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# California State Assembly

## PUBLIC SAFETY



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## AGENDA

Tuesday, July 2, 2024  
9 a.m. -- State Capitol, Room 126

### REGULAR ORDER OF BUSINESS

#### HEARD IN SIGN-IN ORDER

#### LIMITED TESTIMONY FOR SUPPORT AND OPPOSITION

#### TWO WITNESSES - TWO MINUTES EACH

- |     |         |              |  |
|-----|---------|--------------|--|
| 1.  | SB 99   | Umberg       | Law enforcement agencies: military equipment.                        |
| 2.  | SB 268  | Alvarado-Gil | Crimes: serious and violent felonies.                                |
| 3.  | SB 285  | Allen        | Criminal procedure: sentencing.                                      |
| 4.  | SB 804  | Dahle        | Criminal procedure: hearsay testimony at preliminary hearings.       |
| 5.  | SB 820  | Alvarado-Gil | Cannabis: enforcement: seizure of property.                          |
| 6.  | SB 898  | Skinner      | Criminal procedure: sexual assault resentencing.                     |
| 7.  | SB 925  | Wiener       | City and County of San Francisco: merchandising sales.               |
| 8.  | SB 987  | Menjivar     | Pretrial release: pretrial assessment agencies.                      |
| 9.  | SB 1001 | Skinner      | Death penalty: intellectually disabled persons.                      |
| 10. | SB 1002 | Blakespear   | Firearms: prohibited persons.  |
| 11. | SB 1057 | Menjivar     | Juvenile justice coordinating council.                               |
| 12. | SB 1074 | Jones        | Sexually violent predators.(Urgency)                                 |
| 13. | SB 1128 | Portantino   | Sex offender registration: unlawful sexual intercourse with a minor. |
| 14. | SB 1132 | Durazo       | County health officers.  |
| 15. | SB 1133 | Becker       | Bail.  |
| 16. | SB 1161 | Becker       | Juveniles.   |
| 17. | SB 1202 | Newman       | Department of Corrections and Rehabilitation: reports: assaults.     |
| 18. | SB 1254 | Becker       | CalFresh: enrollment of incarcerated individuals.                    |
| 19. | SB 1256 | Glazer       | Crimes: prostitution: DNA collection.                                |

- |     |         |           |  |
|-----|---------|-----------|--|
| 20. | SB 1262 | Archuleta | Crimes: supervised release.                    |
| 21. | SB 1323 | Menjivar  | Criminal procedure: competence to stand trial. |
| 22. | SB 1328 | Bradford  | Elections.(Urgency)                            |
| 23. | SB 1414 | Grove     | Crimes: solicitation of a minor.               |
| 24. | SB 1502 | Ashby     | Controlled substances: xylazine.               |

**VOTE ONLY**

- |     |        |              |  |
|-----|--------|--------------|--|
| 25. | SB 89  | Ochoa Bogh   | Crimes: stalking.                                  |
| 26. | SB 226 | Alvarado-Gil | Controlled substances: armed possession: fentanyl. |

Date of Hearing: July 2, 2024  
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 99 (Umberg) – As Amended June 10, 2024

**SUMMARY:** Prohibits a governing body from approving a military equipment use policy if it contains military equipment from a manufacturer or seller that the United States Armed Forces has been prohibited by federal law or regulation from purchasing.

**EXISTING LAW:**

- 1) Requires a law enforcement agency to obtain approval of the governing body, by an ordinance adopting a military equipment use policy at a regular meeting of the governing body before, among other things, requesting, acquiring, or seeking funds for military equipment. (Gov. Code, § 7071, subd. (a).)
- 2) Defines “military equipment” to include specialized firearms and ammunition of less than .50 caliber, including assault weapons, as specified, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency. (Gov. Code, § 7070, subd. (c)(10).)
- 3) Defines “governing body” as the elected body that oversees a law enforcement agency or, if there is no elected body that directly oversees the law enforcement agency, the appointed body that oversees a law enforcement agency. (Gov. Code, § 7070, subd. (a).)
- 4) Defines “law enforcement agency” as a police department, sheriff’s department, district attorney’s office, or county probation department. (Gov. Code, § 7070, subd. (b)(1)-(4).)
- 5) Requires a law enforcement agency to submit a proposed military equipment use policy to the governing body and make those documents available on the law enforcement agency’s internet website at least 30 days prior to any public hearing concerning the military equipment at issue. (Gov. Code, § 7070, subd. (b).)
- 6) Provides that the governing body shall only approve a military equipment use policy if it determines all of the following:
  - a) The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
  - b) The proposed military equipment use policy will safeguard the public’s welfare, safety, civil rights, and civil liberties.

- c) If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
  - d) Prior military equipment use complied with the military equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance. (Gov. Code, § 7071, subd. (d)(1).)
- 7) Requires, in order to facilitate public participation, any proposed or final military equipment use policy to be made publicly available on the internet website of the relevant law enforcement agency for as long as the military equipment is available for use. (Gov. Code, § 7071, subd. (d)(2).)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “SB 99 would prevent local law enforcement agencies from purchasing or obtaining certain military equipment if the United States Armed Forces is also prohibited from obtaining the same equipment.

“Law enforcement agencies must obtain approval from an elected body to purchase and acquire military equipment. The definition of military equipment is broad, and state law requires the requesting agency to justify the purchase. However, the list of requirements fails to consider developing Department of Defense policies pertaining to prohibited foreign-made equipment.

“One example of evolving prohibition policies is the increased domestic sale and use of Chinese drones manufactured by DJI. The company accounted for 58 percent of the US commercial market in 2022, with a large percentage of sales going to law enforcement agencies. However, many policymakers and the Department of Defense consider DJI drones a national security threat. The New York Times recently reported that cybersecurity researchers have found that Beijing could potentially exploit vulnerabilities in an app that controls the drone to gain access to large amounts of personal information. The Pentagon has banned the use of DJI drones, and in January, the Interior Department decided to continue grounding its fleet of drones over security fears. Federal legislation has also been introduced to ban all domestic sales.

“If the US military deems certain equipment unsuitable for its use, state and local policy should apply the same standard when considering the procurement of military equipment for local law enforcement. SB 99 simply specifies that an applicable governing body shall not approve a military equipment policy for local law enforcement if the United States Armed Forces are prohibited from purchasing that equipment from a manufacturer or seller.”

- 2) **Need for the Bill:** Current law requires a law enforcement agency to obtain approval from the governing body that oversees it before acquiring or using military equipment. (Gov. Code, § 7071, subd. (a), et seq.) Military equipment includes, among other things, Taser Shockwave, microwave weapons, water cannons, Long Range Acoustic Device (LRAD), battering rams, command and control vehicles, tracked armored vehicles that provide



ballistic protection to their occupants, and firearms and firearm accessories that can launch explosive projectiles. (Gov. Code, § 7070, subd. (c).) It also includes unmanned, remotely piloted, powered aerial or ground vehicles. (Gov. Code, § 7070, subd. (c)(11).)

Under existing law, law enforcement may only approve a military equipment use policy if the local governing body determines that there is no reasonable alternative that could achieve officer and civilian safety; the use policy will safeguard the public's welfare, safety, civil rights and civil liberties; the equipment is reasonably cost effective compared to available alternatives; and prior military equipment use complied with the use policy in place at the time or, if the use did not comply, corrective actions have been taken to ensure future compliance. (Gov. Code, § 7071, subd. (d)(1).)

This bill would add that a governing body may not approve of a military equipment use policy that includes military equipment from a manufacturer or seller that the United States Armed Forces has been prohibited by federal law or regulation from purchasing.

- 3) **Argument in Support:** According to *Oakland Privacy*, “Synthesizing military equipment usage guidelines between agencies of the state and agencies of the federal government makes sense. Security issues know no jurisdictional boundaries, and the State should benefit from the risk identification and analysis performed on the federal level to keep Californians safe from threats, both now and in the future as new threats emerge.

“One current application of this principle is unmanned aerial vehicles (commonly known as drones). In the context of unmanned aircraft, the direct and immediate impact of the bill would be on the usage and purchasing of drones manufactured by DJI. DJI is a privately-owned company located in Shenzhen, China. They are the largest manufacturer of drones with a wide variety of unmanned aircraft models ranging in size, speed and capability and their products are in wide use among California governmental agencies.

“Security researchers have identified serious vulnerabilities in DJI-made unmanned aircraft. These vulnerabilities, which include inadequate encryption of location data, log insecurity, and potential for unauthorized remote operation, seriously impact the security and integrity of the video data captured by the manufacturer's drones and have disturbing implications for the Californians who live in communities where they are in use by their government. It is a major project for California government to decommission all DJI unmanned aircraft currently in use. But growing security concerns make it necessary, just as the government has re-evaluated the use of some telecom and surveillance technology equipment from Huawei, Hikvision, Dahua and ZTE.

“DJI has more than a 70 percent market share of drone sales, and such market concentration makes them a significant security risk as DJI is a product of China with ties to the CCP. In fact, a security researcher was able to access highly sensitive customer data on DJI's servers, including passport and driver's license information, photos, and flight logs from military and government workers accounts.

“Furthermore, many federal agencies have found DJI to be a national security risk and have prohibited their use:

- The U.S. Commerce Department blacklisted DJI in 2017.

- The U.S. Department of the Interior grounded its DJI drone fleet in 2019.
- The Department of Defense issued a list of approved U.S. and European drone makers, known as the Blue drone list where DJI is notably absent.
- The U.S. General Services Administration announced it would only buy drones from the Blue UAS list for government purposes in 2021.
- The Pentagon stated that DJI drones still constitute a threat to national security and blacklisted the company in 2022.

“All of this federal activity establishes that the Pentagon has identified DJI drones as a particularized threat that they are removing from the operations of the U.S. military. In addition, Congress has pending legislation under consideration including the American Security Drone Act of 2023 (bipartisan legislation from Senators Warner D-VA and Scott R-FL) and the Stop Illicit Drones Act (Senators Warner – D-VA and Blackburn R-TN). These bills basically codify the administrative actions taken by the Pentagon.

“Senate Bill 99 implements its mandate by building upon existing law, Assembly Bill 481 (Chiu 2021), which created an oversight mechanism for the use of military-style equipment by local agencies. SB 99 simply adds that in addition to considering usage guidelines for appropriate use, financial implications and human and civil rights, local governments also must refrain from approving the purchase and use of types of military equipment that have been judged as unsuitable or too dangerous for use in the United States military. It is hard to come up with a scenario where what is prohibited for use in a battlefield would be safe or desirable for use on Main Street.

“We realize that in the particular DJI use-case that there will be a certain amount of logistical difficulty since the DJI drones are in wide use by CA law enforcement agencies. That is regrettable, but there are times when threats are identified clearly at a later point. Senate Bill 99 would implement safeguards not only for this specific concern which has become acute, but for any emerging threats from military-style equipment use in the future and make sure California is aligned with the most up to date thinking of military experts on what is safe to use and what isn’t.

“As the U.S. military is the origin source of much, but not all, of the military equipment in use by local agencies through the military surplus 1033 program run by the Defense Logistics Agency, it makes perfect sense that California should abide by any prohibitions the U.S. military adopts.”

- 4) **Argument in Opposition:** According to the *California State Sheriffs’ Association*, “We understand the stated concerns regarding data security, but the net effect of the measure will be to prohibit law enforcement’s use of certain technology, despite any security measures and data guidelines that may be in place. Specifically, this bill appears to target unmanned aerial vehicles or drones that are manufactured in certain foreign countries. The standards for technology use by the military are not necessarily the same as standards for law enforcement use but this bill conflates them.

“The effect of this bill will be to prohibit law enforcement’s acquisition and use of drones that comprise a huge portion of the current market. Local governments that use impacted drones will be forced to acquire new technology that is considerably more expensive than a lot of what is currently in use, train their staffs to use it, and likely suffer from a lack of

product and feature diversity. For law enforcement agencies, this translates into difficulty completing their missions at much higher prices with threats to public safety.”

**5) Related Legislation:**

- a) AB 2014 (S. Nguyen), would change law enforcement’s duty to seek approval from the local governing body before funding, acquiring or using drones or robots to only require approval if the drone or robot were weaponized. The hearing on AB 2014 was canceled at the request of the author.
- b) AB 2546 (Rendon), would clarify that the definition of “military equipment” includes area denial electroshock devices generally and not just the Taser Shockwave system; and that the definition also includes long-range acoustic devices, acoustic hailing devices, and sound cannons rather than just the Long-Range Acoustic Device (LRAD) manufactured by the Genasys Corporation.

**6) Prior Legislation:**

- a) AB 1486 (Jones-Sawyer), of the 2023-2024 Legislative Session, would have clarified that an assault weapon is not a “standard issue service weapon” and therefore falls under the definition of “military equipment,” which requires approval from the local governing body before a law enforcement agency may acquire it. AB 1486 was placed on the inactive file in the Senate.
- b) AB 79 (Weber), would prohibit a peace officer from using deadly force against or intending to injure, intimidate, or disorient a person by utilizing any unmanned, remotely piloted, powered ground or flying equipment except under specified circumstances. AB 79 is pending hearing in this committee.
- c) AB 421 (Chiu), Chapter 406, Statutes of 2021, requires local law enforcement agencies to follow specific procedures to obtain approval from local government prior to the acquisition or use of federal surplus military equipment.
- d) AB 3131 (Gloria), of the 2017 – 2018 Legislative Session, was similar to AB 421. AB 3131 was vetoed.
- e) AB 36 (Campos), of the 2015 – 2016 Legislative Session, would have prohibited local agencies, except local law enforcement agencies that are directly under the control of an elected officer, from applying to receive specified surplus military equipment from the federal government, unless the legislative body of the local agency approves the acquisition at a regular meeting. AB 36 was vetoed.
- f) SB 242 (Monning), Chapter 79, Statutes of 2015, requires a school district's police department to obtain approval from its governing board prior to receiving federal surplus military equipment.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Oakland Privacy

**Opposition**

California State Sheriffs' Association

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

Date of Hearing: July 2, 2024  
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 268 (Alvarado-Gil) – As Amended June 6, 2024

**SUMMARY:** Makes rape of an intoxicated person, as specified, a “violent” felony. Specifically, **this bill:** Makes rape of an intoxicated person a “violent” felony where it is pleaded and proved that the defendant caused the intoxication by administering a controlled substance to the victim without their consent and with the intent to sexually assault them.

**EXISTING LAW:**

- 1) Includes within the definition of rape an act of sexual intercourse with a person who is prevented from resisting by an intoxicating or anesthetic substance, or a controlled substance, and this condition was known, or reasonably should have been known by the accused. (Pen. Code, § 261, subd. (a)(3).)
- 2) Provides that the punishment for all forms of rape is imprisonment in the state prison for three, six or eight years. (Pen. Code § 264.)
- 3) Prohibits the court from granting probation for rape of an intoxicated person. (Pen. Code, § 1203.065, subd. (a).)
- 4) Provides that all rape is a “serious” felony. (Pen. Code, §1192.7, subd. (c)(3).)
- 5) Prohibits plea bargaining in any case in which the indictment or information charges a “serious” felony unless there is insufficient evidence to prove the charge, the testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. (Pen. Code, § 1192.7, subd. (a)(2).)
- 6) Provides that any person convicted of a “serious” felony who has previously been convicted of a “serious” felony receives, in addition to the sentence imposed by the court, an additional and consecutive five-year enhancement for each such prior conviction. (Pen. Code, § 667, subd. (a)(1).)
- 7) States that a conviction of a “serious” or “violent” felony counts as a prior conviction for sentencing under the Three Strikes Law. (Pen. Code, § 667.)
- 8) Specifies all references to existing statutes in specified portions of the Three Strikes Law, are to statutes as they existed on November 7, 2012. (Pen. Code, § 667, subd. (h).)
- 9) Provides that if a defendant is convicted of a felony offense and it is pled and proved that the defendant has been convicted of one prior “serious” or “violent” offense as defined, the term of imprisonment is twice the term otherwise imposed for the current offense. (Pen. Code, §

667, subds. (e)(1); Pen. Code § 1170.12, subd. (c)(1).)

- 10) Provides that a defendant, who is convicted of a “serious” or “violent” felony offense or a specified sex offense including rape, and it is pled and proved that the defendant has been convicted of two or more prior “violent” or “serious” offenses, the term is life in prison with a minimum term of 25 years. (Pen. Code § 667, subds. (e)(2); Pen. Code § 1170.12, subd. (c)(2).)
- 11) Defines a “violent” felony as any of the following:
  - a) Murder or voluntary manslaughter;
  - b) Mayhem;
  - c) Rape accomplished by means of force or threats of retaliation;
  - d) Sodomy by force or fear of immediate bodily injury on the victim or another person or with a child under the age of 14 years, as specified;
  - e) Oral copulation by force or fear of immediate bodily injury on the victim or another person or with a child under the age of 14 years, as specified;
  - f) Lewd acts on a child under the age of 14 years, as defined;
  - g) Any felony punishable by death or imprisonment in the state prison for life;
  - h) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which the defendant has used a firearm, as specified;
  - i) Any robbery;
  - j) Arson of a structure, forest land, or property that causes great bodily injury or that causes an inhabited structure or property to burn;
  - k) Arson that causes an inhabited structure or property to burn;
  - l) Sexual penetration accomplished against the victim's will by means of force, menace or fear of immediate bodily injury on the victim or another person, by threats of retaliation, or of a child under the age of 14 years, as specified;
  - m) Attempted murder;
  - n) Explosion or attempted explosion of a destructive device with the intent to commit murder;
  - o) Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;

- p) Explosion of a destructive device which causes death or great bodily injury;
  - q) Kidnapping;
  - r) Assault with intent to commit mayhem or specified sex offenses;
  - s) Continuous sexual abuse of a child;
  - t) Carjacking, as defined;
  - u) Rape or sexual penetration in concert;
  - v) Felony extortion;
  - w) Threats to victims or witnesses, as specified;
  - x) First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;
  - y) Use of a firearm during the commission of specified crimes; and,
  - z) Possession, development, production, and transfers of weapons of mass destruction. (Pen. Code § 667.5, subd. (c).)
- 12) Provides that where the new offense is one of the specified “violent” felonies, in addition and consecutive to any other prison terms, the court must impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the specified violent felonies. However, no additional term shall be imposed for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction. (Pen. Code, § 667.5, subd. (a).)
- 13) Provides that where the new offense is any felony for which probation is not imposed, the court must impose a consecutive one-year term for each prior separate prison term for a sexually violent offense<sup>1</sup> provided that no additional term can be imposed for any prison term served prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under realignment or any felony sentence that is not suspended. (Pen. Code, § 667.5, subd. (b).)
- 14) Provides that the term for an offense, though otherwise punishable as a county jail felony, must be served in state prison if the current or a prior conviction is for an offense on the “violent” felony list. (Pen. Code, § 1170, subd. (h)(3).)

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<sup>1</sup> As defined, a “sexually violent offense” includes any rape committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate. (Pen. Code, § 667.5, subd. (b); Welf. & Inst. Code, § 6600.)

- 15) States that any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for their primary offense. (Cal. Const., Art. I, § 32.)
- 16) Authorizes the California Department of Corrections (CDCR) to award credits earned for good behavior and approved rehabilitative or educational achievements. (Cal. Const., Art. I, § 32.)
- 17) Limits the award of presentence conduct credits to 15 percent of actual confinement time on a prison term for a violent felony. (Pen. Code, § 2933.1.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “Senate Bill 268 brings parity to victims of sexual assault. Over the last several years, California has prioritized the rights of rape victims over their perpetrators by increasing sentence enhancements for those who rape their spouses, and by eliminating the code section defining spousal rape altogether. This bill makes rape of an unconscious person a violent felony if the defendant drugged the victim with the intent to sexually assault them. This change is needed because California currently considers rape of an unconscious person “non-violent” – which makes some rapists eligible for early release under Proposition 57.”
- 2) **Current Penalties:** The offense of rape of an intoxicated person already carries very steep sentences. These punishments can often be further enhanced by any number of existing sentence enhancements.

To begin, any rape conviction is a felony punishable by up to eight years in prison. (Pen. Code, § 261.) Applicable sentence enhancements could be added to that – e.g., if great bodily injury is inflicted, the underlying sentence can be enhanced by three years. (Pen. Code, § 12022.7, subd. (a).) If in committing rape or attempted rape a controlled substance is administered, an additional five years in prison applies. (Pen. Code, § 12022.75, subd. (b).) Further, any person who administers an intoxicating agent with the intent to commit a felony – e.g., rape – is guilty of a felony punishable by 16 months, two years, or three years in state prison. (Pen. Code, § 222.)

Additionally, all forms of rape are currently a “serious” felony. (Pen. Code, § 1192.7, subd. (c)(3).) Rape accomplished by force, violence or duress, is already a “violent” felony. (Pen. Code, § 667.5, subd. (c)(3).) Moreover, if great bodily injury is inflicted on someone other than an accomplice, or a firearm is used in committing rape of an intoxicated person, it is already a “violent” felony. (Pen. Code, § 667.5, subd. (c)(8).)

A person who has a conviction for a strike (“serious” or “violent” felony) faces increased prison time for any future felony conviction. Any future felony conviction when a person has a prior conviction for a single strike results in a doubling of the prison sentence. A person, with two prior convictions for strikes faces a minimum sentence of 25 years-to life for a felony conviction, if certain criteria are met. (Pen. Code § 667, subs. (a) and (d)(2)(i); Pen. Code § 1170.12, subd. (c)(2)(A).) Rape of an intoxicated person is already a strike because it



is a “serious” felony.

- 3) **Proposition 57:** In November 2016, California voters overwhelmingly approved Proposition 57. As relevant here, Proposition 57, authorized earlier parole consideration for people who are serving state prison terms for nonviolent offenses, and gave them more opportunities to earn sentence-reduction credits for good behavior. ([https://ballotpedia.org/California Proposition 20, Criminal Sentencing, Parole, and DNA Collection Initiative \(2020\)](https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020))); see Cal. Const, Art. I, § 32.) For purposes of Proposition 57, “violent” offenses are those specified in Penal Code section 667.5, subdivision (c). (Cal. Code Regs., tit. 15, §§ 3490, subd. (c) & 3495, subd. (c).)

Importantly, Proposition 57 did not mandate early release for nonviolent offenders. Rather, it provided for early parole consideration.

The Amendment does not require that all inmates convicted of nonviolent felonies are subject to immediate release from custody. Rather, those inmates are permitted only early *consideration* by the Board of Parole Hearings, which is charged with determining whether an inmate is suitable for parole. (See, e.g., *In re Perez* (2016) 7 Cal.App.5th 65, 84 [212 Cal. Rptr. 3d 441] [Board of Parole Hearings' core determination is whether a prisoner remains a current threat to public safety].)

(*Alliance for Constitutional Sex Offense Laws v. Department of Corrections & Rehabilitation* (2020) 45 Cal.App.5th 225, 235-236 [emphasis in original].) Thus, inmates considered for nonviolent parole will only be approved for release if they do not pose a current, unreasonable risk of violence or a current unreasonable risk of significant criminal activity if released.

Since July 1, 2017, CDCR has made 37,649 referrals of determinately sentenced non-violent offenders to the Board of Parole Hearings (BPH) for this parole process. BPH has reviewed 33,791 referrals on the merits as of February 28, 2023, approving 4,822 incarcerated persons for release (roughly 14%) and denying 28,969. 3,516 referrals have been closed because BPH’s jurisdictional review of the incarcerated persons’ criminal history and central file revealed they were not eligible for parole consideration. Since July 2019, BPH has conducted 3,093 hearings for indeterminate sentenced nonviolent offenders resulting in 821 grants (roughly 26%), 1,962 denials, and 310 stipulations to unsuitability. (<https://www.cdcr.ca.gov/3-judge-court-update/>.)

By adding rape of an intoxicated person to the list of “violent” felonies in Penal Code section 667.5, subdivision (c), this offense would be excluded from the CDCR’s nonviolent parole consideration process under Proposition 57. A defendant convicted of this offense would be excluded from this early parole regardless of whether they had also been convicted of a nonviolent felony or currently pose a threat to public safety. (*In re Mohammad* (2022) 12 Cal.5th 518.)

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

A violent felony conviction also affects post-sentence credits. As previously discussed, Proposition 57 gave incarcerated persons in state prison the ability to earn additional, nonstatutory credits for sustained good behavior and for approved rehabilitative or educational achievements. The increased credit-earning opportunities incentivizes incarcerated people to take responsibility for their own rehabilitation.

(<https://www.cdcr.ca.gov/proposition57/>.) Under CDCR regulations, a “violent” felony limits good conduct credits (GCC) to 33.3 percent of the total incarceration time, as opposed to 50 percent for a non-violent felony. (*Ibid.*)

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

By adding this offense to the list of “violent” felonies in Penal Code section 667.5, subdivision (c), this offense would be subject to the “violent” felony credit limitations.

- 5) **Proposition 20:** Proposition 20 was a ballot initiative of the November 2020 election which, among other things, would have defined 51 crimes and sentence enhancements as violent in order to exclude them from Proposition 57's nonviolent offender parole program. The list included rape by intoxication. Californians voters overwhelming rejected Proposition 20, by almost 62 percent.  
([https://ballotpedia.org/California\\_Proposition\\_20,\\_Criminal\\_Sentencing,\\_Parole,\\_and\\_DNA\\_Collection\\_Initiative\\_\(2020\)](https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020)), *supra.*) Arguably, this bill would ignore the will of the voters.
- 6) **Increased Penalties and Lack of Deterrent Effect:** The National Institute of Justice (NIJ) has looked into the concept of improving public safety through increased penalties. (<https://nij.ojp.gov/about-nij>.) As early as 2016, the NIJ has been publishing its findings that increasing punishment for given offenses does little to deter criminals from engaging in that behavior. (“Five Things About Deterrence,” NIJ, May 2016, available at: <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.) The NIJ has found that increasing penalties are generally ineffective and may exacerbate recidivism and actually reduce public safety. (*Ibid.*) These findings are consistent with other research from national institutions of renown. (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine, April 2014, at pp. 130 -150 available at: [https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj\\_pubs](https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs), [as of Feb. 25, 2022].) Rather than penalty increases, the NIJ, advocates for polices that “increase the perception that criminals will be caught and punished” because such perception is a vastly more powerful deterrent than increasing the punishment. (“Five Things About Deterrence,” *supra.*)
- 7) **Argument in Support:** According to the *California District Attorneys Association*, “Under current law, a perpetrator at a college party who chooses to forcibly rape a conscious victim will be defined as a “violent” felony for purposes of sentencing. However, a different perpetrator at the same party who chooses to watch and wait for a victim to pass out from intoxication before sexually assaulting her is defined as “non-violent” for custody credits and for future crimes. Whether penetration is accomplished through physical aggression [force]

or predatory behavior is a distinction without a difference. Both perpetrators seek prey that are vulnerable - disadvantaged by his/her capacity to resist. Both perpetrators represent a danger to the community. Additionally, the aftermath suffered by an unconscious victim or a victim incapable of giving consent due to intoxication is not ameliorated by the absence of memory. Indeed, the fear and terror that accompanies the absence of memory of a known sexual assault should not be viewed as less serious than the fear and terror that a victim experiences during a recalled forcible sexual assault. Both sexual predators should be treated identically under the law.”

- 8) **Argument in Opposition:** According to *American Civil Liberties Union California Action*, “We share your emotional outrage and desire to ensure healing for victims of sexual assault. However, this bill is not necessary as California law already provides significant punishments for these crimes, and these punishments are often already further enhanced by myriad existing sentence enhancements. Although people will serve longer prison sentences under SB 268, this will not increase deterrence nor meaningfully prevent crime by incapacitation. Instead, data show that enhancements increase racial disparities and drive over-incarceration, thus aggravating and exacerbating the root causes of crime.

“When reading what leaders in trauma treatment write, it is notable that punishment is not typically considered an essential element of recovery from sexual assault. In March 2017, UC- San Francisco Trauma Recovery Center (TRC) published its “Integrated, Evidence-Based Approach for Survivors of Violent Crime.” In their Goals and Objective section, they wrote:

“The overarching goal of TRC is to support the healing of the client’s emotional and physical wounds along with restoration of their disrupted life circumstances. At the close of treatment, the client’s health, broadly defined, will be stabilized and improving. Goals include working toward having safe housing; having an income sufficient to meet their needs; safety from further violence; the emotional health to cope with daily life, including a sense of hope for the future; access to needed physical or behavioral health treatments; incorporating healthy self-care strategies; employment or school, as appropriate; and being meaningfully engaged with others, such as family, church, and community.”

“SB 268 takes the wrong approach to public safety as it would contribute to the expansion of the budgets and footprints of our police, jails, and courts, monopolizing resources that would be better used to invest in our communities in ways that would improve mental and physical health, and create economic stability.”

- 9) **Related Legislation:** AB 32 (S. Nguyen) would add felony hate crimes to the list of violent felonies subject to enhanced penalties. AB 32 was not heard in this committee at the request of the author.

10) **Prior Legislation:**

- a) AB 27 (Melendez), of the 2017-2018 Legislative Session, would have added specified sex offenses, including rape of an intoxicated person, to the list of violent felonies. AB 27 was held in the Assembly Appropriations Committee.

- b) AB 67 (Rodriguez), of the 2017-2018 Legislative Session, would have added sex trafficking and specified sexual assault offenses, including rape of an intoxicated person, to the list of violent felonies. AB 67 was held in the Assembly Appropriations Committee.
- c) SB 75 (Bates), of the 2017-2018 Legislative Session, would have created an additional “violent felony” list that includes 20 felonies that are not on the existing list, including rape of an intoxicated person, in order to exclude offenders from Proposition 57’s parole provisions and to impose a three-year sentencing enhancement. SB 75 failed passage in the Senate Public Safety Committee.
- d) SB 770 (Glazer), of the 2017-2018 Legislative Session, would have created an additional “violent felonies” list with 30 felonies not on the existing list, including rape of an intoxicated person, in order to exclude offenders from Proposition 57’s parole provisions. SB 770 was held in the Senate Public Safety Committee.

## REGISTERED SUPPORT / OPPOSITION:

### Support

Arcadia Police Officers' Association  
Association of Regional Center Agencies  
Burbank Police Officers' Association  
California Association of Highway Patrolmen  
California Coalition of School Safety Professionals  
California District Attorneys Association  
California Police Chiefs Association  
California Reserve Peace Officers Association  
California State Sheriffs' Association  
Chief Probation Officers' of California (CPOC)  
City of Ceres Council District 2  
City of San Jose  
Claremont Police Officers Association  
Concerned Women for America  
Corona Police Officers Association  
Crime Victims Alliance  
Crime Victims United of California  
Culver City Police Officers' Association  
Deputy Sheriffs' Association of Monterey County  
Fullerton Police Officers' Association  
Healthy Alternatives to Violent Environments  
Live Violence Free  
Los Angeles County Sheriff's Department  
Los Angeles School Police Officers Association  
Murrieta Police Officers' Association  
Newport Beach Police Association  
Novato Police Officers Association  
Office of Lieutenant Governor Eleni Kounalakis  
Orange County District Attorney

Palos Verdes Police Officers Association  
Peace Officers Research Association of California (PORAC)  
Placer County Deputy Sheriffs' Association  
Pomona Police Officers' Association  
Riverside Police Officers Association  
Riverside Sheriffs' Association  
San Diegans Against Crime  
San Diego Deputy District Attorneys Association  
Santa Ana Police Officers Association  
Upland Police Officers Association  
Ventura County Office of The District Attorney

31 Private Individuals

**Opposition**

ACLU California Action  
California Public Defenders Association  
California Public Defenders Association (CPDA)  
Californians United for A Responsible Budget  
Ella Baker Center for Human Rights  
Felony Murder Elimination Project  
Initiate Justice  
Initiate Justice (UNREG)  
Initiate Justice Action  
Legal Services for Prisoner With Children  
San Francisco Public Defender  
Vera Institute of Justice

3 Private Individual

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

Date of Hearing: July 2, 2024  
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 285 (Allen) – As Amended June 4, 2024

**SUMMARY:** Exempts persons sentenced to death, a term of life without parole (“LWOP”), an indeterminate life sentence, or to any person currently serving a sentence for a violent sex offense, from retroactive sentence enhancement relief and resentencing eligibility, as specified. Specifically, **this bill:**

- 1) Provides that any individual currently sentenced to death, to a term of life without the possibility of parole, or to an indeterminate life sentence, or to any person currently serving a sentence for a sexually violent offense is not eligible for retroactive relief from sentence enhancements imposed prior to January 1, 2018 for each prior conviction of specified crimes related to controlled substances (except if the enhancement was for a prior conviction of using a minor during specified controlled substances offenses), and repeals such person’s eligibility for resentencing more generally.
- 2) Provides that any individual currently sentenced to death, to a term of life without the possibility of parole, or to an indeterminate life sentence, or to any person currently serving a sentence for a sexually violent offense is not eligible for retroactive relief from sentence enhancements imposed prior to January 1, 2020, for each prior prison or county jail felony term, and repeals such person’s eligibility for retroactive resentencing more generally.

**EXISTING LAW:**

- 1) States that any sentence enhancement received prior to January 1, 2018, imposing on a defendant convicted of specified crimes related to controlled substances, an additional three-year term for each prior conviction of specified crimes related to controlled is legally invalid, except if the enhancement was imposed for a prior conviction of using a minor in the commission of offenses involving specified controlled substance. (Pen. Code, § 1172.7, subd. (a).)
- 2) States that any sentence enhancement received prior to January 1, 2020, imposing an additional one-year term of imprisonment for each prior prison or county jail felony term served by the defendant for a non-violent felony is legally invalid, except if the enhancement was for a prior conviction of a sexually violent offense. (Pen. Code, § 1172.75, subd. (a).)
- 3) Requires the Secretary of the Department of Corrections and Rehabilitation (CDCR) and the county correctional administrator of each county to identify those persons in their custody currently serving a term for judgment that includes one of the repealed enhancements and to provide the name of each person, along with the person’s date of birth and relevant case number or docket number, to the sentencing court that imposed the enhancement. This information shall be provided as follows:

- a) By March 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first.
  - i) By July 1, 2022, for all other individuals. (Pen. Code, §§ 1172.7, 1172.75, subds. (b))
- 4) States that upon receiving that information, the court shall review the judgment and verify that the current judgement includes one of the repealed enhancements and the court shall recall the sentence and resentence the defendant. The review and resentencing shall be completed as follows:
  - a) By October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement; and,
  - b) By December 31, 2023, for all other individuals. (Pen. Code, §§ 1172.7, 1172.75, subds. (c))
- 5) States that the above resentencing shall result in a lesser sentence than the one originally imposed, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(1).
- 6) Provides that the above resentencing shall not result in a longer sentence than originally imposed. (*Ibid.*)
- 7) States that the court shall apply the sentencing rules of the Judicial Council and apply any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(2).
- 8) Allows a court to consider post-conviction factors at resentencing, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(3).
- 9) Provides that unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(4).
- 10) Requires the court to appoint counsel. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(5).

- 11) Provides that the parties may waive a resentencing hearing, and if the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees. (Pen. Code, §§ 1172.7, 1172.75, subds. (e).
- 12) States that the Legislature finds and declares that in order to ensure equal justice and address systemic racial bias in sentencing, it is the intent of the Legislature to retroactively apply SB 180 (Mitchell, Chapter 677, Statutes of 2017) and SB 136 (Wiener, Chapter 590, Statutes of 2019) to all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements. (SB 483 (Allen), Chapter 728, Statutes of 2021, Sec. 1.)
- 13) States Legislative intent that any changes to a sentence as a result of these above provisions is not a basis for a prosecutor or court to rescind a plea agreement. (*Ibid.*)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "In 2021, SB 483 (Allen, Chapter 728, Statutes of 2021) made retroactive California's elimination of 1- and 3-year sentence enhancements for drug and previous convictions. This created a process by which people could access resentencing for the purposes of removing these legally invalid sentence enhancements. Recently, appeals have been made to the courts arguing that certain people serving sentences for capital and sexually violent offenses qualify for full resentencing under SB 483. This interpretation does not align with the original bill's intent. While courts have been dismissing the appeals, they have unnecessarily wasted court resources and reopened wounds of victims of their families. SB 285 clarifies who is eligible for resentencing under SB 483 to prevent clogging of the courts, limit re-traumatization of victims and their families, and close a loophole in the original drafting."
- 2) **Sentence Enhancements in California:** There are currently more than 100 unique sentence enhancements used in California that can be used to increase the term of imprisonment a defendant will serve.<sup>1</sup> Enhancements add time to a person's sentence for factors relevant to the defendant such as prior criminal history or for specific facts related to the crime. Multiple enhancements can be imposed in a single case and can range from adding a specified number of years to a person's sentence, or doubling a person's sentence or even converting a determinate sentence into a life sentence.

A 2023 report on sentencing enhancements found that about 40% of individual prison admissions since 2015 have sentences lengthened by a sentence enhancement.<sup>2</sup> For currently incarcerated persons, the prevalence of enhanced sentences is even higher, impacting the sentences of approximately 70% of people incarcerated as of 2022.<sup>3</sup> Data shows that enhancements have been applied a total of 167,340 times to new prison admissions since 2015, and have been applied 197,274 times in the cases of those incarcerated as of July

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<sup>1</sup> Bird et. al., *Sentence Enhancements in California*, California Policy Lab (March 2023), p. 6, available at: <https://www.capolicylab.org/wp-content/uploads/2023/03/Sentence-Enhancements-in-California.pdf>

<sup>2</sup> *Id.* at p. 3.

<sup>3</sup> *Ibid.*



2022.<sup>4</sup> Lastly, there are significant racial disparities in the percent of prison admissions subject to sentence enhancements. Specifically, “of the currently incarcerated Black people, 78% have at least one sentence enhancement, while 70% of American Indian/Alaskan Native people, 66% of Hispanic people, 60% of Asian or Pacific Islander people, and 58% of White people have at least one enhancement.”<sup>5</sup>

- 3) **Retroactive Sentence Enhancement Relief Provided by SB 483 (Allen), Chapter 728, Statutes of 2021:** Prior to January 1, 2020, Penal Code section 667.5, subdivision (b) required trial courts to impose a one-year sentence enhancement for each true finding on an allegation the defendant had served a separate prior prison or county jail term for a felony and had not remained free of custody for at least five years. But effective January 1, 2020, SB 136 (Wiener), Chapter 590, Statutes of 2019, amended section 667.5, subdivision (b) to limit the prior prison term enhancement to only prior prison terms for sexually violent offenses, as defined in Welfare and Institutions Code section 6600, subdivision (b).

Further, former Health and Safety Code section 11370.2, provided for a mandatory three-year enhancement for each prior felony conviction of certain enumerated offenses related to controlled substances. But effective January 1, 2018, SB 180 (Mitchell) Chapter 677, Statutes of 2017, narrowed the list of prior offenses that qualify a defendant for an enhancement under this provision. Now the enhancement only applies to prior convictions that involved using a minor to commit drug-related crimes.

SB 483 (Allen), Chapter 728, Statutes of 2021, retroactively applied the repeal of the above sentence enhancements for prior prison or county jail felony terms and for prior convictions of specified crimes related to controlled substances, absent some indication to the contrary in a bill, courts presume the Legislature intended changes to apply prospectively. (See Pen. Code, § 3.) However, SB 483’s language explicitly established legislative intent for SB 180 (Mitchell, Chapter 677, Statutes of 2017) and SB 136 (Wiener, Chapter 590, Statutes of 2019) to retroactively all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements. Specifically, it provided that any one year sentence enhancement for each prior prison or county jail felony term served by a defendant for a non-violent felony imposed prior to January 1, 2020 is legally invalid, unless the enhancement was for a prior conviction of a sexually violent offense. Similarly, it made the additional three-year enhancement for each prior conviction of specified crimes related to controlled substances, for defendants convicted of specified crimes related to controlled substances legally invalid if the enhancement was imposed prior to January 1, 2018.

Notably, SB 483’s retroactive enhancement relief was required to be completed by December 31, 2023. SB 483 established timelines surrounding when such retroactive enhancement relief must be completed. First, SB 483 required the Secretary of CDCR to identify applicable persons serving a term for judgement including one of the repealed enhancements and provide that information to the sentencing court that imposed the enhancement no later than July 1, 2022. Second, it required the sentencing court to verify that the current judgement includes one of the repealed enhancements and to recall the sentence and resent the defendant, and provided that this review and resentencing must be completed

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<sup>4</sup> *Id.* at p. 6.

<sup>5</sup> *Id.* at 31.

no later than December 31, 2023. That being said, reports from advocates suggest that thousands of eligible persons are still awaiting resentencing under SB 483.

- 4) **Effect of this Bill:** Earlier this year, Richard Allen Davis, a convicted murderer and sexually violent offender serving a death penalty sentence petitioned for recall and resentencing under SB 483 on the basis that their sentence included enhancements declared legally invalid by SB 483. This petition was denied on May 31, 2024. SB 285 provides that any individual currently sentenced to death, to a term of life without the possibility of parole, or to an indeterminate life sentence, or to any person currently serving a sentence for a sexually violent offense is not eligible for retroactive enhancement relief for sentences imposed prior to January 1, 2018 (for enhancements related to controlled substances) and imposed prior to January 1, 2020 (for one year prior felony enhancements) repeals such person's eligibility for resentencing more generally.
- 5) **Need for the Bill:** Judges can already deny resenting requests for the most serious of offenders. This was shown when the court summarily denied Richard Allen Davis' request for resentencing earlier this year as an unauthorized challenge to the death sentence which can only be done through a writ of habeas corpus. Further, courts have discretion to refuse to issue a lesser sentence during resentencing, if the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. As such, persons who have committed the most heinous of crimes (e.g. first degree murder, sexually violent offenses, etc.) that make them eligible for the death penalty or LWOP are unlikely to be resentenced to a lower sentence due to the public safety risk such persons pose. In fact, it is unclear if any person serving a death penalty or LWOP sentence has been resentenced under SB 483. As such, the need for SB 285 is unclear.
- 6) **Unconstitutional Retroactive Criminal Punishment:** SB 285 may be interpreted to retroactively restore previously invalid sentence enhancements for specified persons, and as such may afoul of state and federal prohibitions on ex post facto laws. The California Constitution provides that "a bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed."<sup>6</sup> Similarly, the United States Constitution provides that no "State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."<sup>7</sup> An ex post facto law is a law that imposes criminal liability or increases criminal punishment retroactively. Legislative enactments prohibited by the ex post facto clause include those which: (1) criminalize conduct which was innocent when done, (2) increase the punishment for past conduct or, (3) eliminate a defense available at the time the crime was committed.<sup>8</sup> Ex post facto laws are not only outright prohibited by the United States Constitution, but they also violate all notions of fundamental fairness and result in a substantial deprivation of defendant's due process rights. This Clause protects liberty by preventing governments from enacting statutes with "manifestly unjust and oppressive" retroactive effects.<sup>9</sup>

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<sup>6</sup> Cal Const, Art. I § 9

<sup>7</sup> United States Const. art. I, § 10, cl 1.

<sup>8</sup> *Collins v. Youngblood* (1990) 497 U.S. 37, 42.

<sup>9</sup> *Calder v. Bull* (1778) 3 U.S. 386.

SB 483 declared legally invalid specified sentence enhancements imposed prior to January 1, 2018 (prior drug convictions) or January 1, 2020 (prior felony convictions). Given that SB 483 was explicitly retroactive, and SB 285 would exempt such persons from such retroactive relief, SB 285 may result in the retroactive reinstatement of sentence enhancements that have previously been declared to be invalid. As such, this bill is highly vulnerable to an ex-post facto legal challenge.

**Uncertain Application to Persons Who Have Already Been Re-sentenced or Are in the Process of being Resentenced.**

Given that SB 285 may exempt people from retroactive enhancement relief and resentencing how would this apply to persons who have already received such relief or resentencing?

Would SB 285 require persons who are no longer incarcerated due to the enhancement relief provided by SB 483 to return to jail or prison?

How would this impact the courts and initially eligible persons still in the process of being resentenced?

7) **Argument in Support:** None

8) **Argument in Opposition:** According to Courage California, “[i]n 2021, Senator Allen authored SB 483, the Repeal Ineffective Sentence Enhancements (RISE) Act, authorizing courts to retroactively remove 1-year prison prior (SB 136, Wiener) and 3-year drug prior enhancements (SB 180, Mitchell) from the sentences of currently incarcerated people, including those with “final sentences,” as well as those serving probation or parole terms. SB 285 seeks to exclude people from these laws, limiting who can and cannot receive access to judicial review, a lesser sentence, and ultimately justice.

“The RISE Act represents a meaningful step towards reducing the harm of overly long and unjust sentences, allowing families across California to be restored. Sentencing enhancements have not made our communities safer. Instead, long prison and jail sentences are proven to be injurious to system-impacted folks and destabilizing to their families and communities. More generally, they put significant financial burdens on taxpayers and families statewide — the LAO estimates the annual cost to incarcerate one person in state prison for one year to be in excess of \$133,000. The RISE Act has given hope to incarcerated Californians to have outdated and unjust sentences reviewed, creating a process for the courts to align sentences with the truth of data-driven and lived experiences that show reducing excessive sentences improves community well-being [citation omitted].

“SB 285 would partially reverse this landmark victory for those who have been waiting — decades, for some — for their day back in court. People eligible for resentencing under SB 483 are subject to a judge’s discretion. Judges retain and continue to use their authority to decline resentencing if they find clear and convincing evidence that resentencing would endanger public safety.

“Sentencing reform in California has worked, and it has reunited people who were incarcerated under extreme sentences with their families, communities, and our economy. The approach proposed in SB 285 (Allen) removes from judges the ability to determine,

based on the information available to them at resentencing, that continued incarceration is no longer in the interests of justice, solely based on the original sentence. The RISE Act should not be amended to include this exclusion, as it would fundamentally undermine the reason that SB 483 was first introduced - to ameliorate the harm suffered by individuals who were sentenced to excessive terms. We should not put a limit on who has access to justice.”

9) **Related Legislation:** None

10) **Prior Legislation:**

- a) SB 483 (Allen), Chapter 728, Statutes of 2021, applies retroactively the repeal of sentence enhancements for prior prison or county jail felony terms and for prior convictions of specified crimes related to controlled substances.
- b) SB 81 (Skinner), Chapter 721, Statutes of 2021, provides guidance to courts by specifying circumstances for a court to consider when determining whether to apply an enhancement.
- c) AB 1540 (Ting), Chapter 719, Statutes of 2021, requires the court to provide counsel for the defendant when there is recommendation from the Secretary of the Department of Corrections and Rehabilitation (CDCR), the Board of Parole Hearings (BPH), Sheriff, or the prosecuting agency, to recall an inmate's sentence and resentence that inmate to a lesser sentence, and creates a presumption favoring recall and resentencing, as specified, when the recommendation has been made by one of the agencies described above.
- d) AB 1245 (Cooley), would allow a defendant who has served at least 15 years in the state prison to file a petition for recall and resentencing. AB 1245 died in Assembly Appropriations Committee.
- e) AB 1509 (Lee), would repeal several firearm enhancements, reduces the penalty for using a firearm in the commission of specified crimes from 10 year, 20 years, or 25-years-to-life to one, two, or three years, and authorizes recall and resentencing for a person serving a term for these enhancements. AB 1509 was held in the Assembly Appropriations Committee.
- f) SB 136 (Wiener), Chapter 590, Statutes of 2019, limits the one-year sentence enhancement for prison or county jail felony priors by permitting imposition of the enhancement for a defendant sentenced to a new felony offense only if the defendant has a prior conviction for a sexually violent offense, as specified.
- g) SB 1392 (Mitchell), of the 2017-2018 Legislative Session, would have repealed the one-year sentence enhancement for each prior prison or county jail felony term that applies to a defendant sentenced on a new felony. SB 1392 failed passage on the Senate Floor.
- h) SB 180 (Mitchell), Chapter 677, Statutes of 2017, limited the three-year enhancement for a prior conviction related to the sale or possession for sale of specified controlled substance to convictions for the manufacture of a controlled substance, or using or employing a minor in the commission of specified controlled substance offenses.

- i) SB 966 (Mitchell), of the 2015-2016 Legislative Session, would have eliminated the three-year enhancement upon conviction for the sale or possession for sale of specified controlled substances with a prior conviction related to the same. SB 966 failed passage in this Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support:**

None

**Opposition:**

A New Path  
California Coalition for Women Prisoners  
California Innocence Coalition  
California Public Defenders Association  
Californians United for A Responsible Budget  
Communities United for Restorative Youth Justice (CURYJ)  
Community Resource Initiative  
Courage California  
Ella Baker Center for Human Rights  
Felony Murder Elimination Project  
Freedom Within Project  
Friends Committee on Legislation of California  
Initiate Justice  
Initiate Justice Action  
Prison Yoga + Meditation  
San Francisco Public Defender  
Silicon Valley De-bug  
Smart Justice California, a Project of Tides Advocacy  
Theatreworkers Project  
Uncommon Law  
Universidad Popular  
University of San Francisco School of Law | Racial Justice Clinic  
Young Women's Freedom Center  
Youth Leadership Institute

**Analysis Prepared by:** Ilan Zur

Date of Hearing: July 2, 2024  
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 804 (Dahle) – As Amended January 3, 2024

**SUMMARY:** Authorizes law enforcement civilians to provide hearsay testimony at preliminary hearings. Specifically, **this bill:**

- 1) Provides that the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement civilian relating the statements of declarants made out of court offered for the truth of the matter asserted.
- 2) Requires any law enforcement civilian testifying as to hearsay statement to have either five years of experience as a law enforcement civilian or to have completed a training course or the equivalent, as specified.
- 3) Defines “law enforcement civilian” as a uniformed, nonsworn, full-time paid employee of a law enforcement agency, such as a community service officer, police technician, or police services officer, whose primary functions may include, without limitation, writing police reports, investigating reports of property crime, interviewing victims and witnesses, collecting evidence, and processing crime scenes.
- 4) States, declarative of existing law, that any perjured testimony given by a peace officer for law enforcement civilian to establish probable cause at a preliminary hearing is subject to disclosure as impeachment evidence to the extent required under *Brady v. Maryland* (1963) 373 U.S. 83.

**EXISTING FEDERAL LAW:** Provides that a criminal defendant has the right to confront the witnesses against them. (U.S. Const., 6th Amend.)

**EXISTING STATE LAW:**

- 1) Provides that a criminal defendant has the right to confront the witnesses against them. (Cal. Const., art. 1, § 15.)
- 2) States that at the time the defendant appears for arraignment on a felony to which the defendant has not pleaded guilty, the magistrate, immediately upon the appearance of counsel shall set a time for the preliminary hearing and shall not allow less than two days for the district attorney and the defendant to prepare for the examination. (Pen. Code, § 859b.)
- 3) States that if it appears from the examination that there is sufficient cause to believe that the defendant is guilty, the magistrate shall hold the defendant to answer on the charges. (Pen. Code, § 872, subd. (a).)

- 4) Defines “hearsay evidence” as evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. (Pen. Code, § 1200, subd. (a).)
- 5) Prohibits hearsay evidence from being admitted unless otherwise provided by law. (Pen. Code, § 1200, subd. (b).)
- 6) Provides, notwithstanding the law that prohibits hearsay evidence, the finding of probable cause may be based in whole or in part upon the testimony of a law enforcement officer or honorably retired law enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted. (Pen. Code, § 872, subd. (b).)
- 7) States that an honorably retired law enforcement officer may only relate statements of declarants made out of court and offered for the truth of the matter asserted that were made when the honorably retired officer was an active law enforcement officer. (Pen. Code, § 872, subd. (b).)
- 8) States that any law enforcement officer or honorably retired law enforcement officer testifying as to hearsay statements shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings. (Pen. Code, § 872, subd. (b).)
- 9) States that a law enforcement officer who may provide hearsay testimony at the preliminary hearing is any officer or agent employed by a federal, state, or local government agency to whom all of the following apply:
  - a) Has either five years of law enforcement experience or who has completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings; or,
  - b) Whose primary responsibility is the enforcement of any law, the detection and apprehension of persons who have violated any law, or the investigation and preparation for prosecution of cases involving violation of laws. (Pen. Code, § 872, subd. (c).)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “Law enforcement and the legal system must be given the tools needed properly serve our communities. As police departments receive less funding even with rising crime, efficiency is more important than ever. When sworn officers are forced to go re-interview victims, already limited resources are further spread out. Community service officers act as a bridge between victims and law enforcement. Allowing CSO’s to perform hearsay testimony will streamline the process and will enable law enforcement to properly utilize its limited resources. Additionally, victims will not be forced to relive past trauma by being interviewed a second time. Once the CSO performs the initial

interview, the victim will be free to rebuild and will not have to testify in court.”

- 2) **Proposition 115:** Proposition 115, approved by California voters on June 6, 1990, made a number of procedural changes to criminal law and judicial procedures in California. As relevant to this bill, the initiative allowed probable cause to be established through hearsay testimony by peace officers at preliminary hearings.

Specifically, Proposition 115 added Section 30 to Article I of the California Constitution which provides, that in order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings. The proposition also required such an officer to have at least five years of law enforcement experience or have completed a course certified by POST which covers the investigating and reporting of criminal cases, and testifying at preliminary hearings.

Proposition 115 also added Evidence Code Section 1203.1 to provide a preliminary hearing exception to the general requirement that a hearsay declarant be made available for cross-examination.

Proposition 115 amended Penal Code Section 872 to provide that notwithstanding the hearsay rule, the finding of probable cause can be based, entirely or in part, on the sworn testimony of a law enforcement officer relating the out-of-court statements of declarants which are offered for the truth of the matter asserted.

Supporters of the initiative argued that “would ease the burdens of victims and other witnesses who must make repeated appearances in criminal proceedings often plagued with delay. One provision, for example, would allow police officers to present hearsay evidence at preliminary hearings, relieving other witnesses of the duty to appear to support such testimony.” (*California Elections/Proposition 115: Measure Seeks to Remodel Criminal Justice Procedures*, Los Angeles Times (May 20, 1990) < <https://www.latimes.com/archives/la-xpm-1990-05-20-mn-170-story.html> > [as of Dec. 19, 2023].)

This bill amends the section authorizing hearsay testimony by law enforcement officers at preliminary hearings which was put into law by Proposition 115. The Legislature may not amend an initiative statute without subsequent voter approval unless the initiative permits such amendment, and then only upon whatever conditions the voters attached to the Legislature's amendatory powers. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1483-1484.) According to the text of Proposition 115, “The statutory provisions contained in this measure may not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.” (*People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 568-569.)

However, this bill is keyed majority vote, rather than 2/3, and does not require approval by the voters. Notably, previous bills that amended this same section required a 2/3 vote. (See AB 567 (Muratsuchi), Chapter 125, Statutes of 2013 and AB 557 (Karnette) Chapter 18, Statutes of 2005.)



- 3) **Law Enforcement Officer Hearsay Testimony at Preliminary Hearings:** When the district attorney files a felony complaint, a defendant is entitled to a preliminary hearing to ensure that there is enough evidence to hold the defendant to answer in the trial court. (Pen. Code, § 859b.) The preliminary hearing must be held within 10 court days of the date of arraignment or the date the defendant plead not guilty, whichever occurs later, unless time has been waived or good cause has been for a continuance has been found. (Pen. Code, § 859b.)

At the preliminary hearing, the prosecution must present sufficient evidence to convince the judge or magistrate that probable cause exists to believe that a crime has been committed and that the defendant committed it. (Pen. Code, § 872.) The prosecution can present live witnesses, hearsay from law enforcement witnesses, or a combination of both. The defense may call witnesses and cross-examine the prosecution's witnesses.

Existing law, pursuant to Proposition 115, approved by California voters on June 6, 1990, authorized probable cause at a preliminary hearing to be found based whole or in part on law enforcement testimony that testifies to another declarant's out of court statement offered for the truth of the matter stated. (Cal. Const., Art. I, sec. 30(b).) Prior to the passage of Proposition 115, victims had to testify at preliminary hearings because their statement made to a law enforcement officer would be hearsay if offered by the officer at a preliminary hearing.

Generally, hearsay evidence is inadmissible because it is inherently less reliable than testimony from a person who has personal knowledge of the events that occurred. When the evidence is in hearsay form, there is not a fair opportunity to challenge what is being said. However, there are many exceptions to the hearsay rule which are oftentimes based on the trustworthiness of the source and the necessity of the information. As stated above, allowing a law enforcement officer with certain qualifications to provide hearsay testimony at a preliminary hearing is one of such exceptions. Allowing a law enforcement officer with certain qualifications to provide hearsay testimony at a preliminary hearing is one of such exceptions. In permitting only officers with lengthy experience or special training to testify regarding out-of-court statements, Penal Code Section 872(b) contemplates that the testifying officer will be capable of using his or her experience and expertise to assess the circumstances under which the statement is made and to accurately describe those circumstances to the magistrate so as to increase the reliability of the underlying evidence. (*Whitman v. Superior Court* (1991) 54 Cal.3d 1063, 1070.)

However, multiple hearsay is not allowed, meaning the officer could relate what another person told them directly, but could not testify as to what a witness told another officer. (*Id.* at p. 1074.)

This bill would additionally allow a law enforcement civilian to provide hearsay testimony to establish probable cause at the preliminary hearing. The law enforcement civilian would also have to have either five years of experience as a law enforcement civilian or have completed a training course equivalent to the training course required for law enforcement officers who testify at preliminary hearings.

The purpose of allowing someone other than the victim to appear at a preliminary hearing is to relieve potential burdens on a victim of a felony who may have to testify at multiple court

hearings, which for more serious offenses may involve sensitive or traumatic testimony. While CSOs do perform some of the same enforcement and investigation tasks as sworn officers, their main functions are responding to lower priority calls for service in order to allow law sworn officers to respond to more serious calls. The investigation of a minor offense may turn serious depending on the circumstances, however, this will not always or even often be the case. Thus, in those situations where a lower priority call results in arresting a person for a felony, it is unclear that requiring a sworn officer to re-interview the victim would be overly burdensome on the police department.

- 4) **Confrontation Clause:** A criminal defendant has the right under both the federal and state Constitutions to confront the witnesses against him or her. (U.S. Const., 6th Amend.; Cal. Const., art. 1, § 15.) In *Crawford v. Washington* (2004) 541 U.S. 36, 68, the United States Supreme Court held that "where *testimonial* hearsay is at issue," the Sixth Amendment forbids the prosecution from introducing it unless the declarant testifies at trial or the right to confrontation is otherwise honored. "Testimonial evidence" has been defined as including "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." (*Id.* at p. 52.) This description appears to match the hearsay introduced by investigating officers at preliminary hearings.

However, the California Supreme Court has held that the California Constitution does not require confrontation at a preliminary hearing. In doing so, the court recognized that the confrontation clause does not bar all hearsay evidence, and that the United States Supreme Court has repeatedly held that confrontation is a *trial* right. (*Whitman, supra*, at pp. 1077 and 1079.) Recently, the Ninth Circuit reconsidered this proposition in light of *Crawford, supra*, and for the same reasons came to the same conclusion. (*Peterson v. California* (9th Cir. 2010) 604 F.3d 1166, 1170.)

- 5) **Brady v. Maryland:** In *Brady v. Maryland* (1963) 373 U.S. 83, 87, the United States Supreme Court held that federal constitutional due process creates an obligation on the part of the prosecution to disclose all evidence within its possession that is favorable to the defendant and material on the issue of guilt or punishment. *Brady* evidence includes evidence that impeaches prosecution witnesses, even if it is not inherently exculpatory. (*Giglio v. United States* (1972) 405 U.S. 150, 153-155.) Further, the prosecution's disclosure obligation under *Brady* extends to evidence collected or known by other members of the prosecution team, including law enforcement, in connection with the investigation of the case. (*In re Steele* (2004) 32 Cal.4th 682, 696-697, citing *Kyles v. Whitley* (1995) 514 U.S. 419, 437.) In order to comply with *Brady*, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." (*Kyles, supra*, 514 U.S. at p. 437; accord, *In re Brown* (1998) 17 Cal.4th 873, 879.)

Evidence is material under *Brady* if there is a reasonable probability that the result of the proceeding would have been different had the information been disclosed. (*United States v. Bagley* (1985) 473 U.S. 667, 682.) The prosecution's duty to disclose exists whether or not the defendant specifically requests the information. (*United States v. Agurs* (1976) 427 U.S. 97, 107.) Failure to disclose evidence favorable to the accused violates due process irrespective of the good or bad faith of the prosecution. (*Brady, supra*, 373 U.S. at p. 87.)

This bill states that any perjured testimony given by a peace officer or law enforcement

civilian to establish probable cause at a preliminary hearing is subject to disclosure as impeachment evidence to the extent required under *Brady*. This bill also states that this is declarative of existing law.

- 6) **Argument in Support:** According to the *California Police Chiefs Association*, “Under current law, only sworn officers can deliver hearsay testimony (i.e. introducing statements made by witnesses and victims) during preliminary hearings. However, as more and more agencies are utilizing CSOs, who are non-sworn, take statements and reports for lower-level crimes, this has created complications in court rooms as those CSOs are not given that same authority as sworn officers. As such, victims and witnesses must either testify directly at preliminary hearings, or sworn officers are having to re-investigate the entire case, including re-interviewing victims and witnesses.

“If a sworn peace officer is tasked with re-investigating and re-interviewing witnesses so they can testify in place of the victim, this takes significant time to complete, and keeps the officer off the street and away from their primary duty of responding to emergency calls. It also requires the victim to relive the crime again through additional interviews. SB 804 solves both these issues by allowing a properly trained or experienced non-sworn public safety officer to testify in the same way an officer may.

“SB 804 protects victims and is the best use of public safety departments’ already limited staff.”

- 7) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice*, “The loose evidentiary rules utilized in preliminary hearing already undermine what should be a critical filter for our criminal justice process. These hearings should be designed to ensure accuracy of charges, and the pursuit of accuracy of prosecution. However, too often expediency overtakes critical evidentiary pillars. SB 804 would allow law enforcement civilians to take down witness statements and testify about them at preliminary hearings to establish probable cause, and individuals charged with crimes will not be able to cross-examine actual witnesses. Cross examination is an essential, constitutional safeguard in ensuring the accuracy and completeness of testimony and taking this safeguard away by admitting additional sources of hearsay evidence undermines the ability of the judge to determine whether probable cause has been established. When the prosecution or the judge gets it wrong, it is the defendant, their family, and community who bear the brunt of that error. This law will exacerbate this problem.

“The legislation appears to rewrite evidentiary rules simply in response to police departments’ shift to more civilian personnel. Whatever the financial savings achieved by this budgetary strategy, it does not outweigh the need to preserve the right to cross-examination. Current preliminary hearing rules are already too lenient in this regard and should not be modified simply because of personnel change in police departments. Evidentiary rules and other procedural modifications should be focused on achieving more accurate outcomes and preservation of constitutional protections.

“As currently drafted, SB 804 recognizes that these civilian personnel lack the same training or work experience as sworn officers. There are also other likely legal implications that have yet to be fully examined, such as the type of legal recourse available if a civilian intentionally mishandles a case and/or evidence. Current law in these areas focus on sworn officers and

not civilians, therefore, it is possible that these individuals will have less legal culpability and/or accountability than sworn officers.

“Ultimately, SB 804 will unjustly expedite the preliminary hearing process, making it easier for individuals accused of felony charges to be held in custody awaiting trial.”

8) **Related Legislation:** AB 2833 (McKinnor), establishes that an individual’s participation in and communications related to restorative justice processes are inadmissible in civil, criminal, juvenile, administrative or other proceedings, except as specified. AB 2833 is pending a vote on the Senate Floor.

9) **Prior Legislation:**

- a) AB 1736 (Cunningham), Chapter 64, Statutes of 2018, extended the “prior inconsistent statement” exception to the hearsay rule to conditional examinations and to allow audio recordings.
- b) AB 568 (Muratsuchi), Chapter 125, Statutes of 2013, clarified the definition of a "law enforcement officer" for purposes of introducing hearsay statements at a preliminary hearing.
- c) AB 557 (Karnette), Chapter 18, Statutes of 2005, authorized an honorably retired law enforcement officer to testify as to hearsay statements at a preliminary hearing.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Police Chiefs Association  
California State Sheriffs' Association  
Peace Officers Research Association of California (PORAC)

1 Private Individual

### **Opposition**

ACLU California Action  
California Attorneys for Criminal Justice  
California Public Defenders Association  
Californians United for A Responsible Budget  
Initiate Justice  
Initiate Justice (UNREG)  
San Francisco Public Defender

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

Date of Hearing: July 2, 2024  
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 820 (Alvarado-Gil) – As Amended May 1, 2023

**SUMMARY:** Authorizes any local jurisdiction or the Department of Cannabis Control (“DCC”), upon obtaining an inspection warrant, to seize property in the place, building, yard, or enclosure where unlicensed commercial cannabis activity is conducted, and authorizes the forfeiture, sale, and distribution of such property, as specified. Specifically, **this bill:**

- 1) Authorizes the DCC or any local jurisdiction, after obtaining an inspection warrant to seize any of the following in the place or building, or within any yard or enclosure, where there is unlicensed commercial cannabis activity involving the harvesting, drying, or processing of at least 1,000 living cannabis plants:
  - a) Cannabis or cannabis products;
  - b) Processing equipment for trimming, drying, curing, sorting, weighing, or packaging cannabis or cannabis products;
  - c) Implements of husbandry;
  - d) Packaging materials, hoop houses, irrigation or water equipment;
  - e) Generators, lighting equipment, and heating, air, and ventilation equipment;
  - f) Packaged soil, nutrients, and pesticides;
  - g) Grading equipment and manufacturing machinery equipment;
  - h) Security systems equipment;
  - i) Firearms;
  - j) Fencing, shelving and storage equipment;
  - k) Tools, raised beds and planting pots;
  - l) Computers and computer accessories related to unlicensed commercial cannabis activity; and
  - m) Currency, negotiable instruments, or securities in excess of \$40,000.

- 2) Authorizes the DCC or any local jurisdiction to seize an automobile or other vehicle used to conceal, convey, carry, deliver, or transport cannabis or cannabis products valued at more than \$5,000, by or for a person engaging in commercial cannabis activity without a required license, unless the unlicensed commercial cannabis activity conducted is limited to harvesting, drying, or processing fewer than 1,000 living cannabis plants.
- 3) Prohibits real property from being seized or forfeited pursuant to this bill.
- 4) Authorizes a person whose property has been seized to petition DCC or local jurisdiction within 10 days of the seizure for the return of the property on the grounds that the property was erroneously or illegally seized.
- 5) Requires DCC or the local jurisdiction to consider a petition for the return of illegally seized property within 60 days after filing, to grant the petitioner an oral hearing if requested, and to serve the petitioner with notice of its decision.
- 6) States that any property determined to be illegally or erroneously seized must be returned to the petitioner.
- 7) Provides that seized property shall be subject to a forfeiture proceeding in the superior court, as specified, and these forfeitures are declared statutory forfeitures.
- 8) Requires notice of the seizure and the intended forfeiture proceeding to be filed with the clerk of the court and to be served on all persons, firms, or corporations having a right, title, or interest in the property seized. If the owner or owners cannot be found, notice of the seizure and intended forfeiture proceedings are to be made upon those owners by publication in a newspaper of general circulation, as specified, in the county where the seizure was made.
- 9) Authorizes the owners of the property seized or claimant of a right, title, or interest in the property seized, to file a verified answer to the fact of the alleged use of the property, as specified, within 20 days after service of the notice of seizure and intended forfeiture proceedings, or within 20 days after the date of publication. An extension of time to make the verified answer shall not be granted.
- 10) Provides that if at the end of 20 days after the notice has been mailed or published, there is no verified answer on file, the court shall hear evidence upon the fact of use of the property, as specified, and upon proof thereof, shall order the property forfeited to the State of California.
- 11) Provides that if a verified answer has been filed, the forfeiture proceeding may be set for hearing on a day within 30 days from the date of filing, and notice of this proceeding be given to the owners filing verified answers:
- 12) Provides that at the time of the hearing, the court shall order the property released to an owners of the property who has a verified answer on file, if the owner shows by a preponderance of the evidence any of the following:
  - a) That the property did not in fact meet the criteria for seizure;

- b) That the property was not used, or intended to be used, to facilitate unlicensed commercial cannabis activity.
  - c) That the owner of the property seized did not own, manage, direct, or control any part of the unlicensed commercial cannabis activity, or have a financial interest in the commercial cannabis activity, as defined; or
  - d) That at the time of seizure, a complete application for a license had been submitted by an authorized applicant for the commercial cannabis activity and had not been approved or denied by the department or abandoned or withdrawn by the applicant.
- 13) Provides that at the time set for the hearing the claimant of a right, title, or interest in the property under a lien, mortgage, or conditional sales contract that is officially of record may prove that the lien, mortgage, or conditional sales contract is bona fide and was created after a reasonable investigation of the moral responsibility, character, and reputation of the lienholder, mortgagee, or vendor and without any knowledge that the property was being, or was to be, used in the manner related to unlicensed commercial cannabis activity.
- 14) Provides that if the lienholder, mortgagee, or vendor proves the facts described in the above paragraph, the court must order the property released to them if the amount due to them is equal to, or in excess of, the value of the property. If the amount due to them is less than the value of the property, the property must be sold at public auction by the DCC or the local jurisdiction, and the remainder of the proceeds of the sale, after payment of the balance due on the purchase price, mortgage, or lien, shall be distributed as specified.
- 15) Requires, upon a judgement in favor of the forfeiture, the property to be sold at public auction by DCC or the local jurisdiction and requires the proceeds of that sale to be distributed as follows:
- a) To the DCC for all expenditures made or incurred by it in connection with the seizure, forfeiture, and sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized;
  - b) The remaining funds are to be distributed as follows:
    - i) In the case of property seized by DCC, the funds be paid to the Treasurer for deposit into the Cannabis Control Fund (CCF);
    - ii) In the case of property seized by a local jurisdiction, the funds be paid 15 percent to the local jurisdiction; and 85 percent to the Treasurer for deposit into the CCF; and,
    - iii) All revenue deposited into the CCF pursuant to this bill, are to be available, upon appropriation of the Legislature, exclusively to carry out the provisions of the California Cannabis Equity Act.
- 16) Provides that the remedies or penalties provided by this bill are cumulative to the remedies or penalties available under other law.

**EXISTING LAW:**

**Inspection Warrants:**

- 1) Authorizes judges to issue inspection warrants to conduct any inspection required or authorized by state or local law or regulation relating to building, fire, safety, plumbing, electrical, health, labor, or zoning, upon cause, that is supported by an affidavit, particularly describing the place, dwelling, structure, premises, or vehicle to be inspected and the purpose for which the inspection is made. (Code Civ. Proc., §§ 1822.50, 1822.51.)
- 2) Provides that cause for an inspection warrant exists if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle. (Code Civ. Proc., § 1822.52.)

**Unlicensed Cannabis Operations:**

- 1) Prohibits a person from engaging in commercial cannabis activity without a state license issued by the DCC, as specified. (Bus. & Prof. Code, § 26037.5)
- 2) Authorizes DCC to issue a citation to a licensee or unlicensed person for violating the Medical and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”) or associated regulations, and allows DCC to assess an administrative fine of up to \$5,000 per violation by a licensee and up to \$30,000 per violation by an unlicensed person, where each day of violation constitutes a separate violation. (Bus. & Prof. Code, § 26031.5, subd. (a).)
- 3) Authorizes the superior court for the county in which any person has engaged or is about to engage in any act which violates MAUCRSA, upon a petition filed by DCC to issue an injunction or other appropriate order restraining such conduct. (Bus. & Prof. Code, § 26031.2, subd. (a).)
- 4) Provides that a person engaging in commercial cannabis activity without a state license shall be subject to civil penalties of up to three times the amount of the license fee for each violation, and each day of operation constitutes a separate violation. (Bus. & Prof. Code, § 26038, subd. (a) (1).)
- 5) Provides that a person aiding and abetting unlicensed commercial cannabis shall be subject to civil penalties of up to three times the amount of the license fee for each violation and each day of operation constitutes a separate violation, although penalties shall not exceed \$30,000 for each violation. (Bus. & Prof. Code, § 26038, subd. (a)(2).)
- 6) Provides an owner, lessee, agent, employee, or mortgagee who has management or control of commercial property, who knowingly rents, leases, or makes available for use property for unlicensed cannabis activity shall be subject to civil penalties of up to \$10,000 for each violation, and each day of violation shall constitute a separate violation of this section. (Bus. & Prof. Code, § 26038, subd. (a)(3).)
- 7) Provides a peace officer, including a DCC peace officer, may seize cannabis and cannabis products subject to destruction, as specified (Bus. & Prof. Code, § 26039.4.)



- 8) Provides that the penalty for any person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants is imprisonment in a county jail for a period of not more than six months or by a fine of not more than \$500, or both. (Health & Saf. Code, § 11358, subd. (c).)
- 9) Provides that a person 18 years of age or over who plants, cultivates, harvests, dries, or processes more than six living cannabis plants, or any part thereof, may be punished by imprisonment in a county jail for 16 months, or 2 or 3 years, if any of the following conditions exist:
  - a) The person has one or more prior convictions for specified felonies or for an offense requiring sex offender registration;
  - b) The person has two or more prior convictions for planting, cultivating, harvesting, drying, or processing more than six living cannabis plants; or,
  - c) The offense resulted in specified environmental harms including illegal diversion of water, pollution, or substantial environmental harm to public resources, as specified (Health & Saf. Code, § 11358, subd. (d).)

**Existing Drug Forfeiture Framework:**

- 1) Establishes the Uniform Controlled Substances Act and lists cannabis as a Schedule 1 controlled substance. (Health & Saf. Code, §§ 11053, 11054, subd. (d)(13).)
- 2) Establishes legislative guidelines for the seizure and forfeiture of property, which provide, among other things, that whenever appropriate prosecutors should seek criminal sanctions as to the underlying criminal acts that give rise to forfeiture, and law enforcement shall seek to protect the interests of innocent property owners, guarantee adequate notice and due process to property owners, and ensure that forfeiture serves the remedial purpose of the law. (Health & Saf. Code, § 11469, subd. (j).)
- 3) Requires a criminal conviction for the unlawful manufacture or cultivation of any controlled substance or its precursors in order to recover law enforcement expenses related to the seizing or destroying of illegal drugs, except for seizures of cash in excess of \$40,000. (Health & Saf. Code, §§ 11470.1, subd. (c), 11471.2.)
- 4) Establishes asset forfeiture procedure for specified controlled substances (including cannabis), and describes the items and property that are subject to drug asset forfeiture. These include:
  - a) The controlled substances.
  - b) All raw materials, products, and equipment of any kind which are used, intended for use, in manufacturing, compounding processing, delivering, importing, or exporting the controlled substance.

- c) All property except real property or a boat, airplane, or any vehicle which is used, or intended for use, as a container for the above property.
  - d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of the prohibited controlled substance.
  - e) The interest of any registered owner of any vehicle (other than an implement of husbandry) which has been used to facilitate the manufacture, possession, or sale of 10 pounds of dry weight cannabis, among other controlled substances.
  - f) All money, instruments, securities, or other things of value furnished by any person in exchange for a controlled substance, as specified; and
  - g) Specified real property interests. (Health & Saf. Code, § 11470, et seq.)
- 5) Establishes detailed procedures for a drug forfeiture action, including the filing of a petition for forfeiture within one year of seizure, notice of seizure, publication of notice, the right to a jury trial, and a motion for return of property. (Health & Saf. Code, § 11488.4.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "[w]e are almost eight years post implementation of Prop 64 and still seeing the negative impacts of illegal cannabis cultivation on the legal market. Unlicensed cannabis farms put the law-abiding growers, those who pay required fees and taxes, at a great disadvantage. Additionally, the impact on the legal market has had a disproportionate effect on social equity retailers. SB 820 is a solution to ensure the integrity of the legal cannabis market, and to encourage licensed cultivation. The Cannabis Equity Act is a pivotal piece of legislation to prioritize the historic nature of communities negatively impacted by cannabis criminalization. The intent of SB 820 is to dis-incentivize illegal grows while protecting dedicated dollars for the Cannabis Control Fund - social equity funds to reinvest in the legal, regulated cannabis market."
- 2) **Unlicensed Cannabis Activity:** Despite the existence and regulation of a legal cannabis industry in California following the approval of Proposition 64, the illicit cannabis industry persists. One recent study estimated that the black market still accounts for roughly two-thirds of the state's cannabis sales.<sup>1</sup> Further, in 2021, the California Department of Fish and Wildlife destroyed 2.6 million illegal cannabis plants and 487,270 illegal cannabis flowers, removed 404 illegal water diversions, and served 1,125 search warrants.<sup>2</sup> Moreover, the Unified Cannabis Enforcement Taskforce seized a combined total of \$9.5 million in cash,

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<sup>1</sup> "A New Report Explains How California Screwed Up Marijuana Legalization." 5 May 2022. Reason Magazine. [A New Report Explains How California Screwed Up Marijuana Legalization \(reason.com\)](https://reason.com)

<sup>2</sup> "California Department of Fish and Wildlife releases cannabis enforcement numbers for 2021." <https://cannabis.ca.gov/2022/02/cdfw-releases-cannabis-enforcement-numbers-for-2021/>

and a retail value of over \$1.3 billion in seized cannabis product in 2021 and 2022.<sup>3</sup>

In 2022 the Unified Cannabis Enforcement Task Force (“UCETF”) was established in DCC to increase cannabis enforcement coordination between state, local, and federal partners, for the purpose of improving enforcement against unlicensed cannabis operations.

- 3) **Existing Forfeiture Frameworks:** Forfeiture generally follows one of two legal routes: criminal or civil. While all forfeitures are technically triggered by illegal conduct, they are classified as civil or criminal based on the type of procedure which ends in confiscation of the subject property. The law typically uses the term “seizure” to refer to the taking and holding of evidence that may be associated with a crime in order to use those items as proof in a later criminal trial. Cash proceeds from a drug deal, for example, may be “seized” at the time of an arrest. Forfeiture, by contrast, is typically done after the trial has resulted in a conviction. Forfeiture refers to the process by which the cash proceeds are distributed to law enforcement and other entities within the jurisdiction.

In civil forfeitures, the guilt or innocence of the property owner is irrelevant – it is enough that the property was involved in the unlawful behavior to which forfeiture attaches. Civil asset forfeiture has allowed the government to seize and keep cash, cars, real estate, and any other property suspected of being connected to criminal activity even if the owner is never convicted of a crime. For this reason, *statutes imposing forfeitures are not favored and are to be strictly construed in favor of the persons against whom they are sought to be imposed.* This disfavor applies notwithstanding the strong governmental interest in stemming illegal drug transactions.<sup>4</sup>

California currently has two major statutory civil forfeiture processes relevant to this bill, one that relates to alcoholic beverages and one that relates to controlled substances.

Under the alcoholic beverage seizure statutes, the Department of Alcoholic Beverage Control (“ABC”) may seize an array of specified alcoholic beverages, as well as “any unlicensed still” and “any implements, instruments, vehicles and personal property in the place or building, or within any yard or enclosure, where any unlicensed still or parts thereof are found.”<sup>5</sup> Presumably, as illicit alcohol operations in the wake of prohibition have given way to a robust legal alcohol industry, the use of this forfeiture process has been sparse. In 2021, the ABC only received a total of roughly \$860 in forfeited funds between two operations, suggesting relatively minimal alcohol-focused enforcement activities.<sup>6</sup>

The more commonly used forfeiture process in California law pertains to assets seized from illicit activities relating to controlled substances. The Legislature has set forth several statutory guidelines to ensure the proper utilization of laws permitting the seizure and forfeiture of property related to controlled substances, primarily proscribing the inappropriate use of forfeited assets and funds. Additionally, these provisions grant government officials

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<sup>3</sup> “California Department of Cannabis Control releases cannabis enforcement operation statistics for 2021 and 2022, reports surge in efforts to dismantle illicit market.” <https://cannabis.ca.gov/2023/03/enforcement-update/#:~:text=DCC-led%20search%20warrant%20operations,2021%20and%2056%20in%202022>

<sup>4</sup> *People v. \$10,153.38 in United States Currency* (2009) 179 Cal.App.4th 1520, 1525-1526.

<sup>5</sup> Business and Professions Code §§ 23530, 23532.

<sup>6</sup> 2021 DOJ Asset Forfeiture Annual Report. <https://oag.ca.gov/system/files/media/2021-af.pdf>

broad authority to seize a wide array of property and assets, including the controlled substances themselves, all raw materials, products and equipment, written materials and records, money, specified real property, specified vehicles, and all other property that is not real property or a vehicle.<sup>7</sup>

In 2016, the Legislature passed Senate Bill 443 (Mitchell, Ch. 831, Stats. of 2016), which revised and curtailed California's drug asset forfeiture laws in order to curb perceived abuses of the system by law enforcement.<sup>8</sup> That measure required a conviction prior to forfeiture in any case where the items seized are cash under \$40,000 or other property such as homes regardless of value. Even with this reform, critics of civil asset forfeiture maintain that the system is still problematic, arguing that it disproportionately impacts the poor, violates various constitutional guarantees and the presumption of innocence, and incentivizes law enforcement overreach and unjust enrichment.

- 4) **Effect of this Bill:** Under existing drug asset forfeiture statutes, law enforcement must pursue criminal cannabis-related charges in order to lawfully seize assets over \$40,000, and must secure a conviction before seizing cash assets under \$40,000.<sup>9</sup> This bill permits any local jurisdiction or the DCC, upon obtaining an inspection warrant, to seize specified property if the unlicensed activity involves at least 1,000 cannabis plants. It is not clear how a seizing authority could determine if the 1,000 plant threshold is met, without initially entering the home or building and seizing the property.

Once property has been seized, notice of the seizure and intended forfeiture proceedings must be provided to interested parties. In order for a person whose property has been seized to get their property back, they may petition DCC or the local jurisdiction, within 10 days of seizure, to return the property, and such a petition must be considered within 60 days of its filing. Alternatively, an owner whose property has been seized may file a verified answer within 20 days of notice of forfeiture. If no such answer has been filed, a court must hear evidence on the use of property, and upon proof that the property qualifies for seizure, shall order the property forfeited. If the verified answer has been filed a forfeiture proceeding may be set within 30 days of that filing and that person must prove by the preponderance of the evidence that their property was not subject to seizure. Property determined to be illegally or erroneously seized must be returned.

SB 820 provides that upon a judgement in favor of forfeiture, the proceeds of the sale shall be distributed to DCC for expenditures incurred in connection with the seizure, forfeiture, and sale. If the seizure was made by DCC, any remaining funds shall be distributed to the CCF. If the seizure was made by a local jurisdiction, 15% of the funds shall be paid to a local jurisdiction and 85% to the CCF. Revenue deposited in the CCF can only be used to carry out the provisions of the Cannabis Equity Act.

- 5) **Racial Disparities in Civil Asset Forfeiture and Unlicensed Cannabis Enforcement:** Civil asset forfeiture, a tool heavily utilized in the War on Drugs, tends to be disproportionately utilized against communities of color and low income communities. Data

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<sup>7</sup> Business and Professions Code §11470

<sup>8</sup> For instance, see "The Injustice of Civil Asset Forfeiture." 12 May 2015. The Atlantic.

<https://www.theatlantic.com/politics/archive/2015/05/the-glaring-injustice-of-civil-asset-forfeiture/392999/>

<sup>9</sup> Health and Safety Code §11470.1

suggests that half of DEA seizures from California impacted persons with Latino surnames, and the “vast majority (54%) of the proceeds of federal asset forfeiture in California goes to agencies that police communities that are majority people of color.”<sup>10</sup> Further, Department of Justice and US Census Bureau data indicates that of the California counties with the 10 highest per capita seizure rates, nine had median incomes below the statewide median.<sup>11</sup>

Further, contemporary enforcement efforts against unlicensed cannabis operations in California disproportionately impact people of color. According to the California Research Bureau, both Black and Hispanic people are overrepresented in felony and misdemeanor arrests compared to their representation in the population.<sup>12</sup> “Despite the legalization of cannabis in the state [] Black people continue to be overrepresented in felony and misdemeanor marijuana arrests by roughly three (felony) and two times (misdemeanor) their representation in the population. Moreover, marijuana arrest rates tend to be highest in marijuana-producing California counties such as Mendocino, where the arrest rate for Black people was nearly 10 times higher than the arrest rate for white people in 2016.”<sup>13</sup>

This trend appears to hold true for other enforcement efforts targeting water usage for unlawful cannabis cultivation, which have also been used to target minority communities.<sup>14</sup>

- 6) **Threshold to Initiative Property Seizure:** SB 820 would authorize local jurisdictions and the DCC to seize assets and specified property from homes or buildings upon obtaining an *inspection warrant*. An inspection warrant is obtained from a judge upon a showing of cause that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.<sup>15</sup> For example, an observation of a building code violation may provide cause for such a warrant. No evidence of any criminal activity, let alone a conviction, is needed. By permitting local jurisdictions and DCC to seizure property simply upon a showing of cause that a condition of nonconformity exists, this bill may significantly increase civil asset forfeiture by local governments and the DCC.

This lower threshold of an inspection warrant presents a notable contrast to the Legislature’s recent attempts to increase the standard associated with asset forfeiture. (See SB 443 (Mitchell), Ch. 831, Stats. 2016.).

- 7) **Broad Scope of Property to be Seized:** If DCC or a local jurisdiction obtains an inspection warrant, which subsequently reveals unlicensed commercial cannabis activity, the DCC or the local jurisdiction can seize a broad range of property found in the home or building. While some of the items to be seized must be related to cannabis activity (cannabis, specified

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<sup>10</sup> Civil Asset Forfeiture, American Civil Liberties Union (May 2016), p. 3, available at: <https://www.aclusocal.org/en/sb443-report/>

<sup>11</sup> *Id.* at p. 7.

<sup>12</sup> California Research Bureau, *Criminalization of Cannabis Led to Inequities. Now State Revenue Seek to Address* (May 2021). Available at: <[https://www.library.ca.gov/wp-content/uploads/crb-reports/2021\\_05\\_Cannabis\\_Policy\\_Brief.pdf](https://www.library.ca.gov/wp-content/uploads/crb-reports/2021_05_Cannabis_Policy_Brief.pdf)> [as of April 17, 2024].)

<sup>14</sup> Los Angeles Times, *A California county cuts off water to Asian pot growers. Is it racism or crime crackdown?* (Oct. 26, 2021) <<https://www.latimes.com/california/story/2021-10-26/weaponizing-california-water-against-illegal-pot-growers>> [June 20, 2023]; The Guardian, *Water, weed and racism: why Asians feel targeted in this rural California county* (April 8, 2022) <<https://www.theguardian.com/us-news/2022/apr/08/california-asian-discrimination-water-rights-siskiyou>> [June 20, 2023]; (See, e.g., “*ro*” *Lo v. Cnty. of Siskiyou* (E.D. Cal. 2021) 558 F.Supp.3d 850, 869.).

<sup>15</sup> Code Civ. Proc., § 1822.52.

cannabis equipment, computer accessories, and vehicles), SB 820 permits seizure of assets and equipment unrelated to cannabis activity, for example, agricultural equipment, security systems, firearms, infrastructure, and securities, even if those assets are unrelated to cannabis activity. This may result in seizures of property by family or friends sharing the same space as a person engaged in unlicensed cannabis activity.

Further, SB 820 permits the seizure of valuable assets such as computers, computer accessories (may include phones), and automobiles. Such property seizure may have significant consequences for employees and low wage workers in unlicensed cannabis operations. Specifically – this bill permits the seizure of computers and computer accessories “related to” unlicensed activity or automobiles used to carry, deliver, or transport cannabis valued at more than \$5,000. Given that this bill does not identify how and when the connection between property and unlicensed cannabis activity must be shown, phones and automobiles found in the same facility as unlicensed cannabis activity may be presumed to be “related” or “used” as part of unlicensed activity. Taking the computers, phones, and vehicles of low wage workers in unlicensed cannabis operations may have significant implications for those workers economic security and access to housing.

- 8) **Risk of Unlawful Seizures and Burden on Property Owners to Reclaim Property:** As previously discussed, SB 820 does not require criminal culpability to seize a person’s property. Rather than requiring DCC or a local government to prove that the seizure of property under this bill was lawful, SB 820 requires property owners to take several steps in order to recover their property, and to prove why their property should not be subject to forfeiture. For example, a person whose property has been seized has 10 days to petition DCC or a local jurisdiction to return the property and DCC must consider that petition within 60 days of filing that petition. As a result, a person may not be able to reclaim their property for 70 days, even if the seizure was unlawful. Alternatively, under resourced persons without access to legal guidance may not petition for the return of the property in the first place. Alternatively, a person has the option to file a verified answer within 20 days of receiving notice of seizure and forfeiture. If such an answer is filed the owner *must show by the preponderance of the evidence* that their property was unlawfully seized.

As noted earlier, case law has established that statutes imposing forfeitures are not favored and are to be strictly construed in favor of the persons against whom they are sought to be imposed. *Should the California Legislature permit the seizure of critical personal property such as computers and cars and then place the burden on the property owner to prove why that seizure was unlawful?*

- 9) **Numerous Penalties Available to Address the Conduct this Bill Seeks to Prohibit:** There are several types of penalties that can be imposed on unlicensed cannabis operations.

First, in terms of criminal penalties, any person over 18 who plants, cultivates, dries or processes more than six cannabis plants can face up to six months in jail.<sup>16</sup> Further, felony charges can also be brought against repeat violators and where the unlicensed operations causes specified environmental harms. It is a felony for a person who plants, cultivates,

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<sup>16</sup> Health & Saf. Code, § 11358, subd. (c.)

harvest, dries, or processes more than six cannabis plants if the offense results specified environmental harm.<sup>17</sup>

Second, the Legislature has established a broad array of civil penalties can be imposed against unlicensed cannabis operations.<sup>18</sup>

Third, as noted earlier, assets seized from illicit activities relating to controlled substances (such as cannabis) can already be seized and subject to forfeiture where a criminal conviction is obtained.<sup>19</sup>

*Given that seizures related to controlled substances generally require a conviction, does it make sense for California Legislature to create a lower threshold to seize assets associated with unlicensed cannabis than for other controlled substances such as heroin or fentanyl?*

- 10) **Argument in Support:** According to *Rural County Representatives of California*: “Existing law authorizes the seizure of property used in conjunction with the unlicensed manufacture of hard liquor (i.e., moonshining). Unlike drug forfeiture statutes, these laws are adapted to the fact that alcoholic beverages are not inherently unlawful. No criminal conviction is required, and anyone with an interest in the property is given an opportunity to prove in a civil proceeding that the property was not used unlawfully. Recent amendments provide additional protections against forfeiture for workers' property, for the property of cannabis businesses actively engaged in the state licensure process, and for any property otherwise not used or intended to be used to facilitate illegal commercial cannabis activity.

“SB 820 would bolster enforcement efforts against illicit cannabis operations by authorizing, through a civil enforcement process, the removal of the underlying infrastructure—such as specialized cultivation and manufacturing equipment—used for unlicensed cannabis activities. SB 820 provides law enforcement with an optional tool to disrupt the resources of unlicensed conspirators that allow illegal cannabis operations to thrive. In addition, this measure invests enforcement proceeds in the Cannabis Control Fund to support equity programs for legal operators that were negatively impacted by the war on drugs. It's vital to not only shut down bad actors but also support licensed cannabis businesses that enhance reliable access to regulated, tested cannabis in the legal market.

“This model is a needed tool to effectively curtail illicit cannabis operations that undercut a safe and legal marketplace. It is critical to ensure that the limited resources used to enforce against unlicensed cannabis operations are impactful. In addition to disrupting the operations themselves, civil forfeiture can also act as a deterrent to other illicit operators and promote entrance into the legal, regulated cannabis market.”

- 11) **Argument in Opposition:** According to the *California Public Defenders Association*: “SB 820 authorizes the forfeiture of a family’s property (implements, instruments, vehicles, currency, the personal property in the place or building, or within any yard or enclosure, etc.) by “any local jurisdiction” where “commercial cannabis activity” occurs without a license. Forfeitures such as the type proposed by SB 820 hit our clients particularly hard. Many of

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<sup>17</sup> Health & Saf. Code, § 11358, subd. (d).

<sup>18</sup> See e.g., Bus. & Prof. Code, §§ 26038, subd. (a)(5), 26039.4, 26031.5, subd. (a).

<sup>19</sup> Health & Saf. Code, § 11470.1, subd. (c).

our clients have limited personal property to begin with. Taking away a car, for example, may mean they will lose a job, not be able to pick up their children from school or day care, or not be able address medical issues. Many of our client live out of their cars. The devastating impact that the forfeitures proposed by SB 820 would have on the lives of our clients cannot be overstated.

“SB 820 seeks to revive and rely on a harsh drug war strategy, civil asset forfeiture. Civil forfeiture places the responsibility on owners to prove the innocence of their own property, which is nearly impossible to do. In addition, the bill does not follow established forfeiture law, codified in H&SC 11470 et seq. with rules of procedure at H&SC 11488.4. Instead, it puts new forfeiture language into the Business and Professions code, with the cryptic addition, “The remedies or penalties provided by this section are cumulative to the remedies or penalties available under other law.”

“Further, we continue to strongly oppose distributing the proceeds of enforcement actions to the same entities that initiated, investigated, prosecuted, and enforced the action. First, the bill would reimburse the entity for “all expenditures made or incurred by its connection with the seizure.” Then any additional proceeds (profits) would be split between the Treasurer, the Cannabis Control Fund, and the local entity. This type of policing-for-profit undermines just and unbiased enforcement. Any fines or proceeds from lawful seizure, pursuant to a conviction and cognizant of the rights of guiltless family members, should go to the state or county General Fund. Given the prior abuses of civil asset forfeiture and the national attention to the issue, we can predict that conservative and liberal protectors of civil rights and property will join in opposition to this bill.”

#### 12) Related Legislation:

- a) AB 1616 (Lackey) of the 2023-2024 Legislative Session, authorizes the Board of State and Community Corrections (BSCC) to award grants from the California Cannabis Tax Fund to local governments that were previously ineligible and requires BSCC to prioritize grants to local governments whose programs seek to combat the illicit cannabis market. AB 1616 is pending in Senate Public Safety Committee.
- b) AB 2850 (Rodriguez), of the 2023-2024 Legislative Session, would create a new felony for persons 18 to 20 years of age who plant, cultivate, harvest, dry, or process any cannabis plants. AB 2850 did not receive a hearing in the Assembly Public Safety Committee.

#### 13) Prior Legislation:

- a) AB 1448 (Wallis), Chapter 843, Statutes of 2023, redirects specified portions of civil penalties collected for unlicensed commercial cannabis activity from the General Fund to the treasurers of localities that brought the action for the penalties.
- b) AB 1684 (Maienschein), Chapter 477, Statutes of 2023, expanded existing law that allows local agencies to immediately impose administrative fines or penalties for specified violations that exist as a result of the unlicensed cultivation of cannabis to also include the unlicensed manufacturing, processing, distribution, or retail sale of cannabis.



- c) SB 753 (Caballero), Chapter 504, Statutes of 2023, makes it a felony for an adult who plants, cultivates, harvests, dries, or processes more than six living cannabis plants to intentionally or with gross negligence cause substantial environmental harm to surface or groundwater.
- d) AB 2728 (Smith), of the 2021-2022 Legislative Session, would have increased the maximum civil penalty for engaging in commercial cannabis activity without a license to up to four times the amount of the license fee for the violation, with each day of operations constituting a separate violation. AB 2728 did not receive a hearing in Senate Judiciary Committee.
- e) SB 1426 (Caballero), of the 2021-2022 Legislative Session, makes it an alternate felony/misdemeanor (a “wobbler”) to plant, cultivate, harvest, dry, or process more than 50 living cannabis plants when that activity involves unauthorized tapping into a water conveyance or storage infrastructure, or digging an unpermitted well. SB 1426 was held in suspense in the Senate Appropriations Committee.
- f) AB 2421 (Rubio), of the 2021-2022 Legislative Session, would have authorized a county counsel to file a civil action relating to unlawful water pollution and unauthorized water diversions due to unlicensed cannabis cultivation on behalf of the state. AB 2421 did not receive a hearing in the Senate Judiciary Committee.
- g) AB 195 (Committee on Budget and Fiscal Review), Chapter 56, Statutes of 2022, among other things, authorized, for a violation resulting from unlicensed cannabis cultivation, a civil action brought by a county counsel or city attorney, as specified.
- h) AB 1138 (B. Rubio), Chapter 530, Statutes of 2021, subjects any person who aids and abets unlicensed commercial cannabis activity to civil penalties of up to \$30,000 per day.
- i) AB 2094 (Jones-Sawyer) of the 2019-2020 Legislative Session, would have imposed civil penalties of up to \$30,000 on persons who rent, lease, or make property available for the purpose of unlawfully cultivating, manufacturing, selling, storing, or distributing illicit cannabis. AB 2094 did not receive a hearing in the Assembly Business and Professions Committee.
- j) SB 443 (Mitchell), Chapter 831, Statutes of 2016, required a conviction before California law enforcement agencies can share in the proceeds of drug asset forfeiture in joint federal-state task force cases, except for seizures of cash in excess of \$40,000.

## REGISTERED SUPPORT / OPPOSITION:

### Support

California Cannabis Industry Association  
County of El Dorado  
County of Mendocino  
County of Monterey  
County of Siskiyou

League of California Cities  
Peace Officers Research Association of California (PORAC)  
Rcrc  
Rural County Representatives of California (RCRC)

**Opposition**

ACLU California Action  
All of Us or None Los Angeles  
California Coalition for Women Prisoners  
California Public Defenders Association  
Californians United for A Responsible Budget  
California Norml (UNREG)  
Drug Policy Alliance  
Ella Baker Center for Human Rights  
Initiate Justice Action  
Last Prisoner Project  
Legal Services for Prisoners With Children  
San Francisco Public Defender

**Analysis Prepared by:** Ilan Zur

Date of Hearing: July 2, 2024  
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 898 (Skinner) – As Amended June 26, 2024

**SUMMARY:** Expands the post-conviction factors a court must consider when resentencing, as specified, to include whether an incarcerated person has been a victim of sexual abuse by staff at a Department of Corrections and Rehabilitation (“CDCR”) or jail facility, identifies what conduct constitutes retaliation against an incarcerated person for reporting sexual abuse against correctional staff, and permits such an incarcerated person, if sexual abuse is proven, as specified, to receive a sentence reduction of up to 12 months. Specifically, **this bill:**

- 1) Provides that notwithstanding any other law, an action for sexual assault brought against a public entity or public employee by a person who is imprisoned on a criminal charge, or in execution under the sentence of a criminal court, shall be tolled during the period of imprisonment and until one year after the release from custody.
- 2) Provides that for a defendant sentenced to imprisonment for life without possibility of parole who was under 18 years of age at the time of the offense, and has been incarcerated for at least 15 years, the factors a court may consider when determining whether to resentence the defendant to a term of imprisonment with the possibility of parole include, whether the defendant has been a victim of sexual abuse or sexual violence at any time during their incarceration.
- 3) Provides that if a court initiates resentencing for a defendant convicted of a felony within 120 days of the defendant's commitment, the post-conviction factors the court shall consider include whether the defendant has been a victim of sexual abuse or sexual violence by a staff person at a CDCR facility or a county correctional facility or jail during the defendant's incarceration.
- 4) Provides that in the 90 days following an allegation of sexual abuse brought on behalf of an incarcerated person against a staff person at a CDCR facility or a county correctional facility or jail, CDCR or county facility shall monitor the person who made the report and the person who is reported to have suffered the sexual assault for possible retaliation.
- 5) Provides that the following actions are presumed to be retaliation that requires a referral within 72 hours for investigation by CDCR's Office of Internal Affairs or, in the case of a county correctional facility or jail, their oversight agency:
  - a) Disciplinary reports.
  - b) Program or job changes.
  - c) Housing changes including, but not limited to, ordered transfers to other facilities.

- d) Denial of mental health care.
  - e) Strip searches.
  - f) Non-routine cell searches.
  - g) Denial of access to visiting with or support from family, community supporters, or legal advocates.
- 6) Provides that if an incarcerated person, subject to the above, is ordered to be transferred to another facility with 90 days after a report of sexual assault, the transfer shall be referred to and reviewed by the Departmental Review Board or local oversight agency on an expedited basis.
- 7) Provides that if the review board or the local oversight agency determines that the transfer was improper, the incarcerated person shall be transferred back to the facility from which they were transferred within 48 hours after the determination.
- 8) Provides any act of retaliation against an incarcerated person who has made a complaint of sexual abuse by a staff person at a CDCR facility or a county correctional facility or jail is prima facie evidence that the abuse occurred and creates a rebuttable presumption that the abuse occurred in any subsequent civil or administrative proceeding regarding the abuse.
- 9) Defines “Survivor Safety Emergency Credits” as credits that allow for any person incarcerated to be eligible to receive a sentence reduction up to 12 months if they have been proven to have been sexually assaulted by a staff person at a CDCR facility or a county correctional facility or jail.
- 10) Provides that the Secretary of CDCR or a county probation department of the county in which the person is incarcerated shall award Survivor Safety Emergency Credits to an incarcerated person who has experienced sexual assault by a staff person at a CDCR facility or a county correctional facility or jail while incarcerated, in accordance with the following:
- a) Provides that Survivor Safety Emergency Credits shall reduce a sentence by 12 months.
  - b) Provides that Survivor Safety Emergency Credits shall be available to an incarcerated person whose sexual assault by a staff person has been established by any of the following:
    - i) A court order, stipulation, or admission of staff sexual assault.
    - ii) A conviction in a criminal case.
    - iii) A substantiated finding in a Prison Rape Elimination Act investigation involving sexual assault by staff.
    - iv) A sustained finding in a staff misconduct investigation involving sexual assault.

- 11) Provides that CDCR or a county probation department shall identify those persons in custody who may be eligible for Survivor Safety Emergency Credits and verify eligibility, as specified, when a claim had been asserted by the incarcerated person or a third party.
- 12) Provides that By July 1, 2025, CDCR or a county probation department shall review staff and incarcerated persons records to identify any person eligible for Survivor Safety Emergency Credits, if CDCR has reason to know of sexual assault cases by staff, and shall apply the Survivor Safety Emergency Credit accordingly for an incarcerated person still in custody.
- 13) Provides that Survivor Safety Emergency Credits shall not be forfeited for violation of jail or prison rules.

**EXISTING LAW:**

- 1) Provides specified factors a court may consider when determining whether to resentence the defendant sentenced to life without parole to a term of imprisonment with the possibility of parole who was under 18 years of age at the time of the offense and has been incarcerated for at least 15 years. (Pen. Code, § 1170, subd. (d)(6).)
- 2) Authorizes a court to initiate resentencing for a defendant convicted of a felony within 120 days of the defendant's commitment, or any time upon the recommendation of the secretary of the Board of Parole Hearings, the county correctional administrator, district attorney or Attorney General, and identifies the specific post-conviction factors a court should consider during such resentencing. (Pen. Code, § 1172.1, subd. (a).)
- 3) Requires CDCR inmate classification and housing assignment procedures to take into account specified risk factors that can lead to inmates and wards becoming the target of sexual victimization or of being sexually aggressive toward others. (Pen. Code, § 2636, subd. (a).)
- 4) Requires CDCR to ensure that staff members intervene when an inmate or ward appears to be the target of sexual harassment or intimidation. (Pen. Code, § 2636, subd. (b).)
- 5) Requires CDCR to ensure that its protocols for responding to sexual abuse include all of the following:
  - a) The safety of an inmate or ward who alleges that they have been the victim of sexual abuse shall be immediately and discreetly ensured. Staff shall provide the safest possible housing options to inmates and wards who have experienced repeated abuse. Housing options may include discreet institution transfers.
  - b) Inmates and wards who file complaints of sexual abuse shall not be punished, either directly or indirectly, for doing so. If a person is segregated for his or her own protection, segregation must be non-disciplinary.
  - c) Any person who knowingly or willfully submits inaccurate or untruthful information in regards to sexual abuse is punishable pursuant to department regulations.

- d) Under no circumstances is it appropriate to suggest that an inmate should fight to avoid sexual violence or to suggest that the reported sexual abuse is not significant enough to be addressed by staff.
  - e) Staff shall not discriminate in their response to inmates and wards who are gay, bisexual, or transgender who experience sexual aggression, or report that they have experienced sexual abuse.
  - f) Retaliation against an inmate or ward for making an allegation of sexual abuse shall be strictly prohibited. (Pen. Code, § 2637.)
- 6) Requires CDCR to ensure that the following procedures are performed in the investigation and prosecution of sexual abuse incidents:
- a) The provision of safe housing options, medical care, and the like shall not be contingent upon the victim's willingness to press charges.
  - b) Investigations into allegations of sexual abuse shall include, when deemed appropriate by the investigating agency, the use of forensic rape kits, questioning of suspects and witnesses, and gathering of other relevant evidence.
  - c) Physical and testimonial evidence shall be carefully preserved for use in any future proceedings.
  - d) Staff attitudes that inmates and wards cannot provide reliable information shall be discouraged.
  - e) If an investigation confirms that any employee has sexually abused an inmate or ward, that employee shall be terminated. Administrators shall report criminal sexual abuse by staff to law enforcement authorities.
  - f) While consensual sodomy and oral copulation among inmates is prohibited the increased scrutiny provided by this article shall apply only to nonconsensual sexual contact among inmates and custodial sexual misconduct. (Pen. Code, § 2639.)
- 7) Requires CDCR to collect specified statistics on sexual abuse of inmates and wards, including whether the abuse was perpetrated by staff, and this data shall be made available to the Office of the Sexual Abuse in Detention Elimination Ombudsperson. (Pen. Code, § 2640.)
- 8) Creates the Office of the Sexual Abuse in Detention Elimination Ombudsperson in state government to ensure the impartial resolution of inmate and ward sexual abuse complaints, and bases the office within the Office of the Inspector General (OIG), subject to the following:
- a) The ombudsperson shall have the authority to inspect all of the CDCR institutions and to interview all inmates and wards.

- b) CDCR shall allow all inmates and wards to write confidential letters regarding sexual abuse to the ombudsperson.
  - c) Information about how to confidentially contact the ombudsperson shall be clearly posted in all CDCR institutions.
  - d) The OIG shall investigate reports of the mishandling of incidents of sexual abuse, while maintaining the confidentiality of the victims of sexual abuse, if requested by the victim. (Pen. Code, § 2641.)
- 9) Provides that persons sentenced to county jail or state prison are eligible to earn custody credits, as specified. (Pen. Code, §§ 2933, 4019.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "California's Department of Corrections and Rehabilitation (CDCR) has a zero tolerance policy on sexual assault and harassment within state prisons. Yet despite the enactment of the Prison Rape Elimination Act over 20 years ago, sexual assault has not been eliminated in CDCR facilities. A person is sentenced to custody for their crime, that sentence does not include enduring rape or sexual assault while serving their time. Earlier this year the Madera County DA charged a former corrections officer with 90 counts of rape and sexual assault against 16 women incarcerated at California's Correctional Women's Facility in Chowchilla. The assaults occurred over many years, demonstrating that staff on inmate sexual assaults remain an ongoing concern. Creating safe conditions for a victim to report such incidents without fear of retaliation is an essential step toward achieving the goal of zero sexual assaults. SB 898 creates such conditions by protecting incarcerated victims who report sexual assault from staff retaliation. SB 898 acknowledges the grave harm of staff on inmate sexual assault by allowing the victims with substantiated sexual assault claims up to 12 months of Survivor Safety Credits, and consideration by a court during any subsequent hearings on the victim's sentence."
- 2) **Sexual Abuse of Incarcerated Individuals:** Sexual violence, sexual misconduct, and sexual harassment in the nation's correctional facilities is prevalent.<sup>1</sup> The Bureau of Justice Statistics conducts an annual Survey of Sexual Victimization which is administered to all federal and state prisons, all facilities operated by the military and U.S. Immigration and Customs Enforcement, and representative samples of public and private jails, private prisons, and jails holding adults on Native American territory.<sup>2</sup> As part of the survey, correctional administrators provide annual totals of allegations of five types of sexual victimization which are determined by the type of incident (e.g., nonconsensual sexual acts, abusive sexual

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<sup>1</sup> See Char Adams, *Hundreds of lawsuits allege decades of sexual abuse at Rikers Island* (Dec. 5, 2023) available at <<https://www.nbcnews.com/news/nbcblk/sexual-abuse-lawsuits-rikers-island-new-york-adult-survivors-act-rcna126898>>; Lisa Fernandez, *More than 60 sex abuse, retaliation lawsuits filed against officers at FCI Dublin* (Mar. 8, 2024) available at <<https://www.ktvu.com/news/more-than-60-sex-abuse-retaliation-lawsuits-filed-against-officers-at-fci-dublin>>; Stacey Barchenger, *NJ to pay \$21M for assaults at women's prison, federal oversight coming* (Apr. 8, 2021) available at <<https://www.northjersey.com/story/news/new-jersey/2021/04/08/nj-settlement-edna-mahan-million-assaults-womens-prison-federal-consent-decree/7140814002/>>; Alysia Santo, *Preying on prisoners: When Texas guards demand sex* (Jun. 17, 2015) available at <<https://www.texastribune.org/2015/06/17/preying-texas-prisoners-when-guards-demand-sex/>>.)

<sup>2</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Special Report: Sexual Victimization Reported By Adult Correctional Authorities, 2016-2018* (Jun. 2021), pp. 1-2 available at <<https://bjs.ojp.gov/content/pub/pdf/svraca1618.pdf>>.

conduct, and sexual harassment) and perpetrator (e.g., incarcerated individual or staff).<sup>3</sup> Between 2016 and 2018, there were 45,581 allegations of sexual victimization reported by the nation's prisons and jails in which a staff member was the perpetrator.<sup>4</sup>

Between 2016 and 2018, correctional authorities reported 2,229 substantiated incidents of sexual victimization perpetrated by staff on an incarcerated person.<sup>5</sup> Of those 2,229 substantiated incidents, 1,549 were sexual misconduct incidents and 680 were sexual harassment incidents.<sup>6</sup> The overwhelming majority of sexual harassment or sexual misconduct incidents perpetrated by staff were perpetrated by correctional officers or other custodial staff, although maintenance staff, medical staff, administrative staff, program staff, and other staff were also found to have victimized incarcerated individuals.<sup>7</sup>

California's prisons—and the women's prisons in particular—have been plagued with allegations of staff sexual assault and sexual misconduct for years.<sup>8</sup> 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.<sup>9</sup> The lawsuit alleges that 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.<sup>10</sup> 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.<sup>11</sup>

- 3) **Effect of the Bill:** SB 898 seeks to address the well documented problem of sexual abuse of incarcerated persons perpetrated by prison and jail staff by identifying the type of conduct that constitutes retaliation when an incarcerated persons alleges sexual abuse and violence by staff, and permitting such sexual abuse at the hands of the state to be used to provide resentencing relief. Some of the bill's most notable changes include the following: 1) providing that an action for sexual assault brought by an incarcerated person shall be tolled during imprisonment and until one year after release; 2) allowing courts to consider whether an incarcerated person has been a victim of sexual abuse while incarcerated, and whether that abuse was perpetrated by prison or jail staff in resentencing decisions; and 3) identifying the specific types of conduct that constitute unlawful retaliation against an incarcerated person who claim they have been sexually abused by prison or jail staff (e.g. disciplinary report, program or job changes, housing changes, denial of mental health, strip searches, denial of visitation). Such retaliation would establish a rebuttable presumption that the abuse occurred in associated proceedings.

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<sup>3</sup> *Id.* at p. 2.

<sup>4</sup> *Id.* at p. 6.

<sup>5</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Special Report: Substantiated Incidents of Sexual Victimization Reported By Adult Correctional Authorities, 2016-2018* (Jan. 2023), p. 1 available at <<https://bjs.ojp.gov/document/sisvraca1618.pdf>>.

<sup>6</sup> *Id.* at p. 10.

<sup>7</sup> *Id.* at p. 13.

<sup>8</sup> See Richard Winton, 'Every woman's worst nightmare': *Lawsuit alleges widespread sexual abuse at California prisons for women* (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>>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 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>>.



Most notably, SB 898 would require CDCR or a county probation department to provide credits to an incarcerated person who has alleged and proven that they experienced sexual assault by state prison or jail facilities while incarcerated. In order to receive such credits, the incarcerated person must prove that such sexual assault by staff occurred, either through a court order, admission from staff, a criminal conviction against said staff, a substantiated finding in a Prison Rape Elimination Act investigation, or a sustained finding of such sexual assault in a staff misconduct investigation. In their letter, the California District Attorneys Association oppose this bill, citing it would apply to any incarcerated person “who claims to have been sexually assaulted by prison staff”.... and that there “is no standard in [the] bill that would require an inmate to prove the claim of assault.” Recent author amendments appear to have addressed much of this concern by specifically requiring incarcerated persons must prove and establish that such sexual assault occurred through specified documentation.

If sexual assault against an incarcerated person by staff is established, CDCR or the county jail facility will be required to provide credits that reduce the incarcerated person’s sentence by 12 months. This provision of credits appears to be modeled after other provisions of existing law that authorize CDCR to similarly reduce a sentence by 12 months if an incarcerated person provides exceptional assistance in maintaining the safety and security of a prison, or if a person has performed a heroic act in a life-threatening situation.

- 4) **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.
- 5) **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. (34 U.S.C. § 30301 et seq.) The act also created the National Prison Rape Elimination Commission and charged it with developing standards for the elimination of prison rape.

*PREA Standards:* 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.<sup>12</sup> Among 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

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<sup>12</sup> 77 Fed.Reg. 37106 (Jun. 20, 2012).

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.

*CDCR PREA Policy*: AB 550 (Goldberg), Chapter 303, Statutes of 2005, established the Sexual Abuse in Detention Elimination Act. The Act made several legislative findings and declarations regarding sexual abuse at CDCR institutions and required CDCR to adopt specified policies, practices, and protocols related to the placement of incarcerated individuals, physical and mental health care of victims who are incarcerated individuals, 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 individuals incarcerated in CDCR facilities.<sup>13</sup> The policy applies to all incarcerated individuals and individuals employed by CDCR, including volunteers and independent contractors assigned to an institution, community correctional facility, conservation camp, or parole.

- 6) **CDCR Regulations on Staff Sexual Misconduct and Sexual Harassment:** CDCR regulations define staff sexual misconduct as "any sexual behavior by a departmental employee, volunteer, agent or individual working on behalf of the Department of Corrections and Rehabilitation, which involves or is directed toward an inmate or parolee."<sup>14</sup> Regulations specify that the legal concept of consent does not exist between CDCR staff and incarcerated individuals, and that any sexual behavior between them constitutes sexual misconduct and will subject the employee to disciplinary action and/or to prosecution.<sup>15</sup>

Section 3401.5 provides that sexual misconduct includes, but is not limited to: influencing or offering to influence an incarcerated individual's safety, custody, housing, privileges, or programming, or offering goods or services, in exchange for sexual favors; threatening an incarcerated individual's safety, custody, housing, privileges, work detail, or programming because the incarcerated individual has refused to engage in sexual behavior; engaging in a sexual act or contact, as defined; display by staff, in the presence of an incarcerated individual, of the staff person's uncovered genitalia, buttocks, or breast; voyeurism, defined as an invasion of privacy of an incarcerated individual by staff for reasons unrelated to official duties, by a staff person, including volunteers or independent contractors.<sup>16</sup>

An employee who observes, or who receives information from any source concerning staff sexual misconduct, is required to immediately report the information or incident directly to the hiring authority, unit supervisor, or highest-ranking official on duty.<sup>17</sup> Failure to accurately and promptly report any incident, information, or facts which would lead a reasonable person to believe sexual misconduct has occurred may subject the employee who

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<sup>13</sup> DOM §§ 54040.1-54040.22.

<sup>14</sup> Cal. Code of Regs., tit. 15, § 3401.5, subd. (a).

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Cal. Code of Regs., tit. 15, § 3401.5, subd. (c).

failed to report it to disciplinary action.<sup>18</sup> Retaliatory measures against an incarcerated individual who reports an incident of staff sexual misconduct, including coercion, threats of punishment, or any other activities intended to discourage or prevent the reporting of sexual misconduct shall result in disciplinary action and/or criminal prosecution.<sup>19</sup>

Regulations define staff sexual harassment as “repeated verbal comments or gestures of a sexual nature to an offender by a staff member, volunteer, or contractor, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.”<sup>20</sup> All allegations of staff sexual harassment are subject to review and investigation, and when appropriate, to disciplinary action and/or criminal prosecution.<sup>21</sup> The employee reporting requirements and prohibition on retaliation for reporting that is applicable to staff sexual misconduct apply to staff sexual harassment.<sup>22</sup>

- 7) **Sexual Assault Response and Prevention Working Group:** The 2023-2024 Budget Act established a sexual assault response and prevention working group and ambassador program” and allocated funds to CDCR as well as the Sister Warriors Freedom Coalition to support the working group in identifying best practices for whistleblower protections and trauma-informed care and support to survivors. The working group consisted of CDCR leadership and staff, correctional officers, community-based organizations led by formerly incarcerated people, representatives from the Sister Warriors Freedom Coalition, and individuals who have survived sexual assault while in custody. The working group met over a six-month period. Two reports were produced as a result of the working group: one authored by CDCR required by the Budget Act and one authored by the community-based organizations that were members of the working group.

The community report on the working group primarily focused on the women’s prisons, CIW and CCWF.<sup>23</sup> The report made several recommendations fitting into five categories: expedited release of survivors, culture shifting, services for survivors, the investigation and reporting process, and accountability.<sup>24</sup> With respect to the investigation and reporting process, the group recommended the following:

- a) Ensuring privacy in reporting by using locked submission boxes placed next to other existing submission boxes in public areas in common use, away from stations used by custody staff; allowing reporting using non-surveilled email; allowing reporting via private, non-surveilled phone lines; and providing private, non-surveilled spaces where in-person reporting to support professionals can occur.
- b) Allowing for increased anonymity and confidentiality in reporting.
- c) Creating an independent reporting process by authorizing the initial handling of reports by an independent, external body; oversight by an independent regulatory system; the creation of a role for independent survivor advocates; the creation of a tracking system of

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<sup>18</sup> *Ibid.*

<sup>19</sup> Cal. Code of Regs., tit. 15, § 3401.5, subd. (f).

<sup>20</sup> Cal. Code of Regs., tit. 15, § 3401.6, subd. (a).

<sup>21</sup> Cal. Code of Regs., tit. 15, § 3401.6, subd. (b).

<sup>22</sup> Cal. Code of Regs., tit. 15, § 3401.6, subds. (c), (d).

<sup>23</sup> Sister Warriors Freedom Coalition et al., *California Women’s Prisons—Sexual Abuse Response and Prevention Working Group, Community Report to the Legislature* (Mar. 2024) available at <[https://sisterwarriors.org/prison\\_sexualassault\\_report](https://sisterwarriors.org/prison_sexualassault_report)>.

<sup>24</sup> *Id.* at p. 6.

reports; and independent review of staff misconduct investigations by an entity other than CDCR.<sup>25</sup>

The recommendations were designed to increase confidence in reporting misconduct, ensure protection of those reporting from retaliation, and increase staff and department accountability.

- 8) **Argument in Support:** According to the *California Public Defenders Association* “SB 898 seeks to provide potential relief for incarcerated victims of sexual assault, harassment, or violence. At the same time, it maintains many requirements in place to ensure that only truly deserving individuals will receive reductions or resentencing. Currently, the Secretary of CDCR, under specified guidelines, may grant up to 12 additional months of reduction of a sentence to a prisoner who has performed a heroic act in a life-threatening situation or who has provided exceptional assistance in maintaining the safety and security of a prison. This bill would authorize the Secretary to grant up to 12 additional months of reduction of a sentence to an incarcerated victim of sexual assault. This may assist with offsetting the conditions and loss of programming the victim endures if they are brave enough to report an incident that is then substantiated.

“Additionally, amongst other factors listed for Judges to consider when resentencing an incarcerated person who was under 18 years of age at the time of the commission of a specified offense for which the person was sentenced to imprisonment for life without the possibility of parole and has been incarcerated for at least 15 years, SB 898 would authorize the court to also consider if the person has been a victim of sexual abuse or sexual violence at any time during their incarceration.

“When someone has been sexually assaulted by CDCR staff or county correctional facility or jail staff their attorney would be authorized to request resentencing for them. SB 898 would add being a victim of sexual abuse or sexual violence by staff at a department facility or the staff at a county correctional facility or jail during their incarceration as one of the factors that the court considers under existing law in deciding whether continued incarceration is no longer in the interest of justice.”

- 9) **Argument in Opposition:** According to the *California District Attorneys Association* “SB 898, however, does nothing to prevent sexual abuse in prison. Instead, it would provide a presumption in favor of resentencing for any inmate – imprisoned for any crime – who claims to have been sexually assaulted by prison staff. There is no standard in your bill that would require an inmate to prove the claim of assault, nor is there any limitation on what conduct would qualify as sexual assault for this purpose.

“Currently Penal Code section 289.6 proscribes consensual sexual conduct between inmates and staff. Thus, your bill would allow an incarcerated person to seduce a staff member in order to secure resentencing.

“Such behavior would not be unheard of. In 2022, inmate Casey White escaped an Alabama facility with the help of a guard, Vicky White, who had fallen in love with him. In 2015 a

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<sup>25</sup> *Id.* at pp. 37-42.

civilian prison employee, Joyce Mitchell was seduced by convicted murderer David Sweat and then helped Sweat and another convicted murderer escape. In 2007, Jennifer Hyatte, a Tennessee prison nurse killed a corrections officer while helping her husband, George Hyatte, whom she met and married while he was incarcerated, escape from prison. In 2000, former prison psychologist Elizabeth Feil, helped her lover, Byron Smoot and another inmate escape a Maryland prison.

“Each of these women – and others like them – were manipulated by prisoners into doing what would otherwise have been unthinkable. Your bill, however, would allow prisoners to escape lawful sentences with far less effort, needing only to allege some form of sexual activity to ensure a new sentencing hearing.”

10) **Related Legislation:** SB 1069 (Menjivar) of the 2023-2024 Legislative Session, grants the 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. SB 1069 is pending in Assembly Appropriations Committee.

11) **Prior Legislation:**

- a) AB 102 (Ting), Chapter 38, Statutes of 2023, established “a sexual assault response and prevention working group and ambassador program” and allocated funds to CDCR as well as the Sister Warriors Freedom Coalition to support the working group in identifying best practices for whistleblower protections and trauma-informed care and support to survivors.
- b) AB 1039 (Rodriguez) of the 2023-2024 Legislative Session, would have expanded the definition of the type sexual touching that, when done by an employee or agent of a public entity detention or health facility with a consenting adult who is confined in the facility, qualifies as criminal sexual activity, and increased the penalty for this type of criminal sexual touching from a misdemeanor to an alternative felony-misdemeanor. AB 1039 was held in suspense in the Assembly Appropriations Committee.
- c) SB 990 (Wiener), of the 2017-2018 Legislative Session, 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 suspense in the Assembly Appropriations Committee.
- d) AB 550 (Goldberg), Chapter 303, Statutes of 2005, established the Sexual Abuse in Detention Elimination Act, which 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
- e) AB 1455 (Wicks), Chapter 595, Statutes of 2021, revives otherwise time-barred claims arising out of an alleged sexual assault by a law enforcement officer, modifies the statute of limitations claims arising out of an alleged sexual assault by law enforcement officer, and exempts such claims from all state and local government claim presentation requirements.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Catholic Conference  
California Public Defenders Association  
Ella Baker Center for Human Rights  
Freedom 4 Youth  
Glide  
Initiate Justice Action  
San Francisco Public Defender  
Sister Warriors Freedom Coalition  
Smart Justice California, a Project of Tides Advocacy  
Western Center on Law & Poverty, INC.  
Youth Forward

**Oppose**

California District Attorneys Association  
California State Sheriffs' Association

**Analysis Prepared by:** Ilan Zur

Date of Hearing: July 2, 2024  
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 925 (Wiener) – As Amended June 26, 2024

**SUMMARY:** Authorizes the City and County of San Francisco to adopt an ordinance requiring a permit for the sale on public property of merchandise that is determined to be a common target of retail theft. Specifically, **this bill:**

- 1) Authorizes the City and County of San Francisco to adopt an ordinance requiring a permit for the sale, on public property, including streets or sidewalks, of merchandise that the City and County of San Francisco has determined is a common target of retail theft. Merchandise shall not include food items, unless those food items are prepackaged and not prepared onsite.
- 2) Provides that if the City and County passes such an ordinance, the ordinance shall include all of the following written findings:
  - a) That there has been a significant pattern of merchandise being the subject of retail theft and then appearing for sale on public property within the City and County of San Francisco;
  - b) That requiring a permit to sell will further the objective of preventing retail theft;
  - c) That there are reasonable permit requirements to enable the sale of lawful merchandise and to safeguard civil rights;
- 3) States that an ordinance adopted pursuant to these provisions may remain in effect for up to three years, subject to annual renewal of the written findings.
- 4) Requires an ordinance adopted pursuant to these provisions to identify a local permitting agency, separate from the San Francisco Police Department that shall be responsible for administering a permit system.
- 5) Provides that the permitting agency shall adopt rules and procedures for administering the permit system.
- 6) Requires the permitting agency to issue permits to persons who are able to demonstrate that they obtained the merchandise lawfully and not through theft or extortion.
- 7) Provides that selling merchandise without a permit is punishable as an infraction, and subsequent violations after two prior convictions is an alternate infraction/misdemeanor punishable by imprisonment in the county jail not exceeding six months.

- 8) Provides that if the above ordinance is adopted by the City and County of San Francisco, it shall, by January 1, 2029, submit a report to the relevant committees of the Legislature that includes all of the following:
  - a) The local permitting agency that was made responsible administering the permit system;
  - b) The rules and procedures the permitting agency adopted for administering the permit system;
  - c) The list or lists of merchandise that the City and County of San Francisco has determined was a common target of retail theft;
  - d) Whether the City and County of San Francisco elected to renew its ordinance and, if so, when;
  - e) The total number of permits issued pursuant to this legislation;
  - f) The method by which the local permitting agency determined an applicant was able to demonstrate that they obtained merchandise lawfully and not through theft or extortion;
  - g) The total number of infractions and misdemeanors issued, and the number for which convictions were reached;
  - h) The perceived race or ethnicity, gender and age of the person issued an infraction or misdemeanor, provided that the identification of these characteristics was solely based on the observation and perception of the local authority who issued the infraction or misdemeanor; and,
  - i) States that the actions taken by a local authority when issuing infractions or misdemeanors, including, but not limited to, all of the following:
    - i) Whether the local authority asked for consent to search, and if so, whether consent was provided;
    - ii) Whether the local authority searched the person or any property, and, the basis for the search and any contraband or evidence seized; and,
    - iii) Whether the local authority seized any property and, if so, the type of property that was seized and the basis for seizing the property.
- 9) Requires the City and County of San Francisco to administer public information campaign for at least 30 calendar days prior to the enactment of an ordinance pursuant to this legislation, including public announcements in major media outlets and press releases.
- 10) States that nothing in these provisions shall be construed as to affect the applicability of other state and local laws.



- 11) States that this bill will become inoperative on January 1, 2030, and as of that date is repealed.
- 12) Contains Legislative findings and declarations as to the need to enact special statute because of the need to address the issues of fencing and retail theft in San Francisco.

**EXISTING LAW:**

- 1) Defines the criminal offense of theft and divides the offense into two degrees: grand theft and petty theft. (Pen. Code, §§ 484; 486.)
- 2) Provides that grand theft occurs when the money, labor, or real or personal property taken is of a value exceeding \$950. (Pen. Code § 487, subd. (a).)
- 3) Provides that other cases of theft are petty theft. (Pen. Code, § 488.)
- 4) Punishes grand theft as a state prison felony when the item taken is a firearm, and as an alternate felony/misdemeanor (a “wobbler”) in all other cases. (Pen. Code, § 489.)
- 5) Punishes petty theft as a misdemeanor. (Pen. Code, § 490.)
- 6) Establishes that a person who commits any of the following acts is guilty of organized retail theft:
  - a) Acts in concert with one or more persons to steal merchandise from one or more merchant’s premises or online marketplace with the intent to sell, exchange, or return the merchandise for value.
  - b) Acts in concert with two or more persons to receive, purchase, or possess merchandise as described, knowing or believing it to have been stolen.
  - c) Acts as an agent of another individual or group of individuals to steal merchandise from one or more merchant’s premises or online marketplaces as part of an organized plan to commit theft.
  - d) Recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake any of the acts described, or any other statute defining theft of merchandise. (Pen. Code, § 490.4, subd. (a)(1)-(4).)
- 7) Provides that organized retail theft is punishable as follows:
  - a) If a person acts in concert or as an agent and commits violations on two or more separate occasions within a 12-month period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that 12-month period exceeds nine hundred fifty dollars (\$950), the offense is punishable by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Penal Code section 1170.

- b) Any other violation when a person acts in concert or as an agent that is not described in paragraph (1) of this subdivision is punishable by imprisonment in a county jail not exceeding one year.
  - c) A violation of organized retail theft by act of recruiting, coordinating, organizing, supervising, directing, managing, or financing another to commit acts of organized retail theft is punishable by imprisonment in a county jail not exceeding one year, or as a felony pursuant to subdivision (h) of Penal Code section 1170. (Pen. Code, § 490.4, subd. (b)(1)-(3).)
- 8) States that, for the purpose of determining whether the defendant acted in concert with another person or persons in any proceeding, the trier of fact may consider any competent evidence, including, but not limited to, all of the following:
- a) The defendant has previously acted in concert with another person or persons in committing acts constituting theft, or any related offense, including any conduct that occurred in counties other than the county of the current offense, if relevant to demonstrate a fact other than the defendant's disposition to commit the act;
  - b) That the defendant used or possessed an artifice, instrument, container, device, or other article capable of facilitating the removal of merchandise from a retail establishment without paying the purchase price and use of the artifice, instrument, container, or device or other article is part of an organized plan to commit theft; or,
  - c) The property involved in the offense is of a type or quantity that would not normally be purchased for personal use or consumption and the property is intended for resale. (Pen. Code, § 490.4, subd. (c).)
- 9) States that, in a prosecution for the crime of organized retail theft, the prosecutor shall not be required to charge any other co-participant of the organized retail theft. (Pen. Code, § 490.4, subd. (d).)
- 10) Provides that, upon conviction for organized retail theft, the court shall consider ordering, as a condition of probation that the defendant stay away from retail establishments with a reasonable nexus to the crime committed. (Pen. Code, § 490.4, subd. (e).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "San Francisco's vibrant culture of street vending supports many families and showcases the diversity of our communities. But that cultural richness is threatened when bad actors are allowed to openly sell stolen goods on our streets, often pushing out legitimate street vendors and undermining public safety.

“SB 925 recognizes that a narrowly tailored, surgical response, which accounts for the realities and benefits of these local economies, is needed in order to adequately address the issue of illegal fencing. This bill does so by allowing San Francisco to create additional

permitting requirements to sell items they have determined are commonly associated with retail theft and to give law enforcement the tools to hold bad actors accountable.”

- 2) **Background.** The California Constitution allows a city or county to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” This is commonly referred to as the police power of cities and counties. It is from this fundamental power that local governments derive their authority to regulate land uses through planning, zoning ordinances, and use permits. Local agencies also use this police power to abate nuisances and protect public health, safety and welfare.

As an extension of the police power, state law lets local governments require businesses operating in their jurisdictions to obtain a license and impose related licensing fees. Local governments license businesses for lots of reasons: to identify individuals operating businesses in their jurisdictions; to ensure compliance with other local laws; to facilitate contact in case a problem arises; and, to raise money to support public services that support those businesses. Cities and counties subject businesses to a wide variety of regulations to preserve the public health and welfare, such as limitations on their hours of operation, restrictions on where various types of businesses can be located within a jurisdiction, and regulations on the type of merchandise that can be sold. These regulations are typically intended to address concerns of local citizens about the impact of a business.

- 3) **State and Local Regulation of Sidewalk Vending.** Until 2019, cities and counties were able to regulate or ban sidewalk vending as they saw fit. Due to concerns that criminal citations for sidewalk vendors could enable deportation by the federal government, and to legalize the activity of sidewalk vending as a means of economic support for immigrant communities, the Legislature enacted SB 946 (Lara), Chapter 459, Statutes of 2018. SB 946 prohibited local governments from banning sidewalk vending, prohibited any infractions from being punishable as an infraction or misdemeanor, and established other parameters for local sidewalk vending ordinances.

Specifically, SB 946 prohibited cities and counties from regulating sidewalk vendors unless they adopt a regulatory framework consistent with the bill’s provisions. Among other things, SB 946 prohibited a city or county from requiring sidewalk vendors to operate within specific parts of the public right-of-way, unless that restriction is directly related to objective health, safety, or welfare concerns. Local authorities can neither restrict the overall number of sidewalk vendors, nor require sidewalk vendors to operate only in a designated area, unless these restrictions are directly related to health, safety, or welfare concerns.

Cities and counties can also prohibit sidewalk vendors near farmers markets, swap meets, and special events, and they can prohibit stationary vendors (but not roaming vendors) in certain circumstances in parks and exclusively residential zones. Sidewalk vending in parks may be further restricted if the requirements are any of the following:

- a) Directly related to objective health, safety, or welfare concerns.
- b) Necessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities.
- c) Necessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.

SB 946 allows cities and counties to adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are directly related to objective health, safety, or welfare concerns, such as requirements to:

- a) Limit the hours of operation of sidewalk vendors in a manner that is not unduly restrictive.
  - b) Maintain sanitary conditions.
  - c) Obtain a local business license and a valid seller's permit from the California Department of Tax and Fee Administration.
  - d) Require compliance with other generally applicable laws.
- 4) **Argument in Support:** According to the *Mayor of the City and County of San Francisco*, "Currently in San Francisco there are a number of bad actors who are selling goods on the street. As a result, our legitimate vendors, who are working hard every day within the existing permitting system, are harmed and crowded out. Our brick-and-mortar businesses are threatened each time someone runs into a store, steals an item, and sells it down the street at a discounted price. ADA path of travel is obstructed, and it is difficult for families to walk down the sidewalk. Disputes and conflicts erupt. City workers enforcing existing requirements have been assaulted and threatened. The situation is chaotic during the day, and worse during the night.

"It is time that we make a change to address this issue and restore safety. SB 925 would help us do just that. By enabling San Francisco to create a list of frequently stole goods, require a permit and proof of purchase to sell those goods, and enable us to pursue an infraction or misdemeanor if someone is found in repeated violation, this legislation would give us the tools to make our streets safer. It allows us to go after the bad actors who are stealing and selling those stolen goods, without pulling down our vending community."

- 5) **Argument in Opposition:** According to the *Inland Coalition for Immigrant Justice*, "Street vending has long been a vital part of our local economies, offering affordable goods and services to residents while providing a means of livelihood for many individuals. SB 925 creates a narrative that unfairly stigmatizes street vendors by associating their activities with criminal behavior. This negative portrayal not only undermines the legitimacy of hardworking vendors but also contributes to a broader environment of distrust and marginalization.

"Moreover, the stringent new misdemeanors proposed by SB 925 are troubling. The bill allows for the imposition of severe penalties, including imprisonment, for selling merchandise without a permit after two prior convictions. Such punitive measures disproportionately impact vulnerable communities, including low-income individuals and immigrants, who rely on street vending as a primary source of income. These penalties could lead to significant hardship and exacerbate existing inequalities. By creating a state-mandated local program with new crimes, SB 925 sets a concerning precedent for other cities and counties throughout California. It opens the door for similar ordinances to be enacted elsewhere, potentially leading to a patchwork of stringent regulations that make it increasingly difficult for street vendors to operate legally. This approach fails to consider the

broader economic and social benefits of street vending and instead prioritizes punitive measures that may not effectively address the root causes of retail theft.”

- 6) **Related Legislation:** AB 2791 (Wilson) prohibits sidewalk vendors from operating within 250 feet of an annual fair. AB 2791 is pending hearing in the Senate Local Government Committee.
- 7) **Prior Legislation:**
  - a) SB 1290 (Allen) of 2022 would have required, by January 1, 2025, the Governor’s Office of Business and Economic Development (GO-Biz), in consultation with others, to submit a specified report to the Legislature on local sidewalk vending in California. SB 1290 was held in the Assembly Appropriations Committee.
  - b) SB 946 (Lara), Chapter 459, Statutes of 2018, decriminalized sidewalk vending and established various requirements for local regulation of sidewalk vendors.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Bay Area Council  
Central City Sro Collaborative  
Civic Center Community Benefit District  
Clecha  
Galeria De LA Raza  
Good Samaritan Family Resource Center  
LA Voz Latina  
Mayor of City & County of San Francisco London Breed  
Mid Market Community Benefit District  
Mission Economic Development Agency  
Mission Merchants Association  
Mission Neighborhood Center  
Mission Street Vendors Association  
San Francisco Bay Area Rapid Transit District (BART)  
Tenderloin Community Benefit District  
Tenderloin Housing Clinic  
University of California College of The Law, San Francisco

### **Oppose**

California Human Development  
Inland Coalition for Immigrant Justice

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

Date of Hearing: July 2, 2024  
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 987 (Menjivar) – As Amended June 6, 2024

**SUMMARY:** Authorize a court, with the concurrence of the county board of supervisors, to use county pretrial agency staff independent from probation, to provide pretrial services and to prohibit a defendant from being charged any fees for pretrial supervision. Specifically, **this bill:**

- 1) States that if the court orders pretrial supervision as a condition of the defendant's release from custody, the defendant shall not be charged any fees for pretrial supervision.
- 2) Requires that information obtained in the course of performing pretrial supervision services shall be maintained apart from other law enforcement and criminal justice records and shall be confidential, subject to the following exceptions:
  - a) A written report filed with the court regarding the defendant's compliance with the conditions of release shall be provided to the prosecuting attorney and the attorney for the defendant. The report shall not be further disclosed or disseminated to any other person or agency by the prosecuting attorney or the attorney for the defendant; and,
  - b) The court may order the disclosure of information if there is a substantial likelihood that the information is all of the following:
    - i) Material;
    - ii) Exonerating on the issue of guilt in a judicial proceeding involving the individual charged or a third party; and,
    - iii) Would not otherwise be available in such a proceeding.
- 3) Provides that, without waiving the privilege for official information acquired in confidence by a public employee in the course of their duty, information may be disclosed to the following individuals and entities to the extent necessary to carry out the purpose of disclosure:
  - a) The court to determine bail, release, and any conditions of release, detention, compliance with release conditions, or sentencing.
  - b) If the defendant poses an imminent risk of physical harm, information necessary to permit the party at risk to take appropriate protective action.
  - c) An agency or program to which the defendant has been referred as a condition of release.

- d) A law enforcement agency upon a reasonable belief that such information is necessary to assist in apprehending an individual for whom a warrant has been issued for failure to appear or for the commission of a crime.
  - e) A probation department for use in communicating the defendant's compliance with the conditions of release in a presentence investigation report, or for locating the defendant if the probation department is supervising the defendant concurrently.
  - f) An individual or agency designated by the defendant upon specific written authorization of the defendant.
  - g) A public agency or bona fide research institution for purposes of conducting research related to the administration of justice. Information identifying individuals shall be provided only for research and statistical activities and shall not be transferred, revealed, or used for purposes other than research or statistical activities. Reports or publications derived from this information shall not identify specific individuals.
- 4) Prohibits individuals and entities that receive this information from disclosing or disseminating that information to others, except that the individuals and entities identified above may disclose or disseminate that information to others if necessary to carry out the purpose of the disclosure.
  - 5) Provides that the information obtained in the course of performing pretrial supervision services shall not be admissible on the issue of guilt in a criminal proceeding, except for the following:
    - a) Prosecution of a crime committed while on pretrial supervision or for failure to appear in a criminal proceeding while the defendant was on pretrial supervision, or,
    - b) If that information is relevant evidence that is admissible under the standards described in the California Constitution's right to truth-in-evidence.
  - 6) Authorizes a court, with the concurrence of the board of supervisors, to use county pretrial agency staff for the purpose of recommending whether a defendant should be released on their own recognizance (OR).
  - 7) Authorizes an investigative report for every investigation by a court-employed investigative staff or a county pretrial agency staff.
  - 8) Requires the report to include a written assessment of the strengths and needs of the defendant, including treatment and services, when available.
  - 9) States that if a report is issued, the investigative staff or county pretrial agency staff may only include information relevant to the release of the defendant in the report.
  - 10) Prohibits investigative staff or county pretrial agency staff from soliciting from the defendant any information regarding the circumstances of the alleged offense.

- 11) Removes certification of the report prior to submitting to the court for review.
- 12) Requires a copy of the report to be provided to the prosecuting attorney and the defendant's attorney and states and prohibits further disclosure or dissemination of the report to any other person or agency by the prosecuting attorney or the defendant's attorney, unless the report is relevant evidence that is admissible as provided.
- 13) Defines "county pretrial agency staff" as a local public agency, separate from county probation that performs pretrial risk assessments or release assessments of individuals and provides the assessment information to a court in the Counties of Los Angeles and Santa Clara, and the City and County of San Francisco.
- 14) Authorizes DOJ to furnish state summary criminal history information to:
  - a) County staff performing pretrial investigation and release services; and,
  - b) A treatment provider, if disclosure is requested by county staff performing pretrial investigation and release services, with the consent of the subject of the state summary criminal history, and for purposes of furthering the subject's compliance with court-ordered conditions of pretrial release or diversion.
- 15) Authorizes a local agency to furnish local summary criminal history information to:
  - a) County staff performing pretrial investigation and release services; and,
  - b) A services of treatment provider if disclosure is requested by county staff performing pretrial investigation and release services, with the consent of the subject of the state summary criminal history, and for purposes of furthering the subject's compliance with court-ordered conditions of pretrial release or diversion.
- 16) Adds pretrial investigation and release activities to the definition of "criminal justice agencies."
- 17) Contains the Legislative finding that preserving the confidentiality of pretrial records is critical to the success of pretrial services agencies because it ensures that clients are more likely to be candid with pretrial services staff, as has been recognized by the U.S. Congress and federal courts.

**EXISTING LAW:**

- 1) Provides that the defendant shall not be released from custody under an own recognizance (OR) until the defendant files with the clerk of the court or other person authorized to accept bail a signed release agreement which includes:
  - a) The defendant's promise to appear at all times and places, as ordered by the court or magistrate;



- b) The defendant's promise to obey all reasonable conditions imposed by the court or magistrate;
  - c) The defendant's promise not to depart this state without leave of the court;
  - d) Agreement by the defendant to waive extradition if the defendant fails to appear as required and is apprehended outside of the State of California; and,
  - e) The acknowledgment of the defendant that the defendant has been informed of the consequences and penalties applicable to violation of the conditions of release. (Pen. Code, § 1318, subd. (a).)
- 2) Authorizes a court, with the concurrence of the board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on OR. (Pen. Code, § 1318.1, subd. (a).)
- 3) Requires that whenever a court has employed an investigative staff, an investigative report shall be prepared in all cases involving a violent felony, as described in subdivision (c) of Section 667.5, or a felony in violation of subdivision (a) of Section 23153 of the Vehicle Code, recommending whether the defendant should be released on OR. The report shall include all of the following:
- a) Written verification of any outstanding warrants against the defendant;
  - b) Written verification of any prior incidents where the defendant has failed to make a court appearance;
  - c) Written verification of the criminal record of the defendant;and,
  - d) Written verification of the residence of the defendant during the past year. (Pen. Code, § 1318.1, subd. (b).)
- 4) States that after the report is certified, it shall be submitted to the court for review prior to a hearing held in open court and until the prosecuting attorney is given notice and a reasonable opportunity to be heard on the matter of whether the defendant may be released on OR. (Pen. Code, § 1318.1.)
- 5) Defines "state summary criminal history information" to mean the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person. (Pen. Code, § 11105, subd. (a)(2)(A).)
- 6) Requires the Department of Justice (DOJ) to maintain state summary criminal history information and requires such information to be furnished to specified entities in fulfilling employment, certification, or licensing duties as provided. (Pen. Code, § 11105, subd. (a) and (b).)

- 7) Defines “local summary criminal history information” to mean the master record of information compiled by any local criminal justice agency pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person. (Pen. Code, § 13300, subd. (a)(1).)
- 8) Defines a “local agency” to mean a local criminal justice agency. (Pen. Code, § 13300, subd. (a)(3).)
- 9) Defines “criminal justice agencies” as those agencies at all levels of government which perform as their principal functions, activities which either:
  - a) Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or,
  - b) Relate to the collection, storage, dissemination or usage of criminal offender record information. (Pen. Code, § 13101.)
- 10) Requires a local agency to furnish local summary criminal history information to specified entities when needed in the course of their duties and when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties as provided. (Pen. Code, § 13301, subd. (b).)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author’s Statement:** According to the author, “Traditionally, courts have only been permitted to use the county probation departments to provide pretrial services such as assessment of individual, background investigation, and reporting back to the courts. In a few counties, such as Los Angeles, their Board of Supervisors have created independent pretrial services departments to handle this work. Current law does not include the independent pretrial services departments, thus not allowing full access to information needed to analyze and report back to the courts. SB 987 fixes this problem by adding independent pretrial services departments into the definition of “criminal justice agency” authorizing them the same access to background criminal history from federal, state, and local agencies, thus allowing them to perform the same activities for the court that probation does. This bill does not preclude Probation Departments from work in pretrial services.”
- 2) **Pretrial Services:** When a person has been arrested for a crime and booked into jail custody, the person may be released from custody prior to trial proceedings either on bail, own recognizance, or supervised release with conditions. Persons who are not released pursuant to one of these avenues will remain in custody until the resolution of their case. Pretrial services is responsible for conducting pretrial risk assessments, making recommendations for pretrial release or detention, supervising and providing services to released individuals, and locating those who do not show up for court appearances. Existing law requires pretrial service agencies to validate their pretrial risk assessment tools no less than every three years and to specified information regarding the tool, including validation studies, publicly

available. (Pen. Code, §1320.35.)

Although pretrial services have been around since the 1960s, bail has been the primary avenue for pretrial release. (*Pretrial Risk Assessment in California*, Public Policy Institute of California (Dec. 2019), p. 4.) Critics of the bail system argue that this system fails to protect public safety and gives wealthy people an advantage over people who cannot afford bail. In 2018, the First District Court of Appeals in San Francisco ruled that pretrial detention of a defendant solely due to inability to post bail is unconstitutional. (*In re Humphrey* (2018) 19 Cal.App.5th 1006.) The California Supreme Court upheld this ruling: “The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional. Other conditions of release — such as electronic monitoring, regular check-ins with a pretrial case manager, community housing or shelter, and drug and alcohol treatment — can in many cases protect public and victim safety as well as assure the arrestee’s appearance at trial. What we hold is that where a financial condition is nonetheless necessary, the court must consider the arrestee’s ability to pay the stated amount of bail — and may not effectively detain the arrestee ‘solely because’ the arrestee ‘lacked the resources’ to post bail.” (*In re Humphrey* (2021) 11 Cal. 5<sup>th</sup> 135, 143.)

The Budget Act of 2019 (AB 74 (Ting), Ch. 23, Stats. 2019) earmarked \$75 million to the Judicial Council to launch and evaluate two-year pretrial projects in local trial courts. The projects aimed to increase the safe and efficient release of arrestees before trial, use the least restrictive monitoring practices possible while protecting public safety and ensuring court appearances, validate and expand the use of risk assessment tools, and assess any bias. In August 2019, the Judicial Council approved and distributed funding to the 16 pilot projects selected for participation in the Pretrial Pilot Program. By the conclusion of the pilot program, 14 of 16 pilot projects had implemented a court date reminder system which provides text message and phone call notifications to all individuals as pretrial release. Initial data showed that court appearances after the implementation of a court date reminder system increased significantly. The final report on the Pretrial Pilot Program suggested an overall positive impact of the program including increased pretrial release and decreased booking/rearrest for misdemeanors and felonies. See [https://www.courts.ca.gov/documents/Pretrial-Pilot-Program\\_Final-Report.pdf](https://www.courts.ca.gov/documents/Pretrial-Pilot-Program_Final-Report.pdf) [as of Mar. 1, 2024].)

Following the pilot program, the Budget Act of 2021 (SB 129 (Skinner), Ch. 69, Stats. 2021) allocated ongoing funding to the Judicial Council for the implementation or expansion of pretrial programs in all California courts.

- 3) **Effect of This Legislation:** This bill would provide that the court, with the concurrence of the county board of supervisors, may use a county pretrial agency, independent of the probation department, to provide pretrial services. In most counties, probation departments provide pretrial services; however, some counties use an independent pretrial services department to provide this service. Currently, San Francisco and Santa Clara are allowed to contract with the Office of Pretrial Services to provide this service in their counties.

According to the sponsor of this bill, Los Angeles County has created a pretrial services department within their county that is independent of their probation department. While existing law does not prohibit using a county agency other than probation to provide these services, statutes that authorize access to criminal history records needed to conduct risk

assessments do not authorize disclosure to this additional type of entity. This bill specifies that state and local summary criminal history information shall be disseminated to county staff performing pretrial investigation and release services, and to a treatment provider if disclosure is requested by county staff performing pretrial investigation and release services, with the consent of the subject of the state summary criminal history, and for purposes of furthering the subject's compliance with court-ordered conditions of pretrial release or diversion.

This bill also provides that if the court orders pretrial supervision as a condition of the defendant's release from custody, the defendant shall not be charged any fees for pretrial supervision and require that information obtained in pretrial supervision services be maintained apart from law enforcement and criminal justice records. This bill also makes confidential, subject to specified exceptions, information that is obtained in the course of performing pretrial supervision. Notwithstanding any privilege afforded this information, this bill specifies that the information may be disclosed to specified entities such as the court, law enforcement and probation department to the extent necessary to carry out the stated purpose of disclosure. This bill specifies that if a report is made recommending whether a defendant should be released prior to trial proceedings, the report may only include information relevant to the release of the defendant and staff shall not solicit from the defendant any information regarding the circumstances of the alleged offense. A copy of the report shall be provided to the prosecuting attorney and attorney for the defendant but shall not be further disclosed or disseminated unless the report is relevant evidence and admissible as provided.

- 4) **Argument in Support:** According to the *County of Los Angeles Board of Supervisors*, "SB 987 would allow county-independent pretrial release departments to offer a wide array of client services along with the offerings of a traditional pretrial agency.

"Current law authorizes county probation, courts, or other existing "criminal justice agencies" to carry out specified pretrial duties. Thus, independent pretrial agencies are precluded from accessing key criminal history information necessary to operate an all-inclusive pretrial agency.

"Further, existing law does not protect information provided by defendants in pretrial services evaluations. The absence of this protection does not allow for candid conversations between defendants and interviewers.

"SB 987:

- expands the definition of "criminal justice agencies" to include county-independent pretrial release departments that implement pretrial services and programs.
- authorizes state and local law enforcement agencies to share criminal history background information with county-independent pretrial release departments.
- protects information provided by defendants in pretrial services investigations.

"This bill is critically important in furthering progress in reforming pretrial systems in California.

- 5) **Argument in Opposition:** According to the *American Federation of State, County, and Municipal Employees, AFL-CIO*, "Probation officers are experts in assessing and mitigating

the risk that criminal defendants may pose when awaiting trial. They provide crucial information to those public entities concerned with community safety (i.e. law enforcement, the courts, probation).

“The process for evaluating and recommending appropriate programs for those who have been arrested and are awaiting trial is thorough and comprehensive. The goals of the Pretrial Pilot Program are to increase the safe and efficient pre-arraignment and pretrial release of individuals booked into jail, implement monitoring practices with the least restrictive interventions necessary to enhance public safety and return to court, expand the use and validation of pretrial risk assessment tools that make their factors, weights, and studies publicly available; and, assess any disparate impact or bias that may result from the implementation of these programs. Probation employees help implement the above-mentioned successful programs and they rightly have access to sensitive information like individual criminal records and state Department of Justice databases so they can make proper recommendations regarding pretrial release to judges.

“We appreciate the author’s willingness to engage with AFSCME members on this issue, unfortunately, our members still do not see the need for legislation. To our knowledge there have not been any issues in counties that currently operate independent pretrial agencies nor the Courts with accessing or receiving criminal record information from the pre-trial services staff in county probation departments, and thereby fail to understand why this bill is necessary. If current staffing is available to provide the tools necessary to run programming, there is no need to add additional personnel to do the work that is already provided by county probation employees.

“As experts in assessing and mitigating risk, probation is a natural choice for pretrial assessment and monitoring functions. Our Pre-Trial officers are familiar with the role of assessments in the criminal justice system and provide recommendations and reports to the court. Probation has the expertise needed for successful pretrial services that protect public safety while also mitigating disruptions to positive social engagement for low-risk offenders.”

**6) Prior Legislation:**

- a) AB 2354 (Kalra), of the 2021-2022 Legislative Session, was substantially similar to this bill. AB 2354 was held in this committee.
- b) SB 129 (Skinner), Chapter 69, Statutes of 2021, allocated ongoing funding to the Judicial Council for the implementation or expansion of pretrial programs in all California courts.
- c) SB 36 (Hertzberg), Chapter 589, Statutes of 2019, required each pretrial services agency that uses a pretrial risk assessment tool to regularly validate the tool, and to make specified information regarding the tool publicly available.
- d) SB 10 (Hertzberg), Chapter 244, Statutes of 2018, creates a risk-based non-monetary prearrestment and pretrial release system for people arrested for criminal offenses including preventative detention procedures for person’s determined to be too high a risk to assure public safety if released.

- e) AB 789 (Rubio), Chapter 554, Statutes of 2017, allows a court to approve, without a hearing, OR release under a court-operated or court-approved pretrial release program for arrestees of specified felony offenses with three or more prior failures to appear.

### **REGISTERED SUPPORT / OPPOSITION:**

#### **Support**

Amity Foundation  
 California Association of Alcohol and Drug Program Executives, INC.  
 California Public Defenders Association  
 County of Los Angeles Board of Supervisors  
 County of Santa Clara  
 Ella Baker Center for Human Rights  
 Los Angeles County  
 Los Angeles Regional Reentry Partnership (LARRP)  
 Oakland Privacy  
 Somos Familia Valle  
 Steinberg Institute  
 Tarzana Treatment Centers, INC.

#### **Opposition**

Afscme District Council 36  
 Afscme Local 1587 Santa Clara County Probation Peace Officers Union  
 American Federation of State, County and Municipal Employees  
 American Federation of State, County and Municipal Employees, Afl-cio  
 Association of Orange County Deputy Sheriffs  
 Bu 702-SEIU 721 Joint Council  
 California Fraternal Order of Police  
 Chief Probation Officers' of California  
 Kern County Probation Officers Association  
 Los Angeles County Federation of Labor  
 Los Angeles County Probation Managers Association Afscme Local 1967  
 Los Angeles County Probation Officers Union, Afscme Local 685  
 Monterey County Probation Association  
 Sacramento County Probation Association  
 San Diego County Probation Officers Association  
 San Francisco Deputy Probation Officers Association  
 San Joaquin County Probation Officers Association  
 Santa Clara County Probation Peace Officer's Union, Afscme Local 1587  
 Solano Probation Peace Officer Association  
 Sppoa  
 State Coalition of Probation Organization  
 State Coalition of Probation Organizations  
 Ventura County Professional Peace Officers Association  
 Yolo County Probation Association

1 Private Individual

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

Date of Hearing: July 2, 2024  
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 1001 (Skinner) – As Amended June 25, 2024

**SUMMARY:** Declares, in the Penal Code, that a person with an intellectual disability is ineligible for the death penalty and makes other clarifying changes to ensure persons with intellectual disabilities are not subject to the death penalty. Specifically, **this bill:**

- 1) Defines “manifested before the end of the developmental period” to mean the deficits were present during the developmental period. Provides that it does not require a formal diagnosis of intellectual disability, or tests of intellectual functioning in the intellectual disability range, before the end of the developmental period.
- 1) Deletes a provision that allows nothing prohibits a court from making orders reasonably necessary to ensure the production of evidence to determine whether or not the defendant is a person with an intellectual disability including, but not limited to the appointment of an examination of the defendant by experts.
- 2) Provides that if the jury cannot reach a unanimous verdict on whether the defendant has an intellectual disability, the court shall enter a finding that the defendant is ineligible for the death penalty.
- 3) Clarifies that if a defendant may elect to present information at trial regarding a claim of intellectual disability.
- 4) Provides that when a court has concluded a hearing under this section is necessary, the court may order a defendant or petitioner to submit to testing by a qualified prosecution expert only if the prosecution presents a reasonable factual basis that the intellectual functioning testing presented by the defendant or petitioner is unreliable.
- 5) Provides that any order requiring the defendant or petitioner to submit to testing by a qualified prosecution expert shall be limited to tests directly related to the determination of the defendant or petitioner’s intellectual functioning.
- 6) Provides that any such order shall prohibit the expert from questioning the defendant or petitioner about the facts of the case, shall permit the defendant or petitioner to have the attorney nearby during the examination and to consult with their attorney during the examination if they choose, and shall require that the prosecutions expert’s examination be recorded in a manner agreed upon by the parties and the court.
- 7) Provides that the prosecution must submit a proposed list of the tests its expert wishes to administer so that the defendant or petitioner may raise any objections before testing is ordered. Provides that this is declaratory of existing law.

- 8) Provides (a) that intellectual disability is a question of fact; (b) that the parties to a trial or habeas proceeding may stipulate that a defendant or petitioner is a person with intellectual disability as defined in the clinical standards and in this section; and (c) whenever the parties so stipulate, or counsel representing the State concedes that the defendant or petitioner has an intellectual disability, the court shall, within 30 days, accept the stipulation or concession and declare the defendant or petitioner ineligible for the death penalty.
- 9) Makes findings and declarations.

#### EXISTING LAW:

- 1) Establishes court procedures during death penalty cases regarding the issue of intellectual disability. (Pen. Code, § 1376.)
- 2) Defines “intellectual disability” as the condition of significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the end of the developmental period. (Pen. Code, § 1376, subd. (a).)
- 3) Authorizes a defendant to apply, prior to the commencement of trial, for an order directing that a hearing to determine intellectual disability be conducted when the prosecution in a criminal case seeks the death penalty. (Pen. Code § 1376, subd. (b)(1).)
- 4) Provides that if the defendant does not request a court hearing, the court shall order a jury hearing to determine if the defendant is a person with an intellectual disability. (Pen. Code § 1376, subd. (b)(1).)
- 5) Specifies that the jury hearing on intellectual disability shall occur at the conclusion of the guilt phase of the trial in which the jury has found the defendant guilty with a finding that one or more special circumstances, as specified, are true, making the penalty death or life imprisonment without possibility of parole (LWOP). (Pen. Code, §§ 190.2; 1376, subd. (b)(1).)
- 6) Provides that (a) the jury or court shall decide only the question of the defendant’s intellectual disability; (b) the defendant shall present evidence in support of the claim that they are a person with an intellectual disability; (c) the prosecution shall present its case regarding the issue of whether the defendant is a person with an intellectual disability; (d) each party may offer rebuttal evidence; (e) the court, for good cause in furtherance of justice, may permit either party to reopen its case to present evidence in support of or opposition to the claim of intellectual disability; (f) nothing prohibits the court from making orders reasonably necessary to ensure the production of evidence sufficient to determine whether or not the defendant is a person with an intellectual disability, including, but not limited to, the appointment of, and examination of the defendant by, qualified experts; and (g) a statement made by the defendant during an examination ordered by the court shall not be admissible in the trial on the defendant’s guilt. (Pen. Code § 1376, subd. (b)(2).)
- 7) Provides that the burden of proof shall be on the defendant to prove by a preponderance of the evidence that they are a person with an intellectual disability. Provides that the jury verdict must be unanimous. (Pen. Code § 1376, subd. (b)(3).)



- 8) Provides that if the jury is unable to reach a unanimous verdict that the defendant is a person with an intellectual disability the courts shall dismiss the jury and order a new jury impaneled to try the issue of intellectual disability. (Pen. Code, § 1376, subd. (b)(3).)
- 9) Provides that where the hearing is conducted before trial, the following shall apply:
  - a) If the court finds that the defendant is a person with an intellectual disability, the court shall preclude the death penalty and the criminal trial shall proceed as in any other case in which a sentence of death is not sought by the prosecution. If the defendant is found guilty of first degree murder, with a true finding of one or more special circumstances, the court shall sentence the defendant to confinement in the state prison for LWOP. The jury shall not be informed of the prior proceedings or the finding concerning the defendant's claim of intellectual disability. (Pen. Code § 1376, subd. (c)(1).)
  - b) If the court finds that the defendant is not a person with an intellectual disability, the trial court shall proceed as in any other case in which a sentence of death is sought by the prosecution. The jury shall not be informed of the prior proceedings or the finding concerning the defendant's claim of intellectual disability. (Pen. Code § 1376, subd. (c)(2).)
- 10) Provides that when the hearing is conducted before the jury after the defendant is found guilty with a finding that one or more special circumstances is true, the following shall apply:
  - a) If the jury finds that the defendant is a person with an intellectual disability, the court shall preclude the death penalty and sentence the defendant to confinement in the state prison for LWOP; or,
  - b) If the jury finds that the defendant does not have an intellectual disability, the trial shall proceed as in any other case in which the death penalty is sought by the prosecution. (Pen. Code, § 1376, subd. (d).)
- 11) States that in any case in which the defendant has not requested a court hearing prior to trial, and has entered a plea of not guilty by reason of insanity, as specified, the hearing on intellectual disability shall occur at the conclusion of the sanity trial if the defendant is found sane. (Pen. Code, § 1376, subd. (e).)
- 12) Provides that the results of a test measuring intellectual functioning shall not be changed or adjusted based on race, ethnicity, national origin, or socioeconomic status. (Pen. Code, § 1376, subd. (g).)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "While executions are not presently taking place, California's death penalty law remains, as well as protections that apply to the implementation of the death penalty. One of those protections is a requirement of the 8th Amendment which prohibits cruel and unusual punishments, among such punishments are

the execution of anyone who is intellectually disabled. SB 1001 enacts safeguard to help ensure that California does not execute people who are intellectually disabled. Specifically SB 1001 establishes a process that retains the requirement that intellectual disability be present during a person's developmental stage but allows for the person to obtain a diagnosis of intellectual disability past that time period.

- 2) **Need for the Bill:** According to information provided by the author: Since the United States Supreme Court held that it is unconstitutional to execute people with an intellectual disability in 2002 (*Atkins v. Virginia*), it is critical to ensure that California has legislation reflecting federal court mandates. Despite progress being made toward this issue in 2020, The Committee on the Revision of the Penal Code found in that 2021 that, "many people remain on California's death row despite having been diagnosed with intellectual disabilities."<sup>1</sup>

"This bill makes technical amendments to California's existing law to help ensure that California does not sentence to death or execute a single person with an intellectual disability. This bill is necessary to ensure that people who were diagnosed with an intellectual disability as an adult but can show that they meet the diagnostic criteria for intellectual disability are protected from execution. This amendment to statute aligns California law with current clinical standards, which do not require a diagnosis to be made during the developmental period. This bill also codifies court rulings that clarify the procedures used when a prosecutor seeks additional testing of a person raising a claim of intellectual disability and that the issue of intellectual disability is a question of fact. The bill also makes amendments to the statute to provide for efficient resolution of cases and to eliminate any opportunities to prolong the proceedings when the parties agree that the individual has an intellectual disability.

"When the Legislature adopted Penal Code section 1376, and in subsequent amendments, the Legislature neglected to explicitly state that a person with an intellectual disability is ineligible for the death penalty. The United States Supreme Court first reached that conclusion in *Atkins v. Virginia* (2002) 536 U.S. 304. At that time, intellectual disability was referred to as "mental retardation. The bill remedies this deficiency by adding subdivision (b).

"In AB 2512 (Stone 2020), the Legislature modernized the statute and brought it in line with current clinical standards by amending the definition of intellectual disability, as reflected in subdivision (a)(1). Although the Legislature added the phrase "manifested before the end of the developmental period," it did not further define that term. Experts have explained that clinical standards do not require a formal diagnosis of intellectual disability or the administration of tests of intellectual functioning before the end of the developmental period. Codifying this clinical definition will leave less room for error or misunderstanding by courts, who may not be familiar with current clinical standards.

"In *Centeno v. Superior Court* (2004) 117 Cal.App.4th 30, the California Supreme Court addressed and limited the scope of permissible testing by prosecution experts in capital cases in which intellectual disability is raised. The trial court in *Centeno* placed additional limitations on the prosecution expert's examination of the defendant, which the California

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<sup>1</sup> (Committee on Revision of the Penal Code, Death Penalty Report, p. 28, <[http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_DPR.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_DPR.pdf)>.)

Supreme Court noted served to protect the defendant's Fifth Amendment rights. Subdivision (i) codifies the holding in *Centeno* as well as the limitations the trial court in that case imposed and the California Supreme Court recognized helped protect the defendant's Fifth Amendment privilege against self-incrimination.

"Intellectual disability is "a question of fact." (*In re Lewis* (2018) 4 Cal.5th 1185, 1192, 1201; *People v. Superior Court (Vidal)* (2007) 40 Cal.4th 999, 1012; *In re Hawthorne* (2005) 35 Cal.4th 40, 49.) In at least one case, even after the parties stipulated to this question of fact, a court retained its own expert to assess whether the petitioner had an intellectual disability. Ultimately, the court's expert agreed with the conclusions of both parties' experts – that the petitioner was a person with intellectual disability, and the court found that the petitioner had an intellectual disability and vacated the petitioner's death sentence. This cost the taxpayers thousands of dollars and took two years to resolve.

"There is no need for courts to waste taxpayer funds, court staff time, and attorney time extending litigation once both parties agree the person has an intellectual disability. The addition of subdivision (j) will help address this problem, avoid protracted litigation, and ensure that people who have an intellectual disability have their death sentence promptly vacated.

- 3) **Death Penalty and Individuals with Intellectual or Developmental Disabilities (I/DD):** In 2002, the U.S. Supreme Court, in *Atkins v. Virginia*, 536 U.S. 304, invalidated a death sentence of a Virginia man with an intellectual/developmental disability. In 1989, the U.S. Supreme Court upheld, on a 5-4 basis, the constitutionality of executing those with intellectual disability in *Penry v. Lynaugh* (1989) 492 U.S. 302. The Court said, using the parlance of the time, "mental retardation" should be a mitigating factor to be considered by the jury during sentencing.<sup>2</sup>

Writing for the majority, Justice Sandra Day O'Connor said that a "national consensus" had not developed against executing those with "mental retardation." At the time, only two states, Maryland and Georgia, prohibited such executions. Between the *Penry* and *Atkins* decisions, 16 additional states enacted laws prohibiting the execution of people with I/DD. The federal death penalty statute also forbids such executions. Prior to *Atkins v. Virginia*, eighteen states plus the federal government prohibit executing a person with an I/DD.<sup>3</sup>

The California Supreme Court in *In re Hawkins* (2005) 35 Cal.4th 40, 51-52 held, "An inmate's evidentiary showing on petition for writ of habeas corpus, which included an expert's declaration describing him as a [person with an intellectual or developmental disability], based on an evaluation and his childhood history, was sufficient to meet the statutory threshold of Pen. Code, § 1376, entitling him to a hearing on the question of his mental retardation."

AB 2512 (Stone), Chapter 331, Statutes of 2020, authorizes a defendant in a death penalty case to apply for an order directing that a hearing to determine intellectual disability be

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<sup>2</sup> The characterization "retardation" has been wholly rejected by the medical community. (See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3188762/> [last visited June 17, 2024].)

<sup>3</sup> The states are: AZ, AR, CO, CT, FL, GA, IN, KS, KY, MD, MO, NE, NM, NY\*, NC, SD, TN, WA, and U.S. (\*except for murder by a prisoner.

conducted as part of a habeas corpus petition, and revises the definition of intellectual disability to include conditions that manifest before the end of the developmental period and prohibit the results of a test measuring intellectual functioning to be changed or adjusted based on race, ethnicity, national origin, or socioeconomic status.

This bill seeks to codify and expand the holding of *Centeno v. Superior Court* (2004) 117 Cal.App.4th 30. The court in *Centeno* held that testing for I/DD in a criminal proceeding must be limited to information reasonably related to a determination of the accused's possible I/DD, to be determined after a hearing with evidence from experts for both parties. In *Centeno*, the examination delved in the facts of the actual crime and the People moved to admit that evidence at trial. The defendant argued that information obtained during the testing went beyond testing for I/DD. The court stated:

Thus, when mental retardation for *Atkins* purposes is the issue, the tests to be conducted by prosecution experts must be reasonably related to a determination of whether the defendant has a ‘significantly sub average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18.’ (See Pen. Code, § 1376, subd. (a); *Atkins v. Virginia*, *supra*, 536 U.S. 304.) The mental retardation examination must be limited in its scope to the question of mental retardation. (*Baqleh v. Superior Court*, *supra*, 100 Cal.App.4th at p. 492.) Therefore, if requested, the prosecution must, as it was required to do in this case, submit a list of proposed tests to be considered by the defendant so that any objections may be raised before testing begins. Then, upon a defense objection to specific proposed prosecution tests, the trial court must make a threshold determination that the tests bear some reasonable relation to measuring mental retardation, including factors that might confound or explain the testing, such as malingering. Otherwise, there is a danger that defendants will be improperly subjected to mental examinations beyond the scope of the precise issue they have tendered and their resulting waiver of constitutional rights. (*Centeno*, 117 Cal.App.4th at 45.)

This bill codifies this case by specifying that individuals with an I/DD are ineligible for the death penalty and the question of intellectual disability is a question of fact that may be stipulated to by the parties, and requires the court, within 30 days, to accept the stipulation and declare the defendant or petitioner ineligible for the death penalty. This bill also authorizes the court to order a defendant to submit to testing by a qualified prosecution expert *only* if the prosecution presents a reasonable factual basis that the intellectual functioning testing presented by the defendant or petitioner is unreliable.

This bill also states an intellectual disability is a “question of fact” for a jury or trier of fact. (*In re Lewis* (2018) 4 Cal.5th 1185, 1192, 1201; *People v. Superior Court (Vidal)* (2007) 40 Cal.4th 999, 1012; *In re Hawthorne* (2005) 35 Cal.4th 40, 49.). The bill makes it clear that the parties to a trial or habeas proceeding may stipulate that a defendant or petitioner is a person with intellectual disability, as defined. This will save wasted court time when all parties agree.

- 4) **Argument in Support:** According to the *California Innocence Coalition*: The California Innocence Coalition consists of four Innocence Network member organizations in California, the Northern California Innocence Project, the Innocence Center, the Los Angeles Innocence Project, and the Loyola Project for the Innocent. The missions of our organizations are to protect the rights of the innocent by litigating their cases to bring them home and to promote a fair and effective criminal legal system by advocating for change in

California laws and policy. Collectively, the California Innocence Coalition has won the freedom of over 70 wrongly imprisoned individuals who collectively lost over 800 years in prison for crimes they did not commit. In 2002, the United States Supreme Court held it is unconstitutional to execute a person with intellectual disability.

The following year, the California Legislature added Penal Code section 1376 to implement this decision. Since it was enacted, this code section has been amended twice: first, in 2012, to change the term “mental retardation” to “intellectual disability,” and again in 2020 to modernize the statute and bring it in line with current clinical standards. SB 1001 makes further technical amendments to the statute that provide necessary and important safeguards to ensure that California is not engaging in cruel and unusual punishment by executing or sentencing to death people who are intellectually disabled. SB 1001 (Skinner) will make five important amendments to Penal Code section 1376:

1. It will expand the protections of the current statute to people who were diagnosed with an intellectual disability after childhood but meet the criteria for a diagnosis of intellectual disability.
  2. It will codify court rulings that define the procedures prosecutors must use when seeking testing of the person raising a claim of intellectual disability.
  3. It will provide for quick and efficient resolution of cases when the parties agree the person has an intellectual disability.
  4. It will codify the constitutional rule prohibiting people with an intellectual disability from being subjected to the death penalty.
  5. It will ensure that California is not executing people who have an intellectual disability.”
- 5) **Argument in Opposition:** According to the *California District Attorneys Association*: “This bill would create a de facto presumption in favor of a test by the defendant related to an intellectual disability specifically within death penalty cases. This presumption would exclude the people from even testing the defendant to confirm the intellectual disability unless the testing produced by the defendant could be shown to be unreliable. Forcing a party to show that a defendant’s mental test is unreliable before having the right to access that defendant to conduct an independent examination is a novel standard that has not been applied in other criminal settings. Once a defendant has put their mental state into dispute, the state has the legal right to independently assess and test a defendant.

Furthermore, even if the People could show the testing of a defendant for an intellectual disability was unreliable, this bill seeks to severely limit the ability to test a defendant. SB 1001 limits the testing of a defendant who has already presented unreliable tests. The People would be limited to tests directly related to the determination of the defendant’s intellectual functioning and would be prohibited from a discussion of the facts of the case even if that discussion was necessary to testing intellectual disability. The prosecution expert will be required to submit a proposed list of the tests prior to the evaluation so that they can be challenged by the defense in a manner that is inconsistent with current law.”

- 6) **Related Legislation:** SB 349 (Roth), would provide that a certificate of restoration for a defendant who was found incompetent to stand trial shall apply to all cases pending against the defendant at the time of restoration. SB 349 was referred to, but never heard in the Assembly Committee on Public Safety.

**7) Prior Legislation:**

- a) AB 2512 (Stone), Chapter 331, Statutes of 2020, authorizes a defendant in a death penalty case to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a habeas corpus petition, and revises the definition of intellectual disability.
- b) SB 1381 (Pavley), Chapter 457, Statutes of 2012, revised specified laws that referred to mental retardation or a mentally retarded person to refer instead to intellectual disability or a person with an intellectual disability.
- c) SB 3 (Burton), Chapter 700, Statutes of 2003, established standards regarding mental retardation for the purpose of death penalty cases as required by the United States Supreme Court.
- d) SB 51 (Morrow), of the 2003-2004 Legislative Session, would have set up standards regarding mental retardation for the purpose of death penalty cases as required by the US Supreme Court. SB 51 failed passage in the Senate Committee on Public Safety.
- e) AB 557 (Aroner), of the 2001-2002 Legislative Session, would have established court procedures in death penalty cases regarding the issue of mental retardation. AB 557 died in the Assembly pending concurrence in Senate amendments.

**REGISTERED SUPPORT / OPPOSITION:****Support**

8th Amendment Project  
ACLU California Action  
All of Us or None Los Angeles  
Alliance for Boys and Men of Color  
Amnesty International USA  
Anti-recidivism Coalition (UNREG)  
Bend the Arc California  
California Alliance for Youth and Community Justice  
California Anti-death Penalty Coalition  
California Attorneys for Criminal Justice  
California Catholic Conference  
California Innocence Coalition  
California Public Defenders Association  
Californians for Safety and Justice  
Californians United for A Responsible Budget  
City and County of San Francisco  
Communities United for Restorative Youth Justice (CURYJ)  
Death Penalty Focus  
Disability Rights California  
Ella Baker Center for Human Rights  
Faith in Action East Bay

Felony Murder Elimination Project  
Friends Committee on Legislation of California  
Full Picture Justice  
Grip Training Institute  
Initiate Justice  
Initiate Justice (UNREG)  
Initiate Justice Action  
LA Defensa  
Lawyers' Committee for Civil Rights of The San Francisco Bay Area  
League of Women Voters of California  
Legal Services for Prisoner With Children  
Legal Services for Prisoners With Children  
Los Angeles County District Attorney's Office  
Nextgen California  
Santa Cruz Barrios Unidos  
Scdd  
Sister Warriors Freedom Coalition  
Smart Justice California, a Project of Tides Advocacy  
Transformative Programming Works (TPW)  
Uncommon Law  
Universidad Popular  
University of San Francisco School of Law | Racial Justice Clinic  
Young Women's Freedom Center

**Oppose**

California District Attorneys Association

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

Date of Hearing: July 2, 2024  
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 1002 (Blakespear) – As Amended June 17, 2024

**SUMMARY:** Requires the relinquishment of firearms and ammunition possessed by certain individuals subject to mental illness-related firearms prohibitions, makes various changes regarding the notices provided to individuals subject to these prohibitions, and authorizes the issuance of a search warrant for firearms and ammunition subject to relinquishment under these provisions. Specifically, **this bill:**

- 1) Provides that a search warrant may be issued when the property to be seized include ammunition that is owned, in the possession, custody or control of a person subject to the firearms prohibition because they have been adjudicated to be a danger to others due to mental illness, adjudicated to be a mentally disordered sex offender, taken into custody because of the threat they pose to others, found not guilty by reason of insanity, found mentally incompetent to stand trial, (“IST”), or placed under a conservatorship, as specified, the person has been lawfully served, and the person has failed to relinquish the ammunition, as required.
- 2) Requires persons adjudicated to be a danger to others due to mental illness, adjudicated to be a mentally disordered sex offender, or found not guilty by reason of insanity to relinquish to law enforcement any firearms, ammunition or other deadly weapons in their custody or control within 14 days of the court order finding them subject to the prohibition, and to submit a receipt to the court to show proof of relinquishment.
- 3) Requires, upon the issuance of the order finding the person to be subject to the prohibition against the possession or acquisition of a firearm because they have been adjudicated to be a danger to others as a result of a mental disorder or who has been adjudicated to be a mentally disordered sex offender, a court to inform the person and any person to whom they have provided power of attorney of how they may relinquish the firearm, ammunition or other deadly weapon and submit a receipt to the court to show proof of relinquishment.
- 4) Provides that the prohibition against purchasing, receiving, possessing or having custody of firearms or other deadly weapons for persons found IST or placed under a conservatorship, also includes ammunition.
- 5) Provides, for a person who has been placed under a conservatorship, as specified, that the court shall also inform the person and their conservator of how the person may relinquish any firearm, other deadly weapon, or ammunition in the person’s possession, custody, or control according to local procedures, and the process for submitting a receipt to show the court proof of relinquishment.



- 6) Provides that for individuals subject to the prohibition on the purchase and possession of firearms (due to danger to others as a result of mental disorder, adjudicated as a mentally disordered sex offender, not guilty by reason of insanity, or a conservatee, as specified), such prohibition additionally prohibits them from possessing ammunition.
- 7) Provides that within 7 days of the receipt of a report from a designated facility to which a person has been admitted, containing information including the identity of the person and legal grounds upon which they were admitted to the facility, the Department of Justice (“DOJ”) shall notify, by email, text message or certified mail with a return receipt requested, a person subject to the above provision of the following information, and shall enter the date that the notification was issued in the person’s state mental health firearms prohibition system information:
  - a) That the person is prohibited from owning, possessing, controlling, receiving, or purchasing, or attempting to own, possess, control, receive, or purchase, any firearm or ammunition for a period of either five years or the remainder of their life, whichever is applicable, after the notice by the facility is made to the DOJ.
  - b) The date when the firearm prohibition commences and the date when the firearm prohibition ends.
  - c) That the person may petition a court for an order permitting them to own, possess, control, receive, or purchase a firearm.
- 8) Requires such a designated facility to inform such a person that they are required to relinquish any firearm, deadly weapon, or ammunition that the person owns, possesses, or controls within 72 hours of discharge from the facility and how to relinquish firearms according to state law and local procedures.
- 9) Requires the DOJ to also provide a copy of the “Patient Notification of Firearm Prohibition and Right to Hearing Form” identifying the person and the legal grounds for their admission to that person and to the superior court in each county of the state upon the request of a law enforcement agency solely for investigative purposes.
- 10) Clarifies that the authorization to use designated facility reports containing information including the identity of the person and legal grounds upon which they were admitted to the facility to determine eligibility of persons to own, possess, control, receive, or purchase firearms, also includes other deadly weapons and ammunition.
- 11) Provides that a person taken into custody, assessed and admitted to a facility because that person is a danger to themselves or others, shall, within 72 hours of discharge from a facility, relinquish any firearm, other deadly weapon, or ammunition that they own, possess or control in a safe manner by any of the following methods:
  - a) Surrender to the control of a law enforcement agency.
  - b) Sell or transfer to a licensed firearms dealer, as specified.

- c) Transfer or cause to be transferred to a licensed firearms dealer for storage during the duration of the prohibition, as specified.
  - d) Sell or transfer to a non-prohibited third party using a licensed firearms dealer, as specified.
- 12) Provides that the law enforcement agency or licensed dealer taking possession of the firearm, deadly weapon, or ammunition, per above, shall issue a receipt to the person relinquishing the firearm or ammunition at the time of relinquishment.
  - 13) Provides that the “Patient Notification of Firearm Prohibition and Right to Hearing Form” shall include information about the methods by which the firearm may be relinquished.
  - 14) Provides that the prohibition against owning, possessing, receiving, or purchasing a firearm for a period of five years for persons who have been certified for intensive treatment, as specified, also includes other deadly weapons, and ammunition.
  - 15) Provides that the authority for persons who have been certified for intensive treatment, as specified, to petition a county superior court for an order permitting the possession, control, receipt, or purchase of a firearm, and associated procedures permitting the return of a firearm, also includes other deadly weapons or ammunition.
  - 16) Provides that the prohibition against persons found to be prohibited from owning or controlling a firearm because they are a danger to themselves or others and has been granted mental health diversion, also includes other deadly weapons and ammunition.
  - 17) Provides that the punishment for a person who owns, possesses, has custody or control of, or purchases, receives or attempts to purchase a receive a firearm, when prohibited as specified, also includes other deadly weapons and ammunition.

**EXISTING FEDERAL LAW:**

- 1) Provides that a person who has been adjudicated a “mental defective” or committed to a mental institution is prohibited from shipping, transporting, receiving or possessing any firearm or ammunition, a violation of which is punishable by a fine of \$250,000 and/or imprisonment of up to ten years. (18 U.S.C. §§ 922(g)(4), 924(a)(2).)

**EXISTING STATE LAW:**

- 1) Requires a person, upon conviction of any offense that renders them a prohibited person, to relinquish all firearms they own or possess, or have under their custody or control, and prescribes a process for this relinquishment. (Pen. Code, § 29810.)
- 2) Provides that a person shall not possess, purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon, if on or after January 1, 1992, he or she has been admitted to a facility and is receiving inpatient treatment and, in the opinion of the attending health professional who is primarily responsible for the patient’s treatment of a mental disorder, is a danger to self or others, as specified. (Welf. & Inst. Code, §8100 (a).)

- 3) Provides that a person shall not possess, purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon for a period of five years if they communicate to a licensed psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims, as specified. (Welf. & Inst. Code, § 8100, subd. (b).)
- 4) Provides that whenever a person who has been detained or apprehended for examination of their mental condition, is a person undergoing inpatient treatment at a mental facility, has been adjudicated by a court of any state to be a danger to others as a result of mental illness, or who has been adjudicated to be a mentally disordered sex offender, is found to own, or have in his or her possession any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon. (Welf. & Inst. Code, § 8102, subd. (a).)
- 5) Sets forth a process for law enforcement confiscation of a weapon described above and a process by which the agency may initiate proceedings to retain the weapon, as specified. (Welf. & Inst. Code, § 8102, subs. (b) – (h).)
- 6) Enumerates the various grounds upon which a search warrant may be issued. (Pen. Code, § 1524.)
- 7) Provides that a person who has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall not purchase or receive, or attempt to purchase or receive, or have possession, custody, or control of a firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness. (Welf. & Inst. Code, § 8103, subd. (a).)
- 8) Provides that a person found not guilty by reason of insanity, as specified, shall not purchase or receive, or attempt to purchase or receive, or have possession, custody, or control of any firearm or any other deadly weapon. (Welf. & Inst. Code, § 8103, subd. (b), (c).)
- 9) Provides that a person found by a court to be mentally incompetent to stand trial shall not purchase or receive, or attempt to purchase or receive, or have possession, custody, or control of any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence by the committing court. (Welf. & Inst. Code, § 8103, subd. (d).)
- 10) Prohibits any person who has been placed under conservatorship by a court because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism, from purchasing or receiving, or attempting to purchase or receive, or possessing any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court that imposed the conservatorship found

that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others, and requires the court shall notify the person of this prohibition. (Welf. & Inst. Code, § 8103, subd. (e).)

- 11) Provides that a person who has been taken into custody as a “5150 patient” because that person is a danger to themselves or others, and has been assessed and admitted to a designated facility, as specified, because that person is a danger to themselves or others, shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years after the person is released by the facility. (Welf. & Inst. Code, § 8103, subd. (f)(1).)
- 12) For a person taken into custody, assessed and admitted and who was previously taken into custody, assessed and admitted one or more times within one year preceding the most recent admittance, the ban on the purchase, possession, receipt and ownership of a firearm shall last the remainder of their life. (*Id.*)
- 13) Specifies that for each person subject to the provision above, the designated facility shall, within 24 hours of the time of admission, submit a specified form to the DOJ containing information regarding the identity of the person and the legal grounds upon which the person was admitted to the facility. (Welf. & Inst. Code §8103, subd. (f)(2).)
- 14) Specifies that prior to or concurrent with discharge, the facility shall inform a person subject to the above provisions that they are prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years or, if the person was previously taken into custody, assessed, and admitted to custody for a 72-hour hold because they were a danger to themselves or to others during the previous one-year period, for life. (Welf. & Inst. Code, § 8103, subd. (f)(3).)
- 15) Requires a designated facility to provide the person with a copy of the most recent “Patient Notification of Firearm Prohibition and Right to Hearing Form” prescribed by the DOJ. (Welf. & Inst. Code, § 8103, subd. (f)(3).)
- 16) Requires the DOJ to provide the “Patient Notification of Firearm Prohibition and Right to Hearing Form” it receives from the facility identifying the person and the legal grounds for their admission to that person and to the superior court in each county. (Welf. & Inst. Code §8103, subd. (f)(4).)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "[r]ight now, people experiencing mental health crises can be involuntarily confined at a healthcare facility for 72 hours under section 5150 of the Welfare and Institution Code. The facilities admit people when they are unable to take care of themselves or deem them to be a danger to themselves or others, and the 5150 hold automatically prohibits the individual from having firearms for five years. From 2012 to 2022, healthcare facilities admitted an average of 120,000 Californians per year for 5150 holds.

The problem is that there is not a solid framework to ensure that people who have recently experienced a mental health crisis follow the law and turn over their firearms. Instead, these people often join a database (known as APPS) of nearly 24,000 people who are known to have firearms despite being prohibited from having them. Just over 4,800 people remain armed despite mental health-related firearm prohibitions. When it comes to guns and people in mental health crises, that backlog is unacceptable. We are extremely vulnerable to someone slipping through the cracks.

“SB 1002 keeps us safer by setting up a system that proactively ensures people comply with the law. It increases the likelihood that an individual who has recently experienced a mental health crisis complies with existing firearm prohibitions by ensuring multiple parties, rather than just the healthcare facility, give the person information on how to comply with the prohibition and providing a clear deadline at which they must turn over their firearms.”

- 2) **Background on Mental Illness and Firearms:** For decades, government regulation of firearms has been bound up with public discourse surrounding mental health and mental illness, a trend that has only become more prevalent with the tragic rise in mass shootings. However, while mental health issues are certainly a component, they alone cannot predict or cause gun violence. Some research indicates that despite popular misconceptions reflected in the media and in policy, mental illness is a weak risk factor for gun violence, and that framing psychiatric disease as the driving culprit behind such violence has more to do with political expediency than fidelity to the data, which shows that people with mental illnesses are often more likely to be the victims of gun violence.<sup>1</sup> Other research suggests that suicide risk and homicide risk are in fact elevated among people with certain mental illnesses (e.g. schizophrenia, depression, borderline personality disorder, and others) and co-occurring substance abuse disorders, though these individuals still account for a minority of homicides and acts of mass violence in the United States. This research also suggests that people with mental health conditions appear to be at an increased risk for being victims of interpersonal violence.<sup>2</sup> Regardless of any inconsistencies in the research regarding how strong mental illness is as a risk factor for gun violence, most experts agree that policymakers should at least be aware of the connection between these issues in the development of firearm regulations.
- 3) **Mental Illness-Related Firearm Restrictions and Reporting Requirements:** California Welfare and Institutions Code § 8103 contains several mental illness-related firearms prohibitions for individuals that fall within different categories, most of which are lifetime bans on the ownership, possession or purchase of firearms. Individuals subject to this lifetime ban include persons found by a court of any state to be a danger to others as a result of mental illness, persons adjudicated to be mentally disordered sex offenders, persons found not guilty by reason of insanity, persons found mentally incompetent to stand trial, and any

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<sup>1</sup> Rozel, John and Edward Mulvey, *The Link Between Mental Illness and Firearm Violence: Implications for Social Policy and Clinical Practice*, *Annu Rev Clin Psychol.* 2017 May 8; 13: 445–469, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5784421/>; *Mental Health, Gun Violence, and Why America Connects Them*, NPR, ( June 21, 2022), available at: <https://www.npr.org/2022/06/21/1106424446/mental-health-gun-violence-and-why-america-connects-them>

<sup>2</sup> Ramchand, Rajeev and Lynsay Ayer, *Is Mental Illness a Risk Factor for Gun Violence?* RAND Corporation (April 15, 2021), available at: <https://www.rand.org/research/gun-policy/analysis/essays/mental-illness-risk-factor-for-gun-violence.html>

person who is placed under a 5150 hold two or more times within one year.<sup>3</sup> Non-lifetime prohibitions include persons receiving in-patient treatment at a mental health facility for a mental disorder and is a danger to self or others (until discharge),<sup>4</sup> any person placed under a conservatorship because they are gravely disabled from a mental disorder or chronic alcoholism and are a danger to self or others (for the period of the conservatorship), any person who communicates a serious threat of physical violence to a psychotherapist against a reasonably identifiable victim (5 years), any person taken into custody and admitted to a mental health facility under a 5150 hold (5 years).<sup>5</sup>

Additionally, California has a relatively robust set of reporting requirements regarding mental health circumstances triggering a firearm prohibition. For example, mental health facilities must report to DOJ within 24 hours whenever an individual is taken into custody and determined either to be a danger to self or others or gravely disabled due to mental disorder or chronic alcoholism.<sup>6</sup> Other existing requirements relate to the timeline for reporting by psychotherapists and the State Department of State Hospitals. To make these reports, courts, law enforcement agencies, and mental health facilities use the Mental Health Reporting System, established in 2012. According to the DOJ, as of January 1, 2023, 19% of people in the Armed Prohibited Persons System (APPS),<sup>7</sup> or 4,837 individuals, are prohibited from owning, possessing or purchasing a firearm due to a mental health triggering event.<sup>8</sup>

- 4) Effect of this Bill:** Regarding the bill's provisions pertaining to relinquishment, SB 1002 requires persons adjudicated to be a danger to others due to mental illness, adjudicated to be a mentally disordered sex offender, or found not guilty by reason of insanity to relinquish to law enforcement any firearms, ammunition or other deadly weapons within 14 days of the court order finding them subject to the prohibition, and to submit a receipt to the court to show proof of relinquishment. Additionally, for persons adjudicated to be a danger to others due to a mental disorder or adjudicated to be a mentally disordered sex offender, the court must inform the person and any person to whom they have provided power of attorney of how they may relinquish the firearm and submit the required receipt. For individuals placed under a conservatorship and subject to a firearm prohibition for the length of the conservatorship, this bill requires a court to inform the conservatee and their conservator how they may relinquish any firearm in their possession. Here, the author may wish to consider if it is appropriate to have county counsel (who is often the conservator), rather than the court, provide this information to the conservatee and their conservator since that information may be more readily available to county counsel.

Additionally, this bill requires individuals subject to a 5150 hold to relinquish any firearm in their custody or control by specified methods within 72 of discharge from the facility at which they were receiving treatment. These methods include surrender to a law enforcement agency, transfer to a firearms dealer by sale or for storage, or sale or transfer to a non-prohibited third party.

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<sup>3</sup> Welf. & Inst. Code, § 8100, et. seq.

<sup>4</sup> Welf. & Inst. Code, § 8100

<sup>5</sup> See Welf. & Inst. Code, § 8103, subds. (a)-(g).

<sup>6</sup> Welf. & Inst. Code § 8103, subds. (a)-(g) (2).

<sup>7</sup> APPS is DOJ's tool for tracking individuals in California that are prohibited from possessing, purchasing or owning a firearm, and compiles information reported to it from various databases.

<sup>8</sup> *Armed and Prohibited Persons System Report 2022*, California Department of Justice (accessed June 19, 2024), available at: <https://oag.ca.gov/system/files/media/2022-apps-report.pdf>

The bill also adds notification requirements for 5150-related notice provisions. Under existing law for a person that has been admitted into a designated facility on a 72-hour 5150 hold (thereby prohibited from possessing a firearm for 5 years after release) that facility, within 24 hours, must submit a report to DOJ containing information regarding the identity of the person and the grounds upon which they were admitted, and, concurrent with discharge, to notify the person via a specified form (“Firearm Prohibition Form”). Additionally, the DOJ must provide the form received from the facility identifying the person and the legal grounds for their admission to that person and to the superior court in each county.<sup>9</sup> This arguably creates duplicative notification requirements. It requires the DOJ, within 7 days of receiving the report from the facility mentioned above, to notify the person subject to the prohibition by email, text message or certified mail. Further it requires such a designated facility to inform such a person that they are required to relinquish any firearm, deadly weapon, or ammunition that the person possesses or controls within 72 hours of discharge and how to relinquish said firearms according to state law and local procedures. Lastly, it requires the DOJ to provide a copy of the firearm prohibition form identifying the person and the legal grounds for their admission to that person and to the superior court in each county of the state upon the request of a law enforcement agency solely for investigative purposes.

Lastly, SB 1002 adds a new legal basis for issuing a search warrant. Specifically it provides that a search warrant may be issued when the property to be seized include ammunition that is in the custody or control of a person subject to the firearms prohibition due to any of the mental-illness related firearm prohibitions previously discussed. This may create some overlap with other firearm related grounds for issuing search warrants. For example, there are several firearm-related grounds for issuing a search warrant including for firearms connected to domestic violence incidents, firearms owned by or in possession of a person subject to a domestic violence restraining order or gun violence restraining order, and guns in possession of a person subject to firearm prohibitions due to a criminal conviction. More notably, another basis for a search warrant is when the property to be seized, includes a firearm or other deadly weapon owned or in the possession of a person adjudicated to be a danger to others due to mental illness, adjudicated to be a mentally disordered sex offender, taken into custody because of the threat they pose to others, found not guilty by reason of insanity, found mentally incompetent to stand trial, (“IST”), or placed under a conservatorship<sup>10</sup>. In such cases, Welfare and Institutions Code Section 8102 already requires the confiscation of such weapons by law enforcement agencies.

- 5) **Argument in Support:** According to the *San Diego City Attorney’s Office*, “[t]he California Welfare & Institution Code § 8103 has various provisions prohibiting people who have experienced mental health struggles and crises from possessing firearms, including, but not limited to, people placed in conservatorships, deemed mentally incompetent to stand trial, found not guilty by reason of insanity, adjudicated to be a danger to others due to a mental disorder, and those involuntarily committed to a healthcare facility because of a mental health episode. SB 1002 primarily focuses on ensuring people involuntarily committed to healthcare facilities comply with our public safety laws....

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<sup>9</sup> Welf. & Inst. Code §8103, subd. (f)(4).

<sup>10</sup> See Pen. Code, §1524(a)(10) and Welf. & Inst. Code, §8102.

Unfortunately, the current legal structure has several implementation gaps and inefficiencies that are contributing to the backlog of armed and prohibited persons. First, newly prohibited people are not always aware that they are not allowed to have firearms or, if they are, do not know how to comply. Second, there is no deadline for compliance making it difficult for law enforcement to encourage a reluctant individual to comply. Third, local law enforcement agencies do not always have access to all the information they need to ensure enforcement.

SB 1002 addresses these issues by:

- 1) Ensuring that individuals are adequately notified of how to comply with firearm prohibitions by multiple parties, including the admitting healthcare facility, the California Department of Justice (DOJ), and, where applicable, the courts. The courts and healthcare facilities must provide information tailored to the local jurisdiction.
  - a) Requiring the DOJ to provide, upon request, the same patient notification form they receive from the health care facility. Access to the form will aid local law enforcement's ability to reach out to people and increase voluntary compliance efforts. In instances where a person is reluctant to comply, the information will aid law enforcement's ability to seek voluntary compliance by ensuring the person received and understands the form and, if necessary, to seek assistance from the courts to compel compliance."
- 6) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice*, "The bill appears to have a drafting error in Section 2, new paragraph 4 to W&I 8103(a). The language refers to "their legal representative" when discussing who should receive notice of the procedure to be used to relinquish property. "Legal representative" could include a lawyer, a conservator, and possibly other people. However, the bill summary refers to "their conservator," and the bill appears to intend to apply to conservators. It should not be applied to attorneys. Attorneys will be placed in a position of conflict of interest if they have any personal obligation to turn over their clients' property.

The bill would also add an unnecessary paragraph to Penal Code section 1024, which already authorizes search warrants for property used as a means to commit a felony (sec. 1024(a)(2).) There is no need for the bill to specify firearms and ammunition possessed in violation of W&I Code section 8103, because those are items used to commit a felony violation of that section and are therefore covered by 1024(a)(2).

Even more concerning is the bill's failure to describe the relinquishment procedure it mandates. It refers to "local procedure," which could mean different things to different people. This vagueness invites arbitrary and capricious enforcement, with the risk of racially disparate treatment in violation of the Racial Justice Act."

#### 7) **Related Legislation:**

- a) AB 899 (Skinner) of the 2023-2024 Legislative Session, extends firearm and ammunition relinquishment procedures that exist for purposes of domestic violence restraining orders ("DVROs") to other specified protective orders. AB 899 is pending hearing in Senate Judiciary Committee.



- b) AB 2629 (Haney), of the 2023-2024 Legislative Session, specifies, commencing September 1, 2025, that any person who is determined to be incompetent to stand trial ("IST") on a misdemeanor offense, or in a post-release community supervision ("PRCS") proceeding, or in a parole revocation hearing, may not possess or own a firearm, as specified. AB 2629 is pending in Senate Appropriations Committee.

**8) Prior Legislation:**

- a) AB 455 (Quirk-Silva), Chapter 236, Statutes of 2023, prohibits individuals in pretrial mental health diversion for a felony or specified misdemeanor charge from owning a firearm until they successfully complete diversion.
- b) AB 1968 (Low), Chapter 861, Statutes of 2018, requires that a person who has been taken into custody, assessed, and admitted to a designated facility because he or she is a danger to himself, herself, or others, as a result of a mental health disorder more than once within a one-year period be prohibited from owning a firearm for the remainder of his or her life, subject to the right to challenge the prohibition at periodic hearings.
- c) AB 1591 (Achadjian), Chapter 141, Statutes of 2014, reduces the time the court has to notify the Department of Justice (DOJ) of court actions that will result in the prohibition of a person from possessing a firearm or any other deadly weapon or result in the person no longer being subject to that prohibition, from two court days to one court day.
- d) AB 1131 (Skinner), Chapter 747, Statutes of 2013, increases the period of time during which a person is prohibited from possessing a gun based on a mental illness or mental disorder, or a serious threat of violence communicated to a licensed psychotherapist.
- e) AB 302 (Beall), Chapter 344, Statutes of 2010, requires specified mental health facilities to report to the Department of Justice exclusively by electronic means when a person is admitted to that facility either because that person was found to be a danger to themselves or others, or was certified for intensive treatment for a mental disorder, as specified.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Brady California  
Brady Campaign  
California State Sheriffs' Association  
Giffords Law Center to Prevent Gun Violence  
Los Angeles County District Attorney's Office  
Los Angeles County Sheriff's Department  
Los Angeles Unified School District  
Neveragainca  
San Diegans for Gun Violence Prevention  
San Diego City Attorney's Office  
San Diego County Sheriff's Office

Women Against Gun Violence  
Women for American Values and Ethics

**Oppose**

California Attorneys for Criminal Justice

**Analysis Prepared by:** Ilan Zur

Date of Hearing: July 2, 2024  
Consultant: Samarpreet Kaur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 1057 (Menjivar) – As Amended May 16, 2024

**SUMMARY:** Revises and recasts the membership for a Juvenile Justice Coordinating Council, specifically, **this bill:**

- 1) Provides that in order to be eligible for a grant under this article, each county shall be required to establish a Juvenile Justice Coordinating Council that shall develop and implement a continuum of care to prevent and respond to young people experiencing juvenile court system involvement that is modeled on a framework of positive youth development and demonstrates a healing-centered, restorative, community-based, collaborative, and integrated approach for at-promise youth and youth involved in the juvenile court system.
- 2) Requires that a Juvenile Justice Coordinating Council to, at a minimum, consist of at least 50 percent community representatives.
- 3) Requires the Juvenile Justice Coordinating Council to be composed of the chief probation officer, as co-chair, and may include one representative each from the public health department, the district attorney's office, the public defender's office, the board of supervisors, the county department of social services, the county department of mental or behavioral health, a community-based drug and alcohol program, a city police department, the county office of education or a school district, and the county department of children, youth, and families, if one exists.
- 4) Requires the Juvenile Justice Coordinating Council to be co-chaired by a community representative elected from among its members, to include an at-promise youth, and either a person with experience in the juvenile court system or a system-impacted family member.
- 5) Requires that a Juvenile Justice Coordinating Council to meet no less than three times per year, announce meetings at least 10 days in advance, make meetings accessible to the public through remote participation, such as streaming and remote call-in options, and to choose meeting times that optimize and encourage public participation.
- 6) Defines "At-promise youth" as young people up to 25 years of age, inclusive, who are vulnerable to court system involvement due to high rates of poverty, a lack of educational and employment opportunities, racial discrimination, the incarceration of one or more of their family members, and a high prevalence of community violence and crime.
- 7) Defines "Community representative" as an individual who is currently or formerly justice system-involved, a system-impacted family member, or a representative from a nonprofit, community-based organization that provides services to youth and that does not include law enforcement employees or staff.

8) Makes legislative findings and declarations.

**EXISTING LAW:**

- 1) Establishes in each county treasury a Supplemental Law Enforcement Services Account (SLESA). (Gov. Code, § 30061, subd. (a).)
- 2) Requires the county auditor, in any fiscal year for which a county receives moneys to be expended, to allocate the moneys in the county's SLESA within 30 days of the deposit of those moneys into the fund. Specifies how the moneys are allocated. (Gov. Code, § 30061, subd. (b).)
- 3) Requires fifty percent of the money allocated to the county or city and county to implement a comprehensive multiagency juvenile justice plan, as provided. Requires the juvenile justice plan to be developed by the local juvenile justice coordinating council in each county and city and county. Requires the plan to be reviewed and updated annually by the council. (Gov. Code, § 30061, subd. (b)(4).)
- 4) Provides that the plan or updated plan may, at the discretion of the county or city and county, be approved by the county board of supervisors. Requires the plan or updated plan to be submitted to the BSCC by May 1 of each year in a format specified by the board. (Gov. Code, § 30061, subd. (b)(4).)
- 5) Requires the multiagency juvenile justice plan to include all of the following:
  - a) An assessment of existing law enforcement, probation, education, mental health, health, social services, drug and alcohol, and youth services resources that specifically target at-risk juveniles, juvenile offenders, and their families;
  - b) An identification and prioritization of the neighborhoods, schools, and other areas in the community that face a significant public safety risk from juvenile crime, such as gang activity, daylight burglary, late-night robbery, vandalism, truancy, controlled substances sales, firearm-related violence, and juvenile substance abuse and alcohol use;
  - c) A local juvenile justice action strategy that provides for a continuum of responses to juvenile crime and delinquency and demonstrates a collaborative and integrated approach for implementing a system of swift, certain, and graduated responses for at-risk youth and juvenile offenders; and,
  - d) A description of the programs, strategies, or system enhancements that are proposed to be funded pursuant to this subparagraph. (Gov. Code, § 30061, subd. (b)(4)(A).)
- 6) Requires that the programs, strategies, and system enhancements proposed to be funded satisfy all of the following requirements:
  - a) Be based on programs and approaches that have been demonstrated to be effective in reducing delinquency and addressing juvenile crime for any elements of response to juvenile crime and delinquency, including prevention, intervention, suppression, and incapacitation;

- b) Collaborate and integrate services of all the resources to the extent appropriate; and,
  - c) Employ information sharing systems to ensure that county actions are fully coordinated, and designed to provide data for measuring the success of juvenile justice programs and strategies. (Gov. Code, § 30061, subd. (b)(4)(B).)
- 7) Requires each county or city and county to submit an annual report to the county board of supervisors and to the Board of State and Community Corrections (BSCC) on the programs, strategies, and system enhancements funded in order to assess their effectiveness. Requires the report to include all of the following:
- a) An updated description of the programs, strategies, and system enhancements that have been funded in the immediately preceding fiscal year;
  - b) An accounting of expenditures during the immediately preceding fiscal year for each program, strategy, or system enhancement funded;
  - c) A description and expenditure report for programs, strategies, or system enhancements that have been co-funded during the preceding fiscal year using JJCPA funds and Youthful Offender Block Grant funds;
  - d) Countywide juvenile justice trend data available from existing statewide juvenile justice data systems or networks, as specified by the BSCC, including, but not limited to, arrests, diversions, petitions filed, petitions sustained, placements, incarcerations, subsequent petitions, and probation violations, and including, in a format to be specified by the board, a summary description or analysis, based on available information, of how the programs, strategies, or system enhancements funded pursuant to this chapter have or may have contributed to, or influenced, the juvenile justice data trends identified in the report. (Gov. Code, § 30061, subd. (c)(4)(C).)
- 8) Requires the BSCC to compile the local reports and, by March 1 of each year following their submission, make a report to the Governor and the Legislature summarizing the programs, strategies, and system enhancements and related expenditures made by each county and city and county. Requires the annual report to the Governor and the Legislature to also summarize the countywide trend data and any other pertinent information submitted by counties indicating how the programs, strategies, or system enhancements supported by appropriated have or may have contributed to, or influenced, the trends identified. Requires the annual report to be posted for access by the public on the website of the board. (Gov. Code, § 30061, subd. (c)(4)(E).)
- 9) Establishes the Juvenile Crime Enforcement and Accountability Challenge Grant Program that is administered by the BSCC for the purpose of reducing juvenile crime and delinquency. Requires this program to award grants on a competitive basis following request-for-proposal evaluation standards and guidelines developed by the board to counties that develop and implement a comprehensive, multiagency local action plan that provides for a continuum of responses to juvenile crime and delinquency, including collaborative ways to address local problems of juvenile crime; and demonstrate a collaborative and integrated

approach for implementing a system of swift, certain, graduated responses, and appropriate sanctions for at-risk youth and juvenile offenders. (Welf. & Inst. Code, § 749.21.)

- 10) Provides that in order to be eligible for this grant, each county shall be required to establish a multiagency juvenile justice coordinating council that shall develop and implement a continuum of county-based responses to juvenile crime. The coordinating councils shall, at a minimum, include the chief probation officer, as chair, and one representative each from the district attorney's office, the public defender's office, the sheriff's department, the board of supervisors, the department of social services, the department of mental health, a community-based drug and alcohol program, a city police department, the county office of education or a school district, and an at-large community representative. (Welf. & Inst. Code, § 749.22.)
- 11) Requires a coordinating council to include representatives from nonprofit community-based organizations providing services to minors. The board of supervisors shall be informed of community-based organizations participating on a coordinating council. The coordinating councils shall develop a comprehensive, multiagency plan that identifies the resources and strategies for providing an effective continuum of responses for the prevention, intervention, supervision, treatment, and incarceration of male and female juvenile offenders, including strategies to develop and implement locally based or regionally based out-of-home placement options for youths (Welf. & Inst. Code, § 749.22.)
- 12) Provides that counties may utilize community punishment plans developed pursuant to grants awarded from funds included in the 1995 Budget Act to the extent the plans address juvenile crime and the juvenile justice system or local action plans previously developed for this program. Requires the plan include, but not be limited to, the following components:
  - a) An assessment of existing law enforcement, probation, education, mental health, health, social services, drug and alcohol and youth services resources which specifically target at-risk juveniles, juvenile offenders, and their families;
  - b) An identification and prioritization of the neighborhoods, schools, and other areas in the community that face a significant public safety risk from juvenile crime, such as gang activity, daylight burglary, late-night robbery, vandalism, truancy, controlled substance sales, firearm-related violence, and juvenile alcohol use within the council's jurisdiction;
  - c) A local action plan for improving and marshaling the resources described above to reduce the incidence of juvenile crime and delinquency in the targeted areas and the greater community. Requires the councils to prepare their plans to maximize the provision of collaborative and integrated services of all the resources described above, and to provide specified strategies for all elements of response, including prevention, intervention, suppression, and incapacitation, to provide a continuum for addressing the identified male and female juvenile crime problem, and strategies to develop and implement locally based or regionally based out-of-home placement options for youths;
  - d) Develop information and intelligence-sharing systems to ensure that county actions are fully coordinated, and to provide data for measuring the success of the grantee in achieving its goals. Requires the plan to develop goals related to the outcome measures that will be used to determine the effectiveness of the program; and,

- e) Identify outcome measures which must include, but not be limited to, the following:
  - i) The rate of juvenile arrests;
  - ii) The rate of successful completion of probation; and,
  - iii) The rate of successful completion of restitution and court-ordered community service responsibilities. (Welf. & Inst. Code, § 749.22.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "California has committed to ending the era of tough-on-crime approach to youth incarceration while ushering in a new, health-based approach to youth development. While we have made great strides, there remain opportunities for improvement. One urgent opportunity is rectifying the injustices created by the flawed implementation of the Juvenile Justice Crime Prevention Act (JJCPA). The JJCPA was enacted over twenty years ago to service youth in their communities and keep them from entering the justice system. However, the lack of community representation on counties' local Juvenile Justice Coordinating Council (JJCC) has caused us to fall short of that goal.

“SB 1057 seeks to remedy this problem by creating a more equitable JJCC composition. The expertise of those who are most impacted by the system, and those working alongside them with a trauma-informed, healing-focused lens, are invaluable to implementing the JJCPA. SB 1057 would require counties to bring these experts to the table. However, it is not enough simply to have a seat at the table. System impacted young people, credible messengers, and trusted community stakeholders must feel safe; SB 1057 will add a community co-chair to JJCCs to ensure community voice does not become illusory. This bill does not defund probation, nor does it require that probation or other county agencies are left behind – SB 1057 simply supplements the current efforts by adding community voice to the decision-making process.”

- 1) **Background:** The Juvenile Justice Crime Prevention Act (JJCPA) was enacted in 2000 through the signage of AB 1913 (Chapter 353, Statutes of 2000). Its goal is to provide a stable funding source for local county juvenile justice programs and help reduce crime among young at-risk individuals. The JJCPA requires that each county establish a juvenile justice coordinating council and that it be made up of minimum twelve mandated seats, which include, at-least ten representatives from various local government agencies, at-least one representative from a nonprofit community-based organization, and at-least one at-large community representative. The coordinating council is required to develop a comprehensive multiagency juvenile justice plan for the county. This plan must be annually updated to generally summarize a county's holistic efforts to reduce juvenile crime. Specifically the plan must reflect a description of juvenile programs and strategies, accounting/description of expenditures from the previous fiscal year, and countywide juvenile justice trend data available. Each county must submit its plan to the county Board of Supervisors and the BSCC annually, along with a year-end report that describes the county's JJCPA-funded programs and how those programs may have affected the county's juvenile justice trends.

The BSCC then compiles the information it receives from the counties and submits an annual report to the Governor and Legislature.

For the Fiscal Year 2022-2023, the JJCPA-YOBG Grant allocated \$368 million to counties to support youth within the juvenile justice system or those at risk. The state provides JJCPA funding to counties based on population. JJCPA and YOBG are part of the funding structure established in the 2011 Public Safety Realignment legislation, funded through the Local Revenue Fund of 2011, specifically the Law Enforcement Services Account. JJCPA's main revenue source is the Vehicle License Fee Fund, supplemented by State Sales Tax revenue if needed. YOBG's primary revenue source is State Sales Tax, with potential supplementation from the Vehicle License Fee Fund in case of shortfalls. Proposition 30, approved in 2012, constitutionally guaranteed funding for JJCPA and YOBG, providing local agencies with flexibility in designing, administering, and delivering public safety services as determined by the Legislature. (Board of State and Community Corrections, *Juvenile Justice Crime Prevention Act and Youth Offender Block Grant Annual Report to the Legislature* (Mar. 2024), p. 14 available at < <https://www.bscc.ca.gov/wp-content/uploads/2024/04/2024-JJCPA-YOBG-Legislative-Report-FINAL-4-2024.pdf> )

This bill would revise and recast the membership for a Juvenile Justice Coordinating Council. Specifically the council will be required to be composed of the following members: the chief probation officer as the co-chair, one community representative, elected from among its members, as the other co-chair, at-least one at-promise youth, and at least fifty percent of the council be made up of community representatives. This bill would additionally state that the council may include one representative each from various county or city and county departments and shall meet no less than three times per year, announce meetings at least 10 days in advance, make meetings accessible to the public through remote participation, such as streaming and remote call-in options.

- 2) **State Auditor Report (2020):** At the request of the Joint Legislative Audit Committee, the State Auditor conducted an audit to assess five counties' spending and reporting of JJCPA funds, and decision-making processes related to and evaluations of their JJCPA-funded programs. The report containing the audit findings was published in May 2020. The overall conclusion of the report was that weak oversight of the JJCPA by the state and counties had resulted in some counties not having a juvenile justice coordinating council at all, Mendocino lacked a Coordinating Council but still received JJCPA funds, some counties having vacancies on their council, and several counties making only limited revisions to their comprehensive juvenile justice plan over the last two decades despite significant changes in the statewide juvenile justice landscape. (State Auditor, *Juvenile Justice Crime Prevention Act: Weak Oversight Has Hindered Its Meaningful Implementation* (Report 2019-116), pp. 1-4, available at <<http://auditor.ca.gov/pdfs/reports/2019-116.pdf> .)

The State Auditor made the following recommendations for legislative action:

1. To ensure that counties adequately identify how they serve at-risk youth, the Legislature should require counties to define at-risk youth in their comprehensive plans. The Legislature should also require the BSCC to review counties' comprehensive plans to ensure that each contains an adequate definition of at-risk youth.



2. The Legislature should direct the BSCC to monitor reports that counties submit to ensure that they include meaningful descriptions or analyses of how their JJCPA-funded programs may have contributed to or influenced countywide juvenile justice trends.
  3. To enable the BSCC to provide effective oversight of the required elements of the JJCPA, the Legislature should amend state law to describe a process for restricting the spending of JJCPA funding by counties that do not meet JJCPA requirements. As part of that process, the State should prohibit counties from spending JJCPA funds if they have not established Coordinating Councils.
  4. To make JJCPA funding more stable and predictable, the Legislature should amend state law to increase the amount of guaranteed JJCPA funding the State provides to counties. (*Id.* at p. 5.)
- 3) **Argument in Support:** According to the National Center for Youth Law, “In 2000, the Schiff-Cárdenas Juvenile Justice Crime Prevention Act was created to support youth in their communities and limit their involvement in the justice system. The grant requires that each county establish a Juvenile Justice Coordinating Council that consists of representatives from a variety of local agencies and community groups to ensure the county’s multi-agency juvenile justice plan is collaborative and comprehensive.

“However, in 2020, the California State Auditor released a report which found that most counties left mandatory stakeholder seats vacant. In fact, 20 percent of counties lacked a Council entirely during the audit review period. Of those counties that did complete plans, the State Auditor found that counties generally made limited revisions to their plans over the past 20 years although youth arrests in California have declined by 89 percent from 243,090 in 2000 to 26,000 in 2022. The state has also seen a 91 percent decline in referrals to probation since 2006, from 187,296 in 2006 to 16,252 in 2022.

“Across the state, inequitable decision-making by JJCCs has continued in the years since the Auditor’s report. The Riverside County JJCC was required to add five community member seats following a 2020 settlement centered on the county’s Youth Accountability Team (YAT) program. The lawsuit argued that the YAT program spent millions of dollars funneling children into an unconstitutional probation system that denied them their due process rights and subjected them to oppressive, invasive policies, such as surprise searches, unannounced home visitations, strict restrictions on who participants could speak to, curfews, and interrogations into intimate details of their lives. In 2021 and 2022, Fresno and Sacramento Counties were both found to be unlawfully holding meetings on juvenile justice reform behind closed doors. Dismal reporting has continued, allowing for incidents such as in Los Angeles County, where probation was found to have spent nearly \$400 thousand yearly on a youth diversion program that served zero youth participants while simultaneously hoarding almost \$100 million in JJCPA funding, thus preventing the delivery of much-needed resources to parks and recreation, arts, education, and behavioral health oriented youth programming.

“SB 1057 will advance the health-first approach to youth justice envisioned in California’s Juvenile Justice Realignment Plan, ensure equitable community representation and improved transparency and decision-making, and promote positive youth development for California’s

most vulnerable youth.”

4) **Argument in Opposition:** According to the Chief Probation Officers’ of California (CPOC), “SB 1057 revises the composition of local Juvenile Justice Coordinating Councils in an untenable way. Our continued concerns underlying our opposition include:

- The bill would jeopardize county funding, tying receipt of the grant to a new council composition that has considerable challenges in seating. Community participation is voluntary and not compelled, yet community participation becomes a requirement for counties to meet with 50 percent of its council membership.
- Requires, rather than permits, a council to have at least 50 percent community representatives. This mandate becomes particularly difficult, and in some cases would likely not be able to be met, in many parts of the state. It is important to note that there are instances within the current committee composition that despite best efforts to obtain participation for all of the members, there have been challenges in doing so.
- Requires, rather than permits, a community representative co-chair. Not only does this mandate a co-chair, but further specifies that it shall be a community representative. Mandating it with the level of specificity in the bill does not reflect the local needs, nor the challenges faced in many counties to be able to meet these new requirements for community members.
- Narrowly defines community representative which exacerbates the challenges to fill these very prescriptive volunteer positions in many parts of the State.

“We wholly support and acknowledge the benefit of having multiple perspectives on this committee and proactively encourage this at the local level. The local councils currently include an at-large community member as well as representatives from nonprofit community-based organizations providing services to minors. By requiring, rather than authorizing additional members, and tying funding to these new requirements, the bill would create considerable obstacles in counties continued ability to deliver much needed and heavily relied upon supports and services. Counties having difficulty seating community members including those with lived experience, should be provided additional tools and resources to address this issue, rather than have their population served be penalized.”

5) **Prior Legislation:**

- a) AB 702 (Jackson), of the 2023-2024 Legislative Session, would require no less than 80% of the funds allocated under grants be distributed to community-based organizations and other public agencies or departments that are not law enforcement entities. It would revise and recast membership provisions, and instead require each juvenile justice coordinating council to, at a minimum, consist of at least 50% community representatives with the remainder of the seats allocated to representatives from government agencies. Lastly it would require a council to select 2 co-chairs from amongst its members. AB 702 was not heard in Assembly Public Safety.

- b) SB 493 (Bradford), of the 2021-2022 Legislative Session, would require no less than 95% of the funds allocated to be distributed to community-based organizations and other public agencies or departments that are not law enforcement entities and prohibits this portion of the funds from being used for law enforcement purposes. It would revise and recast membership provisions, and instead require each Juvenile Justice Coordinating Council to, at a minimum, consist of 7 members with at least 50% community representatives with the remainder of the seats allocated to government agencies. The bill would require a council to select 2 co-chairs from amongst its members, at least 1 of which must be a community representative. SB 493 was held in Senate Appropriations.
- c) AB 1007 (Jones-Sawyer), of the 2019-2020 Legislative Session, would require no less than 95% of the funds allocated to be distributed to community-based organizations and other public agencies or departments that are not law enforcement entities. It would revise and recast membership provisions, and instead require each Juvenile Justice Coordinating Council to, at a minimum, consist of 7 members with at least 50% community representatives with the remainder of the seats allocated to government agencies. The bill would require a council to select 2 co-chairs from amongst its members. AB 1007 was not set for a hearing in Senate Public Safety.
- d) AB 1913 (Cardenas), Chapter 353, Statutes of 2000, allocated 50% of SLESF moneys to counties and cities and counties to implement a comprehensive multiagency juvenile justice plan with specified components and objectives, and required that the plan be developed by the local juvenile justice coordinating council in each county and city and county.

## REGISTERED SUPPORT / OPPOSITION:

### Support

ACLU California Action  
 All of Us or None (HQ)  
 Alliance for Girls  
 California Academy of Child and Adolescent Psychiatry  
 California Alliance for Youth and Community Justice  
 California Alliance of Child and Family Services  
 California Public Defenders Association  
 California Youth Connection (CYC)  
 Center on Juvenile and Criminal Justice  
 Children Now  
 Children's Defense Fund - CA  
 Coalition for Engaged Education  
 Communities United for Restorative Youth Justice (CURYJ)  
 Ella Baker Center for Human Rights  
 Freedom 4 Youth  
 Fresh Lifelines for Youth  
 Humboldt County Transition Age Youth Collaboration's Youth Advocacy Board  
 Initiate Justice  
 LA Defensa  
 Legal Services for Prisoners With Children

Messaging for Success  
National Center for Youth Law  
Public Health Advocates  
Rtime Co.  
Sigma Beta Xi, INC. (sbx Youth and Family Services)  
Silicon Valley De-bug  
Southeast Asia Resource Action Center  
The Children's Partnership  
The Collective for Liberatory Lawyering  
The W. Haywood Burns Institute  
Vera Institute of Justice  
Youth Forward

**Oppose**

American Federation of State, County and Municipal Employees, Afl-cio  
Bu 702- Seiu 721 Joint Council  
California District Attorneys Association  
California State Association of Counties (CSAC)  
Chief Probation Officers' of California (CPOC)  
Contra Costa County  
County of Fresno  
County of Kern  
County of Madera  
County of Mendocino  
County of Monterey  
County of Placer  
County of Riverside  
County of San Luis Obispo  
County of Santa Barbara  
County of Solano  
County of Stanislaus  
County of Ventura  
Fresno County Board of Supervisors  
Los Angeles County Probation Managers Association Apscme Local 1967  
Los Angeles County Probation Officers Union, Apscme Local 685  
Rural County Representatives of California (RCRC)  
Sacramento County Probation Association  
Sacramento; County of  
San Francisco Deputy Probation Officers Association  
San Joaquin County Board of Supervisors  
Santa Clara County Probation Peace Officer's Union, Apscme Local 1587  
Shasta; County of  
Sppoa  
State Coalition of Probation Organizations  
Urban Counties of California (UCC)  
Ventura County Professional Peace Officers Association

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

Date of Hearing: July 2, 2024  
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 1074 (Jones) – As Amended May 16, 2024

**SUMMARY:** Requires the State Department of State Hospitals (DSH) to approve the potential placement of a sexually violent predator (SVP) scheduled to be conditionally released before finalizing a lease or rental agreement. Specifically, **this bill:**

- 1) States that the DSH is responsible for ensuring that department vendors consider public safety in the placement of SVP's conditionally released in the community.
- 2) Requires the DSH to approve a potential placement before a department employee or vendor proposes a potential placement to a court, including signing a lease or rental agreement regarding the placement of an SVP who is scheduled to be conditionally released in the community.
- 3) Provides that the above provisions do not prohibit the placing hold on a residence for purposes of assessing suitability and public safety considerations for the prospective placement of a person committed as an SVP.
- 4) Contains an urgency clause in order to protect the public and to provide greater transparency in the placement of SVP's in the community.

**EXISTING LAW:**

- 1) Provides for the civil commitment for psychiatric and psychological treatment of a prison inmate found to be a SVP after the person has served his or her prison commitment. (Welf. & Inst. Code, § 6600, et seq.)
- 2) **Defines a "sexually violent predator" as "a person who has been convicted of a sexually violent offense against at least one victim, and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior."** (Welf. & Inst. Code, § 6600, subd. (a)(1).)
- 3) Permits a person committed as a SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code, § 6604.1.)
- 4) Requires that a person found to have been a SVP and committed to the DSH have a current examination on his or her mental condition made at least yearly. The report shall include consideration of conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and also what conditions can be imposed to adequately

protect the community. (Welf. & Inst. Code, § 6604.9.)

- 5) Allows a SVP to seek conditional release with the authorization of the Director of the DSH when DSH determines that the person's condition has so changed that he or she no longer meets the SVP criteria, or when conditional release is in the person's best interest and conditions to adequately protect the public can be imposed. (Welf. & Inst. Code, § 6607.)
- 6) Allows a person committed as a SVP to petition for conditional release or an unconditional discharge any time after one year of commitment, notwithstanding the lack of recommendation or concurrence by the Director of the DSH. (Welf. & Inst. Code, § 6608, subd. (a).)
- 7) Provides that, if the court deems the conditional release petition not frivolous, the court is to give notice of the hearing date to the attorney designated to represent the county of commitment, the retained or appointed attorney for the committed person, and the Director of the DSH at least 30 court days before the hearing date. (Welf. & Inst. Code, § 6608, subd. (b).)
- 8) Requires the court to first obtain the written recommendation of the director of the treatment facility before taking any action on the petition for conditional release if the is made without the consent of the director of the treatment facility. (Welf. & Inst. Code, § 6608, subd. (c).)
- 9) Provides that the court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. Provides that the attorney designated the county of commitment shall represent the state and have the committed person evaluated by experts chosen by the state and that the committed person shall have the right to the appointment of experts, if he or she so requests. (Welf. & Inst. Code, § 6608, subd. (e).)
- 10) Requires the court to order the committed person placed with an appropriate forensic conditional release program operated by the state for one year if the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community. Requires a substantial portion of the state-operated forensic conditional release program to include outpatient supervision and treatment. Provides that the court retains jurisdiction of the person throughout the course of the program. (Welf. & Inst. Code, § 6608, subd. (e).)
- 11) Provides that if the court denies the petition to place the person in an appropriate forensic conditional release program, the person may not file a new application until one year has elapsed from the date of the denial. (Welf. & Inst. Code, § 6608, subd. (h))
- 12) Allows, after a minimum of one year on conditional release, the committed person, with or without the recommendation or concurrence of the Director of the DSH, to petition the court for unconditional discharge, as specified. (Welf. & Inst. Code, § 6608, subd. (k).)
- 13) Prohibits a conditionally-released person from being placed within a quarter-mile of any kindergarten through twelfth grade school if the court finds that the person has “a history of

improper sex conduct with children” or has previously been convicted of specified sex offenses. (Welf. & Inst. Code, § 6608.5, (f).)

- 14) States that the county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed as SVPs who are about to be conditionally released. (Welf. & Inst. Code, § 6608.5, (d).)
- 15) Specifies that in recommending a specific placement for community outpatient treatment, DSH or its designee shall consider all of the following: a) The concerns and proximity of the victim or the victim’s next of kin; and b) The age and profile of the victim or victims in the sexually violent offenses committed by the person subject to placement. The “profile” of a victim includes, but is not limited to, gender, physical appearance, economic background, profession, and other social or personal characteristics. (Welf. & Inst. Code, § 6608.5, (e)(1)-(2).)
- 16) States that if the court determines that placement of a person in the county of his or her domicile is not appropriate, the court shall consider the following circumstances in designating his or her placement in a county for conditional release: a) If and how long the person has previously resided or been employed in the county; and b) If the person has next of kin in the county. (Welf. & Inst. Code, § 6608.5, (g)(1)-(2))
- 17) Specifies that when DSH makes a recommendation to the court for community outpatient treatment for any person committed as a SVP, or possibilities of community placement exist, DSH must notify the sheriff or chief of police, or both, the district attorney, or the county’s designated counsel, that have jurisdiction over the following locations: (a) The community in which the person may be released for community outpatient treatment; (b) The community in which the person maintained his or her last legal residence; and, (c) The county that filed for the person’s civil commitment. (Welf. and Inst. Code, § 6609.1 (a)(1)(A)-(C).) 16)
- 18) Requires notice be given at least 30 days prior to DSH’s submission of its recommendation to the court in those cases in which DSH recommended community outpatient treatment, or in which DSH is recommending or proposing a placement location, or in the case of a petition or placement proposal by someone other than DSH, within 48 hours after becoming aware of the petition or placement proposal. (Welf. & Inst. Code, 6609.1, subd. (a)(4).) 17) Specifies that agencies receiving the notice may provide written comment to the DSH and the court regarding the impending release, placement, location, and conditions of release. All community agency comments shall be combined and consolidated. (Welf. & Inst. Code, 6609.1, subd. (b).)
- 19) Requires that the agencies’ comments and DSH’s statements be considered by the court which shall, based on those comments and statements, approve, modify, or reject the DSH’s recommendation or proposal regarding the community or specific address to which the person is scheduled to be released or the conditions that shall apply to the release if the court finds that DSH’s recommendation or proposal is not appropriate. (Welf. & Inst. Code, 6609.1, subd. (c).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "SB 1074 introduces the Sexually Violent Predator Accountability, Fairness, and Enforcement Act (SAFE Act) to oversee the placement of Sexually Violent Predators (SVPs) upon their release. SVPs are criminals who have committed a sexual offense and have a diagnosed mental disorder that makes them likely to reoffend. Currently, the Department of State Hospitals (DSH) contracts with Liberty Healthcare to manage SVP placement with little to no oversight. Time and again, this has led to entirely inappropriate placements, putting our communities at risk of victimization at the hands of these predators.

"The SAFE Act requires DSH to take ownership in the placement process by approving any placements BEFORE a department employee or vendor can sign any leases for placement locations. Additionally, this bill will make public safety a priority for any potential placement of an SVP. SB 1074 sets our priorities straight and puts public safety above the interests of Liberty Healthcare or the SVPs they release into our neighborhoods."

- 2) **SVP Background:** The Sexually Violent Predator Act (SVPA) establishes an extended civil commitment scheme for sex offenders who are about to be released from prison, but are referred to the DSH for treatment in a state hospital, because they have suffered from a mental illness which causes them to be a danger to the safety of others. The DSH uses specified criteria to determine whether an individual qualifies for treatment as a SVP. Under existing law, a person may be deemed a SVP if: (a) the defendant has committed specified sex offenses against two or more victims; (b) the defendant has a diagnosable mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually-violent criminal behavior; and, (3) two licensed psychiatrists or psychologists concur in the diagnosis. If both clinical evaluators find that the person meets the criteria, the case is referred to the county district attorney who may file a petition for civil commitment.

Once a petition has been filed, a judge holds a probable cause hearing; and if probable cause is found, the case proceeds to a trial at which the prosecutor must prove to a jury beyond a reasonable doubt that the offender meets the statutory criteria. The state must prove "[1] a person who has been convicted of a sexually violent offense against [at least one] victim[] and [2] who has a diagnosed mental disorder that [3] makes the person a danger to the health and safety of others in that it is likely that he or she will engage in [predatory] sexually violent criminal behavior." (*Cooley v. Superior Court (Martinez)* (2002) 29 Cal.4th 228, 246.) If the prosecutor meets this burden, the person then can be civilly committed to a DSH facility for treatment.

The DSH must conduct a yearly examination of a SVP's mental condition and submit an annual report to the court. This annual review includes an examination by a qualified expert. (Welf. & Inst. Code, § 6604.9.) In addition, DSH has an obligation to seek judicial review



any time it believes a person committed as a SVP no longer meets the criteria, not just annually. (Welf. & Inst. Code, § 6607.)

The SVPA was substantially amended by Proposition 83 ("Jessica's Law"), which became operative on November 7, 2006. Originally, a SVP commitment was for two years; but now, under Jessica's Law, a person committed as a SVP may be held for an indeterminate term upon commitment or until it is shown that the defendant no longer poses a danger to others. (See *People v. McKee* (2010) 47 Cal.4th 1172, 1185-87.) Jessica's Law also amended the SVPA to make it more difficult for SVPs to petition for less restrictive alternatives to commitment. These changes have survived due process, ex post facto, and, more recently, equal protection challenges. (See *People v. McKee, supra*, 47 Cal.4th 1172 and *People v. McKee* (2012) 207 Cal.App.4th 1325.)

- 3) **Difficulty in Placing SVP's on Conditional Release:** Liberty Health Care, the contract provider for DSH, goes to great lengths at considerable expense to find suitable housing for an SVP on conditional release in the community. In the case of *People v. Superior Court (Karsai)* (2013) 213 Cal App 4<sup>th</sup> 774, Liberty Health Care reported that its staff had travelled 6,793 miles in one year searching for a residence for Karsai and had viewed 1,261 properties in Santa Barbara, Ventura, and San Luis Obispo Counties. The only potential residence was Karsai's mother's home in Santa Maria, and the Court determined that Karsai's mother's home was not disqualified as a potential residence despite its proximity to a park and an elementary school. Later, Liberty informed the court that the Karsai family had withdrawn his mother's home as a placement/residence site because the family had been beset upon by the local media.

The court then found that "extraordinary circumstances existed, justifying a search for 'any' available housing "without being constrained to San Luis Obispo or Santa Barbara County." Approximately five months later, Liberty had reviewed more than 1,830 sites and had identified two possible locations: an apartment in Sacramento and a small home in Auburn. At a hearing, both the People and Karsai objected to the locations. The People objected due to the proximity of Karsai's victims, and both sides objected "on the basis that the placement would provide no support structure for Mr. Karzai". Agreeing that it would be "fruitless" to pursue those placements, the court ordered Liberty to check into the option of placing Karzai in a travel trailer on a pad next to the San Luis Obispo County Sheriff's Office. Liberty shortly informed the court that there had been objections to Karzai's placement in a trailer and that the pad was "not Jessica's law compliant. Because it appeared to the court that "there was no suitable placement available either in Mr. Karsai's county of domicile, or elsewhere," the court ordered Karsai be "released in Santa Barbara County as a transient." Santa Barbara then sought a writ of mandate in the court of appeal, seeking to vacate the superior court's order releasing Karsai into Santa Barbara as a transient.

The court eventually ruled that nothing in the law forbids the conditional release of an SVP as a transient. "Moreover, to imply such a limitation into the law would raise serious constitutional issues. 'Because civil commitment involves a significant deprivation of liberty, a defendant in an SVP proceeding is entitled to due process protections.' (*People v. Otto* (2001) 26 Cal.4<sup>th</sup> 200, 209 [109 Cal. Rptr. 2d 327, 26 P.3d 1061].) Once a court has determined that a particular SVP would not be a danger to the health and safety of others in that it is not likely that he or she would engage in sexually violent criminal [\*789] behavior due to his or her diagnosed mental disorder if under supervision and treatment in the

community, that person unquestionably has a significant liberty interest in being released. To authorize an unspecified delay in that release by implying in the SVPA a requirement that the person must have a specific residence before release, when under the statutory scheme the securing of a specific residence is not a prerequisite to a finding that the person would pose no danger to others if under outpatient supervision and treatment, would run the risk that a person who is no longer dangerous will nonetheless have to remain in custody in a secure facility indefinitely simply because of some [\*\*\*28] extraneous factor, such as public outrage, that interferes with finding and securing a fixed residence for that person. To avoid such a potential due process problem, we believe the more prudent—as well as that most consistent with the established canons of statutory interpretation—is to not imply in the SVPA something the Legislature did not expressly include in it: the limitation that an SVP cannot be conditionally released in the community without a specific residence."

- 4) **Argument in Support:** According to the *California District Attorneys Association*, "Under current law, DSH avoids responsibility for placing SVP's into the community by contracting their conditional release to Liberty Healthcare. Liberty Healthcare serves as the sole vendor for providing post release CONREP (Conditional Release Program). Although public safety should be the primary consideration, Liberty has engaged in a number of placements that do not reflect public safety as a primary concern. In doing so, Liberty has obligated the state to numerous leases and created unsafe conditions. Some of these releases include releasing an SVP next door to a home where six children reside, releasing an SVP next door to two deaf children, requiring their family to move for the safety of their children. DSH and specifically its director, have avoided responsibility by delegating the placement task to Liberty Healthcare."
- 5) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice*, "CACJ opposes this bill as being another in a long line of proposed legislation designed to keep individuals who have previously been found to qualify as a sexually violent predator under California law from ever being able to find a residence once they have earned their right to be released from custody.

"Over the years since the Sexually Violent Predator law came into existence, numerous attempts have been made through legislation to bar or restrict the return and placement in our communities. Some of these attempts have become successful in becoming law. Many others have not either because of failing to become law or having been overturned by court decisions. It is clear to CACJ that the overriding goal in all these attempts is to keep the individuals from having a place to live in our communities. SB 1074 is no different."

6) **Prior Legislation:**

- a) SB 832 (Jones) of the 2023 Legislative Session prohibited the placement of SVPs within five miles of federal land and to require the DSH to take specified actions before placing a sexually violent predator in the community and to require the DSH, the CDCR, and the Department of Forestry and Fire Protection to report to the Governor and Legislature the status of quarters available for the placement of sexually violent predators. SB 832 failed passage in the Senate Public Safety Committee.

- b) SB 841 (Jones) of the 2022 Legislative Session was substantially similar to SB 832. SB 832 failed passage in the Senate Public Safety Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California District Attorneys Association  
California State Sheriffs' Association

**Opposition**

California Attorneys for Criminal Justice  
Ella Baker Center for Human Rights

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

Date of Hearing: July 2, 2024  
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Kevin McCarty, Chair

SB 1128 (Portantino) – As Amended April 11, 2024

**SUMMARY:** Requires any person to register as a sex offender for a period of 10 years when the person is convicted of statutory rape and the age difference is more than 10 years between the adult and the minor. Specifically, **this bill:**

- 1) Requires sex offender registration if the defendant is 18 or older, engages in an act of unlawful sexual intercourse with a minor, and the minor is more than three years younger than the defendant.
- 2) Requires registration if the defendant is 21 or older, engages in an act of unlawful sexual intercourse with a minor, and the minor is under 16.
- 3) Provides that, notwithstanding the registration requirements above, a person is not required to register if, at the time of the offense, they are not more than 10 years older than the minor.

**EXISTING LAW:**

- 1) Requires a sex offender to register for ten years, 20 years, or for a lifetime, depending on the offense. (Pen. Code, § 290, subd. (c)(1-2), (d).)
- 2) Requires persons convicted of specified sex offenses to register a sex offender, or re-register if the person has been previously registered, upon release from incarceration, placement, commitment, or release on probation. States that the registration shall consist of all of the following:
  - a) A statement signed in writing by the person, giving information as shall be required by DOJ and giving the name and address of the person's employer, and the address of the person's place of employment, if different from the employer's main address;
  - b) Fingerprints and a current photograph taken by the registering official;
  - c) The license plate number of any vehicle owned by, regularly driven by or registered in the name of the registrant;
  - d) Notice to the person that he or she may have a duty to register in any other state where he or she may relocate; and, Copies of adequate proof of residence, such as a California driver's license or identification card, recent rent or utility receipt or any other information that the registering official believes is reliable. (Pen. Code, § 290.015, subd. (a).)

- 2) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony if the offense requiring registration was a felony or if the person has a prior conviction of failing to register. (Pen. Code, § 290.018, subd. (a) and (b).)
- 3) Provides that within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the DOJ. (Pen. Code, § 290.015, subd. (b).)
- 4) States that a misdemeanor failure to register shall be punishable by imprisonment in a county jail not exceeding one year, and a felony failure to register shall be punishable in the state prison for 16 months, two or three years. (Pen. Code, § 290.018, subd. (a) and (b).)
- 5) Provides that a court can require a person not otherwise required to register if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for the purpose of sexual gratification. (Pen. Code, § 290.006)
- 6) States the Department of Justice (DOJ) is required to make information about registered sex offenders available to the public via an Internet Web site, as specified. (Pen. Code, § 290.46.)
- 7) Provides that DOJ is required to include on this web site a registrant's name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, any other information that the Department of Justice deems relevant unless expressly excluded under the statute. (*Id.*) Requires DOJ to include on its Internet Web site either the home address or zip code of residence of persons who are required to register as sex offenders based upon their registration offense (Pen. Code, §§ 290.46, subd. (b)(2); 290.46, subd. (d)(2).)
- 8) Requires people who are sex offender registrants to disclose this status to the licensee of a community care facility before becoming a client of that facility. (Health and Safety Code § 1522.01.)
- 9) Imposes specified restrictions on persons registered as sex offenders with respect to employment in certain areas, such as in education (Education Code §§ 35021, 44345), community care facilities (Health and Safety Code § 1522), residential care facilities (Health and Safety Code § 1568.09), residential care facilities for the elderly (Health and Safety Code § 1569.17), day care facilities (Health and Safety Code § 1596.871), engaging in the business of massage (Government Code § 51032), physicians and surgeons (Business and Professions Code § 2221 ), registered nurses (Business and Professions Code § 2760.1), and others.
- 10) Provides that notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed or reside, for the duration of his or her period of parole, within one-quarter mile of any school including any public or private school including any or all of kindergarten and grades 1 to 8, inclusive. (Pen. Code, § 3003, subd. (g).)
- 11) Creates the Sex Offender Management board (SOMB) to address any issue, concerns and problem related to the community management of adult sex offenders. (Pen. Code, § 9000, et

seq.)

- 12) Provides that unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator if the person is a minor under 18 years of age. (Pen. Code, § 261.5, subd. (a).)
- 13) Provides that a person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator is guilty of a misdemeanor. (Pen. Code, § 261.5, subd. (b).)
- 14) Provides that a person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of a wobbler. (Pen. Code, § 261.5, subd. (c).)
- 15) Provides that a person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who under 16 years of age is guilty of a wobbler. (Pen. Code, § 261.5, subd. (d).)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

- 1) **Author's Statement:** According to the author, “It is imperative that we do everything we can to protect vulnerable youth and reduce the demand for sex and the human trafficking of minors. It is inexplicable that some “consensual” sex acts with a minor require sex offender registration but the unlawful sexual intercourse with a minor, irrespective of the age difference, does not. This is particularly troubling considering the increased risk for unintended pregnancies and sexually transmitted infections that may result from sexual intercourse. Unintended adolescent pregnancies often lead to poor outcomes and frequently results in socioeconomic and health related challenges for the adolescent and their children. SB 1128 fixes this discrepancy.

“This bill will ensure those who engage in the unlawful sexual intercourse with a minor who is more than ten (10) years younger than the offender are required to register as a sex offender. This bill seeks to eliminate the current omission in the law that prevents offenders that engage in the unlawful sexual intercourse with a minor from mandated sex registration. In doing so, offenders will be held accountable and the demand for sex and human trafficking of minors will be reduced.”

- 2) **Need for the Bill:** As noted by the author, the intent of this bill is to remedy a perceived inequity in the law and protect people from human trafficking. The author states:  
“Current law requires sex offender registration for those engaged in specific ‘consensual’ sex acts with a minor, including oral copulation, sodomy, and sexual penetration with a foreign object, if the offender is more than 10 years older than the minor. Current law, however, does not require sex offender registration for a violation of Penal Code section 261.5, the unlawful sexual intercourse with a minor, irrespective of the age difference between the offender and the minor.

“SB 1128 will protect vulnerable children and hold offenders accountable. The following juvenile demographic data was collected by the LAPD and confirmed by the LA City Attorney’s Office. It demonstrates a subset of data on minors in California who are impacted by the issues that SB 1128 seeks to address.

“For 2023, the LA City Attorney had the following Juvenile (underage) "rescues" from the Figueroa Corridor:

60 Juveniles:

70% - African American

26% - Hispanic

3% - White

1% - Other

Gender:

100% - Females

0% - Males

“Here is the 2023 "John" data for solicitation of prostitution in exchange for compensation that was compiled by the LA City Attorney’s Office. This data is not broken down between adults and minors.

**A. Filed Cases**

63% - Hispanic

23% - White

7% - Black

7% - Other

**B. Diversion Cases**

City Attorney Hearings:

85% - Hispanic

7.5% - Black

7.5% - White

Neighborhood Justice Program:

67% - Hispanic

16.5% - White

16.5% - Other

**Rejected Cases**

75% - Hispanic

12% - Other

7% - White

6% - Black

“Current law requires sex offender registration for those engaged in specific ‘consensual’ sex acts with a minor, including oral copulation, sodomy, and sexual penetration with a foreign

object, if the offender is more than 10 years older than the minor. Current law, however, does not require sex offender registration for a violation of Penal Code section 261.5, the unlawful sexual intercourse with a minor, irrespective of the age difference between the offender and the minor.

- 3) **Sex Registration Laws:** In 1947, California became the first state in the nation to require sex offender registration for persons convicted of specified offenses. Sex offender registration is a regulatory means of assisting law enforcement in dealing with the problem of recidivist sex offenders. (*In re Alval* (2004) 33 Cal.4th 254, 279.) Until recently, California was one of the few states that required lifetime registration for all registerable offenses with no discernment. However, as explained below, the Legislature enacted numerous changes to the sex offender registration law in 2017.

Prior to changes made in 2017, California had thousands of people on the registry that posed no threat to public safety, were deceased, or who had otherwise left the state. The registry was so bloated as to be meaningless in tracking, what could be, dangerous people. In its report, SOMB noted that its highest priority for 2017 was advocating for a system of tiered registry, because, “The proposed change in the law would allow law enforcement, with their limited resources, to focus on those sex offenders who pose the higher risk of reoffending.”<sup>1</sup>

In response, the Legislature passed SB 384 (Wiener) Chapter 541, Statutes of 2017, which established a three-tiered registration system. The changes to California law take into consideration the seriousness of the offender’s criminal history, the empirically assessed risk level of the offender, and whether the offender is a recidivist or has violated California’s sex offender registration law. Duration of registration would range from 10 years to lifetime registration.<sup>2</sup>

Also, in California specifically, a court may order registration for any crime that occurred because of “sexual compulsion” or for “sexual gratification.” Such registration may be issued even if the offense is not one specified in Penal Code section 290, subdivision (c). Penal Code section 290.006 states:

Any person ordered by any court to register pursuant to the act, who is not required to register pursuant to Section 290, shall so register, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

Given a court may already issue registration requirements where appropriate for statutory rape, does it make sense to mandate registration in every instance, without judicial discretion?

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<sup>1</sup> *Id.*, supra at fn. 1, p. ii.

<sup>2</sup> [http://www.casomb.org/docs/CASOMB%20Report%20Jan%202010\\_Final%20Report.pdf](http://www.casomb.org/docs/CASOMB%20Report%20Jan%202010_Final%20Report.pdf) [last visited June 20, 2024.]



Furthermore, registration laws rely on the presumption that registration is not punitive, but regulatory. Therefore, it is required by law that registration requirements have a connection to tracking and monitoring dangerous sex offenders.

Simply requiring registration in every instance, without evidence to support the need, may suffer constitutional infirmity. If this is viewed as an aggravating factor, it must be proven beyond a reasonable doubt to the trier of fact. (See *Blakely v. Washington* (2004) 542 U.S. 296 [holding that in the context of mandatory sentencing guidelines under state law, the Sixth Amendment right to a jury trial prohibited judges from enhancing criminal sentences based on facts other than those decided by the jury or admitted by the defendant].)

Finally, as explained below, it is this constitutional concern that resulted in California standing up the SOMB on an urgency basis.<sup>3</sup> SOMB's obligation is to evaluate and examine specific registration requirements in a non-partisan, evidence-based manner in order to ensure maximum effectiveness – not merely to punish without evidence of solvency.

- 4) **Constitutionality of Sex Offender Registration:** Both the California and the United States Supreme Court have ruled that, generally, sex offender registration laws do not run afoul of constitutional prohibitions against ex post facto, double jeopardy, the right to a jury trial, and cruel and unusual punishment. (*In re Leon Casey Alva* (2004) 33 Cal. 4th 254; *Smith v. Doe* (2003) 538 U.S. 84.) In making such a finding, both state and federal courts applied the *Mendoza-Martinez* test which outlines several guiding factors in determining ***whether a law is punitive***.<sup>4</sup> If a law is viewed as punitive, rather than regulatory or administrative, it may violate the constitutional prohibitions against violating various constitutional due process provisions.

The factors include whether the “regulatory scheme” has been regarded in history and tradition as punitive, imposes an affirmative disability or restraint, promotes the traditional aims of punishment, has a rational connection to a non-punitive purpose, or is excessive with respect to its purpose. The state may not make publicity and stigma an integral part of the objective of such regulation. (*Kennedy, supra*, 372 U.S. 144.) Sex offender registration has been viewed as a non-punitive regulatory scheme ***because it is designed only to keep law enforcement and to some extent, the public aware of dangers.***

The Ex Post Facto Clause of the United States Constitution forbids the application of any new punitive measure to a crime already consummated. When determining whether a state's sex offender registration statute violates the Ex Post Facto Clause, courts must first ascertain whether the legislature meant the statute to establish civil proceedings. If the intention of the legislature was to impose punishment, ***that ends the inquiry***. If, however, the intention was to enact a regulatory scheme that is

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<sup>3</sup> See AB 1015 (Chu), Chapter 338, Statutes of 2006. AB 1015 was passed as an urgency to take effect immediately because: “To allow the Governor and the Legislature to make appointments to the Sex Offender Management Board as soon as possible to allow the board to begin working on an assessment of current adult sex offender programs for a report to the Legislature, which is due on January 1, 2008.”

<sup>4</sup> *Kennedy vs. Mendoza-Martinez* (1963) 372 U.S. 144

civil and non-punitive, courts must then examine whether the statutory scheme is so punitive either in purpose or effect as to negate the State's intention to deem it civil.<sup>5</sup> (Emphasis added.)

For the most part, sex offender registration laws have been remarkably resilient to constitutional challenges. However, several courts have enjoined community-notification provisions under the Fourteenth Amendment, holding that states must provide minimum due-process protections, such as hearings and a state burden of clear-and-convincing evidence for those hearings, before infringing upon either state privacy rights or the right not to be defamed by the government.

The courts generally recognized that the increased burden on the state was necessitated by the relatively serious liberty interest of the registrant when compared to the insubstantial value of community notification to the state. As stated by the Third Circuit in 1997:

“An erroneous underestimation of an individual's dangerousness will not necessarily result in harm to protected groups . . . . On the other hand, an overestimation of an individual's dangerousness will lead to immediate and irreparable harm to the offender: his conviction becomes public, he is officially recorded as being a danger to the community, and the veil of relative anonymity behind which he might have existed disappears.”<sup>6</sup>

For instance, the California Court of Appeals for the Fourth District held that after the residency restrictions in Jessica's Law passed in November of 2006, sex offender registration may no longer a regulatory scheme but instead a form of punishment. The *E.B.* court stated:

“We conclude, based on our analysis of the salient *Mendoza-Martinez* factors, Jessica's Law's residency restriction has an overwhelming punitive effect. It effectuates traditional banishment under a different name, interferes with the right to use and enjoy real property near schools and parks, and subjects housing choices to government approval like parole or probation. It affirmatively restrains the right to choose a home and limits the right to live with one's family. It deters recidivism and comes close to imposing retribution on offenders. While it has a non-punitive of protecting children, it is excessive with regard to that purpose.”

The United States Supreme Court rejected lifetime GPS because it constituted a Fourth Amendment violation. (*Grady v. North Carolina* (2015) 575 U.S. 306, 307 [holding satellite-based monitoring of a recidivist sex offender constituted a search within the scope of

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<sup>5</sup> *Clark v. Ryan* (9th Cir. 2016) 836 F.3d 1013, 1014.

<sup>6</sup> *E.B. vs. Verniero* (1997) 119 F.3rd 1077, superseded by state constitutional amendment, *L.A. ex rel. Z.kh. v. Hoffman* (N.J., 2015) 144 F.Supp.3d 649; Garfinkle, COMMENT: *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community – Notification Laws to Juveniles*, (2003) 91 Calif. L. Rev. 163, 202.)

the Fourth Amendment, since attaching a monitoring device to the offender involved physically intruding on the offender's body without consent for purposes of obtaining information concerning the offender's movement.] )

This bill proposes to require registration for sex between two people separated by 10 years when one party is a minor. If the scheme is designed to gravely disable a person or is seen as a way to further punish "sex offenders," courts may re-examine sex offender registration with the attitude that it is all designed to further the punish the offender and require it be proven to the jury as an additional penalty. This may result in some offenders escaping registration.

- 5) **SOMB Annual Report and Tiered Registration:** As eluded to above, the SOMB was created in 2006 to examine the state of California's sex offender laws, and particularly, sex offender registration.<sup>7</sup> As a general matter, the Legislature sought to defer research questions to SOMB given its capacity for detailed analysis of available data and the highly politicized nature of sex offender registration.

The SOMB began advocating for tiered registration based on the data in 2010, but ultimately, it took seven more years to sign tiered registration into law given the *very* political nature of this debate. Specifically, when tiered registration was created in 2017, it was done very late in the legislative year. According to the SOMB, several confusions resulted:

Years were spent by the CASOMB (a multidisciplinary board that includes victim advocates, law enforcement, district attorney, defense attorney, judge, treatment providers, and other key stakeholders) and district attorneys to create a responsible and evidence informed bill. The bill was co-sponsored by Los Angeles District Attorneys, Equality California, and California Coalition against Sexual Assault (victim advocates) and received no formal opposition.

Through the amendment process, several changes were made to the well thought out and written proposal that affected tier placement for certain types of offense behavior. In its original version, it passed through the assembly public safety and senate public safety committees. **It was modified as a condition of being released from the Assembly Appropriations Committee.**

In this gut and amend process, many offense behaviors were moved from tiers 1 and 2 and placed into Tier 3. In examining Tier 3, the CASOMB recognizes that it requires amending as some of the offenses that were placed in Tier 3 were not research informed decisions. Tier 3 was intended for individuals with lifetime prison sentences, individuals found to meet the criteria under the Sexually Violent Predator Act, Mentally Disordered Offenders with increased risk of re-offense, and

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<sup>7</sup> See <https://casomb.org/index.cfm?pid=1211> [last visited June 20, 2024].

individuals with more than one separately tried sexual offense conviction against a minor. The changes recommended by the CASOMB are the first steps in restoring the original intent of the bill. (Emphasis added.)

SOMB continues in its December 2023 report<sup>8</sup> explaining some of the tiered registration mistakes. “[P]lacing individuals with a conviction of PC 288(c)(1) on Tier 3, is not consistent with the current legal continuum for sentencing. Individuals convicted under PC 261.5. subdivision (d) - unlawful sexual intercourse, sentencing includes a range of 1 year for misdemeanors, and 2, 3, or 4 years for felonies and does not require registration. Individuals convicted for PC 288(a) – Lewd and Lascivious acts with a minor under the age of 14 are placed in Tier 2.

“Individuals convicted for PC 288(a) have more severe sentences. The statute states, ‘they shall be punished by imprisonment in the state prison, by three, six, or eight years.’ While those convicted for PC 288(c)(1) ‘shall be punished by one, two, or three years, or by imprisonment in a county jail for not more than one year.’ PC 667.5 defines Section (a) as a serious offense, which allows for them to stay on probation for 5 years.”

“The discrepancy can be seen in the table below:

	261.5 (d) Unlawful sexual intercourse def. over 21/vic. Under 16	288(a) – Lewd and Lascivious with a minor under 14	288(c)(1) – Lewd and Lascivious with a minor 14/15
Sentencing Guidelines	1 year (misdemeanor)  2,3,and 4years (felony)	3,6,8 years in state prison	1, 2, or 3 years state prison, or no more than 1 year in county jail.
Serious felony per PC 667.5	No	Yes	No
Probation Term	1 year for misdemeanor  2 years for felony	Up to five years	1 year for misdemeanor  2 years for a felony
Tier Level	No registration	2 (20) years	3 (lifetime)”

<sup>8</sup> See fn. 9, *supra*.

SOMB recommends placing 288, subdivision (c)<sup>9</sup> on tier 2 [20 year registration – not lifetime registration] because it is consistent with the risk of re-offense and risk to public safety. **It points to the disparity between these crimes to illustrate its point about the error in 288, subdivision (c) that resulted from last minute amends to tiered registration. SOMB made clear in its recent report that it did not find support for the proposition that Penal Code section 288(c) should be subjected to lifetime registration and did not mention requiring registration for statutory rape.**

Additionally, as eluded to by the author, Penal Code section 290, subdivision (c)(2) states: “Notwithstanding paragraph (1), *a person convicted of a violation of subdivision (b) of Section 286, subdivision (b) of Section 287, or subdivision (h) or (i) of Section 289 shall not be required to register if, at the time of the offense, the person is not more than 10 years older than the minor, as measured from the minor’s date of birth to the person’s date of birth, and the conviction is the only one requiring the person to register...*” (Emphasis added.) This language was added by SB 384 in late amends, but was not part of the original SOMB recommendation or in the initial draft of the bill.<sup>10</sup>

Protecting anyone, but particularly young people, from sexual assault is, most certainly, everyone’s very laudable intended goal. However, a fully responsive and responsible legislative debate must rely on the best possible evidence from those in the strongest position to make changes – such as the SOMB – to protect all Californians. The language pointed to by the bill’s proponents as evidence there is a difference in law likely resulted from moving very fast, late in the session, on a very politically polarizing issue, and is likely to have serious consequences. Given it was not recommended by the SOMB, does it make more sense to remove the (c)(2) provision from Penal Code section 290 all together?

In order to ensure our registration laws do not run afoul of the constitution and actually protect the community regardless of sex or gender, these issues should be deferred to scholarly experts, local district attorneys, sexual assault experts such as the California Coalition Against Sexual Assault, defense attorneys, and others with verifiable experience in studying these issues. If SOMB contends this may be necessary to protect victims based on available data and evidence, then the idea of registration for statutory rape would have much stronger standing.

- 6) **Human Trafficking:** The state’s human trafficking law was enacted by AB 22 (Lieber) Chapter 240, Statutes of 2005. AB 22 provided that the essence of human trafficking is the

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<sup>9</sup> Penal Code section 288, subdivision (c) states “A person who commits a [lewd and lascivious act] with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.” Conduct consistent with Penal Code section 261.5, subdivision (c) and (d) is likely consistent with Penal Code section 288, subdivision (c) and would result in a lifetime registration and state prison.”

<sup>10</sup>See [https://lis.calegis.net/LISWeb/faces/bills/billverscomp.xhtml;jsessionid=iAU3vysgtqSkOW0AxIZehwQWWLWmJWP\\_42egvP09bRn7Cp\\_6G2ne!-1868324493!574167095](https://lis.calegis.net/LISWeb/faces/bills/billverscomp.xhtml;jsessionid=iAU3vysgtqSkOW0AxIZehwQWWLWmJWP_42egvP09bRn7Cp_6G2ne!-1868324493!574167095). Additionally, SB 384 initially started out as SB 421 (Weiner) – but due to serious objections in the Assembly Committee on Appropriations, SB 421 was gutted into another vehicle – SB 384.

deprivation of the victim's liberty in order to place the person in sexual commerce or obtain labor. The human trafficking law was amended by Proposition 35 in 2012. The initiative significantly increased and established fairly comprehensive penalties for human trafficking. Human trafficking of minors can be done through inducements and persuasion. The use of coercion, fraud, force or duress against a minor does, however, subject a defendant to a term of 15-years-to-life in prison.

Human trafficking of a minor includes a relatively long list of crimes involving commercial sex, including prostitution and child pornography. If the minor is brought into such activities through "force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person," the penalty is a term of 15-years-to-life in prison and a fine of up to \$500,000.

With mandatory penalty assessments, a fine of \$500,000 is actually a fine of over \$2,000,000. It seems likely that most cases of human trafficking involving a minor would include force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of an injury. For example, if the trafficker misrepresented what the minor would be doing or the conditions under which they would be done, that would appear to be a case involving fraud or deceit. The punishment for human trafficking of a minor, when the crime does not involve some sort of deceit, coercion or force, is still relatively severe—5, 8, or 12 years in prison and a fine of up to \$500,000.

The author alleges changing this "disparity" will assist in rescuing women and girls from the grips of human trafficking. However, if there is any evidence of trafficking – it begs the question – why is the prosecutor not seeking a charge pursuant to Penal Code section 236.1?

- 7) **Argument in Support:** According to the *Los Angeles City Attorney*, the bill's sponsor: According to the California Attorney General, "human trafficking is among the world's fastest growing criminal enterprises and is estimated to be a \$150 billion-a-year global industry," which according to the California Child Welfare Council, involves over 100,000 children in the United States.

Within the United States, California consistently ranks number one in the nation in the number of human trafficking cases reported to the National Human Trafficking Hotline and, according to the Federal Bureau of Investigation, Los Angeles ranks near the top of the nation's high intensity child prostitution areas. In acknowledging the prevalence and serious nature of this crime, the California Attorney General notes that young girls and women account for 99.4% of sex trafficking victims. These statistics highlight the need to do more to protect vulnerable youth and reduce the demand for the sex trafficking of minors. SB 1128 answers this call.

By requiring sex offender registration for those who engage in unlawful sexual intercourse with a minor, SB 1128 will help deter the sexual exploitation of children and hold those who prey upon them accountable. Moreover, SB 1128 fixes the current disparity in the law that treats different sex acts differently. It is inexplicable that some "consensual" sex acts with a minor currently require sex offender registration but the unlawful sexual intercourse with a minor, irrespective of the age difference, does not. This disparity in the law is nonsensical considering the increased risks of unintended pregnancies and sexually transmitted infections that may result from sexual intercourse.

According to the California Department of Public Health, unintended adolescent pregnancies often lead to socioeconomic and health related challenges for the adolescent and their children. SB 1128 recognizes this aggravated harm and, similar to how the law treats other sex acts with a minor, appropriately requires an offender who engaged in unlawful sexual intercourse with a minor to register in the sex offender registry.

- 8) **Argument in Opposition:** According to According to the *San Francisco Public Defenders Office*: SB 1128 is redundant and unnecessary. A judge can find that anyone convicted of any offense as a result of sexual compulsion or for purposes of sexual gratification can be ordered to register pursuant to Penal Code section 290. (Penal Code section 290.006.) 290.006.

(a) Any person ordered by any court to register pursuant to the act, who is not required to register pursuant to Section 290, shall so register, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

Given that SB 1128 is totally unnecessary for any legitimate public safety purpose, there is no need to tinker with the Act a mere three years after it went into effect undercutting the work of the broad coalition of stakeholders who crafted Penal Code section 290 based on the science, the law and community safety. California already treats sex offenses seriously, and sex offender registration is a harsh and lifelong punishment. Lifetime registration is by far not the norm in this country, and only three other states require it: Alabama, South Carolina, and Florida. Sex offenders in California are required to re-register annually, filling out extensive paperwork on their activities and locations because there are rules prohibiting them from being close to schools, parks and other locations where children congregate. The registry prevents individuals from successful reentry upon their release.

There is generally no need to require someone to register for a lifetime. In one study, “high-risk” offenders who hadn't committed a new sex offense within fifteen years of their release rarely did later. In that same study, about 97.5% of the low-risk offenders were offense-free after five years; about 95% were still offense-free after 15 years. People on the registry face challenges in finding housing, employment, and other necessities, which can result in incarceration for lacking those resources. Registration places extreme stress and pressure on offenders and thereby intensifies their risk of recidivism. Stressors include threats of bodily harm, termination of employment, on-the-job harassment, and forced instability of residence.

9) **Related Legislation:**

- a) AB 2034 (Rodriguez) would re-enact, with some changes, the crime of loitering for the purpose of engaging in a prostitution offense which, before it was repealed, criminalized standing or loitering in public in order to engage in sex for compensation. AB 2034 is pending hearing in this committee. AB 2034 was held in this committee.
- b) AB 2419 (Gipson) would the grounds upon which a search warrant may be issued to include when the property or things to be seized consist of evidence that tend to show that

sex trafficking of a person under 18 years of age, as specified, has occurred or is occurring. AB 2419 will be heard today in the Senate Public Safety Committee.

- c) AB 2924 (Petrie-Norris) would repeal the authorization for a person under 18 years of age to be issued a marriage license or to establish a domestic partnership, thereby prohibiting a person under 18 years of age from being issued a marriage license or from establishing a domestic partnership. The hearing on AB 2924 was canceled at the request of the author.
- d) SB 1414 (Grove) would increase the punishment for the crime of solicitation (asking for a sex act in exchange for something of value) of a minor under the age of 16 and requires a person convicted of soliciting a minor who has a prior conviction of soliciting a minor to register as a sex offender if the person was more than 10 years older than the minor at the time of the offense. SB 1414 will be heard today in this committee.

#### 10) Prior Legislation:

- a) SB 14 (Grove), Chapter 230, Statutes 2023 designates human trafficking of a minor for purposes of a commercial sex act as a “serious felony,” making it a strike for purposes of the Three Strikes Law.
- b) SB 384 (Weiner), Chapter 541, Statutes of 2017, bill creates a tiered registry for sex offenses so that people will be required to register for 10 years, 20 years, or lifetime depending on the conviction offense.
- c) SB 421 (Weiner) recasts the California sex offender registry scheme into a three-tiered registration system for periods of 10 years, 20 years or life, for a conviction in adult court of specified sex offenses, and five years, 10 years, and possibly life, for an adjudication as a ward of the juvenile court for specified sex offenses.
- d) SB 1322 (Mitchell), of the 2015-16 Legislative Session, provides that a minor engaged in commercial sexual activity will not be arrested for a prostitution offense; (2) directs a law enforcement officer who comes upon a minor engaged in a commercial sexual act to report the conduct or situation to county social services as abuse or neglect; and (3) provides that a commercially sexually exploited child (CSEC) may be adjudged a dependent child of the juvenile court and taken into temporary custody to protect the minor’s health or safety. This bill failed passage on the Senate Floor.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

Brentwood Community Council  
Brentwood Community Council - West Los Angeles  
California District Attorneys Association  
California Sexual Assault Forensic Examiner Association  
California Women's Law Center  
City of Los Angeles



Dignity Health  
Dtla Chamber of Commerce  
Feminist Majority  
Forgotten Children INC.  
Los Angeles City Attorney's Office  
Los Angeles County Prosecutors Association  
Orange County Sheriff's Department  
Peace Officers Research Association of California (PORAC)  
Sistahfriends  
South Central United  
The Teen Project

**Opposition**

ACLU California Action  
Alliance for Constitutional Sex Offense Laws  
California Attorneys for Criminal Justice  
California Public Defenders Association  
Californians United for A Responsible Budget  
Courage California  
Ella Baker Center for Human Rights  
Pacific Juvenile Defender Center  
Root & Rebound  
Root & Rebound (UNREG)  
San Francisco Public Defender

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