# California State Assembly

## PUBLIC SAFETY

NICK SCHULTZ
CHAIR



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## AGENDA

Tuesday, March 4, 2025
9 a.m. -- State Capitol, Room 126

## ADOPTION OF COMMITTEE RULES

## REGULAR ORDER OF BUSINESS

## HEARD IN SIGN-IN ORDER

| | | | |
|---|---|---|---|
| 1. | AB 15 | Gipson | Open unsolved murder: review and reinvestigation. |
| 2. | AB 31 | Ramos | Peace officers: tribal police pilot project. |
| 3. | AB 32 | Soria | Tribal judges. |
| 4. | AB 71 | Lackey | Ignition interlock devices. |
| 5. | AB 229 | Davies | Criminal procedure: Sexually transmitted disease testing. |
| 6. | AB 237 | Patel | Crimes: threats. |
| 7. | AB 285 | Ramos | Criminal procedure: protective orders. |
| 8. | AB 297 | Hadwick | Arson: penalties. |
| 9. | AB 321 | Schultz | Misdemeanors. |
| 10. | AB 327 | Ta | Crimes: false reporting. |
| 11. | AB 336 | Wallis | Criminal penalties: wildfires. |
| 12. | AB 355 | Sanchez | Crimes: extortion. |

Date of Hearing: March 4, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 15 (Gipson) – As Amended February 24, 2025

**SUMMARY**: Requires a law enforcement agency ("LEA"), as specified, to perform a review of any open homicide investigation case file, upon written application by a designated person, as defined, to determine if reinvestigation would result in probative investigative leads. Specifically, **this bill**:

1) States any LEA must review an open unsolved homicide case file to determine if a reinvestigation would result in probative investigative leads, when requested pursuant to a written application by a designated person, as specified.

2) Requires a LEA case file review to include all of the following:

   a) An analysis of the investigative steps or follow-up steps that may have been missed in the initial investigation;

   b) An assessment of whether witnesses should be interviewed or re-interviewed;

   c) An examination of physical evidence to see if all appropriate forensic testing and analysis was performed in the first instance or if additional testing might produce information relevant to the investigation; and

   d) An update of the case file to bring it up to current investigative standards to the extent doing so would help develop probative leads.

3) Mandates any person performing the case review may not be a person that previously investigated the murder.

4) Requires the applicable LEA to confirm receipt of a request to perform a case review and provide the applicant notice of their rights.

5) States that only one case review may be undertaken at any one time with respect to the same open unsolved murder victim.

6) Mandates if more than one investigative agency is involved in a homicide investigation, each investigative agency shall coordinates its case file review such that there is only one case file review at a time.

7) States no later than 90 days after the receipt of the written application for a case review, the applicant agency is required to conclude its case file review and reach a conclusion whether

reinvestigation is warranted.

8) Provides that a LEA may extend the 90 day time limit for a period not to exceed 45 days if the LEA makes a finding that the number of case files to be reviewed makes it impracticable to comply with said limits without unreasonably taking resources from other law enforcement activities.

9) States for cases wherein the 90-day time limit is extended, the LEA shall provide notice and an extension of its reasoning to the designated person who filed the written application.

10) Mandates each LEA develop a written application for a designated person to request a case file for review.

11) Requires each agency to assign a person or a department responsible for receiving and processing applications for case file reviews and ensuring that the agency meets all deadlines and obligations generated by the application receipt.

12) Requires any LEA to conduct a reinvestigation of the open unsolved murder at issue if the review of the case file determines a reinvestigation of an open unsolved murder would result in probative investigative leads.

13) Provides that a reinvestigation must include analyzing all evidence regarding the open unsolved murder at issue for the purpose of developing probative investigative leads as to the suspect or suspects.

14) Provides that the person or persons performing the reinvestigation shall not have previously investigated the murder, except for the case file review.

15) Requires each LEA, if there is more than LEA, to coordinate its reinvestigation such that there is only one reinvestigation occurring at a time.

16) States the applicable agency shall consult with the designated person who filed the written application and provide them with periodic updates during the case file review and reinvestigation.

17) Requires the LEA to meet with the designated person and discuss the evidence to explain to the designated person who filed the written application the agency's decision on whether or not to engage in a reinvestigation at the conclusion of the case file review.

18) States if a case file is completed and the conclusion is not to conduct a re-investigation, no additional case file review shall be undertaken for a period of five years, unless there is newly discovered, materially significant evidence.

19) Provides that an LEA is not required to provide information that would endanger the safety of any person, unreasonably impede an ongoing investigation, violate a court order, or violate a legal obligation regarding privacy.

20) Provides that a LEA may continue an investigation absent a designated person's application for a new case file review.

21) States if a reinvestigation is done and a suspect is not identified at its conclusion, no additional case file review or reinvestigation needs to be conducted for a period of five years, unless there is newly discovered, materially significant, new evidence.

22) Defines the following terms:

a) "Agency" means any LEA in California.

b) "Applicable Agency" means any LEA that is investigating or has investigated the murder of the victim.

c) "Designated person" means any immediate family member or similarly situated person, or their designed legal representative who is a member in good standing with the State Bar of California.

d) "Immediate family member" means a parent, parent-in-law, legal guardian, grandparent, grandparent-in-law, sibling, spouse, child, or stepchild of a murder victim or any person who exercised in loco parentis over a victim under 18 years of age.

e) "Murder" is defined as any violation of Penal Code section 187.

f) "Open unsolved murder" means a murder that meets the following requirements:

i. The murder was committed more than a year prior to the date of the application for a case review by a designated person, as specified.

ii. The murder was previously investigated by an LEA.

iii. All probative investigative leads have been exhausted.

iv. No suspect has been identified;

v. The murder was committed after January 1, 1990.

g) "Victim" means the person against whom an open homicide murder was committed.

**EXISTING LAW**:

1) Defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. (Pen. Code, § 187, subd. (a).)

2) States the definition of murder does not apply to any person who commits an act that results in the death of a fetus if any of the following apply:

a) Any action that complies with the former Therapeutic Abortion Act or the Reproductive Privacy Act;

b) The action was committed by a holder of a physician's and surgeon's certificate, as defined in the Business and Professions Code, in a case where, to a medical certainty, the result of childbirth would be death of the person pregnant with the fetus or where the pregnant person's death from childbirth, although not medically certain, would be substantially certain or more likely than not; or,

c) It was an act or omission by the person pregnant with the fetus or was solicited, aided, abetted, or consented to by the person pregnant with the fetus.

3) Defines "express malice" as any time when there is manifested a deliberate intention to unlawfully take away the life of a fellow creature. (Pen. Code, § 188, subd. (a)(1).)

4) Defines "implied malice" as when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. (Pen. Code, § 188, subd. (a)(2).)

5) States that if it is shown that the killing resulted from an intentional act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. Neither an awareness of the obligation to act within the general body of laws regulating society nor acting despite that awareness is included within the definition of malice. (Pen. Code, § 188, subd. (b).)

6) States that the Public Records Act does not require disclosure of records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the California Office of Emergency Management (Cal OES), and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 7923.600, subd. (a).)

7) Establishes in Cal OES, a program of financial assistance to provide for statewide programs of education, training, and research for local public prosecutors and public defenders and all funds made available to Cal OES for the programming offered to prosecutors and public defenders shall be administered and distributed by the Director of Cal OES. (Pen. Code, § 11501.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "AB 15, the California Homicide Victims' Families' Right Act, would create a procedure for family members of homicide victims to request that law enforcement conduct a review of an open unsolved homicide case file to determine whether a full reinvestigation would result in new, probative investigative leads. This legislation is essential for the countless families that have lost a loved one to unlawful violence.

"Engaging with families of homicide victims in the review of an open unsolved homicide case is not only a step towards helping families heal. It can be a useful tool in addressing the impacts of gun violence on homicide case clearance rates and improving demographic disparities in case clearance rates.

"Homicides involving firearms are 22.1% less likely to be solved than homicides with other weapons.[1] A 10% increase in the proportion of firearm homicides decreases the clearance rate by 2.3%.[2] When the victim of gun violence is Black, the case is less likely to be cleared. Statistics vary slightly on the exact amount:

Fagan and Geller: Murders with Black victims are 23.2% less likely to be cleared[3]

DeCarlo: Murders with Black victims are 14.5% less likely to be cleared[4]

Korosec: Murders with Black victims are 21.1% less likely to be cleared.[5]

"According to Cal DOJ's OpenJustice database, California's homicide case clearance rates have been at or below 65.7% for the last decade. Local department clearance rates are available on the FBI Crime Data Explorer page and reflect disparities across locations around the state. Many of California's cities that are being hit the hardest by increases in gun violence also have homicide clearance rates well below the state average. Grieving families often want more information about the status of their loved one's case, but there is no uniform process around the state for families to request further review of an unsolved case.

"AB 15 also brings a critical component of communication between law enforcement and homicide victims' family members by requiring that the agency consult with the family member who requests a case file review, provide periodic updates to them, and meet with them to discuss the evidence and decision regarding whether to conduct a full reinvestigation. While communication touchpoints and transparency may be routine in some jurisdictions, there is no assurance they will occur in areas where there is mistrust between law enforcement and the community. This bill seeks to improve inequities in case clearance rates and the experiences of grieving families.

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

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[1] Lauren Korosec, "The Changing Nature of Homicide and Its Impact on Homicide Clearance Rates: A Quantitative Analysis of Two Trends From 1984-2009," *Electronic Thesis and Dissertation Repository*, April 4, 2012, https://ir.lib.uwo.ca/etd/422.

[2] Graham C. Ousey and Matthew R. Lee, "To Know the Unknown: The Decline in Homicide Clearance Rates, 1980—2000," *Criminal Justice Review* 35, no. 2 (June 1, 2010): 141–58, https://doi.org/10.1177/0734016809348360.

[3] Jeffrey Fagan and Amanda Geller, "Police, Race, and the Production of Capital Homicides," *Berkeley Journal of Criminal Law* 23, no. 3 (2018): 261–313.

[4] Alonzo DeCarlo, "A Reason for Reasonable Doubt in Social Justice: The Weight of Poverty, Race and Gender in Lopsided Homicide Case Clearances Outcomes," *Contemporary Social Science* 11, no. 4 (October 1, 2016): 362–72, https://doi.org/10.1080/21582041.2014.997275.

[5] Lauren Korosec, "The Changing Nature of Homicide and Its Impact on Homicide Clearance Rates: A Quantitative Analysis of Two Trends From 1984-2009," *Electronic Thesis and Dissertation Repository*, April 4, 2012, https://ir.lib.uwo.ca/etd/422. See also: https://www.theguardian.com/us-news/2024/feb/21/black-homicide-clearance-rate-lower-than-white

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

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

The CPRA generally prohibits disclosure of police investigation records unless the investigation is ***closed***. (See Gov. Code, § 7923.600, subd. (a); former Gov. Code, § 6254, subd. (f).) A closed investigation is not the same as an investigation that may be slow or even cold. A closed investigation often means the suspect was identified and the police have passed that information on to the district attorney or the suspect was arrested and tried to resolution.

The CPRA police records provision requires LEAs to provide certain information derived from investigative records to the public ***and*** permits the withholding of information wherein disclosure: (a) would endanger the safety of a witness or other person, (b) would endanger the successful completion of an investigation, or (c) reflects the analysis or conclusions of investigating officers. (*Williams v. Superior Court [Freedom Newspapers, Inc.]* (1993) 5 Cal.4th 337, 349.)

This bill does not require disclosure of police investigative records, but it may require the police to provide details about the investigation as part of the rights granted to the family or designated person, as specified in the bill. As a general matter, that may include the *"analysis or conclusions of investigating officers."* While this bill contains an exception that allows law enforcement to withhold information that "*would endanger the safety of any person, **unreasonably** impede an ongoing investigation, violate a court order, or violate a legal obligation regarding privacy,* (emphasis added)*"* it is not clear what is meant by "unreasonably" impeding an investigation. In some cases, any details being made public may impede an investigation. Therefore, it is unclear what effect, if any, this bill would have on the CPRA exemption for police investigation files or the differences in mandates between the obligation to conduct a reinvestigate review and withhold certain information.

3) **Public Law 117-164:** In 2021, despite massive gridlock in Congress, a fairly non-controversial bill was signed into law – the Homicide Victims' Families' Rights Act. (See 34 U.S.C. § 60901.). Public Law 1174-164 requires a federal LEA to review a cold case file upon written application by a designated person. This bill appears modeled on the federal law; although there are some important differences.

   First, the federal law states any review must be of a "cold case." (See 34 U.S.C. § 60901, subd. (a).) "Cold case" is defined in the law as: (a) committed more than three years prior to the application for case review; (b) previously investigated by federal law enforcement; (c) probative investigative leads have been exhausted; and (d) for which no likely perpetrator has

been identified. (See 34 U.S.C. § 60911, subd. (6)(A)-(D).) Second, the federal law contains an exception depending on the status of the case. Specifically, section 60901, subdivision (c) states:

> "In any case in which a written application for review has been received under this Act by the agency, review shall be unnecessary where the case does not satisfy the criteria for a cold case murder. In such a case, the head of the agency shall issue a written certification, with a copy provided to the designed person that made the application under subsection (a), stating that final review is not necessary because all probative investigative leads have been exhausted or that a likely perpetrator will not be identified."

The federal statute is currently in rulemaking with the U.S. Department of Justice ("USDOJ") to implement the law. Public comment is set to close on March 24, 2025. USDOJ has broad authority to develop regulations of terms in order to implement the statute. (See 28 CFR Part 95 [Docket No. OAG 182; AG Order No. 6144-2025], RIN 1105-AB70.)[6]

This bill states that a person may demand a case review for any "open unsolved murder" meaning: (a) the murder was committed more than one year prior to the date of the application for a case review; (b) the murder was previously investigated by an agency; (c) all probative investigative leads have been exhausted; (d) no suspect has been identified; and (e) the murder was committed after January 1, 1990. (See proposed Pen. Code, §11484, subd. (f).)

As noted above, it is not clear in this bill whether a designated person is entitled to the specifics of a case file or records from the case file. However, proposed section 11488, subdivision (a) requires the LEA to discuss the evidence with the designated person. As noted above, the CPRA prevents disclosure of police investigation records where it: (a) would endanger the safety of a witness or other person, (b) would endanger the successful completion of an investigation, or (c) reflects the analyses or conclusions of investigating officers. Presumably, the LEA could simply reject the application as a violation of the CPRA if the discussion resulting from a case review involved details from records that are not otherwise subject to disclosure. (See generally, *Fredericks v. Superior Court [City of San Diego]* (2015) 233 Cal.App.4th 209, 217.)

4) **Possible Unintended Consequences:** This bill is laudable in its intent – but there may be unintended consequences that may require further amendments to avoid. Most certainly, Black, Indigenous, and People of Color face unprecedented failure rates in solving homicides, particularly in more rural parts where there are far fewer resources. Indigenous women and girls and Trans women of color suffer the highest rates of homicide and one of the lowest solve rates.[7] However, it is not clear from this bill how those homicides will

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[6] Located at https://www.federalregister.gov/documents/2025/01/21/2025-01159/homicide-victims-families-rights-act. Last visited February 20, 2025.
[7] See Sanctuary for Families (2023), *"The Silent Epidemic of Femicide in the United States,"* located at https://sanctuaryforfamilies.org/femicide-

receive more attention and resources in order to close those cases and bring a perpetrator to justice. Additionally, homicide units are, in most cases, intensely committed to solving a homicide – no matter how old.

Furthermore, this bill allows a case review for any case that has not been solved in a year. That is a very short period of time for most LEAs depending on the nature of the homicide. For instance, homicides that occur during the commission of other criminal activity often require cooperation from people that either have no incentive to speak to a LEA or have an affirmative motive not to cooperate with a LEA for a host of reasons. As a result, it may take time to gather enough information sufficient to prosecute a defendant for the homicide when the LEA or the District Attorney has sufficient leverage to get people to share what they know.

On the other hand, stranger homicides, including serial homicides, may be very difficult to solve and require days, weeks, months, or even years of painstaking work to bring to a resolution. This bill requires a LEA to review a file after a year and where there is no "identified suspect." However, in many cases, homicide detectives may have identified a "person of interest" who has become the focus of the investigation, but they do not yet have enough information to seek a search warrant or arrest warrant for the person. In other cases, law enforcement may not have a person of interest or a suspect, but have a DNA profile that has not been matched to an offender yet.

For instance, in the case of New York real estate mogul Robert Durst, he ultimately admitted killing multiple people after many years of being the NYPD's and LAPD's top person of interest in the killing of Durst's first wife, Kathleen McCormack Durst and friend Susan Berman.[8] Another example is the Long Island Serial Killer case where the police spent over a decade searching for the killer before charging Rex Heuermann.[9] If this bill means to track the federal legislation, it should consider whether a review is only appropriate where there is no person of interest identified and only after several years have passed. As noted above, the federal law allows a case review after three years.

Also, most LEAs at this point have received state and federal grants to establish cold case units that re-examine older homicides that have not been solved. In many cases, LEAs have been able to close those cases with advancements in forensic testing, expansive digital surveillance, and a greater willingness of witnesses to talk after time has passed. It is not clear how this bill will affect statewide cold case units who may now have to divert resources spent running down leads and witnesses, to case reviews, as required by this bill. California has much greater state resources to solve cold cases than perhaps smaller states. The federal law may have been aimed more at smaller states with fewer resources.

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epidemic/#:~:text=Trans%20women%20and%20women%20of%20color%20face%20a%20disproportionate%20risk&text=For%20indigenous%20women%20and%20girls,for%2094%25%20of%20those%20homicides.

[8] McFadden, *"Robert Durst, Real Estate Scion Convicted as Killer, Dies at 78,"* New York Times, p. A1 (Jan. 11, 2022).

[9] George, *"Giglo Beach Murders: Complete Timeline of Events Leading up to Rex Heuermann's arrest,"* https://abc7ny.com/gilgo-beach-murders-timeline-rex-heuermann/13516686/#:~:text=After%20over%20a%20decade%20with%20no%20suspects%2C%20an%20arrest%20is%20made.&text=Rex%20Heuermann%20is%20arrested%20in,death%20of%20Maureen%20Brainard%2DBarnes.

Additionally, it is not clear how a LEA may respond if the designated person requesting a case review is a person of interest in the homicide – or at the very least has not been eliminated as a potential suspect. For instance, in many cases wherein a spouse is murdered, the other spouse is usually a person of interest that police seek to include or exclude early in the investigation. If a spouse is a person of interest, that person may seek a case review to determine how much progress law enforcement has made in solving the crime they, themselves, committed. Could that affect the integrity of the investigation if the spouse is ultimately arrested later? The author may wish to consider a more narrow approach that focuses on cases where several years have passed and the LEA has indicated it is inactive. It may also make sense to instead fund more conviction integrity units and LEA cold case squads to reinvestigate cases that may benefit from newer scientific methods or more up to date investigation practices. For the most part, homicide detectives in 2025 take investigations very seriously and will go to extraordinary lengths to solve those cases. Although, certainly, families may feel understandably frustrated by a perceived lack of effort and a lack of communication, when all the while, homicide detectives are working around the clock to solve the case.

Finally, this bill allows a designated person that is an "immediate family member or a ***similarly situated person***" to request a case review. It is unclear who a "similarly situated person" is, but both this bill and the federal statute further define immediate family member. USDOJ appears to define "similarly situated" as a step-parent.[10] Therefore, "similarly situated person" may be interpreted as any person who had an immediate family member die by homicide since they are similarly situated in that respect. The author may wish to provide further detail on that language to ensure LEAs are not required to do case review for people who are not immediate family members, as defined.

5) **Argument in Support**: According to *Youth ALIVE*: Too many families in California have lost their loved ones to homicide. Far too many wait year after year never getting answers, even though having closure is incredibly important for healing and breaking cycles of violence. Family members of murder victims should have the right to request that law enforcement conduct an unsolved homicide case file review to determine whether a full reinvestigation could result in new leads.

   Under AB 15, a law enforcement agency would be required to review an unsolved homicide case file when they receive a request from an immediate family member of a homicide victim. The case file review will be conducted by a different person than the original investigator to bring a "fresh set of eyes" to the case. If the case reviewer decides that reinvestigation of the case would result in probative new leads, the law enforcement agency must conduct that reinvestigation. Importantly, the bill also requires updates to the families. Facing barriers to getting basic information about the status of a loved one's case compounds grief and sorrow.

   With the procedures in AB 15, law enforcement can instead be part of victims' families' path towards healing and these procedures will improve trust between law enforcement and the communities they serve. The bill is largely based on the bipartisan federal Homicide Victims' Families' Rights Act, which President Biden signed into law in 2022. As the federal

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[10] See fn. 6, supra, 28 CFR Part 95, §95.2 – Definitions.

law only applies to homicides investigated by federal agencies, we need a state law to extend these rights to grieving families in California.

6) **Argument in Opposition**: According to the *California State Sheriffs' Association*: We certainly appreciate the desire to solve cold cases, especially unsolved murders. That said, this bill creates a rigid process in statute with little room for flexibility to address the particular realities of any specific case or investigating agency. Specifically, the bill triggers what would effectively be an automatic review if an immediate family member or a "similarly situated person" files an application. Notwithstanding the lack of clarity around the term "similarly situated person," the bill effectively moves this case review to the front of the line, without regard to available staff and fiscal resources and other law enforcement priorities, and requires that it be completed within 90 days, with the possibility of only a single 45-day extension. Further, designated persons could ask for this type of case review every five years, thereby compounding the challenges this bill creates.

   It is also worth noting a particular feature of the case review; specifically, the bill provides that the person or persons performing the case file review required by this bill shall not have previously investigated the murder. This will be exceedingly problematic for small agencies who may not have multiple staff members who could complete such a review and for larger agencies who may have more staff resources, but when all relevant staff members participated in the original investigation.

7) **Prior Legislation**:

   a) AB 2319 (Gipson), of the 2023-24 Legislative Session was substantially similar to this bill and was held on the Assembly Appropriations suspense file.

   b) AB 2944 (Waldron), of the 2023-24 Legislative Session would have authorized the Governor to appoint a Red Ribbon Panel to address the murdered or missing indigenous persons (MMIP) crisis, and require the panel to produce and submit, by January 1, 2026, a study with recommendations to address the MMIP crisis to tribes, California's federal elected officials, the Legislature, counties, cities, and federal, tribal, state, county, and local law enforcement agencies. AB 2944 was held on the Assembly Appropriations suspense file.

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

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

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Youth Alive! (Co-Sponsor)

**Oppose**

California State Sheriffs' Association

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

Date of Hearing: March 4, 2025
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 31 (Ramos) – As Introduced December 2, 2024

**SUMMARY**: Establishes a pilot program, under the direction of the Department of Justice ("DOJ") and the Commission on Peace Officer Standards and Training ("POST") that would grant tribal law enforcement officers, of specified tribes, state peace officer authority on Indian land and elsewhere in the state under specified circumstances. Specifically, **this bill**:

1) Establishes the Tribal Police Pilot Program to operate from July 1, 2026 until July 1, 2029, under the direction of DOJ and POST.

2) Provides that any qualified entity may notify DOJ that they wish to enroll in the program and upon verification by DOJ in coordination with POST, that the qualified entity has complied with specified requirements, any qualified member of that qualified entity shall be deemed a peace officer, as specified.

3) Defines the following terms:

   a) A "qualified entity" means any of the three federally recognized tribes to be selected by DOJ, provided that those tribes elect to participate. In selecting the tribes, the DOJ shall consider selecting tribes of different sizes from different parts of the state, as well as a tribe's access to public safety resources.

   b) A "qualified member" means a chief of police who is appointed by, or a person who is regularly employed as a law enforcement, police, or public safety officer or investigator, by a qualified entity and who meets specified requirements and qualifications, and who has been designated by the qualified entity as a peace officer pursuant to the pilot program.

   c) "Indian Country" means all land within the limits of any Indian reservation under the jurisdiction of the U.S. Government.

4) States that a person shall not be a qualified member unless the person completes and maintains all requirements for the appointment, training, education, hiring, eligibility, and certification required for peace officers under state law.

5) Provides that the qualified entity designating a person as a peace officer must document the officer's compliance with this provision and submit documentation to POST.

6) Requires a qualified entity enrolled in this pilot program to do all of the following:

   a) Enact and maintain in continuous force a tribal law or resolution expressing their intent that their tribal officers participating in this pilot program be California peace officers,

and that the qualified entity be similarly situated to a California local law enforcement agency employing California peace officers, and adopting specified requirements.

b) Adopt and maintain in continuous force for a period of no less than three years after the conclusion of the pilot program, tribal law that provides public access to records, and related procedures and remedies substantially identical to the California Public Records Act ("CPRA") as to any record related to this pilot program. Such records include, without limitation, any record related to specified conduct subject to disclosure under the CPRA by a person designated as a peace officer pursuant to this program, including any administrative record of the tribe specifically related to such conduct.

c) Adopt and maintain in continuous force tribal law that provides procedures and remedies substantially identical to the Government Claims Act for any claim arising from any actions or omissions of a tribal police officer acting as a California peace officer pursuant to the program.

d) Adopt and maintain in continuous force for no less than three years after the conclusion of the pilot program, tribal law that contains all of the following:

   i) A clear and unequivocal limited waiver of tribal sovereign immunity against any suit, liability, and judgment, including the full enforcement of judgments and collections for a peace officer designated pursuant to this pilot program, in connection with any act or omission arising out of the qualified entity's participation in this pilot program, including, but not limited to, any act or omission by a tribal law enforcement officer exercising, or purporting to exercise, the authority granted to peace officers by this bill.

   ii) An express agreement that the substantive and procedural laws of California or of the U.S., as applicable to California peace officers and their employers, shall govern any claim, suit, or regulatory or administrative action, and that the obligations, rights, and remedies shall be determined in accordance with those laws, and by the courts of the California or of the federal government, as applicable. This clause does not limit the jurisdiction of the court of a tribe, but the qualified entity shall clearly and unequivocally waive any right to require the exhaustion of remedies in a tribal court in connection with this pilot program.

   iii) An express acknowledgment of the Attorney General's inherent authority over the peace officers and law enforcement agencies of the state, as specified, and a grant of authority over tribal law enforcement agencies to the Attorney General for the duration of the pilot program or later if there is an ongoing inspection, audit, review, or investigation.

   iv) An express agreement that the qualified entity and its officers, employees, and other agents shall cooperate with any inspections, audits, and investigations by the DOJ or POST in connection with the qualified entity's participation in this pilot program, including any sanction or discipline imposed by DOJ or POST, up to and including removal of the qualified entity from the pilot program. This section shall not limit the Attorney General's authority, as specified, to investigate a tribal law enforcement agency participating in this pilot program or to prosecute any action resulting from their participation.

v) A requirement for the qualified entity to carry sufficient insurance coverage, as determined by the DOJ, in consultation with the qualified entity, for the liability of the qualified entity and its officers, employees, and other agents arising out of the qualified entity's participation in this pilot program.

7) Requires qualified entities to do all of the following:

a) Comply with requirements in existing law regarding the investigation of complaints by members of the public and other specified requirements related to POST.

b) Submit all required documentation of compliance with these provisions to POST, as specified.

c) Submit to the DOJ any data, statistics, reports, or other information requested by the DOJ for the monitoring and evaluation of the pilot program.

d) Comply with other specified provisions of existing law related to the submission of specified data to the DOJ and the administration of local law enforcement agencies by DOJ.

e) Comply with any investigation or review by the Attorney General of an officer-involved shooting resulting in the death of an unarmed person.

f) Adopt and maintain in continuous force a policy prohibiting law enforcement gangs, as specified.

g) Adopt and maintain in continuous force an ordinance or other enforceable policy that complies with the requirement that each local law enforcement agency conspicuously post on their websites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public if a request were made pursuant to the CPRA.

8) Authorizes a qualified entity to establish a domestic violence death review team, as specified.

9) Provides that when a tribal officer designated as a peace officer pursuant to this program issues a citation for a violation of state law, the citation shall require the person cited to appear in the superior court of the county in which the offense was committed, and shall be submitted to the district attorney of that county.

10) Provides that any criminal charge resulting from a custodial arrest or citation issued by a person designated as peace officer pursuant to this program, while exercising the authority as a peace officer, shall be within the jurisdiction of California courts.

11) Requires any official action taken by a person designated as a peace officer pursuant to this program, while exercising the authority as a peace officer, including, without limitation, any detention, arrest, use of force, citation, release, search, or application for, or service of, any warrant, shall be taken in accordance with all laws applicable to a California peace officer employed by a local law enforcement agency.

12) Provides that the sovereign immunity of the state shall not extend to any act or omission arising out of the qualified entity's participation in this pilot program, including, without limitation, any act or omission by a tribal law enforcement officer exercising, or purporting to exercise, any authority as a California peace officer, and specifies that it is the intent of the Legislature that such tribal law enforcement officers be similarly situated to California peace officers employed by local law enforcement agencies.

13) Provides that peace officer authority granted to any person pursuant to this program shall be automatically revoked on July 1, 2029.

14) Provides that the Attorney General, in coordination with POST, shall provide ongoing monitoring, evaluation, and support for the pilot program, however, DOJ and POST are not required to provide legal representation, advice, or counsel to any qualified entity.

15) Authorizes a qualified entity to terminate their participation in the program at will, as specified.

16) Authorizes the DOJ, in coordination with POST, to suspend or terminate the participation of a qualified entity for gross misconduct or for willful or persistent failure to comply with requirements of the pilot program.

17) Requires DOJ to prepare and submit two reports to the Legislature, the Assembly Select Committee on Native American Affairs, and the Assembly and Senate Public Safety Committees: an interim report by no later than January 1, 2028, and a final report by no later than January 1, 2030.

18) Requires the DOJ reports to include the impacts of the pilot program on case clearance rates, including homicide and missing persons cases, the impact of the pilot program on crime rates on Indian lands and surrounding communities, the impact of the pilot program on recruitment and retention of tribal police, a discussion of feasibility and implementation difficulties, and recommendations to the Legislature.

19) Creates the Tribal Police Pilot Fund in the State Treasury, and requires monies deposited into the fund to be used to assist pilot program participants with fiscal needs associated with the development of information technology necessary for the purposes of complying with any state-mandated reporting required of California law enforcement agencies and employers of peace officer.

20) Provides that this pilot program shall be construed to empower Indian tribes and tribal law enforcement officers to exercise powers conferred by the laws of the State of California in a manner consistent with those laws.

21) Provides that such powers are in addition to a tribe's inherent powers of self-government, and this pilot program shall not be construed to infringe upon the sovereignty of any Indian tribe nor their inherent authority to self-govern, including the authority to enact laws that govern their lands.

22) Authorizes participating tribes to enter into an agreement to share liability and collaborate on Missing and Murdered Indigenous Persons cases.

23) Provides that commencing on July 1, 2026, until July 1, 2029, a chief of police appointed by a qualified entity enrolled in the pilot program and meeting the requirements of a qualified member or a police officer, public safety officer, or investigator employed in that capacity by a qualified entity enrolled in the pilot program and meeting the requirements of a qualified member, is a peace officer.

24) Specifies that the authority of a peace officer designated pursuant to this pilot program extends to any place within the territorial boundaries of Indian country of the employing tribe, in accordance with and subject to any limitations of Public Law 280.

25) Provides that the authority of a peace officer designated pursuant to this pilot program may also extend to any place in the state, under any of the following circumstances:

    a) At the request of a state or local law enforcement agency.

    b) Under exigent circumstances involving an immediate danger to persons or property, or of the escape of a perpetrator.

    c) For the purpose of making an arrest consistent with peace officer arrest authority under California law, when a public offense has occurred, or there is probable cause to believe a public offense has occurred, within the Indian country of the tribe that employs the peace officer, and with the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by that chief, director, or officer to give consent, if the place is within a city, or of the sheriff, or person authorized by the sheriff to give consent, if the place is within an unincorporated area of a county.

    d) Notwithstanding the above paragraph, when the peace officer is in hot pursuit or close pursuit of an individual that the officer has reasonable suspicion has violated or attempted to violate state law and the violation occurred within the Indian country of the tribe that employs the peace officer.

    e) When delivering an apprehended person to the custody of a law enforcement authority or magistrate in the city or county in which the offense occurred.

26) States that peace officers participating in the program shall be subject to the applicable requirements of the certification program for peace officers run by POST.

27) Provides that any peace officer described in this pilot program shall obtain the basic certificate issued by POST upon completion of a 12-month probationary period but in no case later than 24 months after their employment, in order to continue to exercise the powers of a peace officer after the expiration of the 24-month period.

28) Provides that if the probationary period established by the employing agency is 24 months, a peace officer described in this pilot program may continue to exercise the powers of a peace officer for an additional 3-month period to allow for the processing of the certification application.

29) Provides that any chief of police, or any other person in charge of a qualified entity, as a condition of continued authority as a peace officer, shall obtain POST's basic certificate within two years of appointment.

30) Provides that the above provisions shall only become operative upon an appropriation of funds by the Legislature to fulfill its purposes.

31) Creates a January 1, 2032 sunset date on the operation of the pilot program.

32) Makes legislative findings and declarations.

**EXISTING FEDERAL LAW**:

1) Provides that Indian tribes are domestic independent nations that exercise inherent sovereign authority which can be modified only through Congressional action. (*E.g.*, *Michigan v. Bay Mills Indian Community* (2014) 572 U.S. 782, 788-789.)

2) States that any Indian tribe shall have the right to organize for its common welfare. (25 U.S.C. § 5123, subd. (a).)

3) States that California has jurisdiction over offenses committed by or against Indians in Indian Country to the same extent that the State has jurisdiction over offenses committed elsewhere in the State. (18 U.S.C. § 1162.)

4) Provides that the criminal laws of California shall have the same force and effect within Indian country as they have elsewhere within the State. (*Ibid.*)

5) Defines "Indian country" as all land within the limits of any Indian reservation under the jurisdiction of the United States Government. (18 U.S.C. § 1151.)

6) Establishes the Bureau of Indian Affairs ("BIA"), which is responsible for the management of all Indian affairs and of all matters arising out of Indian relations. (25 U.S.C. §§ 1- 68.)

7) States that the BIA is responsible for assisting in the provision of federal law enforcement services in Indian County and authorizes the BIA to issue Special Law Enforcement Commissions ("SLECs") to tribal law enforcement officers. (25 U.S.C. §§ 2802 & 2803.)

8) Limits the penalty that a tribal court may impose on a criminal defendant for a conviction to a term of imprisonment not to exceed 1 year or a fine of $5,000. A tribal court may impose a term of imprisonment of 3 years or a fine not to exceed $15,000 or both, as specified, if the person has previously been convicted of the same or comparable offense by any jurisdiction in the U.S. Under no circumstance can the term of the sentence exceed 9 years. (25 U.S.C. § 1302.)

9) Authorizes tribal courts to exercise special tribal criminal jurisdiction over all people, concurrent with the criminal jurisdiction of the federal government and the state, for specified crimes, including, assault of tribal justice personnel, child violence, dating violence, domestic violence, obstruction of justice, sexual violence, sex trafficking, stalking, and a violation of a protective order. A tribe may not exercise this special jurisdiction if neither the

defendant nor the victim is Indian. (25 U.S.C § 1304.)

10) Guarantees that the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe. (25 U.S.C. § 1303.)

**EXISTING STATE LAW**:

1) Provides that the Attorney General is the chief law enforcement officer of the State, and shall have direct supervision over every law enforcement officers as may be designated by law. (Cal. Const. art. V, § 13.)

2) States that a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. (Cal. Const. art. XI, § 7.)

3) Establishes the "Feather Alert," which is a notification system designed to issue and coordinate alerts with respect to endangered indigenous people, and specifically, indigenous women or persons who are reported missing under unexplained or suspicious circumstances. (Gov. Code § 8594.13, subd. (a).)

4) Provides that to improve the implementation of concurrent criminal jurisdiction on California Indian lands, the DOJ shall provide technical assistance to local law enforcement agencies that have Indian lands within or abutting their jurisdictions, and to tribal governments with Indian lands, including those with and without tribal law enforcement agencies, as specified. (Pen. Code, § 11070, subd. (a).)

5) Authorizes a law enforcement agency or court of a tribe to apply to the Attorney General for access to the California Law Enforcement Telecommunications System ("CLETS"). (Gov. Code, § 15168, subd. (b).)

6) Allows cities and counties to enter into a contract with an Indian tribe to provide police or sheriff protection services for the Indian tribe either solely on Indian lands, or on the Indian lands and territory adjacent to those Indian lands. (Gov. Code, § 54981.7)

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

8) Provides that the authority of peace officers, as specified, extends to any place in the state as follows:

   a) As to a public offense committed or for which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves;

   b) If the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by that chief, director, or officer to give consent, if the place is within a city, or of the sheriff, or person authorized by the sheriff to give consent, if the place is within a county;

and

c) As to a public offense committed or for which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense. (Pen. Code, § 830.1, subd. (a).)

9) States that any person designated by a tribe, who is deputized or appointed by the county sheriff, is a peace officer, if the person and the person has completed the basic POST course. The authority of a peace officer pursuant to this subdivision includes the full powers and duties of a peace officer as specified in the above paragraph. (Pen. Code, § 830.6, subd. (b).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "Public Law 280 transferred responsibility for law enforcement and criminal justice on tribal lands to six states, including California. The law resulted in fewer resources for public safety on reservations and created confusion among federal, state and local law enforcement jurisdictions. We must continue to press forward in our efforts to prevent and resolve Missing and Murdered Indigenous Persons cases that have resulted in loss of life and great trauma in the past, in the present and will continue detrimental impacts into the future, especially when the violence leaves children without parents. We have to give tribal governments an opportunity to face the MMIP crisis head on and AB 31 aims to provide a tool to do so."

2) **Background on Criminal Jurisdiction in Indian Country under Public Law 280**: Tribes are under the exclusive and plenary jurisdiction of the federal Congress, which may restrict or abolish such jurisdiction and sovereignty. The federal government has exercised this power a number of times to limit tribal jurisdiction or assume federal jurisdiction over a number of areas. For example, Congress has granted limited jurisdictional authority to the federal government (under the General Crimes Act, 18 U.S.C. § 1153 and the Major Crimes Act, 18 U.S.C. § 1152) and to the States (under Public Law 280) and has imposed limits on tribal courts through the Indian Civil Rights Act (ICRA, 25 U.S.C. § 1301–1303).

   Further, in 1953 the U.S. Congress passed Public Law 280, which significantly altered the criminal jurisdictional framework governing tribal lands. Notably, the history of law enforcement action under Public Law 280 has been heavily criticized. Public Law 280 has created a number of legal complexities which help explain why state law enforcement responses to criminal activity on Indian land have been inconsistent and at times, inadequate.[1] Specifically, Public Law 280 provided six states, including California, with civil and criminal jurisdiction over crimes occurring on tribal land, and gave other states the option to adopt such jurisdiction. As a result, California and Tribes have concurrent jurisdiction over criminal offenses committed by or against Indians within Indian country.

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[1] Judicial Branch of California, *Public Law 280 Jurisdiction Information* (accessed Feb. 27, 2025), available at: <https://www.courts.ca.gov/documents/PL280-jurisdiction.pdf.

For example, if the offender is non-Indian, and the victim is non-Indian or Indian or it is a victimless crime the state generally has exclusive jurisdiction. (*Draper v. United States* (1896) 164 U.S. 240). Alternatively, if the offender is Indian, and the victim is Indian or non-Indian, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (Indian Civil Rights Act, 25 U.S.C. § 1301.) Lastly, if the offender is Indian, and it is a victimless crime, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (*Ibid.*)

Most crimes committed in California Indian country are criminally prosecuted in state court, although Tribes can also prosecute the same crime in tribal court under tribal law, if the defendant is Indian. Notably, tribal courts may exercise special tribal criminal jurisdiction over all people, concurrent with the criminal jurisdiction of the federal government and the state, for the crime of assault of tribal justice personnel, even if neither the defendant nor the alleged victim is an Indian. (25 U.S.C § 1304, subds. (a)(1), (a)(5)(A), & (b)(4)(A).) This means that both state and tribal courts may prosecute persons who assault or attempt to murder tribal judges, even where the defendant is not Indian.

3) **Effect of this Bill:** This bill would establish a three-year Tribal Police Pilot Program under the direction of DOJ and POST that would allow any of the three federally recognized tribes, to be selected by the DOJ, to elect to participate in the pilot program. The pilot program would operate from July 1, 2026 until July 1, 2029.

*a) Requirements of Participating Tribes*

In order to qualify for the pilot program, a participating tribe must meet several requirements. *First*, the tribe must enact a tribal law or resolution expressing their intent that their tribal officers be California peace officers, and that the tribe be similarly situated to a California law enforcement agency. *Second*, they must adopt a tribal law providing access to records, procedures, and remedies substantially identical to the CPRA. *Third*, they must adopt a tribal law that provides procedures and remedies substantially identical to the Government Claims Act for any claim arising from any actions or omissions of a tribal officer acting as a peace officer. *Fourth*, a participating tribe must maintain for three years following the pilot program a tribal law that contains among other things: 1) a clear and unequivocal limited waiver of tribal sovereign immunity against any liability in connection with any act or omission by a tribal officer exercising peace officer authority under this bill; 2) an agreement that the state and federal laws that apply to California peace officers govern any associated claim, suit, or administrative action; and 3) a requirement that the tribe carry sufficient insurance coverage, as determined by the DOJ in consultation with the tribe, for the liability of the tribe and its officers, employees, and other agents arising out of the tribe's participation in this pilot program. This bill authorizes participating tribes to enter into an agreement to share liability.

Additionally, participating tribes must comply with existing law's requirements pertaining to the investigation of complaints by the public, submit documentation of compliance to POST, submit specified data to the DOJ, comply with any investigations by the DOJ of an officer-involved fatal shooting of an unarmed person, maintain a policy prohibiting law enforcement gangs, and comply with provisions in existing law requiring law enforcement to publicly disclose specified standards and procedures.

b) *Requirements of Participating Tribal Officers*

AB 31 requires a tribal law enforcement officer participating in the program to complete and maintain all requirements for the appointment, training, education, hiring, eligibility, and certification required for peace officers under state law. Specifically, a participating officer is subject to the applicable requirements of the certification program for peace officers run by POST, and must obtain the basic certificate issued by POST no later than 24 months after their employment in order to continue to exercise the powers of a peace officer after the expiration of the 24-month period. Alternatively, a chief of police, or any other person in charge of a qualified tribe, as a condition of maintaining continued authority as a peace officer, shall obtain POST's basic certificate within two years of appointment.

*c) Powers Granted to Participating Tribal Officers and Tribes*

In exchange for meeting the above requirements, AB 31 would expand the criminal jurisdiction of tribal officers participating in this pilot program. Specifically, it would give participating tribal officers peace officer authority over crimes committed in Indian Country, and would extend such peace officer authority to anywhere in the state under any of the following circumstances:

i) At the request of a state or local law enforcement agency.

ii) Under exigent circumstances involving an immediate danger to persons or property, or of the escape of a perpetrator.

iii) For the purpose of making an arrest, consistent with peace officer arrest authority under California law, when a public offense has occurred, or there is probable cause to believe a public offense has occurred, within the Indian country of the tribe that employs the peace officer, and with the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by that chief, director, or officer to give consent, if the place is within a city, or of the sheriff, or person authorized by the sheriff to give consent, if the place is within an unincorporated area of a county.

iv) When the peace officer is in hot pursuit or close pursuit of an individual that the officer has reasonable suspicion has violated or attempted to violate state law and the violation occurred within the Indian country of the tribe that employs the peace officer.

v) When delivering an apprehended person to the custody of a law enforcement authority or magistrate in the city or county in which the offense occurred.

As noted earlier, tribes have limited criminal jurisdiction over crimes committed in Indian country or crimes committed against Indians. Most notably, a tribe generally does not have criminal jurisdiction over crimes committed in Indian country by non-Indians or crimes committed outside of Indian country. This bill would strengthen the criminal jurisdiction of

participating tribal officers in Indian country by authorizing such officers to investigate and arrest non-Indians that commit crimes in Indian country. Additionally, it would extend the criminal jurisdiction of participating tribal officers outside of Indian country in certain circumstances.

AB 31 would also authorize participating tribes to establish a domestic violence death review team. Additionally, it authorizes participating tribes to enter into an agreement to share liability and collaborate in Missing and Murdered Indigenous Persons cases.

4) **Governor's Veto of AB 2138 (Ramos)**: This bill is substantially similar to AB 2138 (Ramos), of the 2023-2024 Legislative Session, which passed out of this committee last year. AB 2138 arrived at the Governor's desk without significant opposition. Nevertheless, the Governor vetoed it. The Governor's veto message stated:

> I am returning Assembly 2138 without my signature.
>
> This bill would establish a three-year pilot program to grant participating tribal law enforcement officers California peace officer status.
>
> I appreciate the author's steadfast commitment to addressing the ongoing Missing and Murdered Indigenous People (MMIP) crisis, and my administration continues to prioritize policies that increase collaboration between law enforcement and tribal communities to bring justice to those impacted. In partnership with the Legislature, we increased funding in this year's budget for the MMIP Grant Program, which has awarded millions of dollars in grants to support tribes' efforts to identify, publicize, investigate, and solve MMIP cases.
>
> Unfortunately, while well-intentioned, this bill creates a significant legal disparity between California peace officers and tribal police officers. There are a range of important obligations, as well as powers, that accompany peace officer status. These obligations must be maintained should the powers of peace officer status be shared with tribal police officers.
>
> For this reason, I cannot sign this bill.

This bill differs from AB 2138 in several ways.

AB 31 strengthens the requirements that tribes must meet in order to participate in the pilot program, in an effort to address the concerns raised in the above veto message.

*First*, it requires the tribal law or resolution that must be adopted by participating tribes to state the intent of the qualified entity that the entity be similarly situated to a California local law enforcement agency employing California peace officers, and adds legislative intent to the same effect. It also requires that participating tribes adopt tribal laws that are "substantively identical" (rather than "comparable" as provided in AB 2138) to the CPRA and the Government Claims Act. Similarly it requires a tribal law outlining procedures "substantively identical" to the CPRA to be maintained for three, rather than two, years.

*Second*, it further limits the application of tribal sovereign immunity to any suit, liability, or judgement by specifying that this limited waiver must be "clear and unequivocal." It also specifies that this waiver applies to any suit or liability "in connection with any act or omission arising out of the qualified entity's participation in this pilot program, including, but not limited to, any act or omission by a tribal law enforcement officer exercising, or *purporting to exercise*, the authority granted to peace officers by this bill." In contrast, AB 2138 had contained a more limited waiver of immunity – providing that the immunity waiver only applied to liability associated with "negligent or wrongful acts or omissions that caused undue harm to a person within the personal and subject matter jurisdiction of the tribe."

*Third*, it specifies that the substantive and procedural laws of California or the U.S., as applicable to California peace officers and their employers, *shall* (rather than "may" under AB 2138) govern any claim, suit, or regulatory or administrative action. It would also require a participating tribe "to clearly and unequivocally waive any right to require the exhaustion of remedies in a tribal court in connection with this pilot program."

*Fourth*, it specifies that the tribal law that must be adopted by participating tribes to additionally contain "an express acknowledgment of the Attorney General's inherent authority over the peace officers and law enforcement agencies of the state, as specified, and a grant of authority over tribal law enforcement agencies to the Attorney General for the duration of the pilot program or later if there is an ongoing inspection, audit, review, or investigation."

*Fifth*, it also strengthens the requirement that a participating tribe carry sufficient insurance coverage, by specifying that this coverage is not only limited to acts or omissions of tribal officers, but applies more generally to the liability of the participating tribe and its officers, employees and other agents arising out of the tribe's participation in the pilot program. To offset this expanded liability, AB 31 would authorize participating tribes to enter into an agreement to share liability as well as collaborate on Missing and Murdered Indigenous Persons cases. The author may wish to expand upon what it means for liability to be shared. Could one participating tribe fully cover the liability of another?

Other more minor changes include requiring a participating tribe to: 1) comply with any investigations by the DOJ of an officer-involved fatal shooting of an unarmed person; 2) maintain a policy prohibiting law enforcement gangs; and 3) comply with provisions in existing law requiring law enforcement to publicly disclose specified standards and procedures.

AB 31 would also extend the deadline for participating tribal officers to obtain the basic POST certificate, from no later than 24 months after the commencement of their employment, to simply 24 months "after their employment." The author may wish to clarify if this 24 month deadline would be triggered by the commencement or termination of employment. Finally, AB 31 specifies that the DOJ, rather than POST, is responsible for verifying that a qualified entity has complied with the necessary requirements.

5) **Argument in Support**: According to the *California Tribal Business Alliance*: "This bill represents an important step forward in demonstrating the readiness and capability of tribal peace officers in protecting tribal communities. This legislation is crucial given the jurisdiction complexities of law enforcement pursuant to Public Law (PL) 280 from 1953

which is a contributing factor to the crisis of Missing and Murdered Indigenous People. This pilot program will serve as the model to demonstrate the effectiveness of community policing, provide tribal peace officers with parity to their non-native counterparts, and enhance the safety and protection of native communities and citizens.

Thirteen states and the federal government provide a process for tribal peace officers to have state peace officer status conferred upon them provided certain requirements are met. California policy, by not providing a path for California tribal government peace officers to attain state peace officer status, places public safety as [sic] risk, especially in rural areas, where tribal peace officers are unable to respond to law enforcement calls. As a result, tribal communities, families, and citizens are less protected.

Studies show that public safety improves when tribal nations have the resources to enforce their laws and protect their people."

6) **Arguments in Opposition:** None submitted.

7) **Related Legislation**: AB 32 (Soria), would increase penalties for assault and attempted murder against a tribal judge in retaliation for, or to prevent, the performance of their official duties. AB 32 will be heard today in this committee.

8) **Prior Legislation**:

   a) AB 2138 (Ramos), of the 2023-2024 Legislative Session, was substantially similar to this bill. The Governor vetoed AB 2138.

   b) AB 2696 (Ramos), Chapter 662, Statutes of 2024, requires specified data collected by law enforcement and reported to DOJ to be disaggregated by whether an incident occurred in Indian Country, as defined.

   c) AB 44 (Ramos), Chapter 638, Statues of 2023, requires the DOJ to grant tribal courts and tribal law enforcement access to CLETS.

   d) AB 1314 (Ramos), Chapter 476, Statutes of 2022, authorizes law enforcement agencies to request CHP to activate a Feather Alert if specified criteria are satisfied with respect to an indigenous person who has been reported missing.

   e) AB 3099 (Ramos), Chapter 170, Statutes of 2020, requires the DOJ to provide technical assistance to local law enforcement agencies and tribal governments relating to guidance for law enforcement education and training on policing and criminal investigations on Indian lands, providing guidance on improving crime reporting, crime statistics, criminal procedures, and investigative tools, and facilitating and supporting improved communication between local law enforcement agencies and tribal governments.

   f) AB 1507 (Hernández), of the 2015-2016 Legislative Session, would have required each police chief and county sheriff to assess their jurisdiction to determine if any Indian tribal lands lie within the jurisdiction, and to ensure that those peace officers employed by the agency who work in, or adjacent to, Indian tribal lands, or who may be responsible for responding to calls for service on, or adjacent to, Indian tribal lands, complete a course

that includes, but is not limited to, a review of Public Law 280. AB 1507 failed passage by the Senate.

g) SB 911 (Alarcon), of the 2001-2002 Legislative Session, would have among other things, authorized Tribal officers to exercise the powers of California peace officers and to enforce California law. SB 911 was heard for testimony only in Senate Public Safety Committee.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California Tribal Business Alliance
Epic (environmental Protection Information Center)
Friends of The Eel River
Habematolel Pomo of Upper Lake
Mount Shasta Bioregional Ecology Center
Peace Officers Research Association of California (PORAC)
Save California Salmon
Trout Unlimited
Trust for Public Land
Yurok Tribe

**Opposition**

None submitted

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

Date of Hearing: March 4, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 32 (Soria) – As Introduced December 2, 2024

**SUMMARY**: Increases penalties for assault and attempted murder against a tribal judge in retaliation for, or to prevent, the performance of their official duties. Specifically, **this bill**:

1) Increases the punishment for assault of an active or retired tribal judge in retaliation for, or to prevent, the performance of their official duties from a misdemeanor, punishable by up to one year in county jail, to a wobbler punishable by imprisonment either by up to one year in county jail or by 16 months, two years, or three years.

2) Increases the punishment for attempted murder of an active or retired tribal judge in retaliation for, or to prevent, the performance of their official duties to 15 years to life.

3) Authorizes active and retired tribal judges of federally recognized California Indian tribes to request confidentiality of their residence address, telephone number, and email address appearing on their voter registration application.

4) Authorizes active and retired tribal judges of federally recognized California Indian tribes to request confidentiality of their home address in DMV records.

5) Makes findings and declarations.

**EXISTING STATE LAW**:

1) Defines "assault" as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. (Pen. Code, § 240.)

2) Makes simple assault punishable by a fine not exceeding $1,000, or by imprisonment in county jail not exceeding six months, or by both the fine and imprisonment. (Pen. Code, § 241, subd. (a).)

3) Punishes assault by means of force likely to produce great bodily injury with imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by a fine not exceeding $10,000, or by both the fine and imprisonment. (Pen. Code, § 245, subd. (a)(4).)

4) Prohibits assault in retaliation for or to prevent the performance of official duties of an active or retired local, state, or federal judge. (Pen. Code, § 217.1, subd. (a).)

5) Defines murder as the unlawful killing of a human being with malice aforethought. (Pen. Code, § 187.)

6) Punishes attempted murder that is willful, deliberate, and premeditated with imprisonment in state prison for life with the possibility of parole. (Pen. Code, § 664, subd. (a).)

7) Punishes any other attempted murder by imprisonment in state prison for 5, 7 or 9 years, unless otherwise specified. (Pen. Code, § 664, subd. (a).)

8) Makes attempted murder of a justice, judge, or former judge of any local, state, or federal court, or other subordinate judicial officer of any court, in retaliation for or to prevent the performance of their official duties, punishable by 15 years to life in state prison. (Pen. Code, § 217.1, subd. (b).)

9) Authorizes county elections officials, upon application of a public safety officer, as defined, who states that a life-threatening circumstance exists to the officer or a member of their family, to make confidential that officer's residence address, telephone number, and email address appearing on their affidavit of voter registration. (Elec. Code, § 2166.7, subds. (a) & (b).)

10) Provides that any residence address in any record of the DMV is confidential and shall not be disclosed to any person, except a specified government or law enforcement agency. (Veh. Code, § 1808.21, subd. (a).)

11) Authorizes specified public safety officials, as defined, including active or retired judges or court commissioners, to request their home address where it appears in DMV records be made confidential. (Veh. Code, § 1808.4, subd. (a)(4).)

12) Requires the home addresses of retired judges and court commissioners to be permanently withheld from public inspection, if confidentiality is requested, and the home addresses of specified surviving spouses and children to be withheld from public inspection for three years following the death of the judge or court commissioner. (Veh. Code, § 1808.4, subd. (c)(5).)

13) Provides that the disclosure of a confidential home address of a judge or court commissioner that results in bodily injury to that judge, court commissioner, or their spouse or children, is a felony. (Veh. Code, § 1808.4, subd. (d.).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "Like local and state counterparts, tribal courts oversee a slew of legal cases that can touch upon very sensitive information. Misdemeanor cases, custody battles, and child support cases risk the chance of emotions becoming heightened and leading to threats and assaults on tribal judges. As the rates of court-targeted acts of violence increase at the state and federal level, California must bring to parity the same protections given to local, state, and federal judges to their counterparts servicing tribal courts across the state."

2) **Increased Penalties for Crimes against Tribal Judges:** This bill would include tribal judges in the categories of public officials where enhanced penalties are available for the commission of certain crimes against those public officials in retaliation for or preventing them from performing their official duties.

   It is already a crime for a person to assault or attempt to murder a tribal judge. (Pen. Code, §§ 240, 187, 664). Under California law, simple assault is punishable by a fine up to $1,000, imprisonment up to six months in county jail, or both. (Pen. Code, § 241, subd. (a).) Attempted murder that is willful, premeditated, and deliberate is punishable by life in prison with possibility of parole. (Pen. Code, §§ 187,664.) Unless otherwise specified, any other attempted murder is punishable by 5, 7, or 9 years in state prison. Given California has the same power to prosecute crimes committed "by or against Indians in Indian country" as it does throughout the State (18 U.S.C. § 1162), a person who assaults or attempts murder on a tribal judge already faces significant criminal punishment.

   This bill would make the assault of a tribal judge, in retaliation for, or to prevent, the performance of the judge's duties, punishable by imprisonment in county jail for no more than one year. It would also provide for a 15 years to life sentence for attempted murder of a tribal judge under the same circumstances. Like their judicial counterparts, this would roughly double the punishment currently available for an assault or attempted murder conviction against a tribal judge.

3) **Judges Facing Increased Threats:** Data from various sources shows threats against judges and judicial officers increasing for more than 50 years. The Center for Judicial and Executive Security found the rate of threats and violent incidents against judicial officers has increased every decade between 1970 and 2010.[1] Threats to federal judges have risen every year since 2019.[2]

   Unfortunately, violent incidence data specific to tribal courts and judges is not currently available. According to the National Center for State Courts, however, tribal courts face similar security and safety threats as local and state courts.[3] Like their state court colleagues, tribal judges also face threats of "bodily harm, witness intimidation, nonverbal threatening communications in courtrooms, and random acts of violence outside of the courthouse."[4]

4) **Authorization for Confidentiality:** This bill would grant tribal judges the same protections as state and federal judges by authorizing tribal judges to request the confidentiality of their home address appearing in DMV records and of their home address, telephone number, and email address in voter registration applications.

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[1] *Court Security: Final Report of the Court Emergency Response and Security Task Force* (Nov. 30, 2012) Judicial Council of California <https://courts.ca.gov/sites/default/files/courts/default/2024-12/jc-20121214-itemt.pdf> [as of Feb. 25, 2025].
[2] Legare, *Threats to federal judges have risen every year since 2019* CBS News (Feb. 14, 2024) <https://www.cbsnews.com/news/threats-to-federal-judges-have-risen-every-year-since-2019/> [as of Feb. 25, 2025].
[3] *Status of Court Security in State Courts – A National Perspective* (June 2013) National Center for State Courts, <https://ncsc.contentdm.oclc.org/digital/collection/facilities/id/184> [as of Feb. 25, 2025].
[4] *Ibid.*

Even with these changes implemented, it is unlikely this bill will have a significant impact on the confidentiality of residence information in the DMV records of tribal judges. With few exceptions, residential addresses in DMV records are confidential. (Veh. Code, § 1808.21, subd. (a).) The committee has not been provided with any evidence showing violent crimes committed following the acquisition of residence information in DMV records.

There is a similarly slim likelihood of violent crimes following the acquisition of personally identifying information in voter registration affidavits. Existing law authorizes any person filing a voter registration affidavit to request their information be kept confidential. (Elec. Code, § 2166, subd. (a).) To secure this confidentiality, the applicant must, upon order of a superior court, show good cause that life-threatening circumstances exist to the person or their household. (*Ibid.*) Existing law also permits certain public safety officials to go through the confidentiality application process with a county elections official. (Elec. Code, § 2166.7, subd. (a).) This bill would make this additional option to obtain confidentiality available to tribal judges by defining tribal judges as public safety officials and public safety officers. Ultimately, whether this bill will enhance tribal judge safety is unclear, even if makes it easier for tribal judges to secure the confidentiality of their information in DMV and voter registration records.

5) **Impact of Increased Penalties on Criminal Deterrence:** It is unclear whether increasing penalties in these cases will have a deterrent effect.

   There is reliable evidence showing that increased penalties generally fail to deter criminal behavior.[5] Data shows greater deterrent effects as the likelihood of being caught and the perception that one will get caught rises for criminal behavior.[6] In contrast, the act of punishment and the length of punishment largely do not increase deterrence.[7]

   This bill would increase the length of punishment for certain crimes committed against tribal judges. California law already authorizes these punishments for federal and state judges. Making the same penalties available for crimes against tribal judges adds consistency to this set of laws, but it is questionable whether this consistency will actually deter people from committing these crimes.

6) **Additional Comments**: The author may wish to consider some modifications to the statutory language to enhance clarity.

   The proposed amendment to Vehicle Code section 1808.4, subdivision (a)(4), currently states, "For all of the following persons, the person's home address that appears in a record of the department is confidential if the person requests the confidentiality of that information: [a]n active or retired judge or court commissioner, *including a tribal judge of a federally recognized California Indian tribe.*" This change appears to make clear that the list of public safety officials who can request confidentiality. However, subdivisions (c)(4) and (5) of the same section do not explicitly include tribal judges in the statutory language. While the

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[5] *Five Things About Deterrence* (May 2016) National Institute of Justice <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [as of Feb. 25, 2025].
[6] *Ibid.*
[7] *Ibid.*

California Supreme Court has stated, "the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole" (*People v. Medina* (2007) 41 Cal.4th 685, 696), courts are not always consistent in how and when this rule is applied.

Therefore, the author may wish to consider adding the words "or tribal judge" after each mention of "court commissioner" in the above-referenced code sections to enhance clarity across the statutory scheme.

7) **Arguments in Support**:

   a) According to the *Habematolel Pomo of Upper Lake (HPUL),* "California's Tribal judges preside over cases that involve decisions over the custody rights of parents, domestic violence restraining orders, and other matters that are highly contested and emotionally fraught. AB 32 recognizes the safety and security vulnerabilities associated with the role and takes action by providing Tribal judges the same protections that their local, state, and federal counterparts can access to guard their and their families' personal information. When considering the disparity in available security measures that some Tribal courtrooms have access to, it becomes especially apparent how necessary this bill is to protect Tribal judges across California and uphold their right to operate their own judicial systems."

   b) According to the *California District Attorneys' Association (CDAA),* "Tribal judges preside over cases that often involve sensitive and high-stakes matters, including criminal, family, and civil disputes. Like their counterparts in state and federal courts, they are vulnerable to threats and violence from individuals seeking to undermine the judicial process. However, current law does not provide the same level of protection for tribal court judges as it does for state and federal judges. AB 32 appropriately addresses this gap by extending these crucial protections to judges of federally recognized California Indian tribes."

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

9) **Related Legislation**: AB 31 (Ramos), would establish a pilot program granting peace officer authority to certain tribal police officers on Indian lands and elsewhere in the state under specified circumstances. AB 31 is scheduled to be heard today in this committee.

10) **Prior Legislation**:

   a) AB 2281 (Soria), of the 2023-2024 Legislative Session, was nearly identical to this bill. AB 2281 was held in the Senate Appropriations Committee.

   b) SB 101 (Nielsen), of the 2021-2022 Legislative Session, would have added code enforcement and parking control officers, as well as their spouses and children, to the list of persons who may request an additional level of confidentiality from the DMV. SB 101 was held in the Senate Appropriations Committee.

c) AB 980 (Kalra), of the 2019-2020 Legislative Session, would have made confidential a person's home address in the records of the DMV if the person is a county public guardian, county public conservator, or county public administrator or a staff member of such offices. AB 980 was held in the Assembly Appropriations Committee.

d) AB 2322 (Daly), Chapter 914, Statutes of 2018, required the DMV, upon request, to make a retired judge or court commissioner's home address confidential for the rest of their life and for any surviving spouse or child for three years following the death of the judge or court commissioner.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California District Attorneys Association
California Indian Legal Services
California State Sheriffs' Association
Habematolel Pomo of Upper Lake
Judicial Council of California

**Opposition**

None submitted

**Analysis Prepared by**: Dustin Weber / PUB. S. / (916) 319-3744

Date of Hearing: March 4, 2025
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 71 (Lackey) – As Introduced December 11, 2024

**As Proposed to be Amended in Committee**

**SUMMARY**: Extends the sunset of the ignition interlock device ("IID") pilot program currently in place, from January 1, 2026, to January 1, 2033. Specifically, **this bill**:

1) Extends the operation of the IID pilot program set to expire on January 1, 2026, until January 1, 2033. The primary components of the current pilot program that will be extended, include the following:

   a) A court may order a person convicted of their first DUI offense (involving alcohol) to install a functioning, certified IID on any vehicle that the person operates and prohibit that person from operating a motor vehicle for up to six months unless that vehicle is equipped with a functioning, certified IID.

   b) A court must order the installation of an IID for repeat DUI offenders and DUIs causing bodily injury to another person, as follows:

      i) For a period of *one year* for a person convicted of a DUI *with one prior*[1], or a first-time DUI causing bodily injury to another person.

      ii) For a period of *two years* for a person convicted of a DUI with *two priors*, or a DUI causing bodily injury to another person with one prior.

      iii) For a period of *three years* for a person convicted of a DUI *with three or more priors*, a DUI causing bodily injury to another person with two priors, or a prior specified DUI conviction punishable as a felony.

      iv) For a period of *four years* for a person convicted of a DUI causing bodily injury to another person with one prior punishable as a specified felony.

2) Requires the Department of Motor Vehicles (DMV) to submit specified data pertaining to the efficiency and implementation of this pilot program to the California State Transportation Agency (CalSTA) by July 1, 2030, for the purpose of issuing a subsequent report to the Legislature.

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[1] For purpose of this analysis and unless otherwise specified, a "prior" means a separate DUI conviction under Vehicle Code sections 23152 (DUI), 23153 (DUI causing bodily injury), or a "wet reckless" conviction under 23103.5 (a plea to reckless driving in satisfaction of an original DUI charge) that occurred within 10 years of the current violation.

3) Authorizes CalSTA to contract with educational institutions to obtain and analyze the necessary data, and requires CAlSTA to assess the pilot program based on specified data, and report to the Legislature on the outcomes of the pilot program by July 1, 2031.

**EXISTING LAW**:

1) Makes it unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle. (Veh. Code, § 23152 subds. (a), (f), & (g).)

2) Makes it unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in their blood ("BAC") to drive a vehicle. (Veh. Code, § 23512, subd. (b).)

3) Requires a person convicted of driving when their license is suspended or revoked because that person has either one, two, or three or more priors, to install an IID in all vehicles operated by that person for one, two, or three years, respectively. (Veh. Code, § 23573, subd. (j).)

4) Establishes an IID pilot program until January 1, 2026, as follows:

   a) *Authorizes* a court to order a person convicted of their first DUI offense (involving alcohol) to install a functioning, certified IID on any vehicle that the person operates and prohibits that person from operating a motor vehicle *for up to six months* unless that vehicle is equipped with a functioning, certified IID. (Veh. Code, § 23575.3, subd. (h)(1)(A)(i).)

   b) Provides that for a person convicted of their first DUI offense (involving alcohol), the court may either order installation of an IID or the person may apply to the DMV for a restricted driver's license, as specified, upon proof of enrollment in a DUI program, proof of financial responsibility, and payment of fees (Veh. Code, § 23575.3, subd. (h)(1)(A).).

   c) *Requires* a court, from January 1, 2019 to January 1, 2026, to order the installation of an IID for repeat DUI offenders and DUIs causing bodily injury to another person, as follows:

      i) For a period of *one year* for a person convicted of a DUI involving alcohol (or both alcohol and drugs) *with one prior*, or a first-time DUI causing bodily injury to another person.

      ii) For a period of *two years* for a person convicted of a DUI involving alcohol (or both alcohol and drugs) with *two priors*, or a DUI causing bodily injury to another person with one prior.

      iii) For a period of *three years* for a person convicted of a DUI involving alcohol (or both alcohol and drugs) *with three or more priors*, a DUI causing bodily injury to another person with two priors, or a prior specified DUI conviction punishable as a felony.

iv) For a period of *four years* for a person convicted of a DUI causing bodily injury to another person with one prior punishable as a specified felony. (Veh. Code, §§ 23575.3, subd. (h); 13352; 13352.4; 13353.3; 13353.6; & 13353.75.)

d) Requires the DMV, if a court orders the installation of an IID, to place a restriction on the person's license stating the driver is restricted to only driving vehicles equipped with an IID for the applicable term. (Veh. Code, § 23575.3, subd. (h)(1)(A)(i), 23575).

e) Requires a person subject to an IID to arrange for each vehicle they operate to be equipped by a functioning, certified IID by a certified provider, provide proof of installation to the DMV, and pay a fee, determined by the DMV, sufficient to cover the costs of administering the pilot program. (Veh. Code, § 23575.3, subd. (d).)

f) Requires IID manufacturers to adopt a fee schedule under which the manufacturer will absorb a varying amount of an offender's cost for the IID based on the offender's income, relative to the federal poverty level. (Veh. Code, § 23575.3, subd. (k).)

g) Provides that the above IID pilot program shall sunset on January 1, 2026. (Veh. Code, §§ 13352; 13352.4; 13353.3; 13353.6; & 13353.75.)

5) Specifies that upon the expiration of the above pilot program, and beginning January 1, 2026, a court may order a person convicted of their first DUI offense involving drugs or alcohol, or a DUI offense involving bodily injury, to install an IID on any vehicle that the person operates *for a term of up to three years*. The court shall give heightened consideration to ordering an IID for a first offense violator: 1) with 0.15 percent BAC; 2) with two or more prior moving traffic violations; or 3) persons who refused a chemical test at arrest. (Veh. Code, § 23575.)

6) Requires a person ordered to install an IID to arrange for each vehicle with an IID to be serviced by the installer at least once every 60 days in order for the installer to recalibrate and monitor the operation of the device. (Veh. Code, § 23573, subd. (e)(1).)

7) Provides that a person convicted of their first DUI (not involving injury), and given probation, is subject to the following penalties:

a) Possible two days to six months in county jail.

b) A fine of $390 to $1,000, plus penalty assessments;

c) Six month license suspension, or a 10-month suspension if a 9-month DUI program is ordered; and

d) In counties with approved programs, completion of a 3-month (30 hour) DUI treatment program, or a 9-month (60 hour) program if the person's BAC was .20% or more or they refused to take a chemical test. (Veh. Code, §§ 13352, subd. (a)(1); 13352.1, subd. (a); 23536, subds. (a) & (c); 23538, subds. (a) & (b).)

8) Provides that a person convicted of their first DUI offense causing bodily injury, if not given probation, faces 90 days to one year in county jail or 16 months, two or three years state

prison (five days to one year in jail if given probation), a $390 to $1,000 fine plus penalty assessments, suspension of driving privileges for one year, and applicable DUI programs. (Veh. Code, §§ 13352 subd. (a)(2), 23554, 23556.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "IID programs have proven to be essential in reducing the amount of drunk drivers in California. By extending the program until 2033, AB 71 will continue to save thousands of lives and ensure DUI offenders are held accountable."

2) **Effect of this Bill:** Under the current pilot program, a court may order a first-time DUI offender (not causing bodily injury), in addition to all other potential penalties (jail, fines, license suspension, or DUI programs), to install an IID on any vehicle they operate for up to six months or the DMV may issue that person a restricted driver's license (limited driving to and from their work and their DUI program). (Veh. Code, § 23575.3, subd. (h)(1)(A).) If the first-time DUI causes bodily injury to another person or that person has one or more priors, courts are required to order an IID for up to four years. (Veh. Code, §§ 23575.3, subd. (h); 13352; 13352.4; 13353.3; 13353.6; & 13353.75.) AB 71, as proposed to be amended, would extend the operation of the current pilot program from January 1, 2026, to January 1, 2033, and would require CalSTA to submit a report to the Legislature analyzing the effectiveness of this extended pilot program, by July 1, 2031.

3) **Background on IIDs**: IID technology has been around since the 1960s and has been authorized for use in California since the 1980s.[2] According to the DMV, "[A]n IID is about the size of a cell phone and wired to your vehicle's ignition. After installation, the IID requires you to provide a breath sample before the engine will start. If the IID detects alcohol on your breath, the engine will not start. As you drive, you are periodically required to provide breath samples to ensure the continued absence of alcohol in your system."[3] The initial statutory authorization of IIDs in California allowed judges to order an IID when sentencing DUI offenders, however, it was not often ordered because DUI offenders were already subject to license suspension. [4] IID's subsequently became required for drivers convicted of driving on a suspended license following a DUI.

4) **Results of Prior IID Pilot Programs**: Since 1989, the Legislature has enacted four different IID pilot programs that have imposed various IID installation requirements, and commissioned five statistical studies analyzing the effectiveness of IIDs in California. These reports have generated many recommendations on how to maximize the use of IIDs as a DUI countermeasure and reduce the harms associated with drunk driving. In sum, these studies have found that IIDs can reduce DUI recidivism, although they have limited effectiveness for

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[2] California DMV, *An Evaluation of the Implementation of Ignition Interlock in California* (May 2002) p. ii, available at: https://www.dmv.ca.gov/portal/file/an-evaluation-of-the-implementation-of-ignition-interlock-in-california/

[3] California DMV, *Ignition Interlock Devices* (accessed February 26, 2025), available at: https://www.dmv.ca.gov/portal/driver-education-and-safety/educational-materials/fast-facts/ignition-interlock-devices-ffdl-31/

[4] California DMV, *An Evaluation of the Implementation of Ignition Interlock in California*, at p. ii.

first-time offenders and are associated with substantial increases in subsequent crashes compared to DUI offenders with a suspended or revoked license.

*a) 1986 Pilot Program*

The *first* pilot program was enacted in 1986, making California the first state to pass legislation authorizing the use of IIDs. Specifically, the Legislature enacted the Farr-Davis Safety Act of 1986, which established a temporary four county pilot program authorizing judges to order DUI offenders to install IIDs as a condition of probation.[5] The associated pilot program study found "there was no statistically significant difference in the subsequent DUI conviction rate between DUI offenders who installed IIDs and DUI offenders who did not."[6]

*b) 1998 Pilot Program*

The *second* pilot program was created by AB 762 (Torlakson), Chapter 756, Statutes of 1998. AB 762 authorized the use of IIDs for first time offenders for up to three years, especially when aggravating factors such as a high BAC were present, and required IIDs for repeat offenders and drivers convicted of driving on a DUI suspended license. The associated DMV study analyzed the effectiveness of IIDs in reducing alcohol-related crashes and convictions, and crashes overall.[7]

The findings of this study were mixed. It found that IIDs can be effective in reducing DUI recidivism, particularly when they are actually installed. However, the report emphasized that IIDs are not effective "in all situations or for all offenders."[8] While the report found that IIDs can reduce DUI recidivism, it also found that IIDs are "linked with an increase in crash risk" and as such "the overall traffic safety effect of IIDs are mixed, even when installed."[9]

*c) 2009 Pilot Program*

The *third* IID pilot program was created by AB 91, Chapter 217, Statutes of 2009. From 2010 to 2016, first-time and repeat DUI offenders, in four counties, were required to install IIDs in order to obtain a restricted driver's license. The DMV conducted two different studies of this pilot program.

The first study was a general deterrent study that examined whether the program was associated with a general reduction in first-time and repeat DUI offenses in the pilot counties compared to non-pilot counties. This evaluation did not analyze changes in the specific behavior of drivers convicted of DUIs in the pilot counties. In sum, the DMV found that the program "was not associated with a reduction in the number of first-time and repeat DUI convictions in pilot counties" and as such, "no evidence was found that the pilot program has

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[5] California Department of Motor Vehicles, *An Evaluation of the Effectiveness of Ignition Interlock in California* (Sept. 2005), p. 4, available at: https://www.dmv.ca.gov/portal/file/an-evaluation-of-the-effectiveness-of-ignition-interlock-in-california/
[6] *Id.* at p. 2.
[7] *Id.* at Report Documentation Page.
[8] *Id.* at p. 61-62 (emphasis added).
[9] *Id.* (emphasis added).

a general deterrence effect."[10] The DMV cited the low recidivism rate among first-time DUI offenders as a possible explanation for why the pilot program was not associated with a decrease in DUI convictions in pilot counties.[11]

The second study was a specific deterrent study, and as such is more informative, as it specifically examined whether the IID program led to reductions in DUI recidivism and crashes among DUI offenders in the pilot counties.[12] The study generated several primary findings, which were somewhat consistent with the 2005 DMV study.

First, it found that pilot participants had lower DUI recidivism rates than other DUI offenders, although these lower rates significantly diminished over time.[13] Second, and consistent with the study associated with the 1998 pilot program, it found that obtaining an IID-restricted license was associated with a substantial increase in subsequent crashes, including fatal/injury crashes, compared to DUI offenders whose licenses remained suspended or revoked.[14] This finding was particularly problematic and of "primary importance" according to the DMV.[15] This was in part because the higher crash risk for first and second time DUI offenders increased over time relative to those with a suspended license and "a substantial proportion of these crashes are those involving injuries and/or fatalities."[16]

*d) 2016 Pilot Program.*

The *fourth* pilot program was a statewide program created by SB 1046 (Hill), Chapter 783, Statutes of 2016. This pilot program is currently in place, and is set to expire on January 1, 2026. As previously discussed, under this program a court may order a first-time DUI offender to install an IID on any vehicle they operate for up to six months or the DMV may issue that person a restricted driver's license. (Veh. Code, § 23575.3, subd. (h)(1)(A).) Alternatively, if a first-time DUI causes bodily injury to another person or that person has one or more priors, courts are required to order an IID for up to four years. (Veh. Code, §§ 23575.3, subd. (h); 13352; 13352.4; 13353.3; 13353.6; & 13353.75.)

The CalSTA study of the effectiveness of the current program, which was required to be submitted to the Legislature by January 1, 2025, has not been released yet. However, this committee has been informed that the report is in the process of being finalized and should be released very soon. Once that report is sent to the Legislature, the author may wish to consider reviewing the recommendations included in that report to ensure those recommendations are consistent with this pilot program extension.

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[10] California Department of Motor Vehicles, *General Deterrent Evaluation of the Ignition Interlock Pilot Program in California* (Jan. 2015), Report Documentation Page, available at: https://www.dmv.ca.gov/portal/file/general-deterrent-evaluation-of-the-ignition-interlock-pilot-program-in-california/
[11] *Id.* at viii.
[12] California Department of Motor Vehicles, *Specific Deterrent Evaluation of the Ignition Interlock Pilot Program in California* (June 17, 2016), Report Documentation Page, available at: https://www.dmv.ca.gov/portal/uploads/2021/12/s5-251.pdf
[13] *Id.* at xiv-xv.
[14] *Id.* at xv.
[15] *Ibid.*
[16] *Ibid.*

5) **Argument in Support**: According to *California District Attorneys Association*, "In 2019, SB 1046 expanded an IID pilot program statewide. This program required almost all DUI offenders to install IIDs. It also allowed for DUI offenders to install an IID to immediately obtain a restricted driver's license, rather than enforcing a mandatory period of license suspension. These changes have allowed many DUI offenders to return to their lives, jobs, and family responsibilities much more quickly than would have otherwise been possible, benefitting these individuals and society generally.

   "Most importantly, the changes to the IID requirements since 2019 have resulted in an approximate 23% decrease in DUI arrests in California. (DOJ Crime in California 2023.) The IID pilot program was successful when it started, and its statewide implementation demonstrates measurable statewide benefits. AB 71 will extend the current sunset date of these laws to continue discouraging DUI recidivism while allowing many DUI offenders to quickly return to productive lives."

6) **Argument in Opposition**: According to the *Ella Baker Center for Human Rights*, "The proposed legislation will impose a state-mandated local program and would repeal reforms on application of ignition interlocks on DUI drivers which have been made more affordable and accessible. A roll-back of these reforms will push low-income communities who are subjected to IID's into economic hardship and at risk of increased criminalization.

   "IIDs cost Californians $1000 or more per year, including: a $75 installation fee, $75-100 per month in maintenance fees, and a removal fee, typically costing $50-150. With Californian's already in an affordability crisis, charging low-income households for IID expenses is unsustainable and only exacerbates economic harm, with any unexpected expense having a destabilizing effect on these households. Even when charging only 10% of IID costs (approximately $100), this 0.66% of the annual income of one-person households at the federal poverty line, 0.5% of the annual income of two-person households, and 0.32% of the annual income of four-person households. Harming Californians, these payments are not necessary to maintaining safe roadways with IIDs.

   "AB 71 extends California's IID policies sunset clause from January 1, 2026, to January 1, 2033. Unlike California's prior policy, this extension eliminates mandated license termination for those convicted of DUI offenses and permits restricted licenses for people enrolled in an IID program. While IID programs are inadvisable for the reasons discussed, mandated license termination creates harmful collateral consequences including barriers to accessing employment and other vital services like healthcare and childcare. As such, our organization will remove our opposition to the bill if AB 71 is subjected to reasonable amendments. Specifically, we encourage the following amendments to Section 26 § 23575.3 (k)(1)(a)-(f) of the Vehicle Code. Section 23575.3(k)(1) outlines IID payment based on a person's income relative to the federal poverty level. To help alleviate California's growing poverty rate, we suggest adjusting:

      "People with an income of 100 percent the federal poverty level to pay for 0% of the IID manufacturer's cost, instead of 10%.

      "People with an income of 101-200 percent of the federal poverty level to pay for 10% of the IID manufacturer's cost, instead of 25%.

"People with an income of 201-300 percent of the federal poverty level to pay for 25% of the IID manufacturer's cost, instead of 50%.

"Eliminate the provision requiring people receiving CalFresh benefits to pay for 50% of the IID manufacturer's cost.

"People with an income of 301 to 400 percent of the federal poverty level to pay for 50% of the IID manufacturer's cost, instead of 90%.

"All other people are responsible for 100% of the cost of the ignition interlock device."

7) **Related Legislation**:

a) AB 366 (Petrie-Norris) would remove the discretion of courts to determine whether to order a first-time DUI offender to install an IID on every vehicle they operate, and would make permanent certain provisions of the IID pilot program currently in place. AB 366 is pending a hearing in this Committee.

b) AB 981 (Gipson) would authorize a court to order a person convicted of specified driving offenses, such as speeding and reckless driving, to install a speed assist device on any vehicle they operate, and would require a court to order installation of a speed assist device for specified repeat offenders. AB 981 is pending referral to this Committee.

8) **Prior Legislation:**

a) AB 2210 (Petrie-Norris), of the 2023-2024 Legislative Session, would have required the DMV to operate a five-county pilot project for the installation of an IID in the vehicle of a first-time DUI offender. AB 2210 was held in Assembly Appropriations.

b) SB 545 (Hill), of the 2019-2020 Legislative Session, would have required IIDs to be installed for a period of six months for first time convicted DUI offenders. The hearing on SB 545 in the Assembly Public Safety Committee was cancelled at the request of the author.

c) SB 1046 (Hill), Chapter 783, Statutes of 2016, extended the IID pilot program in certain counties and required installation of IIDs for specified DUI offenses.

d) SB 61 (Hill), Chapter 350, Statutes of 2015, extended the IID pilot project in Alameda, Los Angeles, Sacramento, and Tulare Counties until July 1, 2017.

e) SB 55 (Hill), of the 2013-2014 Legislative Session, would have required, as a condition of being issued a restricted driver's license, being reissued a driver's license, or having the privilege to operate a motor vehicle reinstated for a second or subsequent conviction for a DUI offense, installation for a specified period of time an ignition interlock device on all vehicles a person owns or operates. SB 55 was held in the Assembly Appropriations Committee.

f) SB 598 (Huff), Chapter 193, Statutes of 2009, allowed individual convicted of more than one DUI within a 10 year period to get a restricted driver's license upon installation of an

IID, enrolling in DUI class, and meeting other specified criteria.

g) AB 91 (Feuer), Chapter 217, Statutes of 2009, established a pilot program in Alameda, Los Angeles, Sacramento, and Tulare Counties, administered by DMV to require the installation of IIDs on the vehicles of all persons convicted of a DUI, as specified.

h) SB 177 (Migden), of the 2007-08 Legislative Session, would have, among other things, recast and revised provisions of law authorizing restricted licenses and imposing additional requirements with respect to IIDs on those restricted licenses, and would have established the IID Assistance Fund in the State Treasury. SB 177 was never heard in the Senate Committee on Public Safety.

i) SB 1361 (Correa), of the 2007-08 Legislative Session, would have required installation of an IID, as specified, for all offenders convicted of a DUI under certain conditions, such as where there is a high BAC for a first offender and for a second or subsequent offender. SB 1361 was vetoed.

j) SB 1388 (Torlakson), Chapter 404, Statutes of 2008, required that a person immediately install a certified IID on all vehicles they operate for a period of one to three years when they have been convicted of violating specified provisions relating to DUI and driving a motor vehicle when their license has been suspended or revoked as a result of a DUI-related conviction.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Alcohol Justice
Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
CA Consortium of Addiction Programs and Professionals
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California Consortium of Addiction Programs and Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association

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

**Oppose**

Ella Baker Center for Human Rights

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

# Amended Mock-up for 2025-2026 AB-71 (Lackey (A))

## Mock-up based on Version Number 99 - Introduced 12/11/24
## Submitted by: Staff Name, Office Name

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

**SEC. 1 – SEC. 26. ....**

**SEC. 27.** Section 23575.6 is added to the Vehicle Code, to read:

**23575.6.** (a) On or before July 1, 2030, the Department of Motor Vehicles shall report updated data to the Transportation Agency regarding the continued implementation and efficacy of the statewide ignition interlock device program extended by the act that added this section for the period covering January 1, 2026 to January 1, 2030, inclusive.

(b) The data described in subdivision (a) shall, at a minimum, include all of the following:

(1) The number of individuals who were required to have a functioning, certified ignition interlock device installed as a result of the program who killed or injured anyone in a crash while they were operating a vehicle under the influence of alcohol.

(2) The number of individuals who were required to have a functioning, certified ignition interlock device installed as a result of the program who were convicted of an alcohol-related violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code during the term in which the person was required to have the ignition interlock device installed.

(3) The number of injuries and deaths resulting from in alcohol-related motor vehicle crashes during the reporting period and during periods of similar duration prior to the implementation of the program.

(4) The number of individuals who have been convicted more than one time for driving under the influence of alcohol during the reporting period and during periods of similar duration prior to the implementation of the program.

(5) Any other information requested by the Transportation Agency to assess the continued effectiveness of the statewide ignition interlock device requirement in reducing recidivism for driving-under-the-influence violations.

(c) The Transportation Agency may contract with educational institutions to obtain and analyze the data required by this section.

(d) The Transportation Agency shall conduct a revised assessment of the program based on the data provided pursuant to subdivision (b) and shall report to the Legislature on the updated outcomes of the program by no later than July 1, 2031.

(e) The report described in subdivision (d) shall be submitted in compliance with Section 9795 of the Government Code.

(f) This section is repealed as of July 1, 2035, unless a later enacted statute, that becomes operative on or before July 1, 2035, deletes or extends the dates on which it becomes inoperative and is repealed.

**SEC. 28~~7~~.** Section 23576 of the Vehicle Code, as amended by Section 29 of Chapter 485 of the Statutes of 2017, is amended to read:

**23576.** (a) Notwithstanding Sections 13352, 13352.1, 13353.6, 13353.75, 23573, 23575, 23575.3, and 23700, if a person is required to operate a motor vehicle in the course and scope of his or her employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of a functioning, certified approved ignition interlock device if the employer has been notified by the person that the person's driving privilege has been restricted pursuant to Section 13352, 13352.1, 13353.6, 13353.75, 23573, 23575, 23575.3, or 23700 and if the person has proof of that notification in his or her possession, or if the notice, or a facsimile copy thereof, is with the vehicle.

(b) A motor vehicle owned by a business entity that is all or partly owned or controlled by a person otherwise subject to Section 13352, 13352.1, 13353.6, 13353.75, 23573, 23575, 23575.3, or 23700, is not a motor vehicle owned by the employer subject to the exemption in subdivision (a).

(c) This section shall become operative on January 1, 2019.

(d) This section shall remain in effect only until January 1, 2033, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2033, deletes or extends that date.

**SEC. 29~~8~~.** Section 23576 of the Vehicle Code, as added by Section 39 of Chapter 783 of the Statutes of 2016, is amended to read:

**23576.** (a) Notwithstanding Sections 23575 and 23700, if a person is required to operate a motor vehicle in the course and scope of his or her employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of a functioning, certified ignition interlock device if the employer has been notified by the person that the person's driving privilege has been restricted pursuant to Section 23575 or 23700 and if the person has proof of that notification in his or her possession, or if the notice, or a facsimile copy thereof, is with the vehicle.

(b) A motor vehicle owned by a business entity that is all or partly owned or controlled by a person otherwise subject to Section 23575 or 23700 is not a motor vehicle owned by the employer subject to the exemption in subdivision (a).

(c) This section shall become operative January 1, 2033.

**SEC. 30~~29~~.** Section 23597 of the Vehicle Code, as amended by Section 30 of Chapter 485 of the Statutes of 2017, is amended to read:

**23597.** (a) Notwithstanding Sections 13202.5, 13203, and 13352, a court may order a 10-year revocation of the driver's license of a person who has been convicted of three or more separate violations of Section 23152 or 23153, the last of which is punishable under Section 23546, 23550, 23550.5, or 23566. When making this order, the court shall consider all of the following:

(1) The person's level of remorse for the acts.

(2) The period of time that has elapsed since the person's previous convictions.

(3) The person's blood-alcohol level at the time of the violation.

(4) The person's participation in an alcohol treatment program.

(5) The person's risk to traffic or public safety.

(6) The person's ability to install a functioning, certified ignition interlock device in each motor vehicle that he or she operates.

(b) Upon receipt of a duly certified abstract of the record of the court showing the court has ordered a 10-year revocation of a driver's license pursuant to this section, the department shall revoke the person's driver's license for 10 years, except as provided in subdivision (c).

(c) (1) Five years from the date of the last conviction of a violation of Section 23152 or 23153, a person whose license was revoked pursuant to subdivision (a) may apply to the department to have his or her privilege to operate a motor vehicle reinstated, subject to the condition that the person submits the "Verification of Installation" form described in paragraph (2) of subdivision (g) of Section 13386 and agrees to maintain a functioning, certified ignition interlock device as required under subdivision (f) of Section 23575.3. Notwithstanding Chapter 5 (commencing with Section 23700) or Section 23575.3, the ignition interlock device shall remain on the person's motor vehicle for two years following the reinstatement of the person's driving privilege pursuant to this section.

(2) The department shall reinstate the person's license pursuant to paragraph (1), if the person satisfies all of the following conditions:

(A) The person was not convicted of any drug- or alcohol-related offenses, under state law, during the driver's license revocation period.

(B) The person successfully completed a driving-under-the-influence program, licensed pursuant to Section 11836 of the Health and Safety Code, following the date of the last conviction of a violation of Section 23152 or 23153 of this code.

(C) The person was not convicted of violating Section 14601, 14601.1, 14601.2, 14601.4, or 14601.5 during the driver's license revocation period.

(3) The department shall immediately revoke the privilege to operate a motor vehicle of a person who attempts to remove, bypass, or tamper with the device, who has the device removed prior to the termination date of the restriction, or who fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. The privilege shall remain revoked for the remaining period of the original revocation and until all reinstatement requirements are met, provided, however, that if the person provides proof to the satisfaction of the department that the person is in compliance with the restriction issued pursuant to this section, the department may, in its discretion, restore the privilege to operate a motor vehicle and reimpose the remaining term of the restriction.

(d) This section shall become operative on January 1, 2019.

(e) This section shall remain in effect only until January 1, 2033, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2033, deletes or extends that date.

**SEC. 3<u>1</u>0.** Section 23597 of the Vehicle Code, as added by Section 42 of Chapter 783 of the Statutes of 2016, is amended to read:

**23597.** (a) Notwithstanding Sections 13202.5, 13203, and 13352, a court may order a 10-year revocation of the driver's license of a person who has been convicted of three or more separate violations of Section 23152 or 23153, the last of which is punishable under Section 23546, 23550, 23550.5, or 23566. When making this order, the court shall consider all of the following:

(1) The person's level of remorse for the acts.

(2) The period of time that has elapsed since the person's previous convictions.

(3) The person's blood-alcohol level at the time of the violation.

(4) The person's participation in an alcohol treatment program.

(5) The person's risk to traffic or public safety.

(6) The person's ability to install a certified ignition interlock device in each motor vehicle that he or she owns or operates.

(b) Upon receipt of a duly certified abstract of the record of the court showing the court has ordered a 10-year revocation of a driver's license pursuant to this section, the department shall revoke the person's driver's license for 10 years, except as provided in subdivision (c).

(c) (1) Five years from the date of the last conviction of a violation of Section 23152 or 23153, a person whose license was revoked pursuant to subdivision (a) may apply to the department to have his or her privilege to operate a motor vehicle reinstated, subject to the condition that the person submits the "Verification of Installation" form described in paragraph (2) of subdivision

(g) of Section 13386 and agrees to maintain the ignition interlock device as required under subdivision (g) of Section 23575. Notwithstanding Chapter 5 (commencing with Section 23700) or subdivision (f) of Section 23575, the ignition interlock device shall remain on the person's motor vehicle for two years following the reinstatement of the person's driving privilege pursuant to this section.

(2) The department shall reinstate the person's license pursuant to paragraph (1), if the person satisfies all of the following conditions:

(A) The person was not convicted of any drug- or alcohol-related offenses, under state law, during the driver's license revocation period.

(B) The person successfully completed a driving-under-the-influence program, licensed pursuant to Section 11836 of the Health and Safety Code, following the date of the last conviction of a violation of Section 23152 or 23153.

(C) The person was not convicted of violating Section 14601, 14601.1, 14601.2, 14601.4, or 14601.5 during the driver's license revocation period.

(3) The department shall immediately terminate the restriction issued pursuant to this section and shall immediately revoke the privilege to operate a motor vehicle of a person who attempts to remove, bypass, or tamper with the device, who has the device removed prior to the termination date of the restriction, or who fails three or more times to comply with any requirement for the maintenance or calibration of the ignition interlock device. The privilege shall remain revoked for the remaining period of the original revocation and until all reinstatement requirements are met.

(d) This section shall become operative January 1, 2033.

**SEC. 32~~1~~.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: March 4, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 229 (Davies) – As Amended February 24, 2025

**SUMMARY**: Authorizes a search warrant for evidence of any sexually transmitted disease where a defendant is accused or charged with a specified sex offense. Specifically, **this bill**:

1) Authorizes a search warrant for any sexually transmitted disease – not just human immunodeficiency virus (HIV) – at the request of a victim, including blood, oral mucosal transudate saliva, urine, or rectal, urethral, or cervical discharge, where there is probable cause to believe, as specified, that a defendant has committed a specified sex offense.

2) Permits the parent or guardian of a minor victim or the legal representative of a victim of a specified sex offense to request to test for any sexually transmitted disease, including blood, oral mucosal transudate saliva, urine, or rectal, urethral, or cervical discharge, where there is probable cause to believe, as specified, that a defendant committed a specified sex offense.

3) Expands the list of eligible sex offenses for which a victim or the parent of a minor victim or representative of a victim may request testing and disclosure of any sexually transmitted diseases where a defendant is charged with a sex offense to include rape of a child 10 years of age or younger and sexual activity of a confined consenting adult or an attempt to commit rape of a child under the age of 10, continued sexual abuse of a child, and sexual activity with a confined consenting adult.

**EXISTING LAW**:

1) Declares that the primary purpose of the testing and disclosure provided in this section is to benefit the victim of a crime by informing the victim whether the defendant is infected with HIV. It is also the intent of the Legislature in enacting this section to protect the health of both victims of crime and those accused of committing a crime. (Pen. Code, § 1524.1, subd. (a).)

2) States that when a defendant has been charged by complaint, information, or indictment with a crime, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime, the court, at the request of the victim, may issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with an HIV test, only under the following circumstances:

   a) When the court finds, upon the conclusion of a hearing, or when a preliminary hearing is not required to be held, that there is probable cause to believe that the accused committed the offense; and

   b) There is probable cause to believe that blood, semen, or any other bodily fluid identified by the State Department of Public Health in appropriate regulations as capable of

transmitting HIV has been transferred from the accused to the victim. (Pen. Code, § 1524.1, subd. (b)(1).)

3) States that when a defendant or juvenile has been charged by complaint, information, or indictment with assault with intent to commit specified sex crimes, rape, statutory rape, rape with a foreign object, inducing sexual intercourse by fraud or fear, aggravated sexual assault of a child, forced sodomy, forcible oral copulation, lewd act with a child, continuous sexual abuse of a child, forcible sexual penetration, or fleeing the state to avoid punishment for a sex offense, or with an attempt to commit any of the offenses, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged as assault with intent to commit specified sex crimes, rape, statutory rape, rape with a foreign object, inducing sexual intercourse by fraud or fear, aggravated sexual assault of a child, forced sodomy, forcible oral copulation, lewd act with a child, continuous sexual abuse of a child, forcible sexual penetration, or fleeing the state to avoid punishment for a sex offense, or of an attempt to commit any of the offenses, the court, at the request of the victim of the uncharged offense, may issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with an HIV test under the following circumstances:

   a) When the court finds that there is probable cause to believe that the accused committed the uncharged offense; and

   b) There is probable cause to believe that blood, semen, or any other bodily fluid identified by the State Department of Public Health in appropriate regulations as capable of transmitting HIV has been transferred from the accused to the victim. (Pen. Code, § 1524.1, subd. (b)(2).)

4) Provides that when the defendant has been charged by complaint, information, or indictment with a crime, the prosecutor shall advise the victim of the right to make a request for testing. To assist the victim of the crime to determine whether the victim should make this request, the prosecutor shall refer the victim to the local health officer for pre-request counseling to help that person understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the accused, to ensure that the victim understands both the benefits and limitations of the current tests for HIV, to help the victim decide whether the victim wants to request that the accused be tested, and to help the victim decide whether the victim wants to be tested. (Pen. Code, § 1524.1, subd. (c)(1).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "Existing law permits a victim of sexual assault who was exposed to the defendant's bodily fluids to obtain a search warrant directing the local health officer to test the defendant for HIV and disclose the results to both the defendant and the victim. The purpose of this law is to protect the health of both the defendant and the victim, who may not share the defendant's results except to protect the health or safety of a family member or sexual partner. Under circumstances that warrant a court granting a victim's request for a defendant to be tested for HIV, there is no reason to exclude testing for other sexually transmitted diseases (STDs), which can lead to sterility, increased cancer risk, or death, if left untreated.

"Sexual assault is one of the most heinous crimes that can be done to a person. In addition to the emotional and physical trauma done to the victim, if the perpetrator carries any sexually-transmitted diseases (STDs) that can cause serious healthcare risks as well. AB 229 is a common-sense measure to provide reassurances and protections for the victim that they are allowed to petition a court to test their assailant to determine if they carry any STDs that would need immediate or long-term treatment. Testing allows healthcare providers the ability to promptly identify and treat any infections, reducing the risk of long-term health complications such as infertility, chronic pain, or other health issues associated with untreated STDs.

2) **Testing a Defendant for Sexually Transmitted Infections (SDI) following a Sex Crime:** Penal Code section 1524.1 allows for testing for HIV in sexual assault cases to ensure that a victim has not been exposed to the virus as a result of the crime. However, when requested, the court must determine whether there is probable cause to believe the crime has been committed – usually upon a finding of probable cause at a preliminary hearing – and there is evidence of a possible exposure based on regulations issued by the California Department of Public Health. If there is no likelihood that bodily fluids have been transmitted, the court may deny the warrant request for HIV testing. This law is specific to HIV and was enacted in 1988, when HIV and AIDS had a higher rate of mortality. (1988 Cal Stats. ch. 1088.)

"Penal Code section 1524.1 is closely aligned with provisions governing the issuance of search warrants in criminal cases." (*Humphrey v. Appellate Division* (2002) 29 Cal.4th 569, 571.) In *Humphrey*, the mother of two victims of child molestation sought to obtain a search warrant for HIV testing from the defendant. In doing so, the mother submitted an affidavit from herself and medical professionals detailing what the children recounted. The court considered what standard of review should apply to search warrants for HIV testing given its similarity to other search warrant statutes.

> "Cal. Penal Code § 1525, for example, states, a search warrant cannot be issued but upon probable cause, supported by affidavit. Fourth Amendment standards govern those provisions of the penal code and, in light of its placement, the California Supreme Court concludes the same standards govern the Cal. Penal Code § 1524.1 warrant." (*Id.*)

This bill proposes to expand Penal Code section 1524.1 to include testing for a variety of SDIs rather than just HIV. To some extent, other SDIs may also be significantly consequential to a person's health and seems analogous to HIV as those infections are understood in 2025. For instance, human papillomavirus is one of the leading causes of cervical and uterine cancer in women and other SDIs may result in pelvic inflammatory disease affecting reproduction and cancer of the fallopian tubes. Additionally, this bill authorizes a parent or guardian to request a search warrant on behalf of a child or any legal representative on behalf of a victim. In accordance with the *Humphrey* decision, this appears authorized by current law when the court held that a parent may file an affidavit for a search warrant on behalf of a child victim. This bill just states it explicitly in the statute. Finally, this bill would expand the list of offenses for which a person may seek a search warrant to include rape of a child 10 years of age or younger and sex with a person in a custodial setting.

3) **Argument in Support**: According to the *California District Attorneys Association*: "For over 25 years, California law has authorized the testing of a defendant who committed a sex crime that transmitted bodily fluids to their victim to determine whether the defendant was infected with HIV. The primary purpose of the testing and disclosure was to inform the victim and protect their health.

   "However, when bodily fluids are exchanged during a sexual assault, a survivor's health concerns are not limited solely to exposure to HIV. They are also exposed to a host of sexually transmitted diseases that cause serious health complications such as pregnancy complications, infertility, cancer, and neurological and cardiovascular disease. Some sexually transmitted diseases can also be passed on to infants. A survivor of sexual assault who is informed that they were exposed to a sexually transmitted disease, can seek the appropriate medical treatment and take the appropriate steps to avoid infecting others. AB 229 would permit defendants who commit sex crimes to be tested for sexually transmitted diseases such as chlamydia, gonorrhea, hepatitis, herpes, human immunodeficiency virus, human papillomavirus, trichomoniasis and syphilis.

   "AB 229 seeks to protect the survivors of sexual assault by informing them if they have been exposed to a sexually transmitted disease during their sexual assault so they can seek the appropriate medical care. Alternatively, AB 229 provides survivors peace of mind that they were not exposed to a sexually transmitted disease if the testing results are negative."

4) **Argument in Opposition**: According to the *California Public Defender's Association*: "The California Public Defender's Association opposes this bill because of its invasion into the medical and physical privacy of a person who has merely been accused of a crime, not convicted. The rational for the bill, as stated in its intent, is to 'benefit the victim of the crime by informing the victim whether the defendant' is infected with a sexually transmitted disease. However, the bill does not limit the availability of the information to individuals who are determined by a court of law to be victims of a crime; the bill presumes anyone accused of a crime is guilty and therefore any accuser is a victim. While it is understandable that the legislature previously enacted a statute that would allow for testing for HIV, which causes a potentially deadly disease, using the blood or saliva of a person accused of a crime, this bill goes far beyond the existing statute.

   "While the previous statute only allowed for the collection for HIV testing of blood or saliva of an accused, this bill allows for the collection of rectal, urethral or cervical discharge to test for any sexually transmitted disease. The bill does not explain how these samples would be taken; it seems likely that the execution of such a search warrant could involve very invasive procedures, including the insertion of medical tools into the rectum, urethra, or vagina/cervix of the accused.

   "This bill will allow this invasive medical testing to determine if the accused has any sexually transmitted disease, no matter how minor, or how likely or unlikely it is to have been transmitted to the alleged victim. While it might make sense for the legislature to provide a mechanism where a person who is the victim of a crime can find out if the person who has been convicted of the crime has a disease that could have been sexually transmitted to the victim; this legislation puts the cart before the proverbial horse by assuming the accused is guilty before it has been proven in a court of law. Further, the legislature should

know how potentially invasive collecting rectal, urethral or cervical samples is before deciding to allow a court to order it based only on probable cause."

5) **Related Legislation**: SB 608 (Menjivar), would require the State Department of Education to monitor compliance with the requirements of the California Healthy Youth Act as part of its annual compliance monitoring of state and federal programs. SB 608 is pending referral to committee.

6) **Prior Legislation**: SB 996 (Wilk), of the 2023-2024 Legislative Session, would have required school districts to adopt a policy at a publicly noticed meeting specifying how parents and guardians of pupils may inspect the written and audiovisual educational materials used in comprehensive sexual health education and HIV prevention education. SB 996 was held on the Senate Appropriations Committee suspense file.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California District Attorneys Association
Conference of California Bar Associations

**Oppose**

Apla Health
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
San Francisco Public Defender

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

Date of Hearing: March 4, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 237 (Patel) – As Introduced January 13, 2025

**As Proposed to be Amended in Committee**

**SUMMARY**: Creates a new crime for a person to willfully threaten to commit a crime that will result in great bodily injury or death at a daycare, school, university, workplace, house of worship, or medical facility, as specified. Specifically, **this bill**:

1) States that any person who willfully threatens by any means, including but not limited to, an image or threat posted or published on the internet, to commit a crime that will result in death or great bodily injury to another person or persons at a daycare, school, university, workplace, house of worship, or medical facility, with specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, is guilty of an alternate felony-misdemeanor.

2) Requires the threat, on its face and under the circumstances in which it is made, to be so unequivocal, unconditional, immediate, and specific as to convey to the persons or persons threatened, a gravity of purpose and an immediate prospect of execution of the threat and that it causes a person or persons to be reasonably in sustained fear for their safety or the safety of others at these locations.

3) Makes the new crime punishable by imprisonment in the county jail for no more than one year or imprisonment in the county jail for 16 months, or 2 or 3 years.

4) Specifies that the bill's provisions do not preclude or prohibit prosecution under any other law, except that a person shall not be convicted for the same threat under both this section and existing Penal Code Section 422

**EXISTING LAW**:

1) States that any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement made (either verbally, in writing, or by means of an electronic device) is to be taken as a threat, even if there is no intent of carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution, and which thereby causes the person reasonably to be in sustained fear for their own safety or that of their family, is guilty of a crime punishable either as a misdemeanor or felony, as specified. (Pen. Code, § 422.)

2) States that any person who with intent to annoy, telephones another or contacts him or her by means of an electronic device, and threatens to inflict injury on the person or the person's

family, or to the person's property is guilty of a misdemeanor. (Pen. Code, § 653m, subd. (a).)

3) States that any person who with intent to cause, attempts to cause, or causes, any officer or employee of any public or private educational institution to do, or refrain from doing, any act in the performance of his or her duties, by means of a directly-communicated threat to the person, to inflict unlawful injury upon any person or property, and it reasonably appears to the recipient that such threat could be carried out, is guilty of a crime, punishable as an alternate felony-misdemeanor on a first offense, and a felony on a second or subsequent offense. (Pen. Code, § 71, subd, (a).)

4) States that any person who reports that a misdemeanor or felony has been committed knowing the report to be false is guilty of a misdemeanor. (Pen. Code, § 148.5.)

5) States that any person who maliciously informs any other person that a bomb or other explosive has been or will be placed or secreted in any public or private place, knowing that the information is false, is guilty of an alternate felony-misdemeanor punishable in county jail not to exceed one year, or as a county jail-eligible felony. (Pen. Code, § 148.1, subd. (c).)

6) Provides that any person who transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both. (18 U.S.C. § 875.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "The rise of threats against sensitive locations has continued to increase. Paired with the increasing number of actual violent acts in schools, synagogues, public venues, institutions, and care facilities, we must be able to act even when the crime is just a threat. AB 237 closes a loophole in Penal Code 422 that complicates prosecution and clarifies that it's criminal to threaten a location. It's common sense to understand that threatening a building threatens people in that building."

2) **First Amendment Considerations:** A law that restricts speech has First Amendment implications. The First Amendment to the United States Constitution states: "Congress shall make no law . . . abridging the freedom of speech . . . ." This fundamental right is applicable to the states through the due process clause of the Fourteenth Amendment. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal. 4th 121, 133-134, citing *Gitlow v. People of New York* (1925) 268 U.S. 652, 666.) Article I, section 2, subdivision (a) of the California Constitution provides that: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

   While these guarantees are stated in broad terms, "the right to free speech is not absolute." (*Aguilar v. Avis Rent A Car System, Inc., supra*, 21 Cal. 4th at p. 134, citing *Near v. Minnesota* (1931) 283 U.S. 697, 708; and *Stromberg v. California* (1931) 283 U.S. 359.) As the United States Supreme Court has acknowledged: "Many crimes can consist solely of

spoken words, such as soliciting a bribe (Pen. Code, § 653f), perjury (Pen. Code, § 118), or making a terrorist threat (Pen. Code, § 422)."

Content-based restrictions on speech are presumptively invalid (*R.A.V. v. St. Paul* (1992) 505 U.S. 377, 382), however, courts have upheld restrictions on content-based speech when the speech is "'of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.' Thus, for example, a State may punish those words 'which by their very utterance inflict injury or tend to incite an immediate breach of the peace.'" (*In re J.M.* (2019) 36 Cal.App.5th 668, 674, citing *Virginia v. Black* (2003) 538 U.S. 343, 358–359.)

True threats are not protected by the First Amendment. (*In re M.S.* (1995) 10 Cal.4th 698. Existing Penal Code section 422 has been found to be constitutional because it is narrowly tailored to apply only to true threats which is defined as a threat "to commit a crime which will result in death or great bodily injury to another person . . . which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat." (*People v. Toledo* (2001) 26 Cal.4th 221, 233.)

As originally enacted, Penal Code section 422 was found to be unconstitutional and void for vagueness. (*People v. Mirmirani* (1981) 30 Cal.3d. 375, 383.) In order to meet the strict standard required for criminalizing content-based speech, the statute "must provide clear lines by which citizens, law enforcement officials, judges and juries can understand what is prohibited and what is not." (*Id.* at p. 384.) In *Mirmirani*, the court noted that a threat can be penalized if "on its face and in the circumstances in which it is made is so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution. . . ." (*Mirmirani*, *supra*, 30 Cal.3d. at p. 388.) Following *Mirmirani*, the Legislature enacted a revised version of Penal Code section 422 to ensure the amended statute would not violate the First Amendment. (*People v. Wilson* (2010) 186 Cal.App.4th 789, 802.)

Recently, the United States Supreme Court reviewed the requisite mental state for true threats. In *Counterman v. Colorado* (2023) 600 U.S. 66, the statute at issue made it unlawful to repeatedly make any form of communication with another person in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person serious emotional distress. (*Counterman*, *supra*, citing Colo. Rev. Stat. section 18-3-602(1)(c) (2022).) The defendant argued that the statute violated the First Amendment because it did not require proof of the speaker's subjective intent, rather it required only that a reasonable person would have viewed the communication as threatening violence.

The Supreme Court held that for true threats to fall outside of the First Amendment's protections, there must be a showing of the subjective mental state of the defendant in order to reduce the prospect of chilling fully protected speech. After reviewing the three basic categories of mens rea (purpose, knowledge, recklessness), the court found that a recklessness standard was sufficient. Specifically, this means the speaker consciously disregards a substantial and unjustifiable risk that the statement will be regarded as threatening violence and made the statement anyway. (*Counterman*, *supra*, 600 U.S. at p. 80.) *Counterman* addressed the minimum mens rea required to criminalize true threats. It did

not reevaluate any other standards to determine whether a statement meets the other elements of a true threat.

3) **Prior Legislation and Existing Law:** Threats of violence directed at particular locations such as schools and places of worship has been the subject of several bills in the past few years.[1] SB 796, of the 2023-2024 Legislative session, would have created a similar statute to existing Penal Code section 422 but applied its provisions to schools and places of worship and modified the sustained fear requirement so that it applied if the threat causes a person or persons reasonably to be in sustained fear for their own safety or the safety of another person. SB 796 was held in the Senate Appropriations' suspense file. AB 907, of the 2019-2020 Legislative session, was substantially similar to SB 796, however, AB 907 was amended in policy committee to specify that the minor who commits the new offense is guilty of a misdemeanor rather than facing a potential felony acknowledging that concern raised by opposition that minors will be disproportionately prosecuted for the new crime. AB 907 was held in the Senate Appropriations' suspense file.

   Similar to the stated need for those prior bills, the sponsor of this bill argues that the current criminal threats statute, Penal Code section 422, does fit well into instances of threats of violence at specific locations such as schools because often times threats posted on social media do not specify a targeted individual. Rather, the threat oftentimes applies to anyone present at those locations. Background materials provided by the author of this bill listed instances where the court dismissed charges because a specific individual was not the target of the threat. However, courts' reading of the law appears to be mixed in various jurisdictions.

   An example illustrating the existing law's application to threats of violence made to a group of people rather than naming a specific person as the target can be found in case law. In *In re L.F.* (June 3, 2015, A142296) [nonpub. opn.], the adjudged minor was a Fairfield High School student who posted on her Twitter account that she planned to bring a gun to school and shoot people. While she did note specified areas of the school and one of the campus monitors by name in some of her posts, her Tweets were generally targeted at all of the students and staff at the school. The petition filed against the minor alleged that the minor had made criminal threats against "Fairfield High School students and staff" instead of listing specific persons. (*Id.* at p. 4.) The appellate court affirmed the juvenile court's ruling that the minor had violated the existing criminal threats statute. (*In re L.F.*, *supra*, A142296 at p. 8.) This interpretation of the law is consistent with older case law that says a true threat may be made to a particular individual or group of individuals." (*Virginia v. Black* (2003) 538 U.S. 343, 359, citing *Watts v. United States* (1969) 394 U.S. 705, 708.)

   Another example showing that the current law is applicable regardless whether the threat was made to an individual or a group of people is *In re A.G.* (2020) 58 Cal.App. 5th 647 where the adjudged minor was convicted of criminal threats after a Snapchat image showed that he was going to bring a gun to school with a picture of a gun. The Snapchat image did not include the name of the school or any individuals and the minor later posted that it was all a joke, however the court found that it was sufficient under the law that an individual and a teacher saw the post and were in sustained fear. (*Id.* at pp. 656-657.)

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[1] For a summary of all similar prior legislation, see note 8 below.

Also illustrated in the cases above, Penal Code section 422 does not require the statement of deadly harm to be true, it can be used to prosecute false statements as well. Specifically, the statute states that the speaker need not have intent to carry out the act of violence. (Pen. Code, § 422.)

This bill creates a similar offense to existing Penal Code section 422 but contains differences on which persons may be in sustained fear of the threat. This bill also contains language specifying that the bill's provisions do not preclude or prohibit prosecution under any other law, except that a person shall not be convicted for the same threat under both this section and Section 422.

4) **Impetus for this Bill:** This bill is in response to a recent case where a 39-year-old Marine combat veteran, Lee Lor, was arrested and charged with making criminal threats to commit a mass shooting at an elementary school in San Diego.[2] Over the course of several months, Lor sent seemingly random replies to hundreds of spam emails he had received, many of which named Shoal Creek Elementary School which is located about a mile from where Lor lived. In one email Lor wrote, "If you think this is a joke, laugh. If not, a lot of children are going to die."[3] This email was received in the spam folder of a woman living in Beverly Hills who reported it to law enforcement. Lor was investigated and arrested for making criminal threats against his neighbors. After 10 months in custody, the charges were dismissed after the judge determined there was not sufficient evidence to move forward with the charges at trial. The judge ruled that the criminal threats counts concerned the man's neighbors rather than anyone connected to the school.

   Two weeks after the dismissal of charges and Lor's release from custody, law enforcement executed a search warrant of his home and found a firearm as well as research on ammunition and the school's layout. The man was then rearrested and charged with making criminal threats but named the principal of the school as the victim. The judge denied bail citing public safety and an existing gun violence restraining order[4] that was issued against him as factors. The new case is currently pending after a new preliminary hearing and has been ordered to trial.[5]

5) **Argument in Support**: According to *California District Attorneys Association*, a co-sponsor of this bill:

   "Currently, prosecutors rely upon Penal Code section 422 to prosecute threats to do violence on school grounds, places of worship or other public places. However, PC 422 has limitations that prevents its effective use as a tool to hold all offenders accountable who

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[2] See https://timesofsandiego.com/crime/2024/10/04/judge-finds-man-didnt-target-san-diego-school-in-email-dismisses-criminal-threats-charges/ [accessed Feb. 14, 2025].
[3] https://www.10news.com/news/local-news/san-diego-news/combat-veteran-pleads-not-guilty-after-being-re-arrested-for-threatening-to-commit-school-shooting-over-350-times [accessed Feb. 14, 2025].
[4] A Gun Violence Restraining Order prohibits a person subject to this restraining order from having in his or her custody or control, own or possess, or receive any firearms or ammunition while the order is in effect. (Pen. Code, § 18100 et seq.)
[5] https://www.sandiegouniontribune.com/2025/02/18/neighbor-ordered-to-stand-trial-in-carmel-mountain-ranch-school-shooting-threats-case/ [accessed Feb. 20, 2025].

make true threats directed at our schools and places of worship. Because PC 422 requires proof that the criminal threat causes a victim to be in sustained fear, these prosecutions are difficult to prove when the offender does not identify a specific target but instead communicates a threat to commit a violent act at a place where many potential people could be in harm's way such as a school or a place of worship.

"Penal Code section 422's requirement that the threat caused sustained fear in a victim presents real world challenges. In 2023, a 38 year-old man sent hundreds of emails threatening to commit a shooting at Shoal Creek Elementary School in San Diego's Carmel Mountain Ranch community. The different emails included the same sentence that read "I'm going to commit mass shootings at 11775 Shoal Creek elementary school, San Diego, CA 92128." At the preliminary hearing, the judge dismissed the Penal Code section 422 prosecution because the threatening emails were not sent directly to the school. The judge ruled that the law requires the threat to be specific towards a targeted person."
Man accused of threatening mass shooting at San Diego elementary school charged again – NBC 7 San Diego

6) **Argument in Opposition**: According to the *Californians United for a Responsible Budget*:

"California law already provides broad protection against criminal threats. Current law makes it a felony to willfully threaten to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out. That standard has served California well by both protecting the public from criminal threats, but also ensuring that individuals are not convicted of the crime of making a threat unless the individual had some intent to make a threat."

7) **Related Legislation**: SB 19 (Rubio), would create a new crime for a person who willfully threatens to commit a crime which will result in death or great bodily injury to any person who may be on the grounds of a school or place of worship, with specific intent and under certain circumstances. A person violating the bill's provisions would be guilty of a misdemeanor or felony punishable by imprisonment in a county jail, except that if the person is under 18 years of age, the bill would make the person guilty of a misdemeanor. SB 19 is pending hearing in Senate Public Safety Committee.

8) **Prior Legislation**:

a) SB 796 (Alvarado-Gil), of the 2023-2024 Legislative Session, would have created a new criminal threats statute for threats of violence to occur on the grounds of a school or place of worship. SB 796 was held in the Assembly Appropriations suspense file.

b) SB 1330 (Borgeas), of the 2021-2022 Legislative Session, would have prohibited maliciously informing any other person that a terror incident, as defined, will occur at any school or place of worship, as defined, or at any school-sponsored event, knowing that the information is false. SB 1330 failed passage in Senate Public Safety Committee.

c) AB 907 (Grayson), of the 2019-2020 Legislative Session, was substantially similar to SB 796 except the maximum penalty for minor who commit the offense was a misdemeanor,

rather than an alternate felony-misdemeanor. AB 907 was held in the Senate Appropriations Committee.

d) AB 2768 (Melendez), of the 2017-2018 Legislative Session, would have created a new criminal threats statute specific to threats made against administrators of a school or place of worship. AB 2768 was held in the Assembly Appropriations Committee.

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

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

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

California District Attorneys Association (Sponsor)
California Police Chiefs Association (Sponsor)
San Diego County District Attorney's Office (Sponsor)
California Association of Highway Patrolmen
California School Employees Association
Hindu American Foundation, INC.
League of California Cities
National Asian Pacific Islander Prosecutors Association (NAPIPA)
Santa Clara County District Attorney's Office

**Oppose**

ACLU California Action
California Attorneys for Criminal Justice
California Civil Liberties Advocacy
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice
Initiate Justice Action
LA Defensa
Local 148 LA County Public Defenders Union
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy

**Analysis Prepared by**: Stella Choe / PUB. S. / (916) 319-3744

AMENDMENTS TO ASSEMBLY BILL NO. 237

Amendment 1

On page 2, in line 2, strike out "threatens" and insert:

willfully threatens, by any means, including, but not limited to, an image or threat posted or published on an internet web page,

Amendment 2

On page 2, in line 2, after "crime" insert:

that will result in death or great bodily injury to another person or persons

Amendment 3

On page 2, in lines 3 and 4, strike out "medical facility, or public venue with reckless disregard" and insert:

or medical facility with specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, if the threat on its face and under the circumstances in which it is made is so unequivocal, unconditional, immediate, and specific as to convey to the person or persons threatened a gravity of purpose and an immediate prospect of execution of the threat, and if that threat causes a person or person to reasonably be in sustained fear for their own safety or the safety of others at these locations,

Amendment 4

On page 2, in line 6, strike out "in the state prison." and insert:

pursuant to subdivision (h) of Section 1170.

Amendment 5

On page 2, strike out lines 7 to 19, inclusive, and insert:

(b) This section does not preclude or prohibit prosecution under any other law, except that a person shall not be convicted for the same threat under both this section and Section 422.

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 237

CALIFORNIA LEGISLATURE—2025–26 REGULAR SESSION

**ASSEMBLY BILL** **No. 237**


**Introduced by Assembly Member Patel**

January 13, 2025

An act to add Section 422.3 to the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 237, as introduced, Patel. Crimes: threats.

Existing law makes it a crime to willfully threaten to commit a crime that will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat that, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution of the threat, and thereby reasonably causes the threatened person to be in sustained fear for their own safety or the safety of their immediate family, as defined. Under existing law, this crime is punishable by imprisonment in a county jail for no more than one year for a misdemeanor, or by imprisonment in state prison for a felony.

This bill would make it a crime for a person to ~~threaten~~ *willfully threaten, by any means, including, but not limited to, an image or threat posted or published on an internet web page,* to commit a crime at specified locations, including a daycare and workplace, with ~~reckless disregard, as defined.~~ *specific intent that the statement is be taken as a threat, even if there is no intent of actually carrying it out, if the threat, on its face and under the circumstances in which it is made is so unequivocal, unconditional, immediate, and specific as to convey to the person or persons threatened a gravity of purpose and an immediate*

*prospect of execution of the threat, and if the threat causes a person or person to reasonably be in sustained fear for their own safety or the safety of others at the specified locations. This bill would make this crime punishable as a wobbler by imprisonment in the county jail for not more than one year or by imprisonment in the county jail for 16 months or 2 or 3 years.* By creating a new crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

ıge 2

SECTION 1. Section 422.3 is added to the Penal Code, to read:

422.3. (a) Any person who ~~threatens~~ *willfully threatens, by any means, including, but not limited to, an image or threat posted or published on an internet web page,* to commit a crime *that will result in death or great bodily injury to another person or persons* at a daycare, school, university, workplace, house of worship, ~~medical facility, or public venue with reckless disregard~~ *or medical facility with specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, if the threat on its face and under the circumstances in which it is made is so unequivocal, unconditional, immediate, and specific as to convey to the person or persons threatened a gravity of purpose and an immediate prospect of execution of the threat, and if that threat causes a person or person to reasonably be in sustained fear for their own safety or the safety of others at these locations,* shall be punished by imprisonment in the county jail not to exceed one year or by imprisonment ~~in the state prison.~~ *pursuant to subdivision (h) of Section 1170.*

~~(b) For purposes of this section, the threat described in subdivision (a) includes a threat conveyed in or as an image as well as a threat posted on or published through any medium, including, but not limited to, an internet web page or the World Wide Web.~~

**Amendments 1 & 2**

**Amendment 3**

**Amendment 4**

**Amendment 5**

~~(c) For purposes of this section, a person threatens with "reckless disregard" when the person making the threat is aware of and consciously disregards a substantial and unjustifiable risk that the threat will cause another person of ordinary emotions and sensibilities to fear for their safety, the safety of a family member, or the safety of a person at the threatened daycare, school, university, workplace, house of worship, medical facility, or public venue.~~

*(b) This section does not preclude or prohibit prosecution under any other law, except that a person shall not be convicted for the same threat under both this section and Section 422.*

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

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# California State Assembly

## PUBLIC SAFETY


**NICK SCHULTZ**
CHAIR



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## Analysis Packet Part II
## (AB 285 (Ramos) – AB 355 (Sanchez))

Date of Hearing: March 4, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 285 (Ramos) – As Introduced January 22, 2025

**SUMMARY**: Requires a court, when imposing a state prison sentence on a defendant convicted of domestic violence or a sex offense, to issue a temporary criminal protective order against the same identified victim or victims from an original witness intimidation protective order, as specified, for a maximum period of 180 days.

**EXISTING LAW**:

1) Authorizes the trial court in a criminal case to issue a protective order when there is a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. (Pen. Code, § 136.2, subd. (a).)

2) Provides that a person violating a protective order may be punished for any substantive offense described in provisions of law related to intimidation of witnesses or victims, or for contempt of court. (Pen. Code, § 136.2, subd. (b).)

3) Requires a court to consider issuing up to a 10-year restraining order protecting victims for convictions including, but not limited to domestic violence, certain types of human trafficking, gang activity, statutory rape, pimping of a minor, and offenses requiring sex offender registration. (Pen. Code, §§ 136.2, subd. (i)(1); 273.5, subd. (j); 368, subd. (l); 646.9, subd. (k); 1201.3, subd. (a).)

4) Provides that a post-conviction protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison, or a county jail, or subject to mandatory supervision, or whether the defendant is placed on probation. The duration of a protective order issued by the court should be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and the victim's immediate family. (Pen. Code, § 136.2, subd. (i)(1).)

5) Requires a court to consider issuing up to a 10-year restraining order protecting percipient witness, upon clear and convincing evidence of witness harassment, in cases with convictions including, but not limited to domestic violence, statutory rape, gang activity, and sex registerable offenses. (Pen. Code, § 136.2, subd. (i)(2).)

6) Authorizes a court to place conditions on a 10-year restraining order that can include electronic monitoring for up to one year, as specified. (Pen. Code, § 136.2, subd. (i)(3).)

7) Prohibits a person who is subject to a protective order from owning, possessing, purchasing, attempting to purchase or receive a firearm while the protective order is in effect, and the court shall order a person subject to the protective order to relinquish ownership or

possession of any firearms. (Pen. Code, § 136.2, subd. (d).)

8) Authorizes courts to issue civil harassment restraining orders, as specified. (Code Civ. Proc. § 527 *et seq.*)

9) Authorizes courts to issue domestic violence restraining orders, as specified. (Fam. Code, § 6300 *et seq.*)

10) Punishes an individual for willful disobedience of, among other things, a lawful restraining order. (Pen. Code, §§ 166 & 273.6.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "I introduced AB 285 to ensure survivors are protected from being re-victimized. By issuing a criminal protective order, we ensure that upon an offender's release, they cannot gain contact with those whom they victimized. This is especially important when it comes to Missing and Murdered Indigenous Persons cases that stem from domestic violence. We want to ensure that all survivors are able to feel protected even when the individuals who harmed them are released from prison. Survivors should not have to live again in fear.

   "The deficiency in current law lies with the issuance of criminal protective orders which may expire before the release of an offender. This is particularly troubling in the cases of violent offenders who are often serving longer time for their crimes. If a court were to issue a CPO, it may expire or last less than intended time when the offender is released. This leaves the survivors of these crimes without a valuable tool to prevent the offender from engaging with them. This may lead to survivors fearing for their own safety. The goal of ensuring the CPO is issued upon the offenders release means that we allow for additional time for victims to seek permanent solutions.

2) **Penal Code section 136.2:** Penal Code section 136.2 authorizes the court in certain criminal trials, upon a showing of good cause, to issue specified protective orders against a defendant or third party. The purpose of Penal Code section 136.2 is to prevent a defendant in a domestic violence or sexual assault trial from: (a) engaging in witness or victim intimidation; (b) for law enforcement to provide protection to a victim, witness or a victim's or witness' immediate family members; and (c) to stay away from any victim or witness for up to 10 years. Good cause means evidence that a defendant intends to intimate a victim or witness. It is not automatic and requires a judicial hearing and specified findings to impose. (*Babalola v. Superior Court (People)* (2011), 192 Cal. App. 4th 948 ["There was no finding of good cause to believe an attempt to intimidate or dissuade a victim occurred or was ***reasonably likely*** to occur."].)

   Penal Code section 136.2 also allows the court, in specific circumstances, to order electronic monitoring for up to one year. In cases related to domestic violence and offenses requiring sex offender registration, the case file must be clearly marked so that the court is aware of their nature for purposes of considering a protective order. (Pen. Code, § 136.2, subd. (e)(1).) The court has the authority to issue pre- and post-conviction protective orders. (Pen. Code, §

136.2.) Any person subject to a protective order pursuant to Penal Code section 136.2 may not possess a firearm. Finally, Penal Code section 136.2, subdivision (i)(1) allows the court to issue a protective order in certain cases, including domestic violence cases, for up to 10 years, regardless of whether the defendant is sentenced to state prison or county jail, or placed on probation. Penal Code section 136.2, subdivision (i)(2) authorizes the court to issue an order prohibiting a defendant from any contact with any witness to the underlying crime.

This bill would require a court, when issuing a protective order against a defendant in a domestic violence or sex offense case also issue a protective order following the defendant's release from state prison for up six months. As noted above, existing law already allows a court to issue a protective order for up to ten years upon a showing of good cause. Presumably, this bill would apply if the 10-year order expired while the defendant was incarcerated. Otherwise, the 10-year protective order would still be in place even after the defendant is released from prison.

Moreover, the maximum period a person may serve for felony domestic violence (assuming no other charges, enhancements, or prior strikes or prison terms) is six years. A defendant sentenced to 10 or more years likely has a more serious conviction history and will be closely monitored after release. A victim may also seek protective order pursuant to Family Code section 6218. Finally, as explained below, a defendant released from state prison is either on parole or PRCS and may be returned to state prison for any violation of their terms of release.

3) **Restraining Orders and Protective Orders:** Protective orders and restraining orders are, in the outcome, very similar – both are orders issued or approved by a court that prevents a person from contacting another person under specific circumstances and may also restrict other conduct to prevent harassment, threats, or violence. (See generally, Fam. Code, § 6218, subds. (a)-(c).)

However, there are a couple of differences, at least in a practical sense. According to the California Courts, Self Help Guide, the ***police*** may ask for an emergency (which includes instances of domestic violence) protective order (EPO) to protect the victim of a crime, usually when the victim calls the police or 911 for help.

If the defendant (the person accused of committing the crime) is arrested and charged, a judge can issue a criminal protective order (CPO) to protect victims and witnesses, particularly during the pendency of the case (as with Penal Code section 136.2). EPOs and CPOs are protective orders. Protective orders and "temporary restraining orders or TROs" are often used interchangeably. A victim may also be able to file their own moving papers to request a protective or restraining order. A restraining order can include some of the same orders as an EPO or CPO, like ordering the defendant to stay away from the victim. But in restraining order cases ***filed by a victim*** (instead of law enforcement), additional protections may be available. A victim can have a restraining order and an EPO or CPO at the same time as one is issued on an emergency basis and one is issued for a longer period of time. (See Fam. Code, § 6320, subd. (a); Judicial Branch of California, California Courts Self-Help Guide, Guide to Protective Orders, p. 1-2.)[1]

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[1] Located at https://selfhelp.courts.ca.gov/protective-orders, last visited February 20, 2025.

An EPO can include orders that the defendant: (a) not contact people protected by the order; (b) not harass, stalk, threaten or hurt people protected by the order; (c) stay a certain distance away from people protected by the order or places they live or go regularly; (d) move out from a home that is shared with the protected person; or (e) not have guns, firearms, or ammunition. An EPO only lasts a short time, usually 5-7 days. If the person protected by the EPO needs protection that lasts longer or wants to ask for other orders, they can apply for a restraining order. A ***protective order*** may be issued for a short period of time, often without service to the alleged wrongdoer (ex parte), so the victim may be protected while the court calendars a hearing on the order and the alleged wrongdoer may be served a more formalized notice. In some cases, law enforcement will seek a protective order even after the alleged wrongdoer was already arrested.

In cases of a ***restraining order***, where a person may be enjoined from contacting someone for a longer period of time, the alleged victim may seek a civil order barring a person from coming within a certain distance, but may not have resulted from any police intervention against the person being restrained. A person may be the subject of a protective order or a restraining order even if they are not facing a criminal charge and are never convicted of any criminal act.

Simple violation of a protective or restraining order **is a misdemeanor**. (See Pen. Code, § 166, subd. (a)(4); Pen. Code, § 273.6, subd. (a).) If a person violates a protective or restraining order issued in a domestic violence case and injury results, that person may be sentenced to a minimum of 30 days and a maximum of one year in county jail – in addition to whatever the defendant receives for any possible assaultive or threatening conduct. (See Pen. Code, § 273.6, subd. (b).) Any criminal conviction also requires proof beyond a reasonable doubt that the defendant was aware of the protective order, knew what they were not allowed to do, and violated the order anyway. It is not the most direct method for ensuring a parolee does not re-contact a victim or witness.

In addition to the penalties for violating a protective order, any person who violates a protective order issued pursuant to Penal Code section 136.2, may be sentenced as if the person **engaged** in witness intimidation –to a state prison sentence of up to four years. (Pen. Code, § 136.1, subd. (c); Pen. Code, § 136.2, subd. (b).) It is unclear what adding an additional six months onto a protective order issued pursuant to Penal Code section 136.2 would do to protect victims of domestic violence or sexual assault. Most certainly, if a person is willing to commit an assault or homicide less than six months after release from prison, it seems doubtful they would be deterred by a protective order.

4) **Postrelease Community Supervision (PRCS) and Parole Requirements:** Inmates sentenced to state prison are supervised upon release for a period as short as 12 months, and as long as the reminder of the person's life, depending on the offense. (Pen. Code, § 3000.1, subd. (b)(1).) Following the enactment of the Criminal Justice Realignment Act of 2011 ("Realignment") a person sentenced to state prison is placed on either PRCS or parole depending on the nature of the offense. (Pen. Code, § 1170, subd. (h); Pen. Code, § 3451, subd. (a).) Prior to Realignment, individuals released from state prison were placed on parole and supervised in the community by the California Department of Corrections and Rehabilitation (CDCR) parole agents. PRCS supervision is handled by local probation departments. Parole is still handled by CDCR.

As noted, Realignment shifted supervision of some people released from state prison from CDCR to local probation departments. CDCR Division of Adult Parole Operations (DAPO) is responsible for supervising inmates released from prison whose term of incarceration was for a serious or violent felony; was serving a sentence on a third strike; is classified upon release as high-risk sex offender; required to undergo treatment as a mentally disordered offender; or any person who, while on state prison parole, commits a new offense, as specified. All other inmates released from prison are subject to up to three years of PRCS under local supervision.

Realignment also changed where an offender is incarcerated for violating parole or PRCS. Most individuals can no longer be returned to state prison for violating a term of supervision; any person whose parole is revoked serves the revocation term in county jail. The only people who are eligible for a return to prison for violating parole are life-term inmates paroled pursuant to Penal Code section 3000.1 (e.g., homicide, manslaughter, attempted homicide, etc.).

"Domestic violence" is defined in Penal Code section 13700, subdivision (b), and is a state prison felony, in accordance with Penal Code section 273.5, subdivision (a). A defendant convicted of a felony domestic violence offense and sentenced to prison is subject to up to six years in state prison. (Pen. Code, § 273.5, subd. (a).) Supervision following release is for three years. (See Pen. Code, § 3451, subd. (b).) Rape or any offense for which a defendant is sentenced to state prison for an offense requiring sex offender registration will also be on parole for at least three years, and supervised by DAPO because it is a violent felony. (See Pen. Code, §§ 667.5, subd. (c)(3-6); (c)(11); (c)(16); (c)(18); and (c)(24).) Additionally, any person released from state prison for a registerable sex offense must be placed on a global positioning system (GPS) device during the period of parole. (Pen. Code, § 3000.07, subd. (a).) It is likely that a person sentenced to 10 plus years for domestic violence or sexual assault has a prior strike conviction.

Parole or PRCS violations only need to be proven by a preponderance of evidence – not beyond a reasonable doubt unlike a new crime. (*Morrissey v. Brewer* (1972) 408 U.S. 471; *People v. Rodriguez* (1990) 51 Cal.3d 437, 441.) People pending a parole or PRCS revocation may also be held in custody with no bond and a parole or probation officer may re-incarcerate a person without prior judicial review. (See Pen. Code, § 3000.08, subd. (c).) A state prison commitment also allows a victim the opportunity to request victim services before a defendant is released from prison.[2] Victim services includes the right to receive notice of when the custody status changes and when a victim desires a no-contact condition of parole. If a victim desires a protective order, they would get notice of the defendant's possible release date in time to seek a restraining order for a period of five years. (See Code of Civ. Proc., § 527.6, subd. (j).)

Given that defendants will be on parole when released from state prison, it seems it would be easier to simply violate their parole if they are harassing a victim. There would be no need to prove beyond a reasonable doubt that a defendant violated a long dormant protective order

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[2] See Office of Victim and Survivor Rights and Services form 1707 https://www.cdcr.ca.gov/victim-services/ (last visited February 20, 2025.)

from more than 10 years ago. Also, as noted above, Penal Code section 136.2 requires a detailed showing of good cause to believe the defendant will intimidate a witness or victim. In most domestic violence cases, there is likely not enough evidence of victim intimidation to order a Penal Code section 136.2 protective order. A parole violation would likely protect more victims and witnesses than the proposed bill.

5) **Argument in Support**: According to the *Riverside County District Attorney's Office*: "Criminal protective orders serve as a vital safeguard for victims facing threats, intimidation, and violence. Unfortunately, criminal protective orders often expire prior to the release of a defendant from prison, placing victims (the protected party) in a vulnerable and likely dangerous situation. According to the National Domestic Violence Hotline, "most female victims of intimate partner violence were previously victimized by the same offender at rates of 77% for women ages 18 to 24, 76% for ages 25 to 34, and 81% for ages 35 to 49.

   "AB 285 seeks to remedy this alarming reality by requiring that a 180-day criminal protective order be in place when a defendant convicted of domestic violence or sex offenses is released from prison. This critical change would provide victims with valuable time to pursue permanent protective orders or assess additional options for continued safety. Strengthening criminal protective orders through this legislation will provide law enforcement, courts, and victims with the necessary tools to prevent further harm and enhance public safety."

6) **Related Legislation**: SB 421 (Valladares), would allow a court to issue a permanent protective order restraining a defendant from any contact with the victim if the defendant has been convicted of any serious or violent felony, as defined, or any felony requiring registration as a sex offender. SB 421 is pending referral to the Senate Committee on Public Safety.

7) **Prior Legislation**:

   a) AB 2024 (Pacheco), Chapter 648, Statutes of 2024, eliminates delays in getting domestic violence restraining order protection forms to the judicial officer due to relatively minor errors or omissions.

   b) AB 1143 (Berman) Chapter 156, Statutes of 2021, provides that in lieu of personal service of a petition for a civil harassment restraining order, if a respondent's address is unknown, the court may authorize another method of service that is reasonably calculated to give actual notice to the respondent, if the court determines that a petitioner made a diligent effort to accomplish service, and may prescribe the manner in which proof of service must be made.

   c) SB 538 (Rubio), Chapter 686, Statutes of 2021, facilitates the filing of a DVRO and gun violence restraining order (GVRO) by allowing petitions to be submitted electronically and hearings to be held remotely.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Coyote Valley Band of Pomo Indians
Culver City Police Officers' Association
Fullerton Police Officers' Association
Indigenous Justice
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Partners Against Violence, INC.
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside County District Attorney
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County District Attorney's Office
Santa Ana Police Officers Association
Tule River Tribe

**Opposition**

None on file.

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

Date of Hearing: March 4, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 297 (Hadwick) – As Introduced January 23, 2025

**SUMMARY**: Requires a three-, four-, or five-year enhancement for a person convicted of arson who proximately caused 500 or more acres of forest land to burn.

**EXISTING LAW**:

1) Defines arson as willfully and maliciously setting fire to or burning or causing to be burned or aiding, counseling, or procuring the burning of, any structure, forest land, or property. (Pen. Code, § 451).

2) Makes arson that causes great bodily injury a felony punishable by imprisonment in the state prison for five, seven, or nine years. (Pen. Code, § 451, subd. (a).)

3) Makes arson that causes an inhabited structure or inhabited property to burn a felony punishable by imprisonment in the state prison for three, five, or eight years. (Pen. Code. § 451, subd. (b).)

4) Makes arson of a structure or forest land a felony punishable by imprisonment in the state prison for two, four, or six years. (Pen. Code, § 451, subd. (c).)

5) Makes arson of property a felony punishable by imprisonment in the state prison for 16 months, two years, or three years, not including a person burning or causing to be burned his or her own personal property unless there is an intent to defraud or there is injury to another person or another person's structure, forest land, or property. (Pen. Code, § 451, subd. (d).)

6) Authorizes a three-, four-, or five-year enhancement for a felony arson conviction if the defendant has a prior conviction for arson or unlawfully causing a fire; a specified first responder suffered great bodily injury as a result of the offense; the defendant proximately caused either great bodily injury to more than one victim or multiple structures to burn; or the defendant committed arson by use of a device designed to accelerate the fire or delay ignition. (Pen. Code, § 451, subd. (a)(1)-(5).)

7) Requires confinement in state prison for five, seven, or nine years for any person who commits arson or unlawfully causes a fire during state of emergency. (Pen. Code, §§ 454, subds. (a)(2) & (b).)

8) Authorizes one- to four-year sentence enhancements for property value loss between $50,000 and $3,000,000 when any person takes, damages, or destroys any property in the commission or attempted commission of a felony, or commits a felony receiving stolen property. (Pen. Code, § 12202.6, subd. (a)(1)-(4).)

9) Makes aggravated arson punishable with 10 years to life if the person previously has been convicted of arson in the past 10 years or the fire caused losses in excess of $10,100,000, which includes the costs of fire suppression. (Pen. Code, § 451.5, subds. (a)(1)-(b).)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement:** According to the author, "Attributed in part to arson, the Dixie Fire, which began on July 13, 2021 burned almost a million acres. It was the 2nd largest fire in California history. It happened in my backyard and my constituents are still recovering. The current penalties for willful arson do not equally consider the amount of forestland burned, the damage to the environment, and the costs to fight fires. Emissions from fires in 2021, started in part by arsonists, completely wiped out California's progress to reduce greenhouse gas emissions, disproportionately hurting undeserved rural communities. These communities face devastating impacts during wildfire recovery, including poor air quality, economic loss, and displacement, while lacking the resources to recover as swiftly as wealthier, urban areas. The destruction of vital forestland also directly impacts their access to natural resources and exacerbates challenges to their livelihoods, including agriculture and tourism. This bill closes this loophole and holds arsonists accountable proportional to the harm that they have caused to our rural under resourced communities. Victims of arsonists deserve justice; this bill seeks to hold perpetrators accountable."

2) **Effect of the Bill:** This bill would authorize a three-, four-, or five-year enhancement for a person convicted of arson who proximately caused 500 or more acres of forestland to burn.

   Penalties in this statutory scheme are already significant. Depending on the facts, an arson conviction carries anywhere from 16 months to nine years in state prison. (Pen. Code, § 451, subds. (a)-(d).) A person convicted of arson of forest land is already subject to up to six years in state prison. (Pen. Code, Code, § 451, subd. (c).) Arson that causes great bodily injury in punishable by imprisonment in state prison for up to nine years. (Pen. Code, § 451, subd. (a).) If more than one victim suffers great bodily injury, or if the arson proximately caused multiple structures to burn, the defendant is subject to up to a five-year enhancement. (Pen. Code, § 451.1, subds. (a)(3) & (4).) The same enhancement applies if the defendant has a prior felony conviction for arson or unlawfully causing a fire. (Pen. Code, § 451.1, subd. (a)(1).) The penalty for aggravated arson is 10 years to life (Pen. Code, § 451.5, subd. (c).)

   Aggravated arson allows for one of the aggravating factors to be a measure of property damage. Under this law, a fire causing more than $10,100,000 of losses is a qualifying aggravating factor. (Pen. Code, § 451.5, subd. (a)(2)(A).) Proving a person committed arson and proving one of the qualifying aggravating factors is sufficient to convict on aggravated arson and secure a sentence of 10 years to life. (Pen. Code, § 451.5, subd. (c).)

   California law already authorizes one- to four-year sentence enhancements for commission or attempted commission of a felony where the property damage is between $50,000 and $3,000,000. (Pen. Code, § 12202.6, subds. (a)(1)-(4).) Any fire that burns 500 or more acres is almost certainly going to cost at least $50,000 in property loss and can easily top the $3,000,000 mark, which would allow prosecutors to seek a four-year enhancement on top of the penalty for the arson conviction.

In fact, there was a relatively significant sentence imposed last year on Gary Maynard, who was responsible for setting a series of fires behind firefighters during the Dixie Fire in 2021.[1] Maynard faced up to 20 years in federal prison and a $250,000 fine.[2] Prosecuted by the US Department of Justice, his sentence ultimately included nearly five-and-a-half years in prison, more than $13,000 in restitution fines, and three years of supervised release.[3]

Given the availability and severity of existing laws, it is unclear whether additional penalties are warranted in this area of the law.

3) **Sentence Enhancements**: This bill would authorize sentence enhancements for causing 500 or more acres to burn.

Enhancements have been widely used in California.[4] Indeed, more than half of currently incarcerated women and more than two-thirds of currently incarcerated men have at least one sentence enhancement.[5] Sentence enhancements increase an individual's prison sentence, which then increases the size of our prison population.[6] Sentence enhancements are applied disproportionately to Black men.[7] A 2023 study found, "Black people are over-represented among the currently incarcerated with sentence enhancements while Hispanic people are slightly under-represented. Among those *without* a sentence enhancement, 49% are Hispanic while 19% are Black. Individuals serving a sentence with an enhancement are overwhelmingly male."[8]

Sentence enhancements increase the average sentence by nearly 2 years for all admissions.[9] Confinement length for those with a sentence enhancement is approximately 5 years longer compared to those without an enhancement.[10] Approximately 40% of prison admissions since 2015 have sentences lengthened by a sentence enhancement.[11]

There is reason to doubt the effectiveness of enhancements. Reliable evidence shows increased penalties generally fail to deter criminal behavior.[12] Instead, data shows a rise in deterrence linked with the likelihood of being caught and the perception of being caught.[13] In

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[1] "Former Professor Sentenced for Setting Multiple Fires Blocking in Firefighters Responding to the Dixie Fire" (May 30, 2024) U.S. Department of Justice <https://www.justice.gov/usao-edca/pr/former-professor-sentenced-setting-multiple-fires-blocking-firefighters-responding> [as of Feb. 27, 2025].
[2] Downs, *Former criminal justice college professor pleads guilty to setting fires near Dixie Fire* (May 30, 2024) CBSNews.com <https://www.cbsnews.com/sacramento/news/former-criminal-justice-college-professor-pleads-guilty-to-setting-fires-near-dixie-fire/> [as of Feb. 27, 2025].)
[3] *Ibid.*
[4] Bird, *et al., Sentence Enhancements in California*, Cal. Policy Lab (Mar. 2023) <https://www.capolicylab.org/wp-content/uploads/2023/03/Sentence-Enhancements-in-California.pdf> [as of Feb. 25, 2025].
[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*
[12] *Five Things About Deterrence* (May 2016) National Institute of Justice <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [as of Feb. 25, 2025].
[13] *Ibid.*

contrast, the act of punishment and the length of punishment largely do not increase deterrence.[14]

Given the questionable effectiveness of enhancements on criminal deterrence, one might reasonably question whether this proposed enhancement would meaningfully deter people from committing arson or reduce the number of arsons each year.

4) **Costs of Incarceration:** This bill would increase sentence lengths for burning of 500 or more acres of forest land. The effect of this change, among other things, would mean longer terms of confinement. More people sentenced to state prison for longer terms of confinement means larger prison populations. In 2011, the U.S. Supreme Court ordered California to reduce its prison population because of overcrowding. (*Brown, et al. v. Plata, et al.* (2011) 463 U.S. 593.) The costs of incarcerating a person have also risen dramatically in recent years—from $91,000 per person in 2019 to $133,000 per person in 2024.[15]

   The passage of Proposition 36 has caused the Legislative Analyst's Office (LAO) to project an increase of more than 4,000 people in confinement over the next two years.[16] Higher carceral populations create the conditions for prison overcrowding. Therefore, one might reasonably question whether adding more sentence enhancements is sound public policy.

5) **Proximate Causation Problems:** This bill would authorize sentence enhancements for any person convicted of arson who is the proximate cause of 500 or more acres of forest land to burn.

   Proximate causation is a confusing concept in the law. Courts have done their best to apply this murky requirement to the facts and law at issue, however, the law remains no clearer despite their efforts.

   For more than half a century the concept of proximate cause has frustrated courts and misled jurors. The California Supreme Court in one case wrote, "Even courts and the legal community have struggled with the meaning of proximate causation." (*People v. Bland* (2002) 28 Cal.4th 313, 334-335). In another case the court noted, "The misunderstanding engendered by the term 'proximate cause'" has been documented. In a scholarly study of 14 jury instructions, [the instruction for proximate cause] produced proportionally the most misunderstanding among laypersons." (*Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1051.) As far back as the 1950s, an appeals court judge said, "The concept of proximate causation has given courts and commentators consummate difficulty and has in truth defied precise definition." (*State Comp. Ins. Fund* v. *Ind. Acc. Com.* (1959) 176 Cal.App.2d 10, 20.)

   Despite the misunderstanding, we charge juries with applying this concept knowing they do not understand it in the first place. This is not ideal. Adding another law to the books that lacks clarity, evades clear application, and demonstrably confuses the people responsible for rendering verdicts could lead to undesirable consequences.

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[14] *Ibid.*
[15] Harris, et al., *California's Prison Population* (Sept. 2024) Public Policy Institute of California <https://www.ppic.org/publication/californias-prison-population/> [as of Feb. 27, 2025].
[16] *The 2025-26 Budget: California Department of Corrections and Rehabilitation* (Feb. 25, 2025) Legislative Analyst's Office https://lao.ca.gov/Publications/Report/4986> [as of Feb. 26, 2026].

5) **Argument in Support**: According to the *California District Attorneys Association*, "Under existing law, a person convicted of felony arson may receive this enhancement if they have previously been convicted of certain arsons, caused great bodily injury, or destroyed multiple structures. However, large-scale wildfires devastate California's environment, endanger communities, and place an enormous financial burden on state and local agencies. Recognizing the catastrophic impact of these crimes, AB 297 appropriately extends the sentencing enhancement to cases where arson results in significant destruction of forest land.

   "California continues to experience increasingly severe wildfires, many of which are the result of deliberate acts of arson. Strengthening accountability for arsonists whose actions lead to large-scale devastation is an important step in protecting lives, property, and our natural resources."

6) **Argument in Opposition**: According to *Initiate Justice*, "Arson of a structure or forest land is already a felony punishable in state prison by two, four, or six years. Notably, felony arson of forest land (CPC 451(c)) does not require that an individual intend to burn or destroy forest land, other harm, or even start a fire. In re VV, 51 Cal. 4th 1020, 1023, 252 P.3d 979, 980 (2011) (Two youth were found guilty of felony arson of forest land where they ignited a firecracker "without intent to cause a fire or any other harm") (emphasis added). Individuals with mental health conditions are disproportionately represented in individuals convicted of arson. AB 297 will waste California's resources by increasing prison sentences largely for individuals with mental health conditions who may or may not have intent to cause harm, destroy property, or to even start a fire. AB 297 would also capture individuals who caused fires accidently and proximately caused forest land to burn because power companies failed to implement wildfire prevention plans or heed advice from firefighters to shut power lines. California should direct its limited resources to corporations that actually have the ability to prevent the start and spread of wildfires.

   "The report to the California Legislature found that the new Office of Energy Infrastructure Safety approved utility companies' wildfire prevention plans even when they were 'seriously deficient.' Included were plans by Pacific Gas & Electric, California's largest utility, which was held responsible for sparking the state's deadliest wildfire, the Camp Fire that killed 85 people in 2018. (Julie Cart, Audit: California utilities aren't doing enough to reduce wildfire threats, CalMatters. March 24, 2022).

   "While investigations continue regarding the causes and major amplifiers of the tragic Los Angeles fires that began in January 2025, fire radio traffic strongly suggests Edison live power lines impeded firefighting efforts. On January 8, firefighters were asking SoCal Edison to shut power off to a second neighborhood– Altadena."

7) **Related Legislation**: AB 336 (Wallis), would change the penalty for causing a fire by recklessly setting fire to, burning, or causing to be burned, any structure, forest land, or property from an alternate misdemeanor/felony to a straight felony. AB 336 is scheduled to be heard today in this committee.

8) **Prior Legislation**:

   a) SB 1242 (Min), Chapter 173, Statutes of 2024, provides that for the crime of reckless fire setting, if the offense was carried out within a merchant's premises in order to

facilitate organized retail theft, it shall be a factor in aggravation at sentencing.

b) SB 281 (McGuire), Chapter 706, Statutes of 2023, increases the dollar amount of property damages and other losses required to be an aggravating factor to $10,100,000, exclusive of damage to, or destruction of, inhabited dwellings and extend the operation of the former aggravated arson offense until January 1, 2029.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association

**Oppose**

ACLU California Action
All of Us or None Los Angeles
California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Courage California
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
LA Defensa
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union

Rubicon Programs
San Francisco Public Defender
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy

**Analysis Prepared by**: Dustin Weber / PUB. S. / (916) 319-3744

Date of Hearing: March 4, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 321 (Schultz) – As Introduced January 24, 2025

**SUMMARY**: Authorizes a court to reduce a felony to a misdemeanor where the crime is an alternate felony-misdemeanor at any time during the pendency of a criminal case not otherwise prohibited by law.

**EXISTING LAW**:

1) Defines a felony as a crime that is punishable with death, by imprisonment in the state prison, or by imprisonment in a county jail under the provisions of realignment. (Pen. Code, § 17, subd. (a).)

2) States that every other crime or public offense is a misdemeanor except those offenses classified as infractions. (Pen. Code, § 17, subd. (a).)

3) Recognizes that certain crimes may be punished as either a felony or a misdemeanor. These crimes are commonly known as "wobblers." (Pen. Code, § 17, subd. (b).)

4) States that when a crime is punishable as either a felony or a misdemeanor, it is a misdemeanor for all purposes under the following circumstances:

   a) After a judgment imposing punishment other than imprisonment in state prison or imprisonment in the county jail under realignment;

   b) When the court, upon committing the defendant to the Division of Juvenile Justice, designates the offense to be a misdemeanor;

   c) When the court grants probation to a defendant without imposition of sentence, and at the time of granting probation or upon application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor;

   d) When the prosecutor files a complaint in court specifying that the offense is a misdemeanor; or,

   e) When at or before the preliminary hearing, or before filing an order holding the defendant to answer, the magistrate determines the offense is a misdemeanor. (Pen. Code, § 17, subd. (b).)

5) States that modification of a probationary sentence includes reducing a felony to a misdemeanor. (Pen. Code, § 1203.3, subd. (b)(1)(B).)

6) States if a petition filed in juvenile court alleging that a minor has committed an offense that would, in the case of an adult, be punishable alternatively as a felony or a misdemeanor, the court, subject to a hearing, ***at any stage of a proceeding***, may determine that the offense is a misdemeanor, in which event the case shall proceed as if the minor had been brought before the court on a misdemeanor petition. (Welf. & Inst. Code, § 700.3.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "AB 321 empowers judges in criminal cases to review a prosecutor's charging decision at all stages of a case. Under current law, judges must make a final decision on whether a 'wobbler case' will move forward as a misdemeanor or felony at or before the preliminary hearing or after a guilty plea at the time of sentencing. At the time of the preliminary hearing, because there is no discovery requirement, the court often has very little information about the accused person and their alleged conduct to determine whether a misdemeanor or felony charge is appropriate.

   "This bill is a streamlined amendment that permits judges to decide whether a wobbler case will move forward as a misdemeanor or felony when they have sufficient evidence to make that decision. This ensures that individuals face consequences proportionate to their actions and that public resources spent on trials are appropriate to the severity and complexity of each case. This bill would enhance court efficiency, save public funds, and lead to a more equitable criminal justice system by guarding against overcharging, mischarging, and severe penalties, particularly for vulnerable populations."

2) **Reducing a Felony to a Misdemeanor**: "Offenses punishable as felonies or misdemeanors are traditionally called 'wobblers.'" (*People v. Stevens* (1996) 48 Cal.App.4th 982, 987, fn. 12.) In crimes punishable as wobblers, whether the crime is charged as felony depends on the decision of the prosecutor; whether it is sentenced as a felony depends on either the prosecutor or the court. (*People v. Cornell* (1860) 16 Cal. 187, 188.) Unless and until a misdemeanor sentence is imposed, the conviction for a wobbler remains a felony for all purposes. (*People v. Bozigian* (1969) 270 Cal.App.2d 373, 379.) Reduction of a felony to a misdemeanor enables a defendant to avoid many, but not all, of the consequences of conviction. For example, reduction of a felony to a misdemeanor does not relieve a defendant of the duty to register as a sex offender if the offense requires registration.

   Penal Code section 17, subdivision (b) is the mechanism by which a defendant may be sentenced to a misdemeanor, even if the case was initially filed as a felony. Existing law specifies four different times during an adult criminal proceeding where either the court or the prosecutor may reduce a charged felony to a misdemeanor.[1] First, a court may reduce a felony to a misdemeanor during the imposition of sentence where the sentence is something other than confinement in state prison or county jail. (Pen. Code, § 17, subd. (b)(1).) Second, reduction may occur when the court grants probation to a defendant on a charged felony.

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[1] Penal Code section 17, subdivision (b)(2) allows the court to reduce a juvenile's felony to a misdemeanor where the juvenile is committed to custody in the Division of Juvenile Justice (since the closure of DJJ, juveniles sentenced to incarceration are held in local secured youth facilities.)

(Pen. Code, § 17, subd. (b)(3).) Third, a defendant's charge may be reduced to a misdemeanor when the district attorney files a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of arraignment or plea objects to the offense being made a misdemeanor. (Pen. Code, § 17, subd. (b)(4).) Finally, a court may reduce a felony to a misdemeanor ***at or before*** a preliminary hearing or prior to making a finding holding a defendant over for trial on a felony. (Pen. Code, § 17, subd. (b)(5).)

The statute does not give the court the authority to reduce a straight felony to a misdemeanor. (*People v. Feyrer* (2010) 48 Cal.4th 426, 441-442.) "If ultimately a misdemeanor sentence is imposed, the offense is a misdemeanor from that point on, but not retroactively." (*Id.* at p. 439.) Penal Code section 17, subdivision (b) identifies the circumstances in which a wobbler offense will be treated as a misdemeanor. One circumstance lies within the discretion of the district attorney. Specifically, as noted above, Penal Code section 17, subdivision (b)(4) states that unless a defendant objects, a wobbler offense is a misdemeanor for all purposes when the district attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor. The remaining circumstances confer discretion on the court. They outline the procedural mechanisms by which a magistrate or trial court may classify an offense as a misdemeanor.

This bill proposes to remove the reference in subdivision (b)(5) limiting a court's discretion to reduce a felony to a misdemeanor ***at or before*** a preliminary hearing, to any time without reference to whether it is before or after the preliminary hearing.

This bill is arguably necessary at this time because the law is a bit unforgiving in its timing – even in instances where a reduction would ordinarily be in the court's discretion and consistent with the evidence. In many cases, the evidence available ***at or before*** a preliminary hearing is in its infancy. Pursuant to Proposition 115 and Penal Code section 859, the prosecutor need only demonstrate probable cause to hold the defendant over for trial and hearsay may be relied upon to make out the elements of the offense. In most cases, the investigating officer is the only person who testifies at a preliminary hearing. (See Pen. Code, § 872, subd. (b) ["…the finding of probable cause may be based in whole or in part upon the sworn 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."].) As noted by the author,

> "AB 321 will improve court efficiency and save public funds. Misdemeanor trials usually last anywhere from a few days to a week, while felony trials can take weeks or even months, depending on the complexity of the case. Expending court resources for felony-level trials on cases that should be misdemeanors (based on evidence that becomes available to the court after the preliminary hearing) is wasteful. This bill will ensure that the amount of public resources spent is proportionate to the severity and complexity of each case. The corollary provision for youth adjudications, [Welfare and Institutions Code, section] 700.3, allows judges to re-classify wobblers at 'at any stage of a proceeding.' Further, no other motion heard in criminal proceedings is subject to a time restriction like 17(b) motions. AB 321 brings 17(b) motions

> under the same process as every other motion. … This simple change would increase court efficiency and save the state money, as well as reduce the high human cost and financial burden of over-incarceration."

The California Supreme Court recently held in *People v. Superior Court (Mitchell)* (hereinafter *Mitchell)* (2024) 17 Cal.5th 228, that a court may not deviate from the strict timeline embedded in the phrase "at or before" a preliminary hearing.

3) ***Mitchell***: In December 2024, the California Supreme Court held that a court may not reduce a wobbler from a felony to a misdemeanor just before the beginning of a trial because Penal Code section 17, subdivision (b)(5) only authorizes a court to reduce a wobbler at or before the preliminary hearing. (*Mitchell, supra,* 17 Cal.5th at 243.) In *Mitchell*, the defendant was charged with one count of felony resisting an executive officer and one count of misdemeanor possession of methamphetamine. The district attorney also alleged a prior strike.[2] Four and a half years later, after several pretrial motions and a number of continuances, the parties announced they were ready for trial. Following pre-trial motions, defense counsel inquired of the court whether Mitchell could plead guilty to the misdemeanor possession of methamphetamine charge, if the prosecution would dismiss the felony charge of resisting an executive officer.

The district attorney declined the offer when asked by the trial court, and the court said it had no authority to force such a bargain. However, the court observed it had been a long time since the offenses were committed, and it asked whether the defendant had committed any other offenses since then. Defense counsel said they were unaware of any charges or convictions, other than another misdemeanor drug possession charge in 2018 – the same year of the instant complaint. The court, just before voir dire was scheduled to begin, agreed to reduce the resisting charge to a misdemeanor. Defendant asked for a continuance to consider enrollment in a veteran diversion program. The People filed an appeal and a writ of mandate and the court stayed the criminal proceedings until resolution of the People's appeal.[3] On appeal, the Supreme Court held:

> "[U]nless the magistrate declares the offense to be a misdemeanor at the preliminary hearing, '[a] wobbler offense charged as a felony is regarded as a felony for all purposes until imposition of sentence or judgment. … The Court of Appeal here correctly held that the trial court's order was unauthorized as well. [Internal citation omitted.) The preliminary hearing had

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[2] The district attorney sought to enhance Mitchell's sentence by doubling the imposed based term for a prior battery with great bodily injury. (Pen. Code, §§ 667, subd. (d)(1) and 1170, subd. (b)(5).) If sentenced to the maximum on a felony where a prior strike is alleged and found true, Mitchell could have faced as much as six years in state prison. Health and Safety Code section 11377 is a misdemeanor subject to one year in county jail and probably would have been dismissed if the defendant was sentenced to state prison.

[3] In subsequent proceedings after the trial court reinstated the felony pending an interlocutory appeal, the prosecution moved to reduce the felony charge to a misdemeanor. Mitchell then pleaded guilty to both counts (now misdemeanors), and the trial court imposed a modest fine and sentenced him to time served. (*Mitchell*, 17 Cal.5th 237.) However, the prosecution later requested to stay imposition of sentence to continue the appeal.

> already occurred, so section 17, subdivision (b)(5) was inapplicable. Any sentencing was still to come, and it was only a possibility, since Mitchell had not been convicted or pled guilty. Section 17, subdivision (b)(1) and (3) were therefore inapplicable as well. .... There is no other statutory authority for the superior court's order reducing the felony wobbler to a misdemeanor over the People's objection." (*Mitchell*, 17 Cal.5th at 243, citing *People v. Silva* (1995) 36 Cal.App.4th 231, 235.)

The Court ultimately remanded the case back to the trial court to consider the People's motion that the matter should probably be dismissed in the interest of justice pursuant to Penal Code section 1385, "given that Mitchell's case was now into its seventh year." (*Mitchell*, 17 Cal.5th at 254.) Therefore, the change proposed by this bill would likely improve judicial economy and reduce costs by clarifying the court's discretion to reduce a felony to a misdemeanor at any time in the proceedings.

4) **Immigration Implications:** This bill would create more judicial discretion to reduce a felony to a misdemeanor, where appropriate, if the defendant is charged with a wobbler. This may provide a greater level of protection for undocumented ***and*** documented immigrants in California at a time when unjustified deportations are being weaponized against communities of color. When a non-citizen defendant is convicted of a crime, particularly a felony, it poses serious immigration consequences – even to people lawfully admitted. Most felony offenses are considered "aggravated" for immigration purposes because felony offenses are usually subject to at least a one-year sentence. (8 USC § 1101(a)(43)(G) & (U).)

Immigrants convicted of "aggravated" offenses are not eligible for most forms of discretionary relief including asylum and voluntary removal, and are subject to detention without bond. (8 USC § 1227(a)(2)(A)(iii).)[4] Most drug offenses are deportable for any non-citizen. (8 U.S.C. § 1227(a)(2)(B)(i).) Additionally, any "crime of moral turpitude" is also subject to deportation. (8 U.S.C. § 1227, subd. (a)(2)(A).)

Penal Code section 18.5 states that any misdemeanor offense has a maximum incarceration period of 364 days – specifically to avoid possible immigration consequences in misdemeanor cases. The state of criminal law is usually fluid and changes often. For instance, Proposition 36 (2024), increased certain misdemeanor offenses to alternate felony-misdemeanor offenses related to controlled substances and theft. (See Health & Saf. Code, § 11370.4; Pen. Code, § 666.1.)

As the U.S. Supreme Court noted in *Padilla v. Kentucky* in 2010, "deportation for noncitizens who commit a removable offense is practically inevitable, barring a decision by the Attorney General to exercise his limited discretionary power to cancel removal" in an overwhelming number of cases. (*Padilla v. Kentucky* (2010) 130 S. Ct. 1473, 1478.) Providing more judicial discretion to reduce a felony to a misdemeanor may be useful in

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[4] See *United States v. Esparza-Ponce* (9th Cir. 1999) 193 F.3d 1133, 1136 [theft is a crime of moral turpitude for immigration purposes].) Among other possible consequences, a crime of moral turpitude can render a noncitizen inadmissible. (8 USC § 1182(a)(2)(A)(i)(I)) or deportable (8 USC § 1227(a)(2)(A)(i) & (ii).)

ensuring that non-citizen immigrants are not swept up in legal changes that may result in a long involuntary detention and summary removal.

5) **Retroactivity:** Retroactivity[5] means whether a change in sentencing or constitutional interpretation should be applied to cases where the penalty may already be imposed and appeals exhausted. As a general matter, Penal Code section 3 states "No part of it (meaning the codes) is retroactive, unless expressly so declared." If retroactivity is not specified, the law is not applied retroactively. However, beginning in 1965, ***if a defendant's case is still pending at the time of the change and the law seeks to lessen a criminal penalty, they may be eligible for application of the new law.*** (*In re Estrada* (1965) 63 Cal.2d 740, 746 (hereinafter "*Estrada*").) This is known as the "final judgement rule."

*Estrada* and other cases since 1965 have held "new laws that reduce the punishment for a crime are presumptively to be applied to defendants whose judgments are not yet final." (*People v. Conley* (2016) 63 Cal.4th 646, 656, citing *Estrada*, 63 Cal.2d at 746).).

> The *Estrada* presumption [of retroactivity] stems from our understanding that when the Legislature determines a lesser punishment is appropriate for a particular offense or class of people, **it generally does not wish the previous, greater punishment—which it now deems too severe—to apply going forward. We presume the Legislature intends the reduced penalty to be used instead in all cases in which there is no judgment or a nonfinal one,** and in which it is constitutionally permissible for the new law to control. (*People v. Padilla* (2022) 13 Cal.5th 152, 162, emphasis added.)

Finality is broadly construed by the courts, but generally means where a criminal proceeding has not yet reached final disposition in the highest court authorized to review it. (*People v. Esquivel* (2021) 11 Cal.5th 671, 677.)

> Recently, we held that 'a convicted defendant who [was] placed on probation after imposition of sentence [was] suspended, and who [did] not timely appeal from the order granting probation, [could] take advantage of ameliorative statutory amendments that [took] effect during a later appeal from a judgment revoking probation and imposing sentence.' We reasoned that the defendant's "prosecution had not been 'reduced to final judgment at the time the ameliorative legislation was enacted as

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[5] The California Supreme Court in *People v. Burgos* (2024) 16 Cal.5th 1 ruled that a defendant was not eligible for a bifurcated trial on a gang enhancement pursuant to Penal Code section 1109, as enacted in 2021 (Stats. 2021, ch. 699, § 5.) The Court correctly rejected *Estrada* as applied to the defendant's case because Penal Code section 1109 was not a criminal penalty reduction, but rather a "prophylactic rule of criminal procedure...." Accordingly, the general rule rejecting retroactivity unless otherwise specified by the statute controlled. In his concurrence, Justice Gorban asked the Legislature to consider the retroactive application of new laws, particularly where the statute is not a clear reduction of a criminal penalty, and to express their intent regarding whether any changes in that kind of legislation should be applied retroactively.

> the criminal proceeding … [meaning it] ha[d] not yet reached final disposition in the highest court authorized to review it (Internal citations omitted)." (*People v. Esquivel, supra,* 11 Cal.5th at 677, *citing People v. McKenzie* (2020) 9 Cal.5th 40, 43-45.)[6]

The proposed legislation is not a clear reduction in penalty, but rather a possible requirement of criminal procedure. If a court determines that *Estrada* does not apply, the change would only apply prospectively.

If a defendant is pending appeal from, for example, a court's refusal to reduce a felony to a misdemeanor between the preliminary hearing and sentencing, and *Estrada* is not applied, this legislative change would be of no use. If the author intends this change to be applicable to those pending appeal, it could specify that application should apply to those pending "final judgment" pursuant to *Estrada.*[7]

6) **Argument in Support**: According to the *San Francisco Public Defender*, "The Better Informed Decisions Act ("The BID Act"), which ensures that judges in the state's criminal courts have more of an opportunity to review relevant evidence necessary during the course of a case so that they can make better informed decisions on whether a case will move forward as a misdemeanor or a felony.

"The offense for which an accused individual faces trial, also known as the criminal charge against them, should match the accused individual's alleged conduct. This ensures that the individual faces consequences that are proportionate to their actions. However, as explained below, current law places strict restrictions on when judges can review charges to make sure they are fair.

"Currently, for offenses called 'wobblers'—which can be classified as misdemeanors or felonies—judges must make a final decision on whether a case will move forward as a misdemeanor or felony at or before the preliminary hearing (the very beginning of a case) or after a guilty plea (at the end of a case). At the preliminary hearing stage of a case, very little information has been gathered about the accused person and their alleged conduct. The BID Act is a simple amendment that removes the time restriction that only permits judges to classify wobblers as felonies or misdemeanors at the very beginning of the case.

"Under the BID Act, judges can make this decision when they have gathered sufficient information about the accused person and their conduct. The BID Act will improve court efficiency and save public funds because it will ensure that the amount of public resources spent is proportionate to the severity and complexity of each case.

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[6] See also *Padilla, supra,* 13 Cal.5th at 161 (holding that "non-final" includes any case remanded following a habeas petition.)

[7] The committee surveyed prosecutors and public defenders from multiple counties and all reported never seeing this in a criminal case – meaning an instance where a court reduced a felony to a misdemeanor at a time not explicitly outlined in the statute. Therefore, it seems unlikely this will arise as a retroactivity issue.

"Lastly, allowing judges to review charges to determine if they are supported by the evidence at a later stage in the criminal case can guard against overcharging and mischarging and thereby reduce unjust outcomes."

7) **Prior Legislation**:

a) AB 1941 (Jones-Sawyer), Chapter 18, Statutes of 2018, authorized the court to reduce an offense punishable as either a felony or a misdemeanor to a misdemeanor upon successful completion of probation, regardless of whether the court had previously imposed a felony sentence.

b) SB 1106 (Weiner), Chapter 734, Statutes of 2022, prohibited the denial of a petition for expungement relief, the denial of release on parole to another state, and the denial of a petition for reduction of a conviction, solely on the basis that the person has not yet satisfied their restitution obligations.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

San Francisco Public Defender (Co-Sponsor)
ACLU California Action
All of Us or None Los Angeles
Asian Americans Advancing Justice Southern California
California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Californians for Safety and Justice
Californians United for A Responsible Budget
Courage California
Drug Policy Alliance
Ella Baker Center for Human Rights
Fresh Lifelines for Youth
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
LA Defensa
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
Orange County Equality Coalition
Prosecutors Alliance of California, a Project of Tides Advocacy
Rubicon Programs
Ryse Center
Secure Justice
Smart Justice California, a Project of Tides Advocacy
Southeast Asia Resource Action Center
Vera Institute of Justice

**Opposition**

None on file

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

Date of Hearing: March 4, 2025
Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 327 (Ta) – As Introduced January 27, 2025

**As Proposed to be Amended in Committee**

**SUMMARY**: Increases the punishment for a second or subsequent offense of "swatting" from a misdemeanor to an alternate felony-misdemeanor. Specifically, **this bill**:

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

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

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

**EXISTING LAW**:

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

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

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

4) Provides that an intent to annoy or harass is established by proof of repeated calls or communications over a period of time, however short, that are unreasonable under the circumstances. (Pen. Code, § 653x, subd. (b).)

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

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

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

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

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

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

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "According to the Educator's School Safety Network, 63.8% of all violent incidents at schools in the past year were the result of false active shooter reports—a shocking 546% increase from 2018 to 2023. Put simply, swatting puts children, teachers, and other innocent members of our community in immediate jeopardy.

   "Any person, including school faculty, students, and public servants, can easily be a target of swatting regardless of position or politics. This serious crime wastes public resources, leads to property damage, causes undue stress for the victims, and risks serious injury or death. Swatting is more than just a threat to the safety of individuals, including our school faculty, students, public officials, and their families – it's an affront to democracy. By granting judicial discretion to address the crime of swatting as a wobbler, AB 327 will help crack down on such a dangerous crime to keep our schools and communities safe."

2) **"Swatting"**: According to one security expert, "Swatting involves people making fraudulent 911 calls reporting serious-level criminal threats or violent situations like bomb threats, hostages, killing, etc. to fool the police into raiding the house or business of somebody who is not actually committing a crime."[1]

   There have been numerous high-profile swatting instances in recent years.[2] According to Politico, "A broad range of politicians and other public figures have been targeted by swatting calls for a variety of reasons that aren't always tied to Trump. The pranks are designed to fool unsuspecting police into responding with force, sometimes with their arms drawn. Callers have reported fake incidents at the homes of Boston Mayor Michelle Wu, a Democrat, and Republican Rep. Majorie Taylor Greene of Georgia has claimed multiple incidents, criticizing the FBI while lauding local police for their response." (*Ibid.*)

   The FBI recently launched a "Virtual Command Center" in partnership with state and local law enforcement to help track and prevent swatting incidents. (Ward, *supra.*) "The initiative allows police and intelligence fusion centers to share details of swatting incidents taking place within their jurisdictions, providing authorities nationwide with a "common operating picture" regarding the nature of the threat, and can assist in identifying whether the same perpetrator is responsible for multiple incidents."[3]

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

   For example, AB 1775 (Jones-Sawyer), Chapter 327, Statutes of 2020, made a number of changes in criminal and civil law to discourage individuals from using 911 or other communications with law enforcement to harass people. That bill was an explicit response to a number of media reports on people calling 911 and making false claims to harass others, in part because the target individuals were members of a protected class.[4] The threat posed by such reports is likely greater to communities of color, and particularly to Black men.[5]

   Under existing law, it is a misdemeanor punishable by up to one year in county jail to use the 911 emergency system to harass another person if the conduct qualifies as a hate crime, as specified. (Pen. Code, § 653y, subd. (c).) Where no evidence of hate crime exists, knowingly

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[1] Ward, *The FBI has formed a national database to track and prevent 'swatting'*, NBCNews.com (June 29, 2023) <https://www.nbcnews.com/news/us-news/fbi-formed-national-database-track-prevent-swatting-rcna91722> [last visited Mar. 27, 2024].
[2] See e.g., Cadelago, *California lieutenant governor 'swatted' after push to boot Trump from ballot*, Politico.com (Jan. 4, 2024) <https://www.politico.com/news/2024/01/04/california-lieutenant-governor-swatted-after-push-to-boot-trump-from-ballot-00133952> [last visited Mar. 27, 2024].
[3] Campbell, *High-profile political figures are the targets in latest wave of 'swatting' incidents. Why the trend is so alarming*, CNN.com (Jan. 15, 2024) <https://www.cnn.com/2024/01/14/us/swatting-incidents-trend-explained/index.html> [last visited Mar. 27, 2024].
[4] See e.g., North, *Amy Cooper's 911 call is part of an all-too-familiar pattern*, Vox.com (May 26, 2020) <https://www.vox.com/2020/5/26/21270699/amy-cooper-franklin-templeton-christian-central-park> [last visited Mar. 27, 2024].
[5] Cf. Premkumar, *Police Use of Force and Misconduct in California*, PPIC (Oct. 2021) <https://www.ppic.org/publication/police-use-of-force-and-misconduct-in-california/> [last visited Mar. 27, 2024].

using the 911 emergency system for the purpose of harassing another is an alternate infraction-misdemeanor for a first offense, and a straight misdemeanor for a second or subsequent offense. In these circumstances, a misdemeanor for a first offense would carry possible imprisonment in county jail for up to six months, whereas a second or subsequent offense carries a punishment of up to one year in county jail. (Pen. Code, § 653y, subd. (b)(1) & (2).)

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

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

4) **Deterrence**: Research shows that increasing the severity of the punishment does little to deter the crime. According to the National Institute of Justice, "Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not 'chasten' individuals convicted of crimes, and prisons may exacerbate recidivism… Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs.[6]

5) **Argument in Support**: According to the *Los Alamitos Unified School District*, "Swatting poses a direct threat to public safety, but it is especially dangerous when schools and students are involved. Swatting is the malicious act of falsely reporting an emergency, such as an active shooter situation, in order to trigger a large-scale law enforcement response. This not only diverts critical resources away from legitimate emergencies, but it places students and educators in immediate harm's way. According to the Educator's School Safety Network, 63.8% of all violent incidents at schools in the past year were the result of false active shooter reports—a shocking 546% increase from 2018 to 2023.

"These fake threats can cause panic and trauma for students, teachers, and parents. The presence of SWAT teams and armed officers on school grounds, responding to a false report, can lead to confusion, fear, and even physical harm. The disruption caused by swatting

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[6] National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [as of Feb. 25, 2025].

incidents interrupts the learning environment, jeopardizing students' education and well-being. Swatting events can have a lasting psychological impact on those involved, particularly children who should feel safe in their schools.

"AB 327 provides a necessary response to this growing problem. By allowing the State of California to prosecute swatting as either a misdemeanor or felony, the bill gives law enforcement the tools to appropriately address these crimes based on their severity. It also ensures that victims, including schools and their staff, are compensated for the costs they incur, such as repairs to property or other damages resulting from these false reports. However, AB 327 will not apply to minors or first-time offenders."

6) **Argument in Opposition**: According to the *California Public Defenders Association*, "AB 327 seeks to create *additional* punishments for specific acts of falsely calling the police. Existing law makes it a misdemeanor to report an emergency to specified government entities knowing that report to be false. Existing law makes it a misdemeanor to initiate communication with the 911 emergency system with the intent to annoy or harass another person. AB 327 would additionally make those offenses punishable as felonies. By increasing the penalty for existing crimes, this bill would impose a state-mandated local program.

"AB 327 flies in the face of the evidence and studies. Increasing the severity of punishment does little to deter crime. According to the National Institute of Justice, laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not "chasten" individuals convicted of crimes, and prisons may exacerbate recidivism.

"Moreover, sending a person convicted of a crime to jail is not a very effective way to deter crime. Jails are good for punishing criminals and keeping them off the street, but jail sentences (particularly long sentences) are unlikely to deter future crime.

"In fact, the Bureau of Justice Statistics reckons that the United States spends more than $80 billion each year to keep roughly 2.3 million people behind bars. Many experts say that figure is a gross underestimate, though, because it leaves out myriad hidden costs that are often borne by prisoners and their loved ones, with women overwhelmingly shouldering the financial burden. Increased punishments have a ripple effect on the incarcerated person's loved ones. Many families shell out hundreds of dollars each month to feed, clothe and stay connected to someone behind bars, paying for health care, personal hygiene items and phone calls and other forms of communication.

"Moreover, incarceration itself often worsens – and can even create – symptoms of mental illness. Research shows that, while it varies from person to person, incarceration is linked to mood disorders including major depressive disorder and bipolar disorder. The carceral environment can be inherently damaging to mental health by removing people from society and eliminating meaning and purpose from their lives. On top of that, the appalling conditions common in prisons and jails — such as overcrowding, solitary confinement, and routine exposure to violence — can have further negative effects. Researchers have even theorized that incarceration can lead to "Post-Incarceration Syndrome," a syndrome similar to PTSD, meaning that even after serving their official sentences, many people continue to

suffer the mental effects.

"When laws and policies are changed to reduce reliance on law enforcement, and incarcerating people for longer periods of time, resources can instead be invested in supportive services that prevent crime more effectively and far more cheaply rather than endlessly cycling people through courts, jails, and back onto the streets. Moreover, it increases public safety when limited law enforcement resources and courts are used to address violent crime.

"While AB 327 wastes scarce public resources and does nothing to address the underlying root causes of crime, it further commits precious public resources to increased punishments."

7) **Prior Legislation**:

a) AB 2609 (Ta), of the 2023-2024 Legislative Session, was nearly identical to this bill. AB 2609 failed passage in the Assembly Appropriations Committee.

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

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

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

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

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

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

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

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

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Alta Loma School District
Anaheim Union High School District
Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Civil Liberties Advocacy
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Reserve Peace Officers Association
Chico Unified School District
Chowchilla Elementary School District
Claremont Police Officers Association
Culver City Police Officers' Association
Desert Sands Unified School District
El Segundo Unified School District
Fremont Union High School District
Fullerton Police Officers' Association
Hope School District District
Los Alamitos Unified School District
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Madera Unified School District
Murrieta Police Officers' Association
Newport Beach Police Association
Palo Verde Union Elementary School District
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Rio Bravo-greeley Union School District
Riverside Police Officers Association
Riverside Sheriffs' Association
San Lorenzo Valley Unified School District
San Marcos Unified School District
San Pasqual Union School District
Santa Ana Police Officers Association
Washington Unified School District
Yucaipa-calimesa Joint Unified School District

**Oppose**

ACLU California Action
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Ella Baker Center for Human Rights

Friends Committee on Legislation of California
Initiate Justice
LA Defensa
Local 148 LA County Public Defenders Union
San Francisco Public Defender

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

# Amended Mock-up for 2025-2026 AB-327 (Ta (A))

## Mock-up based on Version Number 99 - Introduced 1/27/25
## Submitted by: Staff Name, Office Name

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

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

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

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

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

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

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

(e) An individual convicted of violating this section, based upon a report that resulted in an emergency response, is liable to a public agency for the reasonable costs of the emergency response by that public agency and is liable to another party for property damage incurred by the other party as a result of the emergency response.

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

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

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

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

(c) Upon conviction of a violation of this section, an individual shall be liable for the reasonable costs incurred by any unnecessary emergency response, including property damage incurred by any party as a result of the emergency response.

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

Date of Hearing: March 4, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 336 (Wallis) – As Introduced January 28, 2025

**SUMMARY**: Changes the penalty for causing a fire by recklessly setting fire to, burning, or causing to be burned, any structure, forest land, or property from an alternate misdemeanor/felony to a straight felony. Specifically, **this bill**:

1) Makes unlawfully causing a fire that causes great bodily injury a straight felony punishable in state prison for two, four, or six years, rather than an alternate misdemeanor/felony.

2) Makes unlawfully causing a fire of a structure or forestland a straight felony punishable in state prison for 16 months, two years, or three years, rather than an alternate misdemeanor/felony.

3) Requires a fine of up to $10,000 for the crimes above and for unlawfully causing a fire that causes an inhabited structure or property to burn, eliminating the fine of up to $1,000 previously available for a misdemeanor for unlawfully causing a fire.

**EXISTING LAW**:

1) Defines unlawfully causing a fire as recklessly setting fire to, burning, or causing to be burned any structure, forest land, or property. (Pen. Code, § 452).

2) Provides that unlawfully causing a fire that causes great bodily injury is a felony punishable by imprisonment in the state prison for two, four, or six years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine. (Pen. Code, § 452, subd. (a).)

3) Provides that unlawfully causing a fire that causes an inhabited structure or inhabited property to burn is a felony punishable by imprisonment in the state prison for two, three, or four years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine. (Pen. Code, § 452, subd. (b).)

4) Provides that unlawfully causing a fire of a structure or forest land is a felony punishable by imprisonment in the state prison for 16 months, two or three years, or by imprisonment in the county jail for not more than six months, or by a fine, or by both such imprisonment and fine. (Pen. Code, § 452, subd. (c).)

5) Provides that unlawfully causing a fire of property is a misdemeanor, not including someone burning or causing to be burned their own personal property unless there is injury to another person or to another person's structure, forest land, or property. (Pen. Code, § 452, subd. (d).)

6) Authorizes a one-, two-, or three-year enhancement for unlawfully causing a fire if the defendant has a prior conviction for arson or unlawfully causing a fire; a specified first responder suffered great bodily injury as a result of the offense; or the defendant proximately caused either great bodily injury to more than one victim or multiple structures to burn. (Pen. Code, § 452.1, subd. (a)(1)-(4).)

7) Defines arson as willfully and maliciously setting fire to or burning or causing to be burned or aiding, counseling, or procuring the burning of, any structure, forest land, or property. (Pen. Code, § 451).

8) Makes arson that causes great bodily injury a felony punishable by imprisonment in state prison for five, seven, or nine years. (Pen. Code, § 451, subd. (a).)

9) Requires imprisonment in state prison for five, seven, or nine years for every person who commits arson or unlawfully causes a fire during state of emergency. (Pen. Code, § 454, subds. (a)(2) & (b).)

10) Defines "maliciously" as importing a wish to vex, defraud, annoy, or injure another person, or an intent to do a wrongful act. (Pen. Code, § 450, subd. (e).)

11) Defines "recklessly" as being aware of and consciously disregarding a substantial and unjustifiable risk that his or her act will set fire to, burn, or cause to burn a structure, forest land, or property. The risk shall be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. (Pen. Code, § 450, subd. (f).)

12) Authorizes the court to impose a fine upon conviction for any crime punishable by imprisonment in county jail or state prison, where no fine is prescribed, of up to $1,000 for misdemeanors or $10,000 for felonies. (Pen. Code, § 672.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement:** According to the author, "Reckless burning is a serious threat to our communities, especially when we consider the 2 million acres of land in California classified as high or very high fire risk. With so many areas vulnerable to wildfires, we cannot afford to let negligence slide by. Small acts of recklessness can lead to catastrophic consequences, as we've seen time and time again. We need to close the loophole that allows these offenses to be treated as misdemeanors. It's crucial to hold those responsible accountable [sic] to protect our communities, stop the cycle of burning and rebuilding, and ensure that we don't repeat the same devastating losses year after year. Bills like AB 336 are key to this effort, and we must act now to safeguard lives and property."

2) **Effect of the Bill:** This bill would change the punishment for recklessly setting fire to, burning, or causing to be burned, any structure, forestland, or property from an alternate misdemeanor/felony to a straight felony and require payment of a fine up to $10,000.

Like the penalties for arson (Pen. Code, § 451), this bill would require felony penalties for recklessly and unlawfully causing fires. Unlike arson, however, this bill would require imposition of a substantial fine in conjunction with incarceration. As a result, this bill would require imposition of nearly identical and sometimes greater penalties for two distinct crimes – arson and recklessly causing a fire.

Delineating between different criminal acts and assigning proportionate punishment for those distinct acts is a foundational responsibility of representative legislative bodies. Thomas Jefferson wrote, "[I]t becomes a duty in the legislature to arrange in a proper scale the crimes which it may be necessary for them to repress, and to adjust thereto a corresponding gradation of punishments."[1]

This legislative responsibility is arguably frustrated where imposition of the maximum penalty under this bill would be 6 years' incarceration and a $10,000 fine for the lesser offense of unlawfully causing a fire, while the minimum penalty for the greater offense of arson is 5 years' imprisonment. As our Supreme Court stated, it is a fact "that reckless burning is a lesser offense of arson." (*People v. Atkins* (2001) 25 Cal.4th 76, 88.) The statutes themselves make clear the difference in these crimes by including separate definitions for malicious and reckless. (Pen. Code, § 450, subds. (e) & (f).)

The court in *Atkins* went on to state,

> Arson's . . . willful and malice requirement ensures that the setting of the fire must be a deliberate and intentional act, as distinguished from an accidental or unintentional ignition or act of setting a fire. On the other hand, the offense of unlawfully causing a fire covers reckless accidents or unintentional fires, which, by definition, is committed by a person who is 'aware of and consciously disregards a substantial and unjustifiable risk that his or her act will set fire to, burn, or cause to burn a structure, forest land, or property.' For example, such reckless accidents or unintentional fires may include those caused by a person who recklessly lights a match near highly combustible materials." (*Atkins,* supra, 25 Cal.4th 76, 88-89.)

Under this bill, the person in the court's example who carelessly lights a match near highly combustible materials could be punished more severely than a person who calculatedly sets fire to those same combustible materials intending to produce widespread destruction.

3) **Incongruent Penalties for Arson and Unlawfully Causing a Fire:** Penalties in this statutory scheme are already significant. Possession of a flammable or combustible substance with an intent to commit arson is an alternate misdemeanor/felony. (Pen. Code, § 453, subd. (a).) One- to three-year enhancements are available for unlawfully causing a fire, for example, with a prior conviction for arson or unlawfully causing a fire that results in great bodily injury. (Pen. Code, § 452.1, subds. (a)(1) & (2).) Unlawfully causing a fire under a state of emergency authorizes incarceration of five, seven, or nine years in state prison. (Pen. Code, § 454, subd. (a)(2).)

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[1] Thomas Jefferson, "64. A Bill for Proportioning Crimes and Punishments in Cases Heretofore Capital" (June 18, 1779) <https://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0064#TSJN-01-02-0206-fn-0001.> [as of Feb. 25, 2025].

This bill also appears to make inconsistent and perplexing changes to the statute. Under current law, the three crimes modified in this bill are all alternate felony/misdemeanors. This bill would make two of them straight felonies and retain the alternate felony/misdemeanor for one of them. Yet, the bill punishes all three crimes with the same fine. The reason for the incongruent penalties, but the same fines, for these crimes is unclear.

More confusingly still, this bill retains the alternate felony/misdemeanor for a crime that carries a higher maximum state prison sentence than one of the crimes for which the alternate felony/misdemeanor was eliminated. Again, no clear reason for this difference has been provided.

4) **Impact of Increased Penalties on Criminal Deterrence:** This bill would increase prison lengths and require fines.

It is unclear whether increasing penalties has a deterrent effect. There is reliable evidence showing increased penalties generally fails to deter criminal behavior.[2] Data shows greater deterrent effects as the likelihood of being caught and the perception that one will get caught rises.[3] In contrast, the act of punishment and the length of punishment largely do not increase deterrence.[4]

Criminal fines and the collection of those fines is commonly misunderstood. The breakdown and supporting information below is illustrative.

**Example:** Penalty assessments and fees on a base fine of $1,000:

| | |
|---|---|
| Pen. Code, § 1464 state penalty on fines: | 1,000 ($10 for every $10) |
| Pen. Code, § 1465.7 state surcharge: | 200 (20% surcharge) |
| Pen. Code, § 1465.8 court operation assessment: | 40 ($40 fee per criminal offense) |
| Gov. Code, § 70372 court construction penalty: | 500 ($5 for every $10) |
| Gov. Code, § 70373 assessment: | 30 ($30 for felony or misdemeanor) |
| Gov. Code, § 76000 penalty: | 700 ($7 for every $10) |
| Gov. Code, § 76000.5 EMS penalty: | 200 ($2 for every $10) |
| Gov. Code, § 76104.6 DNA fund penalty: | 100 ($1 for every $10) |
| Gov. Code, § 76104.7 additional DNA fund penalty: | 400 ($4 for every $10) |
| **Total Fine with Assessments:** | **$4,170** |

Thus, imposing the maximum fine under this bill along with the associated fines and fees amounts to approximately $41,700, which would eat up more than 50% of a US family's median household income.[5] Criminal fines rapidly balloon into unpayable amounts for most of the population, which then create significant downstream economic consequences for

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[2] *Five Things About Deterrence* (May 2016) National Institute of Justice <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [as of Feb. 25, 2025].
[3] *Ibid.*
[4] *Ibid.*
[5] *Median Household Income by County in the US* (Sept. 2024) U.S. Census Bureau <https://www.census.gov/library/visualizations/interactive/median-household-income.html> [as of Feb. 25, 2025].

impacted individuals and society. Unsurprisingly, the judicial branch reported that $8.6 billion in fines and fees remained unpaid at the end of 2019-20.[6]

With evidence also showing that increasing criminal fines increases felony recidivism, specifically among a population that historically has faced inexplicably disproportionate punishment in the criminal justice system,[7] it remains questionable whether increasing criminal punishment, as this bill does, would produce the desired impact.

5) **Reducing Discretion and the Costs of Incarceration:** This bill would require charging felonies and imposing fines for recklessly causing a fire. Rather than retaining the option for prosecutors to charge either a misdemeanor or felony for unlawfully causing a fire, this bill would require felony charges, except in one case. The effect of this mandate, among other things, would reduce prosecutorial and judicial discretion. Reducing the discretion of judges and prosecutors in these cases would eliminate their abilities to make certain critical decisions based on the unique context of each case. The freedom to make these vital decisions potentially has important public safety implications.

   The alternate misdemeanor/felony, also known as a "wobbler", gives prosecutors and judges a measure of discretion in case dispositions. A "wobbler" is a crime that can charged as, and result in a conviction for, a felony or a misdemeanor. A district attorney has the discretion to charge a "wobbler" as a felony or a misdemeanor. If a defendant is charged with a felony for a crime that is a "wobbler" a judge has discretion, under certain circumstances, to reduce the charge to a misdemeanor, or sentence the defendant as a misdemeanor.

   More people sentenced to state prison for longer terms of confinement means larger prison populations. In 2011, the U.S. Supreme Court ordered California to reduce its prison population because of overcrowding. (*Brown, et al. v. Plata, et al.* (2011) 463 U.S. 593.) The costs of incarcerating a person have also risen dramatically in recent years—from $91,000 per person in 2019 to $133,000 per person in 2024.[8] Therefore, one might reasonably question whether removing the discretion of prosecutors and judges to charge or sentence defendants for misdemeanors in appropriate cases is sound public policy.

6) **Argument in Support**: According to the *California District Attorneys Association*, "Wildfires pose a severe and increasing threat to California communities, endangering lives, destroying homes, and causing billions of dollars in damage. Existing law allows for misdemeanor punishments in certain cases of recklessly causing a fire, even when it results in great bodily injury or the destruction of inhabited structures. AB 336 appropriately increases accountability by classifying these crimes as straight felonies, ensuring that individuals who recklessly cause catastrophic wildfires face meaningful consequences. The proposed legislation aligns with California's commitment to public safety and wildfire

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[6] *Overview of Criminal Fine and Fee System* (May 13, 2021) Legislative Analyst's Office <https://lao.ca.gov/Publications/Detail/4427> [as of Feb. 25, 2025].

[7] One recent study has shown that the increase in fines levied for criminal punishment increased the likelihood of felony recidivism, especially among Black defendants. Giles, *The Government Revenue, Recidivism, and Financial Health Effects of Criminal Fines and Fees* (Sept. 9, 2023) Wellesley College <http://dx.doi.org/10.2139/ssrn.4568724> [as of Feb. 25, 2025].

[8] Harris, et al., *California's Prison Population* (Sept. 2024) Public Policy Institute of California <https://www.ppic.org/publication/californias-prison-population/> [as of Feb. 27, 2025].

prevention. By deterring reckless behavior that leads to devastating wildfires, AB 336 will help protect our residents, first responders, and natural resources."

7) **Argument in Opposition**: According to the *California Public Defenders Association*, "Many criminal offenses, known as 'wobblers,' can be charged as misdemeanors or felonies, depending on the seriousness of the offense. The conduct underlying these cases encompasses a range of seriousness and criminal culpability. Allowing such conduct to be charged and convicted as a misdemeanor or felony gives discretion to the prosecution and judges to ensure that the seriousness of the crime is appropriately reflected in the charges and punishment. It is a means to achieve just results.

   "For example, prosecutorial and judicial discretion are essential to distinguish teenagers who are setting off fireworks on the 4th of July who cause a fire from a mentally sound adult who has been warned by the park ranger about the high fire conditions and then leaves their campfire unattended allowing it to destroy the forest.

   "More serious conduct involving unlawfully causing a fire already has more serious punishments. The conduct AB 336 seeks to address should remain as a wobbler to provide prosecutors and judges the discretion appropriate to achieve just outcomes."

8) **Related Legislation**: AB 297 (Hadwick), would authorize punishment with a three-, four-, or five-year enhancement for a person who proximately caused 500 or more acres of forestland to burn. AB 297 is scheduled to be heard in this committee today.

9) **Prior Legislation**:

   a) SB 1242 (Min), Chapter 173, Statutes of 2024, provides that for the crime of reckless fire setting, if the offense was carried out within a merchant's premises in order to facilitate organized retail theft, it shall be a factor in aggravation at sentencing.

   b) SB 281 (McGuire), Chapter 706, Statutes of 2023, increases the dollar amount of property damages and other losses required to be an aggravating factor to $10,100,000, exclusive of damage to, or destruction of, inhabited dwellings and extend the operation of the former aggravated arson offense until January 1, 2029.

   c) SB 177 (Nielsen), of the 2019-2020 Legislative Session, would have made technical changes to Pen. Code § 451, relating to arson. SB 177 was not heard in policy committee and subsequently returned to the Senate desk.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Association of School Police Chiefs

California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association

**Oppose**

ACLU California Action
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
LA Defensa
Local 148 LA County Public Defenders Union
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Vera Institute of Justice

**Analysis Prepared by**: Dustin Weber / PUB. S. / (916) 319-3744

Date of Hearing: March 4, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 355 (Sanchez) – As Introduced January 30, 2025

**SUMMARY**: Expands the definition of "fear" in the extortion statute to include any threat to post, distribute, or create AI-generated images or videos of another.

**EXISTING LAW**:

1) States fear, such that it constitutes extortion, may be induced by a threat of any of the following:

   a) To do an unlawful injury to the person or property of the individual threatened or of a third person.

   b) To accuse the individual threatened, or a relative of his or her, or a member of his or her family, of a crime.

   c) To expose, or to impute to him, her, or them a deformity, disgrace, or crime.

   d) To expose a secret affecting him, her, or them.

   e) To report his, her, or their immigration status or suspected immigration status. (Pen. Code, § 519, subd. (1)-(5).)

2) Provides that every person who extorts property or other consideration from another, under circumstances not amounting to robbery or carjacking, by means of force or threat, as specified, shall be punished by imprisonment in county jail for a term of two, three, or four years. (Pen. Code, § 520.)

3) Defines extortion as the obtaining of property or other consideration from another, with their consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right. (Pen. Code, § 518, subd. (a).)

4) Defines consideration as anything of value, including sexual exploitation of a child, or an image of an intimate body part, as specified. (Pen. Code, § 518, subd. (b).)

5) States it is not extortion if a person under 18 years of age obtains consideration for an image of sexual conduct or an image of an intimate body part. (Pen. Code, § 518, subd. (c).)

6) Provides that every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed in the Penal Code, is guilty of a

misdemeanor. (Pen. Code, § 521.)

7) States that except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars ($1,000), or by both. (Pen. Code, § 19.)

8) States that every person who attempts, by means of any threat, such as is specified in existing provisions of law relating to threats sufficient to constitute extortion, to extort money or other property from another is punishable by imprisonment in the county jail not longer than one year or in the state prison or by fine not exceeding ten thousand dollars ($10,000), or by both such fine and imprisonment. (Pen. Code, § 524.)

**FISCAL EFFECT**: Unknown

**COMMENTS**:

1) **Author's Statement**: According to the author, "The development of artificial intelligence is moving at a record pace and so are the dangers it poses to our most vulnerable populations. To help equip our prosecutors with the tools they need to crack down on criminals targeting these people, I introduced AB 355, which will clarify that extortion by means of threat to post, distribute, or create AI-generated images or videos is considered a criminal act.

   "Currently, California law defines extortion as the obtaining of property from another, even with consent, through the wrongful use of force, fear, or certain threats. Of particular concern for vulnerable populations, especially minors, are "sextortion" cases involving AI-generated images. "Sextortion" involves coercing victims into providing sexually explicit photos or videos of themselves, then threatening to share them publicly or with the victim's family and friends. The key motivators for this are typically a desire for more illicit content, financial gain, or to bully and harass others. For example malicious actors have used manipulated photos or videos with the purpose of extorting victims for ransom or to gain compliance for sending actual nude photos.

   "As of January 2024, the FBI has publicly identified the uptick in sextortion cases as a "growing threat targeting minors." Based on recent victim reporting, the malicious actors typically demanded:

   1. Payment through with [sic] threats to share the images or videos with family members or social media friends if funds were not received.

   2. The victim send real sexually-themed images or videos.

   "These crimes can result in victims harming themselves or even committing suicide. From October 2021 to March 2023, the FBI and Homeland Security Investigations received over 13,000 reports of online financial sextortion of minors. The sextortion involved at least 12,600 victims—primarily boys—and led to at least 20 suicides.

"In 2023, the FBI issued an alert to warn the public of the growing use of AI by malicious actors to create manipulative images and videos for the purpose of ensnaring victims in sextortion schemes. While California law does prohibit sextortion generally, it does not specifically prohibit extortion with AI-generated material. This loophole makes it harder for prosecutors and law enforcement to successfully convict criminals and address this growing issue."

2) **AI Defined:** AI is the simulation of human intelligence processes by machines, especially computer systems. Specific applications of AI include expert systems, natural language processing, speech recognition, and machine vision. According to TechTarget, an aggregate site for AI in enterprise:

> "In general, AI systems work by ingesting large amounts of labeled training data, analyzing the data for correlations and patterns, and using these patterns to make predictions about future states. In this way, a chatbot that is fed examples of text can learn to generate lifelike exchanges with people, or an image recognition tool can learn to identify and describe objects in images by reviewing millions of examples. New, rapidly improving generative AI techniques can create realistic text, images, music and other media."
>
> *Learning*: This aspect of AI programming focuses on acquiring data and creating rules for how to turn it into actionable information. The rules, which are called algorithms, provide computing devices with step-by-step instructions for how to complete a specific task.
>
> *Reasoning:* This aspect of AI programming focuses on choosing the right algorithm to reach a desired outcome.
>
> *Self-correction*: This aspect of AI programming is designed to continually fine-tune algorithms and ensure they provide the most accurate results possible.
>
> *Creativity:* This aspect of AI uses neural networks, rules-based systems, statistical methods and other AI techniques to generate new images, new text, new music and new ideas.
>
> AI, machine learning and deep learning are common terms in enterprise IT and sometimes used interchangeably, especially by companies in their marketing materials. But there are distinctions. The term AI, coined in the 1950s, refers to the simulation of human intelligence by machines. It covers an ever-changing set of capabilities as new technologies are developed. Technologies that come under the umbrella of AI include machine learning and deep learning. Machine learning enables software applications to become more accurate at predicting outcomes without being explicitly programmed to do so. Machine learning algorithms use historical data as input to predict new output values. This approach became vastly more effective with the rise of large data sets to train on. Deep

> learning, a subset of machine learning, is based on our understanding of how the brain is structured. Deep learning's use of artificial neural network structure is the underpinning of recent advances in AI, including self-driving cars and ChatGPT." (TechTarget, "A Guide to Artificial Intelligence in the Enterprise.")[1]

3) **Extortion:** The crime of extortion requires a showing that a person obtained something of value from another with consent but induced by a wrongful use of force or fear. (Pen. Code, § 518; CALCRIM No. 1830 [use of fear or force requires proving a defendant threatened to unlawfully injure or use force against another person or a third person or the property of another.].) Fear, as defined by the crime of extortion, means to induce by a threat of exposing the person to "a deformity, disgrace, or crime" or by threat of exposing a secret affecting another. (*People v. Goodman* (1958) 159 Cal.App.2d 54, 61 [force or fear must be the controlling cause.].)

   Threatening to expose a secret or in any way threatening to harm a person's reputation in order to receive something of value from the other person is considered extortion. For instance, threats to expose photos or images of another person engaged in sexually explicit conduct in exchange for something of value is extortion. The secret must affect the threatened person in some way so unfavorable to their reputation or other interest that they would probably pay out money or property to avoid threatened exposure. (*People v. Peniston* (1966) 242 Cal.App.2d 719, 722.) In the *Peniston* case, the defendant possessed partially nude studio photographs of the complaining witness, and told her that unless she gave him money he would take them to her family. The court upheld an extortion conviction. (Id. at pp. 722-723.)

   Recently, in *People v. Bollaert* (2016) 248 Cal.App.4th 699, 725-726, the Court of Appeal upheld an extortion conviction based on the defendant's conduct of obtaining and displaying nude photographs and private information on a website, while taking payments from victims on another website to remove the contents. The court reasoned that the defendant committed extortion based on threatening to expose a secret because the photographs were secret to anyone who had not viewed defendant's website. (*Id.*)

   The U.S. Attorney's Office for the Central District of California defines "sextortion" as "a type of extortion or blackmail of a victim who is usually asked for a nude image. The perpetrator typically threatens to publicly release a nude image unless a victim performs a sexual act or complies with other demands."

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[1] Located at https://www.techtarget.com/searchenterpriseai/definition/AI-Artificial-Intelligence [last visited February 19, 2025.] It is not clear whether AI currently has the authority to access internet images without those images being identified as "training material" by the person developing the AI. If AI-generated material may be developed by releasing the technology onto the web, it is unknown as whether child pornography could be gathered from illegal websites where the person requesting the AI material does not access the materials directly. From a legal standpoint, that would make dissemination of child pornography much more difficult to prosecute because the district attorney could have to prove the content requestor knew, or even should have known, the AI program would gather child pornography from an illegal website.

For example, in *U.S. v Abrahams* (C.D. Cal 2014) No. SA 13-422M, the defendant took control of victims' email accounts, social media accounts, and their computers – which allowed him to remotely turn on web cameras and take pictures of them naked. The defendant used the nude photos to threaten the women to publicly post the compromising photos to the victims' social media accounts – unless they either sent more nude photos or videos, or engaged in a Skype session with him and complied with his demands. Based on this conduct, the defendant was convicted of one count of computer hacking and three counts of extortion and was sentenced to five years in federal prison. (See Press Release, "Glendale man who admitted hacking into hundreds of computers in 'sextortion' case sentenced to five years in federal prison," U.S. District Attorney's Office for the Central District (December 9, 2013).)

This bill expands the definition of "fear" in the extortion statute to specify that AI generated content may also be sufficient to induce fear such that the elements of extortion may be proven. Given that the existing definition of "fear" in Penal Code section 519 is very broad, it already criminalizes threats of exposure or the imputation of reputational harm in exchange for something of value. That likely includes AI-generated content.

4) **Argument in Support**: According to the *California District Attorneys Association*, "Under existing law, extortion is defined as the obtaining of property or an official act through force, fear, or under color of official right. The bill appropriately expands the definition of fear sufficient to constitute extortion to include threats to create, post, or distribute AI-generated images or videos. This update is necessary to address the evolving landscape of digital crimes, where deepfakes and other AI-generated content can be weaponized to manipulate, coerce, and intimidate individuals.

   "By ensuring that threats involving AI-generated content are covered under extortion laws, AB 355 provides a critical tool to prosecutors in holding bad actors accountable while protecting individuals from this emerging form of exploitation. As technology advances, so must our legal frameworks to safeguard Californians from new and evolving threats."

5) **Argument in Opposition**: According to the *California Public Defenders Association*, "Under existing law, the crime of extortion, is "the obtaining of property or other consideration from another, with his or her consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right." (Penal Code section 518.) A threat to do any of the following is sufficient to generate fear – injure the person or their property, accuse them of a crime, expose "a deformity, disgrace or crime", expose a secret, or report their immigration status. (Penal Code section 519.)

   "AB 355 proposes to amend Penal Code section 519 to include in the definition of fear the threat "to post, distribute, or create AI-generated images or videos of another." Additionally, the bill would extend the ambit of the existing sections to all relatives.

   "While CPDA is sympathetic to the concern over the potential abuse of AI to harass and intimidate individuals, AB 355 is a misguided effort to address this problem.

   "AB 355 is unnecessary and redundant since the statute already covers a genuine and understandable fear of injury to person or property or the kind of disgrace or shame caused by accusing someone of a crime, exposing a secret or reporting their immigration status, The

courts have not imposed a mechanical test as to how the threat will be conveyed or generated. It can be done by whispering in someone's ear or having a town crier in the village square. There is no reason to believe that California courts are unable to deal with the threat of posting an AI generated video on social media.

"AB 355 would violate due process by amending the statute to proscribe vaguely defined conduct, including the mere creation of an AI image regardless of its content. The failure to narrowly tailor the amendment to clearly harassing or threatening behavior could result in absurd results.

"For example, a threat to create and post an AI image of an overweight individual sloppily eating a bowl of pasta could be sufficient under AB 355's broad language. Would threatening to generate a video of an individual with no rhythm dancing qualify as a threat? With the broad and vague language that AB 355 proposes the possibilities are endless.

"AB 355's failure to specify what kind of "AI- generated images or videos of another" not only renders it vague and overbroad but would lead to inconsistent results. Prosecutors, juries, and judges would struggle to charge, interpret, and apply the statue. In one jurisdiction, one image might constitute a threat while in another jurisdiction, the same image would be viewed as harmless.

"By failing to properly define and give notice of the prohibited conduct, AB 355 undermines fundamental principles of due process. AB 355 is unnecessary, vaguely drafted and violates due process rights and would undermine the community's faith in the criminal legal system."

6) **Related Legislation**: SB 276 (Weiner), would permit the City and County of San Francisco to issue a permit to sell items on public property if they are able to demonstrate that they obtained merchandise lawfully and not through theft or extortion. SB 276 is pending hearing in the Senate Local Government Committee.

7) **Prior Legislation**:

   a) AB 1872 (Sanchez), of the 2023-2024 Legislative Session, was identical to this bill. AB 1872 was held on the Assembly Appropriations Committee suspense file.

   b) SB 500 (Leyva), Chapter 518, Statutes of 2019, expands the crime of extortion to include not only the obtaining of property, but also the obtaining of other consideration, including sexual conduct or images of intimate body parts.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Arcadia Police Officers' Association
Brea Police Association

Burbank Police Officers' Association
California Association of School Police Chiefs
California Civil Liberties Advocacy
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Orange County Sheriff's Department
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association

**Oppose**

ACLU California Action
California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice
LA Defensa
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy

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