California State Assembly

PUBLIC SAFETY

NICK SCHULTZ
CHAIR

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AGENDA

Tuesday, March 25, 2025
8:30 a.m. -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	AB 292	Patterson	Violent felonies: domestic violence.
2.	AB 352	Pacheco	Crimes: criminal threats.
3.	AB 475	Wilson	Prisons and jails: employment of inmates.
4.	AB 479	Tangipa	Criminal procedure: vacatur relief.
5.	AB 486	Lackey	Vehicles: sideshows and street takeovers.
6.	AB 528	Alanis	Criminal procedure: child pornography.
7.	AB 535	Schiavo	Threatening a witness: assisting a prosecution.
8.	AB 568	Lackey	Serious felonies: furnishing fentanyl to a minor.
9.	AB 572	Kalra	Criminal procedure: interrogations.
10.	AB 584	Hadwick	Firearms dealers and manufacturers: secure facilities.
11.	AB 633	Krell	Human trafficking: vacatur relief for victims.
12.	AB 690	Schultz	Criminal procedure: indigent defense compensation.
13.	AB 701	Ortega	Corrections: solitary confinement.
14.	AB 704	Lowenthal	Criminal records: destruction.
15.	AB 710	Irwin	Theft of a gift card.
16.	AB 741	Ransom	Department of Justice: child abuse reporting.
17.	AB 785	Sharp-Collins	Community Violence Interdiction Grant Program.
18.	AB 799	Celeste Rodriguez	prisons: death benefit for incarcerated firefighters.
19.	AB 800	Ortega	State prisons: food.
20.	AB 809	Quirk-Silva	Corrections: rehabilitation space.
21.	AB 812	Lowenthal	Recall and resentencing: incarcerated firefighters.
22.	AB 837	Davies	Ketamine.
23.	AB 938	Bonta	Criminal procedure: sentencing.

Date of Hearing: March 25, 2025
Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 292 (Patterson) – As Introduced January 22, 2025

SUMMARY: Adds the crime of felony domestic violence to the list of "Violent Felonies" that subject a defendant to additional penalties, including under California "Three Strikes" Law, and reduce the custody credits that a defendant may receive.

EXISTING LAW:

1) Provides that willfully inflicting corporal injury resulting in a traumatic condition upon a victim, as specified, is a felony punishable by two, three, or four years in state prison, or a misdemeanor punishable by up to one year in county jail, or by a fine of up to $6,000, or by both a fine and imprisonment. (Pen. Code, § 273.5, subd. (a).)

2) Provides, for purposes of domestic violence, a victim is the offender's spouse or former spouse; the offender's cohabitant or former cohabitant; the offender's fiancé, or someone with whom the offender has, or previously had, and engagement or dating relationship, as specified; or, the mother or father of the offender's child. (Pen. Code, § 273.5, subd. (b)(1)-(4).)

3) Defines "traumatic condition" as a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. (Pen. Code, § 273.5, subd. (c).)

4) Defines a "violent felony" as any of the following:

   a) Murder or voluntary manslaughter;

   b) Mayhem;

   c) Rape or spousal rape accomplished by means of force or threats of retaliation;

   d) Sodomy by force or fear of immediate bodily injury on the victim or another person;

   e) Oral copulation by force or fear of immediate bodily injury on the victim or another person;

   f) Lewd acts on a child under the age of 14 years, as defined;

   g) Any felony punishable by death or imprisonment in the state prison for life;

h) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which the defendant has used a firearm, as specified;

i) Any robbery;

j) Arson of a structure, forest land, or property that causes great bodily injury;

k) Arson that causes an inhabited structure or property to burn;

l) Sexual penetration accomplished against the victim's will by means of force, menace or fear of immediate bodily injury on the victim or another person;

m) Attempted murder;

n) Explosion or attempted explosion of a destructive device with the intent to commit murder;

o) Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;

p) Explosion of a destructive device which causes death or great bodily injury;

q) Kidnapping;

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

s) Continuous sexual abuse of a child;

t) Carjacking, as defined;

u) Rape or penetration of genital or anal openings by a foreign object;

v) Felony extortion;

w) Threats to victims or witnesses, as specified;

x) First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;

y) Use of a firearm during the commission of specified crimes; and,

z) Possession, development, production, and transfers of weapons of mass destruction.

aa) Rape of an intoxicated person, as specified. (Pen. Code, § 667.5(c)(1)-(24).)

2) Provides that when a defendant is convicted on a new felony offense and has a prior conviction for a specified violent felony, the defendant shall receive a consecutive three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified, unless the defendant meets certain conditions. (Pen.

Code, § 667.5, subd. (a).)

3) States that a conviction of a violent felony counts as a prior conviction for sentencing under the two and three strike law. (Pen. Code, § 667.)

4) Provides that if a defendant is convicted of a felony offense and it is pled and proved that the defendant has been convicted of one prior serious or violent offense as defined, the term of imprisonment is twice the term otherwise imposed for the current offense. (Pen. Code, § 667

5) Specifies that notwithstanding any other law, any person who is convicted of a felony that is contained in the "violent" felony list shall accrue no more than 15% of work-time credit. (Pen. Code, § 2933.1, subd. (a).)

6) Defines a "serious felony" as any of the following: murder or manslaughter; mayhem; rape; sodomy; oral copulation; lewd acts on a child under the age of 14; any felony punishable by death or imprisonment for life; any felony in which the defendant inflicts great bodily injury; attempted murder; assault with the intent to commit rape or robbery; assault with a deadly weapon or instrument on a peace officer; assault by a life prisoner on a non-inmate; assault with a deadly weapon by an inmate; arson; exploding a destructive devise with the intention to commit murder or great bodily injury; first-degree burglary; armed robbery or bank robbery; kidnapping; holding of a hostage by a person confined to a state prison; attempting to commit a felony punishable by death or life in prison; any felony where the defendant personally used a dangerous or deadly weapon; selling or otherwise providing heroin, PCP or any type of methamphetamine-related drug; forcible sexual penetration; grand theft involving a firearm; carjacking; assault with the intent to commit mayhem, rape, sodomy or forcible oral copulation; throwing acid or other flammable substance; assault with a deadly weapon on a peace officer; assault with a deadly weapon on a member of the transit authority; discharge of a firearm in an inhabited dwelling or car; rape or sexual penetration done in concert; continuous sexual abuse of a child; shooting from a vehicle; intimidating a victim or witness; any attempt to commit the above-listed crimes except assault or burglary; and using a firearm in the commission of a crime and possession of weapons of mass destruction. (Pen. Code § 1192.7, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "By definition, domestic violence is violent; however, under current California law, in most instances, felony domestic abuse convictions are considered "nonviolent offenders and are eligible for early release under Prop. 57 after serving only 50% of their sentence. Additionally, nonviolent felonies are not considered strikes under California's three strikes law, which limits prosecutors from seeking longer sentences for repeat offenders. This reality has resulted in the perpetuation of domestic abuse, and in some cases the loss of life. According to research compiled by USA Today, the Associated Press, and Northwestern University, more than 68% of mass shooters have a documented history of domestic violence or have killed a family member. Whether you're a Republican, Independent, or Democrat, you can't argue with the data. Statistics show that violent domestic abusers are the individuals most likely to commit mass shootings. If we

hold them accountable, we will reduce mass shootings."

2) **Existing Penalties for Domestic Violence:** Existing penalties for domestic violence can be serious. Domestic violence is currently punishable by imprisonment in the state prison for up to four years or by imprisonment in a county jail. A second offense within seven years of a prior conviction is punishable by up to five years in prison. (Pen. Code, § 273.5, subd. (b).) There is an enhancement of up to five more years if great bodily injury is inflicted. (Pen. Code, § 12022.7, subd. (e).) Under existing law, a felony domestic violence conviction for a person with a prior strike also doubles the maximum term of incarceration. (Pen. Code, § 667, subd. (e)(1).)

   Depending on the conduct involved, domestic violence includes or can be charged as other crimes, including strikeable offenses. For example, a husband who punches his wife may be charged with assault likely to produce great bodily injury, even where the victim did not suffer great bodily injury. (Pen. Code, § 245, subd. (a)(4); see *People v. Medellin* (2020) 45 Cal.App.5th 519, 528; *In re Nirran W.* (1989) 207 Cal.App.3d 1157, 1161.) A mother who causes a traumatic injury to her child's father and prevents him from leaving her residence can be charged with kidnapping, a serious and violent felony, and domestic violence. (See *People v. Delacerda* (2015) 236 Cal.App.4th 282; Pen. Code, § 667.5, subd. (14); Pen. Code, § 1192.7, subd. (c)(20)) A man who threatens to blow up his boyfriend's car and home can be charged and convicted of criminal threats, a serious felony. (Pen. Code, § 422, subd. (a); Pen. Code, § 1192.7, subd. (c)(38); see *People v. Martinez* (1997) 53 Cal.App.4th 1212.) A person who prevents their partner from calling the police during or after an incident involving domestic violence can be charged with a felony for dissuading or preventing a victim from making a report to law enforcement, also a serious felony. (Pen. Code, § 136.1, subd. (b)(1); Pen. Code, § 1192.7, subd. (c)(38).*People v. McElroy* (2005) 126 Cal.App.4th 874).

   Moreover, domestic violence is a wobbler. A "wobbler" is a crime that can charged as, and result in a conviction for, a felony or a misdemeanor. Wobblers give prosecutors and judges a measure of discretion in case dispositions. 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 can, under certain circumstances, reduce the charge to a misdemeanor or sentence the defendant to a misdemeanor. Every offense on the violent felony is a straight felony. Adding felony domestic violence to that list would be unprecedented.

3) **Domestic Violence as a Violent Felony**: This bill would add felony domestic violence to the violent felony list. Domestic violence that results in great bodily injury is already a violent felony. (Pen. Code, § 667.5, subd. (c)(3).) Great bodily injury is a significant or substantial bodily injury—an injury resulting in greater than moderate harm. (Pen. Code, § 12022.7, subd. (f)(1); CALCRIM 3163.) "An examination of California case law reveals that some physical pain or damage, such as lacerations, bruises, or abrasions is sufficient for a finding of 'great bodily injury.'" (*People v. Washington* (2012) 210 Cal.App.4th 1042, 1047.)

   Felony domestic violence, however, does not require great bodily injury. Domestic violence is willfully inflicting corporal injury resulting in a traumatic condition upon a victim, which is defined to include a "[minor] external or internal injury…caused by a physical force." (PC

273.5(a) & (d).) As one court explained:

> "It is *injury* resulting in a traumatic condition that differentiates this crime from lesser offenses. Both simple assault [citation] and misdemeanor battery [citation] are included in a prosecution of section 273.5....
>
> "Some other offenses do require higher degrees of harm to be inflicted before the crime denounced by them is committed: felony battery...requires 'serious bodily injury'; and, felony assault...requires 'force likely to produce great bodily injury.' But, the Legislature has clothed persons of the opposite sex in intimate relationships with greater protection by requiring less harm to be inflicted before the offense is committed. Those special relationships form a rational distinction which has a substantial relation to the purpose of the statute. [Citations.]" (*People v. Abrego* (1993) 21 Cal.App.4th 133, 137, citing *People v. Gutierrez* (1985) 171 Cal.App.3d 944, 952) (internal citations omitted).)

An "injury resulting in traumatic condition" is a lower level of harm than "great bodily injury." A traumatic condition may be found when the victim suffered "redness about [the] face and nose" and soreness of nose and neck. (*People v. Wilkins* (1993) 14 Cal.App.4th 761, 771.) In other words, the bill would affect felony domestic violence convictions resulting in harms dissimilar from those caused by crimes already on the list, such as murder, mayhem, rape, continuous sexual abuse of a child, or exploding a destructive device with the intent to commit murder. And, as previously noted, domestic violence incidents often already involve conduct for which one can be convicted of a strikeable offense.

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

   A violent felony conviction also affects post-sentence credits. As previously discussed, Proposition 57 gave incarcerated persons in state prison the ability to earn additional, nonstatutory credits for sustained good behavior and for approved rehabilitative or educational achievements. The increased credit-earning opportunities incentivizes incarcerated people to take responsibility for their own rehabilitation.[1] Under the California Department of Corrections and Rehabilitation (CDCR) regulations, a violent felony limits good conduct credits (GCC) to 33.3 percent of the total incarceration time, as opposed to 50 percent for a non-violent felony.[2] (*Ibid*; 15 Cal. Code of Regs. § 3043.2.)

   Additionally, under CDCR regulations, persons convicted of nonviolent crimes earn 66.6 percent GCC while housed in camp or Minimum Support Facility (MSF) settings. People convicted of violent crimes, however, earn 50 percent GCC in fire camp settings and 33.3 percent in MSF settings.

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[1] (https://www.cdcr.ca.gov/proposition57/, *supra*.)
[2] (See (https://www.cdcr.ca.gov/proposition57/, *supra*.)

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

5) **Three Strikes Implications**: In general, violent felonies as specified in Penal Code section 667.5 are considered "strikes" for purposes of California's Three Strikes law. However, Proposition 36, which was passed by California voters on November 6, 2012, specifies that only the crimes that were included in the "violent felonies" list as of November 7, 2012, shall be treated as strikes for purposes of the Three Strikes law.

> Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after November 7, 2012, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667 (Three Strikes Law), are to those statutes as they existed on November 7, 2012.

(Pen. Code, § 667.1; see also Pen. Code, § 1170.125 ["Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994, General Election, for all offenses committed on or after November 7, 2012, all references to existing statutes in Sections 1170.12 and 1170.126 are to those sections as they existed on November 7, 2012].)

This bill would make this offense a strike under California law because this bill would amend the date which defines the list of strikes to include the provisions of this bill.

6) **Proposition 20**: Proposition 20 was a November 2020 ballot initiative election that, among other things, would have defined 51 crimes and sentence enhancements as "violent felony offenses" in order to exclude them from Proposition 57's nonviolent offender parole program. The list included felony domestic violence. Californians voters overwhelming rejected Proposition 20.[3] Arguably, this bill would ignore the will of the voters.

7) Increased Penalties and Lack of Deterrent Effect: This bill would add felony domestic violence to the list of "Violent Felonies" that subject a defendant to additional penalties, including under California's "Three Strikes" Law. As a result, people convicted of felony domestic violence would receive fewer custody credits while incarcerated, resulting in longer prison terms. However, there is reason to doubt that longer prison terms will meaningfully deter future criminal conduct.

The National Institute of Justice (NIJ) has looked into the concept of improving public safety through increased penalties.[4] As early as 2016, the NIJ has been publishing its findings that increasing punishment for given offenses does little to deter criminals from engaging in that behavior.[5] The NIJ has found that increasing penalties are generally ineffective and may exacerbate recidivism and actually reduce public safety.[6] These findings are consistent with other

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[3] (https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020), *supra.*)

[4] (https://nij.ojp.gov/about-nij.)

[5] ("Five Things About Deterrence," NIJ, May 2016, available at: https://www.ojp.gov/pdffiles1/nij/247350.pdf].)

[6] (*Ibid.*)

research from national institutions of renown.[7] Rather than penalty increases, the NIJ, advocates for polices that "increase the perception that criminals will be caught and punished" because such perception is a vastly more powerful deterrent than increasing the punishment.[8]

8) **Argument in Support**: According to the *California State Sheriffs Association*, the bill's sponsor, "Within existing statutes, domestic violence is generally not considered a violent felony despite the inherently violent nature of the offense. The sole exception is if, in commission of an offense, great bodily injury is inflicted. The current statutory composition defies logic and ignores the seriousness and impact of domestic violence offenses.

"Domestic violence continues to create victims across our state. This crime has long-term effects on abused persons, their families, and their communities. It is time that the California criminal justice system re-examine and modify its response to this abhorrent behavior.

"By adding felony domestic violence to the state's list of violent felonies, domestic abusers can face increased penalties that appropriately reflect the severity of their crimes and lifelong harm they inflict upon their victims."

9) **Argument in Opposition**: According to *Smart Justice*, "We agree that the Legislature must enact new policies and programs to better prevent and respond to domestic violence (DV) and intimate partner violence (IPV). It is urgent that the legislature address the shortfall in funding for domestic violence shelters and sexual assault providers resulting from the reduction in federal funding through the Victims of Crime Act (VOCA). This bill, AB 292, however, will not improve public safety or help survivors of domestic violence.

"California law already provides sufficient and appropriate penalties for domestic violence, calibrated based on the facts of the case. If a domestic violence incident involves a deadly weapon or results in great bodily injury, then **the offense is a violent felony and a strike under California's Three Strikes Law**. Courts have held that abrasions or bruises are sufficient to constitute great bodily injury. (*People v. Hood* (2014) Cal.App.4th 1356.) The injury need not be permanent, prolonged or protracted to be considered great bodily injury. (*People v. Woods* (2015), 241 Cal.App.4th 461.) It is not necessary for the victim to seek medical treatment. (*People v. Quinonez* (2020) 260 Cal.Rptr.3d 86.) Indeed, one Court of Appeal has even held that physical force or affirmative action on the part of the convicted person is not required to support a finding of great bodily injury. (*People v. Elder* (2014) 227 Cal.App.4th 411.)

"California law provides appropriate punishment for domestic violence, including categorizing the offense as a violent offense and a strike based on the circumstances of the case."

10) **Related Legislation**:

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[7] (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine, April 2014, at pp. 130 -150 available at: https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs, [as of Feb. 25, 2022].)

[8] ("Five Things About Deterrence," *supra*.)

a) AB 38 (Lackey), would designate specified crimes involving rape or sexual assault of a minor who has a developmental disability as "violent felonies." AB 38 is pending a hearing in this committee.

b) AB 568 (Lackey), would add selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give fentanyl to a minor on the list of serious felonies subject to enhanced penalties. AB 568 is scheduled for hearing today in this committee.

c) AB 1011 (Hoover), would add child abuse offenses to the "serious felonies" list and makes any person convicted of specific child neglect offenses ineligible to earn credits for their service as an inmate firefighter. AB 1011 is pending hearing in this committee.

11) **Prior Legislation**:

a) SB 268 (Alvarado-Gil), Chapter 855, Statutes of 2024, made rape of an intoxicated person a "violent" felony where it is pleaded and proved that the defendant caused the intoxication by administering a controlled substance to the victim without their consent and with the intent to sexually assault them.

b) AB 2470 (Joe Patterson) was identical to this bill. AB 2470 did not receive a hearing in this committee.

c) AB 3231 (Villapudua), of the 2023-2024 Legislative Session, adds felony hate crimes, or any felony in which a hate crimes enhancement is imposed, to the list of violent felonies subject to additional penalties. AB 3231 did not receive a hearing in the Assembly Public Safety Committee.

d) AB 229 (Joe Patterson) of the 2023-2024 Legislative Session, would have added several felonies to the "Violent Felony" list, including felony domestic violence. AB 229 failed passage in Assembly Public Safety Committee.

e) AB 1665 (Seyarto) of the 2022-2023 Legislative Session, would have added trafficking a minor to the "serious" felony list. AB 1665 failed passage in this committee.

f) AB 1746 (Hoover) of the 2022-2023 Legislative Session, was substantially similar to AB 1011. AB 1746 failed passage in this committee.

g) SB 75 (Bates), of the 2017-2018 Legislative Session, would have created an additional "violent felony" list that includes 20 felonies that are not on the existing list, including rape of an intoxicated person, in order to exclude offenders from Proposition 57's parole provisions and to impose a three-year sentencing enhancement. SB 75 failed passage in the Senate Public Safety Committee.

h) SB 770 (Glazer), of the 2017-2018 Legislative Session, would have created an additional "violent felonies" list with 30 felonies not on the existing list, including rape of an intoxicated person, in order to exclude offenders from Proposition 57's parole provisions. SB 770 was held in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association (Sponsor)
Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Baptist for Biblical Values
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
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association

Oppose

All of Us or None Los Angeles
Alliance for Boys and Men of Color
Anti Police-terror Project
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Freedom 4 Youth
Initiate Justice
Initiate Justice Action
LA Defensa
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
Next Door Solutions to Domestic Violence
Rubicon Programs
Ryse Center
San Francisco Public Defender

Smart Justice California, a Project of Tides Advocacy
Uncommon Law
Universidad Popular
Vera Institute of Justice

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

Date of Hearing: March 25, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 352 (Pacheco) – As Amended March 17, 2025

SUMMARY: Authorizes a court, in sentencing a person for making criminal threats, against a judge or commissioner, as specified, as a factor in aggravation.

EXISTING LAW:

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

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

3) States a person, whether or not acting under color of law, shall not, by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim. (Pen. Code, § 422.6, subd. (a).)

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

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

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

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

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

9) Defines "elected or appointed official" to include, but is not limited to, all of the following:

   a) State constitutional officer.

   b) Member of the Legislature.

   c) Judge or court commissioner.

   d) District attorney.

   e) Public defender.

   f) Member of a city council.

   g) Member of a board of supervisors.

   h) Appointee of the Governor.

   i) Appointee of the Legislature.

   j) Mayor.

   k) City attorney.

   l) Police chief or sheriff.

   m) Public safety official.

   n) State administrative law judge.

   o) Federal judge or federal defender.

   p) Member of the United States Congress or appointee of the President of the United States.

   q) Judge of a federally recognized Indian tribe. (Gov. Code, § 7920.500.)

10) Prohibits any state or local agency from publicly posting the home address, telephone number, or the name and assessor parcel number associated with the home address of any elected or appointed official on the internet without first obtaining the written permission of that individual. (Gov. Code, § 7928.205, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Rising threats and violence against California's judiciary endanger both court commissioner and litigant access to justice. Recent incidents include courthouse bomb threats, courtroom attacks on judges, and targeted threats against judicial officers across the state.

"AB 352 addresses this problem by adding a subdivision to Penal Code Section 422 to make threats against judges and court commissioners a factor in sentencing. This change enables the courts to impose the maximum three-year sentence for felony criminal threats when appropriate, providing necessary protection for judicial officers while maintaining sentencing discretion. This targeted approach helps to ensure that all Californians maintain safe access to justice.

"Judges play an essential role in upholding the rule of law, making impartial decisions, and ensuring justice is served. However, in recent years, there has been a sharp increase in threats and violence against judicial officers, which undermines the integrity of the legal system and those seeking justice within courthouses. According to the U.S. Marshals Service, between 2021 and 2022, federal judges faced nearly 6,000 threats and inappropriate communications. Similarly, a 2020 National Judicial College Survey revealed that most judges feared for their safety and believed more protections were necessary. These threats are not just theoretical; they pose real dangers that can disrupt judicial proceedings and the safety of each judicial officer and their families.

"Several high-profile incidents highlight the severity of the problem. In California, an explosive device detonated at the Santa Maria Superior Courthouse led to a series of threats and evacuations at other state courthouses, demonstrating the persistent danger faced by judicial officers. Likewise, the tragic murder of Judge Esther Salas' son in New Jersey underscored the need for enhanced protections, as the perpetrator was able to locate the judge's home address through public records. In response to such threats, states and the federal government have taken steps to bolster judicial security, such as passing the federal Daniel Anderl Judicial Security and Privacy Act to protect judges' personal information.

"California Penal Code 422 makes it a crime to make criminal threats against another person, regardless of the person's official capacity. However, if the threaten person is a judicial officer seeking to execute their official duties, the law treats these actions no different than any other criminal threat. AB 352 proposes to provide that if a defendant is convicted of making such criminal threats against a judge or commissioner, then that is a factor in aggravation that the court can consider. This enables for the possibility of the maximum sentence of three years under Penal Code 422 to be imposed when an individual is convicted of a felony criminal threat. This is necessary to prevent attempts to intimidate or retaliate

against judicial officers and to reinforce the safety needs for members of the judiciary. Adding a factor in aggravation helps to strengthen the law for judicial officers, thus ensuring they can carry out their duties without fear of their safety.

2) **Factors in Aggravation:** California's sentencing scheme is, for the most part, determinate – it is referred to as the determinate sentencing law (DSL). (Pen. Code, § 1170, subd. (b)(1).) Any person convicted of a felony is sentenced to one of three sentences referred to the "triad." For instance, a person convicted or a felony offense that may be charged as either a misdemeanor or felony (known as a "wobbler") shall be sentenced to 16 months, two years, or three years in either county jail or state prison, unless the statute specifies another sentence. Burglary of a home or occupied residence, for example, may be sentenced to two, three, or four years. The court must consider factors in aggravation and those factors must be proven to the trier of fact beyond a reasonable doubt before imposing the upper term. (Pen. Code, § 1170, subd. (b)(2) and (6).)

   The Sixth Amendment right to a jury trial applies to any factual finding, other than that of a prior conviction, necessary to warrant any sentence beyond the presumptive maximum. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *Blakely v. Washington* (2004) 524 U.S. 296, 301, 303-04.) Prior to 2007, the DSL required imposition of the middle term. However, the Supreme Court, following its ruling in *Blakely* upended the way California sentenced a defendant convicted of a felony.

   In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California's Determinate Sentencing Law (DSL) violated a defendant's right to trial by jury by placing sentence-elevating fact finding within the judge's province. (*Id.* at p. 274.) The DSL authorized the court to increase the defendant's sentence by finding facts not reflected in the jury verdict. Specifically, the trial judge could find factors in aggravation by a preponderance of evidence to increase the defendant's sentence from the presumptive middle term to the upper term and, as such, was constitutionally flawed. The Court stated, "Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the sentence cannot withstand measurement against our Sixth Amendment precedent." (*Id.* at p. 293.)

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

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

> declared in this Court's decisions." (*Cunningham, supra*, 549 U.S. at pp. 293-294.)

Following *Cunningham*, the Legislature amended the DSL, specifically Penal Code Sections 1170 and 1170.1, to make the choice of the lower, middle, or upper prison term one within the sound discretion of the court. (See SB 40 (Romero), Chapter 3, Statutes of 2007.) This approach was embraced by the California Supreme Court in *People v. Sandoval* (2007) 41 Cal.4th 825, 843-852. The new procedure removes the mandatory middle term and the requirement of weighing aggravation against mitigation before imposition of the upper term. In 2021, the Legislature enacted SB 567 (Bradford), Chapter 731, Statutes of 2021 which requires that any aggravating factors, except for prior convictions, relied upon by the court to impose a sentence exceeding the middle term either for a criminal offense or for an enhancement be submitted to the trier of facts and found to be true, or be admitted by the defendant. This bill would add criminal threats against a judge or commissioner as a possible factor in aggravation that may authorize imposition of the upper term if the jury finds it true beyond a reasonable doubt.

3) **Existing Penalties and Address Confidentiality**: First, existing law punishes any person who assaults a judge or the family member of a judge in retaliation for or to prevent performance of the judge's official duties to up to three years in county jail. (Pen. Code, § 217.1, subd. (a).)

   Second, existing law already protects a judicial officer's address. Government Code section 7928.210 prohibits any person from knowingly posting the home address or phone number of any elected or appointed official, or the official's spouse or children knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. (See Gov. Code, § 7928.210, subd. (a).) Posting an elected or appointed official's address on the internet is a misdemeanor punishable by up to six months in the county jail – same as a violation of Penal Code section 169. (Gov. Code, § 7928.210, subd. (b).)

   Existing law also prohibits any person, business, or association from soliciting, selling, or trading on the internet the home address or telephone number of an elected or appointed official with the intent to cause imminent great bodily harm to the official or to any person residing at the official's home address. (Gov. Code, § 7928.230.) Vehicle Code section 1808.4 also requires the Department of Motor Vehicles (DMV) to keep any judge or retired judge's address confidential in their own records. (Veh. Code, § 1808.4, subd. (a)(4).)

   The law provides a broad amount of protection for judges despite being elected officials. Materials provided by the author appear to indicate that judges are concerned about people protesting at their home, but there are several laws that prohibit sharing a judge's address.

4) **Argument in Support**: According to the *California Judges Association:* "Nationwide elected and appointed officials face rising threats and violence against themselves and their family members. According to the U.S. Marshals Service, the entity in charge of protecting federal judges, they assessed 5,873 threats and inappropriate communications against the judiciary between 2021 and 2022. A 2020 National Judicial College Survey of 572 judges found a majority of judges feared for their safety and believed more effective measures should be taken to protect them. Additionally, state court facilities have recently been

targeted nationwide by bomb threats, while state Supreme Court justices handling controversial cases experience rising incidents of threats and intimidation.

"Unfortunately, the recent assassination of a Kentucky district judge in his own chamber, the attempted murder of a Nevada district judge, and the violent threats made towards judicial officers and their family members highlight the continued need to provide safeguards for the judiciary. AB 352 recognizes this need for additional safeguards by potentially heightening the sentence for criminal threats when those threats are made against judicial officers.

"Presently, Penal Code Section 422 provides that any person who willfully threatens to commit a crime which will result in death or great bodily injury with the specific intent that the statement – made verbally, in writing or electronically – is to be taken as a threat. PC 422 applies regardless if the threat is intended to actually be carried out, so long as the threat is so unequivocal, unconditional, immediate, and specific as to convey to the threaten person to cause them to reasonably be in sustained fear for their own safety. Specifically, AB 352 adds a new subdivision outlining that threats made against judicial officers is a factor in aggravation when determining the defendant's sentencing under PC 422. We believe this change is warranted and needed to help to address this increased level of unprecedented violence aimed at judicial officers.

5) **Argument in Opposition**: According to ACLU California Action: While ensuring that the safety of judges and court commissioners is of the utmost importance, we do not believe this bill is necessary to accomplish that goal. Current law, Penal Code § 422, 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 carrying the threat out.

"This law punishes criminal threats in all settings, directed at any person. Research shows that allowing threats against judges to be an aggravating factor leading to longer sentences will not improve public safety.1 Even the federal Department of Justice discourages AB 352's approach of increased punishments, noting that longer sentencing schemes do little to deter crime.2 Moreover, we caution against expanding §422 because the existing law's enforcement is often problematic. Penal Code Section §422 is often misused to penalize conduct that does not truly belong in the criminal justice system.

"Penal Code section §422, like AB 352, does not require that the person making the threat have either the intent or the ability to carry it out, or that the person take any action to carry out the threat. Defendants – often young people, or individuals with mental health issues – face criminal punishment for mere words even when they have no intent to take any action. This is particularly true for those with mental health conditions, who often suffer from crippling paranoia and delusions. The fear they experience can lead them to say things that are easily misinterpreted as threats. Creating harsher penalties under this statute will not address the underlying issue.

6) **Related Legislation**:

a) AB 32 (Soria) makes it a crime for a person to assault a judge or former judge of a tribal court in retaliation for or to prevent the performance of their official duties. AB 32 is

pending hearing in the Assembly Committee on Transportation.

b) AB 343 (Pacheco) includes in the definition of the term "elected or appointed official," a retired judge or court commissioner, a retired federal judge or federal defender, a retired judge of a federally recognized Indian tribe, and an appointee of a court to serve as children's counsel in a family or dependency proceeding. AB 343 is pending hearing in the Assembly Committee on Judiciary.

7) **Prior Legislation**:

a) AB 32 (Lieu), Chapter 403, Statutes of 2009, required the removal of personal information of specified officials from the Internet, and permits employers or professional organizations to assert the rights of the official in removing the personal information from the Internet.

b) AB 2707 (Keene), of the 2005-06 Legislative Session, would have created a new misdemeanor for picketing within 300 feet of a burial site, mortuary, or church. AB 2707 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Civil Liberties Advocacy
California Judges Association

Oppose

ACLU California Action
Californians United for A Responsible Budget
Felony Murder Elimination Project
Legal Services for Prisoners With Children
Universidad Popular

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

Date of Hearing: March 25, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 475 (Wilson) – As Amended March 10, 2025

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to develop a voluntary work program, eliminate mandatory work, and make all work voluntary for incarcerated persons not on death row. Specifically, **this bill**:

1) Requires CDCR to develop a voluntary work program for incarcerated people, including developing rules and regulations for voluntary work assignments.

2) Prohibits CDCR, beginning on January 1, 2027, from requiring incarcerated persons to work, and requires any work performed by an incarcerated person to be through a voluntary work program, except as specified.

3) States that compensation for persons incarcerated in state prisons shall be set by regulations developed by the CDCR Secretary.

4) Establishes that compensation for persons incarcerated in city and county jails shall be set by local ordinance.

5) Makes technical, nonsubstantive changes to the law.

EXISTING LAW:

1) Provides that neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. (U.S. Const., 13th Amend.)

2) Prohibits involuntary servitude except to punish crime. (Cal. Const., art. I, § 6.)

3) Authorizes the Secretary of CDCR to enter into contracts with public entities, nonprofit or for-profit organizations, and businesses for the purpose of conducting programs which use the labor of incarcerated individuals. (Cal. Const., art. XIV, § 5.)

4) Requires every able-bodied person incarcerated in CDCR to work every day for compensation and under regulations set by the CDCR Director. (Pen. Code, § 2700.)

5) Authorizes the CDCR Director to determine the amount of compensation forfeited when an inmate escapes custody. (Pen. Code, § 2700.)

6) Authorizes Boards of Supervisors to compensate each person confined in or committed to a county jail up to two dollars for every eight hours of work. (Pen. Code, § 4019.3.)

7) Authorizes CDCR to require inmates to work for various institutions, as defined, except those under the jurisdiction of the Prison Industry Authority (PIA), and requires inmates to render emergency services for the preservation of life and property. (Pen. Code, § 2701, subds. (a)-(b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "I am proud to introduce AB 475, a bill that upholds dignity, fairness, and opportunity for incarcerated individuals. For the first time in our state history, this bill would require that all work assignments for incarcerated individuals is **voluntary** and they would not be subject to discipline for refusing a work assignment, allowing for greater participation in rehabilitative services and helping to restore dignity and bodily autonomy to incarcerated individuals. AB 475 promotes economic justice and better prepares individuals for reintegration into society, and reflects our commitment to humane corrections policies. AB 475 is a step toward a more just criminal justice system—one that holds people accountable, while valuing work as a pathway to rehabilitation rather than a condition of confinement."

2) **Effect of the Bill:** This bill would remove the work requirement for every able-bodied incarcerated person and replace it with a voluntary work program for all incarcerated persons, except death-eligible incarcerated persons subject to Proposition 66's passage in 2016.[1]

   This bill likely would upend the existing structure of prison and jail work by creating a bifurcated working population. Under current law, incarcerated persons are unable to refuse work or decline a work assignment without risking significant punishment.[2] Incarcerated persons can be assigned to work instead of participating in rehabilitative programming without their consent. (Cal. Code Regs., tit. 15, § 3040, subd. (g).) By authorizing essentially all incarcerated persons to work only on a volunteer basis, but leaving the death-eligible population under different rules, one result of this bill likely would be some reimagining and reorganizing of CDCR's existing work programs and processes. The overall impact on CDCR from any potential reorganization, however, remains unclear.

   This bill would eliminate the requirement to work, including prohibiting CDCR from punishing an incarcerated person for declining a work assignment. CDCR would retain the ability, however, to reward an incarcerated person who voluntarily works with various privileges and credits.

   Supporters of the bill argue that volunteer work programs are less regressive and more humane relative to compulsory work programs. As one scholar noted, "The exploitative

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[1] *Proposition 66. Death Penalty. Procedures. Initiative Statute* (July 18, 2016) Legislative Analyst's Office <https://lao.ca.gov/ballot/2016/Prop66-110816.pdf> [as of Mar. 19, 2025] (*inter alia*, specifying that every person under a sentence of death must work while in state prison, subject to state regulations.).
[2] *What to Expect*, California Department of Corrections and Rehabilitation <https://www.cdcr.ca.gov/ombuds/ombuds/entering-a-prison-faqs/> [as of Mar. 17, 2025].

dynamics [of forced prison labor] are rooted in slavery . . . which relies on inhumane, regressive forms of revenue generation and masks the true costs of incarceration."[3]

Making work voluntary could also promote improved rehabilitation and public safety outcomes by increasing developing marketable job skills and lowering re-offense rates. One national program that requires voluntary workers and payment of relatively higher wages, the Prison Industry Enhancement Certification Program (PIECP), has demonstrated voluntary work programs can achieve these outcomes.[4] Data gathered from the program showed PIECP participants returned to the job market quicker after release and reoffended less compared to their counterparts who were not able to access the program.[5] The California Legislature has stated many times its commitment to rehabilitating incarcerated persons. In one section it states, "The purpose of incarceration is rehabilitation and successful community reintegration achieved through education, treatment, and active participation in rehabilitative and restorative justice programs." (Pen. Code, § 1170, subd. (a)(1).) Requiring voluntary work could help advance these goals.

While the bill's requirement to change the existing model of mandatory work for every able-bodied incarcerated person to voluntary work for incarcerated persons likely will require some adjustments, the potential benefits to incarcerated persons and society could also positively affect public safety.

3) **Inmate Labor and the Courts:** This bill would mandate that essentially all work done by incarcerated persons be part of a voluntary work program, which could create tension with the United States and California Constitutions.

The U.S. Supreme Court has referred to the confinement exception on the Thirteenth Amendment's ban on involuntary servitude as an "express exception." (*United States v. Kozminski* (1988) 487 U.S. 931, 942 [abrogated by statute on other grounds].) The Ninth Circuit stated the plain language of the Thirteenth Amendment does not prohibit prison labor, even in private prisons. (*Nielsen v. Thornell* (2024No. 22-15302) F.4th [2024 WL 3334998].) Our Supreme Court last year found inmates in county jails, who had *not* been convicted, have no claim to minimum wage or overtime pay because, among other things, they are "confined" within the meaning of the statute defining a locality's right to pay them no more than two dollars for every eight hours worked. (*Ruelas v. County of Alameda* (2024) 15 Cal.5th 968.)

Given federal and state courts have consistently found it permissible to subject incarcerated persons to involuntary servitude under U.S. and California Constitutions, it is unclear whether this bill's change to California's Penal Code will be enforceable without a statewide constitutional amendment establishing that involuntary servitude is never permitted.

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[3] Mast, *Forced Prison Labor in the "Land of the Free"* (Jan. 16, 2025) Economic Policy Institute <https://www.epi.org/publication/rooted-racism-prison-labor/> [as of Mar. 17, 2025].
[4] Prison Industry Enhancement Certification Program, Bureau of Justice Assistance (Aug. 2018) <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/PIECP-Program-Brief_2018.pdf> [as of Mar. 19, 2025].
[5] *Ibid.*

CDCR could plausibly challenge this law in courts arguing their authority under the applicable constitutional provisions supersedes the bill's statutory requirements. With this possibility, enforcement of this bill could ultimately require passage of ACA 6 (*See* **Related Legislation**), which would prohibit involuntary servitude.

4) **Argument in Support**: According to the *California Public Defenders Association* (CPDA), "Current law requires the Department of Corrections and Rehabilitation (CDCR) to compel incarcerated people to participate in 8 hours a day of programming, including labor, education, counseling, physical fitness, and other programs, 5 days per week. Under existing CDCR regulations, an incarcerated person who fails to participate as required is subject to a loss of privileges, including the earning of good conduct credit.

"AB 475 would require CDCR to develop a voluntary work program instead of a mandatory program. It would also establish rules for voluntary work assignments, including setting wages for incarcerated people. Similarly, AB 475 would require local authorities to pass a local ordinance to set compensation for county and city jail programs.

"AB 475 aligns with the values that CPDA members uphold every day in courts across California where they fight to protect the constitutional rights of the overlooked or marginalized. The bill reflects a commitment to creating a more just system, one that provides equal opportunities for rehabilitation and keeps the human dignity of every individual at the forefront of legal proceedings. Allowing people to be coerced into labor while incarcerated perpetuates a system of exploitation that dehumanizes individuals and disproportionately impacts communities of color. Prohibiting involuntary servitude in all forms is a significant step in reversing this harmful cycle."

5) **Related Legislation**:

   a) ACA 6 (Wilson) would remove language from the California Constitution that allows involuntary servitude as punishment for a crime. ACA 6 is pending referral to the Assembly Rules Committee.

   b) AB 1144 (McKinnor) would authorize incarcerated persons 55 years of age or older, except those sentenced to death, in state prison or county jail to elect whether to continue to work, reduce the number of hours worked, or retire. AB 1144 is pending hearing in this committee.

6) **Prior Legislation**:

   a) ACA 8 (Wilson), of the 2023-24 Legislative Session, was substantially similar to ACA 6. ACA 8 was rejected by the voters.

   b) AB 628 (Wilson), of the 2023-24 Legislative Session, was substantially similar to this bill, except that AB 628 was made contingent on the passage of ACA 8. AB 628 was approved by the Governor but failed to become law when the voters rejected ACA 8.

   c) ACA 3 (Kamlager), of the 2021-22 Legislative Session, was substantially similar to ACA 6. ACA 3 died on the Senate inactive file.

REGISTERED SUPPORT / OPPOSITION:

Support

A New Way of Life Re-entry Project
Anti-recidivism Coalition
California Public Defenders Association (CPDA)
Greater Sacramento Urban League
Grip Training Institute

Opposition

None on file.

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

Date of Hearing: March 25, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 479 (Tangipa) – As Introduced February 10, 2025

SUMMARY: Requires a court considering a vacatur petition based on a defendant's status as a victim of intimate partner or sexual violence to also consider whether the petitioner holds a professional license, as specified, when deciding whether vacatur is in the best interest of justice. Specifically, **this bill**:

1) Requires the court, before it may vacate the conviction, to make findings regarding the impact on the public health, safety, and welfare, if the petitioner holds a license, as defined, and the offense is substantially related to the qualifications, functions, or duties of a licensee.

2) Mandates if a petitioner holds a professional license, the petition and supporting documentation shall also be served on the applicable licensing entity and the licensing agency has 45 days to respond.

EXISTING LAW:

1) Allows a person arrested for or convicted of any nonviolent offense committed while they were a victim of human trafficking, including, but not limited to, prostitution, the person may petition the court for vacatur relief of their convictions, arrests, and adjudications under this section. (Pen. Code § 236.14, subd. (a).)

2) Authorizes a person who was arrested for or convicted of any nonviolent offense, as specified, committed while they were a victim of intimate partner violence or sexual violence, to petition the court for vacatur relief of their convictions and arrests. (Pen. Code, § 236.15, subd. (a).)

3) Mandates that, upon showing an arrest or conviction was the direct result of being a victim of intimate partner violence or sexual violence, the court shall find that the person lacked the requisite intent to commit the offense and therefore vacate the conviction as invalid due to legal defect at the time of the arrest or conviction. (Pen. Code, § 236.15, subd. (a).)

4) Provides that, after considering the totality of the evidence presented, the court may vacate the conviction and the arrest and issue an order if it finds all of the following:

    a) That the petitioner was a victim of intimate partner violence or sexual violence at the time of the alleged commission of qualifying crime;

    b) The arrest or conviction of the crime was a direct result of being a victim of intimate partner violence or sexual violence; and,

c) It is in the best interest of justice. (Pen. Code, § 236.15, subd. (g).)

5) Requires the court, in issuing an order of vacatur, to do the following:

   a) Set forth a finding that the petitioner was a victim of intimate partner violence or sexual violence at the time of the alleged commission of the qualifying crime and therefore lacked the requisite intent to commit the offense.

   b) Set aside the arrest, finding of guilt, or the adjudication and dismiss the accusation or information against the petitioner as invalid due to a legal defect at the time of the arrest or conviction.

   c) Notify the Department of Justice that the petitioner was a victim of intimate partner violence or sexual violence when they committed the crime and of the relief that has been ordered. (Pen. Code, § 236.15, subd. (h)

6) Provides that, a petitioner who has obtained vacatur relief may lawfully deny or refuse to acknowledge the arrest, conviction, or adjudication that is set aside pursuant to the order. (Pen. Code, §§ 236.14, subd. (o); 236.15, subd. (o).)

7) Defines "vacate" to mean that the arrest and any adjudications or convictions suffered by the petitioner which are deemed not to have occurred and that all records in the case are sealed and destroyed. (Pen. Code, §§ 236.14, subd. (t)(2), 236.15, subd. (t)(2).)

8) Defines "nonviolent" to mean any offense not listed on the violent felonies list. (Pen. Code, §§ 236.14, subd. (t)(3); 236.15, subd. (t)(1).)

9) States that in any criminal proceeding against a person who has been issued a license to engage in a business or profession by a state agency, as specified, the state agency which issued the license may voluntarily appear to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public, or may be ordered by the court to do so, if the crime charged is substantially related to the qualifications, functions, or duties of a licensee. (Pen. Code, § 23, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 479 enhances public safety by ensuring licensing boards are notified when individuals with serious convictions petition to clear their records. In a recent case, the Board of Registered Nursing was unable to voice concerns when a licensee with child pornography-related convictions had their charges vacated, potentially allowing them to work with vulnerable populations. This bill allows the courts to make fully informed decisions without substantially amending the process for victims. By providing judges with critical information, AB 479 helps prevent risks to public safety while maintaining a fair process."

2) **Vacatur for Intimate Partner and Sexual Violence Generally**: Penal Code section 236.14 provides post-conviction relief to human trafficking victims by vacating nonviolent arrests, charges and convictions that were a direct result of human trafficking. Penal Code section 236.15 extends the same form of post-conviction relief to intimate partner violence and/or sexual violence victims by vacating nonviolent arrests, charges, and convictions that were a direct result of the intimate partner or sexual violence. Unlike an expungement, getting a conviction vacated effectively means that the conviction never occurred. "Vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed. (Pen. Code, §§ 236.14, subd. (t)(2), 236.15, subd. (t)(2).)

   The purpose of these laws is to provide relief for individuals who have criminal records as a result of their exploitation, by vacating nonviolent criminal offenses that were committed by human trafficking victims at the behest of their traffickers. Vacatur under sections 236.14 and 236.15 requires showing by clear and convincing evidence, that the arrest or conviction was the direct result of human trafficking, intimate partner violence, and/or sexual violence and that the defendant lacked criminal intent to commit the underlying crime.

3) **Penal Code section 23:** Penal Code section 23 allows a licensing agency, as specified, to voluntarily appear at a court proceeding in order to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public, or may be ordered by the court to do so, if the crime charged is substantially related to the qualifications, functions, or duties of a licensee. This appears to be largely limited to probation conditions. (See generally, *Gray v. Superior Court* (2005) 125 Cal.App.4th 629, 643 [holding that Medical Board was not entitled to provide conditions of bail despite it being related to public safety.].)

   This bill states that the court should consider the licensing entity's position on vacatur if the conviction is substantially related to the license. According to the Board of Registered Nursing, the sponsor of the bill, a licensee was granted vacatur for possession of child pornography upending the Department of Consumer Affairs, Board of Registered Nursing's (BRN) plans to de-certify the person so they could no longer work as a nurse.[1] However, licensing is not relevant to determining whether a person should be granted vacatur. As noted above, vacatur is appropriate when a person does not have the requisite criminal intent to commit the crime because of the violence they suffered. It is akin to duress. The defense of duress negates an element of the crime charged. (*People v. Heath* (1989) 207 Cal. App. 3d 892, 900 ["To establish the defense, the defendant must show [they] acted under such immediate threat or menace that [they] reasonably believed [their] life would be endangered if [they] refused."].)

   Furthermore, vacatur requires, by a showing of clear and convincing evidence that a defendant did not have the requisite intent to commit the offense because of their status as a victim of sexual violence and/or intimate partner violence. A *"clear and convincing"*

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[1] See *People v. Seth Adam Hall*, No. E083533, Appeal from an Order of the Superior Court of California, County of Riverside, March 20, 2024, pending before the Fourth District Court of Appeals, located at https://unicourt.com/case/ca-sca1-casebs6bfe570d112b-224166?init_S=c_relc#case-details

standard is not an easy standard to demonstrate. It requires evidence sufficient to show something is "highly and substantially more likely to be true than untrue. In other words, the fact finder must be convinced that the contention is highly probable." (*Colorado v. New Mexico* (1984) 467 U.S. 310.) It seems really unlikely that the court would grant vacatur for possession of child pornography if there was not substantial reason to believe the defendant did have the intent to commit the crime. Therefore, allowing the licensing agency to argue to the court vacatur should be denied for reasons specific to their license undercuts the vacatur statute.

4) **Seth Adam Hall litigation:** As noted above, and according to moving papers filed by the Department of Justice and provided by the author, this bill is based on a grant of vacatur for a person convicted of possession of child pornography in violation of Penal Code section 311.11. Based on the conviction, on or about July 31, 2023, the BRN moved forward with license revocation of the defendant's nursing license. However, on or about February 12, 2024, the trial court in defendant's case granted vacatur on the ground the defendant was the victim of intimate or sexual violence and that he had made considerable efforts to distance himself from the actions for which the police found child pornography.

   However, the full record was sealed possibly due to the explicit nature of the abuse suffered by defendant. As a result of vacatur, the BRN withdrew its attempt to revoke the defendant's license. The court ordered the defendant's counsel to notify the Department of Justice of its decision to vacate the defendant's license. On or about November 5, 2024, the District Attorney and the BRN appealed to the Fourth District Court of Appeals. The appeal is still pending and presently in briefing status and on assignment.[2] BRN alleges, *inter alia*, that it was entitled to notice and an opportunity to be heard pursuant to Penal Code section 23 before the court granted vacatur.

   Also, as noted above, vacatur is based on a substantive defect in the conviction itself. It effectively stands for the proposition that the defendant was not capable of criminal intent as a direct result of significant violence. Based on the court records provided by the author, the notice of vacatur states,

   > "The petitioner…was a victim of intimate partner violence or sexual violence at the time the non-violence offense was committed. The commission of the crime was a direct result of being a victim of intimate partner violence or sexual violence. The victim was engaged in a good faith effort to distance himself from the perpetrator of the harm. It is in the best interest of the petitioner and in the interest of justice."[3]

   Given this case is pending appellate review and the facts of vacatur are under seal, it makes more sense to wait for the court to makes its ruling before changing the law in this case. Additionally, licensing agencies have some burden to follow criminal cases that may impact licensure and provide input. BRN appears to have been aware of the arrest and conviction

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[2] https://unicourt.com/case/ca-sca1-casebs6bfe570d112b-224166?init_S=c_relc#dockets

[3] In the matter of Seth Adam Hall, Notice of Ruling in the Matter of the People of the State of California v. Seth Adam Hall (Riverside County Super Court Case No. INF 2202269

since it began disciplinary proceedings before vacatur. As noted by BRN, it may provide information to the court pursuant to Penal Code section 23.

Finally, the court appears to have had ample grounds to grant vacatur in this case given the serious nature of the underlying charge. This is exactly the type of relief the vacatur statute was designed to provide – victims who could not form the requisite intent to commit the underlying crime should not suffer a punitive impact as a direct result of the violence they suffered.

5) **Other Grounds for Discipline:** As a general matter, a person may face revocation of their professional license even where there is no conviction. The BRN Unprofessional Conduct, Substantial Relationship Criteria, Disciplinary Guidelines and Criteria for Rehabilitation states licensure may be suspended or revoked for "a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of a [registered nurse], if to a substantial degree it evidences the present or potential unfitness of a person holding a license or certificate to perform the functions authorized and/or mandated by the license or certificate, or in a matter consistent with the public harm." If there are facts sufficient to support license revocation, it may be characterized as "professional misconduct…" and discipline sought even without a conviction. (See Cal. Code Regs., tit. 16, § 1443.) Additionally, the professional rules make clear that a conviction, itself, is not the only factor the Board considers. In some cases, a person with a prior conviction may still be licensed or retain their license. (See Cal. Code Regs., tit. 16, § 1445.)

   If the BRN is able to file an accusation and seek discipline without reference to a conviction, it is unclear whether they should be allowed to participate in a court proceeding where licensure is not relevant to whether the defendant had the requisite intent to commit the underlying crime.

6) **Argument in Support**: According to the *Board of Registered Nursing*: "As the sponsor of AB 479, the Board's main goal is to ensure that when a trial court is considering a petition for vacatur under Penal Code Section 236.15, it has all the input necessary to make a fully informed decision. The bill would not impede or override the trial courts authority to grant a petition. It would simply require that a petitioner give notice to their licensing board, if they file a petition under Penal Code Section 236.15. This would allow the board an opportunity to appear and be heard on the petition before the trial court issues its decision, if the board believes there is a public protection concern.

   "Unfortunately, last year a Board licensee was convicted of possessing a substantial amount of child pornography. As a result, the Board began pursuing disciplinary action against the individual's license through the administrative court. Separately, the licensee petitioned the trial court to vacate their conviction under the provisions of Penal Code Section 236.15. However, the Board was not aware of the licensee's petition and was not able to provide the trial court with any input prior to its ruling.

   "The trial court ultimately granted the petition to vacate the conviction, which prohibited the Board from using the conviction or any related records as a basis for discipline in the administrative court. Consequently, the licensee can continue practicing unrestricted as a nurse, including with minor patients.

"The Board is not suggesting that an individual who possesses a professional license could never obtain a vacatur order under Penal Code Section 236.15. In many cases, the trial court may conclude that the best interest of justice would be served by vacatur, notwithstanding the licensing-related implications. The bill would simply ensure that the trial court consider whether vacatur would be inconsistent with public protection from a licensing context before making their ruling."

7) **Argument in Opposition**: According to *California Public Defenders Association*: "AB 479 would amend Penal Code Section 236.15 (PC 236.15) to make it more difficult for victims of intimate partner violence or sexual violence to obtain vacatur relief for convictions that were the direct result of being a victim. AB 479 would add the additional requirement that vacatur relief would be "in the best interest of justice as described in subdivision (g)."

"AB 479 would potentially reduce expungement relief for victims of human trafficking of their past non-violent criminal records. This relief was enacted to enhance the futures of these Californians through increased access to employment, housing, and other future opportunities. By making this relief more difficult to attain, AB 479 would eliminate that hope without providing any correlative benefit.

"PC 236.15 relief applies only to nonviolent prior convictions, which already rules out a vast number of convictions. Adding another roadblock to relief simply doesn't make sense. CPDA members can attest to the misery that past records of conviction inflict upon our clients, and the difficulty in expunging the records of worthy reformed individuals. The existing requirement to obtain relief under PC 236.15 is:

"The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of intimate partner violence or sexual violence that demonstrates that the person lacked the requisite intent to commit the offense."

"This existing requirement of a showing by clear and convincing evidence is already a sufficiently high standard and in no way should be further complicated by the "best interest of justice" requirement proposed by AB 479. Victims of intimate partner violence and sexual violence have so many obstacles to overcome in their journey to become whole they do not need, yet another one placed in their way; which is all that AB 479 would do."

8) **Related Legislation**:

a) AB 633 (Krell), would expand vacatur relief to persons who were convicted of or arrested for any offense committed when they were under the age of 18 and while they were a victim of human trafficking. AB 633 is scheduled to be heard in this committee today.

b) AB 938 (Bonta), would authorize vacatur relief for a person arrested or convicted of any offense and authorize relief for a person whose offense was related, rather than directly related, to being a victim of human trafficking, intimate partner violence, or sexual violence. AB 938 is scheduled to be heard in this committee today.

9) **Prior Legislation**:

a) AB 124 (Kamlager), Chapter 124, Statutes of 2021 requires courts to consider whether specified trauma to the defendant or other circumstances contributed to the commission of the offense when making sentencing and resentencing determinations and to expand access to vacatur relief and the affirmative defense of coercion currently available to victims of human trafficking to victims of intimate partner violence and sexual violence.

b) AB 2169 (Gipson), Chapter 776, Statutes of 2022 clarifies that vacatur relief for offenses committed while the petitioner was a victim of human trafficking, intimate partner violence, or sexual violence demonstrates that the petitioner lacked the requisite intent to commit the offense, and that the conviction is invalid due to legal defect.

REGISTERED SUPPORT / OPPOSITION:

Support

Board of Registered Nursing
California District Attorneys Association

Oppose

All of Us or None Los Angeles
Californians for Safety and Justice
Californians United for A Responsible Budget
East Bay Community Law Center
Ella Baker Center for Human Rights
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
San Francisco Public Defender
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
Universidad Popular
Vera Institute of Justice

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

Date of Hearing: March 25, 2025
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 486 (Lackey) – As Introduced February 10, 2025

As Proposed To Be Amended in Committee

SUMMARY: Provides that a person who organizes a sideshow may be charged with aiding or abetting a speed contest or exhibition of speed, even if they are not physically present at the scene of the sideshow. Specifically, **this bill:**

1) Provides that a person who organizes, facilitates, encourages, promotes, or instigates a side show may be charged with aiding or abetting a motor vehicle speed contest or a motor vehicle exhibition of speed, as specified, even if they are not physically present at the scene of the sideshow.

2) Clarifies that this bill does not abrogate or otherwise modify the legal elements that must be proven to find an individual guilty of aiding and abetting a crime as established in the California Supreme Court's decision in *People v. Beeman* (1984) 35 Cal.3d 547.

EXISTING LAW:

1) Prohibits a person from engaging in a motor vehicle speed contest or motor vehicle exhibition of speed on a highway or in an off-street parking facility, or aiding and abetting such a contest or speed exhibition. (Veh. Code, § 23109, subds. (a)-(c).)

2) Defines a "motor vehicle speed contest" as a motor vehicle race against another vehicle, a clock, or other timing device. (Veh. Code, § 23109, subd. (a).)

3) Provides that a person who aids or abets a motor vehicle speed contest or exhibition of speed shall be punished by up to 90 days in county jail, a fine of up to $500, or both. (Veh. Code, § 23109, subd. (i)(1).)

4) Provides that, for purposes arrested for aiding or abetting a speed contest or exhibition of speed, as specified, whether the person will be taken into custody or released and given a notice to appear, is at the discretion of the arresting officer. (Veh. Code, § 40303.)

5) Provides that person shall not, for the purpose of facilitating or aiding or as an incident to a motor vehicle speed contest or exhibition upon a highway or in an off-street parking facility, in any manner obstruct or place a barricade or obstruction or assist or participate in placing a barricade or obstruction upon a highway or in an off-street parking facility. (Veh. Code, § 23109, subd. (d).)

6) A "sideshow" is an event in which two or more persons block or impede traffic on a highway or in an offstreet parking facility for the purpose of performing motor vehicle stunts, motor

vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators, and provides that a sideshow is also known as a street takeover. (Veh. Code, § 23109, subd. (i)(2)(A)(ii).)

7) Authorizes a court to order the privilege to operate a motor vehicle suspended for 90 days to six months for a person who engages in, or aids or abets a motor vehicle exhibition of speed, only if the violation occurred as part of a sideshow. (Veh. Code, § 23109, subd. (i)(2)(A)(i).)

8) Allows a peace officer to immediately arrest and take into custody a person engaged in a motor vehicle contest, reckless driving, as specified, and an exhibition of speed on a highway or an off-street parking facility, and to remove and impound the vehicle used in the offense for up to 30 days. However, this does not apply to aiding or abetting an exhibition of speed on any highway or in an off-street parking facility (Veh. Code, § 23109.2, subd. (a)(2)(D).)

9) Authorizes a peace officer to impound a vehicle without taking the driver into custody for obstructing or placing a barricade upon a highway, or an off-street parking facility, for the purpose of facilitating or aiding a speed contest or exhibition of speed. (Veh. Code, § 23109.3).

10) Provides that any person concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, have advised and encouraged its commission, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed, and are punished the same as the person who directly commits the crime. (Pen. Code, § 31.)

11) Defines the following terms:

    a) An "off-street parking facility" is any off-street facility held open for use by the public for parking vehicles and includes any publicly owned facilities for off-street parking, and privately owned facilities for off-street parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers. (Veh. Code, § 23109, subd. (l).)

    b) A "highway" is a way or place of whatever nature, publicly maintained and open to the public for vehicular travel. Highway includes street. (Veh. Code, § 360.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Sideshows are a growing threat in California, yet existing penalties largely target participants rather than the true instigators: the organizers. AB 486 aims to put an end to this by tackling the root of these street takeovers and hold organizers and promoters accountable."

2) **Aiding and Abetting a Crime:** Aiding and abetting, sometimes referred to as accomplice liability, allows prosecutors to charge persons that contribute towards the commission of a crime as if they committed the crime itself, even if they did not perpetrate the offense

directly.[1] A person who aids and abets a crime is punished the same as a person who directly commits a crime. (Pen. Code, § 31)

Courts have outlined what constitutes aiding and abetting at length. Prosecutors, in order to convict a person for aiding and abetting a crime, must prove four elements: 1) the perpetrator *committed the crime*; 2) the defendant *knew* that the perpetrator intended to commit the crime; 3) before or during the commission of the crime, the defendant *intended to aid and abet* the perpetrator in committing the crime; and 4) defendant's words or conduct *did in fact aid and abet* the perpetrator's commission of the crime. (CALCRIM No. 401 (2025).) As stated by the California Supreme Court, "a person aids and abets the commission of a crime when [they], acting with [] knowledge of the unlawful purpose of the perpetrator, [] the intent or purpose of committing, encouraging, or facilitating the commission of the offense, and [] by act or advice aid, promote, encourage, or instigate the commission of the crime." (*People v. Beeman* (1984) 35 Cal.3d 547, 561).

The requirement that the person did in fact aid or abet the crime simply means that the person must have actually participated in the offense. (*People v. Malotte* (1956) 46 Cal.2d 59, 65.). For example, this includes acts that make an independent contribution to the commission of the crime, or make it more probable that the crime will be completed. (*People v. Flores* (1969) 269 Cal.App.2d 666, 669.) Aiding and abetting does not necessarily require physical presence at the scene of the crime, although it is a factor that a court will consider in determining if a person aided and abetted a crime. (*People v. Bohmer* (1975) 46 Cal.App.3d 185, 199.)

In addition to being equally responsible for a perpetrator's intended criminal activity, aiders and abettors can additionally be held responsible for the natural, reasonable, or probable consequences of an offense they aided in committing or encouraged with the intent to further the offense. (*People v. Francisco* (1994) 22 Cal.App.4th 1180, 1190–1191.) The applicable test under this doctrine is if a reasonable person in their position would have or should have known that the offense was a reasonably foreseeable consequence of the act they aided and abetted. (*Id.* at p. 1190.)

3) **Effect of this Bill:** Existing law punishes those who aid and abet speed contests and exhibitions of speed. (Veh. Code, §§ 23109, subds. (b), (c), (d) & (i)(1); 40000.15.) Sideshows are events that facilitate speed contests or exhibitions. Specifically, a sideshow is defined as two or more persons blocking or impeding traffic on specified property for the specific purpose of performing crimes such speed contests or exhibitions of speed, for spectators. (Veh. Code, § 23109, subd. (i)(2)(A)(ii).) Aiding and abetting speed contests and exhibitions of speed are misdemeanors, punishable by imprisonment in a county jail for not more than 90 days, by a fine up to $500, or by both. (Veh. Code, § 23109, subd. (i)(1).)

While aiders and abettors are generally punished the same as the perpetrator of the crime, aiders and abettors of speed contest and exhibitions of speed have greater due process protections than perpetrators of the crime. For example, peace officers can immediately arrest and impound the vehicle of a person engaged in a speed contest, but this impoundment

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[1] *See* Pen. Code, § 31 (providing "all persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its *commission*... are principals in any crime committed." (emphasis added)

authority does not apply to a person aiding and abetting such a contest. That said, if a person aiding and abetting a speed contest goes so far as to obstruct or place a barricade upon specified property for the purpose of facilitating a speed contest, then a peace officer can impound that vehicle without taking the driver into custody. Additionally, a court may order the privilege to operate a motor vehicle suspended for 90 days to six months for a person who engages in a motor vehicle exhibition of speed or aids or abets an exhibition of speed, if the violation occurred as part of a sideshow. (Veh. Code, § 23109, subd. (i) (2).)

Here, AB 486 does two things. First, in an effort to ensure that persons who organize sideshows through social media and online communications can be held accountable for aiding and abetting a speed contest, it provides that a person who organizes, facilitates, encourages, promotes, or instigates a side show may be charged with aiding or abetting a motor vehicle speed contest or a motor vehicle exhibition of speed as specified, even if they are not physically present at the scene of the side show. Under existing law, aiding and abetting does not necessarily require that a person be present when the crime is committed. (*People v. Bohmer* (1975) 46 Cal.App.3d 185, 199.) However, it is a factor that courts rely on when determining if a defendant actually participated in the crime and should be considered to have aided or abetted the crime. (*People v. Flores* (1969) 269 Cal.App.2d 666, 669.) Here, AB 486 reasonably seeks to clarify that a person who organizes, through online communications, the blocking of traffic for the purpose of performing an unlawful speed contest can be prosecuted as an aider and abettor of a speed contest or exhibition, even if they are not ultimately present when the speed contest occurs.

Second, to ensure this proposed change is consistent with the elements that must be proven to prosecute a person for aiding and abetting generally, as provided in long-standing case law, AB 486 specifies that it does not abrogate or otherwise modify the legal elements that must be proven to find an individual guilty of aiding and abetting a crime as established in the California Supreme Court's decision in *People v. Beeman* (1984) 35 Cal.3d 547. This is an important clarification, as irrespective of whether an organizer is physically present at the scene of the crime, prosecutors must still prove all elements of aiding and abetting in order to successfully prosecute a person for aiding and abetting a speed contest. (CALCRIM No. 401 (2025).)

To successfully prosecute a person for aiding and abetting speed contest prosecutors must prove: 1) the crime was committed; 2) the defendant had knowledge of the perpetrators criminal intent; 3) the defendant intended to aid and abet the crime; and 4) the defendant's words or conduct did in fact aid and abet the crime. (*People v. Beeman* (1984) 35 Cal. 3d 547, 561); CALCRIM No. 401 (2025).) Here, AB 486 adds the term "organizing" to the types of conduct that aiding and abetting may include. In sum, this clarifies that if a person organizes, through online communications, the blocking of traffic for the purpose of performing an unlawful speed contest, and that sideshow and associated speed contest takes place, that person can be prosecuted as an aider and abettor.

4) **Argument in Support**: According to the *California District Attorneys Association*, "AB 486, which would clarify that aiding or abetting a motor vehicle speed contest or an exhibition of speed includes, but is not limited to, organizing, facilitating, encouraging, promoting, or instigating those violations as part of a sideshow or street takeover, irrespective of whether the offender is physically present at the scene.

"Despite recent legislative enactments and increased enforcement efforts, street takeovers and sideshows continue to be an ongoing nuisance for law enforcement and residents across the state. These events, often organized through the use of social media, involve dozens to hundreds of drivers and spectators blocking off major intersections and streets to showcase vehicle stunts. Not only is this activity disruptive, it is extremely dangerous and far too often results in a fatality. This lawless environment also attracts a growing criminal element – one in which spectators are armed with firearms and in possession of illicit drugs.

"The individuals who organize, promote, and encourage these events frequently elude law enforcement and, if caught, are rarely held accountable due to the ambiguity surrounding existing aiding or abetting liability related to street takeovers and sideshows. By clarifying that aiding or abetting a motor vehicle speed contest, in violation of VC § 23109(b), or an exhibition of speed, in violation of VC § 23109(c), as part of a sideshow or street takeover is prohibited, AB 486 will strengthen law enforcement's ability to apprehend and hold accountable those who organize, promote and encourage these dangerous events."

5) **Argument in Opposition**: According to *California Attorneys for Criminal Justice*, "The amendment of section 23109 in AB 486 is either unnecessary and duplicative of existing law, or unnecessarily expands the scope of criminal liability for many Californians. California law not only punishes individuals who perpetrate crimes, but also those individuals who, with knowledge and intentional, help or assist the perpetrator who commits the offense – in the language of the statutes, one who 'aids and abets' the commission of a crime. A person who aids and abets another in the commission of a crime is punished as harshly as the person who directly commits the offense.

"Plainly, there are many circumstances where an individual may assist the perpetrator who commits the crime but who is not under California law, and should not be, held criminally liable for an offense. For example, a mother loans her car to her son who said he wanted to run some errands, and the mother knows the son is going to a jewelry store. In fact, the son uses the car to drive to, and escape from, his robbery of that jewelry store. Giving the son the car surely 'assisted' the son committing the crime, but it would be cruel and unreasonable to charge the mother with robbery. Or, a father lets his son use his computer, ostensibly to assist him to complete job applications. In fact, the son uses the computer to view child pornography, or to entice underage youth in engage in sex, or to set-up a plan to scam older adults of their savings. Here, too, punishing the father would be unjust and unreasonable.

"The California Supreme Court long ago recognized that merely aiding another to commit a crime was insufficient to establish criminal liability. As the Court explained more than 40 years ago in People v. Beeman (1984) 35 Cal.3d 547, the law does not punish one whose conduct merely aided or encouraged another to commit a crime. 'Sound law, embodied in a long line of California decisions, requires proof that an aider and abettor rendered aid with an intent or purpose of either committing, or of encouraging or facilitating commission of, the target offense.' (35 Cal.3d at 551.) The Court went on to hold '[i]f the jury were instructed that the law conclusively presumes the intention of the accused solely from his or her voluntary acts, it would effectively eliminate intent as an ingredient of the offense and would conflict with the overriding presumption of innocence with which the law endows the accused and which extends to every element of the crime.' (35 Cal.3d at 559, quoting Sandstrom v. Montana (1979) 442 U.S. 510, 522 [internal quotation marks deleted].) All seven Justices agreed that an individual cannot be convicted for aiding and abetting another

in the commission of a crime unless the individual 'acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.' (35 Cal.3d at 561.)

"The Court's reasoning led to the standard jury instructions defining when a person has 'aided and abetted' the perpetrator of a crime sufficient to be criminally liable. CALCRIM 401 informs jurors that a defendant aids and abets the charged crime only if, inter alia, 1) the defendant 'knew the perpetrator intended to commit the crime;' 2) 'Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime;' AND 3) 'The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime.'

"This bill, AB 486, subdivision (m), would change the law to provide 'For purposes of subdivisions (b) and (c), "aid or abet" includes, but is not limited to, organizing, facilitating, encouraging, promoting, or instigating a violation as part of a sideshow. Physical presence at the scene of a sideshow is not required to aid or abet.' [Emphasis added.]

"AB 486 may intend to merely reaffirm the standards in People v. Beamon and CALCRIM 401. If so, the bill is completely unnecessary, and will merely cloud the enforcement of Vehicle Code § 23109.

"However, more likely, because of the 'not limited to language,' AB 486 would undermine the safeguards mandated by the Supreme Court in People v. Beamon and the numerous Court of Appeal decisions that have followed for more than 40 years. AB 486 can be construed to provide the prosecution need not show a defendant knew of the perpetrator's criminal intent, need not show that before the commission of the crime, the defendant intended to assist in the commission of that crime, nor even that the defendant in fact aided the perpetrator. Rather, while the prosecutor may show the defendant, for example, organized or instigated the charged crime, 'aids and abets' is not limited to the reiteration of words in subdivision (m). Rather, any of the enumerated actions and any other action or inaction may result in conviction, as the defendant's misconduct is not "limited to" the enumerated conducts. No longer would a prosecutor have to prove that a person knew of the perpetrator's intended crime, and intended to affirmatively assist in the commission of that crime and did in fact help the perpetrator commit the planned crime. AB 486 would repudiate the analysis and holding of the seven Justices in Beamon.

"The consequences of a conviction of a criminal offense are substantial and may haunt the defendant for the rest of his/her life. Bad judgment or inattention to the misconduct of another should not trigger a conviction. Beamon carefully laid out the preconditions for the conviction of one who 'aids and abets' another, and there is no evidence that supports a major change in those standards."

6) **Related Legislation**: AB 1168 (Solache), would provide that a motor vehicle speed contest includes a motor vehicle race against another vehicle, a clock, or other timing device. AB 1168 is pending referral.

7) **Prior Legislation**:

a) AB 1978 (Sanchez), Chapter 501, Statutes of 2024, authorized a peace officer to impound a vehicle without taking the driver into custody for obstructing or placing a barricade upon a highway, or an off-street parking facility for the purpose of facilitating or aiding a speed contest or exhibition of speed.

b) AB 2186 (Wallis), Chapter 502, Statutes of 2024, authorized a peace officer to remove and seize a motor vehicle used in an exhibition of speed in an off-street parking facility for no more than 30 days and provides that a peace officer may not remove and seize a vehicle of a person who aided and abetted a person engaged in an exhibition of speed.

c) AB 2807 (Villapudua), Chapter 503, Statutes of 2024, clarified that vehicle sideshows are also known as street takeovers.

d) AB 74 (Muratsuchi), of the 2023-2024 Legislative Session, would have provided that a vehicle used in a sideshow or street takeover is a public nuisance which may be subject to forfeiture. AB 74 failed passage in Assembly Transportation Committee.

e) AB 822 (Alanis), of the 2023-2024 Legislative Session, would have included engaging in a motor vehicle speed contest or an exhibition of speed as offenses for which a peace officer may impound a vehicle pursuant to a court warrant. The hearing was cancelled at the request of the author in this committee.

f) AB 2546 (Nazarian), of the 2022-2023 Legislative Session, would have expanded the definition of a sideshow to include other public places open to vehicle traffic and private property. AB 2546 failed passage in Senate Public Safety Committee.

g) AB 2000 (Gabriel), Chapter 436, Statutes of 2022, made it a crime for a person to engage in a motor vehicle speed contest in an offstreet parking facility or an exhibition of speed in an offstreet parking facility, or to aid or abet therein.

h) AB 3 (Fong), Chapter 611, Statutes of 2021, permitted, but does not require, a court to suspend a person's driver's license for a period of 90 days to six months, if they are convicted of engaging in, or aiding and abetting, a motor vehicle exhibition of speed.

i) AB 1407 (Friedman), of the 2019-2020 Legislative Session, would have required a vehicle that is determined to have been involved in a speed contest to be impounded for 30 days, as specified. AB 1407 was vetoed.

j) AB 2876 (Jones-Sawyer), Chapter 592, Statutes of 2018, clarified that the protections against unreasonable seizures provided by the Fourth Amendment of the U.S. Constitution apply even when a vehicle is removed pursuant to an authorizing statute.

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
California State Sheriffs' Association
Claremont Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Los Angeles County Sheriff's Department
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

California Attorneys for Criminal Justice
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice
Justice2jobs Coalition

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

Amended Mock-up for 2025-2026 AB-486 (Lackey (A))

Mock-up based on Version Number 99 - Introduced 2/10/25
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 23109 of the Vehicle Code, as amended by Section 1 of Chapter 503 of the Statutes of 2024, is amended to read:

23109. (a) A person shall not engage in a motor vehicle speed contest on a highway or in an offstreet parking facility. As used in this section, a motor vehicle speed contest includes a motor vehicle race against another vehicle, a clock, or other timing device. For purposes of this section, an event in which the time to cover a prescribed route of more than 20 miles is measured, but in which the vehicle does not exceed the speed limit, is not a speed contest.

(b) A person shall not aid or abet in a motor vehicle speed contest on a highway or in an offstreet parking facility.

(c) A person shall not engage in a motor vehicle exhibition of speed on a highway or in an offstreet parking facility, and a person shall not aid or abet in a motor vehicle exhibition of speed on a highway or in an offstreet parking facility.

(d) A person shall not, for the purpose of facilitating or aiding or as an incident to a motor vehicle speed contest or exhibition upon a highway or in an offstreet parking facility, in any manner obstruct or place a barricade or obstruction or assist or participate in placing a barricade or obstruction upon a highway or in an offstreet parking facility.

(e) (1) A person convicted of a violation of subdivision (a) shall be punished by imprisonment in a county jail for not less than 24 hours nor more than 90 days or by a fine of not less than three hundred fifty-five dollars ($355) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment. That person shall also be required to perform 40 hours of community service. The court may order the privilege to operate a motor vehicle suspended for 90 days to six months, as provided in paragraph (8) of subdivision (a) of Section 13352. The person's privilege to operate a motor vehicle may be restricted for 90 days to six months to necessary travel to and from that person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. This subdivision does not interfere with the court's power to grant probation in a suitable case.

(2) If a person is convicted of a violation of subdivision (a) and that violation proximately causes bodily injury to a person other than the driver, the person convicted shall be punished by imprisonment in a county jail for not less than 30 days nor more than six months or by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(f) (1) If a person is convicted of a violation of subdivision (a) for an offense that occurred within five years of the date of a prior offense that resulted in a conviction of a violation of subdivision (a), that person shall be punished by imprisonment in a county jail for not less than four days nor more than six months and by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(2) If the perpetration of the most recent offense within the five-year period described in paragraph (1) proximately causes bodily injury to a person other than the driver, a person convicted of that second violation shall be imprisoned in a county jail for not less than 30 days nor more than six months and by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(3) If the perpetration of the most recent offense within the five-year period described in paragraph (1) proximately causes serious bodily injury, as defined in paragraph (4) of subdivision (f) of Section 243 of the Penal Code, to a person other than the driver, a person convicted of that second violation shall be imprisoned in the state prison, or in a county jail for not less than 30 days nor more than one year, and by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(4) The court shall order the privilege to operate a motor vehicle of a person convicted under paragraph (1), (2), or (3) suspended for a period of six months, as provided in paragraph (9) of subdivision (a) of Section 13352. In lieu of the suspension, the person's privilege to operate a motor vehicle may be restricted for six months to necessary travel to and from that person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment.

(5) This subdivision does not interfere with the court's power to grant probation in a suitable case.

(g) If the court grants probation to a person subject to punishment under subdivision (f), in addition to subdivision (f) and any other terms and conditions imposed by the court, which may include a fine, the court shall impose as a condition of probation that the person be confined in a county jail for not less than 48 hours nor more than six months. The court shall order the person's privilege to operate a motor vehicle to be suspended for a period of six months, as provided in paragraph (9) of subdivision (a) of Section 13352 or restricted pursuant to subdivision (f).

(h) If a person is convicted of a violation of subdivision (a) and the vehicle used in the violation is registered to that person, the vehicle may be impounded at the registered owner's expense for not less than 1 day nor more than 30 days.

(i) (1) A person who violates subdivision (b), (c), or (d) shall upon conviction of that violation be punished by imprisonment in a county jail for not more than 90 days, by a fine of not more than five hundred dollars ($500), or by both that fine and imprisonment.

(2) (A) (i) Commencing July 1, 2025, the court may order the privilege to operate a motor vehicle suspended for 90 days to six months for a person who violates subdivision (c), as provided in subparagraph (B) of paragraph (8) of subdivision (a) of Section 13352, only if the violation occurred as part of a sideshow.

(ii) For purposes of this section, "sideshow" is defined as an event in which two or more persons block or impede traffic on a highway or in an offstreet parking facility for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators. A sideshow is also known as a street takeover.

(B) A person's privilege to operate a motor vehicle may be restricted for 90 days to six months to necessary travel to and from that person's place of employment and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment.

(C) If the court is considering suspending or restricting the privilege to operate a motor vehicle pursuant to this paragraph, the court shall also consider whether a medical, personal, or family hardship exists that requires a person to have a driver's license for such limited purpose as the court deems necessary to address the hardship. This subdivision does not interfere with the court's power to grant probation in a suitable case.

(j) If a person's privilege to operate a motor vehicle is restricted by a court pursuant to this section, the court shall clearly mark the restriction and the dates of the restriction on that person's driver's license and promptly notify the Department of Motor Vehicles of the terms of the restriction in a manner prescribed by the department. The Department of Motor Vehicles shall place that restriction in the person's records in the Department of Motor Vehicles and enter the restriction on a license subsequently issued by the Department of Motor Vehicles to that person during the period of the restriction.

(k) The court may order that a person convicted under this section, who is to be punished by imprisonment in a county jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(l) For purposes of this section, "offstreet parking facility" has the same meaning as in subdivision (c) of Section 12500.

(m) A person who organizes, facilitates, encourages, promotes, or instigates a side show may be charged with aiding or abetting a motor vehicle speed contest or a motor vehicle exhibition of speed under subdivisions (b) and (c), even if they are not physically present at the scene of the side show. This subdivision does not abrogate or otherwise modify the legal elements that must be proven to find an individual guilty of aiding and abetting a crime as established in the California Supreme Court's decision in *People v. Beeman* (1984) 35 Cal. 3d 547. ~~For purposes of subdivisions (b) and (c), "aid or abet" includes, but is not limited to, organizing, facilitating, encouraging, promoting, or instigating a violation as part of a sideshow. Physical presence at the scene of a sideshow is not required to aid or abet.~~

(n) This section shall be known and may be cited as the Louis Friend Memorial Act.

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

Date of Hearing: March 25, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 528 (Alanis) – As Introduced February 11, 2025

SUMMARY: Repeals and revises the standards for disclosure of child pornography evidence in criminal trials. Specifically, **this bill**:

1) Repeals existing standards for disclosure of copies of child pornography evidence at trial that allows for disclosure of copies to a defendant, defense attorney or person employed by the defense attorney for good cause.

2) Adds a new standard for disclosure of child pornography evidence at trial to require any material that constitutes child pornography to remain in the care, custody, or control of either a law enforcement agency, the prosecution, or the court and only allows for child pornography to be made reasonably available for inspection.

3) Prohibits a defendant, their attorney, or anybody else from copying, photographing, duplicating, or reproducing any material that constitutes child pornography so long as the prosecution makes the material, and any hardware, media, or other property containing, storing, or housing the material, reasonably available for inspection to the defendant.

4) Defines the phrase "reasonably available for inspection" to mean material or any hardware, media, or other property containing, storing, or housing that material, shall be deemed to be reasonably available to the defendant if the prosecution provides ample opportunity for the inspection, viewing, and examination of that material at the prosecution's office, a law enforcement agency facility, or court facility by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

5) Requires a victim, victim's attorney, or any individual the victim may seek to qualify to furnish expert testimony, have reasonable access to any material that constitutes child pornography depicting the victim, for inspection, viewing, and examination at the prosecution's office, a law enforcement agency facility, or court facility, but under no circumstances may material that constitutes child pornography be copied, photographed, duplicated, or otherwise reproduced.

6) Allows the court to issue redactions of material to protect the privacy rights of third parties.

EXISTING FEDERAL LAW:

1) Requires, in any criminal proceeding, any property or material that constitutes child pornography to remain in the care, custody, and control of either the Government or the court. (18 U.S.C, § 3509, subd. (m)(1).)

2) Mandates a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography so long as the Government makes the property or material reasonably available to the defendant. (18 U.S.C. § 3509, subd. (m)(2)(A).

3) Defines "reasonably available" as meaning the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial. (18 U.S.C. § 3509, subd. (m)(2)(B).

EXISTING STATE LAW

1) Prohibits any attorney from disclosing or permitting to be disclosed to a defendant, members of the defendant's family, or anyone else copies of child pornography evidence, unless specifically permitted to do so by the court after a hearing and a showing of good cause. (Pen. Code, § 1054.10, subd. (a).)

2) States no order requiring discovery shall be made in criminal cases except as provided in the discovery rules. The discovery rules shall be the only means by which the defendant may compel the disclosure or production of information from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the defendant, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties. (Pen. Code, § 1054.5, subd. (a).)

3) Provides that disclosures required under the discovery statute shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. (Pen. Code, § 1054.7.)

4) Defines "good cause" for purposes of the discovery rules as threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement. (Pen. Code, § 1054.7.)

5) Prohibits any prosecuting attorney, attorney for the defendant, or investigator for either the prosecution or the defendant from interviewing, questioning, or speaking to a victim or witness whose name has been disclosed by the opposing party pursuant to the discovery rules without first clearly identifying themselves, identifying the full name of the agency by whom [they are] employed, and identifying whether they represent or have been retained by, the prosecution or the defendant. If the interview takes place in person, the party shall also show the victim or witness a business card, official badge, or other form of official identification before commencing the interview or questioning. (Pen. Code, § 1054.8, subd. (a).)

6) Defines "sexual conduct" as:

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

animals.

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

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

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

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

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

7) States any person who knowingly possesses or controls any matter, representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, or any digitally altered or artificial-intelligence-generated matter, the production of which involves the use of a person under 18 years of age, knowing that the matter depicts a person under 18 years of age personally engaging in or simulating sexual conduct, is guilty of a felony and shall be punished by imprisonment in the state prison for up to three years or in county jail for up to one year. (Pen. Code, § 311.11, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "While federal law already prohibits the removal and duplication of child porn evidence, per 18 U.S. Code § 3509, state law still allows a judge to order copies and removal of this evidence from a secure location. In February of this year, Solano County Sheriff's Office deputies seized over 120 terabytes of child pornography from a residence in Vallejo, California. For comparison, 120 terabytes of standard quality video would comprise of 10,000-50,000 hours of content. This is, of course a very extreme case and the full composition of the content seized is unknown but the sheer size of it is proof of how easy it is for individual to acquire. If, through the use of electronic devices and online access, a single individual has the ability to acquire and potentially trade in tens of thousands of hours of photos and videos of children being sexually abused and exploited, then the state arguably has a responsibility to ensure that every bit of that content is kept secured upon discovery.

"Unlawful distribution of child pornography evidence after it has been secured by law enforcement by either the prosecution or defense has not been widely documented. However, our argument isn't whether either party has ill intent or will make errors in the collection or viewing of the evidence, it's whether the image of an abused child or their likeness should be duplicated and removed from a secure location.

"While federal law prohibits the removal and duplication of child pornography evidence, California state law still permits judges to order copies and removal of this material from secure locations. In February 2025, Solano County Sheriff's Office deputies seized over 120 terabytes of child pornography from a residence in Vallejo, California—an extreme case where the sheer volume, equivalent to 10,000–50,000 hours of standard-quality video, highlights how easily an individual can amass such content.

"Although the full composition of the seized material remains unknown, its scale demonstrates the accessibility of photos and videos depicting the sexual abuse and exploitation of children, enabled by electronic devices and online platforms. If a single person can acquire and potentially trade tens of thousands of hours of this material, the state arguably bears a responsibility to ensure all such evidence remains secure upon discovery, preventing further trauma to the children depicted through unnecessary copying or removal from protected locations. AB 528 seeks to address this by ensuring that documented evidence of their abuse stays secure, never reprinted or duplicated."

2) **History of Penal Code Section 1054.10:** Penal Code section 1054.10 generally prohibits an attorney from disclosing copies of child pornography (hereinafter referred to as "child sexual abuse material" or "CSAM") evidence unless the court expressly permits an attorney to do and only upon a showing of good cause. This prohibition already prohibits a defense attorney from providing the defendant copies of child pornography unless the court gives express permission to do so. (Pen. Code, § 1054.10, subd. (a).)

However, an attorney may disclose copies of CSAM evidence to a person employed by an attorney in a case or to a person appointed by the court to assist in preparation of the defendant's case if the copies are required for preparation. However, while copies may be provided to a third party for purposes of assisting with the case, an attorney cannot provide copies to the defendant without a showing of good cause.

(a) Definition of Good Cause

"Good cause" has several different meanings depending on the context. (*See In re Lucas* (2012) 53 Cal.4th 839, 849 ["It has long been recognized that '[t]he term 'good cause' is not susceptible of precise definition."].) However, in other criminal discovery matters, good cause generally means where a defendant is able to establish a "plausible factual foundation" for access to specific information. (*Warrick v. Superior Court (People)* (2005) 35 Cal.4th 1011, 1025 [defining "good cause" for obtaining peace officer personnel records pursuant to *Pitchess*].) In this case, there is no case law interpreting "good cause" when requesting access to copies of CSAM. It is not clear whether defendants routinely ask for copies of CSAM during the pendency of their case or simply rely on their attorney to determine whether it meet the legal definition of CSAM.

(b) SB 877 (Hollingsworth)

Penal Code section 1054.10 was enacted in 2003 by SB 877 (Hollingsworth), Chapter 238, Statutes of 2003. Before 2003, CSAM was handled pursuant to the criminal discovery statutes and certain restrictions in laws prohibiting disseminating CSAM. Penal Code section 1054.1 generally provides that the prosecuting attorney must disclose to the defendant or his or her attorney (a) the names and addresses of persons the prosecutor intends to call as

witnesses at trial; (b) Statements of all defendants; (c) all relevant real evidence seized or obtained as a part of the investigation of the offenses charged; (d) the existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial; (e) any exculpatory evidence; and (f) relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

In cases where the defendant was charged with possession and/or distribution of CSAM, prior to 2003, the court could order any material to be destroyed after the defendant is convicted. (Pen. Code, § 312.) Finally, the court could always issue a protective order to prevent dissemination of highly sensitive material and order any material sealed. (Pen. Code, § 1054.5, subd. (a) and (b).)

However in 2002, the Court of Appeals in *Westerfield v. Superior Court (People)* (2002) 99 Cal.App.4th 994, ruled a defendant charged with kidnap, sexual assault, and homicide[1] be provided copies of CSAM located during a search of his home prior to his arrest. The trial court denied his request and he appealed. The Court of Appeals ruled the defendant was entitled to copies of CSAM for purposes of preparing his defense. (*Westerfield, supra,* 99 Cal.App.4th at 998 ["To the extent there is any genuine concern about the disposition of the material provided to the defense, the court can issue a protective order limiting disclosure to counsel and their agents or order the return of the images to the court for destruction at the conclusion of the case under section 312."].) In response, the Legislature enacted the current statute which generally prohibits providing any copies of CSAM unless there is good cause.

This bill proposes to re-write Penal Code section 1054.10 to adopt a narrower standard that removes the authority to provide copies of CSAM upon a showing of good cause. It proposes to require any CSAM, including any hardware, media, or other property containing, storing, or housing that material remain in the care, custody and control of either law enforcement, district attorney (DA), or the court. It is also mandates the court to deny any request by the defendant or their attorney to copy, duplicate, or reproduce any CSAM so long as the prosecutor makes that information and any hardware, media, or other storage device reasonably available to the defendant. "Reasonably available" to the defendant is defined as if the prosecution provides ample opportunity to or the inspection, viewing, and examination of the material at the DA's office, the law enforcement agency, or the court.

The proposed statute is narrower than existing law because there is no opportunity for the defense to argue they need copies of the material for a specific reason amounting to good cause. It states only that the material be "reasonably available" to the defense. However, there is no remedy in the statute if such information is not made reasonably available. It also provides that a victim's attorney or an expert retained by a victim may reasonable access the

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[1] In 2002, David Allen Westerfield was tried and convicted of kidnapping, sexually assaulting, and killing seven year old Danielle van Dam. Danielle van Dam was kidnapped from her home in Sabre Springs in San Diego County, was sexually assaulted, killed, and dumped. This case caused mass outrage and concern for the state of the law regarding child sex offenders. (See Gotredson, *"Twenty years since the kidnapping & murder of Danielle can Dam,"* https://www.cbs8.com/article/news/crime/twenty-years-since-kidnapping-murder-danielle-van-dam/509-d43a61fd-7d9e-44e0-aab2-a4a2fc2d4558.)

material for purposes of inspection. As is explained below, the proposed statute mirrors federal law following the enactment of the Adam Walsh Act in 2006.

3) **Federal Law and Adam Walsh Act of 2006:** The Adam Walsh Act was enacted and signed into law in 2006 as an expansion of the Jacob Wetterling Act of 1994; it significantly increased penalties for sex crimes against children and the possession or dissemination of CSAM. (See 34 U.S.C. § 20910, *et seq.*; 18 U.S.C. § 3500, *et seq.*). It also expanded obligations to create a sex offender registry and require sex offender registration in all 50 states. Finally, it made multiple changes to criminal discovery statutes in CSAM cases. 18 U.S.C. § 3509, subdivision (m) states, in part:

> a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title [18 USCS § 2256]), so long as the Government makes the property or material reasonably available to the defendant. (18 U.S.C. § 3509, subd. (m)(1).)

This bill is identical to the federal law. It includes the same definition of "reasonably available" as federal law. Since the enactment of the Adam Walsh Act, courts have continued to balance the defendant's right to relevant evidence necessary for preparing a defense and protecting child victims from further trauma by allowing reproduction of CSAM. The U.S. District Court for the Eastern District of Virginia ruled that section 3509, subdivision (m) is not an impermissible violation of the defendant's right to a fair trial because the defendant is granted an ample opportunity to view or inspect the material.

> While the statute does not define 'ample opportunity,' that term must be read to include at least every opportunity for inspection, viewing, and examination required by the Constitution. If read in that way, any opportunity for inspection that falls short of that mark would enable a court to order a copy given to the defendant for inspection outside a 'Government facility.' Long-established canons of statutory construction require the Court to read 'ample opportunity' in just this way. (*United States v. Knellinger* (E.D.Va. 2007) 471 F.Supp.2d 640, 644.)

The court in *Knellinger* effectively read a remedy into section 3509, subdivision (m) in the event the defendant is not "given ample opportunity" to order copies be provided to the defendant, if necessary. Effectively, the court stated if the Constitution requires access to evidence for purposes of a fair trial, then the court may always fashion a remedy where the defendant is not allowed access to evidence for purposes of a fair trial, even if the statute does not expressly provide for it.

> As discussed above, the opportunity to inspect, view, and examine contemplated by § 3509(m)(2)(B) requires, at a minimum, whatever opportunity is mandated by the Constitution; therefore, an opportunity that is "generous" or "more than adequate" may, in some circumstances, require more access than what would be mandated by the Constitution

> alone. Under that interpretation of "ample opportunity," the Court need not necessarily resolve Knellinger's as applied constitutional challenge in order to determine whether Knellinger has been afforded an "ample opportunity" to access his hard drive. If the statutorily required ample opportunity to access his hard drive has not been provided, the Court may order production of the hard drive without deciding whether the Constitution would also compel its production. (*Knellinger, supra,* 471 F.Supp.2d at 645.)

While the absence of a remedy for violation may create confusion, courts will likely still provide mirroring or copying if the prosecution does not, at least, provide a constitutional level of access so as to allow for a fair trial. This includes allowing time for defense attorneys and experts to view the material at a secure location to prepare for a case. Federal courts have considered numerous remedies in deciding how best to preserve the defendant's right to a fair trial without providing copies.[2] In most cases, courts have not found any due process violation because the defense was entitled to view and analyze the materials at either the U.S. Attorney's Office or the FBI field office.[3]

4) **Argument in Support**: According to the *California Police Chiefs Association*, "The bill directly addresses the highly sensitive and damaging nature of child pornography material. It ensures that such materials remain under strict control by law enforcement, the prosecution, and the courts. By eliminating the potential for unauthorized copies or distribution of this evidence, AB 528 reduces the risk of further harm or misuse of such deeply distressing material. Current law allows for the disclosure of copies of illicit child material to a defendant's legal team.

   "While these provisions are intended to aid in a fair trial, they create potential risks by giving access to highly sensitive materials. The revised approach in AB 528 enhances safeguards by mandating that this type of evidence remain in the custody of authorized entities while still providing the defendant and their legal representative's ample opportunities to inspect and review the material in a controlled environment. As law enforcement leaders, we are committed to supporting policies that prioritize the welfare of our community members and uphold the integrity of legal proceedings. AB 528 offers a thoughtful, balanced approach to handling sensitive materials, striking an important balance between the rights of the

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[2] See also *United States v. Healey* (S.D.N.Y. 2012) 860 F.Supp.2d 262, 270 ["courts have taken different approaches to handling the inherent difficulties in the discovery phase of a child pornography prosecution. In this case, for example, the prosecution sent a mirror image of the computers to Oregon to facilitate analysis by defendant's expert at the FBI office there."].; *United States v. Wright* (9th Cir. 2007) 259 F.App'x 50, 52 [tacitly approved of the U.S. District Court in Arizona's ruling that a defendant charged with possession of CSAM was not entitled to copies but entered a protective order requiring [defendant's] forensic expert to conduct his examination of the mirror copies in a secure room at the United States Attorney's Office.]; *United States v. McNealy* (5th Cir. 2010) 625 F.3d 858, 868 [held that defendant did not suffer any due process violation because McNealy had full access to the Government's exhibits and could have completed all the tasks and was free to prepare digital image exhibits in order to demonstrate that apparent contraband images are indistinguishable from real contraband images.].)

[3] Proposition 115 added Penal Code section 1054.1 which generally requires the prosecutor to provide the defendant with witness statements, defendant statements, all relevant evidence seized by the police, and any record of prior convictions. This bill does not necessarily restrict access to relevant information, it just requires any such evidence to be viewed at one location and rejects any copies.

defendant, the protection of vulnerable victims, and the need for rigorous evidence management."

5) **Argument in Opposition**: According to the *California Public Defenders Association*: "AB 528 is unnecessary. The disclosure of child pornographic evidence is already limited. Penal Code section 1054.10 provides (a) Except as provided in subdivision (b), no attorney may disclose or permit to be disclosed to a defendant, members of the defendant's family, or anyone else copies of child pornography evidence, unless specifically permitted to do so by the court after a hearing and a showing of good cause. (b) Notwithstanding subdivision (a), an attorney may disclose or permit to be disclosed copies of child pornography evidence to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. Persons provided this material by an attorney shall be informed by the attorney that further dissemination of the material, except as provided by this section, is prohibited.

"An attorney who violates section 1054.10 could be found in contempt of court and face monetary sanctions and/or jail. Additionally, an attorney could face State Bar discipline including suspension or revocation of their law license. AB 528 violates a defendant's right to due process and equal protection under both the federal and state constitutions. Due process requires that both the defendant and the State have ample opportunity to investigate the facts crucial to the determination of guilt or innocence. (*Wardius v. Oregon* (1973) 412 U.S. 470; *People v. Gonzalez* (2006) 38 Cal.4th 932.) This bill would dramatically impede a defense counsel's ability to review the core evidence in any child pornography prosecution by making prosecution discovery only available to review at some other location, most likely during court or office hours. It would effectively prevent the review of the evidence by necessary out-of-town experts when it is essential to defend the client. While wealthy individuals could afford counsel and experts that could view the evidence within the restrictions sought here, poor individuals represented by public or private appointed counsel limited by shrinking public budgets would be unable to do. Such a limitation will not withstand constitutional scrutiny.

"Further, this bill effectively repeals existing California law enacted by Proposition 115, a voter initiative. California Penal Code section 1054.1 was enacted by Proposition 115. California Penal Code section 1054.1(e) requires the prosecution to provide to the defense all evidence seized or obtained as part of the investigation into the offenses charged. This bill would eliminate this requirement in child pornography cases. Proposition 115 only allows for amendments to its provisions by the Legislature with a two-thirds vote of the membership of each house."

6) **Prior Legislation**:

a) AB 1831 (Berman), Chapter 926, Statutes of 2024 adds to the definition of "obscene matter" and "matter," any "matter generated through AI" as it pertains to images of persons under the age of 18 engaged in sexual conduct, as specified.

b) SB 926 (Wahab), Chapter 289, Statutes of 2024 creates a new crime for a person to intentionally create and distribute any sexually explicit image of another identifiable person that was created in a manner that would cause a reasonable person to believe the

image is an authentic image of the person depicted, under circumstances in which the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.

REGISTERED SUPPORT / OPPOSITION:

Support

California Civil Liberties Advocacy
California Police Chiefs Association
California State Sheriffs' Association

Oppose

California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Initiate Justice
Justice2jobs Coalition
LA Defensa
Local 148 LA County Public Defenders Union
San Francisco Public Defender

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

Date of Hearing: March 25, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 535 (Schiavo) – As Introduced February 11, 2025

SUMMARY: Clarifies that attempting to prevent or dissuade a witness or victim of a crime from *either* causing a complaint, indictment, information, or probation or parole violation to be sought and prosecuted, *or* assisting in a resulting prosecution is a crime.

EXISTING LAW:

1) Prohibits a person from attempting to prevent or dissuading another person, who has been the victim of a crime or who is witness to a crime, from giving a report to defined law enforcement officers, prosecuting agencies, or judges. (Pen. Code, § 136.1, subd. (b)(1).)

2) Prohibits a person from attempting to prevent or dissuading another person, who has been the victim of a crime or who is witness to a crime, from causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof. (Pen. Code, § 136.1, subd. (b)(2).)

3) Prohibits a person from attempting to prevent or dissuading another person, who has been the victim of a crime or who is witness to a crime, from arresting or causing, or seeking the arrest of a person in connection with the victimization. (Pen. Code, § 136.1, subd. (b)(3).)

4) Authorizes punishment for up to one year in county jail or 16 months, two years, or three years in state prison for knowingly and maliciously preventing or dissuading, or knowingly and maliciously attempting to prevent or dissuade, a witness or victim from attending or giving testimony at a trial, proceeding, or inquiry authorized by law. (Pen. Code, § 136.1, subd. (a)(1) & (2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Victims of crime deserve to be free from witness intimidation or being dissuaded from seeking justice. For certain victims, such as children or those subjected to human trafficking, these protections are especially crucial and can be lifesaving. However, in 2024, the California Supreme Court decided that in order to violate state witness protection laws, an individual must dissuade a witness or victim both before and after charges are filed. While freedom from coercion and intimidation is a cornerstone of our judicial system, this ruling leaves witnesses and victims of crime vulnerable to both unless the Legislature steps in. AB 535 will ensure all crime victims and witnesses are free to assist law enforcement and safeguard their community, knowing that the State will protect them from intimidation."

2) **Effect of the Bill:** This bill would clarify that it is a crime to dissuade a victim or witness from filing a report with law enforcement *or* assisting in the prosecution of the accused's case.

In 2024, the California Supreme Court found that part of the witness intimidation law, as written, only made it a crime to both prevent a witness or victim from filing a report *and* assisting in the prosecution of the accused. *(See People v. Reynoza* (2024) 15 Cal.5th 982, 990.) Due to the ambiguity in the use of the conjunctive "and," rather than the disjunctive "or," the court held that both acts were required to sustain a prosecution under the law. (*Id.* at p. 987.) A statute is ambiguous when its language supports more than one reasonable interpretation. (*Ibid.*)

While the court exhaustively evaluated the available interpretive aids, there appeared to be at least one measure of clarity in the original Legislative Counsel's digest. "Although the Legislative Counsel's summaries are not binding, they are entitled to great weight. It is reasonable to presume that the Legislature [acted] with the intent and meaning expressed in the Legislative Counsel's digest." (*Id.* at p. 998, fn. 12.)

In summarizing this ambiguous section of the statute, Legislative Counsel wrote the law would prohibit intimidation or dissuasion of a witness "from performing specified acts relating to assisting law enforcement *or* prosecution activities. (*Reynoza, supra*, 15 Cal.5th at p. 998, citing Legis. Counsel's Dig., Assem. Bill No. 2909 (1979–1980 Reg. Sess.) as introduced Mar. 6, 1980, p. 1.) The "or" in that part of the Digest suggests the Legislature intended a bill where engaging in just one of the acts would be unlawful. This evidence of intent would not be enough as the court ultimately determined the statute's ambiguity could not be successfully resolved and applied the rule of lenity, which gives the benefit of the doubt to the defendant. (*Reynoza, supra*, 15 Cal. 5th at p. 1013.) That the court ultimately located and evaluated numerous authoritative sources pointing in different directions, however, suggests a sufficient amount of ambiguity in the law that seems worth clarifying through the legislative process.

By changing "and" to "or," this bill clarifies that just one of these acts – preventing a witness from filing a report *or* assisting in the accused's prosecution – is sufficient to establish guilt under the statute.

3) **The Sixth Amendment's Confrontation Clause:** This bill would regulate certain interactions between the accused and a witness or victim of a crime.

This bill would prohibit specific interactions with the same people a defendant has the constitutional right to confront. The Sixth Amendment to the United States Constitution states, in part, "In all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him." (U.S. Const., 6th Amend.) We have consistently valued this right as vital to our criminal justice system. John Marshall, while defending the importance of the Sixth Amendment, said, "I know of no principle in the preservation of which all are more concerned. I know none, by undermining which, life, liberty and property, might be more endangered." (*United States v. Burr* (1807) C.C. D.Va, 25 F. Cas. 55.)

The author notes that certain categories of victims tend to be more vulnerable to witness intimidation and dissuasion. The U.S. Supreme Court appeared to agree saying that domestic

violence cases are "notoriously susceptible to intimidation or coercion of the victim to ensure that she does not testify at trial." (*Davis v. Washington* (2006) 547 U.S. 813, 833.) In the same case, the Court established the constitutional boundary writing, "We may not . . . vitiate constitutional guarantees when they have the effect of allowing the guilty to go free. But when defendants seek to undermine the judicial process by procuring or coercing silence from witnesses and victims, the Sixth Amendment does not require courts to acquiesce. While defendants have no duty to assist the State in proving their guilt, they do have the duty to refrain from acting in ways that destroy the integrity of the criminal-trial system." (*Ibid.*)

By broadening prohibited dissuasion activities, this bill could help address the witness intimidation issue within established constitutional bounds.

4) **Witness Intimidation:** By replacing "and" with "or," this bill would allow for potentially more witness intimidation prosecutions in the future.

Concerns about witness intimidation have grown over time. Experts have identified witness intimidation as a national concern and threat to the administration of justice.[1] Witness intimidation is a risk with many types of crimes.[2] Research suggests intimidation reduces meaningful participation by victims and witnesses in the criminal justice system, which results in decreased accountability, reduced access to justice, and diminished public safety.[3] Many victims and witnesses, following intimidation efforts, fail to appear, refuse to give accurate testimony, change their account of the crime, suddenly experience memory loss, or simply recant altogether.[4]

This bill could serve as a small step in further addressing witness intimidation and dissuasion.

5) **Argument in Support**: According to the *Conference of California Bar Associations*, "AB 535 restores the long-held belief that attempted witness intimidation is a crime. This understanding of California's witness dissuasion law, which tracks a 1979 ABA model statute, was recently upended last fall by *People v. Reynoza* (2024) 15 Cal.5th 982, which found the ABA model statute to be poorly drafted and the statutory language too ambiguous to enforce. Instead, the California Supreme Court left it up to the Legislature to clarify: "[O]ur Legislature remains free to clarify section 136.1(b)(2), as the Senate Committee on the Judiciary suggested it do '[a]t some point' to smooth out the statute's 'numerous rough edges.'" (*Id.* at 1013-1014.)

"AB 535 is necessary to clarify that witnesses are protected from intimidation even after criminal charges are filed. It does not make sense to prohibit attempted witness intimidation if it occurs before filing yet permit such conduct afterwards. We therefore urge your support of AB 535."

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[1] Wilkinson, Evading Justice: The Pervasive Nature of Witness Intimidation (Mar. 2013) Aequitas Strategies in Brief <https://aequitasresource.org/wp-content/uploads/2018/09/Strategies_in_Brief_Issue_16.pdf> at p. 1 [as of Mar. 14, 2025].
[2] *Ibid.*
[3] *Id.* at p. 2.
[4] *Ibid.*

6) **Prior Legislation**: AB 578 (Reyes), of the 2017-18 Legislative Session, would have included in the list of circumstances that make threatening a witness or victim a felony a threat to report the immigration status or suspected immigration status of a crime victim or witness, or of a victim's or witness' family member or relative. This bill was held in the Senate Appropriations Committee.

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
Conference of California Bar Associations
Culver City Police Officers' Association
Fullerton Police Officers' Association
Los Angeles City Attorney's Office
Los Angeles County District Attorney's Office
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
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

Opposition

None on file.

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

Date of Hearing: March 25, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 568 (Lackey) – As Introduced February 12, 2025

As Proposed to be Amended in Committee

SUMMARY: Adds fentanyl to the list of controlled substances for which it is a "serious" felony to sell, furnish, administer, or give to a minor.

EXISTING LAW:

1) Provides that a person 18 years of age or older who solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate laws with respect to either specified controlled substances, including cocaine or heroin, who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, those controlled substances to a minor, shall be punished by imprisonment in the state prison for a period of three, six, or nine years. (Health & Saf. Code, § 11353.)

2) Specifies that any person who is convicted of a violation of Health and Safety Code section 11353, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

   a) One year in state prison if the offense involved heroin, cocaine, cocaine base, or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, a child day care facility, or a public swimming pool, during hours in which the facility is open or in use.

   b) Two years in state prison if the offense involved heroin, cocaine, cocaine base, or any analog of these substances and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high, or high school, during hours that the school is open or in use.

   c) One, two, or three years in state prison if the offense involved a minor who is at least four years younger than the defendant. (Health & Saf. Code, § 11353.1, subd. (a).)

3) States that a person 18 years of age or older who solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate specified laws involving controlled substances, including methamphetamine-related drugs and phencyclidine (PCP), or who unlawfully furnishes, offers to furnish, or attempts to furnish those controlled substances to a minor shall be punished by imprisonment in the state prison for a period of three, six, or nine years. (Health & Saf. Code, § 11380, subd. (a).)

4) Specifies that any person who is convicted of a violation of Health and Safety Code section 11380, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

a) One year in state prison if the offense involved PCP, methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, a child day care facility, or a public swimming pool, during hours in which the facility is open or in use.

b) Two years in state prison if the offense involved PCP, methamphetamine, LSD, or any analog of these substance and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high, or high school, during hours that the school is open or in use.

c) One, two, or three years in state prison if the offense involved a minor who is at least four years younger than the defendant. (Health & Saf. Code, § 11380.1, subd. (a).)

5) States that a person who was convicted of a violation of specified controlled substance offenses including Health and Safety Code sections 11353 and 11380, who has previously served two or more prior separate prison terms for a violation of those listed offenses, may be punished in the state prison for life and shall not be eligible for release on parole for 17 years, or other sentence determined by the court for the underlying conviction and any enhancements, whichever is greater. (Pen. Code, § 667.75.)

6) States that a person who sells, furnishes, administers, or gives away a controlled substance is deemed to have personally inflicted great bodily injury for purposes of sentence enhancement when the person to whom the substance was sold, furnished, administered or given suffers a significant or substantial physical injury from using the substance. (Pen. Code, § 12022.7, subd. (f)(2); added by Proposition 36, approved by voters on Nov. 5, 2024.)

7) Defines the following offenses as "serious" felonies:

a) Murder or voluntary manslaughter;

b) Mayhem;

c) Rape;

d) Sodomy by force, violence, duress, menace, or threat or fear of bodily injury;

e) Oral copulation by force, violence, duress, menace or threat or fear of bodily injury;

f) Lewd act with child under fourteen years of age;

g) Any felony punishable by death or life imprisonment;

h) Any felony in which defendant personally inflicts great bodily injury on any person other than an accomplice or personally uses a firearm;

i) Attempted murder;

j) Assault with intent to commit rape or robbery;

k) Assault with a deadly weapon or instrument on a peace officer;

l) Assault by a life prisoner on a non-inmate;

m) Assault with a deadly weapon by an inmate;

n) Arson;

o) Exploding a destructive device or any explosive with intent to injure;

p) Exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;

q) Exploding a destructive device or any explosive with intent to murder;

r) Burglary of an inhabited dwelling;

s) Robbery or bank robbery;

t) Kidnapping;

u) Holding a hostage by an inmate;

v) Attempt to commit a crime punishable by life imprisonment or death;

w) Any felony where defendant personally used a dangerous or deadly weapon;

x) Selling, furnishing, administering, giving, heroin, cocaine, PCP, or methamphetamine to a minor;

y) Forcible penetration with a foreign object;

z) Grand theft involving a firearm;

aa) Any gang-related felony;

bb) Assault with the intent to commit mayhem or specified sex offenses;

cc) Maliciously throwing acid or flammable substances;

dd) Witness intimidation;

ee) Assault with a deadly weapon or firearm or assault on a peace officer or firefighter;

ff) Assault with a deadly weapon on a public transit employee;

gg) Criminal threats;

hh) Discharge of a firearm at an inhabited dwelling, vehicle, or aircraft;

ii) Commission of rape or sexual penetration in concert;

jj) Continuous sexual abuse of a child;

kk) Shooting from a vehicle;

ll) Any attempt to commit a "serious" felony other than assault;

mm) Any violation of the 10 years, 20 years, 25 years to life gun law;

nn) Possession or use of any weapon of mass destruction;

oo) Sex trafficking of a minor except where the person committing the offense was a victim of human trafficking at the time of the offense; and,

pp) Any conspiracy to commit a "serious" felony. (Pen. Code, § 1192.7, subd. (c).)

8) Prohibits plea bargaining in any case in which the indictment or information charges a "serious" felony unless there is insufficient evidence to prove the charge, the testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. (Pen. Code, § 1192.7, subd. (a)(2).)

9) Provides that any person convicted of a "serious" felony who has previously been convicted of a "serious" felony receives, in addition to the sentence imposed by the court, an additional and consecutive five-year enhancement for each such prior conviction. (Pen. Code, § 667, subd. (a)(1).)

10) Prohibits granting of probation on a current felony conviction if the defendant has one or more prior "serious" or "violent" felony convictions. (Pen. Code, §1170.12, subd. (a)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 568 will not only help prevent deaths by fentanyl overdoses but will also strengthen California's justice system by making it fairer and more accountable. The bill is an essential tool in protecting our youth, ensuring their safety, and safeguarding their futures from the dangers of fentanyl exposure by treating fentanyl dealers in the same manner as those who provide sell other illegal narcotics to our children. It is a bold step toward a more equitable and secure California for all residents, especially the children we are sworn to protect."

2) **Background on Fentanyl and Fentanyl-Related Substances**: Fentanyl was synthesized in 1959 and has been used medically since the 1960s.[1] The Centers for Disease Control and Prevention (CDC) provides this description of fentanyl[2]:

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[1] https://www.yalemedicine.org/news/fentanyl-driving-overdoses (Mar. 18, 2024) [accessed Feb. 28, 2025].)

> Fentanyl is a synthetic opioid that is up to 50 times stronger than heroin and 100 times stronger than morphine
>
> There are two types of fentanyl: pharmaceutical fentanyl and illegally made fentanyl. Both are considered synthetic opioids (made in a laboratory). Pharmaceutical fentanyl is prescribed by doctors to treat severe pain, especially after surgery and for advanced-stage cancer.
>
> However, most recent cases of fentanyl-related overdose are linked to illegally-made fentanyl, which is distributed through illegal drug markets for its heroin-like effect. It is often added to other drugs because of its extreme potency, which makes drugs cheaper, more powerful, more addictive, and more dangerous.

According to the Drug Enforcement Agency (DEA), illegally-made fentanyl is sold as powders, nasal sprays, and pressed into pills to look like legitimate prescription opioids. The DEA reports that they've analyzed counterfeit pills ranging from .02 to 5.1 milligrams of fentanyl per tablet. 42 percent of pills tested contained at least 2mg of fentanyl which is considered a potentially lethal dose. However, lethality depends on a person's body size, tolerance and past usage.

Some users of illegally-made fentanyl are unaware that fentanyl is in the counterfeit pill or the illegal controlled substance they were seeking and would have no idea how much fentanyl is contained in the product. However, may people who use or overdose on fentanyl knowingly take the drug because it provides an intense high.[3]

3) **Existing Laws on Selling or Furnishing Controlled Substances to Minors**: Existing law prohibits selling, furnishing, administering, giving away specified controlled substances, or offering to commit those acts, to a minor. (Health & Saf. Code, §§ 11353, 11380.) The punishment for a violation of such an offense is 3, 6, or 9 years in state prison. Sentence enhancements of 1 to 3 years are available to add on to a person's sentence for the underlying crime when the defendant is 4 years older than the minor, or if the offense occurred at specified locations such as a school, church or community centers. (Health & Saf. Code, § 11353.1.) A sentence enhancement of 3 years may also be added if the person to whom the substance was sold, furnished, administered or given suffers a significant or substantial physical injury from using the substance, such as an overdose. (Pen. Code, § 12022.7, subd. (f)(2).) When those controlled substances include heroin, cocaine, PCP, or methamphetamine, the conviction qualifies as a strike for purposes of the Three Strikes Law. (Pen. Code, § 1192.7.) Enhanced sentencing including a life sentence may also apply to a person with prior convictions involving controlled substances. (Pen. Code, § 667.75.)

   The jury instructions applicable to Health and Safety Code sections 11353 and 11380 require the following elements to be proven beyond a reasonable doubt for a person to be convicted of the offenses:

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[2] https://www.cdc.gov/stop-overdose/caring/fentanyl-facts.html (Apr. 2, 2024) [accessed Feb. 28, 2025].
[3] Supra, note 1.

a) The defendant unlawfully sold/furnished/administered/gave away a controlled substance to another;

b) The defendant knew of the presence of the controlled substance;

c) The defendant knew of the substance's nature or character as a controlled substance;

d) At that time, the defendant was 18 years of age or older;

e) At that time, the person sold/furnished/administered/given the controlled substance was under 18 years of age;

f) The substance was a controlled substance or an analog of a controlled substance; and,

g) The controlled substance was in a usable amount. (CALCRIM No. 2380.)

Fentanyl is included in the controlled substances that are illegal to sell, furnish, administer, give away to a minor pursuant to Health and Safety Code section 11353. Thus, the main effect of this law is to include the crime on the list of controlled substances that elevate the crime to a "serious" felony when the substance is cocaine, PCP, heroin and methamphetamine. As discussed above, illicit fentanyl is commonly mixed with other controlled substances, such as heroin and cocaine, oftentimes unbeknownst to the seller and buyer. Also, if the substance is mixed with cocaine, heroin or methamphetamine, the crime would already be a "serious" felony.

4) **Three Strikes Law**: In 1994, California voters passed Proposition 184, knowns as the "Three Strikes and You're Out" law that defined qualifying "strikes" as those felonies listed as "serious" or "violent" on June 30, 1993. That same year, the California Legislature passed similar legislation that was signed into law. (AB 971 (Jones), Chapter 12, Statutes of 1994.) Collectively, Proposition 184 and AB 971 became known as California's Three Strikes law which imposes longer prison sentences for certain repeat offenders. Proposition 21 of the March 2000 primary election added to the lists of serious and violent felonies and defined qualifying prior strikes as felony listed as "serious" or "violent" felonies as of March 8, 2000, the date that the Proposition 21 took effect.

The Three Strikes law requires a person who is convicted of a felony and who previously has been convicted of one or more "violent" or "serious" felonies, known as strikes, to be subject to an alternative sentencing scheme. Specifically, if the person has one prior strike, the sentence on any new felony conviction must be double what is specified by statute. If the person has two prior strikes, the sentence on any new felony conviction was 25 years to life, although this provision was amended by Proposition 36, approved by voters in 2012, to require that the third strike must be a serious or violent felony in order to impose the life term.

The Three Strikes law contains a statutory lock-in date whereby only the offenses listed in the serious or violent list as of the specified date qualify as strikes. (Pen. Code, §§ 667.1.)

Currently, the statute contains two dates to reflect a change to the list and lock-in dates in 2012[4] and again in 2023[5]:

> (a) Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after November 7, 2012, but before January 1, 2024, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they read on November 7, 2012.
>
> (b) Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after January 1, 2024, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they read on January 1, 2024.

(Pen. Code, § 667.1; see also Pen. Code, § 1170.125.) This bill does not amend the statutory lock-in dates.

5) **Argument in Support**: According to *California District Attorneys Association*, "The threat posed by fentanyl is real, and it is growing. According to a recent study by the Centers for Disease Control and Prevention (CDC), fentanyl-related deaths have spiked by 55% across the U.S. in the past year, with California seeing a similar surge. In 2022 alone, over 5,000 Californians died from fentanyl overdoses, and an alarming number of these fatalities were minors. The consequences of failing to act are grave—without stronger penalties, more young people will continue to die, and the fentanyl crisis will worsen.

   "AB 568 is a critical step forward in combating this crisis. By classifying the act of distributing fentanyl to minors as a serious felony, AB 568 ensures that those who knowingly and recklessly sell fentanyl to children will face severe legal consequences. This bill will give law enforcement the tools they need to crack down on fentanyl trafficking, and it will send a clear message that California is committed to protecting its youth from this deadly epidemic."

6) **Argument in Opposition**: According to *Drug Policy Alliance*, "Current California law is already too draconian, focused on expensive incarceration, rather than more intelligent investments in public health and drug treatment strategies. The current penalty for furnishing fentanyl to a minor (absent any enhancements for great bodily injury or other offenses) is 3, 6, or 9 years in jail. AB 568 would add many more years, and require doubled sentences and incarceration in state prisons for any subsequent felony conviction. The United States Department of Justice and others have concluded, based on available evidence, that the threat of long sentences does not deter crime.

   "The estimated per capita cost of incarceration in Los Angeles County for one year is approximately $90,000. The per capita cost of incarceration in a state prison in California exceed $133,000. Compare that to the cost of substance use disorder treatment, a lifesaving intervention that is still not available statewide. The approximate cost of a year of methadone treatment for a fentanyl dependent person is $6,552. The approximate cost of buprenorphine treatment is less than $6,000. It would be healthier, safer and better for public safety to send

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[4] Proposition 36, approved by California voters on November 6, 2012.
[5] SB 14 (Grove), Chapter 230, Statutes of 2023, which added sex trafficking of a minor to the list of serious felonies.

an additional 17 people to methadone treatment, or 19 people to buprenorphine treatment, than to incarcerate one person for an additional year in a state prison. Funding a robust, voluntary, low-barrier and evidence-based drug treatment system is a far more cost-effective investment.

"The state has made a sizable investment in primary and secondary prevention focused largely on youth. In 2024, the Substance and Addiction Branch of California Department of Public Health launched a multi-million dollar public education campaign Facts About Fentanyl, targeting young people online and through various other forms of media. Advertisement and materials are available in Korean, Spanish, Chinese, as well as English, and provided in partnership with Tribal governments. These approaches, in addition to substance use disorder treatment and harm reduction strategies, including community-based drug checking services, street outreach programs, and distribution of the opioid reversal medication naloxone, are far more effective investments." (Fn. omitted.)

7) **Related Legislation**: AB 292 (Patterson), would add felony domestic violence to the list of "violent" felonies for all purposes, including the Three Strikes Law. AB 292 is pending hearing in this Committee.

8) **Prior Legislation**:

   a) SB 14 (Grove), Chapter 230, Statutes of 2023, added sex trafficking of a minor, except if the person committing the offense was a victim of sex trafficking at the time of the offense as specified, to the list of "serious" felonies for all purposes, including the Three Strikes Law.

   b) SB 1042 (Grove), of the 2021-2022 Legislative Session, would have added human trafficking to the list of "violent" felonies as well as to the list of "serious" felonies for all purposes, including for purposes of the Three Strikes Law. SB 1042 failed passage in the Senate Public Safety Committee.

   c) AB 537 (Acosta), of the 2017-2018 Legislative Session, would have added crimes, including human trafficking involving sexual exploitation, to the list of "serious" felonies. AB 537 failed passage in this committee.

   d) AB 1321 (Stone), of the 2013-2014 Legislative Session, would have added crimes, including human trafficking, to the list of "serious" felonies. AB 1321 was held in this committee.

   e) AB 1188 (Pan), of the 2011-2012 Legislative Session, would have added four new offenses relating to child abuse to the list of "violent" felonies, and added five new offenses related to human trafficking and the abuse of a child to the "serious" felony list. AB 1188 failed passage in this committee.

   f) AB 16 (Swanson), of the 2009-2010 Legislative Session, would have added human trafficking to the list of "serious" and "violent" felonies. AB 16 failed passage in the Assembly Appropriations Committee.

g) SB 440 (Denham), of the 2009-2010 Legislative Session, would have added the crimes of child abuse likely to produce great bodily injury or death, physical child abuse, killing, mutilating, or torturing a domestic animal, elder abuse for which the defendant was incarcerated in state prison, and escape or attempted escape by force or violence to the lists of "serious" felonies as well as to the list of "violent" felonies, as specified; and added the crimes of human trafficking, stalking, solicitation to commit murder, fleeing or attempting to elude a pursuing peace officer, willful flight or attempting to elude a pursuing peace officer, and felon in possession of a firearm, to the list of "serious felonies," as specified. SB 440 failed passage in the Senate Public Safety Committee.

h) AB 426 (Galgiani), of the 2007-2008 Legislative Session, would have added human trafficking to the list of "serious" and "violent" felonies. AB 426 failed passage in the Senate Public Safety Committee

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
Orange County Sheriff's Department
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside County Sheriff's Office
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association

Oppose

ACLU California Action
All of Us or None Los Angeles
California Alliance for Youth and Community Justice
California Public Defenders Association (CPDA)
Californians for Safety and Justice (CSJ)
Center on Juvenile and Criminal Justice
Courage California
Drug Policy Alliance 1
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
Ryse Center
San Francisco Public Defender
Sister Warriors Freedom Coalition

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

Amended Mock-up for 2025-2026 AB-568 (Lackey (A))

Mock-up based on Version Number 99 - Introduced 2/12/25
Submitted by: Staff Name, Office Name

****Add Senator Seyarto as co-author.***

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

SECTION 1. Section 667.1 of the Penal Code is amended to read:

~~**667.1.** (a) Notwithstanding subdivision (h) of Section 667 and except as provided in subdivision (b), for all offenses committed on or after January 1, 2026, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they read on January 1, 2026.~~

~~(b) Notwithstanding subdivision (h) of Section 667, for the offense of human trafficking of a minor, in violation of subdivision (c) of Section 236.1, except with respect to a violation of paragraph (1) of subdivision (c) of Section 236.1, where the person who committed the offense was a victim of human trafficking, as described in subdivision (b) or (c) of Section 236.1, at the time of the offense, committed on or after January 1, 2024, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they read on January 1, 2024.~~

~~**SEC. 2.** Section 1170.125 of the Penal Code is amended to read:~~

~~**1170.125.** (a) Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994, statewide general election and except as provided in subdivision (b), for all offenses committed on or after January 1, 2026, all references to existing statutes in Sections 1170.12 and 1170.126 are to those sections as they read on January 1, 2026.~~

~~(b) Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994, statewide general election, for the offense of human trafficking of a minor, in violation of subdivision (c) of Section 236.1, except with respect to a violation of paragraph (1) of subdivision (c) of Section 236.1, where the person who committed the offense was a victim of human trafficking, as described in subdivision (b) or (c) of Section 236.1, at the time of the offense, committed on or after January 1, 2024, all references to existing statutes in Sections 1170.12 and 1170.126 are to those sections as they read on January 1, 2024.~~

SEC. 3. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) (1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a "one strike," "three strikes" or habitual sex offender statute instead of engaging in plea bargaining over those offenses.

(2) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(3) If the indictment or information charges the defendant with a violent sex crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. At the time of presenting the agreement to the court, the district attorney shall state on the record why a sentence under one of those sections was not sought.

(b) As used in this section, "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or their counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under 14 years of age; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) any burglary of the first degree; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any fentanyl, heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as

described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 26100; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; (42) human trafficking of a minor, in violation of subdivision (c) of Section 236.1, except, with respect to a violation of paragraph (1) of subdivision (c) of Section 236.1, where the person who committed the offense was a victim of human trafficking, as described in subdivision (b) or (c) of Section 236.1, at the time of the offense; and (43) any conspiracy to commit an offense described in this subdivision.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 4. 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 25, 2025
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 572 (Kalra) – As Introduced February 12, 2025

SUMMARY: Requires law enforcement officers, prior to interviewing an immediate family member of a person who has been killed or seriously injured by a peace officer, to inform that person that their family member has been killed or seriously injured. Specifically, **this bill**:

1) Requires a peace officer, prosecuting attorney, or an investigator for the prosecution, prior to commencing any interview, questioning, or interrogation by law enforcement, regardless of whether they are in a police station, with an immediate family member of a person who has been killed or seriously injured by a peace officer, to do the following:

   a) Clearly identify themself, identifying the full name of the agency by whom they are employed, and identifying whether they represent, or have been retained by, the prosecution. If the interview takes place in person, the party shall also show the person a business card, official badge, or other form of official identification.

   b) Inform the person of the status of their family member, including whether the family member has been killed or seriously injured by law enforcement.

   c) Inform the person that they can consult with an attorney or trusted support person, they are not required to speak with officers, and they are not required to go to the police station.

   d) Inform the person that they are conducting an investigation and that the investigation may involve the culpability of the person that was killed or injured.

2) Defines "immediate family" to mean the victim's spouse, domestic partner, parent, guardian, grandparent, aunt, uncle, brother, sister, and children or grandchildren who are related by blood, marriage, or adoption.

EXISTING LAW:

1) Provides that, to the extent that such privilege exists under the Constitution of the United States or the State of California, a person has a privilege to refuse to disclose any matter that may tend to incriminate them. (Evid. Code, § 940.)

2) Requires all peace officers to complete an introductory course of training prescribed by the Commission on Peace Officers Standards and Training ("POST"), demonstrated by passage of an appropriate examination developed by POST. (Pen. Code, § 832, subd. (a).)

3) Requires the Robert Presley Institute of Criminal Investigation to provide an array of investigation training, including core instruction in matters common to all investigative

activities, advanced instruction through foundation specialty courses in the various investigative specialties, and completion of a variety of elective courses pertaining to investigation. (Pen. Code § 13519.9, subd. (b).)

4) Requires a state prosecutor to investigate incidents of officer-involved shootings resulting in the death of an unarmed civilian. (Gov. Code, § 12525.3, subd. (b)(1).)

5) Requires law enforcement to provide certain information to victims of domestic violence and sexual assault, including information about their rights and available services. (Pen. Code, §§ 680.2, subd. (a), 13701, subds. (c)(9).)

6) Requires each department or agency that employs peace officers to make a record of any investigations of misconduct involving a peace officer in the officer's general personnel file or a separate file designated by the department or agency. (Pen. Code, § 832.12, subd. (a).)

7) Requires every person employed as a peace officer to immediately report all uses of force by the officer to the officer's department or agency. (Pen. Code, § 832.13.)

8) States that except as specified, peace officer or custodial officer personnel records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery, among other exemptions (Pen. Code, § 832.7(a).)

9) Provides that peace officer or custodial records maintained by their agencies shall not be confidential and shall be made available for public inspection pursuant to the CPRA. These include:

   a) A record relating to the report, investigation, or findings of:

      i) An incident involving the discharge of a firearm at a person by a peace officer;

      ii) An incident in which the use of force by a peace officer against a person resulted in death, or in great bodily injury;

      iii) A sustained finding involving a complaint that alleges unreasonable or excessive force; or

      iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

   b) Any record relating to an incident in which a sustained finding was made by a law enforcement or oversight agency that a peace officer engaged in sexual assault, as specified;

   c) Any record relating to an incident in which a sustained finding was made by a law enforcement or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, as specified;

d) Any record relating to an incident in which a sustained finding was made by a law enforcement or oversight agency that a peace officer or custodial officer engaged in conduct involving prejudice or discrimination, as specified; and

e) Any record relating to an incident in which a sustained finding was made by a law enforcement or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search. (Pen. Code, § 832.7(b)(1)(A)-(E))

10) Requires any agency employing a peace officer to report to POST any complaint, charge, or allegation of conduct against a peace officer that could render that officer subject to suspension or revocation of certification, within 10 days of the event. (Pen. Code § 13510.9, subd. (a).)

11) Specifies circumstances under which a peace officer shall have their certification revoked, and when a peace officer may have their certification suspended or revoked based on termination for cause or serious misconduct. (Pen. Code § 13510.9)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The relatives of individuals affected by police violence have a reasonable expectation of transparency and information about the circumstances surrounding their loved ones' welfare without encountering deceiving and threatening information. The coercive methods law enforcement officers use to interrogate family members of the victim not only inflict harm upon the victim and their family, but also erode trust in law enforcement. AB 572 will provide family members with information that could protect them from a coercive interrogation when they are at their most vulnerable."

2) **Effect of this Bill:** AB 572 seeks to prevent law enforcement from misleading family members of persons who have been killed by law enforcement for the purposes of securing advantageous information about the deceased family member. It proposes to require law enforcement officers, prior to interviewing an immediate family member of a person who has been killed or seriously injured by an officer, to inform that person that their family member has been killed or seriously injured. Specifically, prior to commencing any interview, questioning or interrogation, of such an immediate family member, an officer would be required to: 1) clearly identify themselves and their employing agency; 2) inform the person of the status of their family member, including whether the family member has been killed or seriously injured by law enforcement; 3) inform the person that they can consult with an attorney or trusted support person, they are not required to speak with officers, and they are not required to go to the police station; and 4) inform the person that they are conducting an investigation, which may involve the culpability of the person that was killed or injured.

3) **Need for this Bill:** Recent reports indicate that many law enforcement agencies in California have been trained, in the aftermath of a police-involved killing, to immediately question family members of the deceased and refrain from disclosing that such a person was killed,

prior to the family members finding out about the death of their deceased family member.[1] This enables law enforcement to secure information (including advantageous and potentially incriminating information) about the deceased person, as family members may be less willing to share information with law enforcement upon finding out that law enforcement killed their family member. Incriminating information (e.g. history of drug use, propensity for violence, mental health issues) gained during such interviews can assist law enforcement agencies in defending against future civil suits pertaining to the death of that person, and ultimately lower potential settlement amounts associated with police-involved killings.[2]

According to a recent *Los Angeles Times* report:

> For years, law enforcement agencies across California have been trained to quickly question family members after a police killing in order to collect information that, among other things, is used to protect the involved officers and their department, an investigation by the Los Angeles Times and the Investigative Reporting Program at UC Berkeley's Graduate School of Journalism has found.
>
> Police and prosecutors routinely incorporate the information into disparaging accounts about the people who have been killed that help justify the killings, bolster the department's defense against civil suits and reduce the amount of money families receive in settlements and jury verdicts, according to police reports, court records and interviews with families and their attorneys.
>
> The Times and the Investigative Reporting Program documented 20 instances of the practice by 15 law enforcement agencies across the state since 2008. Attorneys specializing in police misconduct lawsuits say those cases are just a fraction of what they describe as a routine practice.[3]

In one example - a teenager suffering from mental health issues stabbed his father. While his father was being transported to a hospital, the teenager was shot by police. That same night, detectives went to the hospital and asked the father numerous questions, which led to the father disclosing information about his son's use of drugs, lack of impulse control, and suicidal thinking. The officer's never disclosed that his son was already dead, and only after the detectives left did the father find out about his son's death.[4]

In another example - a 19 year old women with bipolar disorder was shot and killed by the police, who alleged the black drill she was holding looked like a gun. Just two hours after the shooting, detectives interviewed her father in an interrogation room, seeking information about her mental health. Her father was under the impression she was being treated in a hospital, and didn't find out about her death until 27 minutes into the interview.[5]

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[1] Howey, *After police killings, families are kept in the dark and grilled for information*, L.A. Times (Mar. 28, 2023), available at: https://www.latimes.com/california/story/2023-03-28/police-shootings-california-families-grilled-information
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*

Other reports shine light on an opposite, although just as concerning practice; law enforcement falsely informing family members of suspects that their loved one has been killed, for the purposes of securing a guilty confession.[6] For example, one man was being interrogated by police about his father, who had been missing. The police suspected the son had killed his father. Hours into the interrogation the detectives told the son that his father had been found dead. The son repeatedly claimed innocence, before eventually falsely confessing to the crime after several more hours of interrogation. The son subsequently attempted to hang himself. The catch – hours later the the father was located alive and well.[7] While this example is distinct from incidents of law enforcement refraining to disclose to a person that their family member has been killed, it supports the author's concern that there is a pattern of law enforcement misleading people about the health of their family members, when they are most vulnerable, for the purposes of securing advantageous information.

Should there be limits on the extent to which law enforcement can mislead someone about the health and wellbeing of a family member who has been killed or seriously injured by police?

4) **Maintaining Consistency With Miranda Warnings and Peace Officer Investigation Obligations:** The author may wish to make some clarifying changes to avoid overlap with the constitutionally required admonitions that law enforcement are required to give before interrogating certain suspects, and ensure law enforcement can still arrest and detain suspects of crimes when necessary.

For background, "Miranda warnings" are a series of admonitions that generally must be given by police prior to interrogating a suspect of a crime. The purpose of Miranda warnings is to advise people that have been arrested of their constitutional right against self-incrimination. They are the product of the landmark U.S. Supreme Court decision *Miranda v. Arizona* (1966) 384 U.S. 436. In deciding that case, the Supreme Court imposed specific, constitutional requirements pertaining to the advice an officer must provide prior to engaging in a custodial interrogation and held that statements taken without such warnings are inadmissible against the defendant in a criminal case. (*Miranda v. Arizona* (1966) 384 U.S. 436.) The Court summarized its decision as follows:

> [T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive

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[6] Chabria and Garrison, *Cops lie to suspects during interrogations. Should detectives stick to the truth?* L.A. Times (Dec. 23, 2024), available at: https://www.latimes.com/california/story/2024-12-23/cops-lie-to-suspects-during-interrogations-should-detectives-stick-to-the-truth

[7] *Ibid.*

> effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned. (*Id.* at 444-45.)

In sum, Miranda warnings are meant to inform people who are in custody of their constitutional right not to be a witness against themselves. Police are not required to speak a specific set of words but generally must convey that the person has the rights enumerated above. Notably, law enforcement need only give Miranda warnings to people "taken into custody or otherwise deprived of [their] freedom of action in any significant way"—i.e. people seized for questioning about a crime. (*Miranda v. Arizona* (1966) 384 U.S. 436, 444-45.) Such warnings are not required to be given to, among others, witnesses of crime, the family members of a defendant, or family members of a person killed by a peace officer.

In order to avoid confusing the obligations of this bill with Miranda warnings, and to ensure police can still make lawful arrests when needed, the author may wish to clarify that certain requirements of this bill do not apply if the family member is under arrest or subject to custodial interrogation. This is most applicable to the requirements that an officer inform a person whose immediate family member has been killed or seriously injured that they can consult with an attorney or trusted support person, they are not required to speak with officers, and they are not required to go to the police station, as well as the requirement that officers inform a family member that they are conducting an investigation that may involve the culpability of the person who was killed or injured.

It is reasonable for police to inform immediate family members of persons who have been killed by police that they are not required to go to a police station in cases where that family member *is not under arrest*. On the other hand, if that family member is under arrest, or otherwise subject to custodial interrogation because they are a suspect, then requiring police to tell them that they do not need to go to a police station would be inaccurate. For example, say the police are pursuing two brothers who allegedly committed a murder. One is shot and killed by police, and the other, the police follow to an apartment. Upon detaining the surviving brother at the apartment with plans to arrest and take him to a police station, AB 572 could be interpreted to require the police to inform the brother that he is not required to go to the police station. Such a statement would be contradictory in scenarios such as this, where law enforcement would be well within their right to arrest him and take him to a police station. Similarly, in cases where an immediate family member of a person killed by the police is taken into custody for interrogation, the requirement to issue Miranda warnings will be triggered.

Further, requiring a family member that they are conducting an investigation that may involve the culpability of the person that was killed or injured, may not be applicable if an officer is not in fact conducting an investigation. And if that family member is a suspect, as discussed above, making such a statement could interfere with law enforcement investigatory efforts.

5) **Additional Considerations:** The author may wish to clarify certain terms and provisions of this bill.

First, the author may wish to define what it means to be "seriously injured." Definitions elsewhere in the Penal Code may be informative. For example, "great bodily injury" is defined elsewhere as "a significant or substantial physical injury? (Pen. Code, § 12022.7(f)(1).) Alternatively, "serious bodily injury" is defined as "a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement." (Pen. Code, § 243(f)(4).)

Second, the author may wish to further define what is encompassed by the requirement that a law enforcement officer inform the person "of the status" of their family member. This could be interpreted to apply only to whether that family member has been killed or seriously injured. Alternatively, it could be interpreted to require additional disclosure of information such as the family member's location, type of injuries, and whether they are in custody.

Additionally, this bill would apply to a peace officer, prosecuting attorney, or investigator for the prosecution. Notably, a peace officer, as defined in PC 830.1 already includes "an inspector or investigator employed in that capacity in the office of a district attorney." (Pen. Code, § 830.1(a).) As such, it is not necessary to state this bill applies to investigators for the prosecution. Similarly, given that this bill requires an officer to identify themselves and their employing agency, it is unnecessary to additionally identify if they represent or have been retained by the prosecution.

6) **Argument in Support**: According to the *California Public Defenders Association*, "CPDA has a long-standing history of advocating for police transparency, accountability, and accessibility. We have supported numerous pieces of legislation aimed at ensuring community access to information about law enforcement and policing. Over the last 5 years, we have proudly supported specific efforts by members of the California Legislature to put police policies and procedures online (SB 978 (Bradford), increase transparency of some police disciplinary records (SB 1421 (Skinner) and SB 16 (Skinner)) and to create a commission to investigate and decertify police officers who commit misconduct (SB 2 (Bradford.))

"AB 572 would require a peace officer, a prosecuting attorney, or an investigator for the prosecution, prior to interviewing an immediate family member of a person who has been killed or seriously injured by a peace officer, to clearly identify themself, if the interview takes place in person, to show identification, and to state specified information, including that the family member has the right to ask about the status of their family member prior to answering questions, has the right to remain silent, and before speaking with the interviewer, can consult with a trusted person and can have that person with them while they speak to the interviewer.

"AB 572 provides more transparency and accountability by providing members of the community information about whether the person attempting to interview them is a member of the prosecution, or law enforcement or someone else entirely, as well as their purpose in conducting the interview. People who have lost a loved one are understandably emotionally

distraught and often confused about what is happening and should be provided clear information about whom the person is who is asking questions of them. AB 572 will provide some clarity about the purpose of the inquiry being made by law enforcement.

"An individual who has lost a loved one will be more willing to cooperate and aid the police in its investigation knowing the purpose of the questioning. It will help to foster more trusting relationships between the community and law enforcement by providing some assurance that a person is not misrepresenting themselves. Advising members of the public with this most basic information takes little time and energy and it will aid law enforcement in obtaining accurate and reliable information that may be used to further their investigative efforts."

7) **Argument in Opposition**: According to the *Peace Officers Research Association of California,* "PORAC is deeply concerned that AB 572 will impede the pursuit of truth and justice by hindering the ability of investigators to gather accurate information from immediate family members of individuals involved in deadly force or serious injury incidents involving peace officers. By requiring these warnings and creating opportunities for family members to consult with attorneys before providing statements, AB 572 will result in witnesses declining to provide immediate interviews or statements, thereby inviting legal obstruction and the withholding of crucial information. Investigators rely on prompt interviews to capture spontaneous, detailed accounts before narratives solidify and external influences intervene to prevent the disclosure of or misrepresentation of critical details involving the actions of the suspect and the officer leading up to the shooting. For example, after consulting with a lawyer, a spouse who feared her husband would stab her may refuse to disclose her husband was wielding a knife or downplay her fear he would stab her.

"The prompt questioning of witness family members best serves the public by providing investigators with more truthful, accurate, and complete statements. First, fresh memories are more reliable. Statements obtained closer to the event reduce the risk of memory distortion or loss. Consultation with an attorney may result in significant delay, degrading their ability to vividly recall details like the officer and the suspect's actions prior to the shooting, the sequence of events, or environmental factors.

"Second, consultation with a lawyer will result in strategic framing tailored to legal strategies (e.g., minimizing the suspect's culpability to support a wrongful death claim). Attorneys may encourage selective recall aligned with civil litigation goals rather than a comprehensive account. For example, a sibling might initially recall the suspect reaching for a weapon but, post-attorney, focus only on the officer's actions, skewing their statement. Witnesses do not need a Miranda-like warning because they have no risk of self-incrimination or criminal exposure.

"Statements obtained contemporaneously are inherently more reliable because the emotional state of the witness can enhance the recall of vivid details and reduce the risk of deception, for similar reasons to the excited utterances exception to hearsay. An emotional outpouring often leads to unfiltered statements, potentially revealing details they'd later suppress or alter after legal advice.

"In high-profile cases, family members might face pressure from activists, the media, other family members, or civil rights lawyers to align with a false narrative to maximize the

recovery on meritless claims. Prompt interviews might reflect raw emotion, but delayed ones after counsel could balance personal truth with external influences.

"In addition, this bill is predicated on the false notion that family members are inherently vulnerable and require special protections to prevent coercion. In reality, family members are often the individuals with the most direct knowledge of the deceased or injured person's state of mind, potential threats they posed, and relevant circumstances surrounding the incident. Preventing investigators from obtaining truthful statements from these individuals before they can be coached or advised to remain silent undermines the pursuit of justice."

8) **Related Legislation**:

a) AB 1388 (Bryan), would prohibit a law enforcement agency from entering into a settlement agreement with a peace officer who has a pending complaint of misconduct with a term that requires the law enforcement agency to keep the misconduct confidential. AB 1388 is pending a hearing in this committee.

b) AB 1178 (Pacheco), would additionally require a law enforcement agency to redact records of specified sworn officers working an undercover assignment, all sworn personnel attached to a federal or state task force, and members of a law enforcement agency who received verified death threats to themselves or their families within the last ten years because of their law enforcement employment. AB 1178 is pending referral to a policy committee.

9) **Prior Legislation**:

a) AB 3021 (Kalra), of the 2023-2024 Legislative Session, would have established procedures that law enforcement must follow prior to interviewing, questioning, or interrogating the family member of person who has been killed or seriously injured by a peace officer. AB 3021 was ordered to the Senate inactive file.

b) SB 494 (Dodd), of the 2021-2022 Legislative Session, would have required POST to develop and implement a course of instruction for law enforcement officers in the use of advanced interpersonal communication skills, and the use of science-based interviewing. SB 494 was vetoed by the Governor.

c) AB 1506 (McCarty), Chapter 326, Statutes of 2020, requires a state prosecutor to conduct an investigation of any officer-involved shooting that resulted in the death of an unarmed civilian, as specified.

d) SB 203 (Bradford), Chapter 355, Statutes of 2020, requires that, prior to any custodial interrogation and before the waiver of any Miranda rights, a youth of 17 years or younger must consult with legal counsel in person, by telephone, or by video conference.

e) AB 332 (Skinner) Chapter 172, Statutes of 2019, required POST to submit a report to the Legislature and Governor with specified data relating to students' completion of the basic training course for peace officers and the availability of remedial training and retesting when a student fails to complete a course.

f) SB 395 (Lara) Chapter 681, Statutes of 2017 requires that a youth 15 years of age or younger consult with legal counsel in person, by telephone, or by video conference prior to a custodial interrogation and before waiving any of the above-specified rights.

g) SB 1052 (Lara), of the 2015-2016 Legislative Session, would have required that a youth under the age of 18 consult with counsel prior to a custodial interrogation and before waiving any specified rights. SB 1052 was vetoed by Governor Brown.

h) AB 1329 (Epple) Chapter 43, Statutes of 1994 established the Robert Presley Institute of Criminal Investigation in statute.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Asian Law Alliance
California Alliance for Youth and Community Justice
California Civil Liberties Advocacy
California Coalition for Women Prisoners
California for Safety and Justice
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Check the Sheriff
Coalition for Justice and Accountability
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Ella Baker Center for Human Rights
Families Demanding Justice
Felony Murder Elimination Project
Fresh Lifelines for Youth
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Matlin Legal
Oakland Privacy
Pacifica Social Justice
Peace and Justice Law Center
Restoring Hope California
Reuniting Families Contra Costa
Rubicon Programs
Ryse Center
San Francisco Public Defender
San Jose Peace and Justice Center
Silicon Valley De-bug
Silicon Valley Debug

Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
The W. Haywood Burns Institute
Urban Peace Movement
Vera Institute of Justice
Vietunity South Bay
Voices of Strength
Youth United for Community Action (YUCA)

Oppose

Arcadia Police Officers' Association
Association for Los Angeles Deputy Sheriffs (ALADS)
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 Police Chiefs 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
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diego County District Attorney's Office
Santa Ana Police Officers Association

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

Date of Hearing: March 25, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 584 (Hadwick) – As Amended March 12, 2025

SUMMARY: Provides firearms businesses with an additional installation option for their perimeter doors that would meet secure facility requirements. Specifically, **this bill**:

1) Allows perimeter doors to include a doorway with a windowed or windowless steel door that is equipped with panic hardware that operates a multipoint lock that bolts into the interior frame of the door.

2) Requires the perimeter door to have a latch guard over the bolt closest to the primary locking bolt to protect it from prying or cutting.

3) Mandates covering with steel bars of at least one-half of an inch diameter or metal grating of at least nine gauge and affixed to the exterior or interior of the door, any windowed door with a window opening of five inches or more.

4) Makes technical, nonsubstantive changes.

EXISTING LAW:

1) Requires all perimeter doorways at a licensed firearms dealer's place of business to have one of the following features:

   a) A windowless steel security door equipped with both a dead bolt and doorknob lock;

   b) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe; or,

   c) A windowed metal door that is equipped with both a dead bolt and a doorknob lock, and if the window has an opening of five inches or more, the window shall be covered with steel bars of at least one-half of an inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door. (Pen. Code, § 17110, subd. (a)(1)-(3).)

2) Requires all perimeter doorways at a licensed firearms manufacturer to be designed in at least one of the following ways:

   a) A windowless steel security door equipped with both a deadbolt and a doorknob lock;

   b) A windowed metal door equipped with both a deadbolt and a doorknob lock, and if the window has an opening of five inches or more, the window is covered with steel bars of at least one-half of an inch diameter or metal grating of at least nine gauge affixed to the

exterior or interior of the door;

c) A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe;

d) Hinges and hasps attached to doors by welding, riveting, or bolting with nuts on the inside of the door; or,

e) Hinges and hasps installed on doors so that they cannot be removed when the doors are closed and locked. (Pen. Code, § 29141, subd. (c)(1)-(5).)

3) Authorizes a licensed firearms manufacturer that produces fewer than 500 firearms a year within California to alternatively maintain a "secure facility" by designing a security plan that is approved by the Department of Justice or the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, which is then required to be submitted to federal and local authorities, as defined. (Pen. Code, § 29142, subds. (a)-(c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California law currently puts sporting goods stores that sell firearms in an impossible situation between safely securing their business and safely allowing customers to leave in an emergency. The law governing the security of firearms for stores has not been updated in over 25 years and does not reflect updated security door technology. This bill is a common sense solution that resolves a conflict in the law, gives stores another option to safely secure their firearms, and protects the public in an emergency."

2) **Effect of the Bill:** This bill would provide an additional option for firearms dealers and firearms manufacturers to comply with the statute's perimeter door design requirements.

The impetus for expanding these options is to reconcile an apparent conflict between the Penal Code and the California Building Code (Building Code).

Existing law gives firearms dealers three options and firearms manufacturers five options for perimeter door designs, one of which must be installed for those businesses to maintain a "secure facility." (Pen. Code, § 17110, subd. (a)(1)-(3) & Pen. Code, § 29141, subd. (c)(1)-(5).)

The Building Code provides that "door handles, pulls, latches, locks and other operating devices on doors required to be accessible shall not require tight grasping, tight pinching or twisting of the wrist to operate." (Cal. Building Code, pt. 1010.2.2.) The Building Code applies to "the . . . use and occupancy . . . of every building or structure or any appurtenances connected or attached to such buildings or structures." (Cal. Building Code, pt. 101.2.)

Given the Penal Code's requirements for dealers and manufacturers to maintain secure facilities, including resilient perimeter doors, and the California Building Code requirements that mandate simple and quick means of egress through the same doors, there does not appear

to be much space currently for firearms businesses to comply simultaneously with our Penal Code and Building Code.

3) **Safety and Convenience Considerations:** This bill would provide an additional perimeter door option for firearms businesses, which would expand the options for these businesses to establish secure facilities under the law.

   The safety and convenience of perimeter doors at firearms businesses is implicated by the secure facility requirements in the Penal Code and the easy means of egress requirements in the Building Code. While scientific research on the relative safety and convenience of multipoint locking doors appears scarce, a small amount of evidence exists showing that multipoint locks provide some additional measure of safety to the user, though the type and extent of those safety protections are unknown.

   The patent for multipoint locking doors was granted in June 1999.[1] The patent classification described these doors as, "Arrangements of simultaneously actuated bolts or other securing devices at well-separated positions on the same wing with two sliding bars moved in opposite directions when fastening or unfastening with crank pins and connecting rods."[2] The patent abstract states that the multipoint locking door "provides greater security for a door or panel being secured thereby…"[3] The only supporting scientific research located that corroborated this claim came from a research paper in 2016 where the authors wrote, "A multipoint lock is a useful lock which can provide more security and is more convenient for the user."[4] Conclusive evidence was not located to establish whether "more convenient to the user" means that these types of doors are necessarily compliant with California building and fire codes.

   It is not possible with the scientific research available to state conclusively whether these multipoint locking doors provide additional security relative to already approved perimeter doors and whether the added convenience is sufficient for our building codes, but there is at least some evidence showing improved safety and convenience with multipoint locking doors. None of the available research showed that multipoint locking doors were less safe or less convenient compared to common alternatives.

4) **Argument in Support**: According to the *California Rifle and Pistol Association* (CRPA), which is also the bill's sponsor, "On behalf of the California Rifle & Pistol Association Inc. (CRPA), its members and supporters throughout California, I write to express our strong support of Assembly Bill 584 (AB 584). CRPA, founded in 1875, works tirelessly to defend the civil and constitutional rights of individuals who choose to responsibly own and use firearms. CRPA promotes the recreational shooting sports, and provides safety, education, and skills training to enable all persons a more enjoyable and safe recreational experience.

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[1] Quesada, "Three Point Lock Mechanism" (June 15, 1999) United States Patent and Trademark Office <https://patentcenter.uspto.gov/applications/09005593> [as of Mar. 18. 2025].
[2] *Ibid.*
[3] *Ibid.*
[4] Hsing-Hui, *Design of the Transmission Mechanism Used in a Multipoint Mortise Lock* (Dec. 2016) Transactions of The Canadian Society for Mechanical Engineering <https://www.researchgate.net/publication/316961158_Design_of_the_transmission_mechanism_used_in_a_multipoint_mortise_lock> [as of Mar. 18, 2025].

AB 584 helps protect Californians by increasing the safety of firearms dealers and manufacturers from criminal activity by allowing vastly improved security technology to be employed.

"Currently the California Penal Code and California Code of Regulations are in conflict in regard to the requirements of security doors. This conflict is currently reducing the security of facilities instead of improving it. This bill will remove the conflicts and thus offer more secure options for firearms dealers and manufacturers.

"This bill sets forward options to meet legal requirements will enable firearms dealers and manufacturers to access the latest, safest, and most reliable security options while not compromising the safety of their customers and staff. This bill is a win in the fight to make Californians safer. For the foregoing reasons the California Rifle and Pistol Association Inc. stands in strong support of AB 584."

5) **Related Legislation:**

a) SB 53 (Blakespear), Chapter 542, Statutes of 2024, requires a person who possesses a firearm in a residence to keep the firearm securely stored when the firearm is not being carried or readily controlled by the person or another lawful authorized user.

b) SB 368 (Portantino), Chapter 251, Statutes of 2023, requires a licensed firearms dealer to accept for storage a firearm transferred by an individual to prevent it from being accessed or used during periods of crisis or heightened risk, and authorizes a licensed firearms dealer to accept for storage a firearm for a lawful purpose not otherwise stated in the law.

6) **Prior Legislation**:

a) SB 376 (Portantino), Chapter 738, Statutes of 2019, requires licensure for anybody manufacturing 50 or more firearms.

b) SB 220 (Hill), of the 2019-20 Legislative Session, would have required firearms dealers to secure and store their firearms using one of several specified methods, including storing firearms behind a steel roll-down door or security gate. SB 220 died on the inactive file in the Assembly.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rifle and Pistol Association, INC.

Opposition

None on file.

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

Date of Hearing: March 25, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 633 (Krell) – As Introduced February 13, 2025

SUMMARY: This bill would expand vacatur relief to apply to any offense for victims of human trafficking who were minors at the time of their offense.

EXISTING LAW:

1) Authorizes a person who was arrested for or convicted of any nonviolent offense, as defined, committed while they were a victim of human trafficking to petition the court for vacatur relief of their convictions, arrests, and adjudications. (Pen. Code, § 236.14, subd. (a).)

2) Requires a petitioner to establish by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking that demonstrates that the person lacked the requisite intent to commit the offense and upon such a showing, requires the court to find that the person lacked the requisite intent to commit the offense and vacate the conviction as invalid due to legal defect. (Pen. Code, § 236.14, subd. (a).)

3) Provides that the petition for relief shall be submitted under penalty of perjury and shall describe all of the available grounds and evidence that the petitioner was a victim of human trafficking and the arrest or conviction of a nonviolent offense was the direct result of being a victim of human trafficking. (Pen. Code, § 236.14, subd. (b).)

4) Authorizes a court, after considering the totality of the evidence presented, to vacate the conviction and arrests if it finds all of the following:

   a) The petitioner was a victim of human trafficking at the time of the alleged commission of the offense;

   b) The arrest for or conviction of the crime was a direct result of being a victim of human trafficking; and,

   c) It is in the best interests of justice. (Pen. Code, § 236.14, subd. (g).)

5) Authorizes the court, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, to consolidate into one hearing a petition with multiple convictions from different jurisdictions. (Pen. Code, § 236.14, subd. (e).)

6) States that an order of vacatur shall do all of the following:

   a) Set forth a finding that the petitioner was a victim of human trafficking at the time of the alleged commission of the qualifying crime and therefore lacked the requisite intent to commit the offense;

b) Set aside the arrest, finding of guilt, or the adjudication and dismiss the accusation or information against the petitioner as invalid due to a legal defect at the time of arrest or conviction; and,

c) Notify the Department of Justice that the petitioner was a victim of human trafficking when they committed the crime and of the relief that has been ordered. (Pen. Code, § 236.14, subd. (h).)

7) States that a petitioner who was adjudicated as a minor for committing a qualifying nonviolent offense while they were a victim of human trafficking who establishes that the arrest or adjudication was the direct result of being a victim of human trafficking, is entitled to a rebuttable presumption that the requirements for relief have been met. (Pen. Code, § 236.14, subd. (i).)

8) Provides that if the court issues an order vacating the conviction or arrest, the court shall also order all of the following agencies to seal and destroy their records:

a) Any law enforcement agency having jurisdiction over the offense;

b) The Department of Justice;

c) Any law enforcement agency that arrested the petitioner;

d) Any law enforcement agency that participated in the arrest of the petitioner; and,

e) Any law enforcement agency that has taken action or maintains records because of the offense, including, but not limited to, departments of probation, rehabilitation, corrections, and parole. (Pen. Code, § 236.14, subd. (k).)

9) States that a petition for vacatur shall be made and heard at any time after the person has ceased to be a victim of human trafficking or at any time the petitioner has sought services for being a victim of human trafficking, whichever occurs later, and provides that the right to petition for relief does not expire with the passage of time. (Pen. Code, § 236.14, subd. (l).)

10) Contains the following definitions:

a) "Nonviolent offense" means any offense not listed in subdivision (c) of Section 667.5.

b) "Vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed. (Pen. Code, § 236.14, subd. (t).)

11) Includes the following offenses within the definition of "violent felony":

a) Murder or voluntary manslaughter;

b) Mayhem;

c) Rape or spousal rape accomplished by means of force or threats of retaliation;

d) Sodomy by force or fear of immediate bodily injury on the victim or another person;

e) Oral copulation by force or fear of immediate bodily injury on the victim or another person;

f) Lewd acts on a child under the age of 14 years, as defined;

g) Any felony punishable by death or imprisonment in the state prison for life;

h) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which the defendant has used a firearm, as specified;

i) Any robbery;

j) Arson of a structure, forest land, or property that causes great bodily injury;

k) Arson that causes an inhabited structure or property to burn;

l) Sexual penetration accomplished against the victim's will by means of force, menace or fear of immediate bodily injury on the victim or another person;

m) Attempted murder;

n) Explosion or attempted explosion of a destructive device with the intent to commit murder;

o) Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;

p) Explosion of a destructive device which causes death or great bodily injury;

q) Kidnapping;

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

s) Continuous sexual abuse of a child;

t) Carjacking, as defined;

u) Forcible rape or penetration of genital or anal openings by a foreign object;

v) Felony extortion;

w) Threats to victims or witnesses, as specified;

x) First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;

y) Use of a firearm during the commission of specified crimes;

z) Possession, development, production, and transfers of weapons of mass destruction; and,

aa) Rape of an intoxicated person wherein it is pleaded and proved that the defendant caused the intoxication by administering a controlled substance to the victim with the intent to sexually assault them. (Pen. Code, § 667.5, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Thanks to decades of work by survivor leaders and advocates, California law recognizes the harsh realities of human trafficking and the need for a survivor centered approach by the legal system when addressing this crime. But before many of the reforms that are in place today went into effect, child victims were sometimes treated as criminals, prosecuted in the adult court system, and shuttled away to serve long sentences in state prison. My former client Keiana Aldrich is an example—she was pushed into sex trafficking as a child and then participated in a robbery to avoid being raped by a commercial sex buyer. At 17 years old, she was prosecuted as an adult and given a lengthy prison sentence. Although she was eventually resentenced and freed, she still carries the burden of a "strike" conviction, a barrier to housing and career options and a vestige of the trauma she experienced as a child. Trying to survive the most brutal of circumstances, child victims like Keiana have been forced to commit serious crimes and suffer lifelong consequences as a result.

   "Justice would be best served by creating a pathway for these people to have a fresh start by clearing arrests and convictions for crimes they were forced to commit as children."

2) **Expansion of Vacatur Relief:** Existing law authorizes vacatur relief for victims of human trafficking who have been arrested or convicted of nonviolent crimes. (Pen. Code, § 236.14.) A nonviolent crime is any offense that is not listed as a violent felony. (Pen. Code, § 236.14, subd. (t)(1).)

   The law allows a person to file a petition with the court, under penalty of perjury, that establishes by clear and convincing evidence that the arrest or conviction was the direct result of being a victim of human trafficking. (Pen. Code, § 236.14, subd. (a).) The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief. If the petition is opposed, then the court shall hold a hearing. (Pen. Code, § 236.14, subds. (c). If opposition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and may grant the petition. (Pen. Code, § 236.14, subd. (d).) If opposition is filed, or if the court otherwise deems it necessary, the court shall schedule a hearing on the petition. (Pen. Code, § 236.14, subd. (f).)

   If, after considering the totality of evidence presented, the court finds that the petitioner was a victim of human trafficking at the time, the arrest or conviction was a direct result of being a victim of human trafficking, and that it is in the best interest of justice, the court may vacate the conviction and arrests and issue an order reflecting the court's determination. (Pen. Code, § 236.14, subds. (g)-(h).) The petitioner shall not be relieved of any financial restitution order that directly benefits the victim of the crime, unless it is already paid. (Pen. Code, § 236.14, subd. (i).) The term "vacate" for purposes of vacatur relief means "the arrest and any

adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed. The court shall provide the petitioner with a copy of the orders and inform the petitioner that they may thereafter state that they were not arrested for, or adjudicated or convicted of, the charge that was vacated. (Pen. Code, § 236.14, subd. (t)(2).)

Petitioners, who were minors at the time of the offense who establish that the arrest or adjudication was the direct result of being a victim of human trafficking, are entitled to a rebuttable presumption that the requirements for relief have been met. (Pen. Code, § 236.14, subd. (i).)

This bill would allow a person to seek vacatur relief of a conviction and arrest for a violent felony if the petitioner was a minor at the time of the offense. Violent felonies generally involve some level of force or threats of violence and can range from robbery to murder. (Pen. Code, § 667.5.)

3) **Duress and Coercion:** A person who is forced to commit an illegal act may be excused of guilt for the crime. Under existing law, the affirmative defense of duress is available to defendants who commit a crime "under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused." (Pen. Code, § 26, subd. (6).) A threat of future harm is not sufficient; the danger to life must have been immediate. (CALCRIM No. 3402.) Duress is not a defense to murder, unless the charge is felony-murder in which duress can be used to negate the underlying felony. (Pen. Code, § 26; *People v. Anderson* (2002) 28 Cal.4th 767, 784.) The rationale behind allowing duress as a defense for any crime except murder is explained as follows:

> The basic rationale behind allowing the defense of duress for other crimes "is that, for reasons of social policy, it is better that the defendant, faced with a choice of evils, choose to do the lesser evil (violate the criminal law) in order to avoid the greater evil threatened by the other person." (Fn. omitted.) This rationale, however, "is strained when a defendant is confronted with taking the life of an innocent third person in the face of a threat on his own life. . . . When the defendant commits murder under duress, the resulting harm--i.e. the death of an innocent person--is at least as great as the threatened harm--i.e. the death of the defendant." (*People v. Anderson*, supra, 28 Cal.4th at p. 772, citing *U.S. v. LaFleur* (1992) 971 F.2d 200, 205.)

The court must instruct the jury on the defense of duress when it is requested by the defendant and there is substantial evidence supporting the defense. (CALCRIM No. 3402.) Substantial evidence means evidence of a defense, which, if believed, would be sufficient for a reasonable jury to find a reasonable doubt as to the defendant's guilt. (*People v. Salas* (2006) 37 Cal.4th 967, 982–983.) If the prosecutor cannot prove beyond a reasonable doubt that the defendant did not act under duress, the jury must find the defendant not guilty of the underlying crime. (CALCRIM No. 3402.)

Existing law provides a separate affirmative defense to a crime if the defendant establishes by a preponderance of the evidence that they were "coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm." (Pen. Code, § 263.23, subd. (a)-(b).) Similar to vacatur relief for victims of human

trafficking, this defense does not apply violent felonies. (Pen. Code, § 263.23, subd. (a).) This defense may be asserted at any time prior to the entry of a guilty plea and before the conclusion of any trial for the offense. (Pen. Code, § 236.23, subd. (d).)

There is no requirement in the affirmative defense statute that "the accused act at the behest of the trafficker or that the trafficker be aware that the victim was planning or had committed a crime. Rather, the coercion suffered by the accused must result directly from his status as a victim. That coercion may, but need not, be provided directly by the trafficker." (*In re D.C.* (2021) 60 Cal.App.5th 915, 920.) The statutes do "not require the trafficker to have direct involvement in, or even knowledge of, the minor's crime for the defense to apply." (*Id.* at p. 921.) If the defendant prevails on the defense, the defendant is entitled to have the records related to the case sealed and to be generally released from all penalties and disabilities resulting from the charge. (Pen. Code, § 263.23, subd. (e).)

The specific affirmative defense for human trafficking victims was enacted in 2016. (AB 1761 (Weber) Ch. 636, Stats. 2016.) This was the same year that the Legislature enacted vacatur relief for victims of human trafficking. (SB 823 (Block), Chapter 650, Statutes of 2016.) A victim of human trafficking may have been able to raise the issue of duress at trial prior to the enactment of the specific coercion affirmative defense but the likelihood of success may have been less likely without Legislative intent to provide this specific avenue for victims. (See *People v. Cross* (2019) Cal.App.Unpub. LEXIS 1966 [three out of four convictions overturned for co-defendant who unsuccessfully raised duress as an affirmative defense because she was a victim of human trafficking].) For those who were not able to raise this defense or were unsuccessful in raising this defense, the vacatur avenue provides a way for that information to be considered post-conviction.

The rationale for leniency under the law provided by the affirmative defense and vacatur relief provisions for victims of human trafficking is the same – the person was coerced to commit a crime and thus should not be guilty of the crime. This concept is very similar to the defense of duress, however, as noted above, there is a long-standing legal principle making the defense of duress unavailable when a defendant is charged with murder.

This bill removes the exclusion of violent felonies, including murder, for vacatur relief for a human trafficking victim if they were a minor at the time of the offense and the offense was a direct result of their victimization. Allowing the use of vacatur relief based on the victim's coercion to apply to any crime without limitation conflicts with the rationale behind the defense of duress. Specifically, that a person's criminal liability for committing a crime should not be negated when the crime committed may be more serious than the harm that the person could face if they were to resist the coercion.

4) **Retroactivity:** Retroactivity[1] means whether a change in sentencing or constitutional interpretation should be applied to cases where the penalty may already be imposed and

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[1] 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

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 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.)[2]

Estrada's inference of retroactivity has been applied when the Legislature creates "a concrete avenue for certain individuals charged with a criminal offense to be treated more leniently or

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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.

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

to avoid punishment altogether." (*Burgos*, *supra in footnote*, 16 Cal.5th at p. 13 *citing People v. Frahs* (2020) 9 Cal.5th 618, 624; see also *People v. Wright* (2006) 40 Cal.4th 81 [newly enacted affirmative defense applies retroactively].) This bill would mitigate the punishment for an offense that was committed by a victim of human trafficking who was a minor at the time of the offense, thus *Estrada* would apply the benefit of the change to the law retroactively to nonfinal cases without specific direction from the Legislature. Additionally, the existing vacatur statute already states that a petition for vacatur does not expire with the passage of time, thus it appears the Legislature has provided specific direction that the statute to apply retroactively.

5) **Argument in Support**: According to *California Catholic Conference*, "In California, a horrifying reality of our current legal system is that over 90% of human trafficking victims are criminalized while being trafficked. Survivors are often arrested and punished for crimes they were forced to commit by their traffickers. The criminalization of victims by California's legal system leaves survivors without access to healing or crucial resources like housing, employment, and education. Instead, they are subjected to continued cycles of violence, homelessness, and poverty.

   "Vacatur relief eliminates these barriers and spares survivors from having to explain their traumatic past when applying for a job, signing a lease, or volunteering at their kid's Little League. AB 633 expands the protections under AB 124 so that all minors who have survived human trafficking have the chance to rebuild their lives and access the resources they need to heal from their trauma."

6) **Argument in Opposition**: According to *California District Attorneys Association*: "Vacatur relief results in the sealing and destroying of records of the offense. We fear this proposal disregards the seriousness of serious and violent juvenile offenses and may undermine the ability of the justice system to hold repeat offenders accountable. Juvenile adjudications for serious and violent felonies are rightfully considered prior strikes if the offender was at least 16 years old and met specific criteria. These safeguards ensure that individuals who commit egregious crimes—such as murder, robbery, or other violent felonies are held accountable in subsequent convictions.

   "Further, sealing of those records and preventing potential employers or state licensing boards access to the serious or violent felony convictions could place the community at risk of further violence.

   "This bill ignores the reality that some juveniles commit extremely violent and premeditated crimes, even if the juvenile was a victim of human trafficking, that have lasting consequences for victims and communities."

7) **Related Legislation**: AB 938 (Bonta) would, among other things, expand vacatur relief for victims of human trafficking, intimate partner violence and sexual violence to apply to any offense and authorize the affirmative defense of coercion for victims of human trafficking, intimate partner violence and sexual violence to apply to any crime. AB 938 is pending hearing by this committee.

8) **Prior Legislation**:

a) AB 2534 (Bonta), of the 2023-2024 Legislative Session, would have, among other things, expanded vacatur relief for victims of human trafficking, intimate partner violence and sexual violence to apply to any offense. AB 2534 was held on the Assembly Committee on Appropriations' Suspense File.

b) AB 1497 (Haney), of the 2023-2024 Legislative Session, would have, among other things, expanded vacatur relief to violent felony offenses for victims of human trafficking, intimate partner violence, and sexual violence. AB 1497 was held on the Assembly Committee on Appropriations' Suspense File.

a) AB 2169 (Gipson), Chapter 776, Statutes of 2022, clarified that vacatur relief for offenses committed while the petitioner was a victim of human trafficking, intimate partner violence, or sexual violence demonstrates that the petitioner lacked the requisite intent to commit the offense and that the conviction is invalid due to legal defect.

b) AB 124 (Kamlager), Chapter 695, Statutes of 2021, required courts to consider if specified trauma to a defendant and other factors contributed to the commission of an offense when making sentencing and resentencing determinations and expanded the affirmative defense of coercion for human trafficking victims and extended it and vacatur relief to victims of intimate partner violence and sexual violence.

c) AB 262 (Patterson), Chapter 193, Statutes of 2021, provided that a person, when petitioning to vacate a non-violent conviction because the petitioner was a victim of human trafficking, to appear at the court hearings by counsel and removed time limitations to bring the petitions.

d) AB 2868 (Patterson), of the 2019-2020 Legislative Session, would have provided additional legal rights in the judicial process when a victim of human trafficking petitions the court to vacate a conviction for a non-violent crime that was committed while the petitioner was a victim of human trafficking. AB 2868 was not heard in this committee.

e) AB 2869 (Patterson), of the 2019-2020 Legislative Session, would have allowed a petitioner, on a petition to vacate a non-violent conviction because the petitioner was victim of human trafficking and the conviction that was a direct result of being a victim of human trafficking, to appear at the court hearings by counsel. AB 2869 was not heard in this committee.

f) SB 823 (Block), Chapter 650, Statutes of 2016, allowed a person arrested for or convicted of a non-violent crime while they were a human trafficking victim to apply to the court to vacate the conviction and seal and destroy records of arrest.

g) AB 1761 (Weber), Chapter 636, Statutes of 2016, created an affirmative defense against a charge of a crime, other than a serious or violent crime or human trafficking, if the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had reasonable fear of harm.

h) AB 1762 (Campos) of the 2015-2016 Legislative Session, would have allowed a person convicted of a nonviolent crime while he or she was human trafficking victim to apply to

the court to vacate the conviction upon a showing of clear and convincing evidence. AB 1762 was vetoed.

i) AB 1585 (Alejo), Chapter 708, Statutes of 2014, provided that a defendant who has been convicted of solicitation or prostitution may petition the court to set aside the conviction if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking.

REGISTERED SUPPORT / OPPOSITION:

Support

California Alliance of Child and Family Services
California Catholic Conference

Oppose

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
Corona 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

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