determined that an image of revenge porn that was artificially created could not be prosecuted under existing law. There are two reasons for this:

   1. Since the image is not real the image does not contain the actual image of the intimate body parts of another identifiable person (since the intimate body parts depicted aren't real) or the image is not an actual image of the person engaged in any of the specified sexual acts (once again because the image is not real); and

   2. Since the image is not real the victim and defendant never agreed or could there be an understanding between both parties that the image was to remain private because the victim was never aware of its existence. There has been an unfortunate increase in the proliferation of artificially created images distributed electronically across the internet and via email that but for the deficiency in existing law could be prosecuted under California's existing revenge porn statute.

SB 926 would close this loophole in existing law by adding language to Penal Code Section 647(j)(4) that would make it a crime under California's revenge porn statute to distribute any image created or altered through digitization of an intimate body part or parts of another

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[4] CIVIL: Chapters 859 & 863: *Model Revenge Porn Legislation or Merely a Work in Progress?, Code Sections Affected Civil Code § 1708.85 (new).AB 2643 (Wieckowski); 2014 STAT. Ch. 859.Penal Code § 647 (amended).SB 1255 (Cannella); 2014 STAT. Ch. 863.*, 46 McGeorge L. Rev. 297, 301-302

identifiable person, or a digitized image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted, under circumstances which in which the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress. SB 926 will protect victims from harm when a fake image of them is distributed in the same way that existing law protects victims from harm when an actual image of them is distributed. SB 926 will protect victims while still protecting any constitutional issues by retaining the requirement the person distributing the image knew or should have known the distribution of the image would cause the victim serious emotional distress, and the victim suffered that distress. Given the proliferation and advancements in AI technology, it makes no sense from either a policy or legal standpoint to exclude artificially generated images from the definition of revenge porn.

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

6) **Related Legislation**:

   a) AB 1856 (Ta) creates a new crime for intentionally distributing or causing to be distributed a deepfake of an intimate body part of an identifiable person, or a deepfake of the person engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or a deepfake of a person engaging in conduct which the person depicted participates, and the person distributing the deepfake knows or should know that the person depicted did not consent to the distribution and that distribution will cause serious emotional distress, and the person depicted suffers that distress. AB 1856 is pending in Senate Public Safety Committee.

   b) AB 1962 (Berman) expands the crime of posting an intimate image of another identifiable person without their consent with the intent cause serious emotional distress (referred to as "revenge porn") to include the distribution of images recorded, captured, or otherwise obtained without the authorization of the person depicted or by exceeding authorized access from property, accounts, messages, files, or resources of the person depicted.

7) **Prior Legislation**:

   a) SB 23 (Rubio), Chapter 783, Statutes of 2021, extends the statute of limitations for the crime of "revenge porn" to allow prosecution to commence within one year of the discovery of the offense, but not more than four years after the image was distributed.

   b) SB 1081 (Rubio), Chapter 882, Statutes of 2022, defines the terms "distribute" and "identifiable" for purposes of the existing crime of unlawful distribution of a private image, also known as "revenge porn."

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
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles County District Attorney's Office
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Opposition

None on file.

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

Date of Hearing: June 18, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 933 (Wahab) – As Introduced January 16, 2024

SUMMARY: Specifies that computer-generated images, for purposes of statutes that criminalize child pornography, include images generated through the use of artificial intelligence (AI).

EXISTING LAW:

1) Prohibits, except as provided, the act of knowingly sending or bringing into this state for sale or distribution, or possessing, preparing, publishing, producing, developing, duplicating, or printing in this state any representation of information, data, or image including among a non-exhaustive list of types of medium, computer-generated images, that contains or incorporates in any manner, any film or filmstrip, with the intent to distribute, exhibit or exchange with others any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined. (Pen. Code, § 311.1, subd. (a).)

2) Prohibits, except as provided, the act of knowingly sending or bringing into this state for sale or distribution, or possessing, preparing, publishing, producing, developing, duplicating, or printing in this state any representation of information, data, or image, including among a non-exhaustive list of types of medium, computer-generated images, that contains or incorporates in any manner, any film or filmstrip, with intent to distribute, exhibit or exchange with others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct. (Pen. Code, § 311.2, subd. (b).)

3) Prohibits, except as provided, the act of knowingly sending or bringing into this state for sale or distribution, or possessing, preparing, publishing, producing, developing, duplicating, or printing in this state any representation of information, data, or image, including among a non-exhaustive list of types of medium, computer-generated images that contains or incorporates in any manner, any film or filmstrip, with intent to distribute, exhibit or exchange with a person 18 years of age or older, any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct. (Pen. Code, § 311.2, subd. (c).)

4) Prohibits, except as provided, the act of knowingly sending or bringing into this state for sale or distribution, or possessing, preparing, publishing, producing, developing, duplicating, or printing in this state any representation of information, data, or image, including among a non-exhaustive list of types of medium, computer-generated images, that contains or incorporates in any manner, any film or filmstrip, with intent to distribute or exhibit to, or to exchange with, a person under 18 years of age, any matter, knowing that the matter depicts a

person under the age of 18 years personally engaging in or personally simulating sexual conduct. (Pen. Code, § 311.2, subd. (d).)

5) Makes a person, except as provided, guilty of sexual exploitation of a child if the person knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including among a non-exhaustive list of types of medium, computer-generated images, that contains or incorporates in any manner, any film or filmstrip that depicts a person under the age of 18 years engaged in an act of sexual conduct, as defined. (Pen. Code, § 311.3, subd. (a).)

6) Prohibits, except as provided, a person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which they should reasonably know that the person is a minor, hires, employs, or uses the minor to participate in the production, distribution or exhibition of child pornography in violation of Penal Code section 311.2. (Pen. Code, § 311.4, subd. (a).)

7) Prohibits, except as provided, a person who, knows that a person is a minor under the age of 18 years, or who should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including among a non-exhaustive list of types of medium, computer-generated images, that contains or incorporates in any manner, any film, filmstrip, or a live performance involving sexual conduct by a minor for commercial purposes. (Pen. Code, § 311.4, subd. (b).)

8) Prohibits, except as provided, a person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she they should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including among a non-exhaustive list of types of medium, computer-generated images, that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals. (Pen. Code, § 311.4, subd. (c).)

9) Prohibits, except as provided, a person from knowingly possessing or controlling any matter, representation of information, data, or image, including among a non-exhaustive list of types of medium, computer-generated images, that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under 18 years of age, knowing that the matter depicts a person under 18 years of age personally engaging in or simulating sexual conduct. (Pen. Code, § 311.11, subd. (a).)

10) States, except as provided, that any city, county, city and county, or state official or agency in possession of matter that depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct is subject to forfeiture. (Pen. Code, § 312.3, subd. (a).)

11) Defines "sexual conduct" as:

a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

b) Penetration of the vagina or rectum by any object.

c) Masturbation for the purpose of sexual stimulation of the viewer.

d) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

e) Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.

f) Defecation or urination for the purpose of sexual stimulation of the viewer. (Pen. Code, § 311.3, subd. (b)(1-6); Pen. Code, § 311.4, subd. (d).)

12) Defines "matter" to mean "any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines, or materials. "Matter" also means any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated-image that contains or incorporates in any manner any film or filmstrip. (Pen. Code, § 312.3, subd. (h).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Our laws need to keep up with technology. New artificial intelligence (AI) tools allow anyone to create convincing images by typing a short description of what they want to see, and users have quickly found workarounds to previously established safeguards to protect children. The landscape of possibilities presented by artificial intelligence is changing rapidly. We must protect children from new forms of exploitation and violations, and ensure perpetrators are held responsible and accountable for their actions. As technology evolves, our laws must keep up to ensure children are safe."

2) **Child Pornography:** Possession or distribution of child pornography is punishable as either a misdemeanor or felony, and in some cases, may be a state prison felony. Penal Code section 311.2, subdivision (a) criminalizes distribution or exhibition of obscene material, including child pornography, and requires a maximum sentence of one year in state prison. Additionally, Penal Code section 311.2 may be charged per image and, in some case, aggregated to increase the total sentence. (*People v. Haraszewski* (2012) 203 Cal.App.4th 924.) Penal Code section 311.2, subdivision (b) punishes exhibition or distribution of child pornography for commercial consideration as a felony subject to a maximum of six years in state prison. (Pen. Code, § 290, subd. (c).)

   Penal Code section 311.2, subdivision (c) punishes exhibition or distribution of obscene matter to another person 18 and over knowing the material depicts a minor engaged in sexual

conduct, may be sentenced to a maximum of 1 year in state prison. Penal Code section 311.2 subdivision (d) punishes distribution of obscene matter, including child pornography, to a person under the age of 18, by up to one year in county jail, or three years in state prison.

Penal Code section 311.3 criminalizes "sexual exploitation of a child," which is knowingly developing or printing child pornography, as specified, and may be punished by up to one year in the county jail. (Pen. Code, § 311.3, subd. (d).)

Penal Code section 311.4, subdivision (a) punishes knowingly employing a minor to distribute obscenity or pornography, as specified, and is subject to a punishment of up to one year in state prison. Penal Code section 311.11, subdivision (a) criminalizes possession of child pornography which is mostly punishable as a felony. Penalties for violating existing laws on child pornography range from one-year county jail misdemeanors to state-prison felonies.

Until 1994, child pornography was defined to mean depictions of children under the age of 14 engaged in a sexual conduct. In 1994, child pornography was defined as depicting any person under the age of 18 years. (AB 927 (Honeycutt), Ch. 55, Stats. 1994.)

However, when the age standard for child pornography was set to include images of any minor, the definition of "sexual conduct" did not change. That definition is broad enough to include not only graphic depictions of sexual intercourse, oral copulation and sodomy, but also what could be characterized sexually oriented posing. Thus, the range of prohibited depictions makes it difficult to assess exactly what a "child pornography" conviction means in any particular instance since child pornography can range from the most graphic depiction of the rape of a prepubescent child possessed by an adult to a nude image of a 17-year old possessed by another minor.

3) **First Amendment:** The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." (U.S. Const, Amend. I, Section 1.) This fundamental right is applicable to the states through the due process clause of the Fourteenth Amendment. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal. 4th 121, 133-134, citing *Gitlow v. People of New York* (1925) 268 U.S. 652, 666.) The California Constitution also protects free speech. (Cal. Const. Art. I, § 2.) "[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." (*Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.) Speech cannot be prohibited merely because someone justifiably finds it offensive and objectionable. (See e.g. *Cohen v. California*, (1971) 403 U.S. 15, 22; *Virginia v Black* (2003) 538 U.S. 343, 358.) Legislation that regulates the content of protected speech is subject to strict scrutiny, which requires state action to be narrowly tailored to address a compelling government interest. (*Reed v. Town of Gilbert, Ariz.* (2015) 135 S.Ct. 2218, 2226.)

While these guarantees are stated in broad terms, "the right to free speech is not absolute." (*Aguilar v. Avis Rent A Car System, Inc.*, supra, 21 Cal. 4th at p. 134, citing *Near v. Minnesota* (1931) 283 U.S. 697, 708; and *Stromberg v. California* (1931) 283 U.S. 359.) Courts have recognized that there are categories of speech that are not protected under the First Amendment, such as soliciting a bribe (Pen. Code, § 653f), perjury (Pen. Code, § 118), or making a terrorist threat (Pen. Code, § 422). Obscenity and child pornography have also been held to fall outside the protections of the First Amendment. (*Roth v. United States*

(1957) 354 U.S. 476 and *New York v. Ferber* (1982) 458 U.S. 747.)

Miller v. California (1973) 413 U.S. 15, 24 held "obscene material is unprotected by the First Amendment."

> "There are inherent dangers in undertaking to regulate any form of expression. State statutes designed to regulate obscene materials must be carefully limited. As a result, the permissible scope of such regulation is confined to works which depict or describe sexual conduct. That conduct must be specifically defined by the applicable state law, as written or authoritatively construed. A state offense must also be ***limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific valu***e. (Emphasis added.)

While pornography that is not obscene is protected speech under the First Amendment, child pornography is a different matter. The Supreme Court has recognized that a state may legitimately sanction activities which amount to harmful conduct rather than "pure speech," particularly when the conduct in question involves the use of children to make sexual material. (*New York v. Ferber* (1982) 458 U.S. 747, 770-771.) The "prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance." (*Id.* at p. 757.) The use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child. (*Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596, 757; *Osborne v. Ohio* (1990) 495 U.S. 103, 109.) Thus, "pornography showing minors can be proscribed whether or not the images are obscene under the definition set forth in *Miller v. California*." (*Free Speech Coalition*, *supra*, 535 U.S. at p. 240, *citing Ferber*, *supra*, 458 U.S. at p. 764.)

This bill adds images generated by AI to the existing statutes that criminalize child pornography and obscene matter. Specifically, these statutes criminalize the possession, distribution, exchange or production of any matter, representation of information, data, or image, including but not limited to a list of medium, such as computer-generated images, that may be used to distribute or exhibit matter that contains or incorporates materials involving the use of a person under the age of 18 years old personally engaging in or simulating sexual conduct. This bill specifies that computer-generated images include images generated by AI.

While AI encompasses a broad range of images which may be real or fabricated, when applied in the context of existing child pornography statutes, the image must be of a real minor in order to pass constitutional scrutiny. In *Free Speech Coalition*, *supra*, the U.S. Supreme Court declared unconstitutional a federal law that defined child pornography to include visual depictions that appear to be of a minor, even if no minor was actually used. (535 U.S. 234.) The government argued that while real children were not harmed in the production of the materials, the materials could still lead to abuse of real children by pedophiles who "whet their own sexual appetites" with such materials. (*Id.* at p. 241.) Additionally, the government argued that as imaging technology improves, it becomes more difficult to prove that a particular picture was produced using actual children. (*Id.* at 242.)

The Court found these arguments were insufficient reasons to treat virtual child pornography the same as child pornography made with a real minor. In *Ferber*, *supra*, the Court found that the production and distribution of child pornography are "intrinsically related" to the sexual abuse of the child because the material acts as a permanent record of the child's abuse and the circulation of the material would harm the child's reputation and emotional well-being. (*Id.* at p. 249.) The Court distinguished the harm in virtual child pornography created without using a real minor because it is not a recording of a criminal act nor is there continuing harm on a child victim by the distribution of the materials. (*Id.* at p. 250.)

The *Free Speech Coalition* ruling, albeit in dicta, did comment on the difference between pure virtual images versus morphing images where innocent pictures of real children are altered so that the children appear to be engaged in sexual activity. "Although morphed images may fall within the definition of virtual child pornography, they implicate the interests of real children and are in that sense closer to the images in *Ferber*. Respondents do not challenge this provision, and we do not consider it." (*Id.* at p. 242.)

In *U.S. v. Hotaling* (2002), 599 F.Supp.2d 306, the Northern District Court of New York, relying on dicta from the *Free Speech Coalition* case, as well as other district court and U.S. appellate court cases, held that criminalizing morphed images of child pornography created without the filming or photography of actual sexual conduct on the part of the identifiable minor does not violate the First Amendment. (*Id.* at p. 321.) "An image of an identifiable, real child involving sadistic conduct -- even if manipulated to portray conduct that was not actually inflicted on that child -- is still harmful, and the amount of emotional harm inflicted will likely correspond to the severity of the conduct depicted." (*Id.* at p. 320, *citing U.S. v. Hoey* (1st Cir. 2007) 508 F.3d 687, 693.) *Hotaling* also cited similar reasoning which was used by another appellate court in holding that an image in which the face of a known child was transposed onto the naked body of an unidentified child in a lascivious pose constituted child pornography outside the scope of the First Amendment protections. (*Id.* at p. 319, *citing U.S. v. Bach* (8th Cir. 2005) 400 F.3d 622.)

In contrast, a California appellate court held that the possession of morphed images, while morally repugnant, does not fall outside the protection of the First Amendment. (*People v. Gerber* (2011) 196 Cal.App.4th 368, 386.) The court looked at Legislative history of previously enacted statutes that contain the same language -- "personally engaging in or personally simulating sexual conduct" -- and found that it is "clear that the purpose of that legislation was to prevent exploitation of children used to make child pornography." (*Id.* at p. 380, *citing* Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1580 (1977-1978 Reg. Sess.) as amended Aug. 18, 1977, p. 1.) The court also noted that at the time that the Legislature enacted the crime of possession of child pornography, the term "child pornography" had a particular meaning under *Ferber*, *supra*. Specifically, not only must the offender have known that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, production of the matter must have "involve[d] the use of a person under the age of 18 years..." (*Id.* at p. 382, *citing Ferber*, *supra*, 458 U.S. 747, and Cal. Pen. Code, § 311.11.)

Thus, *Gerber* held that "it would appear that a real child must have been used in the production and actually engaged in or simulated the sexual conduct depicted." (*Id.* at p. 382.) The court acknowledged the dicta in *Free Speech Coalition* on morphed images, however, held that such altered materials are closer to virtual child pornography than to real child

pornography because the act does not necessarily involve sexual exploitation of an actual child. (*Id.* at p. 386.) Relying on the rationales laid out in both *Ferber*, *supra* and *Free Speech Coalition*, the court emphasized that "*Ferber's* judgment about child pornography was based upon how it was made, not on what it communicated and *Ferber* reaffirmed that where the speech is neither obscene nor the product of sexual abuse, it does not fall outside the protection of the First Amendment." (*Id.* at p. 385, *citing Free Speech Coalition*, *supra*, 535 U.S. at pp. 250-251.)

As stated above, this bill would includes images generated by the use of AI to computer-generated images in existing statutes that prohibit obscene matter and child pornography. In a literal sense, an AI image is a type of computer-generated image so this bill could be interpreted to merely clarify existing law. To the extent that this bill may be interpreted to expand existing law to images not explicitly covered, such as applying to morphed images of child pornography, case law is not clear on where the constitutional line should be drawn. Whether such expanded application of this bill passes First Amendment scrutiny is ultimately up to the courts.

4) **Argument in Support**: According to the *California Police Chiefs Association*, the bill's sponsor, "According to the Stanford Internet Observatory's 2023 report there are thousands of explicit and abusive images of children hidden within popular AI image-generators. These images make it easier to create explicit and abusive content. Current law does not expressly prohibit the possession or distribution of AI-generated explicit images of actual children, and law enforcement has experienced difficulties tying possession and distribution of these images to existing criminal statutes.

"SB 933 is addressing the pressing issue of AI-generated explicit, abusive images of children, clarifying the law to provide effective safeguards. The bill's solutions are straightforward and impactful, aiming to regulate AI-generated images, create a more secure digital environment for children, and protect children and teens."

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

6) **Related Legislation**:

   a) AB 1831 (Berman), would add to the definition of "obscene matter" and "matter," any "matter generated through AI" as it pertains to images of persons under the age of 18 engaged in sexual conduct, as specified.

   b) AB 1872 (Sanchez) expands the definition of "fear" in the extortion statute to include any threat to post, distribute, or create AI-generated images or videos of another. AB 1872 is being heard in this committee today.

   c) AB 1873 (Sanchez) creates a new crime for knowingly developing, duplicating, printing, or exchanging any representation of information, data, or images generated using artificial intelligence (AI), that depicts a person under the age of 18 years engaged in any sexual conduct, as specified.

7) **Prior Legislation**: SB 1128 (Alquist), Chapter 337, Statutes of 2006, stated, among other numerous changes to the distribution of obscene material, that any person who knowingly

promotes, employs or uses a minor who the person knows or reasonably should have known is under the age of 18 or engages in or assists others to engage in either posing or modeling involving sexual conduct for commercial purposes shall punished as a felony punishable by a term of three, six or eight years in state prison.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Burbank Police Officers' Association
Calchamber
California Baptist for Biblical Values
California Chamber of Commerce
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Chief Probation Officers' of California (CPOC)
Child Abuse Prevention Center and Its Affiliates Safe Kids California, Prevent Child Abuse California and The California Family Resource Association; the
Children's Advocacy Institute
Childrens Advocacy Institute
Claremont Police Officers Association
Common Sense
Common Sense Media
Concerned Women for America
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Junior Leagues of California State Public Affairs Committee
Los Angeles County District Attorney's Office
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Our Duty
Palos Verdes Police Officers Association
Perk Advocacy
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Real Impact.
Riverside Police Officers Association
Riverside Sheriffs' Association

Roblox Corporation
Sacramento County Sheriff Jim Cooper
Sag Aftra
Sag-aftra, Afl-cio
Santa Ana Police Officers Association
SNAP INC.
Technet
Upland Police Officers Association

Opposition

None

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

Date of Hearing: June 18, 2024
Consultant: Elizabeth Potter

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 950 (Skinner) – As Amended June 4, 2024

SUMMARY: Expands reentry services and program assistance for incarcerated persons who are in community correctional reentry centers and requires the Department of Corrections and Rehabilitation ("CDCR") to help incarcerated persons obtain support services and enrollment in eligible programs. Specifically, **this bill**:

1) Requires CDCR to work and collaborate with community organizations, including contracting organizations, to allow an eligible incarcerated person in a correctional facility to apply for and receive a replacement social security card.

2) Requires CDCR to comply with the Privacy Act of 1974 and the federal Social Security Administration's ("SSA") disclosure regulations and guidance promulgated, as specified.

3) Requires CDCR to assess and make recommendations or internally address the overall increased cost to providers or community organizations to support these collaborative efforts.

4) Specifies that these collaborative efforts do not supplant any prior related agreement a correctional facility has entered into with the federal SSA.

5) Requires CDCR to work with the following entities to develop a report exploring alternatives to incarceration for individuals who are advanced in age or disabled and who would otherwise qualify for community correctional reentry centers:

   a) The California Department of Aging;

   b) The State Department of Social Services;

   c) Probation workers and their representatives;

   d) Advocates for people who are advanced in age or have disabilities; and,

   e) Providers of permanent housing.

6) Requires the report to include an assessment or plan for CDCR to develop or implement the potential creation of higher or specific modality community correctional reentry centers for individuals advanced in age or those with disabilities, which would include a customized reentry plan.

7) Requires CDCR to submit a report with specified recommendations to the Legislature on or before March 31, 2026.

8) Requires CDCR to convene a working group of department nonprofit vendors holding community-based reentry contracts to develop a plan for establishing statewide in-reach efforts available under California Advancing and Innovating Medi-Cal (CalAIM).

9) Requires the plan to include a determination of process to help effectuate the ability for reentry providers to engage individuals who are incarcerated during the period authorized under justice involved in-reach efforts, and include a plan on determining rates for these services.

10) Requires CDCR to submit a report on the plan with recommendations to the Legislature on or before March 21, 2026.

11) Requires CDCR, to the extent possible under federal law, guidance, and waivers, to ensure that all eligible residents of a community correctional reentry center are enrolled in Medi-Cal within 30 days of entering the facility.

12) Requires CDCR, in partnership with the Department of Health Care Services ("DHCS"), to maximize Medi-Cal benefits received by residents of, and individuals being released from community correctional reentry centers, including, but not limited to, health care services, homelessness prevention services, and other services known to prevent recidivism.

13) Requires CDCR, in partnership with the State Department of Social Services, to maximize CalFresh benefits and services that are received by residents of, and individuals being released from, community correctional reentry facilities, including employment and training program services for which matching federal funding is available, if a county has established and opted to administer a CalFresh Employment and Training program.

14) Allows a county to locate community health workers, in or near public defender's offices to connect clients with substance use disorder treatment services and designate a supervising provider.

15) Defines "supervising provider" as an enrolled Medi-Cal provider that submits claims for services provided by a community health worker and who ensures that a community health worker meets the qualifications as required by the department and directly or indirectly oversees community health workers and the services they deliver to Medi-Cal beneficiaries.

16) States that a supervising provider may be a licensed provider, a hospital, an outpatient clinic, a local health jurisdiction, or a community-based organization.

EXISTING LAW:

1) Authorizes the Secretary of CDCR to contract for the establishment and operation of separate community correctional reentry centers for men and women. Authorizes CDCR to enter into long-term agreements for transfer of incarcerated individuals to, or placement of incarcerated individuals in, community correctional reentry centers. (Pen. Code, § 6258, subd. (a).)

2) Provides that the purpose of the community correctional reentry center is to provide an enhancement program to increase the likelihood of a successful parole, and the objective of the program is to make incarcerated individuals aware of their responsibility to society, and to assist incarcerated individuals with educational and employment training to ensure employability once on parole. (Pen. Code, § 6258, subd. (b).)

3) Requires a community correctional reentry center to prepare each incarcerated individual for reintegration into society, provide counseling in the areas of drug and alcohol abuse, stress, employment skills, victim awareness, and to, in general, prepare the individual for return to society. Additionally requires the program to emphasize literacy training and utilize computer-supported training so that the incarcerated individual can read and write at least at a 9th-grade level. (Pen. Code, § 6258, subd. (c).)

4) Requires the Secretary of CDCR, in awarding contracts for community correctional reentry centers, to advertise the potential contract and may entertain proposals for the establishment and operation of community correctional reentry centers from public and private entities. (Pen. Code, § 6258, subd. (d).)

5) Requires the Secretary of CDCR when awarding contracts for community correctional reentry centers to give preference to the following community correctional reentry centers:

   a) Centers located near large population centers;

   b) Centers with approved state or local land use;

   c) Centers that provide a rehabilitative, supportive setting and programming that is trauma-informed, culturally responsive, and community oriented in order to improve the outcome of the participants and reduce recidivism; and

   d) Centers operated by a nonprofit organization that has demonstrated experience successfully operating community correctional reentry centers. (Pen. Code, § 6258, subd. (d).)

6) Establishes that all the following eligibility criteria must be met for transfer to a community correctional reentry facility:

   a) The incarcerated individual must apply for a transfer to a community correctional reentry facility;

   b) The incarcerated individual cannot have a current or prior conviction for an offense that requires registration as a sex offender, as specified;

   c) The incarcerated individual has less than two years left to serve in a correctional facility;

   d) The incarcerated individual does not have a history, within the prior 10 years, of an escape, as specified; and,

e) CDCR determines that the incarcerated individual would benefit from the transfer. (Pen. Code, § 6258.1.)

7) Establishes the Medi-Cal Program, administered by DHCS, to provide comprehensive health benefits to low-income individuals who meet specified eligibility criteria. (Welf. & Inst. Code, § 14000 et seq.)

8) Establishes the Cal-Fresh Program, a statewide program, to enable eligible recipients to receive federal Supplemental Nutrition Assistance Program benefits. (Welf. & Inst. Code, § 18900 et seq.)

9) Makes findings and declarations that incarcerated persons should have educational, rehabilitative, and restorative justice programs available so that their behavior may be modified and they are prepared to reenter the community. (Pen. Code, § 1170, subd. (a)(2).)

10) Requires CDCR to develop and implement a plan to obtain additional rehabilitation and treatment services for prisoners and parolees. (Pen. Code, § 2062.)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "California's rehabilitative programs, MCRP and FCRP, have been proven methods to lower recidivism, and provide transformative services for those preparing to return to their communities. These facilities allow qualified incarcerated individuals to serve their final 24 months of incarceration in a community-based facility that provides access to ongoing substance use treatment, education, and employment services, and more to support the individual's full reintegration back into their community. SB 950 will provide people in CCRPs and MCRPs access to Medi-Cal and CalFresh to support reentry by providing ongoing substance abuse recovery support, specifically fentanyl addiction. SB 950 will also identify ways to expand reentry programs to target people advanced in age or severely disabled who would benefit from specialized care. Finally, SB 950 will identify ways to pre-enroll incarcerated individuals into supportive services. The programs introduced in SB 950 will decrease recidivism and increase public safety for Californians."

2) **Community Correctional Reentry Centers:** The goal of community correctional reentry centers is to give individuals the opportunity to serve the end of their sentence in community programs in lieu of confinement in state prison, and connect participants to community rehabilitative services and programs focused on issues such as substance abuse treatment, education, housing, family reunification, vocational training and employment services. Such centers serve male and female prisoners and are available throughout the state.

   According to CDCR, "The Male Community Reentry Program ("MCRP") is a voluntary program for eligible males who have two years or less of their prison sentence left to serve. This allows eligible people committed to state prison to serve the end of their sentences in the community, in lieu of confinement in state prison. MCRP is facilitated by the Division of Rehabilitative Programs (DRP). [] Launched in 2015, MCRP is designed to provide a range of community-based, rehabilitative services that assist with substance use disorder, mental

health care, medical care, employment, education, housing, family reunification, and social support. MCRP assists participants to successfully reenter the community from prison and contributes to reduced recidivism by using community-based rehabilitative services. Rehabilitative services may include guidance and support, family reunification, community resources, education, employment, health care services, recovery groups, and housing."[1]

In contrast, "[t]he Female Community Reentry Program (FCRP) allows eligible female individuals with serious and violent crimes, as well as non-serious committed to State prison to serve their sentence in the community at a FCRP as designated by the Department, in lieu of confinement in State prison and at the discretion of the Secretary. The FCRP will provide a range of rehabilitative services that assist with alcohol and drug recovery, employment, education, housing, family reunification, and social support. [] Under FCRP, one day of participation counts as one day of incarceration in State prison, and participants in the program are also eligible to receive any sentence reductions that they would have received had they served their sentence in State prison. Participants may be returned to an institution to serve the remainder of their term at any time with or without cause."[2]

"Female participants who volunteer for FCRP will be placed into the program with a minimum of 45 days and a maximum of 32 months to participate prior to their release date. All of the participants receiving services through the FCRP will be required to reside at the FCRP program. CDCR will have the final decision regarding program placements and retains the right to remove participants from the program at any time."[3]

This bill would require CDCR to work and collaborate with community organizations, including contracting organizations, to allow an eligible incarcerated person in a correctional facility to apply for and receive a replacement social security card. This bill aims to expand benefits and services for eligible incarcerated persons who are in community correctional centers by requiring CDCR to enroll participants in Medi-Cal and CalFresh. In addition, this bill would allow a county to locate community health workers, in or near public defender's offices to connect clients with substance use disorder treatment services and designate a supervising provider. Additionally, SB 950 would requires CDCR to work with specified entities develop a report exploring alternatives to incarceration for individuals who are advanced in age or disabled and who would otherwise qualify for community correctional reentry centers.

3) **Community Correctional Reentry Programs and Reduced Recidivism:** A study conducted by Stanford University in 2021 showed positive outcomes for incarcerated individuals who participate in community correctional reentry programs. It found that "[o]verall, our results suggest that participating in MCRP is likely to reduce rearrests when offenders participate in the program for at least 7 months and is likely to reduce reconvictions for those who participate for more than 9 months. The estimated reductions in rearrests and reconvictions at over 7 and 9 months of participation were qualitatively large,

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[1] California Department of Corrections and Rehabilitation, *Male Community Reentry Program* [accessed June 12, 2024], available at: https://www.cdcr.ca.gov/rehabilitation/pre-release-community-programs/mcrp/
[2] California Department of Corrections and Rehabilitation, *Female Community Reentry Program* [accessed June 12, 2024], available at: https://www.cdcr.ca.gov/rehabilitation/pre-release-community-programs/fcrp/
[3] *Ibid.*

as recidivism rates have proved very difficult to change over time. More specifically, the respective 7 and 13 percentage point drops in rearrest rates after 7 and 9 months of participation were equal to a 20% and 37% decrease in the average one-year rearrest rate (35%) of the control group in the present study. For the reconviction rate, the 11 percentage point decrease after 9 months of participation was equal to a 92% decrease in the average one-year reconviction rate (12%) of the control group in the present study. These findings suggest that MCRP is a promising program for policymakers and practitioners with the goal of reducing recidivism rates, but substantially longer durations of participation than the average duration of 4 to 5 months are necessary for achieving that goal."[4]

4) **Argument in Support**: According to *the Amity Foundation*, a Co-Sponsor of this bill, "The California Department of Rehabilitations (CDCR) launched Male Community Reentry Programs (MCRPs) and Female Community Reentry Programs (FCRPs) in an effort to provide greater rehabilitation services for individuals in their last two years of custody. MCRPs and FCRPs have shown great strides in lowering recidivism compared to serving their final years in prison by offering treatment, social, work, and education services in communal housing. Despite the efforts these programs have achieved, an estimated 60% of people in reentry are struggling with drug addiction and need additional health services.

   SB 950 will help address drug addiction and further lower recidivism by helping incarcerated people pre-enroll into Medicaid/Medical, SSI, CalFresh, and other programs making them eligible to receive these critical social benefits upon their release. This bill also intends to have the Department look for pathways to expand these successful programs to those advanced in age or that have disabilities. SB 950 creates a healthy pathway from release to reentry by providing necessary services to people impacted by the carceral system that they need and rightfully deserve."

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

6) **Related Legislation**

   a) AB 1353 (Maienschein), Chapter 472, Statutes of 2023, established a pilot program for the San Diego Sheriff's Department and the Department of Motor Vehicles (DMV) to provide incarcerated persons with a valid identification card or a renewed driver's license.

7) **Prior Legislation**

   a) SB 629 (Roth), Chapter 645, Statutes of 2021, changed the eligibility criteria for an incarcerated person to be issued a state identification card upon release.

   b) AB 3073 (Wicks), Chapter 225, Statutes of 2020, required the California Department of Social Services (CDSS), no later than or before September 1, 2022, to issue an all-county letter (ACL) containing recommendations to county human services agencies to enroll formerly incarcerated individuals into CalFresh and connect them with employment or

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[4] Higuera et. al., *Effects of Male Community Reentry Program (MCRP) on Recidivism in the State of California* (June 2021), p. 43, available at: MCRP_Final_060421.pdf (stanford.edu)

employment and training opportunities, and requires CDSS, if it deems it necessary, to submit a waiver to the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) to allow for the pre-enrollment of applicants prior to their release from state prison or county jail

REGISTERED SUPPORT / OPPOSITION:

Support

Amity Foundation (Co-Sponsor)
Health Right 360 (Co-Sponsor)
Westcare California INC. (Co-Sponsor)
ACLU California Action
Alameda County Families Advocating for The Seriously Mentally Ill
Alameda County Homeless Action Center
All Home
All of Us or None Bakersfield
Alliance for Boys and Men of Color
Amnesty International USA
Bend the Arc: Jewish Action California
California Alliance for Youth and Community Justice
California Association of Food Banks
California Catholic Conference
California Innocence Coalition
California Public Defenders Association
California State Association of Psychiatrists
Californians for Safety and Justice
Communities United for Restorative Youth Justice
Communities United for Restorative Youth Justice (CURYJ)
Community Legal Services in East Palo Alto
Cure California
East Bay Community Law Center
Ella Baker Center for Human Rights
Empowering Women Impacted by Incarceration
End Poverty in California Action Aka Epic Action, a Project of Tides Advocacy
Families Inspiring Reentry & Reunification for Everyone
Felony Murder Elimination Project
Food for People, the Food Bank for Humboldt County
Freedom 4 Youth
Friends Committee on Legislation of California
Glide
Grace Institute - End Child Poverty in Ca
Grip Training Institute
Initiate Justice
Initiate Justice Action
LA Defensa
Lawyers Committee for Civil Rights of The San Francisco Bay Area
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Aid At Work

Legal Aid Foundation of Los Angeles
Legal Services for Prisoners With Children
Los Angeles County District Attorney's Office
Los Angeles Regional Reentry Partnership (LARRP)
Milpa Collective
National Health Law Program
National Institute for Criminal Justice Reform
Prosecutors Alliance
Prosecutors Alliance of California
Root & Rebound
Rubicon Programs
Ryse Center
San Francisco Public Defender
Santa Cruz Barrios Unidos
Second Harvest Food Bank of Orange County
Second Harvest Food Bank of Santa Cruz County
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
Steinberg Institute
Transformative In-prison Workgroup
United Way of Greater Los Angeles
Urban Peace Movement
Vera Institute of Justice
Western Center on Law & Poverty
Young Women's Freedom Center
Youth Alive!
Youth Forward
Youth Leadership Institute

Other

County Welfare Directors Association of California
Neighborhood Legal Services of Los Angeles County

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

Date of Hearing: June 18, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 965 (Min) – As Amended May 16, 2024

SUMMARY: Requires the Department of Justice (DOJ) to add additional information to an existing report requirement analyzing and summarizing specified data received from law enforcement agencies pertaining to firearms that have been stolen, lost, found, or recovered, have been used in a crime or suspected of having been used in a crime. Specifically, **this bill**:

1) Requires that the above annual report contain the following additional information:

   a) DOJ staffing levels for conducting firearm dealer and ammunition vendor inspections, including both allocated and filled positions;

   b) The total number of firearm dealer inspections conducted, the number of hours spent to complete the inspection, and specified information gathered during those inspections;

   c) A list of violations identified through the inspection, whether those violations were subsequently resolved and, if so, the date they were resolved, and any fines or penalties assessed;

   d) The number of Dealer Record of Sale (DROS) background checks submitted in the one-year period prior to the inspection, and the outcome of those background checks;

   e) The total number of firearms used in crimes that were traced back to the dealer during the one-year period prior to the inspection, and the percentage of total sales by the dealer in the same period of time that the traced firearms represent;

   f) The number of firearms that the dealer reported or discovered lost or stolen during the one year prior to the inspection;

   g) The total number of ammunition vendors inspections conducted, the number of hours spent to complete the inspection, and other specified information gathered during those inspections;

   h) The number of ammunition vendor background checks submitted in the one- year period prior to the inspection, and the outcome of those background checks; and,

   i) The amount of ammunition that the dealer reported or discovered lost or stolen during the one year prior to the inspection.

2) Requires the DOJ roster of handguns that are determined to be not unsafe handguns to contain the following information:

a) The total number of handguns on the roster, the number of handguns added to the roster in the applicable time period, the number of handguns removed from the roster during the applicable time period, including the reasons for removal.

b) The number of handguns that were denied approval to be listed on the roster during the applicable time period, including the reasons for denial.

3) Requires DOJ to add the data to the report by July 1st, 2025, with the first report containing data from January 1st 2020 to December 31st 2024.

4) Requires subsequent reports be made annually by July 1st of each year.

EXISTING LAW:

1) Requires the DOJ, by no later than July 1, 2023, and annually thereafter, prepare and submit to the Legislature. The report shall, without limitation to the extent possible include all of the following:

a) The total number of firearms recovered in the state;

b) The number of firearms recovered, disaggregated by county and by city;

c) The number of firearms recovered, disaggregated by the firearms dealer where the most recent sale or transfer of the firearm occurred. This shall include the full name and address of the firearms dealer;

d) The number of firearms recovered, disaggregated by the manufacturer; and,

e) The total number of un-serialized firearms recovered, disaggregated by county and by the city. (Pen. Code, § 11108.3, subd. (f).

2) The DOJ shall make the above report available to the public, and may issue regulations to further the purpose of the report.

3) Requires a person to hold a firearm dealer's license in order to sell, lease, or transfer a firearm. (Pen. Code, § 26500.)

4) Provides that the duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting licensees to sell firearms at retail within the city, county, or city and county. (Pen. Code, § 26705, subd. (a).)

5) Requires a firearms dealer or licensee to meet all the following requirements:

a) Have a valid federal firearms license;

b) Have any regulatory or business license, or licenses, required by local government;

c) Have a valid seller's permit issued by the State Board of Equalization;

d) Have a certificate of eligibility issued by the DOJ, as specified;

e) Have a license issued in a specified format granted by the local licensing authority; and,

f) Be recorded in the DOJ's centralized list of licensees. (Pen. Code, § 26700.)

6) Requires DOJ to keep a centralized list of all persons licensed to sell, lease or transfer firearms at retail. (Pen. Code, § 26715.)

7) 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, subd. (a).)

8) Provides that the DOJ may assess specified civil fines against a licensee for any breach of a prohibition or requirement that subjects the licensee to forfeiture of their license to sell firearms. (Pen. Code § 26800, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Nearly all gun violence in this country stems from guns that were originally purchased from legal outlets. Gun dealers play an essential role in preventing gun violence, but without inspections, authorities cannot enforce compliance with regulations and potentially prevent illegal sales. California has worked to develop a strong system of gun dealer standards and oversight. However, there is little to no information about the inspections conducted by the State. This measure will close the information gap and provide transparency about the process to better understand the frequency, outcome, and implications of these critical inspections.

2) **Firearms Dealers and Licensing**: Federal law requires firearms dealers to obtain a license (also known as a "federal firearms license," or "FFL") through the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). According to the ATF, as of December 2021, there were 1,907 FFLs issued for firearms dealers and pawnbrokers in California, and a total of 9,167 FFLs in the state (Bureau of Alcohol, Tobacco, Firearms and Explosives). An FFL is necessary but not sufficient for obtaining a firearms dealer license in California. Additional requirements include any business license required by local government, a seller's permit issued by the California Department of Tax and Fee Administration, a seller's license issued by the local licensing authority of a local government, a certificate of eligibility (COE) issued by the DOJ (verifying that a background check has taken place), and being recorded on the DOJ's centralized list of firearms dealers (Penal Code §26700). In California, only individuals that have obtained a valid license through the DOJ may lawfully sell, lease or transfer firearms within the state, subject to limited exceptions (Penal Code §26500).

   Firearm dealers in California are subject to numerous state and federal laws that they must abide by in order to remain in operation. Such laws specify the manner in which firearm dealers must keep their records, deliver a firearm, secure and store their inventory, obtain security measures, and impose numerous other requirements. Firearm dealers who do not comply with such laws have been linked to a greater likelihood that firearms from their inventory will be recovered in a crime. A recent report from Brady United Against Gun Violence cites data from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

highlighting that when ATF inspected the 1% of gun dealers that supplied almost 60% of crime guns nationwide, it found that 75% of these dealers had violated federal law, including significant recordkeeping violations and participation in sales to potential gun traffickers and prohibited persons. In comparison, when ATF inspected a random sample of dealers, the number that were found to be noncompliant dropped to 37% (Brady United Against Gun Violence).

Licensed firearms dealers in California are subject to inspections by both the state and federal government. FFLs are subject to random inspections by ATF officials to ensure compliance with federal, state and local laws and regulations, educate licensees on specific requirements associated with those laws, and review records that FFLs are required to maintain. In addition, federal inspectors conduct a complete physical inventory of a licensee's firearms and evaluate the licensee's internal controls and security measures. In 2023, the latest year for which there is comprehensive data was compiled by ATF, that agency conducted 9,047 inspections nationwide (Bureau of Alcohol Tobacco, Firearms and Explosives).

Existing California law requires the DOJ to conduct inspections of licensed firearms dealers every three years to ensure compliance with applicable state law related to firearm dealers. Data collected in these inspections is currently used within the department for compliance efforts. This bill would take the internal data collected in these inspections and make it public by submitting it in a report to the Legislature.

3) **DOJ Annual Firearms Report to the Legislature**: AB 1191 (McCarty, Chapter 683, Statutes of 2021). In 2021, the passage of AB 1191 required the DOJ to submit an annual report to the Legislature beginning in 2023 relating to firearms recovered in California by the state (Penal Code § 11108.3 (f)). This would bill require the DOJ to submit the report required by Penal Code section 11108.3 (f) with specified new data by July 1st 2025.

4) **Related Legislation**: AB 1191 (McCarty), Chapter 683, Statutes of 2021 required DOJ, to analyze information reported by law enforcement agencies regarding the history of a recovered firearm that is illegally possessed, has been used in a crime, or is suspected of having been used in a crime, and required DOJ to submit a report to the Legislature summarizing the analysis, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady California
Brady Campaign
Brady United Against Gun Violence
Everytown for Gun Safety Action Fund
Giffords Law Center to Prevent Gun Violence
San Diegans for Gun Violence Prevention

Opposition

None
Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: June 18, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 989 (Ashby) – As Amended May 20, 2024

SUMMARY: Authorizes families of decedents in such cases where the investigating agency determines that a death is not a homicide and closes the case to request records of the investigation, as specified, and request an independent review of the case by a second law enforcement agency, if one can be identified. Specifically, **this bill**:

1) Provides that in addition to a legal heir or representative, a family member in a case where there is an identifiable history of domestic violence against the deceased may submit written authorization to the coroner to receive a copy, reproduction, facsimile of image or video recording for use or potential use in a civil action or proceeding that relates to the death of that person.

2) Requires the family member, in order to receive the copy of the image or video, to submit to the coroner a declaration under penalty of perjury that they are a family member of the deceased, a valid form of identification, and a certified death certificate.

3) Clarifies that it is the duty of the coroner to investigate suicide, including suicide where the deceased has a history of domestic violence.

4) Provides that if the circumstances surrounding a death known or suspected as due to suicide afford a reasonable basis to suspect that the death was caused by or related to the domestic violence of another, the coroner may conduct the inquiry in consultation with a board-certified forensic pathologist certified by the American Board of Pathology.

5) Requires law enforcement investigators, prior to making any findings as to the manner and cause of death of a deceased individual with an identifiable history of being victimized by domestic violence and in the presence of three or more specified factors, to interview family members, such as parents, siblings, or other close friends or relatives of the decedent with relevant information regarding that history of domestic violence.

6) Authorizes law enforcement investigators to request a complete autopsy, as specified, in a case where they have determined there is an identifiable history of being victimized by domestic violence and any of the following conditions are present:

   a) The decedent died prematurely or in an untimely manner;

   b) The scene of the death gives the appearance of death due to suicide or accident;

   c) One partner wanted to end the relationship;

d) There is a history of being victimized by domestic violence that includes coercive control.

e) The decedent is found dead in a home or place of residence;

f) The decedent is found by a current or previous partner;

g) There is a history of being victimized by domestic violence that includes strangulation or suffocation;

h) The current or previous partner of the decedent, or child of the decedent or the decedent's current or previous partner, is the last to see the decedent alive;

i) The partner had control of the scene before law enforcement arrived; or

j) The body of the decedent has been moved or the scene or other evidence is altered in some way.

7) Adds to the course of basic training for law enforcement officers on the handling of domestic violence complaints instruction on the indicators of domestic homicide listed above.

8) Requires sworn law enforcement personnel investigating a death where it has been determined that the decedent has an identifiable history of being victimized by domestic violence to be current in their training related to domestic violence incidents, as specified.

9) Provides that, during the pendency of the investigation and any review, family members shall have access to all victim services and support, as specified.

10) Provides that, in the event that a local law enforcement agency makes a finding that the death is not a homicide and closes the case, family members or their legal counsel shall have the right to request any and all records of the investigation currently available under the California Public Records Act.

11) Specifies that the provisions of this bill do not require local law enforcement agencies to compromise an existing or open investigation and does not preempt the discretion provided to local law enforcement agencies in the investigation of death cases.

12) Defines "identifiable history of domestic violence" as demonstrable past incidents of being victimized by domestic violence that may be verified by prior police reports, written or photographic documentation, restraining order declarations, eyewitness statements, or other evidence that corroborates a history of such incidents.

13) Defines the term "partner" for the purposes of its provisions as a spouse, former spouse, cohabitant, former cohabitant, fiancé, someone with whom the decedent had a dating relationship or engagement for marriage, or the parent of the decedent's child.

EXISTING LAW:

1) Defines domestic violence as abuse perpetrated against any of the following persons:

a) A spouse or former spouse;

b) A cohabitant or former cohabitant, as defined;

c) A person with whom the respondent is having or has had a dating or engagement relationship;

d) A person with whom the respondent has had a child, as specified;

e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, as specified; or

f) Any other person related by consanguinity or affinity within the second degree. (Family Code § 6211.)

2) Provides that regardless of when it was made, a copy, reproduction, or facsimile of any kind of a photograph, negative, or print, including instant photographs and video recordings, of the body, or any portion of the body, of a deceased person, taken by or for the coroner at the scene of death or in the course of a post mortem examination or autopsy, shall not be made or disseminated except as follows:

a) For use in a criminal action or proceeding in this state that relates to the death of that person;

b) As a court of this state permits, by order after good cause has been shown and after written notification of the request for the court order has been served, at least five days before the order is made, upon the district attorney of the county in which the post mortem examination or autopsy has been made or caused to be made; or

c) For use or potential use in a civil action or proceeding in this state that relates to the death of that person, if the coroner receives written authorization from the legal heir or representative of the deceased or if a subpoena is issued by a party who is legal heir or representative of the deceased person in a pending civil action. (Code of Civil Procedure, § 129, subds. (a), (c).)

3) Requires that all of the following shall be provided to the coroner in order to verify the identity of the legal heir or representative:

a) A declaration under penalty of perjury that the individual is the legal heir or representative of the deceased;

b) A valid form of identification; and,

c) A certified death certificate. (Code of Civil Procedure, § 129, subd. (a)(3)(A).)

4) Defines "domestic violence" as abuse perpetrated against specified persons, including a spouse or former spouse, a cohabitant or former cohabitant, or a person with whom the respondent is having or has had a dating or engagement relationship (Fam. Code, § 6211,

subds. (a)-(c).)

5) Requires the course of basic training for law enforcement officers to include adequate instruction in the procedures and techniques for, among other things, handling incidents of domestic violence, questioning victims of domestic violence, the nature and extent of domestic violence, the signs of domestic violence, criminal conduct that may be related to domestic violence. (Pen. Code, § 13519, subd. (c)(3)-(6).)

6) Authorizes a county to establish an interagency domestic violence death review teams to assist local agencies in identifying and reviewing domestic violence deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic violence cases. (Pen. Code, § 11163.3, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 989 significantly enhances investigation protocols in cases involving domestic violence-related deaths. This bill extends the definition of legal representatives to encompass immediate family members, empowers coroners to inquire into deaths they deem suspicious, and designates such deaths as suspicious until properly investigated - strengthening the gravity and urgency of these cases.

   "Crime scene tampering and staging, predominantly perpetrated by male offenders against female victims within intimate partner relationships, pose serious challenges for law enforcement and medical examiners. Beyond the harm inflicted on victims and their families, these actions impede the pursuit of justice – with cases incorrectly classified as suicides or accidents often lacking comprehensive autopsies.

   "SB 989 is a crucial step towards ensuring justice for women impacted by domestic violence-related deaths. This bill equips investigators, coroners, and families with the necessary tools and evidence-based detection measures to identify suspicious cases and ensures that California conducts thorough investigations into suspicious deaths involving histories of domestic violence - establishing a voice to families who have long been silenced."

2) **Requirements of Disclosure of Law Enforcement Investigation Records:** Enacted in 1968, the California Public Records Act (CPRA) grants public access to public records held by state and local agencies. (Gov. Code, § 7920.000 et seq.)

> "Modeled after the federal Freedom of Information Act (5 U.S.C. § 552 et seq.), the [CPRA] was enacted for the purpose of increasing freedom of information by giving members of the public access to records in the possession of state and local agencies. [Citation.] Such 'access to information concerning the conduct of the people's business,' the Legislature declared, 'is a fundamental and necessary right of every person in this state.'"

(Castañares v. Superior Court (City of Chula Vista) (2023) 98 Cal.App.5th 295, 304, citing Los Angeles County Bd. of Supervisors v. Superior Court (ACLU of Southern California) (2016) 2 Cal.5th 282, 290

The CPRA generally prohibits disclosure of police investigation records unless the investigation is **closed**. (See Gov. Code, § 7923.600, subd. (a); former Gov. Code, § 6254, subd. (f).) A closed investigation is not the same as an investigation that may be slow or even cold. A closed investigation often means the suspect was identified and the police have passed that information on to the district attorney, the suspect was arrested and tried to resolution, or law enforcement has followed all investigative leads and determined that the no criminal conduct occurred.

This bill would authorize families of decedents in such cases where the investigating agency determines that a death is not a homicide and closes the case to request records of the investigation, as specified, and request an independent review of the case by a second law enforcement agency, if one can be identified.

3) **Domestic Violence and Staged Suicide**: The 1970s and 1980s saw a growing awareness of the prevalence and severity of domestic violence, particularly intimate partner violence (IPV). This distressing trend led to mounting calls for major reforms regarding criminal penalties for and law enforcement response to domestic violence incidents. By the early 2000s, while some reforms had taken hold on both a national and local scale, it was clear from data collected on IPV and law enforcement handling of IPV cases that far more sweeping changes were needed in order to adequately address the IPV crisis.[1] Today, IPV remains a significant public health issue that has many individual and societal costs. Recent data suggests that about 1 in 5 homicide victims are killed by an intimate partner, and over half of female homicide victims in the United States are killed by a current or former male intimate partner.[2]

Another recent study has explored a rare yet appalling phenomenon within the IPV context: staged suicides. According to the authors of that study:

> Current criminological analysis fails to recognize homicide cases of women with characteristics typical to women's life experience. This failure helps conceal the fact of their homicide-induced death, rendering these cases 'concealed femicide.' [...] The elusive nature of concealed femicides, which do not display external physiological signs that might suggest a homicidal cause of death (such as cutting/shooting/strangulation wounds), assign them, almost automatically, a non-criminal classification. Unless such deaths are known or suspected to be unnatural, they normally go uninvestigated.[3]

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[1] Townsend, Meg et. al, "Law Enforcement Response to Domestic Violence Calls for Service," ASP Task Order 99-C-008-Task039, published February 1, 2005. Law Enforcement Response to Domestic Violence Calls for Service (ojp.gov)

[2] "Fast Facts: Preventing Intimate Partner Violence." Centers for Disease Control and Prevention. Fast Facts: Preventing Intimate Partner Violence |Violence Prevention|Injury Center|CDC

[3] Bitton, Yifat and Hava Dayan. "'The Perfect Murder': An Exploratory Study of Staged Murder Scenes and Concealed Femicide." *The British Journal of Criminology*, Volume 59, Issue 5, September 2019, Pages 1054–1075.

The study highlights other research showing that the most common victim-offender relationship involving scene staging is an intimate partner relationship, and most staged homicides involve the killing of an intimate partner.[4] Moreover, in summarizing their data, the authors of the study identify 6 predictive factors that, when present, suggest foul play:

- A premature death when the deceased was in apparent good health.
- Death by suicide.
- Evidence that one of the partners wished to terminate the relationship.
- Prior domestic violence on the part of the deceased's partner.
- The deceased was found dead in her home.
- The deceased was found dead by her current or previous partner.[5]

The sponsor of this bill, the Alliance for HOPE International, has identified four additional risk factors that can predict IPV-related staged suicide scenes:

- A prior history of domestic violence that includes strangulation/suffocation.
- The deceased's partner was the last to see her/him alive.
- The surviving partner had control of the crime scene.
- The body had been moved or the scene/evidence had been altered in some way.[6]

This research, and the 10 risk factors listed above, provide the backdrop and impetus for this bill.

4) **Duties of the Coroner**: Under existing law, it is the duty of the county coroner to inquire into and determine the circumstances, manner and cause of deaths that occur within their jurisdiction, including violent, sudden or unusual deaths, unattended deaths, known or suspected homicide, suicide or accidental poisoning, deaths from or related to injury or accident, and death in whole or in part occasioned by criminal means, among others.[7] Existing law also authorizes the coroner to perform an autopsy upon any victim of sudden, unexpected, or unexplained death or any death known or suspected of resulting from an accident, suicide, or apparent criminal means.[8] The coroner is required to perform an autopsy if the surviving spouse requests them to do so in writing. If there is no surviving spouse, that right devolves to a surviving parent or child, and subsequently, if there is no surviving parent or child, to the next of kin.[9]

Coroners are also authorized to conduct inquests, or more formal investigations into the cause of a death, of their own volition, and are required to conduct them if requested to do so by the Attorney General, district attorney, sheriff, city prosecutor, city attorney or chief of

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'The Perfect Murder': An Exploratory Study of Staged Murder Scenes and Concealed Femicide | The British Journal of Criminology | Oxford Academic (oup.com)

[4] *Ibid,* at 1056.

[5] *Ibid,* at 1067.

[6] "What are the predictors of staged suicide scenes in domestic violence cases?" Police 1. 23 February 2023. What are the predictors of staged suicide scenes in domestic violence cases? (police1.com)

[7] Govt. Code §27491, (a), (b), §§ 27491.2, 27491.5

[8] Govt. Code §§ 27491.4(c), 27491.43(c).

[9] Govt. Code §27520.

police in their jurisdiction.[10] Autopsies are usually, but not always, a central component of inquests, if they had not been conducted prior to the commencement of the inquest.

Pursuant to their statutory duties, coroners are responsible for the production and completion of various records and documents regarding a particular death under investigation. Centrally, coroners are generally responsible for signing death certificates, which indicate the manner of death. If an autopsy is performed, existing law requires coroners to take certain photograph and produce specific documentation regarding the procedure.[11]

This bill contains several provisions related to the duties and responsibilities of coroners, specifically in cases where there is "an identifiable history of domestic violence," defined above. Specifically, this bill provides that it is the duty of the coroner to inquire into and determine the circumstances, manner, and cause of suicide where the deceased has a history of domestic violence, and authorizes the coroner to inquire into the death in consultation with a board-certified forensic pathologist, if the circumstances surrounding the death reasonably suggest domestic violence. The bill also permits the coroner to perform an autopsy of a decedent upon request by law enforcement where there is an identifiable history of domestic violence and one of the following conditions are present:

- The decedent died prematurely or in an untimely manner.
- The scene of the death gives the appearance of death due to suicide or accident.
- One partner wanted to end the relationship.
- There is a history of domestic violence that includes coercive control.
- The decedent is found dead in a home or place of residence.
- The decedent is found by a current or previous partner.
- There is a history of domestic violence that includes strangulation or suffocation.
- The current or previous partner of the decedent, or child of the decedent or the decedent's current or previous partner, is the last to see the decedent alive.
- The partner had control of the scene before law enforcement arrived.
- The body of the decedent has been moved or the scene or other evidence is altered in some way.

Another provision of this bill requires coroners, in cases where there is an identifiable history of domestic violence, to produce specified documents upon request by family members.

5) **Argument in Support**: According to the Alliance for Hope International, "Suspicious death cases where there is a history of domestic violence have been referred to as "hidden homicides" in recent groundbreaking work by Dr. Jane Monckton Smith in the United Kingdom (UK). Dr. Smith's newest research estimates that in the UK (with a population of 38 million) there are 100-130 hidden homicides per year (Smith, 2019). In the United States (US), we refer to these cases as "staged crime scene" cases and experts are estimating there could be 800 – 1,200 "hidden homicides" in this country each year – the vast majority involving murdered women and no accountability for their killers (Turner-Little, 2022; Turvey, 2022).

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[10] Govt. Code § 27491.6.
[11] Govt. Code §27521(c).

"These cases occur when a perpetrator of domestic violence kills his partner and then stages the scene to look like a suicide or an accident, avoiding accountability for murder. Crime scene staging research has found that most offenders who stage crime scenes are male, most victims are female, and the most common victim-offender relationship involving staging is intimate partner relationships (Turvey, 2016). Until recently, there has been no comprehensive, specialized training conference in the US with this focus. In collaboration with the U.S. Department of Justice, the Alliance now hosts such a course entitled: "Hidden Homicides: The Challenges of Staged Crime Scenes."

"While the staging of crime scenes has been happening for hundreds of years, the rise in domestic violence homicides and the rise in staged crime scenes both call for a focus on this issue (Hazelwood-Napier, 2016). Based on the cases the Alliance has handled in recent years, law enforcement is failing domestic violence homicide victims in California and across the US and the numbers of cases are not small. Our expert team believes hundreds of murders are being misidentified as suicides and/or accidents.

"The **gaps and challenges** with this emerging issue are on full display in the death of Joanna Hunter Lewis in Vacaville, California in 2009. Joanna Hunter was married to an abusive husband with a long history of domestic violence. Nevertheless, when Joanna was found hanging by her bathrobe belt in 2009 in the master bedroom closet of the home she shared with her husband, the case was quickly closed as a "suicide." Joanna died so young. She was at the time trying to leave her husband. She had experienced a history of domestic violence including strangulation assault. Her husband was the last person to see her alive. Her husband had access to her body before the police arrived. And the evidence indicated that the scene had been altered before the police arrived. No autopsy was conducted, and no homicide investigation was done. The case was closed with little scrutiny by local law enforcement.

"**Several years after Joanna's death, her husband was arrested and prosecuted for attempting to firebomb the home of his girlfriend after she attempted to end the relationship.** Similar factors present in Joanna's case also existed with his new girlfriend. He served eight years in a California prison. Not until Joanna's mother Patricia reached out to the Sacramento Regional Family Justice Center for counseling was any actual review done of Joanna's case by and independent investigate team at The Justice Project, a program of San Diego-based Alliance for HOPE International. Our multi-disciplinary forensic team subsequently concluded that Joanna's death was likely a staged crime scene and opined that Joanna was murdered in 2009.

"**Sadly, Joanna's case is not unique.** NBC's Dateline recently featured the work of the Alliance's forensic team in the case of Stacy Feldman in Denver, Colorado who died in 2015. At the time, investigators and the medical examiner's office ruled her manner of death was "undetermined". Her husband claimed she died after a fall in a bathtub. In Stacy's case, the Justice Project Forensic team was able to successfully reopen her case after it was closed for two years. The Justice Project Team was fortunate to work with a committed homicide detective from the Denver Police Department who was suspicious that Stacy's death was a murder but lacked the training and expertise to analyze the evidence. Our collaboration ultimately led to the conviction of Robert Feldman for the murder of Stacy Feldman (even after the case had been ruled as "undetermined" cause of death). Since the exposure on Dateline, the Alliance has been approached by a host of families asking for help in cases where a loved one died, and authorities concluded the death was an accident or a suicide in

the face of overwhelming evidence of a staged crime scene with a long history of DV.

"**Seasoned investigators, medical examiners, and prosecutors can be misdirected by killers and erroneously find highly suspicious cases were suicides, accidents, or undetermined cause of death cases.** In fact, Vernon Geberth, one of the leading experts in the field, believes there are seven major mistakes investigators make during a suicide investigation (Geberth, 2013). Strangulation cases, whether fatal or non-fatal, are easy to miss due to the lack of external visible injury (Gill, 2003). A victim of domestic violence can be strangled to death without any visible external injuries. Then, the killer can place a ligature around her neck and make it appear to be a suicide. Without a complete autopsy, forensic evidence can be lost even if the case is later determined to be suspicious. It is common for the victim's partner to seek an immediate cremation, destroying potential forensic evidence which could be discovered in an autopsy.

"**The failure of law enforcement professionals to thoroughly investigate death cases, particularly in marginalized communities, with victims lacking privilege or status, and often with victims of color, has been recently documented in the work around missing or murdered indigenous persons by the U.S. Department of Justice.** The rush to close cases and the failure to adequately investigate the history of the relationship often colors and biases the investigation. The Alliance has identified ten factors that point to a homicide rather than suicide or accident in intimate partner violence cases:

1. Victim dies prematurely;
2. The scene is made to appear like a suicide or accident scene;
3. One partner wanted to end the relationship;
4. There is a prior history of domestic violence with the current or previous partner;
5. The victim is found dead at home;
6. The victim is found by current or previous partner;
7. The prior identifiable history of domestic violence includes strangulation/suffocation;
8. The victim's partner or former partner is the last to see the victim alive;
9. The partner has control of the crime scene before the police arrive, and
10. The crime scene has been altered in some way.

References: Bitton, Dayan, 2019(#1-6); Glass, Campbell, et al, 2008(#6); Parker, 2009(#8-9); Geberth, 2010(#10); Training Institute on Strangulation Prevention, Case Studies (2022).

"We have also identified lack of training as a key challenge. Most death investigators do not have specialized training in DV and do not work in a multi-disciplinary team (MDT). Most forensic medical examiners have not been trained in the dynamics of DV and often rely on the investigation by law enforcement to help determine the manner of death. Untrained investigators may be quick to call a case a suicide and not complete a comprehensive investigation. They may also fail to check for a prior DV history, talk to family members, conduct a post lethality risk assessment, or adequately assess suicidal ideation. FBI expert Mark Safarik, in People v. Jackson, 221 Cal.App.4th 1222 (2013), testified that "extensive staging is suggestive of someone who knows the victim. Staging is done to confuse the police because they know they are the logical suspect."

"Legislators across the US have also called for better investigations. "Ensuring that the proper steps and procedures are taken at the scene of that death to reassure family members

that the death was a natural one, a suicide or a homicide is a key element in maintaining citizen confidence in local officials. How local death investigations do their job is crucial to family Adkins, National Conference of State Legislators (2011). But no state has yet passed a law to ensure adequate investigations in these cases. California now has the chance to create a law that will be a model for the rest of the country.

"**SB 989 provides key tools in the effort to better investigate suspicious death cases in California where there is a prior history of domestic violence.** Congress has already recognized this important issue by enacting federal legislation entitled, The Homicide Victims' Families Rights Act (Public Law 117-164 (2022)). This bi-partisan, new federal law provides legal remedies and administrative processes for unsolved homicides to be reevaluated and re-investigated with independent investigators once families can provide evidence of an incomplete investigation. During congressional hearings, surviving family members of homicide victims spoke regularly about being ignored, disenfranchised, and not even interviewed during investigations into the suspicious deaths of their loved ones. **Federal law, however, only applies in federal cases and on property under federal jurisdiction. It provides no assistance to California families dealing with similar cases. SB 989 will incorporate federal law into California law and provide a clear vehicle for independent case review when families need immediate assistance.**

"**With the passage of SB 989, California will create a national model statute that can and will be replicated in other states.** It will ensure the voices and rights of family members dealing with the tragic death of a loved one will be heard and honored. It will also provide access to records when formal investigations are concluded to allow family members to seek an independent review of previous findings. SB 989 will help equip and support professionals across California in the handling of staged crime scene death cases where there is a history of DV.

"The murder of a DV victim is the ultimate robbery of hope – the inability to ever experience healing, autonomy, agency, and a future free of violence. SB 989 can reduce the failures of law enforcement professionals in the handling of suspicious death cases where there is a prior history of DV. We welcome the opportunity to address one of the greatest failures in the California criminal justice system today – letting domestic violence offenders get away with murder."

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

7) **Related Legislation**: AB 2913 (Gibson), would require a law enforcement agency, as specified, to perform a review of any open homicide investigation case file, upon written application by a designated person, as defined, to determine if reinvestigation would result in probative investigative leads. AB 2913 was held in suspense in the Assembly Appropriations Committee.

8) **Prior Legislation**:

   a) SB 863 (Min), Chapter 986, Statutes of 2022, authorized interagency domestic violence death review teams (DVDRT) to assist local agencies in identifying and reviewing near-death domestic violence cases, as specified.

b) SB 1331 (Jackson), Chapter 137, Statutes of 2018, requires the Commission on Peace Officer Standards and Training (POST) to include procedures and techniques for assessing signs of lethal violence in domestic violence situations in the existing training course for law enforcement officers in the handling of domestic violence complaints.

c) SB 1421 (Skinner), Chapter 988, Statutes of 2018, permits inspection of specified peace and custodial officer records related to officer involved misconduct pursuant to the CPRA.

d) SB 218 (Solis), Chapter 662, Statutes of 1999, established broad authorization for disclosures between and with DVDRT members.

e) SB 1320 (Solis), Chapter 710, Statutes 1995, authorized counties to establish interagency teams to assist local agencies in identifying and reviewing domestic violence deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic violence cases.

REGISTERED SUPPORT / OPPOSITION:

Support

Academy of Forensic Nursing
Alliance for Hope International
California District Attorneys Association
California Professional Firefighters
California Sexual Assault Forensic Examiner Association
Fbs International -- Mark E. Safarik M.s., V.s.m, Supervisory Fbi Agent (RET.)
Junior Leagues of California State Public Affairs Committee
Los Angeles County District Attorney's Office
Peace Officers Research Association of California (PORAC)
San Diego County District Attorney's Office
San Diego; County of
San Francisco Safehouse
Training Institute on Strangulation Prevention
Voices Survivor Advocacy Network

Oppose

None

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

Date of Hearing: June 18, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1019 (Blakespear) – As Amended March 11, 2024

SUMMARY: Requires law enforcement agencies to destroy fire arms subject to destruction in their entirety, including attachments, and shall develop and maintain a written policy on the destruction of firearms and other weapons. Specifically, **this bill**:

1) Requires every law enforcement agency to develop and maintain a written policy on the destruction of firearms and other weapons including, without limitation, policies for identifying firearms and other weapons that are required to be destroyed, keeping records of those firearms and other weapons, including entry into the Automated Firearms System (AFS), as applicable, and the destruction and disposal of those firearms and other weapons.

2) Specifies that a law enforcement agency that either contracts with, or operates under, a memorandum of understanding (MOU) with another agency for the storage or destruction of weapons or other firearms shall have a policy identifying the other agency and outlining the responsibilities of both agencies under the contract or MOU.

3) Requires every law enforcement agency subject to its provisions to post the weapon destruction policy on its internet website.

4) Defines "destroy" as the destruction of a firearm or other weapon in its entirety by smelting, shredding, crushing, or cutting and shall include all parts including, without limitation, the frame or receiver, barrel, bolt, and grip of a firearm, as applicable, and any attachments including, but not limited to, a sight, scope, silencer, or suppressor, as applicable.

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

6) Deletes a provision that allowed a law enforcement agency to sell a firearm that was an exhibit in a criminal action or proceeding and is no longer needed, unclaimed, or abandoned.

EXISTING LAW:

1) States that when a firearm is taken into custody by a law enforcement officer, the officer shall issue the person who possessed the firearm a receipt describing the firearm, as specified, and listing any serial number or other identification on the firearm. (Pen. Code, §33800.)

2) Provides that no law enforcement agency or court shall be required to retain any firearm or related device for more than 180 days after the owner has been notified that the property has

been made available for return, and stipulates that an unclaimed firearm may be disposed of after the 180-day period. (Pen. Code, §§ 33875.)

3) Provides that when any firearm is in the possession of any officer of the state, or of a county, city, or city and county, or of any campus of the University of California or the California State University, and the firearm is an exhibit filed in any criminal action or proceeding which is no longer needed or is unclaimed or abandoned property, which has been in the possession of the officer for at least 180 days, the firearm shall be sold, or destroyed, as provided. (Pen. Code § 34000, subd. (a).)

4) States that any law enforcement agency that has custody of any firearms or any parts of firearms which are subject to destruction may, in lieu of destroying the weapons, retain and use any of them as may be useful in carrying out the official duties of the agency, including releasing weapons to another law enforcement agency for a similar use or turning over to the criminalistics laboratory of the DOJ or other local law enforcement entity, but must destroy the weapon when it is no longer needed by the agency for use in carrying out its official duties. (Pen. Code § 34005, subds. (b), (c).)

5) Authorizes a law enforcement agency that has custody of any firearms or any parts of firearms that are subject to destruction to instead obtain a court order directing the release of the firearm to the sheriff, who must record the firearm in the Automated Firearms System (AFS), and may in turn loan out the firearm to the basic training academy so that the firearms may be used for educational purposes. (Pen. Code § 34005, subd. (d).)

6) Provides that an officer to whom a weapon is surrendered, except upon receiving a certificate, as specified, stating that the retention of the weapon is necessary or proper to the ends of justice, shall destroy the weapon, and, if applicable, submit proof of its destruction to the court. (Pen. Code § 18005, subd. (a).)

7) Specifies that if any weapon has been stolen and is thereafter recovered, or is used in a manner as to constitute a nuisance without the prior knowledge of its lawful owner that it would be so used, it shall not be destroyed per the above but rather restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with specified provisions of existing law governing the return or transfer of a firearm in the custody or control of a court or law enforcement agency. (Pen. Code § 18005, subd. (b).)

8) States that no weapon shall be destroyed per the requirement above unless reasonable notice is given to its lawful owner, if the lawful owner's identity and address can be reasonable ascertained. (Pen. Code § 18005, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Last December, the New York Times reported that, rather than be destroyed as promised, many of the firearms collected in gun buybacks across the country are recycled and resold online. For those of us devoted to

reducing gun violence, especially those of us who work on crafting and passing legislation, the article represented a failure. I assumed things were as they seemed. They were not. "Under existing federal guidelines and state law, guns are legally "destroyed" when a single part – the serialized frame or receiver – of a gun is destroyed. All the things that make a gun a gun, including the barrel, grip, slide, firing pin, and magazine, do not have to be demolished. Instead, the parts can be sold online as gun kits and combined with a frame or receiver to make a new gun. Individuals who want to avoid registration can easily pair the gun kit with an unserialized frame or receiver to create a "ghost" gun. In practice, this means that all but one piece of a firearm removed from Riverside, California, may end up on the street in Milwaukee as a ghost gun.

"SB 1019 is about government doing what it says it's going to do. When we say we'll destroy of your unwanted guns for you, we should actually follow through with the implied promise: we are going to destroy your guns. SB 1019 ensures all guns acquired through gun buybacks or confiscated through investigations are completely destroyed."

2) **Destruction of Firearms by Law Enforcement**: Law enforcement agencies acquire firearms from the communities they serve for a host of reasons and in a variety of ways; they are seized in enforcement actions, relinquished or surrendered by individuals prohibited from possessing them, purchased in gun buyback programs, and sometimes found abandoned. Many jurisdictions, including California (see below), have requirements that firearms acquired in these various ways be destroyed if or when they cannot be returned to a legal owner. However, a recent investigation from the New York Times revealed that in several of these jurisdictions, the guns are not in fact destroyed so as to render them completely inoperable, but rather sent to companies that crush or cut a single piece of the gun that constitutes the "firearm" under federal law and sells the remaining parts as a kit. These kits, which often include barrels, triggers, grips, slides, stocks and springs, can be purchased by individuals across the country and rebuilt into operable firearms. Thus, a firearm seized by a police officer in California and sent to one of these companies for disposal may end up providing parts to a ghost gun built in Florida.[1]

These companies operate by taking advantage of a loophole in federal law related to the definition of a "firearm." Specifically, the federal definition of "firearm" includes the frame or receiver of a gun that provides housing or structure for the rest of the components, and under federal law, every legal frame or receiver must have a unique serial number.[2] The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) provides guidance depicting acceptable methods for smelting, shredding or crushing the firearm receiver so as to render it legally "destroyed," and specifies that any method of destruction must render the firearm so that it is not restorable to firing condition and is otherwise reduced to scrap.[3] In other words, by destroying the serialized frame or receiver of a firearm but salvaging the remainder of the

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[1] "The Guns Were Said to Be Destroyed. Instead, They Were Reborn." *New York Times.* 10 December 2023. The Guns Were Said to Be Destroyed. Instead, They Were Reborn. - The New York Times (nytimes.com)

[2] See 27 CFR § 478.92\ for the regulations regarding serialization.

[3] How to Properly Destroy Firearms | Bureau of Alcohol, Tobacco, Firearms and Explosives (atf.gov)

components, the companies investigated in the New York Times report are technically in compliance with the letter, if not the spirit, of federal law.

The Times investigation also reviewed a contract between a Nevada firearm destruction company called LSC Destruction and Riverside County, California, which stipulated that LSC may sell gun parts to distributors but not to the civilian population. But as the Times notes, distributors often sell to licensed dealers, who sell to the public. LSC's website also featured a testimonial from an unnamed police official – possibly not linked to Riverside County – saying that "gun buybacks used to be a big headache before contracting with LSC, but now the politicians are happy, and I'm happy too."

3) **Existing California Law Regarding Destruction of Firearms**: As mentioned above, law enforcement agencies routinely acquire and retain possession of firearms in the course of their investigatory duties, and must follow a specific process for their disposal set forth in California law. Generally, law enforcement agencies are not required to retain possession of seized or recovered firearms, ammunition feeding devices, or ammunition for more than 180 days after the owner (if one can be identified) has been notified, and may dispose of the firearm, feeding device, or ammunition once the 180-day period has expired.[4] Moreover, existing law requires that firearms in the possession of law enforcement for at least 180 days and that were exhibits in criminal actions but no longer needed, or were unclaimed or abandoned, must be destroyed.[5] Although exemptions exist for use of those weapons by law enforcement agencies for a limited time to carry out the duties of the agency, and for specified training purposes, the firearms must be destroyed when they are no longer needed.[6] Additionally, existing law requires that specified prohibited firearms and crime guns (i.e. guns defined as a "nuisance") be surrendered to a law enforcement agency, which in turn must destroy the weapon unless a court certifies that retention of the weapon is "necessary or proper to the end of justice."[7]

   To highlight a key distinction for the purposes of this bill, under existing law, guns deemed to be a "nuisance" must be destroyed, guns that were unclaimed, abandoned, or formerly in evidence but no longer needed may be destroyed if they have been in the possession of law enforcement for at least 180 days. Moreover, existing law does not define "destroy" for the purposes of the provisions referenced above. Thus, it is entirely possible for California law enforcement agencies to dispose of firearms either via the "destruction" companies cited in the New York Times investigation. This bill seeks to proscribe this conduct.

   Specifically, this bill requires law enforcement agencies to develop and maintain a written policy on the destruction of firearms including policies for identifying firearms and other weapons required to be destroyed, keeping records of those firearms and other weapons,

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[4] Penal Code § 33875; The 9th Circuit Court of Appeals ruled in *Wright v. Beck* 981 F.3d 719 (2020) that law enforcement may not destroy seized firearms without providing notice to the owner. Wright v. Beck, No. 19-55084 (9th Cir. 2020) :: Justia

[5] This bill strikes language in this statute (Penal Code Sec. 34000) which appears to authorize the sale of such firearms. However, the change proposed by that bill is in fact a technical and conforming change to the AB 200 (Committee on Budget), Ch. 58, Stats. of 2022. Thus, the sale of such firearms is not discussed in this analysis as an accurate reflection of existing law, and this bill makes that technical correction.

[6] Penal Code §§34000, 34005.

[7] Penal Code §§18000, 18005(a).

including entry into the DOJs Automated Firearms System, and the destruction and disposal of those firearms and other weapons. In addition, this bill, for the purposes of the destruction requirements in existing law, defines "destroy" as destroying a firearm in its entirety by smelting, shredding, crushing, or cutting, including all parts, such as the frame or receiver, barrel, bolt, and grip of a firearm, and any attachments." Such a thoroughgoing definition of "destroy" is likely to prevent the transfer of firearms subject to disposal by law enforcement to destruction companies that would resell certain components, as the definition of destroy would render those components into useless scrap.

The bill's destruction policy requirement applies to any police department, sheriffs' department or other agency that employs peace officers. However, not all such agencies may be regularly engaged in the seizure, retention and destruction of firearms (such as the Department of Fish and Game or the Department of Parks and Recreation, for instance). In fact, the provision of existing law requiring the sale or destruction of unclaimed, abandoned and evidence guns contains an exemption for the Department of Fish and Game.[8] The Author and Committee may wish to consider a similar limitation on the definition of "law enforcement agency" in this bill.

4) **Argument in Support**: According to the *Los Angeles District Attorney's Office,* "Under existing federal guidelines and state law, guns are legally "destroyed" when the serialized frame or receiver of a gun is destroyed. However, the barrel, grip, slide, firing pin, and magazine, may remain intact. As a result, the remaining parts are often sold online as gun kits and combined with a frame or receiver to make a new gun. Individuals who want to avoid registration can easily pair the gun kit with an un-serialized frame or receiver to create a "ghost" gun. This means that all but one piece of a firearm removed from the streets may end up right back on the streets as parts of a "ghost" gun.

   "SB 1019 aims to reduce gun violence by ensuring that all firearms confiscated by or surrendered to law enforcement are completely destroyed, and no part makes its way back into society."

5) **Related Legislation**: AB 2842 (Papan), would require law enforcement agencies that contract for the destruction of firearms, to ensure that such contracts prohibit the sale of firearms or any part or attachment of firearms. AB 2842 is currently pending in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady California
Brady Campaign
Brady United Against Gun Violence
Everytown for Gun Safety Action Fund
Giffords Law Center to Prevent Gun Violence

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[8] See Pen. Code Sec. 34000, subd. (b).

Los Angeles County District Attorney's Office
Neveragainca
Prosecutors Alliance of California, a Project of Tides Advocacy
San Diegans for Gun Violence Prevention
San Diego City Attorney's Office
Women Against Gun Violence
Women for American Values and Ethics

Opposition

None

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

Date of Hearing: June 18, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1020 (Bradford) – As Amended March 19, 2024

SUMMARY: Requires law enforcement agencies and specified basic course presenters that provide basic course training or live-fire firearms training to peace officers to adopt a policy prohibiting the use of ethnic shooting targets for specified trainings, qualifications, competitions, or other range activities. Specifically, **this bill**:

1) Requires each law enforcement agency and basic course presenter to have a policy prohibiting the use of ethnic shooting targets for any training, qualification, competition, or other range activities that are sponsored by the agency or presenter, take place on any agency or presenter property, or involve the participation of any agency or presenter personnel or those attending a basic course.

2) Requires this policy to prohibit the provision of ethnic shooting targets to any peace officer or basic course attendee for personal use.

3) Provides that the above requirements do not prohibit the use of a realistic training simulator that utilizes live actors or live actors in video playback.

4) Defines "ethnic shooting target" as any physical range target that depicts a human form or part of a human form that includes skin colors or facial features from which a person might reasonably discern a race or ethnicity of the person depicted, which does not include a silhouette target or a human form target that does not have facial features.

5) Defines "law enforcement agency" to mean any department or agency of the state or any county, city, or other political subdivision thereof that employs any peace officer, as specified, authorized to carry a firearm.

6) Defines "basic course presenter" as any school or other training facility certified by the Commission on Peace Officer Standards and Training ("POST") to provide basic course training or any in-service training to peace officers that involves live-fire firearms training.

EXISTING LAW:

1) Designates specified persons who meet all standards imposed by law on a peace officer, as a peace officer. (Pen. Code, § 830-832.18.)

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

3) Requires POST, operative January 1, 2026, to establish a definition of "biased conduct" that, at a minimum, includes all of the following:

   a) Provides biased conduct includes any conduct, including, but not limited to, conduct online, such as social media use, engaged in by a peace officer in any encounter with the public, first responders, or employees of specified criminal justice agencies, motivated by bias toward any person's protected class or characteristic, whether actual or perceived, as specified;

   b) Provides that biased conduct may result from implicit and explicit biases;

   c) Provides that conduct is biased if a reasonable person with the same training and experience would conclude, based upon the facts that the officer's conduct resulted from bias towards that person's membership in a protected class, as specified; and,

   d) Provides an officer need not admit biased or prejudiced intent for conduct to be determined to be biased conduct. (Pen. Code, § 13510.6, subd. (a).)

4) Requires POST, to adopt a definition of "serious misconduct" that shall serve as the criteria to be considered ineligibility for, or revocation of, certification that shall include demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner. (Pen. Code, § 13510.8, subd. (b).)

5) Requires a law enforcement agency to determine whether the conduct being investigated constitutes "biased conduct," when investigating any bias-related complaint or incident that involves possible indications of officer bias. (Pen. Code, § 13510.6, subd. (b).)

6) Requires POST to develop guidelines and trainings for peace officers on the racial and cultural differences among residents in California, which shall stress understanding and respect for racial, identity, and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a diverse racial, identity, and cultural environment. (Pen. Code, § 13519.4, subd. (a).)

7) Establishes the Racial and Identity Profiling Advisory Board (RIPA) for the purpose of eliminating racial and identity profiling, and improving diversity and racial and identity sensitivity in law enforcement. (Pen. Code, § 13519.4, subd. (j).)

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

9) Requires the course of basic training for peace officers to include adequate instruction on racial, identity, and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial, identity, and cultural groups. (Pen. Code, § 13519.4, subd. (b).)

10) Requires the above curriculum to be evidence-based, examine evidence-based patterns, practices, and protocols that make up racial or identity profiling, including implicit bias, and patterns, practices, and protocols that prevent racial or identity profiling. (Pen. Code, § 13519.4, subd. (h).)

11) Requires POST to implement a course of instruction for the training of law enforcement officers in the use of force, and guidelines for adoption and promulgation by California law enforcement agencies for use of force and such instructions and guidelines shall safeguard the life, dignity, and liberty of all persons, without prejudice to anyone. (Pen. Code, § 13519.10, subd. (a).)

12) Provides such course and guidelines shall include all of the following:

a) Legal standards for use of force;

b) Duty to intercede;

c) The use of objectively reasonable force;

d) Supervisory responsibilities;

e) Use of force review and analysis;

f) Guidelines for the use of deadly force;

g) State required reporting;

h) De-escalation and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence;

i) Implicit and explicit bias and cultural competency;

j) Skills including de-escalation techniques to effectively, safely, and respectfully interact with people with disabilities or behavioral health issues;

k) Use of force scenario training including simulations of low-frequency, high-risk situations and calls for service, shoot-or-don't-shoot situations, and real-time force option decision-making;

l) Alternatives to the use of deadly force and physical force, so that de-escalation tactics and less lethal alternatives are, where reasonably feasible, part of the decision-making process leading up to the consideration of deadly force;

m) Mental health and policing, including bias and stigma;

n) Using public service, including the rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts. (Pen. Code, § 13519.10 (a).)

13) Provides that the minimum content requirement for specified instructor courses for peace officers includes target analysis and assessment. (Cal. Code Regs., tit. 11, § 1082, subd. (d).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "[i]n a multitude of studies published by the American Psychological Association, researchers established that participants would more quickly shoot an armed target if they were an African American compared to than if they were White. And that they were less likely to shoot an unarmed target if they were White compared to if they were African American. This response time indicates a subconscious racial bias not only for law enforcement officers but for the general public as well. This results in an increased risk of deadly harm towards certain ethnic groups and any law enforcement agency that utilizes shooting targets that represent specific ethnic groups only reinforces this bias.

   The utilization of specific ethnic groups on shooting targets only reinforces the inherent racial bias present in law enforcement that White individuals are less dangerous than individuals from certain ethnic groups. SB 1020 would prohibit the use of ethnic shooting targets by law enforcement agencies. This will start the long process of correcting inherent racial bias that certain ethnic groups are more dangerous than others without any harm to the ability of a law enforcement officer to become more proficient with firearms."

2) **Use of Ethnic Targets by California Law Enforcement Agencies:** California law enforcement agencies appear to use utilize ethnic targets in the training of their officers. This is noted by letters submitted by law enforcement associations in opposition to SB 1020."[1] Further, companies that sell shooting range targets that are registered with the Secretary of State to do business in California and specifically advertise their targets law enforcement agencies also sell ethnic targets.[2] Common examples of ethnic targets include targets of images of persons of different ethnicities holding a gun, reaching for a cellphone, holding hostage captive, or holding their hands up.

   Unfortunately, the specific types of ethnic targets being used by particular California law enforcement agencies are largely not available to the public. This makes it difficult to determine the extent and type of use of such ethnic targets. However, considering the number of California businesses asserting to sell ethnic targets to law enforcement agencies and the

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[1] *See* California Police Chiefs Association Opposition Letter (June 13, 2024) (noting the use of realistic targets in training and that "[r]ealistic looking targets are as close as we can get to a real-world scenario). *See also* California state Sheriff's Association Opposition Letter (June 13, 2024) (noting the need for realistic training materials demand the use of targets that have "some sort of skin color and/or facial feature."

[2] LA Police Gear, Targets [accessed June 12, 2024], available at: https://lapolicegear.com/shooting/range-shooting-gear/shooting-targets.html; Qualification Targets Inc., Shooting Targets [accessed June 12, 2024], available at: https://targets.net/collections/targets; Action Target, California [accessed June 12, 2024], available at: https://shop.actiontarget.com/prodcat/papercardboard-statequalification-ca.asp?page=1.

comments made in letters pertaining to this bill it is reasonable to infer that ethnic targets are frequently used by law enforcement agencies in California. The lack of information surrounding the extent and type of use of ethnic targets, combined with the absence of statutory rules on this issue, suggests legislative guidelines on the types of targets that can be used by law enforcement agencies may be helpful.

Ethnic targets have been used in harmful ways that perpetuate racial bias and stereotypes surrounding which racial groups are more dangerous. *First*, some companies that sell shooting targets specifically advertise certain types of ethnic targets.[3] *Second*, in 2020 a member of the California Correctional Peace Officers Association was found to have placed the image of a Black man on a shooting target.[4] The particular image was of Reggie Jones-Sawyer, an elected official and former chair of this committee. *Third*, in 2023 it was revealed that a Georgia police was utilizing targets of armed Black men wearing a beanie in their firearms training, resulting in strong public condemnation.[5] In that instance, the use of the target was only revealed when the particular police department errantly posted images of officers shooting at the target on social media.

Fourth, some companies that sell shooting targets to law enforcement agencies *only sell targets that resemble Black men*. Most notably, in 2022 it came to light that a company selling that specifically advertises its services to law enforcement agencies was awarded a $500,000 General Services Administration (GSA) certification permitting the company to sell a rubber dummies for target practice to U.S. government agencies through 2024.[6] The specific rubber dummy product that this company sells resembles a Black man (see below)[7]. This product is available for purchase on the company's website as well as on large-scale retail platforms such as Amazon.[8] It need not be said, but permitting law enforcement agencies to train their officers using targets that disproportionately resemble Black men may reinforce existing bias that certain ethnicities are inherently more dangerous than others, which can contribute to racial bias in shoot/don't shoot decisions.

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[3] Torres Targets, Terrorist Targets [accessed June 12, 2024], available at: https://www.torrestargets.com/targets/paper-targets/photo-shooting-targets/terrorist-targets/?page=1

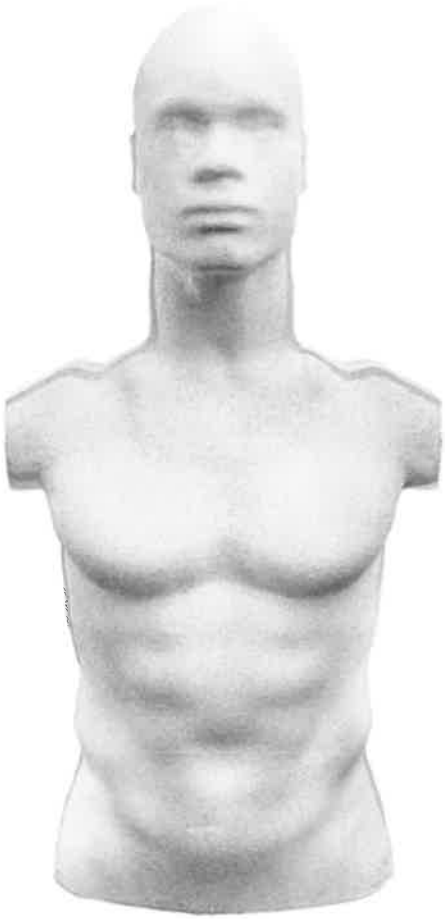
[4] Anita Chabria, *California prison guard union places bull's-eye on Black lawmaker's photo in political ad* [Sept. 17, 2020], available at: https://www.latimes.com/california/story/2020-09-17/california-prison-guard-union-target-reggie-jones-sawyer

[5] Claretta Bellamy, *Georgia police department under investigation for using photo of a Black man for target practice* [June 22, 2023], available at: https://www.nbcnews.com/news/nbcblk/georgia-police-department-investigation-using-photo-black-man-target-p-rcna90658

[6] Thomas, S. [2022, April 27]. *The government is supplying federal agencies with a shooting target that resembles a black man.* The Trace. https://www.thetrace.org/2022/04/rubber-dummie-target-racism-tracy-brown/

[7] Rubber Dummies, Rubber Dummie EP Starter Kit [accessed June 12, 2024], available at: https://www.rubberdummies.com/product/rubber-dummie-2-0-starter-kit/

[8] Amazon, Self Healing Shooting Targets for the Range [accessed June 12, 2024], available at: https://www.amazon.com/Reactive-Shooting-Targets-Thousands-Included/dp/B0D3Y28P22/ref=sr_1_1?dib=eyJ2IjoiMSJ9.ItqxVMMjZSraTfCVhzvZpMznXNfn8ZVQm8x7RpYLzjrH_ENoGgnhOoKXXTdtyxlKFfcQdwXGMl-PbvY410JBWRJG9bFbQ3hivH-m4Z1XY0vAeaHgHYyqZ1fTuG6HiHFit30B_8tF1Yi4MPM3ypqBqpiz6hdjnLsrLQkIoZubUFiBM30BiBBaKlxJRTpWxMTWzbRJRc5hFE9lWb6bgU3GHh2WjCKZKLcRz8TEGh0wyQF-hF9FqlPxBKfv0ehqlcuTgdoHYCBhaPrjyDoEsm7NzpAwOsvD8BftFmhiaoSo-Z4.wJP2h-aZfiW-N9DYGUFf5JkO2w3MwIcPdlx42nCuZ40&dib_tag=se&keywords=rubber%2Bdummies&qid=1718234764&sr=8-1&th=1



*Ethnic target product sold to U.S. government agencies for target practice as part of a $500,000 contract with the GSA.

3) **Racial Disparities in Police Use of Force and Stops:** There are significant racial disparities in police-shootings. Data from 2016-2019 indicates that approximately 250 people are shot by police each year, and about 195 people are killed due to interactions from California law enforcement.[9] Gunshot wounds are the leading cause of fatalities in police encounters.[10] Most notably, Black Californians are approximately *three times more likely to be seriously injured, shot, or killed by the police, relative to their portion of the population.*[11] Specifically, while Black Californians represent approximately 6% of California's population they represent between 16 to 19% of police fatalities. Similarly, Latinos are also disproportionately impacted by police killings, representing 45% percent of police fatalities, but about 39% of California's population. In contrast White Californians are underrepresented in police killings; comprising about 33% of police fatalities and 37% of California's populations.[12] Asian and Pacific Islanders are similarly underrepresented in police fatalities.[13] These racial disparities are similarly reflected in other police decisions such as police stops. For example, initial Racial and Identity Profiling Act (RIPA) data from

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[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

July 1, and December 31, 2018. found "[w]hile African Americans make up roughly 6% of the population in the [reported] jurisdictions, they made up slightly more than 15% of all stops.[14]

4) **Racial Bias in Simulated Shoot/Don't Shoot Decisions:** Studies similarly demonstrate that racial bias is present in simulated decisions pertaining to whether to shoot. One study found that when using a videogame simulator in which participants were told to shoot armed targets and not to shoot unarmed targets, "[w]hite participants made the correct decision to shoot an armed target more quickly if the target was African American than if he was White but decided to 'not shoot' an unarmed target more quickly if they were White."[15] Other studies testing racial bias in simulated decisions to shoot similarly show that "Black targets are shot more frequently and more quickly than Whites."[16] These findings are consistent for peace officers as well. A study specific to police officers shooting decisions, indicated that police also demonstrate "robust racial bias in response speed" in simulated decisions to shoot or not shoot Black and White targets, although officers outperformed non-police participants on other measures such as overall speed and accuracy.[17]

5) **Is there a Role for Ethnic Targets in Implicit Bias Training?** Law enforcement training that intentionally utilizes ethnic targets for the purpose of identifying and reducing racial bias, may be able to reduce racial bias in police shoot/don't shoot decisions. Studies indicate that "repeated exposure to Black and White suspects when race is not a diagnostic cue as to whether the suspect is holding a gun results in less biased and more accurate decisions about when to shoot."[18] Additionally, in a Stanford study, participants were placed in a simulated game where they were told to shoot only when they saw a weapon, and the game was designed so that Black and White suspects were equally likely to be paired with weapons (in an attempt to break implicit bias that a Black suspect was more likely to possess a weapon.)[19] The study found that participants who participated in this simulation, compared with a separate control group, were subsequently less likely to shoot unarmed Black suspects than those in the control group, suggesting that counter-stereotypic training may be capable of reducing bias in shoot/don't shoot decisions.[20] A separate study similarly fond that "bias can be reduced and even eliminated by exposure to counter stereotypic information."[21] Lastly,

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[14] Public Policy Institute of California, *African Americans are Notably Overrepresented in Police Stops* (Aug. 13, 2020), available at: https://www.ppic.org/blog/african-americans-are-notably-overrepresented-in-police-stops/

[15] Correll et. al., *The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, Journal of Personality and Social Psychology, 6:83 (2002), p. 1314. Available at: https://faculty.washington.edu/jdb/345/345%20Articles/Correll%20et%20al.pdf

[16] Pleskac, et. al., *How race affects evidence accumulation during the decision to shoot*, Psychon Bull Rev. 25, 1301 (Aug. 2018), available at: https://link.springer.com/content/pdf/10.3758/s13423-017-1369-6.pdf

[17] Park, et. al., *Across the thin blue line: Police officers and racial bias in the decision to shoot* (2007) *Journal of Personality and Social Psychology, 92*(6), 1006–1023, available at: https://typeset.io/papers/across-the-thin-blue-line-police-officers-and-racial-bias-in-2g958e1sil

[18] Cynthia Lee, *Race, Policing, and Lethal force: Remedying Shooter Bias with Martial Arts Training*, George Washington University Law School (2016), available at: https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2476&context=faculty_publications

[19] Stanford, *Practice Reduces Prejudice*, available at: https://sparq.stanford.edu/solutions/practice-reduces-prejudice

[20] *Ibid.*

[21] Correll et. al., *the influence of stereotypes on decisions to shoot*, European Journal of Social Psychology, 37: 1102-1117 (2007), p. 1107, available at: https://sparq.stanford.edu/sites/g/files/sbiybj19021/files/media/file/correll_et_al._2007_-_the_influence_of_stereotypes_on_decisions_to_shoot.pdf

another peer review study has found that "police training may actually reduce Shooter Bias by rendering the gun/no-gun decision more automatic for officers."[22]

The above studies suggest it may be possible for ethnic targets to be used in a way to identity racial bias among cadet shoot/don't shoot decisions and potentially reduce such bias by intentionally utilizing armed or unarmed ethnic targets to expose counter-stereotypic information as previously noted. Phrased differently, research suggest that utilizing ethnic targets in such a way could have a positive impact in training cadets on their own implicit bias. As such, banning ethic targets may create the unintended consequence of eliminating an avenue to reduce racial bias in police.

While it may be possible for ethnic targets to have positive training applications, it is less clear if that is how ethnic targets are actually being used. Rather, the racial disparities in police shootings and shoot/don't shoot decisions, and available information about the type of ethnic targets sold in California, indicate that ethnic targets may be being used in harmful ways that reinforce racial stereotypes that certain ethnicities are inherently more threatening than others. To preserve the potential value of utilizing ethnic targets as an implicit bias training tool, *the author may wish to consider an amendment only permitting the use of ethnic targets as a means to train officers in implicit bias and reduce such bias in police shoot/don't shoot decisions*. While SB 1020 exempts realistic training simulators utilizing live actors from its application, such simulators are typically expensive and may not be widely available to all law enforcement agencies in the state, leaving non-simulator targets as the primary means of law enforcement target training.

The author may also wish to minimize the administrative burden of the bill, by simply prohibiting the use of ethnic targets (unless otherwise exempted), rather than requiring law enforcement agencies to adopt policies prohibiting such targets.

6) **Argument in Support**: According to the Ella Baker Center for Human Rights "[i]n a plethora of studies disseminated by the American Psychological Association, researchers have elucidated a disconcerting trend: participants exhibit swifter reaction times in targeting armed individuals of African American descent compared to their white counterparts. Conversely, there is a reluctance to engage with unarmed targets of white ethnicity when juxtaposed with those of African American descent.

"This discernible discrepancy in response times underscores a profoundly ingrained subconscious bias prevalent among law enforcement personnel and within the broader societal framework. Such biases perpetuate an elevated peril for specific ethnic cohorts, amplifying the propensity for lethal outcomes. Moreover, the continued utilization of shooting targets depicting specific ethnicities serves to perpetuate and reinforce these entrenched prejudices.

"By portraying certain ethnicities as inherently more threatening or less so, law enforcement agencies inadvertently fortify the pervasive notion that individuals of white ethnicity are

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[22] Correll et. al., *The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, Journal of Personality and Social Psychology, 6:83 (2002), p. 1328. Available at: https://faculty.washington.edu/jdb/345/345%20Articles/Correll%20et%20al.pdf

intrinsically less dangerous. This perpetuation of racial bias not only compromises the integrity of law enforcement practices but also undermines the fundamental principles of equity and justice.

"SB 1020 would prohibit the use of ethnic shooting targets by law enforcement agencies. This will start the long process of correcting inherent racial bias that certain ethnic groups are more dangerous than others without any harm to the ability of a law enforcement officer to become more proficient with firearms."

7) **Argument in Opposition**: According to the California Police Chiefs Association "[i]n firearms training, the course of fire must simulate the physical and mental stress that would be most nearly created by actual field combat situations. The firearms test will minimally include threat assessment, multiple targets, left and right shooting positions using cover and concealment, and multiple shooting positions. In these trainings, realistic targets provide the recruit officer with an opportunity to develop the skills necessary to assess a situation and take appropriate action during stressful situations.

"Studies have shown that people who have not received realistic training tend to hesitate in real life situations because they are forced to process something that is new to them. They need context clues to assess a threat and take appropriate action. Additionally, when the targets turn, the recruit officers have a limited time to assess each target, determine if there is a threat and take appropriate action.

"Realistic looking targets are as close as we can get to a real-world scenario. At the very least, the recruit officers are being provided with realistic context clues that will help them assess the situation and take appropriate action. In training we are trying to condition their minds with the ability to recognize and react quickly and appropriately to a given threat. Failure to provide this training could cause an officer to either hesitate and fail to react to a threat in time, fire and miss a target, or cause them to panic and fire at an unarmed citizen. All these scenarios could end with tragic results. With proper mental conditioning, the officer will be better prepared to react to a threat in the field."

8) **Related Legislation**: None

9) **Prior Legislation**: None

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association
Council on American-Islamic Relations, California
County of Los Angeles Board of Supervisors
Ella Baker Center for Human Rights
Office of Los Angeles Mayor Karen Bass

Oppose

California Police Chiefs Association
California State Sheriffs' Association

Analysis Prepared by: Ilan Zur

Date of Hearing: June 18, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1025 (Eggman) – As Amended March 21, 2024

SUMMARY: Adds felony offenses to the military diversion program for a defendant who was, or currently is, a member of the Armed Forces of the United States, except as specified. Specifically, **this bill**:

1) Provides that a defendant charged with a felony may participate in the military diversion program if the defendant was, or currently is a member of the United States Armed Forces, and the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse or a mental health problem as a result of their military service, and the defendant's condition was a significant factor in the commission of the charged offense.

2) Requires the court to find that the defendant's condition was a significant factor in the commission of the charged offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense.

3) Allows a court to consider any relevant and credible evidence, including, but not limited to, a police report, preliminary hearing transcript, witness statement, statement by the defendant's mental health treatment provider, or medical record, or record or report by qualified medical expert, that the defendant displayed symptoms consistent with the condition at or near the time of the offense.

4) Provides that the court may request, using existing resources, an assessment that the above provisions apply to the defendant.

5) States that a defendant may not be placed in a military diversion program for the following current charges:

   a) Murder or voluntary manslaughter;

   b) An offense for which a person, if convicted, would be required to register as a sex offender;

   c) Rape;

   d) Lewd or lascivious act on a child under 14 years of age;

   e) Assault with intent to commit rape, sodomy, or oral copulation;

f) Commission of rape or sexual penetration in concert with another person;

g) Continuous sexual abuse of a child; and,

h) Specified violations involving weapons of mass destruction.

EXISTING LAW:

1) Establishes a diversion program for defendants charged with a misdemeanor offense who were, or currently are, a member of the United States military. (Pen. Code, § 1001.80.)

2) States that this program may apply to a defendant who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of their military service. The court may request, using existing resources, an assessment to aid in making this determination. (Pen. Code, § 1001.80, subd. (a)(2).)

3) Provides that if the court determines that a defendant charged with an applicable offense is eligible, the court, with the consent of the defendant and a waiver of the defendant's speedy trial right, may place the defendant in a pretrial diversion program. (Pen. Code, § 1001.80, subd. (b).)

4) Defines "pretrial diversion" to mean the procedure of postponing prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.80, subd. (k).)

5) States that if it appears to the court that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from the treatment and services provided under the diversion program, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstituted. (Pen. Code, § 1001.80, subd. (c).)

6) Provides that if the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from diversion, the court may end the diversion and order resumption of the criminal proceedings. If the defendant has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed. (Pen. Code, § 1001.80, subd. (c).)

7) States that if a referral is made to the county mental health authority as part of the diversion program, the county shall provide mental health treatment services only to the extent that resources are available for that purpose. If mental health treatment services are ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veterans service officer. The county mental health agency is not responsible for providing services outside its traditional scope of services. (Pen. Code, § 1001.80, subd. (d).)

8) Authorizes the court to order the referral of a defendant to a county mental health agency only if that agency has agreed to accept responsibility for all of the following:

a) The treatment of the defendant;

b) The coordination of appropriate referral to a county veterans service officer; and,

c) The filing of Progress reports. (Pen. Code, § 1001.80, subd. (d).)

9) States that the court, in making an order to commit a defendant to an established treatment program, shall give preference to a treatment program that has a history of successfully treating veterans who suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of military service, including, but not limited to, programs operated by the United States Department of Defense or the United States Department of Veterans Affairs. (Pen. Code, § 1001.80, subd. (f).)

10) Provides that the period during which criminal proceedings against the defendant may be diverted shall be no longer than two years. The responsible agency or agencies shall file reports on the defendant's progress in the diversion program with the court and with the prosecutor not less than every six month. (Pen. Code, §1001.80, subd. (h).)

11) States that upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The defendant may indicate in response to a question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except in an application for a position as a peace officer. (Pen. Code, § 1001.80, subds. (i) and (j).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "More than half of our California justice-involved veterans are tackling homelessness, mental health struggles including PTSD, depression, anxiety and substance abuse disorders after fighting for our country. This bill gives our veterans with felony offenses an opportunity to rehabilitate and be given the proper care and resources that they need in order to reintegrate back into society rather than being sentenced to a crime they committed while dealing with undue pressure of service linked mental health issues. Many courts are already allowing for military veterans who committed felonies the opportunity to enter a diversion program. This bill simply allows for all courts to do so in order to create fairness to all military veterans who need support in California."

2) **Background**: Current law (SB 1227, Hancock; Chapter 658, Statutes of 2013) allows for active-duty military members and veterans who have committed a misdemeanor to enter a pre-plea military diversion program as an alternative to sentencing. While felonies are not included as part of this diversion program, some diversion programs do allow them on a case-by-case basis, which creates a lack of consistency in our diversion court programs and forces veterans to be placed in different diversion programs to get the care they need. Veterans may have to sacrifice the veteran-focused and centered services found in the military diversion program to avoid jail time and permanent records.

   SB 1025 seeks to formally include felony charges in the military diversion program when, as a result of their military service, the defendant is suffering from sexual trauma, traumatic

brain injury, post-traumatic stress disorder, substance abuse, or a mental health problem and the defendant's condition is a significant factor in the commission of the charged offense. This creates parity with the other diversion programs. Including felony offenses, excluding sex and murder-related crimes, in the diversion program would allow military veterans to rehabilitate outside of the criminal justice system. The San Francisco Veterans Justice Court, which allows active-duty military members and veterans with felony offenses to participate in its military diversion program states that over 85% of their veteran participants have successfully rehabilitated and reintegrated back into society.

3) **Argument in Support**: According to the *California Judges Association,* "Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that they have never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume; however, a hearing to terminate diversion is required. Many diversion programs aim to assist veterans facing service-related challenges, providing them with necessary support to access services and enhancing their employability by keeping their record clean upon successful completion.

"In 2013, California enacted SB 1227 (Hancock; Chapter 658, Statutes of 2013) which created a pre-plea military diversion program for active-duty members and veterans who have committed misdemeanors. Many veterans suffer from service-related trauma, such as post-traumatic stress disorder (PTSD), traumatic brain injury, sexual trauma, substance abuse, or mental health issues resulting from their service. Since SB 1227's enactment, military diversion programs have seen significant success with veterans and active-duty members being connected with critical veteran and military services.

"While felony offenses are not eligible as part of SB 1227's diversion programs for veterans, some military diversion programs will accept veterans charged with certain felonies without requiring a guilty plea or on a case-by-case basis with an agreement with the local District Attorney. For example, the San Francisco Veterans Justice Court has informed us that most of the participants in their court have open felony charges and over 85% of veterans who graduate from their program have not been arrested again.

"SB 1025 finishes where SB 1227 started by adding felony offenses, as specified, to these pre-plea diversion programs for veterans. SB 1025 requires that the defendant's suffering, as a result of their military service, from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or a mental health problem is a significant factor in the charged offense. By expanding diversion services, this bill is giving our veterans and active-duty members more opportunities to rehabilitate and access potentially life-saving services."

4) **Prior Legislation**: SB 492 (Eggman) of the 2023 Legislative Session was identical to this bill. SB 492 was held on the Assembly Appropriations Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

California Judges Association (Sponsor)
ACLU California Action
California Public Defenders Association
Ella Baker Center for Human Rights
Initiate Justice
Orange County Veterans and Military Families Collaborative (OCVMFC)
Secure Justice
Smart Justice California, a Project of Tides Advocacy
Steinberg Institute

Opposition

None

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

Date of Hearing: June 18, 2024
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1025 (Eggman) – As Amended March 21, 2024

SUMMARY: Adds felony offenses to the military diversion program for a defendant who was, or currently is, a member of the Armed Forces of the United States, except as specified. Specifically, **this bill**:

1) Provides that a defendant charged with a felony may participate in the military diversion program if the defendant was, or currently is a member of the United States Armed Forces, and the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse or a mental health problem as a result of their military service, and the defendant's condition was a significant factor in the commission of the charged offense.

2) Requires the court to find that the defendant's condition was a significant factor in the commission of the charged offense unless there is clear and convincing evidence that it was not a motivating factor, causal factor, or contributing factor to the defendant's involvement in the alleged offense.

3) Allows a court to consider any relevant and credible evidence, including, but not limited to, a police report, preliminary hearing transcript, witness statement, statement by the defendant's mental health treatment provider, or medical record, or record or report by qualified medical expert, that the defendant displayed symptoms consistent with the condition at or near the time of the offense.

4) Provides that the court may request, using existing resources, an assessment that the above provisions apply to the defendant.

5) States that a defendant may not be placed in a military diversion program for the following current charges:

   a) Murder or voluntary manslaughter;

   b) An offense for which a person, if convicted, would be required to register as a sex offender;

   c) Rape;

   d) Lewd or lascivious act on a child under 14 years of age;

   e) Assault with intent to commit rape, sodomy, or oral copulation;

f) Commission of rape or sexual penetration in concert with another person;

g) Continuous sexual abuse of a child; and,

h) Specified violations involving weapons of mass destruction.

EXISTING LAW:

1) Establishes a diversion program for defendants charged with a misdemeanor offense who were, or currently are, a member of the United States military. (Pen. Code, § 1001.80.)

2) States that this program may apply to a defendant who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of their military service. The court may request, using existing resources, an assessment to aid in making this determination. (Pen. Code, § 1001.80, subd. (a)(2).)

3) Provides that if the court determines that a defendant charged with an applicable offense is eligible, the court, with the consent of the defendant and a waiver of the defendant's speedy trial right, may place the defendant in a pretrial diversion program. (Pen. Code, § 1001.80, subd. (b).)

4) Defines "pretrial diversion" to mean the procedure of postponing prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication. (Pen. Code, § 1001.80, subd. (k).)

5) States that if it appears to the court that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from the treatment and services provided under the diversion program, after notice to the defendant, the court shall hold a hearing to determine whether the criminal proceedings should be reinstituted. (Pen. Code, § 1001.80, subd. (c).)

6) Provides that if the court finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from diversion, the court may end the diversion and order resumption of the criminal proceedings. If the defendant has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed. (Pen. Code, § 1001.80, subd. (c).)

7) States that if a referral is made to the county mental health authority as part of the diversion program, the county shall provide mental health treatment services only to the extent that resources are available for that purpose. If mental health treatment services are ordered by the court, the county mental health agency shall coordinate appropriate referral of the defendant to the county veterans service officer. The county mental health agency is not responsible for providing services outside its traditional scope of services. (Pen. Code, § 1001.80, subd. (d).)

8) Authorizes the court to order the referral of a defendant to a county mental health agency only if that agency has agreed to accept responsibility for all of the following:

a) The treatment of the defendant;

b) The coordination of appropriate referral to a county veterans service officer; and,

c) The filing of Progress reports. (Pen. Code, § 1001.80, subd. (d).)

9) States that the court, in making an order to commit a defendant to an established treatment program, shall give preference to a treatment program that has a history of successfully treating veterans who suffer from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of military service, including, but not limited to, programs operated by the United States Department of Defense or the United States Department of Veterans Affairs. (Pen. Code, § 1001.80, subd. (f).)

10) Provides that the period during which criminal proceedings against the defendant may be diverted shall be no longer than two years. The responsible agency or agencies shall file reports on the defendant's progress in the diversion program with the court and with the prosecutor not less than every six month. (Pen. Code, §1001.80, subd. (h).)

11) States that upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The defendant may indicate in response to a question concerning his or her prior criminal record that he or she was not arrested or diverted for the offense, except in an application for a position as a peace officer. (Pen. Code, § 1001.80, subds. (i) and (j).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "More than half of our California justice-involved veterans are tackling homelessness, mental health struggles including PTSD, depression, anxiety and substance abuse disorders after fighting for our country. This bill gives our veterans with felony offenses an opportunity to rehabilitate and be given the proper care and resources that they need in order to reintegrate back into society rather than being sentenced to a crime they committed while dealing with undue pressure of service linked mental health issues. Many courts are already allowing for military veterans who committed felonies the opportunity to enter a diversion program. This bill simply allows for all courts to do so in order to create fairness to all military veterans who need support in California."

2) **Background**: Current law (SB 1227, Hancock; Chapter 658, Statutes of 2013) allows for active-duty military members and veterans who have committed a misdemeanor to enter a pre-plea military diversion program as an alternative to sentencing. While felonies are not included as part of this diversion program, some diversion programs do allow them on a case-by-case basis, which creates a lack of consistency in our diversion court programs and forces veterans to be placed in different diversion programs to get the care they need. Veterans may have to sacrifice the veteran-focused and centered services found in the military diversion program to avoid jail time and permanent records.

   SB 1025 seeks to formally include felony charges in the military diversion program when, as a result of their military service, the defendant is suffering from sexual trauma, traumatic

brain injury, post-traumatic stress disorder, substance abuse, or a mental health problem and the defendant's condition is a significant factor in the commission of the charged offense. This creates parity with the other diversion programs. Including felony offenses, excluding sex and murder-related crimes, in the diversion program would allow military veterans to rehabilitate outside of the criminal justice system. The San Francisco Veterans Justice Court, which allows active-duty military members and veterans with felony offenses to participate in its military diversion program states that over 85% of their veteran participants have successfully rehabilitated and reintegrated back into society.

3) **Argument in Support**: According to the *California Judges Association,* "Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that they have never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume; however, a hearing to terminate diversion is required. Many diversion programs aim to assist veterans facing service-related challenges, providing them with necessary support to access services and enhancing their employability by keeping their record clean upon successful completion.

"In 2013, California enacted SB 1227 (Hancock; Chapter 658, Statutes of 2013) which created a pre-plea military diversion program for active-duty members and veterans who have committed misdemeanors. Many veterans suffer from service-related trauma, such as post-traumatic stress disorder (PTSD), traumatic brain injury, sexual trauma, substance abuse, or mental health issues resulting from their service. Since SB 1227's enactment, military diversion programs have seen significant success with veterans and active-duty members being connected with critical veteran and military services.

"While felony offenses are not eligible as part of SB 1227's diversion programs for veterans, some military diversion programs will accept veterans charged with certain felonies without requiring a guilty plea or on a case-by-case basis with an agreement with the local District Attorney. For example, the San Francisco Veterans Justice Court has informed us that most of the participants in their court have open felony charges and over 85% of veterans who graduate from their program have not been arrested again.

"SB 1025 finishes where SB 1227 started by adding felony offenses, as specified, to these pre-plea diversion programs for veterans. SB 1025 requires that the defendant's suffering, as a result of their military service, from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or a mental health problem is a significant factor in the charged offense. By expanding diversion services, this bill is giving our veterans and active-duty members more opportunities to rehabilitate and access potentially life-saving services."

4) **Prior Legislation**: SB 492 (Eggman) of the 2023 Legislative Session was identical to this bill. SB 492 was held on the Assembly Appropriations Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

California Judges Association (Sponsor)
ACLU California Action
California Public Defenders Association
Ella Baker Center for Human Rights
Initiate Justice
Orange County Veterans and Military Families Collaborative (OCVMFC)
Secure Justice
Smart Justice California, a Project of Tides Advocacy
Steinberg Institute

Opposition

None

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

Date of Hearing: June 18, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1069 (Menjivar) – As Amended May 16, 2024

SUMMARY: Grants the Office of the Inspector General (OIG) investigatory authority over all staff misconduct cases that involve sexual misconduct with an incarcerated person, and authorizes the OIG to monitor and investigate a complaint that involves sexual misconduct with an incarcerated person.

EXISTING LAW:

1) Establishes the independent OIG. (Pen. Code, § 6125.)

2) Provides that the Inspector General (IG) is responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process of the Department of Corrections and Rehabilitation (CDCR) under policies to be developed by the IG. (Pen. Code, § 6126, subd. (a).)

3) Authorizes the IG to initiate an audit or review of policies, practices, and procedures of CDCR when requested by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly. Requires the IG to, during the course of an audit or review, identify areas of full and partial compliance, or noncompliance, with departmental policies and procedures, specify deficiencies in the completion and documentation of processes, and recommend corrective actions, including, but not limited to, additional training, additional policies, or changes in policy, as well as any other findings or recommendations that the Inspector General deems appropriate. Requires the IG to prepare a written public report upon completion of an audit or review. (Pen. Code, § 6126, subds. (b)-(d).)

4) Requires the IG to provide contemporaneous oversight of grievances that fall within the OIG's process for reviewing and investigating inmate allegations of staff misconduct and other specialty grievances, examining compliance with regulations, department policy, and best practices. Specifies that the contemporaneous oversight be completed in a way that does not unnecessarily slow the department's review and investigation of inmate allegations of staff misconduct, and other specialty grievances. Requires the IG to issue reports annually, beginning in 2021. (Pen. Code, § 6126, subd. (i).)

5) Requires the IG to monitor the department's process for reviewing uses of force and to issue reports annually. (Pen. Code, § 6126, subd. (j).)

6) Requires the OIG to be responsible for contemporaneous public oversight of CDCR investigations and staff grievance inquiries conducted by the department's Office of Internal Affairs (OIA). Provides that the OIG have staff physically co-located with CDCR's OIA to facilitate oversight of the department's internal affairs investigations. Requires the OIG to be

responsible for advising the public regarding the adequacy of each investigation, and whether discipline of the subject of the investigation is warranted. Provides that the OIG has discretion to provide public oversight of other CDCR personnel investigations as needed. (Pen. Code, § 6133, subd. (a).)

7) Requires the OIG to issue regular reports, no less than annually, to the Governor and the Legislature summarizing its recommendations concerning its oversight of CDCR allegations of internal misconduct and use of force. (Pen. Code, § 6133, subd. (b)(1).)

8) Requires the OIG to also issue regular reports, no less than semiannually, summarizing its oversight of OIA investigations. Requires the report to include, but not be limited to, all of the following:

   a) Data on the number, type, and disposition of complaints made against correctional officers and staff.

   b) A synopsis of each matter reviewed by the OIG.

   c) An assessment of the quality of the investigation, the appropriateness of any disciplinary charges, the OIG's recommendations regarding the disposition in the case and when founded, the level of discipline afforded, and the degree to which the agency's authorities agreed with the OIG recommendations regarding disposition and level of discipline.

   d) The report of any settlement and whether the OIG concurred with the settlement.

   e) The extent to which any discipline was modified after imposition. (Pen. Code, § 6133, subd. (b)(1).)

9) Requires the reports to be in a form that does not identify the agency employees involved in the alleged misconduct. Requires the reports be posted on the IG's website and otherwise made available to the public upon their release to the Governor and the Legislature. (Pen. Code, § 6133, subds. (b)(2) and (3).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "SB 1069 will work to protect incarcerated survivors of sexual misconduct involving staff within the California Department of Corrections and Rehabilitation (CDCR). Decades of sexual misconduct, including recent horrific events documented at the Central California Women's Facility (CCWF) and the California Institution for Women (CIW) have demonstrated that a new process for sexual misconduct cases and complaints is necessary. Wardens at both institutions were relieved of duty as recently as 2023 following scandals, including rampant sexual abuse and suicides.

   According to the National Resource Center on Domestic Violence, approximately 60-70% of incarcerated women or girls have reported experiencing physical or sexual violence in childhood, and 70-80% of incarcerated women have reported adulthood intimate partner

violence. Incarcerated people deserve to have confidence in the Department, processes and entities in place to protect them while in state custody. SB 1069 will create more accountability in the investigation of staff sexual misconduct by authorizing [OIG] to monitor and investigate complaints of sexual misconduct. Ultimately, this will create a more meaningful pathway for victims of sexual misconduct by CDCR staff to have their reports thoroughly investigated and fairly addressed."

2) **OIG's Monitoring of CDCR**: The OIG is an independent office that provides oversight of CDCR's internal affairs investigations and the disciplinary process as well as oversight of grievances that fall within CDCR's process for reviewing and investigating allegations of staff misconduct. Current law requires the OIG to determine the adequacy of each investigation and whether discipline is warranted. The OIG is statutorily required to issue regular reports, no less than annually, to the Governor and the Legislature summarizing its recommendations concerning its oversight of CDCR allegations of internal misconduct and use of force, and regular reports, no less than semiannually, summarizing its oversight of OIA investigations. All reports are required to be posted on the IG's website and otherwise made publicly available. California's prisons—and the women's prisons especially —have been plagued with allegations of staff sexual assault and sexual misconduct for years.[1]

   Earlier this year, 130 individuals formerly incarcerated at the California Institution for Women (CIW) and Central California Women's Facility (CCWF) filed a lawsuit against CDCR and 30 current and former correctional officers alleging that they were sexually abused while in prison. The lawsuit alleges the sexual abuse occurred throughout the prisons, including in cells, closets, and storage rooms, and alleges a variety of sexual abuse, including groping, forced oral copulation, and rape. In 2023, a former correctional officer at CCWF was arrested for sexually assaulting 13 incarcerated individuals over nine years and was charged with 96 counts of rape, sodomy, sexual battery, and rape under color of authority.[2]

3) **Prison Rape Elimination Act (PREA):** PREA was passed by Congress in 2003. It applies to all correctional facilities, including prisons, jails, and juvenile facilities. Among the many stated purposes for PREA are: to establish a zero-tolerance standard for the incidence of prison rape in prisons in the United States; to develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape; to increase the available data and information on the incidence of prison rape to improve the management and administration of correctional facilities; and to increase the accountability of prison officials who fail to detect, prevent, reduce, and punish prison rape.[3] PREA also created the National Prison Rape Elimination Commission and charged it with developing standards for the elimination of prison rape.

   The PREA standards developed by the National Prison Rape Elimination Commission were issued as a final rule by the U.S. Department of Justice in 2012. (77 F.R.D. 37106.) Among

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[1] See Richard Winton, *"'Every woman's worst nightmare': Lawsuit alleges widespread sexual abuse at California prisons for women,"* located at (Jan. 18, 2024) available at <https://www.latimes.com/california/story/2024-01-18/every-womans-worst-nightmare-lawsuit-alleges-widespread-sexual-abuse-at-californias-womens-prisons.)

[2] Jeremy Childs, *"Ex-corrections officer accused of raping 13 inmates in California women's prison"* (May 25, 2023) available at <https://www.latimes.com/california/story/2023-05-25/ex-corrections-officer-accused-of-raping-inmates-at-california-womens-prison)

[3] (34 U.S.C. § 30301 et seq. (previously classified as 42 U.S.C. § 15601 et seq.))

other things, the standards require each agency and facility to: designate a PREA point person to coordinate compliance efforts; develop and document a staffing plan, taking into account a set of specified factors, that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse; and train staff on key topics related to preventing, detecting, and responding to sexual abuse. In addition, the standards provide requirements regarding the avenues for reporting sexual abuse, investigation of sexual abuse, and access to medical and mental health care for inmate victims of sexual abuse.

The PREA standards contemplate ways for particular vulnerable inmates who identify as LGBTIA+ or whose appearance or manner does not conform to traditional gender expectations. (*Id.* at pp. 37149-37154.) The standards require training in effective and professional communication with LGBTIA and gender nonconforming inmates and require the screening process to consider whether the inmate is, or is perceived to be, LGBTI or gender nonconforming. The standards also require that post-incident reviews consider whether the incident was motivated by the inmate's LGBTIA+ identification, status, or perceived status.

In addition, the standards do not allow placement of LGBTIA+ inmates in dedicated facilities, units, or wings in adult prisons, jails, or community confinement facilities solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

The standards impose a complete ban on searching or physically examining a transgender inmate for the sole purpose of determining the inmate's genital status. Agencies are required to train security staff in conducting professional and respectful cross-gender pat-down searches and searches of transgender inmates. In deciding whether to assign a transgender inmate to a facility for male or female inmates, and in making other housing and programming assignments, an agency may not simply assign the inmate to a facility based on genital status. Rather, the agency must consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems, giving serious consideration to the inmate's own views regarding their own safety. In addition, the standards require that transgender inmates be given the opportunity to shower separately from other inmates.

CDCR PREA Policy: AB 550 (Goldberg, Chapter 303, Statutes of 2005) established the Sexual Abuse in Detention Elimination Act. The Act requires CDCR to adopt specified policies, practices, and protocols related to the placement of inmates, physical and mental health care of inmate victims, and investigation of sexual abuse. CDCR's PREA policy provides guidelines for the prevention, detection, response, investigation, and tracking of sexual violence, staff sexual misconduct, and sexual harassment against CDCR inmates. (DOM §§ 54040.1-5404.22.) The policy applies to all offenders and persons employed by CDCR, including volunteers and independent contractors assigned to an institution, community correctional facility, conservation camp, or parole. With respect to inmates who are at a high risk for sexual victimization, CDCR's PREA policy provides:

> Offenders at high risk for sexual victimization, as identified on the electronic Initial Housing Review, shall not be placed

> in segregated housing unless an assessment of all available alternatives has been completed, and a determination has been made that there is no available alternative means of separation from likely abusers.

Offenders at high risk for sexual victimization shall have a housing assessment completed immediately or within 24 hours of placement into segregated housing. . . . If a determination is made at the conclusion of the assessment that there are no available alternative means of separation from likely abusers, the inmate will be retained in segregated housing…The offender's retention in segregation should not ordinarily exceed 30 days. (Italics added) (DOM § 54040.6.)

The policy further provides:

> Based on information that the offender has been a victim of sexual violence or victimization, the custody supervisor conducting the initial screening shall discuss housing alternatives with the offender in a private location. *The custody supervisor shall not automatically place the offender into administrative segregation.* Consideration shall be given to housing this offender with another offender who has compatible housing needs. . . .

An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness. (DOM § 54040.7.)

OIG is uniquely equipped to investigate allegations of sexual assault given it already investigates other staff misconduct. This appears to be an effective step to address issues of sexual assault in prisons and jails.

4) **Argument in Support**: According to the *ACLU California Action*: Currently, following internal investigations of employee sexual misconduct, prison wardens have the sole authority to review completed investigation reports, determine the findings of the investigation, and decide on appropriate disciplinary action. This process is fundamentally flawed due to a lack of oversight and an inherent conflict of interest in purely internal investigations. Oversight by the OIG has consistently shown that investigations are frequently lacking or incomplete and that warden determinations are often inadequate. Decades of sexual misconduct, including recent events at the Central California Women's Facility (CCWF) and the California Institution for Women (CIW), have demonstrated that a new process is necessary.

SB 1069 would require OIG to participate in determining the outcome of employee sexual misconduct. Instances when OIG identifies problems with the investigation outcome will require information-sharing with the Department of Justice (DOJ). SB 1069 will serve as a short-term fix to CDCR's current staff sexual misconduct investigation process. It will require CDCR to share decision-making responsibility with the OIG when determining appropriate outcomes for all staff sexual misconduct investigations. If there is disagreement among the shared decision makers, the OIG would prepare a report documenting the

disagreement to be submitted to the Secretary of CDCR for final decision and to the Department of Justice for consideration. Granting the OIG investigatory authority will allow for a more meaningful oversight over CDCR's investigation process. This bill will build trust in the investigations process, increasing the likelihood that victims will report staff abuse. By ensuring that independent stakeholders are involved in CDCR's employee sexual misconduct investigations, SB 1069 would address concerns about conflict of interest and increase safety for survivors.

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

6) **Related Legislation**: AB 1986 (Bryan) requires the Office of The Inspector General (OIG) to add to its website a "Centralized List of Disapproved Publications" as maintained by the California Department of Corrections and Rehabilitations (CDCR) and allows for the OIG to review each publication and determine whether it should remain disapproved or be allowed for use by incarcerated persons. AB 1986 is pending on Senate Third Reading.

7) **Prior Legislation**:

   a) SB 132 (Weiner) Chapter 182, Statutes of 2019 requires the California Department of Corrections and Rehabilitation (CDCR) to house an individual in a correctional facility consistent with their gender identity, except where the individual's perception of their health and safety needs require a different placement or where there are significant security or management concerns regarding housing the individual based on their perception of safety.

   b) SB 990 (Wiener), of the 2017-2018 Legislative Session, was substantially similar to this bill and would have required CDCR to consider sexual orientation and gender identity when classifying inmates in order to prevent sexual violence. SB 990 was held in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Alliance for Boys and Men of Color
California Coalition for Women Prisoners
California Immigrant Policy Center
California Partnership to End Domestic Violence
California Public Defenders Association
Californians for Safety and Justice
Californians United for A Responsible Budget
Catalyst
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice
Ella Baker Center for Human Rights
Families Against Mandatory Minimums
Families Against Mandatory Minimums Foundation

Family Services of Tulare County
Felony Murder Elimination Project
Free to Thrive
Friends Committee on Legislation of California
Grip Training Institute
Haywood Burns Institute
Healthy Alternatives to Violent Environments
Hollywood Now
Initiate Justice
Initiate Justice Action
Just Detention International
Justice First
LA Defensa
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Legal Services for Prisoners With Children
Los Angeles County District Attorney's Office
Los Angeles Regional Reentry Partnership (LARRP)
Modoc Crisis Center
Mountain Crisis Services
Nextgen California
North County Rape Crisis and Child Protection Center
Oakland Privacy
Partners Against Violence
Peace Over Violence
Prevail
Project Sister Family Services
Rape Counseling Services of Fresno
Rape Trauma Services: a Center for Healing and Violence Prevention
Riverside Area Rape Crisis Center
Root & Rebound
Rubicon Programs
San Francisco Public Defender
San Francisco Women Against Rape
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
Stand Up Placer, INC.
Strength United
The Amelia Ann Adams Whole Life Center
Transformative In-prison Workgroup
Transitions Clinic Network
Valorus
Wild Iris Family Counseling & Crisis Center
Women's Center-high Desert, INC.
Young Women's Freedom Center
YWCA Golden Gate Silicon Valley

Opposition
None.
Analysis Prepared by: Kimberly Horiuchi / PUB. S. / (916) 319-3744

Date of Hearing: June 18, 2024
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1317 (Wahab) – As Amended April 23, 2024

SUMMARY: Extends the sunset date until January 1, 2030 on the provision of law authorizing involuntary medication of county jail inmates who are awaiting arraignment, trial, or sentencing. Specifically, **this bill**:

1) Extends the sunset date from January 1, 2025 to January 1, 2030 to authorize involuntary medication of county jail inmates, as specified.

2) Requires each county that administers involuntary medication to any inmate awaiting arraignment, trial, or sentencing to, by no later than January 1, 2029, prepare and submit a written report about any instances of involuntary medication between January 1, 2025 and July 1, 2028, to the Assembly Committee on Public Safety and the Senate Committee on Public Safety, summarizing all of the following information:

   a) The number of inmates who were administered involuntary medication while awaiting arraignment, trial, or sentencing between January 1, 2025 and July 1, 2028;

   b) The crime for which each of these inmates was arrested, if it is practically feasible to obtain that information;

   c) The total time each inmate was detained while awaiting arraignment, trial, or sentencing, if it is practically feasible to obtain that information;

   d) The duration of the administration of involuntary medication for each inmate;

   e) The number of times, if any, that each existing order for the administration of involuntary medication was renewed; and,

   f) The reason that administration of involuntary medication was terminated for each inmate.

EXISTING LAW:

1) Authorizes, until January 1, 2025, the administration of psychotropic medication on an involuntary basis to county jail inmates who are awaiting arraignment, trial, or sentencing if a psychiatrist determines that the inmate should be treated with psychiatric medication and specified procedures are followed. (Pen. Code, § 2603, subd. (b).)

2) Authorizes, until January 1, 2025, the administration of medication without a defendant's consent on a nonemergency basis only if all of the following conditions have been met:

a) A psychiatrist or psychologist determines that the inmate has a serious mental disorder;

b) A psychiatrist or psychologist determines, as a result of that mental disorder, the inmate is gravely disabled and does not have the capacity to refuse treatment with psychiatric medications, or is a danger to self or others;

c) A psychiatrist prescribes one or more psychiatric medications for the treatment of the inmate's disorder, considers the risks, benefits, and treatment alternatives to involuntary medication, and determines that the treatment alternatives to involuntary medication are unlikely to meet the needs of the patient;

d) Advises the inmate of the risks and benefits of, and treatment alternatives to, the psychiatric medication and refuses, or is unable to consent to, the administration of the medication;

e) The jail documents an attempt to locate an available bed for the inmate in a community-based treatment facility in lieu of seeking to administer involuntary medication. The jail transfers that inmate to such a facility only if the facility can provide care for the mental health needs, and the physical health needs, if any, of the inmate and upon the agreement of the facility. In enacting the act that added this paragraph, it is the intent of the Legislature to recognize the lack of community-based beds and the inability of many facilities to accept transfers from correctional facilities;

f) Provides the inmate a hearing before a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer, as specified;

g) Provides inmate counsel at least 21 days prior to the hearing, unless emergency medication is being administered, in which case the inmate would receive expedited access to counsel;

h) Provides the inmate and counsel with written notice of the hearing at least 21 days prior to the hearing, unless emergency medication is being administered, in which case the inmate would receive an expedited hearing;

i) In the hearing described in paragraph (f), the superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer determines by clear and convincing evidence that the inmate has a mental illness or disorder, that as a result of that illness, the inmate is gravely disabled and lacks the capacity to consent to or refuse treatment with psychiatric medications or is a danger to self or others if not medicated, that there is no less intrusive alternative to involuntary medication, and that the medication is in the inmate's best medical interest;

j) The historical course of the inmate's mental disorder, as determined by available relevant information about the course of the inmate's mental disorder, shall be considered when it has direct bearing on the determination of whether the inmate is a danger to self or others, or is gravely disabled and incompetent to refuse medication as the result of a mental disorder; and,

k) An inmate is entitled to file one motion for reconsideration following a determination that they may receive involuntary medication, and may seek a hearing to present new

evidence, upon good cause shown. This paragraph does not prevent a court from reviewing, modifying, or terminating an involuntary medication order for an inmate awaiting trial if there is a showing that the involuntary medication is interfering with the inmate's due process rights in the criminal proceeding. (Pen. Code, § 2603, subd. (c)(1-8).)

3) Provides, until January 1, 2025, that an order by the court authorizing involuntary medication of an inmate awaiting arraignment, trial or sentencing shall be valid for no more than 180 days and the court shall review the order at intervals of not more than 60 days to determine whether the ground for the order remains. At each review, the psychiatrist shall file an affidavit with the court that ordered the involuntary medication affirming that the person who is the subject of the order continues to meet the criteria for involuntary medication. A copy of the affidavit shall be provided to the defendant and the defendant's attorney. (Pen Code, § 2603, subd. (e)(1)(B).)

4) States, until January 1, 2025, that in determining whether the criteria for involuntary medication still exist, the court shall consider the affidavit of the psychiatrist or psychiatrists and any supplemental information provided by the defendant's attorney. The court may also require the testimony from the psychiatrist, if necessary. The court, at each review, may continue the order authorizing involuntary medication, vacate the order, or make any other appropriate order. (*Ibid.*)

5) States, until January 1, 2025, that in the case of an inmate awaiting arraignment, trial, or sentencing, the renewal order shall be valid for no more than 180 days and follows the same requirements in the initial order authorizing involuntary medication. (Pen Code, § 2603, subd. (h)(3)(B).)

6) Required each county that administers involuntary medication to an inmate awaiting arraignment, trial, or sentencing to file, by January 1, 2021, a written report to the Senate Committee on Public Safety and the Assembly Committees on Public Safety and Judiciary summarizing the following:

   a) The number of inmates who received involuntary medication while awaiting arraignment, trial, or sentencing between January 1, 2018 and July 1, 2020;

   b) The crime for which those inmates were arrested;

   c) The total time those inmates were detained while awaiting arraignment, trial, or sentencing;

   d) The duration of the administration of involuntary medication;

   e) The reason for termination of administration of involuntary medication;

   f) The number of times, if any, that an existing order for the administration of involuntary medication was renewed; and,

   g) The reason for termination of the administration of involuntary medication. (Pen. Code, §2603, subd. (l).)

7) Sunsets the provisions of law authorizing involuntary medication of inmates detained in county jail while awaiting arraignment, trial or sentencing on January 1, 2025.

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "Spending time in a county jail is hard on anyone's mental health. But those with truly severe mental health challenges who won't voluntarily accept treatment are at a major risk of deterioration, victimization, or harming themselves or others. They often languish in horrid conditions in their cells, refusing to eat, bathe, or care for themselves. These troubling circumstances reflect the unfortunate reality that has led county jails to serve as de facto mental health institutions. It is a reality that we cannot ignore. To let a person who is gravely disabled or a danger to self or others exist in such conditions is inhumane. In such cases, involuntary medication is a form of harm reduction.

   The process to seek a judicial order to administer involuntary medication in county jail settings (Penal Code section 2603) has already been in statute for 12 years. Specifically tailored for county jail settings, it safeguards the rights of those in custody who are in need of psychiatric medication and reduces delays in the delivery of vital treatment. Further, this statutory procedure to authorize involuntary medication – sought only for those individuals whose condition is truly dire and deteriorating – is critical to counties' ability to address the most acute mental health treatment needs of those in local custody. The objective of such an order is to stabilize the individual so that they can participate in their self-care and treatment and move to a less restrictive setting. Without action by this Legislature, the statute will expire on January 1, 2025. SB 1317 extends that sunset date to January 1, 2030, allowing counties to continue using this authority in rare but necessary cases, under appropriate judicial oversight, along with a robust reporting requirements."

2) **Involuntary Medication:** The Lanterman-Petris Short ("LPS") Act authorizes an involuntary detention for varying lengths of time for the purpose of evaluation and treatment, provided certain requirements are met, such as that an individual is taken to a county-designated facility. Typically, one first interacts with the LPS Act through a "5150" hold initiated by a peace officer or other person authorized by a county, who must determine and document that the individual meets the standard for a 5150 hold. A county-designated facility is authorized to then involuntarily detain an individual for up to 72 hours for evaluation and treatment if they are determined to be, as a result of a mental health disorder, a danger to self or others, or gravely disabled.

   The professional person in charge of the county-designated facility is required to assess an individual to determine the appropriateness of the involuntary detention prior to admitting the individual. Subject to various conditions, a person who is found to be a danger to self or others, or gravely disabled, can be subsequently involuntarily detained for an initial up-to 14 days for intensive treatment, an additional 14 days (or up to an additional 30 days in counties that have opted to provide this additional up-to 30 day intensive treatment episode), and ultimately a conservatorship, which is typically for up to a year and may be extended as appropriate.

Throughout this process, existing law requires specified entities to notify family members or others identified by the detained individual of various hearings, where it is determined whether a person will be further detained or released, unless the detained person requests that this information is not provided. Additionally, a person cannot be found to be gravely disabled if they can survive safely without involuntary detention with the help of responsible family, friends, or others who indicate they are both willing and able to help. A person can also be released prior to the end of intensive treatment if they are found to no longer meet the criteria or are prepared to accept treatment voluntarily.

"Involuntary medication" means the administration of any psychiatric medication or drug to a patient by the use of force, discipline, or restraint, including administration upon a patient who lacks capacity to accept or refuse medication. Involuntary psychiatric medications may be utilized after less restrictive non-pharmaceutical alternatives have been deemed unavailable or clinically inappropriate, or in a medical emergency. If psychiatric medication is administered during an emergency, the medication shall only be that which is required to treat the emergency condition and shall be administered for only so long as the emergency exists. (Cal. Code of Regs., tit. 15 § 3999.345, subd. (a)(6).)

3) ***Riese* hearings:** The Department of Health Care Services (DHCS's) website includes the handbook "Rights for Individuals in Mental Health Facilities," which states that a capacity hearing, also called a *Riese* hearing,[1] may be held to determine whether an individual can refuse treatment with medications. The capacity hearing is conducted by a hearing officer at the facility where the individual is receiving treatment or by a judge.

The hearing officer will determine whether the individual has the capacity to consent to or refuse medication as a form of treatment. An individual's representative helps them prepare for the hearing and will answer questions or discuss concerns that they may have about the hearing process. If an individual disagrees with the capacity hearing decision, they may appeal the decision to a superior court or to a court of appeal. Their patients' rights advocate or attorney can assist them with filing an appeal.

The first of these hearings typically occur during the initial 72 hour hold. When a patient's condition necessitates an additional hold beyond the initial 72 hour and 14 day periods, a certification review hearing is held to determine that the patient still meets the criteria to be held at the beginning of each proposed hold. In addition to a certification review hearing, a new Riese hearing may be held to determine the patient's incapacity to refuse treatment prior to each new hold. The hearings impacted by this bill are those for an additional 14 day hold, initial up-to 30 day hold, and additional up-to 30 day hold.

Under current law, *Riese* hearings are required to be heard within 24 hours of the filing of the petition whenever possible. Twenty-four hour delays are permitted if parties need additional

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[1] *Riese* hearings get their name from *Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1320. In *Riese*, the Court held "absent a judicial determination of incompetence, antipsychotic drugs cannot be administered to involuntarily committed mental patients in nonemergency situations without their informed consent." Accordingly, administering psychotropic medication requires a significant amount of due process to ensure a person's basic human dignity are protected.

time to prepare or to accommodate county policies regarding the scheduling of hearings. However, current law states that hearings cannot be held beyond 72 hours of the filing of the petition.

4) **Constitutional Issues:** In *Washington v. Harper*, (1990) 494 U.S. 210, the U.S. Supreme Court held that a mentally-ill prisoner who was a danger to themselves or others may be involuntarily medicated. Furthermore, the Court held in *Riggins v. Nevada,* (1992) 504 U.S. 127 that forced medication to render a defendant competent to stand trial for murder was constitutionally permissible under certain circumstances.

   Read together, the Court "indicate(s) that the Constitution permits the Government to involuntarily to administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial, ***but only if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, talking account of less intrusive alternatives, is necessary significantly to the further important governmental trial-related interests***." (Emphasis added.) (*Sell v. United States* (2003) 539 U.S. 166, 179.)

   In *Sell*, the Court goes on to state the limited circumstances when the U.S. Constitution permits the government to administer drugs to a pretrial detainee against the mentally ill criminal detainee's will when seeking to render him competent for trial. Under those circumstances, all of the following conditions must apply:

   a) A court must find that important governmental interests are at stake. While bringing to trial a person accused of a serious crime is an important government interest, and timely prosecution satisfies the literal aspect of this element, that alone does not satisfy the purpose as there may be special circumstances that lessen its importance in a particular case. Consequently, this analysis must be done on a case-by-case basis. (*Id.* at 180; *Carter v. Superior Court* (2006) 141 Cal.App.4th 992, 1002.)

   b) A "court must conclude that involuntary medication will *significantly further* those concomitant state interests. It must find that administration of the drugs is substantially likely to render the defendant competent to stand trial." (*Sell, supra,* 539 U.S. at 181.)

   c) A court must find that the administration of the drugs is "substantially unlikely" to have side effects that interfere significantly with the person's ability to assist his or her counsel in conducting a defense. (*Id., citing Riggins v. Nevada* (1992) 504 U.S. 127, 142-145.)

   d) A court must find that involuntary medication is necessary to further those interests and that alternative, less intrusive treatments are unlikely to achieve substantially the same results. (*Id.)*

   e) A court must find that administering the medication is medically appropriate, that is to say, in the inmate's best medical interest in light of his or her condition. (*Id.)*

   The 9th Circuit Court of Appeal held that the U.S. Supreme Court standard articulated in *Harper, supra*, also applies to pretrial detainees who are a danger to self or others. (*United States v. Loughner*, (2012) (9th Cir.) 672 F.3d 731, 750.) The court in *Loughner* stated, ". . . , we now hold that when the government seeks to medicate a detainee—whether pretrial or

post-conviction—on the grounds that he is a danger to himself or others, the government must satisfy the standard set forth in *Harper*…'[T]he Due Process Clause permits the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs against his will, if the inmate is dangerous to himself or others and the treatment is in the inmate' s medical interest.'" (*Loughner* at 752, citing *Harper, supra* at 227.)

The author may wish to consider whether specification should be included in the bill about ensuring a fidelity to the medical standard of care so inmates are not physically harmed by the medication, and that people are not just warehoused in the county jail because there is no "community based" treatment.

5) **Argument in Support**: According to *Psychiatric Physicians Alliance of California*: With the marked reduction in psychiatric hospital beds in California communities in the last 5 decades, county jails have become the de facto default destination to house untreated, often homeless, mentally ill persons. In a jail setting, many of these inmates who are admitted – often very sick with a mental disorder – become even more delusional, disorganized, and disruptive in confinement. Mentally ill individuals tend to spend much longer in the pretrial process than their peers without mental illness when charged with the same crimes. Many weeks, and more likely months, may pass before adjudication. Many of these inmates refuse to accept medication, in fact are so sick they are not able to recognize they are ill and need help.

   Under these circumstances psychotic individuals, for instance, who are delusional and experiencing hallucinations cannot follow correction officer orders, may bang their heads against walls, scream for hours at all hours, or smear feces around their cells. These individuals obtain a significant benefit from medication, but until AB 720 (Eggman, 2017) was these individuals languished for lack of medication unless they accepted them voluntarily. Case law, most recently United States v. Loughner, in the 9th Circuit Court of Appeal (2012), has determined that the same standards for involuntary medication of convicted inmates who are dangerous or gravely disabled because of a mental disorder apply to pretrial detainees who are dangerous or gravely disabled because of a mental disorder. The proposal in AB 1317 guarantees that a vital tool will be continued in a statute which lies squarely within the clearly defined Loughner legal parameters.

6) **Argument in Opposition**: According to the *California Public Defenders Association*: We share with the author and the sponsor the goal of alleviating our severely mentally ill clients' suffering in the jail. While appreciating the author's willingness to engage with us, we remain concerned because there is no mandatory requirement that any administration and treatment with powerful psychotropic involuntary medication be done utilizing the medical standard of care and that there is no enforcement of the provision that involuntary medication in the jail be a last resort, not a first option. During our discussions with the author for the last three months, we have significantly narrowed our proposed amendments to the following:

   > (b) If a psychiatrist determines that an inmate should be treated with psychiatric medication, but the inmate does not consent, the inmate may be involuntarily treated with the medication. Treatment may be given on either a nonemergency basis as provided in subdivision (c), or on an emergency or interim basis as provided in subdivision (d). ***Any such treatment shall be consistent with the standard of care.***

(5) The jail has made a documented attempt to locate an available bed for the inmate in a ~~community-based~~ treatment facility in lieu of seeking to administer involuntary medication. The jail shall transfer that inmate to such a facility only if the facility can provide care for the mental health needs, and the physical health needs, if any, of the inmate and upon the agreement of the facility. In enacting the act that added this paragraph, it is the intent of the Legislature to recognize the lack of ~~community-based~~ ***treatment*** beds and the inability of many facilities to accept transfers from correctional facilities. ***It is sufficient for the sheriff or their designee to show due diligence of the attempt to locate an available bed by submitting a declaration under penalty of perjury.***

Santa Clara County, the sponsor of SB 1317, has numerous policies and safeguards in place including their own acute mental health facility for jailed individuals. Unfortunately, other counties are not as well-resourced and do not have access to the same level of mental health care for incarcerated individuals. Involuntary Psychiatric Medication: Psychiatric medications can cause significant liver and other organ damage, including increasing the risk of diabetes. When an individual knowingly consents to the use of such medication, they are presented with the risks and benefits. Such is not the case for individuals who are involuntarily medicated.

The Department of State Hospitals facilities routinely monitor individuals with blood tests and other lab tests. Santa Clara County's practice appears to be consistent with the Department of State Hospitals. According to the Santa Clara County Jail Reform website, Santa Clara County responded to recommendations for needed reforms stating that they do the following:

Medications for medical and behavioral health are monitored using lab testing as appropriate to determine levels as per the recommendation of the manufacturer and medical decision making. Voluntary versus involuntary medication use is reviewed on a case by cases basis and is dependent on review by a physician or psychiatrist.
https://jailreforms.sccgov.org/summarized-recommendations/inmatehealthcare-hlc#3925188384-4062458531

Community Based or Other Treatment Beds

Again, Santa Clara County has their own treatment facility in the jail. In other counties, such as Contra Costa, the sheriff or county counsel either does not make a robust attempt to find a treatment facility before attempting involuntary medication in the jail or in counties such as Alameda, they transfer the individual to an acute non-carceral county facility. CPDA and our members want the same protections that Santa Clara County affords to its incarcerated severely mentally ill individuals to be extended to all Californians who are incarcerated and subject to involuntary medication orders.

7) **Related Legislation**:

a) AB 2547 (Ta) requires a court to conduct a hearing on a defendant's eligibility for mental health diversion when they are declared incompetent to stand trial (IST) and charged with a misdemeanor. AB 2547 failed passage in this committee.

b) AB 2692 (Papan), specifies that the diversion period for an IST defendant commences when the defendant is admitted to receive treatment, as specified. AB 2692 is pending in the Senate Committee on Public Safety.

c) SB 1323 (Menjivar), would require the court, upon a finding a defendant charged with a felony IST, to determine if it is in the interests of justice to restore the defendant to competence, and if the restoration of the defendant's mental competence is not in the interests of justice, to hold a hearing to consider granting mental health diversion or other programs to the defendant, as specified, and, if none of those solutions are appropriate, to dismiss the charges against the defendant. SB 1323 is pending in this committee.

d) SB 1400 (Stern), removes, for misdemeanor IST proceedings, the option for the court to dismiss the case and would instead require the court to hold a hearing to determine if the defendant is eligible for diversion. SB 1400 is pending in this committee.

8) **Prior Legislation**:

a) AB 720 (Eggman), Chapter 347, Statutes of 2017, applies the existing framework for involuntary medication of a person in county jail after being sentenced on a criminal conviction, to all inmates in county jail

b) AB 1907 (Lowenthal), Chapter 814, Statutes of 2012, created the involuntary medication statute for inmates.

c) AB 1114 (Lowenthal), Chapter 665, Statutes of 2011, changed the procedures for involuntary medication of inmates in CDCR.

d) AB 2380 (Dymally), of the 2005-06 Legislative Session, would have clarified that "treatment" for medically disordered offenders paroled to other facilities for treatment includes involuntary medication. AB 2380 failed passage in Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Families Advocating for The Seriously Mentally Ill
County of Los Angeles Board of Supervisors
County of Santa Clara
Los Angeles County Professional Peace Officers Association
Psychiatric Physicians Alliance of California (PPAC)
Steinberg Institute

Opposition

California Public Defenders Association

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

Date of Hearing: June 18, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1400 (Stern) – As Amended April 11, 2024

SUMMARY: Remove express statutory authority for a court to dismiss a case where a misdemeanor defendant has been found incompetent to stand trial and instead require the court to determine if defendant is eligible for other programs or treatment. Specifically, **this bill**:

1) Requires the court to hold a hearing to determine whether a misdemeanor IST defendant is eligible for mental health diversion.

2) States that if the court determines that the defendant is ineligible or unsuitable for mental health diversion, or if the defendant is charged with a new offense as specified or is not performing satisfactorily in the program, the court shall hold a hearing to determine whether to order modification of an mental health diversion treatment plan, refer the defendant to assisted outpatient treatment, refer the defendant to the county conservatorship investigator for possible conservatorship proceedings, or refer the defendant to the CARE program.

3) Eliminates the express authority of the court to dismiss the charges in the interests of justice but clarifies that nothing in the provisions of this bill limits a court's discretion pursuant to Penal Code Section 1385.

4) Provides that if the defendant is found IST on a misdemeanor offense and a felony offense and committed to treatment, the misdemeanor offense shall be dismissed.

5) States that, notwithstanding any other law, a misdemeanor offense for which a defendant may be placed in a mental health diversion program includes a misdemeanor violation of driving under the influence. However, this does not limit the authority of the Department of Motor Vehicles to take administrative action concerning the driving privileges of a person arrested for misdemeanor driving under the influence.

EXISTING LAW:

1) States that a person cannot be tried or adjudged to punishment or have his or her probation, mandatory supervision, postrelease community supervision, or parole revoked while that person is mentally incompetent. (Pen. Code § 1367, subd. (a).)

2) Requires, when counsel has declared a doubt as to the defendant's competence, the court to hold a hearing determine whether the defendant is incompetent to stand trial (IST). (Pen. Code § 1368, subd. (b).)

3) Provides that, except as provided, when an order for a hearing into the present mental competence of the defendant has been issued, all proceedings in the criminal prosecution

shall be suspended until the question of whether the defendant is IST is determined. (Pen. Code § 1368, subd. (c).)

4) States that a person who has been found to be IST may be eligible for mental health diversion. (Pen. Code, § 1001.36, subd. (b)(1)(D).)

5) Specifies how the trial on the issue of mental competency shall proceed. (Pen. Code § 1369.)

6) Requires the court to appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. (Pen. Code, § 1369, subd. (a)(1).)

7) Provides that if the defendant or defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof. One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution. (Pen. Code, § 1369, subd. (a)(1).)

8) States that in a jury trial, the court shall charge the jury, instructing them on all matters of law necessary for the rendering of a verdict. It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. The verdict of the jury shall be unanimous. (Pen. Code, §1369, subd. (f).)

9) States that only a court trial is required to determine competency in a proceeding for a violation of probation, mandatory supervision, postrelease community supervision, or parole. (Pen Code, § 1369, subd. (g).)

10) Provides that if a defendant is found mentally competent, the criminal process shall resume and the trial on the offense charged or the hearing on the alleged violation shall proceed. (Pen. Code, § 1370.01, subd. (a).)

11) States that a person who has been found to be IST may be eligible for mental health diversion. (Pen. Code, § 1001.36, subd. (b)(1)(D).)

12) States that if the defendant is found mentally incompetent, the trial, or judgement, or hearing on the alleged violation shall be suspended and the court may do either of the following:

    a) Conduct a hearing to determine if the defendant is eligible for mental health diversion and grant diversion for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter; or,

    b) Dismiss the charges pursuant to Penal Code section 1385. In this case, the court shall dismiss a copy of the order to the county behavioral health director or the director's designee. (Pen. Code, § 1370.01, subd. (b).)

13) Authorizes a judge or magistrate, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, to order an action to be dismissed, as

specified. (Pen. Code, § 1385, subd. (a).)

14) Provides that if the court opts to conduct a hearing to determine whether the defendant is eligible for mental health diversion, the hearing shall be held no later than 30 days after the finding of incompetence. If the hearing is delayed beyond 30 days, the court shall order the defendant to be released on their own recognizance pending the hearing. (Pen. Code, § 1370.01, subd. (b)(1)(B).)

15) States that if the court finds the defendant ineligible for diversion, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following:

    a) Order modification of the treatment plan in accordance with a recommendation from the treatment provider;

    b) Refer the defendant to assisted outpatient treatment (AOT) only if in a county where services are available and the agency agrees to accept responsibility for the treatment of the defendant. If the defendant is accepted into AOT, the charges shall be dismissed in the interests of justice;

    c) Refer the defendant to county conservatorship investigator for possible conservatorship proceedings. If the outcome of the conservatorship proceedings results in the establishment of conservatorship, the charges shall be dismissed in the interests of justice;

    d) Refer the defendant to the CARE program. If the defendant is accepted into CARE, the charges shall be dismissed in the interests of justice. (Pen. Code, § 1370.01, subd. (b)(1)(D).)

16) States that if the defendant is found IST and is on a grant of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision. If the revocation matter is dismissed, the court may modify the terms and conditions of supervision to include appropriate mental health treatment. (Pen. Code, § 1370.01, subd. (c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Author's Statement**: According to the author, "My bill, Senate Bill 1400, aims to close the gaps in treatment for our MIST population. This bill would prevent over a thousand individuals a year from falling into the prison-to-street pipeline by removing the option to dismiss cases without diversion or a warm handoff. SB 1400 represents a critical step in ensuring that individuals deemed incompetent to stand trial receive the support and treatment they need to prevent further involvement in the criminal justice system."

2) **Background: Mental Competency in Criminal Proceedings**: The Due Process Clause of the United States Constitution prohibits the criminal prosecution of a defendant who is not mentally competent to stand trial. Existing law provides that if a person has been charged

with a crime and is not able to understand the nature of the criminal proceedings and/or is not able to assist counsel in his or her defense, the court may determine that the offender is IST. (Pen. Code § 1367.) When the court issues an order for a hearing into the present mental competence of the defendant, all proceedings in the criminal prosecution are suspended until the question of present mental competence has been determined. (Pen. Code, §1368, subd. (c).)

In order to determine mental competence, the court must appoint a psychiatrist or licensed psychologist to examine the defendant. If defense counsel opposes a finding on incompetence, the court must appoint two experts: one chosen by the defense, one by the prosecution. (Pen. Code, § 11369, subd. (a).) The examining expert(s) must evaluate the defendant's alleged mental disorder and the defendant's ability to understand the proceedings and assist counsel, as well as address whether antipsychotic medication is medically appropriate. (Pen. Code, § 1369, subd. (a).)

Both parties have a right to a jury trial to decide competency. (Pen. Code, § 1369.) A formal trial is not required when jury trial has been waived. (*People v. Harris* (1993) 14 Cal.App.4th 984.) The burden of proof is on the party seeking a finding of incompetence. (*People v. Skeirik* (1991) 229 Cal.App.3d 444, 459-460.) Because a defendant is initially considered competent to stand trial (*Medina v. California* (1992) 505 U.S. 437), usually this means that the defense bears the burden of proof to establish incompetence. Therefore, defense counsel must first present evidence to support mental incompetence. However, if defense counsel does not want to offer evidence to have the defendant declared incompetent, the prosecution may. Each party may offer rebuttal evidence. Final arguments are presented to the court or jury, with the prosecution going first, followed by defense counsel. (Pen. Code, § 1369, subds. (b)-(e).)

For defendants charged with a felony, if after an examination and hearing the defendant is found IST, the criminal proceedings are suspended and the court shall order the defendant to be referred to DSH, or to any other available public or private treatment facility, including a community-based residential treatment system if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status, except as specified. (Pen. Code § 1368, subd. (c) and 1370, subd. (a)(1)(B).) The court may also make a determination as to whether the defendant is an appropriate candidate for mental health diversion pursuant to Penal Code section 1001.36.

The maximum term of commitment for an IST defendant charged with a felony is two-years, however, no later than 90 days prior to the expiration of the defendant's term of commitment, if the defendant has not regained mental competence shall be returned to the committing court and the court shall not order the defendant returned to the custody of DSH. (Pen. Code, § 1370, subd. (c)(1).) With the exception of proceedings alleging a violation of mandatory supervision, the criminal action may be dismissed in the interests of justice. (Pen. Code, § 1370, subd. (d).)

For defendants charged with a misdemeanor, if the defendant is found IST, the proceedings shall be suspended and the court may do either of the following: 1) conduct a hearing to determine whether the defendant is eligible for mental health diversion; or 2) dismiss the charges pursuant to Penal Code section 1385. If the charges are dismissed, the court shall

transmit a copy of the order to county behavioral health director or the director's designee. (Pen. Code, § 1370.01, subd. (b).)

If a misdemeanor defendant is found eligible for diversion, the court may grant diversion for a period not to exceed one year from the date the individual is accepted into diversion or the maximum term of imprisonment provided by law for the most serious offense charged in the complaint, whichever is shorter. (Pen. Code, § 1370.01, subd. (b)(1)(A).)

If the court finds that the defendant is not eligible for diversion, the court may, after notice to the defendant, defense counsel, and the prosecution, hold a hearing to determine whether to do any of the following: 1) order modification of the treatment plan in accordance with a recommendation from the treatment provider; 2) refer the defendant to assisted outpatient treatment (AOT); if the defendant is accepted into AOT, the charges shall be dismissed; 3) refer the defendant to the county conservatorship investigator for possible conservatorship if the defendant appears to be gravely disabled, as defined; if a conservatorship is established, the charges shall be dismissed; or 4) refer the defendant to the CARE program; if the defendant is accepted into CARE the charges shall be dismissed. (Pen. Code, § 1370.01, subd. (b)(1)(D).)

This bill requires that upon a finding that a misdemeanor defendant is IST, the court shall hold a hearing to determine whether the defendant is eligible for mental health diversion. The bill states that if the defendant is ineligible for diversion, the court must take one of three actions which include modification of the treatment plan, referral to AOT, or referral for possible conservatorship. This bill removes the express authority for the court to dismiss the misdemeanor charges against a defendant who is ineligible for diversion. Additionally, the bill removes the provision of law that states that if the defendant is on a grant of probation for a misdemeanor offense, the court shall dismiss the pending revocation matter and may return the defendant to supervision.

According to information provided by the author of this bill, since July 2022, approximately 80 individuals per month were found IST on a misdemeanor charge in Los Angeles County and assessed by the Office of Diversion and Reentry team. Of those assessed, about 75% were found to be suitable and released to the misdemeanor IST diversion program.

As noted above, existing law states that if a misdemeanor defendant is found ineligible for diversion, the court may order different treatment including referral to AOT or conservatorship, or the court may dismiss the case. Thus, while 25% of those assessed may not be suitable for diversion, it is unclear how many of those cases are being dismissed versus first being referred to other treatment options.

3) **Dismissals in the Interest of Justice**: Penal Code section 1385 gives discretion to judges to strike or dismiss a prior conviction or added punishment in the interests of justice. The California Supreme Court has ruled that even if a statute prescribing a particular sentence uses the term "shall," this is insufficient to evidence an intent that the trial court was precluded from exercising such discretionary powers. (See *People v. Williams* (1981) 30 Cal.3d 470.) In *Williams*, the Court reviewed the history and purpose of Penal Code section 1385:

> The trial court's power to dismiss an action has been recognized by statute since the first session of the Legislature in 1850. The rules of criminal procedure enacted in that session included the provision that "[the] Court may, either of its own motion, or upon the application of the District Attorney, and in furtherance of justice, order any action, after indictment, to be dismissed; but in such case the reasons of the dismissal shall be set forth in the order, which must be entered on the minutes." (Stats. 1850, ch. 119, § 629, p. 323.) With slight changes, this provision became section 1385 when the Penal Code was enacted in 1872.
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> . . . .
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> "A determination whether to dismiss in the interests of justice after a verdict involves a balancing of many factors, including the weighing of the evidence indicative of guilt or innocence, the nature of the crime involved, the fact that the defendant has or has not been incarcerated in prison awaiting trial and the length of such incarceration, the possible harassment and burdens imposed upon the defendant by a retrial, and the likelihood, if any, that additional evidence will be presented upon a retrial. When the balance falls clearly in favor of the defendant, a trial court not only may but should exercise the powers granted to him by the Legislature and grant a dismissal in the interests of justice." (*People v. Superior Court of Marin County (Howard)* (1968) 69 Cal. 2d 491, 505.)
>
> The court also discussed the policy served by [the section at issue in the case]. "Mandatory, arbitrary or rigid sentencing procedures invariably lead to unjust results. Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case. Only the trial judge has the knowledge, ability and tools at hand to properly individualize the treatment of the offender. Subject always to legislative control and appellate review, trial courts should be afforded maximum leeway in fitting the punishment to the offender." (*People v. Dorsey* (1972) 28 Cal.App3d 15, 18.)

(*People v. Williams*, *supra*, 30 Cal.3d at 479-482.) The Court then looked to the legislative intent and found that there was no indication of contrary legislative intent and thus held that absent a clear expression of legislative intent in this regard, a sentencing statute will not be construed to abrogate a trial court's general section 1385 power to strike. (*Id.* at p. 482.)

Likewise, striking the express authority in a separate statute for a court to dismiss charges pursuant Penal Code 1385 does not abrogate the court's power to exercise its discretion to do so when the court finds that this would be in furtherance of justice. This bill clarifies that nothing in the bill's provisions limit a court's discretion pursuant to Penal Code Section 1385.

4) **Mental Health Diversion**: Diversion is the suspension of criminal proceedings for a prescribed time period with certain conditions. A defendant may not be required to admit guilt as a prerequisite for placement in a pretrial diversion program. If diversion is successfully completed, the criminal charges are dismissed and the defendant may, with certain exceptions, legally answer that he or she has never been arrested or charged for the diverted offense. If diversion is not successfully completed, the criminal proceedings resume, however, a hearing to terminate diversion is required.

In 2018, the Legislature enacted a law authorizing pretrial diversion of eligible defendants with mental disorders. Under the mental health diversion law, in order to be eligible for diversion, 1) the defendant must suffer from a mental disorder, except those specifically excluded, 2) that played a significant factor in the commission of the charged offense; 3) in the opinion of a qualified mental health expert, the defendant's symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment; 4) the defendant must consent to diversion and waive the right to a speedy trial; 5) the defendant must agree to comply with treatment as a condition of diversion; and 6) the court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined, if treated in the community. (Pen. Code, § 1001.36, subds. (b)-(c).) The defendant is not eligible if they are charged with specified crimes. (Pen. Code, § 1001.36, subd. (d).)

In addition to the eligibility requirements of the defendant, mental health treatment program must meet the following requirements: 1) the court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant; 2) the defendant may be referred to a program of mental health treatment utilizing existing inpatient or outpatient mental health resources; 3) and the program must submit regular reports to the court and counsel regarding the defendant's progress in treatment. (Pen. Code, § 1001.36, subd. (f).) The court has the discretion to select the specific program of diversion for the defendant. The county is not required to create a mental health program for the purposes of diversion, and even if a county has existing mental health programs suitable for diversion, the particular program selected by the court must agree to receive the defendant for treatment. (Pen. Code, § 1001.36, subd. (f)(1)(A).)

The diversion program cannot last more than two years for a felony and cannot last for more than a year on a misdemeanor. (Pen. Code, § 1001.36, subd. (f)(1)(C).)If there is a request for victim restitution, the court shall conduct a hearing to determine whether restitution is owed to any victim as a result of the diverted offense and, if owed, order its payment during the period of restitution. (Pen. Code, § 1001.36, subd. (f)(1)(D).)

The stated purpose of the diversion program is "to promote all of the following: . . . Allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings." (Pen. Code, § 1001.35, subd. (b).)

Under existing law, when a misdemeanor defendant is found to be IST, the court may opt to conduct a hearing to determine whether a defendant is eligible for mental health diversion. This bill requires the court to conduct this hearing. If the defendant is not eligible or suitable, the defendant is not performing satisfactorily in the program, or the defendant is charged with a new offense as specified, this bill requires the court to hold a hearing to determine whether to order modification of an existing mental health diversion treatment plan, refer the defendant to AOT, refer the defendant to the county conservatorship investigator for possible conservatorship proceedings, or refer the defendant to the CARE program.

This bill also codifies the recent ruling in *Persiani v. Superior Court*, (2024) 100 Cal. App. 5th 48, where the Court of Appeal ruled that trial court has authority under Penal Code

section 1370.01, subdivision (b)(1)(A) to order treatment through mental health diversion for a mentally incompetent misdemeanor defendant charged with driving under the influence. Specifically, the court found that Vehicle Code section 23640 does not prohibit a court from exercising its discretion under the misdemeanor IST statute (Penal Code section 1370.01) to order treatment through mental health diversion for an IST defendant charged with misdemeanor driving under the influence. The court also noted that misdemeanor driving under the influence is not one of the excluded offenses in the mental health diversion statute. (*Id.* at pp. 62-63.)

5) **Argument in Support**: According to *Treatment Advocacy Center*, "I am writing on behalf of Treatment Advocacy Center to express support for SB 1400, designed to rectify a critical loophole in SB 317 (Stern 2021). This loophole has resulted in the dismissal of a multitude of misdemeanor cases where defendants are deemed incompetent to stand trial (IST), without any connection to necessary treatment.

"SB 1400 aims to address this issue by eliminating the option to dismiss Misdemeanor IST (MIST) cases outright and mandating court hearings to evaluate the eligibility of MIST individuals for mental health diversion. If diversion is not feasible, the court must then determine whether referring the individual to assisted outpatient treatment (AOT), a conservatorship investigation, the CARE program, or to modify the individual's existing treatment plan is appropriate.

"Under California Penal Code Sec. 1367, a defendant is mentally incompetent if they are unable to comprehend the nature of the criminal proceedings or to assist counsel in their defense, as a result of a mental health disorder or developmental disability. Such incompetence can result from severe mental illness. Dismissing MIST defendants with severe mental illness without connecting them to treatment often leads to a cycle of reoffending, repeated hospitalizations, homelessness, and incarceration.

"SB 1400 aims to break this cycle by connecting vulnerable individuals with treatment. By removing the option to dismiss MIST cases without first exploring mental health diversion and other treatment alternatives, SB 1400 fills a crucial gap in care that contributes to the large number of MIST cases. It is important to note that courts will still retain discretion to dismiss charges in furtherance of justice under Penal Code 1385."

6) **Argument in Opposition**: According to *Disability Rights California*, "SB 1400 would remove the option for the court to dismiss misdemeanor charges against defendants deemed incompetent to stand trial (IST). According to the Stepping Up Initiative, people with mental illness are incarcerated in jails approximately 2 million times each year across the nation.1 The Los Angeles County Sheriff recently reported that 42% of individuals incarnated in Los Angeles County Jail have a mental illness.2 Incarceration can trigger and worsen symptoms of mental illness.

"SB 1400 would increase the number of individuals with mental illness stuck in jail for low-level criminal charges by eliminating options for the court to dismiss misdemeanor charges for individuals deemed IST."

7) **Related Legislation**:

a) AB 2547 (Ta) requires a court to conduct a hearing on a defendant's eligibility for mental health diversion when they are declared incompetent to stand trial (IST) and charged with a misdemeanor. AB 2547 failed passage in this committee.

b) AB 2692 (Papan), specifies that the diversion period for an IST defendant commences when the defendant is admitted to receive treatment, as specified. AB 2692 is pending in the Senate Committee on Public Safety.

c) SB 1317 (Wahab), would extend the sunset date until January 1, 2030 on the provision of law authorizing involuntary medication of county jail inmates who are awaiting arraignment, trial, or sentencing. SB 1317 will be heard in this committee today.

d) SB 1323 (Menjivar), would require the court, upon a finding a defendant charged with a felony IST, to determine if it is in the interests of justice to restore the defendant to competence, and if the restoration of the defendant's mental competence is not in the interests of justice, to hold a hearing to consider granting mental health diversion or other programs to the defendant, as specified, and, if none of those solutions are appropriate, to dismiss the charges against the defendant. SB 1323 is pending in this committee.

8) **Prior Legislation**:

a) SB 317 (Stern), Chapter 599, Statutes of 2021, revised the procedures when a defendant is found mentally incompetent to stand trial (IST) on misdemeanor charges. Allowed a defendant to earn conduct credits when he or she is committed to a state hospital or other mental health treatment facility as IST in the same manner as if they were held in county jail.

b) SB 1187 (Beall), Chapter 1008, Statutes of 2018, reduced the maximum term for commitment to a treatment facility when a defendant has been found incompetent to stand trial (IST) on a felony from three years to two years. Specified that when a defendant has been found IST and is held in a county jail treatment center while undergoing treatment for restoration to competency, that person is entitled to custody credits in the same manner as any other inmate confined to a county jail.

c) AB 1810 (Committee on Budget), Chapter 34, Statutes of 2018, specified that when a defendant is determined to be IST, the court can find that they are an appropriate candidate for mental health diversion.

d) AB 1214 (Stone), Chapter 991, Statutes of 2018, revised the procedures to determine the mental competence of a juvenile charged with a crime.

e) AB 2186 (Lowenthal), Chapter 733, Statutes of 2014, made changes to the process of involuntary administration of antipsychotic mediation of individuals who are found to be incompetent to stand trial and confined in a state hospital or county jail.

f) SB 1412 (Nielsen), Chapter 759, Statutes of 2014, applied procedures relative to persons who are incompetent to stand trial (IST) to persons who may be mentally incompetent and face revocation of probation, mandatory supervision, postrelease community

supervision (PRCS), or parole.

g) SB 586 (Wiggins), Chapter 556, Statutes of 2007, allowed county jails or other county penal facilities to be used as "treatment facilities", as specified, and are designed to restore a criminal defendant's mental competency.

REGISTERED SUPPORT / OPPOSITION:

Support

Treatment Advocacy Center

Opposition

California District Attorneys Association
California Public Defenders Association
Disability Rights California

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

Date of Hearing: June 18, 2024
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

SB 1518 (Committee on Public Safety) – As Amended April 16, 2024

SUMMARY: Makes technical and non-controversial changes to various code sections relating to criminal justice laws. Specifically, **this bill**:

1) Specifies that participation in an institutional firehouse must also be successful, as specified, to be qualifying for record relief and makes other non-substantive clarifying changes.

2) Repeals Penal Code Section 1463.5.

3) Makes technical changes in Penal Code Section 2620 to reflect the unification of the superior and municipal courts.

4) Provides that the certification from the Department of Justice ("DOJ") required under Penal Code Section 13511.5 shall state that the applicant is eligible to possess, receive, own and purchase a firearm under state and federal law.

5) Corrects a drafting error describing the penalty for repeat offenses for possessing nine or more catalytic converters.

6) Updates department names, makes clarifying changes, and corrects a number of cross-references and errors in various codes.

EXISTING LAW:

1) States that an incarcerated person who successfully participates as an incarcerated hand crew member in the California Conservation Camp program or in a county incarcerated hand crew, or participates at a California Department of Corrections and Rehabilitation (CDCR) institutional firehouse is, upon release, eligible for record expungement, as specified. (Pen. Code, § 1203.4b, subd. (a).)

2) Provides that the distribution of specified funds and assessments collected for crimes to be determined and made based on probability sampling, which shall be procedural in nature. The procedure for the sampling shall be prescribed by the county auditor and approved by the board of supervisors and a majority of cities within a county, and the reasonableness of the distribution shall be verified during a specified audit. (Pen. Code, § 1463.5.)

3) Provides that when a person imprisoned in state prison is brought before any court to be tried for a felony, or other specified matters, an order for the prisoner's temporary removal from the prison must be made by the superior court where the action is to be heard. (Pen. Code, § 2620.)

4) Requires each applicant for admission to a basic training course certified by the Commission on Peace Officers Standards and Training ("POST") that includes the carrying and use of firearms, and is not sponsored by an agency or is not a peace officer, to submit a written certification from the Department of Justice ("DOJ") that the person has no criminal background check that would disqualify them from owning or controlling a firearm. (Pen. Code, § 13511.5.)

5) Establishes the penalties for possessing nine or more catalytic converters for persons acting as an automobile dismantler without meeting certain business and licensing requirements, with increased penalties for subsequent violations. (Veh. Code, § 11500, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Purpose of This Bill:** This is the annual public safety omnibus bill. In past years, the omnibus bill has been introduced by all members of the Committee on Public Safety. This bill is similar to the ones introduced as Committee bills in the past, in that it has been introduced with the understanding that the bill's provisions make only technical or minor substantive but non-controversial changes to the law and there is no opposition by any member of the Legislature or recognized group to the proposal. This procedure has allowed for introduction of fewer minor bills and has saved the Legislature time and expense over the years.

2) **Clarification for Successful Completion of Fire Camp:** Penal Code section 1203.4b authorizes expungement of a person's conviction following successful completion of a fire camp. This bill would clarify that participation in an institutional firehouse must also be successful.

3) **Repeals Penal Code Section 1463.5**: Penal Code Section 1463.5 authorizes the distribution of specified funds and assessments collected for crimes to be determined and made based on probability sampling. This method for calculating trial court fund distribution is reportedly no longer in use, indicating this code section is obsolete. This bill would repeal this section.

4) **DOJ Firearm Certification:** Existing law requires specified applicants for admission to POST's basic training course that includes the carrying and use of firearms to submit a written DOJ certification that the applicant has no criminal background check that would disqualify them from owning or controlling a firearm. SB 1518 would provide that the certification from the DOJ shall state that the applicant is eligible to possess, receive, own and purchase a firearm under state and federal law.

5) **Clarifying Punishment for Possessing Nine or More Catalytic Converters:** Existing law outlines the penalties for possessing nine or more catalytic converters for persons acting as an automobile dismantler without meeting specified requirements, with increased penalties for subsequent violations. SB 1518 would correct a drafting error describing the penalty for repeat offenses for possessing nine or more catalytic converters.

6) **Other Changes**: This bill would make a number of other technical or clarifying changes. These changes include making technical changes in Penal Code Section 2620 to reflect the

unification of the superior and municipal courts, updating department names, deleting erroneous cross-references, and correcting a number of cross-references and errors in various codes.

7) **Related Legislation:**

a) AB 2621 (Gabriel) of the 2023-2024 Legislative Session, would add new requirements to the hate crimes guidelines and course of instruction that POST provides to peace officers, including technical changes to Penal Code Section 13519.6 that are substantially similar to this bill. AB 2621 is pending hearing in the Senate Appropriations Committee.

8) **Prior Legislation**:

a) SB 883 (Committee on Public Safety), Chapter 311, Statutes of 2023, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

b) SB 1493 (Committee on Public safety), Chapter 197, Statutes of 2022, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

c) SB 827 (Committee on Public Safety) Chapter 434, Statutes of 2021, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

d) SB 781 (Committee on Public Safety) Chapter 256, Statutes of 2019, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

e) SB 1494 (Committee on Public Safety) Chapter 423, Statutes of 2018, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

f) SB 811 (Committee on Public Safety) Chapter 269, Statutes of 2017, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

g) SB 1474 (Committee on Public Safety) Chapter 59, Statutes of 2016, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

h) SB 795 (Committee on Public Safety) Chapter 499, Statutes of 2015, made technical and corrective changes, as well as non-controversial substantive changes, to various code section relating to criminal justice laws.

REGISTERED SUPPORT / OPPOSITION:

Support

None submitted.

Opposition

None submitted.

Analysis Prepared by: Ilan Zur