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California State Assembly

PUBLIC SAFETY



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AGENDA

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

Analysis Packet Part II
(AB 690 (Schultz)- AB 938 (Bonta))

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 690 (Schultz) – As Amended March 18, 2025

As Proposed to be Amended in Committee

SUMMARY: Establishes new requirements for indigent legal defense service agreements. Specifically, **this bill:**

- 1) Requires any agreement, beginning on January 1, 2027, between a county or court and a law firm, individual attorney, or other legal entity for the provision of indigent defense services use the following procedure:
 - a) A request for proposals, request for qualifications for indigent defense services contracts, or other policy for the contracting of indigent defense services shall require proposals and all final contracts to include all of the following:
 - i) Requirements for compliance with the Office of the State Public Defender's (OSPD) standards for contract systems.
 - ii) Explicit language demonstrating a direct relationship between the contract amount and the total number of cases to be handled during the contract period. The number of cases handled over the contract period shall be informed by caseload limits defined in the National Public Defense Workload Study by the RAND Corporation published in 2023, or a later workload study identified by the OSPD. When determining the scope of work and number of cases to be handled, the county or court shall take into consideration the percentage of the attorney or firm time for work in other cases in addition to work performed pursuant to the indigent defense services contract.
 - iii) The contract amount and structure shall ensure that attorneys have the resources and time necessary to consult with clients, assess discovery, conduct fact investigations, file motions, and perform any relevant tasks to ensure competent legal representation.
 - iv) All contracts shall provide a separate allocation of funds for case-related defense services, including, but not limited to, investigators, social workers, and immigration counsel. These ancillary service funds shall be separate and in addition to funds allocated for attorney compensation, and there shall not be a penalty for contracted attorneys accessing those funds.
 - b) A county or court shall not enter into flat fee or per case compensation contracts, as defined, with the definition not to include hourly rate contracts.
 - c) Contract amounts shall account for all dimensions of modern criminal defense practice, including, but not limited to, the costs of technology, support staff, and ancillary legal

services, including, but not limited to, immigration support, paralegals, social workers, mitigation specialists, experts, and investigators.

- d) The contract shall include a provision that affords the contractor a process to seek a modification of the contract amount if the number of cases handled or the costs of providing a modern criminal defense practice exceed the amount contemplated at the beginning of the contract period.
 - e) Provides that a request for proposals shall be disqualified from consideration if it does not meet all of the defined requirements.
- 2) Requires counties to provide all contracts for indigent defense services to the OSPD every two years, beginning on January 1, 2027.
 - 3) Provides that the above provisions apply to any memorandum of agreement, contract, contract amendment, or contract extension for the provision of indigent defense services entered into or elected by any county or court in California on or after January 1, 2027.
 - 4) Provides that the above provisions apply to any agreement entered into between a court and attorneys for the purpose of representing indigent defendants.
 - 5) Makes legislative declarations and findings.

EXISTING FEDERAL LAW: Secures to defendants in criminal prosecutions the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (U.S. Const., 6th Amend.)

EXISTING STATE LAW:

- 1) Secures to defendants in criminal causes the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. (Cal. Const., art. I, § 15.)
- 2) Provides that reasonable compensation and necessary expenses be paid to assigned counsel for indigent persons to be paid out of the county general fund, the amount of which shall be determined by the court. (Pen. Code, § 987.2, subd. (a).)
- 3) Allows for the sum of compensation to be paid to assigned counsel to be determined by a contract between the court, one or more responsible attorneys, and following consultation with the board of supervisors, provided that the amount of compensation awarded is within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases. (Pen. Code, § 987.2, subd. (b).)
- 4) Encourages counties that utilize an assigned private counsel system to do all of the following: Establish panels that shall be open to members of the State Bar of California, categorize attorneys for panel placement on the basis of experience, refer cases to panel members on a

rotational basis within the level of experience of each panel, and seek to educate those panel members through an approved training program. (Pen. Code, § 987.2, subs. (c)(1)-(4).)

- 5) Provides that in certain counties where the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. (Pen. Code, § 987.2, subd. (d).)
- 6) Provides that in certain counties where the public defender is unavailable and the county has created a second public defender and contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall next utilize the services of the second public defender and then the services of the county-contracted attorneys prior to assigning any other private counsel. (Pen. Code, § 987.2, subd. (e).)
- 7) States that in cases where counsel is assigned, counsel appointed by the court and any court-appointed licensed private investigator shall have the same rights and privileges to information as the public defender and the public defender investigator. (Pen Code, § 987.2, subd. (f).)
- 8) Establishes that a court-appointed attorney is entitled to reasonable compensation and necessary expenses considering various factors, as defined. (Pen. Code, § 987.13.)
- 9) Mandates counsel be appointed to represent, in a misdemeanor case, a person who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant. (Pen. Code, § 987.2, subd. (i).)
- 10) Provides that in capital cases or cases with indigent defendants, counsel may request the court for funds for the specific payment of investigators, experts, and others for the preparation or presentation of the defense. (Pen. Code, § 987.9, subd. (a).)
- 11) States that in assigning defense counsel in felony cases, whether it is the public defender or private counsel, the court shall only assign counsel who represents, on the record, that they will be ready to proceed with the preliminary hearing or trial. (Pen. Code, § 987.05.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “Many California counties use flat-fee compensation models for indigent defense contracts, paying their attorneys a predetermined amount to take an unrestricted number of cases over a set period of time. Since attorneys are paid a flat rate regardless of the amount of time or work allocated to a case, attorneys are encouraged to prioritize efficiency and cost-effectiveness over their client’s interests. These compensation models create ethical issues for attorneys and contribute to unjust outcomes for clients with a disproportionate impact on lower income people, people of color, and noncitizens.

“Studies show that attorneys working under flat-fee contract systems rush to dispense with cases quickly, prior to performing necessary investigation or research. Many states have banned flat-fee compensation models and courts in other jurisdictions have found that the economic conflict of interest can create an inference of inadequate representation. The lack of any standard for indigent defense contracts results in a statewide system with disparate outcomes and a lack of transparency or accountability.

“California does not currently provide any guidance related to these contracts, leading to wide variation in the quality of legal representation. AB 690 creates standards for contracts for indigent defense services to ensure that all Californians receive equal access to quality legal services.”

- 2) **Effect of the Bill:** This bill would update the procedures that those contracting for indigent legal defense services would be required to follow.

The right to counsel has a tradition of expansion and support in our country as evidenced by numerous court decisions, its inclusion in the Bill of Rights (U.S. Const., 6th Amend.), and its adherence in difficult times by a prominent attorney, John Adams, who stated, “no [one] in a free country should be denied the right to counsel and a fair trial.”¹ The U.S. Supreme Court, in an important 20th century case, wrote, “In our adversary system of justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.” (*Gideon v. Wainwright* (1963) 372 U.S. 335, 344.) This bill could add another layer of protection atop this right.

This bill establishes a Request for Proposals (RFP) or similar process for soliciting indigent defense service contracts. Final contracts resulting from the RFP process would have to be compliant with the Office of State Public Defender’s (OSPD) standards for contracts, show a direct relationship between the contract amount and number of cases to be handled, include components that ensure competent legal services will be provided, and maintain a separate account for case-related services that counsel can access without penalty. A report by the State Bar highlighted many of the issues implicated in this bill, including workload standards, relative parity in resource availability for cases, and the importance of hourly compensation being on par with prosecuting agencies.² This bill should serve as an effort to address some of the documented inefficiencies in the area of indigent defense services.

This bill would also ban flat fee and per case compensation contracts. It would additionally require a mechanism for assigned counsel to request modification of the contract where the case expectations have changed. The bill mandates that counties submit all of their indigent defense service contracts to OSPD every two years as well. One study noted that regulation of indigent defense contracts could be an important step in improving indigent defense

¹ McCollough, *John Adams* (2002) at p. 66.

² *Guidelines on Indigent Defense Services Delivery Systems* (2006) State Bar of California <https://www.calbar.ca.gov/Portals/0/documents/ethics/Indigent_Defense_Guidelines_2006.pdf> at pp. 30-32 [as of Mar. 20, 2025].

services.³ By providing restrictions and mandates on indigent defense service contracts, this bill could support improvements in the quality of indigent defense.

- 3) **Committee Amendments:** Under the amended proposal, clarifying language is included to state that any agreement for assigned counsel is subject to the new contracting requirements and defining flat fee contracts more clearly as not to include hourly rate contracts.
- 4) **Argument in Support:** According to *Californians for Safety and Justice*, “Currently 24 out of 58 counties in California do not have a public defender office and instead rely on contracted attorneys to provide all public defense representation. In addition, nearly all California counties rely on contracted attorneys when the public defender cannot take the case. California does not currently provide any guidance related to these contracts, leading to wide variation in the quality of legal representation. Further, many California counties use flat-fee compensation models for indigent defense contracts, paying their attorneys a predetermined amount to take an unrestricted number of cases over a set period of time. Since attorneys are paid a flat rate regardless of the amount of time or work allocated to a case, attorneys are encouraged to prioritize efficiency and cost-effectiveness over their client’s interests. These compensation models create ethical issues for attorneys and contribute to unjust outcomes for clients with a disproportionate impact on lower income people, people of color, and noncitizens.

“Studies show that attorneys working under flat-fee contract systems rush to dispense with cases quickly, prior to performing necessary investigation or research. Many states have banned flat-fee compensation models. Some courts, in other jurisdictions, have found that flat-fee contracts create economic conflicts of interest and thus can be presumed to lead to inadequate representation. California still lacks such standards for indigent defense contracts, resulting in a statewide system with disparate outcomes and a lack of transparency or accountability.

“AB 690 will improve Californians’ access to justice by prohibiting the use of flat-fee compensation models and by providing standards for indigent defense contracts.

- 5) **Related Legislation:** SB 610 (Perez) would revise the definition of “legal aid organization” to specify that it means a nonprofit organization that provides civil legal services for indigent persons without charge. SB 610 is pending hearing in the Senate Judiciary Committee.
- 6) **Prior Legislation:**
 - a) AB 2521 (Waldron), Chapter 153, Statutes of 2024, authorizes the prosecuting agency to access otherwise confidential documents relating to an indigent defendant requesting the court for funds for the preparation or presentation of the defense when the defendant raises certain issues on appeal.

³ Benner, *The Presumption of Guilt: Systemic Factors that Contribute to Ineffective Assistance of Counsel in California*, (2009) California Western Law Review at p. 347 (May 7, 2009).
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1475478 [as of Mar. 20, 2025].

- b) AB 1209 (Jones-Sawyer), of the 2023-24 Legislative Session, would have established a presumption that a person detained, when representation begins, is unable to financially employ counsel and is eligible for indigent defense services. The bill also would have required the court to ensure detained persons are advised of their right to counsel, advised of the importance of counsel, and expanded the prohibition against accepting pleas for misdemeanors unless the person was advised of their right to counsel and they freely waived that right. AB 1209 was held in suspense the Assembly Appropriations Committee.
- c) AB 625 (Arambula), Chapter 583, Statutes of 2021, requires the State Public Defender, in consultation with the California Public Defenders Association and other subject matter experts, to undertake a study to assess appropriate workloads for public defenders and indigent defense attorneys and submit a report with their findings and recommendations to the Legislature no later than January 1, 2024.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Law Alliance
California Public Defenders Association (CPDA)
Californians for Safety and Justice
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Community Agency for Resources, Advocacy and Services
Courage California
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Initiate Justice
Justice2jobs Coalition
LA Defensa
Local 148 LA County Public Defenders Union
Pacific Juvenile Defender Center
Rubicon Programs
San Francisco Public Defender
Silicon Valley De-bug
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
The W. Haywood Burns Institute

Oppose

No longer applicable.

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

AMENDMENTS TO ASSEMBLY BILL NO. 690
AS AMENDED IN ASSEMBLY MARCH 18, 2025

Amendment 1

On page 3, in line 33, after "987.7." insert:

In the absence of a contract, any other agreement pursuant to these provisions shall meet the requirements of Section 987.7.

Amendment 2

On page 7, in line 3, strike out "a fixed dollar amount for a specific period of time," and insert:

for an unlimited number of cases,

- 0 -



PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 690

AMENDED IN ASSEMBLY MARCH 18, 2025

CALIFORNIA LEGISLATURE—2025–26 REGULAR SESSION

ASSEMBLY BILL

No. 690

Introduced by Assembly Member Schultz

February 14, 2025



An act to amend Section 987.2 of, and to add Section 987.7 to, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 690, as amended, Schultz. Criminal procedure: indigent defense compensation.

Existing law grants a defendant the right to counsel in a noncapital case, and requires a defendant to be represented by counsel in a capital case. Existing law requires specified assigned counsel to receive a reasonable sum for compensation and for necessary expenses, as determined by the court, to be paid out of the general fund of the county.

This bill would, commencing with contracts for indigent defense services entered into after January 1, 2027, revise the process and require a county or court, when contracting for indigent defense services, to include certain elements in the contract *or other agreement* for indigent services, including requirements for compliance with the Office of the State Public Defender's standards for contract systems. The bill would prohibit a county or court from entering into flat fee contracts, as defined, or per case compensation contracts. The bill would require the structure of the contract for indigent defense services to ensure that attorneys have the resources and time necessary to provide competent legal representation. The bill would require counties to provide all

AB 690

— 2 —

contracts to the Office of the State Public Defender every 2 years. The bill would require counties to ensure that all contracts provide for an hourly rate or the hourly rate equivalent anticipated under the contract, as specified. By increasing duties on local officials, the bill would impose a state-mandated local program.

The bill would make related findings and declarations.

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. (a) The Legislature finds and declares that the
2 constitutional guarantee of free and effective assistance of counsel
3 to indigent people facing criminal charges is threatened where
4 counties and attorneys enter into flat fee agreements. Experts and
5 policymakers around the country have condemned flat fee contracts
6 for legal services because they undermine effective representation
7 for the client by creating a financial conflict of interest for attorneys
8 when the more the attorney works, the lower their hourly rate.
9 These types of arrangements have been outlawed in several states,
10 including Idaho, Michigan, Nevada, South Dakota, and
11 Washington. Indigent defense counsel in California already labor
12 under high caseloads, sometimes as high as 1,000 cases or more
13 each year, exacerbating the financial conflict of interest.
14 (b) It is the intent of the Legislature to ensure that all
15 Californians have access to effective assistance of counsel,
16 regardless of wealth or income, geographic location, or type of
17 indigent defense system. It is further the intent of the Legislature
18 to provide a mechanism for counties to structure their indigent
19 defense systems in a manner that encourages vigorous
20 representation, pays attorneys a fair wage for work completed, and
21 requires that if contracts are used, they have the structure and

5 support to ensure the promise of constitutionally effective
6 representation.
7 SEC. 2. Section 987.2 of the Penal Code is amended to read:
8 987.2. (a) In any case in which a person, including a person
9 who is a minor, desires but is unable to employ counsel, and in
10 which counsel is assigned in the superior court to represent the
11 person in a criminal trial, proceeding, or appeal, the following
12 assigned counsel shall receive a reasonable sum for compensation
13 and for necessary expenses, the amount of which shall be
14 determined by the court, to be paid out of the general fund of the
15 county:
16 (1) In a county or city and county in which there is no public
17 defender.
18 (2) In a county of the first, second, or third class where there is
19 no contract for criminal defense services between the county and
20 one or more responsible attorneys.
21 (3) In a case in which the court finds that, because of a conflict
22 of interest or other reasons, the public defender has properly
23 refused.
24 (4) In a county of the first, second, or third class where attorneys
25 contracted by the county are unable to represent the person accused.
26 (b) The sum provided for in subdivision (a) may be determined
27 by contract between the court and one or more responsible
28 attorneys after consultation with the board of supervisors, which
29 shall be within the amount of funds allocated by the board of
30 supervisors for the cost of assigned counsel in those cases. A
31 contract entered into pursuant to these provisions shall meet the
32 requirements of Section 987.7. *In the absence of a contract, any*
33 *+ other agreement pursuant to these provisions shall meet the*
34 *+ requirements of Section 987.7.*
35 (c) In counties that utilize an assigned private counsel system
36 as either the primary method of public defense or as the method
37 of appointing counsel in cases where the public defender is
38 unavailable, the county, the courts, or the local county bar
39 association working with the courts are encouraged to do all of
the following:
1 (1) Establish panels that shall be open to members of the State
2 Bar of California.
3 (2) Categorize attorneys for panel placement on the basis of
4 experience.

Amendment 1

page 4 5 (3) Refer cases to panel members on a rotational basis within
6 the level of experience of each panel, except that a judge may
7 exclude an individual attorney from appointment to an individual
8 case for good cause.

9 (4) Seek to educate those panel members through an approved
10 training program.

11 (d) In a county of the first, second, or third class, the court shall
12 first utilize the services of the public defender to provide criminal
13 defense services for indigent defendants. In the event that the public
14 defender is unavailable and the county and the courts have
15 contracted with one or more responsible attorneys or with a panel
16 of attorneys to provide criminal defense services for indigent
17 defendants, the court shall utilize the services of the
18 county-contracted attorneys prior to assigning any other private
19 counsel. Nothing in this subdivision shall be construed to require
20 the appointment of counsel in any case in which the counsel has
21 a conflict of interest. In the interest of justice, a court may depart
22 from that portion of the procedure requiring appointment of a
23 county-contracted attorney after making a finding of good cause
24 and stating the reasons therefor on the record.

25 (e) In a county of the first, second, or third class, the court shall
26 first utilize the services of the public defender to provide criminal
27 defense services for indigent defendants. In the event that the public
28 defender is unavailable and the county has created a second public
29 defender and contracted with one or more responsible attorneys
30 or with a panel of attorneys to provide criminal defense services
31 for indigent defendants, and if the quality of representation
32 provided by the second public defender is comparable to the quality
33 of representation provided by the public defender, the court shall
34 next utilize the services of the second public defender and then
35 the services of the county-contracted attorneys prior to assigning
36 any other private counsel. Nothing in this subdivision shall be
37 construed to require the appointment of counsel in any case in
38 which the counsel has a conflict of interest. In the interest of justice,
39 a court may depart from that portion of the procedure requiring
40 appointment of the second public defender or a county-contracted

page 5 1 attorney after making a finding of good cause and stating the
2 reasons therefor on the record.

3 (f) In any case in which counsel is assigned as provided in
4 subdivision (a), that counsel appointed by the court and any

5 court-appointed licensed private investigator shall have the same
6 rights and privileges to information as the public defender and the
7 public defender investigator. It is the intent of the Legislature in
8 enacting this subdivision to equalize any disparity that exists
9 between the ability of private, court-appointed counsel and
10 investigators, and public defenders and public defender
11 investigators, to represent their clients. This subdivision is not
12 intended to grant to private investigators access to any confidential
13 Department of Motor Vehicles' information not otherwise available
14 to them. This subdivision is not intended to extend to private
15 investigators the right to issue subpoenas.

(g) Notwithstanding any other provision of this section, where
an indigent defendant is first charged in one county and establishes
an attorney-client relationship with the public defender, defense
services contract attorney, or private attorney, and where the
defendant is then charged with an offense in a second or subsequent
county, the court in the second or subsequent county may appoint
the same counsel as was appointed in the first county to represent
the defendant when all of the following conditions are met:

(1) The offense charged in the second or subsequent county
would be joinable for trial with the offense charged in the first if
it took place in the same county, or involves evidence which would
be cross-admissible.

(2) The court finds that the interests of justice and economy will
be best served by unitary representation.

(3) Counsel appointed in the first county consents to the
appointment.

(h) The county may recover costs of public defender services
under Chapter 6 (commencing with Section 4750) of Title 5 of
Part 3 for any case subject to Section 4750.

(i) Counsel shall be appointed to represent, in a misdemeanor
case, a person who desires but is unable to employ counsel, when
it appears that the appointment is necessary to provide an adequate
and effective defense for the defendant. Appointment of counsel
in an infraction case is governed by Section 19.6.

(j) As used in this section, "county of the first, second, or third
class" means the county of the first class, county of the second
class, and county of the third class as provided by Sections 28020,
28022, 28023, and 28024 of the Government Code.

(k) This section shall become operative on July 1, 2021.

6 SEC. 3. Section 987.7 is added to the Penal Code, to read:
7 987.7. (a) A contract between a county or court and a law firm,
8 individual attorney, or other legal entity for the provision of
9 indigent defense services shall use the following procedure:
10 (1) A request for proposals, request for qualifications for
11 indigent defense services contracts, or other policy for the
12 contracting of indigent defense services shall require proposals
13 and all final contracts to include all of the following:
14 (A) Requirements for compliance with the Office of the State
15 Public Defender's standards for contract systems.
16 (B) Explicit language demonstrating a direct relationship
17 between the contract amount and the total number of cases to be
18 handled during the contract period. The number of cases handled
19 over the contract period shall be informed by caseload limits
20 defined in the National Public Defense Workload Study by the
21 RAND Corporation published in 2023, or a later workload study.
22 When determining the scope of work and number of cases to be
23 handled, the county or court shall take into consideration the
24 percentage of the attorney or firm time for work in other cases in
25 addition to work performed pursuant to the indigent defense
26 services contract.
27 (C) The contract amount and structure shall ensure that attorneys
28 have the resources and time necessary to consult with clients,
29 assess discovery, conduct fact investigations, file motions, and
30 perform any other relevant tasks to ensure competent legal
31 representation.
32 (D) All contracts shall provide a separate allocation of funds
33 for case-related defense services, including, but not limited to,
34 investigators, social workers, and immigration counsel. These
35 ancillary service funds shall be separate and in addition to funds
36 allocated for attorney compensation, and there shall not be a
37 penalty for contracted attorneys accessing those funds.
38 (2) (A) A county or court shall not enter into flat fee or per case
39 compensation contracts.
40 (B) For the purposes of this paragraph, "flat fee" means a
41 compensation structure that provides a fixed dollar amount for
42 each case, or ~~a fixed dollar amount for a specific period of time,~~
43 ~~for an unlimited number of cases,~~ without regard to the actual time
44 and resources required to provide competent and zealous
45 representation in each case.

Amendment 2

6 (3) Contract amounts shall account for all dimensions of modern
7 criminal defense practice, including, but not limited to, the costs
8 of technology, support staff, and ancillary legal services, including,
9 but not limited to, immigration support, paralegals, social workers,
10 mitigation specialists, experts, and investigators.
11 (4) The contract shall include a provision that affords the
12 contractor a process to seek a modification of the contract amount
13 if the number of cases handled or the costs of providing a modern
14 criminal defense practice exceed the amount contemplated at the
15 beginning of the contract period.
16 (b) A request for proposals pursuant to paragraph (1) of
17 subdivision (a) shall be disqualified from consideration if it does
18 not meet all of the requirements of subdivision (a).
19 (c) Counties shall provide all contracts for indigent defense
20 services to the Office of the State Public Defender every two years,
21 beginning on January 1, 2027. If the contract does not provide for
22 an hourly rate, the county shall provide to the Office of the State
23 Public Defender the hourly rate equivalent anticipated under the
24 contract.
25 (d) The provisions of this section shall apply to any
26 memorandum of agreement, contract, contract amendment, or
27 contract extension for the provision of indigent defense services
28 entered into or elected by any county or court in California on or
29 after January 1, 2027.
30 (e) This section shall become operative on January 1, 2027.
31 SEC. 4. If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.

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Date of Hearing: March 25, 2025

Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 701 (Ortega) – As Introduced February 14, 2025

SUMMARY: Requires the Department of Justice (DOJ) to study the use of solitary confinement in all jails, prisons, and private detention facilities operating within the State of California.

Specifically, **this bill:**

- 1) Requires DOJ, upon appropriation by the Legislature, in collaboration with the Department of Corrections and Rehabilitation (CDCR) and the Board of State and Community Corrections (BSCC), to conduct a one-time comprehensive study on the use of solitary confinement within all detention facilities in California.
- 2) Requires the study to include, but not be limited to, the following data for each instance of solitary confinement during the first nine months of the year of 2026:
 - a) The time and date solitary confinement began and ended, including any start date that began prior to the study period and any projected end date if someone is still in solitary confinement at the conclusion of the study period;
 - b) The specific facility and unit where solitary confinement occurred, including the name of the unit and whether the unit is considered to be general population, disciplinary confinement, administrative segregation, an alternative to solitary confinement, protective custody, or another type of unit;
 - c) The duration of solitary confinement, including the total consecutive duration in solitary confinement for each individual subjected to solitary confinement, including if that consecutive duration began prior to the study period, and the total duration during the study period of solitary confinement for each individual subjected to solitary confinement, including the total projected duration if the person is still in solitary confinement at the conclusion of the study period;
 - d) The stated basis or reason for the use of solitary confinement;
 - e) The demographics of the individual placed in solitary confinement, including age, gender, race, disability, pregnancy or postpartum status, identification as lesbian, gay, bisexual, transgender, intersex, or gender nonconforming, and any known mental or physical health conditions;
 - f) The nature and frequency of any meaningful human interaction provided during confinement;
 - g) The conditions of the confinement, including number of hours of out of cell time per day, location of out of cell time, number of hours of out of cell time in a group setting, number

of hours of out of cell programming, cell size, lighting, ventilation, access to outdoor recreation, and access to outdoor recreation in a group setting; and,

- h) Any disciplinary, protective, administrative, or other rationale cited for the confinement.
- 3) Requires the study to include all of the following data during the study period for individuals in solitary confinement:
- a) The number of incidents of self-harm, suicide attempts, and suicides during solitary confinement or within 60 days after solitary confinement, broken down by facility, unit, and date of occurrence;
 - b) The number of deaths occurring during solitary confinement broken down by facility, unit, cause of death, and date of occurrence;
 - c) The number of sanctions to solitary confinement that occurred during the study period and the lengths of solitary confinement time imposed by each sanction;
 - d) The number of sanctions that occurred in combination to incarcerated individual's solitary confinement. Sanctions include taking away a person's privileges or services such as visits, packages, correspondence, phone calls, tablets, cell shields, programs, recreation, commissary, out-of-cell time, food, restitution, forfeiture of funds, loss of good time, family reunion programs, and imposed work tasks; and,
 - e) The number of incidents of staff uses of force inside of solitary confinement or to bring an incarcerated individual to solitary confinement, broken down by facility, unit, date of occurrence, and the level of injury to incarcerated people and staff.
- 4) Requires detention facilities to report the data to DOJ, with a frequency of reports determined by the department.
- 5) Requires DOJ to provide a report with interim data to the Legislature monthly, and post that monthly data publicly on its internet website, and submit a final report with the data collected in this study to the Governor and the Legislature, and post that report publicly on its website, by November 1, 2026.
- 6) Requires all detention facilities to cooperate fully with DOJ and provide accurate and timely data as requested by the department, and authorizes the use of the collected data only for the purposes of the study and policy development.
- 7) Prohibits the disclosure of personally identifiable information in the reports or any associated publications, as specified.
- 8) Provides the following definitions:
- a) "Cell" means any room, area, or space that is used or is intended to be used by an incarcerated individual for sleep, or any room, area, or space that is not a shared space conducive to meaningful human interaction among many people in a group setting without physical barriers between people where a person or persons are held for any

purpose.

- b) “Detention facilities” means all jails, prisons, and private detention facilities, as specified, operating within the State of California.
 - c) “Meaningful human interaction” means sustained, direct interaction between individuals that allows for empathetic communication and engagement, extending beyond purely transactional exchanges, conducted without physical barriers, and fostering an individuals’ psychological and social well-being.
 - d) “Out-of-cell” means being in a space outside of, and in an area away from, a cell, in a group setting with other people all in the same shared space without physical barriers between people that is conducive to meaningful human interaction.
 - e) “Solitary confinement” means the confinement of an individual in a cell or similarly confined holding or living space, alone or with other individuals, for 17 hours or more per day, or any situation in which an individual is locked in any space that is not a group setting conducive for meaningful human interaction for 17 hours or more per day.
- 9) Provides a sunset date of January 1, 2028.

EXISTING LAW:

- 1) Prohibits the infliction of cruel and unusual punishment. (Cal. Const., art. I, § 17.)
- 2) Establishes rights for persons sentenced to imprisonment in a state prison, and provides that a person may, during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. (Pen. Code, § 2600.)
- 3) Prohibits the use of any cruel, corporal or unusual punishment or to inflict any treatment or allow any lack of care whatever which would injure or impair the health of the prisoner, inmate, or person confined. (Pen. Code, § 2652.)
- 4) Authorizes CDCR to prescribe and amend rules and regulations for the administration of the prisons. (Pen. Code, § 5058.)
- 5) Requires the Secretary of CDCR to classify and assign prisoners to the institution of the appropriate security level and gender population nearest the prisoner’s home, unless other classification factors make such a placement unreasonable. (Pen. Code, § 5068.)
- 6) Requires the sheriff to receive all persons committed to jail by competent authority and the board of supervisors to provide the sheriff with necessary food, clothing, and bedding, for those prisoners, which shall be of a quality and quantity at least equal to the minimum standards and requirements prescribed by the BSCC for the feeding, clothing, and care of prisoners in all county, city, and other local jails and detention facilities. (Pen. Code, § 4015.)
- 7) Requires the BSCC to establish minimum standards for local correctional facilities. (Pen. Code, § 6030.)

- 8) Requires private local detention facilities to operate pursuant to a contract with the city, county or city and county. (Pen. Code, § 6031.6.)
- 9) Requires private local detention facilities to follow the minimum standards for local correctional facilities established by the BSCC. (Pen. Code, § 6031.6, subd. (c).)
- 10) Limits the confinement of a minor in a locked room or cell with minimal or no contact with persons, as specified, and sets forth the guidelines for the use of room confinement of a minor in a juvenile facility. (Welf. & Inst. Code, § 208.3.)
- 11) Requires the California Attorney General to conduct reviews of county, local, or private locked detention facilities in which noncitizens are being housed or detained for purposes of civil immigration proceedings. (Gov. Code § 12532, subd. (a).)
- 12) Prohibits a city, county or public agency from contracting with a private facility for the purpose of civil immigration facilities, except as specified. (Civ. Code, § 1670.9.)
- 13) Prohibits private detention facilities in California, as specified. (Pen. Code, §§ 5003.1 & 9501.)

EXISTING FEDERAL LAW:

- 1) Prohibits the infliction of cruel and unusual punishment. (U.S. Const., 8th Amend.)
- 2) Makes the laws of the United States and the U.S. Constitution “the supreme Law of the Land.” (U.S. Const. art. VI, cl. 2.)
- 3) Vests the control and management of federal penal and correctional institutions in the U.S. Attorney General, who shall promulgate rules for the government thereof. (18 U.S.C. § 4001, subd. (a).)
- 4) Authorizes the U.S. Attorney General to classify inmates and provide for their proper government, discipline, treatment, care, rehabilitation and reformation. (18 U.S.C. § 4001, subd. (b).)
- 5) Provides that the Bureau of Prisons (BOP), under the direction of the U.S. Attorney General, shall have charge of the management and regulation of all federal penal and correctional institutions and shall provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States. (18 U.S.C. § 4042.)
- 6) Requires the BOP to designate the place of the prisoner’s imprisonment, and subject to bed availability, the prisoner’s security designation, the prisoner’s programmatic needs, the prisoner’s mental and medical health needs, any request made by the prisoner related to faith-based needs, recommendations of the sentencing court, and other security concerns. (18 U.S.C. § 3621.)

- 7) Requires the U.S. Attorney General to arrange for appropriate places of detention for immigrants pending removal decision or removal. (8 U.S.C. § 1231, subd. (g)(1).)
- 8) Requires the U.S. Attorney General to ensure that undocumented criminals incarcerated in federal facilities are held in facilities that provide a level of security appropriate to the crimes for which they were convicted. (8 U.S.C. § 1231, subd. (h)(4)(B).)
- 9) Prohibits the use of room confinement for juveniles in federal custody for any reason other than as a temporary response to the juvenile's behavior that poses a serious and immediate risk of physical harm to any individual. (18 U.S.C. § 5043.)
- 10) Prohibits the use of segregated confinement in federal penal or corrections institutions for individuals who are pregnant or in post-partum recovery, unless the individual presents an immediate risk of harm to the individual or others. Any placement in a segregated housing unit must be limited and temporary. (18 U.S.C. § 4051, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “The science is clear: solitary confinement is cruel, inhumane, and causes severe physical, psychological, emotional, and social harm. Extensive research shows that it neither enhances prison safety nor reduces recidivism, ultimately wasting millions of taxpayer dollars intended to protect inmates and fulfill the rehabilitative goals of our justice system. Despite these known harms, California lacks clarity regarding how, why, and to what extent solitary confinement is currently employed across state prisons, jails, and private detention centers. Moreover, the real-world impact of Governor Newsom’s 2023 reforms remains unknown on a statewide and quantitative level. AB 701 seeks to illuminate these issues by systematically tracking the frequency, rationale, conditions, aftereffects, and demographic impacts of solitary confinement. This bill represents a vital step towards reforming a punitive system that compromises both human dignity and public safety.”
- 2) **Mental, Psychological, and Physical Effects of Segregated Confinement:** There is an increasing body of evidence that suggests that segregated housing produces unwanted and harmful outcomes, for the mental and physical health of those placed in isolation, for the public safety of the communities to which most will return, and for the corrections budgets of jurisdictions that rely on the practice for facility safety. When individuals are placed into segregated housing, it affects access to programming (e.g., education, treatment), the nature and extent of contact they can have with family and friends, and can even impact terms of community supervision.¹ According to a report by the Vera Institute of Justice, “nearly every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation

¹ U.S. DOJ Office of Justice Programs’ (OJP) National Criminal Justice Reference Service (NCJRS), *Examining Race and Gender Disparities in Restrictive Housing Placements* (Sept. 2018) <<https://www.ojp.gov/pdffiles1/nij/grants/252062.pdf>> [as of March 3, 2023].

results in a distinct set of emotional, cognitive, social, and physical pathologies.”² (Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* (May 2015) <https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf>[as of March 3, 2023].)

Further research has shown that there is an increased prevalence of hypertension in persons who have been in solitary confinement, which results in millions in additional future health care costs.³ Also, vulnerable populations like pregnant women are far more susceptible to the potential dangers of solitary confinement.⁴

The World Health Organization, United Nations, and other international bodies have recognized solitary confinement as greatly harmful and potentially fatal. In 2015, the United Nations General Assembly ratified the Nelson Mandela Rules, prohibiting any period of segregation beyond 15 days and defining it as torture.⁵ The American Medical Association (AMA) recently called for the elimination of solitary confinement of any length, for the mentally ill, citing its mental health harms.⁶

- 3) **Ineffectiveness of Segregated Confinement as a Penological Tool:** Prison and jail administrators consider segregated confinement as a necessary tool to maintain safe and orderly correctional facilities and to promote the safety of staff and incarcerated people within prisons and jails. However, use of segregated confinement is not associated with reductions in facility or system wide misconduct and violence. Several studies on segregated confinement have found that its use does not decrease misconduct or violence, including staff assaults, and therefore does not improve the safety of the facility.⁷

Further empirical and anecdotal evidence suggests that segregated housing may have little influence on improving the behavior of incarcerated people and deterring violence.⁸ There is little evidence to support the claim that segregated housing increases facility safety or that its absence would increase in-prison violence.⁹

In addition, a report by the ACLU indicates that there is little evidence or research about the goals, impacts or cost-effectiveness of solitary confinement as a corrections tool.¹⁰ Data from some states suggest that recidivism rates for incarcerated people who have been held in

² Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* (May 2015) <https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf> [as of March 3, 2023].

³ *The Cardiovascular Health Burdens of Solitary Confinement* (2019) J. Gen. Intern. Med. 34, 1977–1980.

⁴ *Unjust Isolation: The Diminishing Returns of Solitary Confinement of Pregnant Women and California’s Need to Regulate It* (2021) 2 Hastings J. Crime & Punish. 122.

⁵ *The United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), (2015).

⁶ MA House of Delegates, *Reducing the Use of Restrictive Housing in Prisoners with Mental Illness: Resolution 412* (2018) at p. 641.

⁷ Benjamin Steiner and Calli M. Cain, *The Relationship Between Inmate Misconduct, Institutional Violence, and Administrative Segregation: A Systematic Review of the Evidence*, U.S. Department of Justice, National Institute of Justice (2016) <<https://perma.cc/BCJ3-HYK3>>[as of April 5, 2022].

⁸ Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, *supra*, (May 2015).

⁹ *Ibid.*

¹⁰ ACLU, *ACLU Briefing Paper: The Dangerous Overuse of Solitary Confinement in the United States* (2014) <<https://www.aclu.org/report/dangerous-overuse-solitary-confinement-united-states>> [as of Feb. 15, 2023].

segregated housing, regardless of whether they are released directly to the community, is significantly higher than for those who have not spent time in segregated housing while in prison.¹¹ Research from California suggests that rates of return to prison are 20% higher for solitary confinement prisoners.¹²

- 4) ***Ashker v. Governor of State of California***: In 2015, California settled *Ashker v. Governor*, a historic class-action lawsuit brought by the Center for Constitutional Rights (CCR) on behalf of a group of Pelican Bay State prisoners who had each spent at least a decade in isolation.¹³ The settlement intended to end the practice of isolating prisoners who have not violated prison rules, cap the length of time a prisoner can spend in solitary confinement, and provide a restrictive but not isolating alternative for prisoners who violate prison rules on behalf of a gang.¹⁴

The *Ashker* agreement was first extended in 2019 by the federal court, based on a finding that CDCR was “effectively frustrating the purpose” of the settlement agreement by systemically violating due process rights.¹⁵ In February 2022, the court determined that CDCR continues to violate the due process rights of incarcerated persons despite the *Ashker* agreement. The court found that CDCR is relying on inaccurate and fabricated confidential information to place individuals in solitary confinement and holding individuals in a restricted unit in the general population without adequate procedural safeguards.¹⁶ Citing these violations, the court extended the *Ashker* agreement for a second one-year term.¹⁷ CDCR appealed the orders extending the settlement agreement. The appeals were consolidated, and in August 2023, the Ninth Circuit reversed the district court’s order granting the first extension of the settlement agreement and vacated the order granting the second extension of the settlement agreement on jurisdictional grounds.

- 5) **Additional Considerations**: This bill requires the Department of Justice (DOJ) to study the use of solitary confinement in all jails, prisons, and private detention facilities operating within the State of California. To meaningfully achieve that goal, the author may wish to consider amends on the following issues:
- a) **The Study’s Timeline**: This bill would require DOJ to study solitary confinement in jails, prisons, and private detention facilities for the first nine months—through September 30—of 2026. At the same time, the bill requires DOJ to report on the number of incidents of self-harm, suicide attempts, and suicides that occur within 60 days after confinement. So, if an incarcerated person were released from solitary confinement on September 20, 2026, DOJ would to report include data on that person through November 19, 2026. However, the bill also requires the DOJ to release the final report on November

¹¹ *Ibid.*

¹² *Ibid.*

¹³ CCR, *Summary of Ashker v. Governor of California Settlement Terms* <<https://ccrjustice.org/sites/default/files/attach/2015/08/2015-09-01-Ashker-settlement-summary.pdf>> [as of Feb. 15, 2022].

¹⁴ *Ibid.*

¹⁵ CCR, *Court Finds Continued Systemic Constitutional Violations in California Prisons*, CCR (Feb. 3, 2022) <<https://ccrjustice.org/home/press-center/press-releases/court-finds-continued-systemic-constitutional-violations-california>> [as of Feb. 15, 2023].

¹⁶ *Ibid.*

¹⁷ *Ibid.*

1, 2026. In other words, DOJ would be unable to fulfill the terms of the study under the timeline established by the bill.

The author should consider making the bill a one year study—January 1, 2026 to December 31, 2026—with the final report due on July 1, 2027. These amendments would give DOJ sufficient time to collect and process the data for the report without violating the law.

- b) **The Definition of Solitary Confinement:** This bill defines “solitary confinement” as the confinement of an individual in a cell or similarly confined holding or living space, alone *or with other individuals*, for 17 hours or more per day. Merriam-Webster defines “solitary” as “being, living, or going alone or without companions.”¹⁸ It defines “alone” as “separated from others.”¹⁹ Thus, the bill uses the term “solitary” to include situations that by definition are not solitary.

This bill also defines “solitary confinement” to be isolation “for 17 hours or more a day.” In other words, under this bill a person would be considered to be housed in solitary confinement even if they were exposed to meaningful human interaction for seven hours a day and housed with other people for the rest of the day—meaning they were almost never alone.

The author may wish to change the definition of “solitary confinement” to mean being housed in a cell alone; or, conversely, to change the term used to describe being confined in a cell alone or with others. The author may also consider whether a definition of solitary confinement that includes the amount of meaningful human interaction and contact with others currently permissible under the bill is too broad. For example, Rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners [the Nelson Mandela Rules] define solitary confinement as “the confinement of prisoners for 22 hours or more a day without meaningful human contact.”²⁰

- 6) **Argument in Support:** According to *ACLU California Action*, “Solitary confinement is one of the most severe and destructive practices found in carceral settings today. The World Health Organization, United Nations, and other international bodies have recognized solitary confinement as greatly harmful and potentially fatal. In 2015, the United Nations General Assembly ratified the Nelson Mandela Rules, prohibiting any period of segregation beyond 15 days and defining it as torture.¹ Despite the consensus around severe impacts of solitary confinement, it is currently unclear how frequently Californians are subjected to solitary confinement and to what extent solitary confinement is used in California facilities.

“AB 701 seeks to bring some transparency to these inhumane practices in our jails and prisons. The study will include specified data about each instance of solitary confinement during the first 9 months of the year of 2026, including, among other data, the time and date solitary confinement began and ended, the facility in which it occurred, and the stated basis for the solitary confinement. The bill also requires the Department of Justice to provide

¹⁸ <https://www.merriam-webster.com/dictionary/solitary>

¹⁹ <https://www.merriam-webster.com/dictionary/alone>

²⁰ https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

monthly data to the Legislature and a final report to the Legislature and the Governor, by November 1, 2026. A comprehensive study about the frequency and use of solitary confinement in detention facilities will help guide conversations on creating common safeguards across facilities and will inform the Legislature's future reforms."

- 7) **Related Legislation:** AB 1140 (Connolly) would require the Secretary of CDCR to develop and implement a pilot program to house people who are incarcerated at four adult prison facilities in single-occupancy cells by January 1, 2027.

8) **Prior Legislation:**

- a) AB 2527 (Bauer-Kahan), Chapter 722, Statutes of 2024, prohibited incarcerated pregnant person from being placed in solitary confinement or restrictive housing units during their pregnancy or for 12 weeks postpartum.
- b) SB 733 (Glazer), of the 2023-204 Legislative Session, would have required the CDCR to collect and report to the Legislature specified data on solitary confinement. SB 733 was held in suspense in the Assembly Appropriations Committee.
- c) AB 280 (Holden), of the 2023-2024 Legislative Session, would limit the use of segregated confinement and requires facilities in the State in which individuals are subject to confinement or involuntary detention to follow specified procedures related to segregated confinement. AB 280 was placed on the inactive file in the Assembly.
- d) AB 2632 (Holden), of the 2021-2022 Legislative Session, was substantially similar to AB 280. AB 2632 was vetoed.
- e) AB 2321 (Jones-Sawyer), Chapter 781, Statutes of 2022, prohibits confinement of a minor in a locked single-person room or cell in a juvenile facility for a period lasting longer than one hour when room confinement is necessary for institutional operations.
- f) AB 1225 (Waldron), of the 2021-2022 Legislative Session, would have prohibited an incarcerated woman from being placed in solitary confinement for medical observation. AB 1225 was held in the Assembly Appropriations Committee.
- g) SB 759 (Anderson), Chapter 191, Statutes of 2016, repealed provisions of law that made incarcerated persons housed in segregation units ineligible to earn credits.
- h) SB 124 (Leno), of the 2015-2016 Legislative Session, would have established standards and protocols for the placement of juveniles in solitary confinement. SB 124 was held in the Assembly Appropriations Committee.
- i) SB 1289 (Lara), of the 2015-2016 Legislative Session, would have, among other things, prohibited an immigration detention facility from involuntarily placing a detainee in segregated housing because of his or her actual or perceived gender, gender identity, gender expression, or sexual orientation. SB 1289 was vetoed.
- j) SB 892 (Hancock), of the 2013-2014 Legislative Session, would have declared the intent of the Legislature that long-term segregated housing as a prison management strategy

should be used only as a last resort and should be limited in duration. SB 892 failed passage on the Assembly Floor.

- k) SB 970 (Yee), of the 2013-2014 Legislative Session, would have prohibited a minor who is detained in, or sentenced to, any juvenile facility or other secure state or local facility from being subject to solitary confinement. SB 970 died in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Collaborative for Immigrant Justice
Nextgen California
San Francisco District Attorney Brooke Jenkins

Opposition

None on file.

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 704 (Lowenthal) – As Amended March 20, 2025

SUMMARY: Authorizes a person arrested for or convicted of an eligible offense, as defined, before the person was 26 years of age, to petition the court to have their records of that conviction or arrest sealed and destroyed. Specifically, **this bill:**

- 1) States any record of arrest that did not result in a conviction are eligible for sealing and destruction, if:
 - a) The statute of limitations has run on every offense upon which the arrest was based and the prosecuting attorney has not filed an accusatory pleading based on that arrest.
 - b) The prosecuting attorney filed an accusatory pleading based on the arrest, but, with respect to all charges, one or more of the following are true:
 - i. No conviction occurred, the charge was dismissed, and the charge may not be re-filed;
 - ii. No conviction occurred and the arrestee has been acquitted of the charges; or
 - iii. A conviction occurred and the arrestee has been vacated or reversed on appeal, all appellate remedies have been exhausted, and the charge may not be re-filed.
 - c) The person successfully completed a diversion program, as specified.
- 2) Provides that if a person is arrested for, or convicted of an eligible offense, a court may order sealing and destruction relief if four years have elapsed since the date on which the defendant was arrested or completed any terms of incarceration, probation, mandatory supervision, post-released community supervision, or parole associated with the record, whichever occurred later, during which the defendant has not been convicted of a new offense.
- 3) Requires that the petition for sealing and destruction relief and supporting documentation be served on the state or local prosecuting agency that obtained the conviction for, or charged the offense for which the person was arrested.
- 4) States a prosecuting agency shall have 45 days from the date of receipt of the petition to respond.
- 5) Authorizes the court, with the agreement of all prosecuting agencies and the petitioner, consolidate multiple petitions to seal and destroy multiple convictions from different jurisdictions.

- 6) Mandates the court schedule a hearing on the petition if the petition is opposed, or if the court deems it necessary.
- 7) States a hearing may consist of the following:
 - a) Testimony by the petitioner, which may be required in support of the petition
 - b) Evidence and supporting documentation in support of the petition;
 - c) Opposition evidence presented by any of the involved state or local prosecutorial agencies that obtained the conviction.
- 8) States that after considering the totality of the evidence presented, the court may order sealing and destruction relief if it finds it is in the best interest of justice.
- 9) Requires that any sealing and destruction relief if it finds it is in the best interest of justice do all the following:
 - a) Set aside the arrest, finding of guilt, or the adjudication and dismiss the accusation or information against the petitioner.
 - b) Set forth a finding that the arrest, conviction, or adjudication has been granted sealing and destruction relief and is deemed to have not occurred.
 - c) Notify the Department of Justice (DOJ) that sealing and destruction relief has been ordered.
- 10) Mandates that when ordering the sealing and destruction relief, the must also order the following agencies to seal and destroy their records:
 - a) Any law enforcement agency (LEA) having jurisdiction over the offense.
 - b) The DOJ.
 - c) Any LEA that arrested the petitioner.
 - d) Any LEA that participated in the arrest of the petitioner.
 - e) Any LEA that has taken action or maintains records because of the offense, including, but not limited to, departments of probation, rehabilitation, corrections, and parole.
- 11) States any agency required to destroy sealed records must seal its records of arrest, conviction, and the court order to seal and destroy the records within 90 days after the court order is granted. The agency shall thereafter destroy their records of conviction, and court order to seal and destroy those records within one year of the date of the court order.
- 12) Requires the court to provide the petitioner and their counsel a certified copy of any court order concerning the sealing and destruction of the records subject to the order. The court shall provide the petitioner and their counsel of any form that the court submits to any

agency, including the DOJ, related to the sealing and destruction of the arrest and conviction records.

- 13) States a petition shall not be granted if the petitioner has not paid any financial restitution order that directly benefits the victim of a crime. With the exception of restitution, the collection of fines imposed as a result of an offense that is the subject of the petition shall be stayed while the petition is pending.
- 14) Mandates the DOJ notify the petitioner and their counsel that the DOJ has complied with the order to seal and destroy the arrest or conviction records by the applicable deadline.
- 15) States the court must maintain a sealed copy of the sealing and destruction order and a sealed copy of the records subject to the order to seal and destroy records, which may not be distributed to any recipient except the petitioner and their counsel.
- 16) States that a petitioner who has obtained an order for the sealing and destruction of records, is released from all penalties and disabilities resulting from the arrest or conviction and may lawfully deny or refuse to acknowledge an arrest or conviction that is granted sealing and destruction relief.
- 17) Provides that any record of a proceeding to seal and destroy records that is accessible to the public shall not disclose the petitioner's full name.
- 18) Authorizes a court that grants a petition to seal and destroy an arrest and conviction record may take additional action as appropriate under the circumstances to carry out its order.
- 19) Provides the following definitions:
 - a) "Eligible offense" does not include any of the following:
 - i. Any offense listed on the violent felonies list or for which the person is required to register as a sex offender.
 - ii. Any offense listed on the serious felonies list.
 - iii. Any felony offense of domestic violence.
 - iv. Any offense of driving under the influence with and without injury.
 - v. Any offense that may be plead and proved as a prior offense for purposes of imposing an increased sentence or enhancement upon conviction.
 - b) "Sealing and destruction relief" means that the arrest and any adjudication 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 inform the petitioner that they may thereafter state that they were not arrested for the charge, or adjudicated or convicted of the charge that was granted relief.

EXISTING LAW:

- 1) Provides that five years or more after the jurisdiction of the juvenile court has terminated over a person adjudged a ward of the court or after a minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18, the person or county probation officer, with specified exceptions, may petition the juvenile court for sealing of the records, including arrest records, relating to the person's case, in the custody of the juvenile court, the probation officer, or any other agency or public official. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)
- 2) Provides that if a petition to commence juvenile court proceedings or adjudge a person a ward of the juvenile court is not filed, five years or more after the person was cited to appear before a probation officer, as specified, or was taken before any officer of a law enforcement agency, or, if, at any time after the person has reached 18 years of age, a petition may be filed for sealing of the records. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)
- 3) Provides that the court may, after a hearing, order the records sealed if it finds that the person has not been convicted of a crime involving moral turpitude since jurisdiction or other action, as specified, ended, and rehabilitation has been attained to the satisfaction of the court. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)
- 4) States that once the court has ordered the person's records sealed, the proceedings in the case shall be deemed never to have occurred, and the person may reply accordingly to any inquiry about the events. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).) An order sealing the record relieves the minor of the obligation to register as a sex offender. (Welf. & Inst. Code, § 781, subd. (a)(1)(C).)
- 5) Prohibits, notwithstanding any other provision of law, the court from ordering a person's records sealed in any case in which the person has been found to have committed a specified serious or violent offense when the individual was 14 years of age or older. (Welf. & Inst. Code, § 781, subd. (a)(1)(D).)
- 6) Prohibits the court from ordering a person's records sealed if he or she was convicted of the specified serious or violent offense in adult court. (Welf. & Inst. Code, § 781, subd. (f).)
- 7) Permits the court to access a file that has been sealed for the limited purpose of verifying the prior jurisdictional status of the ward who is petitioning the court to resume its jurisdiction, as specified. This access is not to be deemed an unsealing of the records. (Welf. & Inst. Code, § 781, subd. (e).)
- 8) Provides that, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation, then the court shall order the petition dismissed and shall order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice. (Welf. & Inst. Code, § 786, subd. (a).)
- 9) Prohibits court-initiated sealing upon probation completion if the petition was sustained on the basis of a specified serious or violent offense committed when the individual was 14 years of age or older, unless the finding on the offense was dismissed or reduced to a lesser

non-serious and non-violent offense. (Welf. & Inst. Code, § 786, subd. (d).)

- 10) States that upon the order of dismissal under the court-initiated sealing process, the arrest and other proceedings in the case must be deemed not to have occurred and the person who was the subject of the petition may reply accordingly to an inquiry by employers, educational institutions, or other persons or entities regarding the arrest and proceedings in the case. (Welf. & Inst. Code, § 786, subd. (b).)
- 11) Allows the court, the prosecuting attorney, the probation department, the person whose record has been sealed, and a child welfare agency to access a record that was sealed by the court-initiated process for limited purposes, as specified. (Welf. & Inst. Code, § 786, subd. (f)(1)(A)-(H).) Access shall not be deemed an unsealing of the record and shall not require notice to any other agency. (Welf. & Inst. Code, § 786, subd. (f)(2).)
- 12) Specifies that records sealed via either the petition or court-initiated process will not prevent a court from enforcing an unpaid judgment for civil restitution. A minor is not relieved of the obligation to pay victim restitution, restitution fines, and court-ordered fines and fees. (Welf. & Inst. Code, §§ 781, subd. (g) & 786, subd. (g)(1).)
- 13) Allows a judge of the juvenile court to dismiss a filed petition, or set aside the findings and dismiss the petition, in the interests of justice and welfare of the subject of the petition, or if the court finds that the subject does not need treatment or rehabilitation, as specified. (Welf. & Inst. Code, § 782.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Giving transitional age youth the opportunity for a clean slate once they have reached developmental maturity can enable them to once again engage in society without the loss of civil rights, public benefits, employment opportunities, housing eligibility, and freedom to live and work without restriction that these convictions too often cause. These sanctions and disqualifications cause long-lasting effects not just to the individual, but to the entire community. Because when people are disenfranchised from work, school, family life and civic participation, the overall health of a community declines.

"Criminal convictions too often act as scarlet letters for people who have fulfilled all penalties associated with crimes they have committed. Criminal convictions leave a lasting scar, long after fines have been payed, time has been served, probation completed etc. Today, it is normal practice for courts to grant expungements (guilty plea withdrawn, and case dismissal) to persons with low level or misdemeanor convictions. Before the days of internet, this was generally sufficient in allowing persons to re-assimilate into society without much restriction. However, today it is very simple for members of the public to attain the criminal records of a person, even if it has been expunged, creating this dilemma where even though the individual has been forgiven by our judicial system, they have not been forgiven by society as a whole. This causes long lasting disenfranchisement that in turn effects whole communities. Because when people are disenfranchised from work, school, family life and civic participation, the overall health of a community declines. AB 704 will allow individuals

who have been arrested for, or convicted of eligible crimes, before the age of 26, the opportunity to petition the courts to seal, and destroy their records.

“This bill does not automatically trigger any petition or any record sealing or destruction. Rather, it only allows the person the opportunity to petition the courts for their records sealed and destroyed. A court that receives such a request is vested with the authority to grant this relief if they find the request to be in the interest of justice and equity. It is the petitioner who has the burden of proof in showing that this relief should be granted.

“Transitional age youth should be treated differently in the criminal justice system as studies show that their developmental stage is not fully mature. This means they may lack the capacity to fully understand the consequences of their actions, potentially requiring a more rehabilitative approach rather than purely punitive measures; this includes factors like impulsivity, susceptibility to peer pressure, and limited cognitive abilities to weigh risks and rewards compared to adults. Giving transitional age youth the opportunity for a clean slate once they have reached developmental maturity aligns with our understanding of youth brain development. They should not be burdened for a lifetime with the barriers to employment, housing and community engagement that were a result of these factors.”

- 2) **Sealing Juvenile Records:** Minors adjudicated delinquent in juvenile court proceedings may petition the court to have their records sealed. (Welf. & Inst. Code, § 781.) To seal a juvenile court record by petition, either the minor or the probation department must petition the court. (*Ibid.*) Juvenile court jurisdiction must have lapsed five years previously, or the person must be at least 18 years old. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).) A court must also find that the person has not been convicted of a felony or a misdemeanor involving moral turpitude since the jurisdiction of the juvenile court ended. (*Ibid.*)¹

In limited circumstances, a person convicted of a violent crime pursuant to Welfare and Institutions Code section 707, subdivision (b) after turning 14 years of age may have their records sealed. If the person was sentenced to the former Division of Juvenile Facilities² and has turned 21, or if the person was not committed to the former Division of Juvenile Facilities and has turned 18. (Welf. & Inst. § 781, subd. (a)(1)(D).) However, there are several instances where the prosecutor may still access 707(b) records for purposes of charging decisions and providing all relevant and exculpatory evidence pursuant to *Brady v. Maryland*. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(ii).)

This bill also proposes to grant the sealing and destruction of criminal records in specific circumstances, but is not limited to just juveniles. It creates a broad remedy for sealing and destroying arrest or conviction records for any person 26 years of age or younger. Juveniles are those who committed an offense before turning 18 and who were subsequently adjudicated as minors – even though they may be sentenced to a juvenile facility until the age of 25. (See Welf. & Inst. Code, § 208.5.)

¹ However, there is also an exception to this general rule if the person’s convictions for either a felony or a misdemeanor of moral turpitude was vacated, dismissed, or reduced to misdemeanors that do not involve moral turpitude. (Welf. & Inst. Code, § 781, subd. (a)(1)(G).)

² The Division of Juvenile Facilities was a division of the California Department of Corrections and Rehabilitation and was closed in 2022. Minors are now held in county facilities.

- 3) **Expungement:** As a general matter, expungement is a more narrow remedy than the sealing and destruction of records. Expungement is a court-ordered dismissal of pending charges or, in some cases, may involve dismissal after a conviction. (See Pen. Code, § 1203.4, subd. (a).) Additionally, Penal Code section 1203.425 extends automatic record relief to misdemeanor convictions where the sentence has been successfully completed following a revocation of probation. (Pen Code, § 1203.425, subd. (a)(1).)

However, in actual practice, the effects of a dismissal are often severely restricted. (52 Ops. Cal. Atty. Gen. 118, 118–119 (1969) [dismissal of criminal conviction does not release person from responsibility of registering as sex offender when civilly committed].) The effects are limited to reinstatement of voting rights relief from criminal registration statutes or relief from impeachment, except when testifying as a criminal defendant. Sealing and the destruction of records are allowable in several different situations.³

Pursuant to Penal Code section 1203.4, a person must be released from penalties and disabilities resulting from conviction in any case in which the person has been granted and successfully completed probation and by fulfilling the conditions of probation for the entire period. (*People v. Chandler* (1988) 203 Cal. App. 3d 782, 788–90.) The court has discretion to grant an expungement in the interests of justice in other probation cases. Penal Code section 1203.4, subdivision (a) expungement is not available from a conviction for certain sex offenses, certain misdemeanor offenses under the Vehicle Code, and certain infractions. (See Pen. Code, § 261.5, subd. (d); and Veh. Code, §§ 12810, subd. (a) and 42002.1.)

This bill expands the ability of a person up to the age of 26 to petition the court to seal and destroy any record of **arrest or conviction** except for serious and violent felonies, any offense for which a person is required to register as a sex offender, any felony domestic violence offense, any driving under the influence offense, and any offense for which a prior conviction may result in an aggravated sentence.

In order for an **arrest** to be sealed and destroyed, the statute of limitations must have run, but no conviction occurred, the charges were dismissed, or the arrestee was acquitted. Penal Code section 851.91 allows for the sealing and destruction of arrest records in certain circumstances, but has numerous restrictions: (a) they may still be charged with any of the offenses upon which the arrest was based; (b) any of the arrest charges, is a charge of murder or any other offense for which there is no statute of limitations, except when the person has been acquitted or found factually innocent of the charge; (c) the petitioner intentionally evaded law enforcement efforts to prosecute the arrest, including by absconding from the jurisdiction in which the arrest occurred (the existence of bench warrants or failures to appear that were adjudicated before the case closed with no conviction does not establish intentional evasion); and (d) petitioner intentionally evaded law enforcement efforts to prosecute the

³ See Penal Code §§ 851.8 (sealing and destroying arrest records of factually innocent person never tried for offense), 851.85 (sealing record of person found factually innocent after acquittal), 851.86 (sealing record of person whose conviction was set aside based on determination of factual innocence), 851.87 (sealing arrest records after completion of pre-filing diversion program), 851.81 (A person who has suffered an arrest that did not result in a conviction may petition the court to have their records sealed), 1000.4 (confidentiality of records after dismissal of charges under pretrial diversion program), 1001.9, 1001.33 (sealing arrest records of various pretrial diversion programs); Health & Safety Code § 11361.5 (sealing and destroying record of certain minor narcotics offenses).)

arrest by engaging in identity fraud and was subsequently charged with a crime for that act of identity fraud. (See Pen. Code, § 851.91, subd. (a)(2).)

For a **conviction**, four years must have elapsed since the date on which the defendant was arrested or completed any terms of incarceration, probation, mandatory supervision, post-released community supervision, or parole associated with the record, whichever occurred later, during which the defendant has not been convicted of a new offense. Welfare and Institutions Code section 781 requires a minimum of five years before a person may seek to seal and destroy their juvenile record.

- 4) **Collateral Consequences:** Collateral consequences are legal disabilities imposed by law as a result of a criminal conviction regardless of whether a convicted individual serves any time incarcerated. (See Description, National Inventory of Collateral Consequences.)⁴ These consequences create social and economic barriers for people reentering society following incarceration. Collateral consequences are known to adversely affect adoptions, housing, welfare, immigration, employment, professional licensure, property rights, mobility, and other opportunities—the collective effect of which increases recidivism and undermines meaningful reentry of the convicted for a lifetime. (See Michael Pinard, Reflections and Perspectives on Reentry and Collateral Consequences (2010) 100 J.L. & Criminology 1213, 1220.)

Moreover, collateral consequences disproportionately affect Black, Indigenous, and People of Color as well as people from historically marginalized communities. (American Bar Association (2015) Collateral Consequences of Criminal Convictions Judicial Bench Book, National Inventory of Collateral Consequences of Criminal Convictions, p. 4.)⁵ Despite the sweeping adverse consequences flowing from any criminal conviction, defendants are generally not entitled, as a matter of due process, to be warned of these consequences, either before accepting a plea or upon conviction. Although the U.S. Supreme Court has required consideration of certain immigration consequences of a criminal conviction, the Court left open what other disenfranchisements might rise to the level requiring constitutional protection. (See *Padilla v. Kentucky* (2010) 559 U.S.356.)

The negative impact of collateral consequences on a returning citizen's chances of successful re-entry into their community are clear and well-documented. Consider barriers to employment: 87% of employers conduct background checks, and recent surveys indicate that most employers are unwilling to hire applicants who have served time in prison. According to the ABA Judicial Bench Book on Collateral Consequences in 2015:

For those who do find work, the resultant pay cuts are staggering: formerly incarcerated men take home 40% less pay annually, resulting in an average earnings loss of nearly \$179,000 by age 48. The nation as a whole suffers from this unfortunate reality. In 2008, the Center for Economic Policy Research estimated that the loss in GDP due to employment

⁴ <http://www.abacollateralconsequences.org/description> (last accessed March 14, 2024).

⁵ <https://www.ojp.gov/pdffiles1/nij/grants/251583.pdf> (last accessed March 14, 2024.)

barriers for people with criminal records was as much as \$65 billion annually—higher than the GDPs of more than half the world's nations—and employers are losing qualified and motivated workers as a result of the stigma associated with prior incarceration.

For many returning citizens, collateral-consequence laws put public housing out of reach. Federal law includes a mandatory ban on access to public housing for people with certain types of convictions and grants discretion to local housing authorities to deny housing based on any criminal activity. Entire households may be evicted based on the arrest or pending criminal charge of one household member. This one-strike provision has a profound impact on family structure. Many families residing in public housing have to sign agreements that returning citizens' family members cannot live with or even visit them at their public housing unit. Private housing is not easy to come by either. Most landlords use background and credit checks to screen out prospective tenants with criminal records. It is no wonder, then, that nearly one-third of individuals released from incarceration expect to go to homeless shelters, which are more often than not unsafe. Obviously, lack of stable housing undoubtedly contributes to increased recidivism. (American Bar Association (2015) *Collateral Consequences of Criminal Convictions Judicial Bench Book*, National Inventory of Collateral Consequences of Criminal Convictions, p. 4).

This bill allows a defendant an avenue to seal and destroy arrest or conviction records preventing the impact of collateral consequences by ensuring the information is not accessible. Existing law already allows people who had a matter dismissed following expungement to seal their conviction and DOJ, subject to a budget appropriation, is required to update its databases to reflect a reduction from a felony to a misdemeanor or if the matter was dismissed. (Pen. Code, § 1203.425, subd. (a)(3)(A).) This bill proposes a more direct process for sealing and destruction records rather than having to file for expungement and then a petition to seal and destroy records.

- 5) **Argument in Support:** According to the *California Public Defenders Association*: AB 704 would allow a person who was under age 26 at the time of their arrest or conviction for eligible offenses to petition the court to have their records sealed and destroyed if certain criteria are met. Records of arrests and convictions, especially for young people, often serve as barriers to education, employment, and housing.

These barriers often lead to poverty, not just for the young person, but their families including their children which can lead to negative generational outcomes. Additionally, record sealing and destruction enhances public safety because the existence of criminal records and their collateral consequences often lead to recidivism in the face of extreme difficulty securing housing and employment. AB 704 offers a pathway to redemption. It will

allow young people to live successful and fulfilling lives while also ensuring true opportunity and dignity in their future endeavors.

- 6) **Argument in Opposition:** According to the *California District Attorneys Association*:
“While we recognize the importance of rehabilitation and reintegration, we have significant concerns about the broad impact of this bill. Existing law already provides avenues for relief, such as record sealing and expungement under Penal Code sections 851.91 and 1203.4. AB 704, however, goes further by mandating the destruction of records, eliminating law enforcement and prosecutorial access that is essential for ensuring public safety.

“The ability to access prior criminal records is critical for enforcing laws, identifying patterns of criminal behavior, and fulfilling constitutional obligations under *Brady v. Maryland* to disclose exculpatory evidence. This bill would hinder the ability of prosecutors to fulfill these legal duties and could prevent the introduction of relevant, admissible evidence in court proceedings. Additionally, AB 704 imposes new mandates on law enforcement agencies, requiring them to seal and destroy records, further straining already limited resources. While the bill acknowledges state reimbursement obligations, the practical difficulties of obtaining such funding leave local agencies to bear the financial burden.

7) **Prior Legislation:**

- a) AB 2420 (Lowenthal), of the 2023-24 Legislative Session, would have authorized any person who had their arrest or conviction set aside and dismissed pursuant to existing law related to expungements to petition the court to have their arrest and related records sealed. AB 2420 was held on the Assembly Appropriations Committee suspense file.
- b) AB 1038 (Ting), of the 2021-2022 Legislative Session, would have required DOJ, on a monthly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for arrest record relief or automatic conviction record relief by having their arrest records, or their criminal conviction records, withheld from disclosure or modified, as specified, for all convictions that occurred on or after January 1, 1973, rather than just those that occurred on or after January 1, 2021. AB 1038 was not heard in the Senate Public Safety Committee.
- b) AB 88 (Committee on Budget), of the 2019-2020 Legislative Session, would have adjusted the timeline for implementation of AB 1076 (Ting), Chapter 578, Statutes of 2019. AB 88 died on the Senate inactive file.
- c) AB 1076 (Ting), Chapter 578, Statutes of 2019, requires the DOJ, as of January 1, 2021, and subject to an appropriation, to review its criminal justice databases on a weekly basis, identify persons who are eligible for relief by having either their arrest records or conviction records withheld from disclosure, with specified exceptions, and required the DOJ to grant that relief to the eligible person without a petition or motion to being filed on the person's behalf.
- d) SB 763 (Durazo), of the 2023-24 Legislative Session, would apply automatic conviction record relief to specified felony convictions occurring on or after January 1, 1973, instead of on or after January 1, 2005. SB 763 was held on the Senate Appropriations suspense

file.

- e) SB 731 (Durazo), Chapter 814, Statutes 2022, as relevant here, expanded automatic arrest record and conviction relief to additional felony offenses, as specified.
- f) SB 118 (Committee on Budget and Fiscal Review), Chapter 29, Statutes of 2020, adjusted the timeline for implementation of AB 1076 (Ting), Chapter 578, Statutes of 2019.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Academy of Child and Adolescent Psychiatry
California Alliance of Child and Family Services
California Attorneys for Criminal Justice
California Civil Liberties Advocacy
California for Safety and Justice
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Center for Employment Opportunities
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
Vera Institute of Justice

Oppose

California District Attorneys Association
California Police Chiefs Association

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 710 (Irwin) – As Amended March 18, 2025

SUMMARY: Creates four new crimes relating to the theft and forgery of gift cards. Specifically, **this bill:**

- 1) Provides that a person who, with the intent to defraud, acquires or retains possession of a gift card or gift card redemption information without the consent of the cardholder, card issuer, or gift card seller is guilty of theft.
- 2) Provides that a person who, with the intent to defraud, alters or tampers with a gift card is guilty of forgery, punishable by imprisonment in county jail not exceeding one year or imprisonment in county jail for 16 months, two years, or three years.
- 3) Provides that a person who, with the intent to defraud, uses a gift card or gift card redemption information for the purpose of obtaining money, goods, services, or anything else of value that has been obtained in violation of either of the above crimes is guilty of theft.
- 4) Provides that person who, with the intent to defraud, devises a scheme to obtain a gift card or gift card redemption information from a cardholder, card issuer, or gift card seller by means of false or fraudulent pretenses, representations, or promises is guilty of theft.
- 5) Provides that if the value of all money, goods, services, and other things of value obtained exceeds \$950, the person is guilty of grand theft.
- 6) Defines the below terms as follows:
 - a) “Cardholder” means a person to whom a physical or virtual gift card is issued through a purchase or a person who receives a gift card from a willing party.
 - b) “Card issuer” means a person that issues a gift card or the agent of that person with respect to that card.
 - c) “Gift card” means a physical or digital card, code, or device that is either activated or inactivated and is issued to a consumer on a prepaid basis primarily for personal, family, or household purposes in a specified amount, regardless of whether that amount may be increased or reloaded in exchange for payment, and can be either of the following:
 - i) A closed-loop gift card, meaning that it is redeemable upon presentation by a consumer at a single merchant or group of affiliated merchants; or

- ii) An open-loop gift card, meaning that it is redeemable upon presentation by a consumer at multiple unaffiliated merchants for goods or services within the payment card network.
- d) “Gift card redemption information” means information unique to a gift card that allows the cardholder to access, transfer, or spend the funds accessed by the gift card.
- e) “Gift card seller” means a merchant that is engaged in the business of selling open-loop or closed-loop gift cards to consumers.
- f) “Value” means the greatest amount of economic loss the owner of the property might reasonably suffer, including the full monetary face value of a gift card or the potential value for variable load gift cards.

EXISTING LAW:

- 1) States that every person who feloniously steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates property which has been entrusted to them, or who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or real or personal property, is guilty of theft. Divides theft into two degrees, petty theft and grand theft. (Pen. Code §§ 484, subd. (a), 486.)
- 2) Provides that in determining the value of the property obtained pursuant to the above, the reasonable and fair market value shall be the test, in determining the value of services received the contract price shall be the test, and if there be no contract price, the reasonable and going wage for the service rendered shall govern. (Pen. Code, § 484, subd. (a).)
- 3) Punishes petty theft as a misdemeanor, punishable by fine not exceeding \$1,000, or by imprisonment in the county jail not exceeding six months, or both. (Pen. Code, § 490.)
- 4) Defines grand theft as theft of money, labor, real or personal property of a value exceeding \$950, and punishes grand theft as a “wobbler” – subject to imprisonment in county jail not exceeding one year, or by imprisonment in county jail for 16 months, two years, or three years (Pen. Code, §§ 487, 489.)
- 5) Provides that in any case involving one or more acts of theft or shoplifting, including but not limited to, shoplifting, theft, and petty theft, the value of property or merchandise stolen may be aggregated into a single count or charge, with the sum of the value of all property or merchandise being the values considered in determining the degree of theft. (Pen. Code, § 490.2.)
- 6) Defines “shoplifting” as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed \$950. Shoplifting is. Shoplifting shall be punished as a misdemeanor. (Pen. Code, § 459.5.)
- 7) Makes it a crime to buy or receive stolen property. If the value of the property is less than \$950, the offense is a misdemeanor punishable by imprisonment in county jail for one year.

If the value of the property is over \$950, the offense is punishable as a “wobbler” – subject to imprisonment in a county jail not exceeding one year, or by imprisonment in county jail for 16 months, two years, or three years (Pen. Code, §§ 487, 489, 496.)

- 8) Provides that a person who has two or more prior convictions for specified theft offenses and who is convicted of petty theft or shoplifting, is punishable by imprisonment in county jail for up to one year, or by 16 months, or two or three years, and makes a second or subsequent conviction of petty theft with two priors punishable by imprisonment in the county jail not exceeding one year or by imprisonment in state prison.. (Pen. Code, § 666.1, subd. (a).)
- 9) Provides that a person that unlawfully possesses property acquired through one or more acts of shoplifting, theft, or burglary from a retail business, where the property is not possessed for personal use and the person has the intent to sell, exchange, or return the merchandise for value, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value; and value of the possessed property exceeds \$950, is guilty of unlawful deprivation of a retail business opportunity, punishable by imprisonment in a county jail not exceeding one year or by imprisonment in county jail for 16 months, two years, or three years. (Pen. Code, § 496.6.)
- 10) Provides that any person that: 1) acts in concert with one or more persons to steal merchandise with the intent to sell, exchange, or return the merchandise for value; 2) acts in concert with two or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen; 3) acts as the agent of another individual or group of individuals to steal merchandise from one or more merchant as part of a plan to commit theft; or, 4) recruits, coordinates, organizes, supervises, directs, manages, or finances another to undertake acts of theft, is guilty of organized retail theft. (Pen. Code, § 490.4, subd. (a).)
- 11) Punishes organized retail theft as follows:
 - a) If violations of the above provisions, except the recruiting, coordinating, organizing, supervising, directing, managing, or financing another provision, are committed on two or more separate occasions within a one-year period, and if the aggregated value of the merchandise stolen, received, purchased, or possessed within that period exceeds \$950 the offense is punishable as either a misdemeanor by imprisonment in a county jail not exceeding one year or as a jail-eligible felony;
 - b) Any other violation of the above provisions, except the recruiting, coordinating, organizing, supervising, directing, managing, or financing another provision, is punishable as a misdemeanor by imprisonment in a county jail not exceeding one year; and,
 - c) A violation of the recruiting, coordinating, organizing, supervising, directing, managing, or financing another provision is punishable as either a misdemeanor by imprisonment in a county jail not exceeding one year or as a jail-eligible felony. (Pen. Code, § 490.1, subd. (b).)

- 12) Creates several crimes pertaining to the theft and forgery of debit and credit cards (also known as “access cards”). (Pen. Code, §§ 484e, 484f, 484g, 484h.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “Organized criminal networks within California and across the United States are stealing gift cards in bulk from retailers and manipulating gift card packaging to steal the card information. Offenders then stealthily return the cards to store displays and drain the funds after a customer purchases and loads the card with funds.

“Whether you got a gift card for your birthday, from a charitable organization after a disaster, or rely on gift cards due to lack of traditional banking access, every Californian deserves peace of mind when receiving a gift card. We must close loopholes that enable scammers to take advantage of California consumers and sow seeds of distrust in our economy. AB 710 hold organized retail crime networks accountable and ensures that consumers can confidently purchase, share, receive and use their gift cards.”

- 2) **Need for this Bill:** Reports suggest that there is a growing trend where people are stealing gift cards, for the purposes of defrauding consumers. For example, people steal numerous gift cards from a retail business. Upon stealing such cards, they gain access to the gift card or otherwise access redemption information using specified technological equipment, and subsequently return that card to the retail business. Once a consumer purchases the card (i.e. loads the card with a certain amount of funds), the people who stole the card proceeds to utilize the gift card redemption information they have secured to steal the loaded funds directly from the consumer. As stated in a recent report on rising gift card fraud:

Experts say there are numerous ways fraudsters can steal gift card balances before the intended recipients can use them. The cards are often displayed in kiosks on sales floors, allowing scammers to steal them and copy their barcode numbers and PINs or security codes before returning the tampered cards to the store. The thieves then wait for the cards to be purchased and loaded with money by unsuspecting customers before they use the stolen codes and pins to drain the funds from the cards.¹

- 3) **Effect of this Bill:** AB 710 creates four new crimes specific to the theft of gift cards. Such crimes are in addition to California’s existing theft statutes that, by punishing theft of any property generally, already encompass theft of gift cards.

First, it provides that a person who, with the intent to defraud, acquires or retains possession of a gift card or gift card redemption information without the consent of the cardholder, card issuer, or gift card seller is guilty of theft. Second, it provides that a person who, with the intent to defraud, alters or tampers with a gift card is guilty of forgery, punishable as a “wobbler” – subject to imprisonment in a county jail not exceeding one year, or by

¹ Mussa, *The gift card industry is booming – and so is related fraud and organized crime*, CBC (March 10, 2025), available at: <https://www.cbc.ca/news/gopublic/go-public-gift-cards-theft-organized-crime-1.7475283>

imprisonment in the county jail for 16 months, two years, or three years. Notably, this new forgery crime would apply irrespective of whether any harm or loss occurs due to such tampering. In effect this purports to treat forgery of a gift card similar to forgery of critical legal documents such as wills, deeds, and records of evidence, as well as akin to credit card fraud. (Pen. Code, §§ 470, 473.)

Third, it provides that a person who, with the intent to defraud, uses a gift card or gift card redemption information for the purpose of obtaining money, goods, services, or anything else of value that has been obtained in violation of either of the above crimes is guilty of theft.

Fourth, it states that person who, with the intent to, defraud, devises a scheme to obtain a gift card or gift card redemption information from a cardholder, card issuer, or gift card seller by means of false or fraudulent pretenses, representations, or promises is guilty of theft. In practice, this would make it a crime for a person to devise a mental criminal scheme, without requiring any actual action from the offender. As discussed more below, this is inconsistent with fundamental principles of criminal law and can be expected to open this bill up to litigation.

Finally, AB 710 would define “value,” for the purposes of this bill to mean the greatest amount of economic loss the owner of the property might reasonably suffer, including the full monetary face value of a gift card or the potential value for variable load gift cards. As discussed more below, this definition of value is inconsistent with the definitions of value elsewhere in the Penal Code, and can be expected to punish persons for the most potential harm they *could* have caused, even if little to no harm actually occurs.

- 4) **Existing Penalties for Conduct Prohibited by this Bill:** There are numerous criminal penalties that can already be used to address the type of gift card schemes at issue here, many of which were specifically created by the Legislature last year to address concerns of rising retail theft. Further, Proposition 36, which was passed by the voters in November of 2024 established additional penalties for repeat theft violators, and made it easier to prosecute grand theft. Available tools that can be utilized to target gift card theft schemes include the following:

a) Theft

A person who feloniously steals or takes away the personal property of another, or who knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money, labor or real or personal property, is guilty of theft. If the value of the property is under \$950, it is petty theft punishable by imprisonment in county jail for one year. If the value of stolen property exceeds \$950, the offense can be charged as grand theft, punishable by imprisonment in a county jail for up to one year, or by imprisonment in the county jail for 16 months, two years, or three years. (Pen. Code, §§ 487, 489, 496.)

Here, a person who steals numerous gift cards from a store, gains access to the gift card redemption information, returns those cards, and subsequently steals money from consumers who have loaded them with money, can be prosecuted for theft in numerous ways. First, the initial theft of the gift cards themselves can be prosecuted as either petty theft, or grand theft, depending on the number of cards stolen. Second, the subsequent theft from consumers, once

they have loaded money onto the cards, can additionally be prosecuted as theft of the consumer's personal property.

Notably, after the passage of Prop 36 in November of 2024, it is now easier for prosecutors to charge persons with grand, rather than petty theft. First, Prop 36 targeted repeat theft offenders, by making a conviction for theft and shoplifting, where that person has two prior theft convictions, punishable by imprisonment in county jail for up to one year or by 16 months, or two or three years; and it made a second or subsequent conviction of petty theft with two priors punishable by imprisonment in the county jail not exceeding one year or by imprisonment in state prison. (Pen. Code, § 666.1, subd. (a).) Here, a person with two priors who is caught stealing gift cards, whether they ultimately defraud consumers or not, can face up to three years in county jail. (Pen. Code, § 666.1, subd. (a).)

Second, Prop 36 made it easier to aggregate the value of stolen property in order to trigger the \$950 grand theft threshold. Previously, the value of stolen property could be aggregated to charge grand theft where the acts were motivated by one intention, one impulse, and one plan. (Pen. Code, § 487, subd. (e).) However, Prop 36 authorized a more generous method of aggregation by stating that, in multiple cases of theft the value of property may be aggregated into a single charge, with the sum of the value of all property or merchandise being the value considered in determining the degree of theft. (Pen. Code, § 490.3.) As such, pursuant to Prop 36's aggregation standard, prosecutors will have greater leeway to aggregate all theft associated with the type of gift card scheme at issue in this bill, making it easier to charge such persons with grand theft.

b) Organized Retail Theft:

A person commits organized retail theft where they: 1) act in concert with one or more persons to steal merchandise with the intent to sell, exchange, or *return the merchandise for value*; 2) act in concert with two or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen; 3) act as the agent of another individual or group of individuals to steal merchandise from one or more merchant as part of a plan to commit theft; or, 4) recruit, coordinate, organize, supervise, direct, manage, or finance another to undertake acts of theft. (Pen. Code, § 490.4, subd. (a).) Violations of the above provisions that are committed on two or more separate occasions within a one-year period, and where the aggregated value of the merchandise exceeds \$950, are in most cases punishable as either a misdemeanor by imprisonment in a county jail not exceeding one year or a felony.

Here, individuals who act in concert to steal gift cards from a store and subsequently return those cards for the purposes of defrauding consumers can be prosecuted for organized retail theft, as that statute specifically covers the theft of property and the subsequent *return* of such property for value. More importantly, organizing, directing, and financing such gift card schemes is punishable by up to 16 months, two years, or three years in county jail for first time violations under the organized retail theft statute.

c) Receipt of Stolen Property

Any persons who receives stolen gift cards for the purpose of gaining access to gift card redemption information and subsequently returning such cards for the purpose of defrauding

consumers can be prosecuted for receipt of stolen property. Under existing law, it is a crime to buy or receive stolen property, knowing the property is stolen. Receipt of stolen property is punishable as a wobbler, depending on the amount stolen. (Pen. Code, §§ 487, 489, 496.) As such, persons who are not directly involved in the theft of gift cards from a retail business, but nonetheless participate by receiving such cards and gaining access to gift card redemption information, can be prosecuted for receipt of stolen property.

d) Deprivation of a Retail Opportunity

Gift card fraud schemes can be prosecuted under the specific statute of deprivation of a retail business opportunity. The statute provides that a person that unlawfully possesses property acquired through one or more acts of theft from a retail business, where the property is not possessed for personal use and the person has the intent to sell, exchange, or return the merchandise for value, or the intent to act in concert with one or more persons to sell, exchange, or return the merchandise for value, and value of the possessed property exceeds \$950, is guilty of unlawful deprivation of a retail business opportunity, punishable by imprisonment in a county jail not exceeding one year or by imprisonment in the county jail for 16 months, two years, or three years. (Pen. Code, § 496.6.)

This statute is particularly applicable to the type of gift card schemes at issue because it targets unlawful possession of property that is stolen from a retail business, where the property is not possessed for personal use, and the person has intent to return the merchandise for value. Here a person who possesses hundreds of stolen gift cards that have not yet been loaded with funds will undoubtedly meet the requirement that they are not possessing the property for personal use. Further, to be convicted of this crime a person does not actually need to return the merchandise for value, but simply requires intent to do so.

e) Retail Crime Restraining Orders

Retailers now have statutory authority to petition for retail crime restraining orders, prohibiting persons convicted of specified theft offenses from entering the premises of a retail establishment, and such orders may be valid for up to two years. (Pen. Code, § 490.8, subd. (a).) These specifically apply to shoplifting, any theft from a retail establishment, and any organized retail theft. Given that the type of gift card scheme at issue here can already be prosecuted as theft as well as organized retail theft, a person who steals gift cards from a retail business may be subject to up to two year restraining order, a violation of which is a misdemeanor.

f) Sentence Enhancements.

Additionally, a person who steals gift cards, where the ultimate value of the amount stolen exceeds \$50,000, can be subject to additional sentence enhancements created by Prop. 36. Specifically, Prop. 36 provided that, if a person takes any property in the attempted commission of a felony, or commits a felony violation including receiving stolen property, the court shall impose additional sentence enhancements of between one year and four years, depending on the value of the property taken. (Pen. Code, § 12022.6.) Here, given the proposed method of valuating gift cards in this bill, a person who steals or receives hundreds of stolen gift cards could not only be prosecuted with felony grand theft but also could be subject to multi-year enhancements, even if no consumers are ultimately defrauded.

Given the significant effort the Legislature has made in recent years to provide prosecutor's with tools to prosecute organize theft, and increase punishments associated with such theft, the need for this bill is unclear.

- 5) **Conspiracy for Organized Gift Card Schemes:** The author cites the concern that persons who steal hundreds of gift cards with the intent defraud consumers, but are caught before they are able to do, will not be adequately held accountable. Specifically, they cite the concern that the market value of hundreds of cards, which are not loaded with any money, will be under \$950, in which case such persons cannot be charged with grand theft. But persons who steal hundreds of gift cards, but are caught prior to returning the gift card to stores and defrauding consumers, may be charged with conspiracy or attempt to commit all the aforementioned crimes.

A conspiracy to commit a crime requires an agreement between two or more people to commit a crime, where one or more persons commits an overt act to further that agreement. (Pen. Code, § 182.) Notably, a conspiracy to commit a felony (e.g. felony grand theft, felony organized retail theft, felony deprivation of a retail opportunity, felony receipt of stolen property, etc.) is punished "in the same manner and to the same extent as provided for the punishment of that felony." (*Ibid.*) Further, for persons that conspire to commit two or more felonies, which have different punishments, and the commission of those felonies constitute one offense of conspiracy, the penalty is the felony with the greater maximum term. (*Ibid.*) As such, where a person is caught stealing hundreds of gift cards, law enforcement may secure search warrants to identify evidence demonstrating intent to commit the type of gift card scheme at issue here, enabling prosecutors to charge such persons with conspiracy to commit the aforementioned crimes. Additionally, while this bill intends to target organized gift card schemes, in the case of a person without co-conspirators, prosecutors can charge that person with attempt to commit the aforementioned crimes.

- 6) **Constitutional Concerns:** Two provisions of this bill authorize disproportionate punishments such that they can reasonably be expected to open this bill up to litigation.

First, a core principal of criminal law, is that every crime, except for strict liability offenses, "has two components: (1) an act or omission, sometimes called the *actus reus*; and (2) a necessary mental state, sometimes called the *mens rea*." (*People v. McCoy* (2001) 25 Cal.4th 1111, 1117.) This bill would make it a crime for a person to intend to defraud and to devise a specified scheme. This would not require any actual action by the defendant. For example, a person who plans in their head how to steal gift cards would be guilty of theft under this bill, even if their mental plan resulted in no physical act of any kind. Such an intent-only crime, absent any action, is inconsistent with a core criminal law principle. As previously noted, conspiracy and attempt are available for persons with the requisite intent and who take some actions to complete those crimes, even if the crime itself is not ultimately committed.

Second, AB 710 proposes a new method of valuating stolen property that purports to punish persons who steal gift cards that have not been loaded with money, for theft of the maximum possible value had the cards been loaded with the maximum possible amount. Specifically, it defines "value" to mean "the greatest amount of economic loss the owner of the property *might reasonably suffer*, including the full monetary face value of a gift card or the *potential value for variable load gift cards*."

This punishes persons not for the harm they caused, but the most potential harm they could have caused, undermining the constitutional principle of proportionate punishment. The Eight Amendment of the U.S. Constitution outlines this proportionality, prohibiting “imposition of a sentence that is grossly disproportionate to the severity of the crime.” (*Ewing v. California* (2003) 538 U.S. 11, 21.) Here, a person who is caught stealing 101 gift cards that have not been purchased or loaded with any actual money, where the maximum amount of money that can be added to each card is \$500, could be prosecuted for \$50,500 worth of theft, punishable by up to four years of incarceration (up to three years for grand theft, plus an additional one year under the sentence enhancements). Alternatively, a person who steals two gift cards that could be loaded with up to \$500, that are each loaded with \$10 by subsequent purchasers, instead of being prosecuted for the \$20 that was stolen, could be prosecuted for theft of \$1,000 and punished by up to three years in county jail.

In addition to constitutional and fairness concerns, this method of valuating property is inconsistent with how property is valued for the purposes of theft of other types of property. Specifically, in determining the value of stolen property under California law “the reasonable and fair market value shall be the test, in determining the values of services received the contract price shall be the test, and if there be no contract price, the reasonable and going wage for the service rendered shall govern.” (Pen. Code, § 484, subd. (a).)

- 7) **Reports of Exaggerated Losses by Retailers:** Some complaints of retail theft have been overstated. For example, in 2021, Walgreens closed five stores in San Francisco purportedly due to retail theft. However, the San Francisco Police Department’s data on shoplifting did not support this explanation for the closures. Recently, the chief financial officer of Walgreens acknowledged the shoplifting threat had probably been overstated. The company likely spent too much on security measures and mischaracterized the amount of theft at stores. In fact, shrinkage (the inventory that was bought but could not be sold primarily due to shoplifting) actually decreased to around 2.5 to 2.6 percent of sales, compared to 3.5 percent the prior year.²

Others say retail theft, while an issue, might be overstated as an excuse to write off mediocre sales and historic inflation and might be a key reason why we’re seeing any theft bump at all. Things have become expensive – “we are in an economy right now where some everyday staples have risen in price six times faster than the overall rate of inflation. Until July of this year, American paychecks grew at a slower rate than inflation as a whole.” Some retailers lump theft in with heavy discounting, soft sales and macroeconomic conditions as other factors that cut into their margins.³

What’s more, the National Retail Federation has not solidified any data around increased

² See New York Times, *Walgreens Executive Says Shoplifting Threat Was Overstated* (Jan. 6, 2023) <<https://www.nytimes.com/2023/01/06/business/walgreens-shoplifting.html>> ; see also Los Angeles Times, *Retailers Say Thefts Are at Crisis Level. The Numbers Say Otherwise* (Dec. 15, 2021) <<https://www.latimes.com/business/story/2021-12-15/organized-retail-theft-crime-rate>>; CNN Business, *‘Maybe We Cried Too Much’ Over Shoplifting, Walgreens Executive Says* (Jan. 7, 2023) <<https://www.cnn.com/2023/01/06/business/walgreens-shoplifting-retail/index.html>>; The Atlantic, *The Great Shoplifting Freak-Out* (Dec. 203, 2021) <<https://www.theatlantic.com/health/archive/2021/12/shoplifting-holiday-theft-panic/621108/>>.)

³ (Freight Waves, *What’s Behind the Reports of ‘Unprecedented’ Retail Theft* (Oct. 2023). Available at: <<https://www.freightwaves.com/news/whats-behind-the-reports-of-unprecedented-retail-theft>>; see also Bloomberg, *Thieves Target Donuts and Ham as Food Prices Jump* (Feb. 2024). Available at: <<https://www.bloomberg.com/news/newsletters/2024-02-23/supply-chain-latest-food-theft-rises-on-grocery-inflation>>.)

rates of organized retail theft or what percentage of external theft is organized crime. Retailers are not required to break down how much they actually lose to theft. “Retailers and trade associations are increasingly using their positions to influence lawmakers to pass new legislation that benefits them, hurts competitors and could disproportionately affect marginalized people.”⁴

From 2020 to 2021, the number of news stories covering smash-and-grab incidents nearly doubled. However, the information available does show that the vast majority of shoplifting is not committed by mobs of people.⁵

Additionally, the Federal Trade Commission recently reported that retail stores likely inflated prices to accommodate for lost revenue resulting from the pandemic. The FTC states, in summary, that:

Notably, consumers are still facing the negative impact of the pandemic’s price hikes, as the Commission’s report finds that some in the grocery [including drug stores] retail industry seem to have used rising costs as an opportunity to further raise prices to increase their profits, which remain elevated today.

Retail stores actually saw significant profits over the past few years despite claims that stores are losing profits as a result of theft and other market forces.⁶

Finally, the Federal Bureau of Investigation (FBI) data on crime statistics reports that crime is actually down nationwide by a significant margin – contributing to the conclusion that the crime rate was a temporary phenomenon brought on by the pandemic and rapidly escalating costs for basic goods and services.⁷

- 8) **Argument in Support:** According to the *California District Attorneys Association*, “As you are aware, sophisticated thieves are increasingly targeting gift cards due to their ease of transferability and resale. These thefts are costly to consumers and retailers. And, though current law already penalizes various forms of access card fraud, AB 710 is a necessary and timely update to explicitly criminalize theft and fraud of gift cards.

“AB 710 is a necessary legislative update that targets a modern method of financial fraud and theft. The bill aligns with existing theft and forgery statutes but will improve current provisions by specifically criminalizing fraudulent possession, alteration, and misuse of gift cards. In this way AB 710 will strengthen consumer protection and prosecutorial effectiveness in addressing retail crime.”

⁴ (CNBC, *Companies say organized retail crime is on the rise, but there’s no data to prove it.* (Aug. 2023). Available at < <https://www.cnbc.com/2023/08/09/claims-about-organized-retail-theft-are-nearly-impossible-to-verify.html>>.)

⁵ (Council on Criminal Justice, *Shoplifting Trends: What You Need to Know* (Nov. 2023) Available at: <<https://counciloncj.org/shoplifting-trends-what-you-need-to-know/>>.)

⁶ Federal Trade Commission, “*Feeding America in a Time of Crisis, The United States Grocery Supply Chain and the COVID-19 Pandemic*” (March 21, 2024).

⁷ FTC, *Report on Grocery Supply Chain Disruptions* (March 2024). Available at: <<https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-releases-report-grocery-supply-chain-disruptions>>.)

- 9) **Argument in Opposition:** According to *Californians United for a Responsible Budget*, “AB 710...would create multiple new criminal offenses for gift card theft and forgery. This legislature should protect small businesses and consumers from gift card scams. However, AB 710 needlessly expands the Penal Code without providing the protection Californians deserve.

“Instead of AB 710, the legislature should follow the model set by other states and pass smarter, tailored solutions that will keep our communities safe and thriving. For example, New Jersey requires sellers to train employees to identify and mitigate gift card scams, and New York passed a law to alert customers of potential gift card scams and ways they can protect themselves against fraud. Most importantly, legislators can target the heart of the problem by requiring gift card sellers to distribute gift cards with improved and secure packaging, as Maryland legislators did.

“First, AB 710 is unnecessary because existing laws already cover these crimes. The four new proposed gift card crimes are already punishable under California’s larceny statute, and the proposed new forgery crime is already punishable under the existing forgery and counterfeiting statute. Adding redundant statutes will further complicate the Penal Code without addressing any gaps in enforcement. Research is clear that lengthening sentences does not effectively deter crime—in this case, few people are likely to know about this obscure law change, let alone factor it into their actions.

“Second, AB 710’s overbroad language risks inflating the prison population. For example, under this bill, a person who “devises a scheme to obtain a gift card” could be sentenced to prison. This implies that the intent to steal a gift card—with no corresponding action—could be penalized, contradicting one of the most basic protections in criminal law, namely that someone cannot be punished for their thoughts alone.

“Additionally, AB 710 redefines the threshold for felony theft (\$950) by basing convictions on “what one might reasonably suffer,” including “the potential value” of the gift card. Research shows retail theft penalties disproportionality harm Black and Latinx people, thus AB 710 risks exacerbating racial disparities in the criminal legal system.

“All Californians deserve thriving local economies, and both businesses and customers deserve to be protected from gift card scams. But adding a redundant law will waste taxpayer resources without addressing people’s real concerns. Instead, we need proven solutions that prevent crime like empowering employees and increasing awareness of gift card scams.”

10) Prior Legislation:

- a) AB 2943 (Zbur), Chapter 168, Statutes of 2024, creates a new crime of unlawful deprivation of a retail business opportunity and make various changes to provisions of law on arrest authority, aggregation, and probation terms for theft-related offenses.
- b) AB 3209 (Berman), Chapter 169, Statutes of 2024, allows a court to issue an order prohibiting a person from being present on the grounds of, or any parking lot adjacent to and used to service, a retail establishment and any other retail establishments in that chain or franchise, as specified.

- c) AB 1802 (Jones-Sawyer), Chapter 166, Statutes of 2024, eliminates the sunset date for the crime of organized retail theft and for the existence of a taskforce established by the California Highway Patrol to analyze organized retail theft and vehicle burglary and to assist local law enforcement in counties identified as having elevated property crime.
- d) AB 1960 (Soria), Chapter 220, Statutes of 2024, re-enacts a sentence enhancement for felony offenses for a person who intentionally takes, damages, or destroys property, when the loss exceeds specified dollar amounts, but lowers the amounts to below 2017 levels when the enhancement sunset.
- e) SB 982 (Wahab), Chapter 982, Statutes of 2024, bill removes the sunset date on the provision of law that criminalizes organized retail theft, thereby making the operation of the law permanent.
- f) AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, extended the sunset date for organized retail theft through January 1, 2026.
- g) AB 329 (Ta), of the 2023-2024 Legislative Session, would have imposed higher penalties for shoplifting and petty theft if the crime is committed by a non-citizen of the state of California. AB 329 failed passage in this committee.
- h) AB 2356 (Rodriguez), Chapter 22, Statutes of 2022, expanded the definition of “grand theft” where the aggregate amount taken by all participants exceeds \$950.
- i) AB 1603 (Salas), of the 2021-2022 Legislative Session, would have reduced the threshold amount for petty theft and shoplifting to be punished as a misdemeanor from \$950 to \$400. AB 1603 failed passage in this Committee.
- j) AB 2390 (Muratsuchi), of the 2021-2022 Legislative Session, would have authorized the aggregation of the value of property from one or more acts of theft or shoplifting, as specified. AB 2390 failed passage in this Committee.
- k) AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018, created the crime of organized retail theft and expanded jurisdiction to prosecute cases of theft or receipt of stolen merchandise.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attractions and Parks Association
 California Business Properties Association
 California Chamber of Commerce
 California District Attorneys Association
 California Grocers Association
 California Retailers Association
 California State Sheriffs' Association
 National Association of Theatre Owners of California
 Nfib California

San Bernardino County District Attorney's Office
San Diego County District Attorney's Office
San Francisco District Attorney Brooke Jenkins
Tri County Chamber Alliance
Ventura County District Attorney's Office

Oppose

ACLU California Action
All of Us or None Los Angeles
California Attorneys for Criminal Justice
California for Safety and Justice
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Local 148 Los Angeles County Public Defender's Union
San Francisco Public Defender
Silicon Valley De-bug
Smart Justice California, a Project of Tides Advocacy
Vera Institute of Justice

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 741 (Ransom) – As Introduced February 18, 2025

SUMMARY: Requires the Department of Justice (DOJ) to monitor the Child Abuse Central Index (CACI) and notify the Court Appointed Special Advocate (CASA) program if a child abuse investigation record involving a CASA employee or volunteer is added to the CACI, and allows the DOJ to increase the fee for a CASA candidate's criminal history information sufficient to cover the cost of processing subsequent child abuse investigation notifications from the CACI.

EXISTING LAW:

- 1) Requires the DOJ to maintain an index of all reports of child abuse and severe neglect submitted in every case of known or suspected child abuse or severe neglect that is determined to be substantiated, as specified. (Pen. Code, § 11170, subd. (a).)
- 2) States the index shall be continually updated by the DOJ and shall not contain any reports that are determined to be not substantiated. (Pen. Code, § 11170, subd. (a).)
- 3) Mandates the agency make information about substantiated allegations of child abuse or severe neglect available to the reporting health care practitioner who is treating a person reported as a possible victim of known or suspected child abuse. (Pen. Code, § 11170, subd. (b)(1).)
- 4) Provides that a designated CASA program may submit to the DOJ fingerprint images and related information of employment and volunteer candidates for the purpose of obtaining information as to the existence and nature of any record of child abuse investigations contained in the CACI, state- or federal-level convictions, or state- or federal-level arrests for which the DOJ establishes that the applicant was released on bail or on their own recognizance pending trial. (Pen. Code, § 11105.04, subd. (a).)
- 5) States when requesting state-level criminal offender record information, as specified, the designated CASA program shall request subsequent arrest notification for all employment and volunteer candidates. (Pen. Code, § 11105.04, subd. (b).)
- 6) Requires DOJ to charge a fee sufficient to cover the cost of processing the requests for federal-level criminal offender record information, but states DOJ shall not charge a fee for state-level criminal offender record information. (Pen. Code, § 11105.04, subd. (d)(1-2).)
- 7) States that a designated CASA program is a local court-appointed special advocate program that has adopted and adheres to the guidelines established by the Judicial Council and which has been designated by the local presiding juvenile court judge to recruit, screen, select, train, supervise, and support lay volunteers to be appointed by the court to help define the best

interests of children in juvenile court dependency and wardship proceedings. (Pen. Code, § 11105.04, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “Currently, California’s Child Abuse Central Index (CACI) does not provide subsequent screening notices of potential wrongdoing to any agency other than the Department of Social Services. Thus, all personnel associated with a CASA program must be re-fingerprinted every four years to ensure that they can continue their work with children. This procedure delays vital information that could be used by a CASA program to prevent harm to a child if a volunteer or staff member is alleged to have hurt a child. Further, it is a financial expense and an administrative burden to the local CASA programs.

“In California, local CASA programs receive notices from the Department of Justice, the FBI, and the Department of Motor Vehicles of any changes in the background screening results of any volunteer (CASA and Board Member) and staff member. Often called the “rap back,” these notices allow the CASA program to immediately investigate the suitability of any volunteer or staff member to continue working with children.

“However, currently local programs do not receive such notices from the California Child Abuse Central Index (CACI). In fact, California Penal Code §11170 restricts the receipt of subsequent responses for CACI information to the California Department of Social Services only, thus leaving CASA programs without this crucial safeguard.

“The safety, protection, and well-being of children in foster care is paramount, and thus it is imperative to extend subsequent notices for CACI information to CASA programs in California. Primarily, this change will enhance child safety, but it will also reduce the financial and administrative burdens on the 44 local CASA programs serving California courts. By taking these steps, we can further strengthen the state’s commitment to safeguarding these most vulnerable individuals: the children and youth in California’s foster care system.”

- 2) **CASA Program:** The CASA program offers assistance to children in dependency proceedings, including foster care. According to the California CASA website, CASA, is a national volunteer movement that began in 1976. Its founder, City of Seattle Superior Court Judge David Soukup, decided “he couldn’t endure any more sleepless nights worrying about the lifelong impact his decisions had on abused and neglected children.”¹ At that time, children in foster care didn’t receive the same representation in court as parents. According to Judge Soukup, in an Los Angeles Times interview:

“In criminal and civil cases, even though there were always many different points of view, you walked out of the courthouse at the end of the day and you said, ‘I’ve done my best; I can live with this decision,’ he explains. But when you’re involved with a child and you’re trying

¹ <https://www.californiacasa.org/our-mission>

to decide what to do to facilitate that child's growth into a mature and happy adult, you don't feel like you have sufficient information to allow you to make the right decision. You wonder, 'Do I really know everything I should? Have I really been told all of the different things? Is this really right?'"²

Implemented in Seattle in 1977, the CASA program provided 110 trained CASA volunteers for 498 children in that first year. National recognition and grants resulted in the replication of the Seattle CASA program in courts across the country.

On April 22, 1985, President Ronald Reagan presented the National CASA Association with the President's Volunteer Action Award for "outstanding volunteer contribution, demonstrating accomplishment through voluntary action." In August of 1989, the American Bar Association officially endorsed the use of CASA volunteers to work with attorneys to speak for abused and neglected children in court.

In July of 1990, the U.S. Congress authorized the expansion of CASA with the passage of the Victims of Child Abuse Act of 1990 (Pub. L. 101-647), so that a court-appointed special advocate shall be available to every victim of child abuse or neglect in the United States that needs such an advocate. The U.S. Advisory Board on Child Abuse and Neglect included utilization of CASA and Guardian *ad Litum* (GAL) volunteers among critical first steps recommended to bring the "national emergency" of child abuse and neglect in America today under control.³

The National CASA Association represents nearly 1,000 CASA and GAL programs in 49 states and the District of Columbia -- recruiting, screening, training and supporting 98,000 volunteers to represent the best interests of abused and neglected children in the courtroom and other settings. CASA and GAL are required to undergo criminal background checks before being employed as an advocate or volunteering with the CASA program. This bill would require that DOJ also update CASA and GAL programs if a person is added to the CACI index after they are hired or are working as a volunteer. The changes proposed in this bill seem to make sense given that CASA and GAL work closely with children in the Family Court environment.

- 3) **CACI:** The CACI was created in 1965 as a centralized system for collecting reports of suspected child abuse. This is not an index of people who have been convicted of any crime; it is an index of persons against whom reports of child abuse or neglect have been made, investigated, and determined by the reporting agency (local welfare departments and law enforcement) to meet the requirements for inclusion, according to standards that have changed over the years.

Access to CACI was initially only available to officials investigating open child abuse cases, but in 1986 the Legislature expanded access to allow the Department of Social Services

² <https://nationalcasagal.org/about-us/history/>

³ [https://nationalcasagal.org/our-work/the-casa-gal-model/#:~:text=Court%20Appointed%20Special%20Advocate%C2%AE%20\(CASA\)%20and%20guardian,home%20and%20have%20the%20opportunity%20to%20thrive.](https://nationalcasagal.org/our-work/the-casa-gal-model/#:~:text=Court%20Appointed%20Special%20Advocate%C2%AE%20(CASA)%20and%20guardian,home%20and%20have%20the%20opportunity%20to%20thrive.)

(DSS) to use the information for conducting background checks on applications for licenses, adoptions, and employment in child care and related services positions. The Attorney General administers the CACI as a tool for state and local agencies to help protect the health and safety of California's children.

“Each year, child abuse investigations are reported to the CACI. These reports pertain to investigations of alleged physical abuse, sexual abuse, mental/emotional abuse, and/or severe neglect of a child. The reports are submitted by county welfare and probation departments. The information in the Index is available to aid law enforcement investigations, prosecutions, and to provide notification of new child abuse investigation reports involving the same suspects and/or victims. Information also is provided to designated social welfare agencies to help screen applicants for licensing or employment in child care facilities and foster homes, and to aid in background checks for other possible child placements, and adoptions.⁴

Information on file in the CACI include: Names and personal descriptors of the suspects and victims listed on reports; reporting agency that investigated the incident; the name and/or number assigned to the case by the investigating agency; type(s) of abuse investigated; and the findings that are substantiated.

It is important to note that the effectiveness of the CACI is only as good as the quality of the information reported. Each reporting agency is required by law to forward to the DOJ a report of every child abuse incident it investigates, unless the incident is determined to be unfounded or general neglect. Each reporting agency is responsible for the accuracy, completeness and retention of the original reports. The CACI serves as a “pointer” back to the original submitting agency.

- 4) **Prior CACI Legislation and Litigation:** In 1963, the Legislature began requiring physicians to report suspected child abuse. (See *Smith v. M.D.* (2003) 105 Cal.App.4th 1169 [discussing evolution of child abuse detection laws].) Two years later, the Legislature expanded the reporting scheme to require that instances of suspected abuse and neglect be referred to a central registry maintained by DOJ. In the early 1980s, the Legislature revised the then-existing laws and enacted the Child Abuse and Neglect Reporting Act (CANRA), which created the current version of the CACI. These revisions did not require that listed individuals be notified of the listing, nor were individuals even able to determine whether they were listed in the CACI.

In *Burt v. County of Orange* (2004) 120 Cal.App.4th 273, the Court of Appeal held that a CACI listing implicates an individual's state constitutional right to familial and informational privacy, thus entitling the person to due process before a person may be listed. (*Id.* at pp. 284-285.) Although the CACI does not explicitly grant a hearing for a listed individual to challenge placement on the CACI, the statutory scheme contained an implicit right to a hearing. (*Id.* at p. 285.) The court declined to provide guidance on what procedures that

⁴ See <https://oag.ca.gov/childabuse>, last visited March 12, 2025.

hearing should include. The court merely stated that the county social services agency was required to afford a listed individual a "reasonable" opportunity to be heard. (*Id.* at p. 286.)

In *Humphries v. Los Angeles County* (9th Cir. 2009) 554 F.3d 1170, 1200, the Ninth Circuit held that an erroneous listing of parents who were accused of child abuse on the CACI without notice and an opportunity to be heard would violate the parents' due process rights. Specifically, "[t]he lack of any meaningful, guaranteed procedural safeguards before the initial placement on CACI combined with the lack of any effective process for removal from CACI violates the [parents'] due process rights." (*Id.*) The court ruled that, "California must promptly notify a suspected child abuser that his name is on the CACI and provide 'some kind of hearing' by which he can challenge his inclusion." (*Id.* at 1201.)

In 2011, the Legislature amended the Child Abuse and Neglect Reporting Act (CANRA) to provide for a hearing to seek removal from the CACI. (See AB 717 (Ammiano), Chapter 468, Statutes of 2011.) The same legislation also limited the reports of abuse and neglect for inclusion in CACI to substantiated reports. Inconclusive and unfounded reports were removed.

- 5) **Department of Social Services Reporting:** Department of Social Services (DSS) child welfare staff will submit the names of perpetrators from "substantiated" referrals of abuse and/or neglect to the DOJ for inclusion in the CACI. Staff will further inform those persons that their name has been submitted for listing on the CACI, and provide them with information on the process to grieve/contest the listing. In response to the settlement in *Gomez v. Saenz*⁵, all child welfare departments in California notify individuals of their listing on the CACI, give individuals the right to grieve the listing, and provide grievance hearings for those who challenge the listing.

Pursuant to the *Gomez v. Saenz* settlement, when submitting a person's name for listing on the CACI, DSS is also required to provide the person (by mail) with three forms – the completed Notice of Child Abuse Central Index Listing, the Request for Grievance Hearing, and the Grievance Procedures for Challenging Reference to the Child Abuse Central Index.⁶

If an individual requests a grievance hearing, there are strict procedures. For example, the hearing must occur within 10 business days, and no later than 60 calendar days from the request for a hearing. The complaining party is entitled to have an attorney or other representative assist him or her at the hearing. The grievance hearing officer must be a person not directly involved in the decision or in the investigation that is the subject of the hearing; nor can a coworker or direct supervisor of persons involved in making the finding be the hearing officer. The complaining party and his or her representatives must be permitted to examine all records and relevant evidence. The complaining party is entitled to a witness list. All testimony must be given under oath or affirmation. The proceedings must be audio

⁵ In 2007, Amelia Gomez filed suit against DOJ and DSS in the Los Angeles Superior Court violation of her due process rights by including her on the CACI without notice or an opportunity to be heard. Before the Humphrey case was ruled on, the Los Angeles Superior Court issued an order for DSS to implement due process regulations for those already on the list.

⁶ <http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC833.pdf>

recorded as part of the official administrative record. There must be a written decision, and the complainant may challenge that decision by means of a writ of mandate.⁷

- 6) **Argument in Support:** According to the *California Court Appointed Special Advocate (CASA) Association* “California’s 44 CASA programs serve as a critical safety net for children in foster care, ensuring that they have a dedicated advocate to support their best interests. Before serving, all CASA volunteers, Board members, and staff undergo rigorous background checks, including fingerprinting through the Department of Justice, the FBI, and CACI. However, unlike other screening agencies, CACI does not provide CASA programs with subsequent notification of new entries related to child abuse allegations, which creates an unnecessary gap in child protection.

“Currently, CASA programs must re-fingerprint every staff member, Board member, and volunteer every four years to ensure they remain eligible to work with children. This process:

- Delays critical information that could be used to protect children from potential harm.
- Imposes financial and administrative burdens on CASA programs and state agencies processing nearly 10,000 background checks on a rotating basis.
- Creates an avoidable gap in safety measures, as CASA programs do not receive ongoing alerts from CACI, unlike other screening entities.

“AB 741 proposes a simple but impactful solution: amending the California Penal Code to allow CASA programs to receive subsequent notices from CACI. This change aligns with existing practices for background check notifications and ensures CASA programs can act swiftly if a volunteer or staff member is implicated in a child abuse allegation.”

- 7) **Argument in Opposition:** None on file.

- 8) **Prior Legislation:** AB 1450 (Lackey), of the 2019-20 Legislative Session, would have allowed a police or sheriff’s department receiving a report of known or suspected child abuse or severe neglect to forward any such reports that are investigated and determined to be substantiated to the DOJ for inclusion in the CACI. AB 1450 failed passage in the Senate Committee on Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

California Court Appointed Special Advocate Association

Opposition

⁷ <https://www.cdss.ca.gov/ord/entres/getinfo/pdf/d050803f.pdf>

None on file.

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

Date of Hearing: March 25, 2025

Consultant: Samarpreet Kaur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 785 (Sharp-Collins) – As Introduced February 18, 2025

SUMMARY: Creates the Community Violence Interdiction Grant Program (CVIGP). Specifically, **this bill:**

- 1) Establishes CVIGP and requires it to be administered by the California Health and Human Services Agency (HHSA) to provide funding to local community programs for community-driven solutions to decrease violence in neighborhoods and schools.
- 2) Requires eligible programs to include, but are not limited to, all of the following:
 - a) Evidence-based, focused-deterrence collaborative programs that conduct outreach to targeted gangs and offer supportive services in order to preemptively reduce and eliminate violence and gang involvement;
 - b) Programs that create and enhance recreation- and health-based interventions for youth during peak times of violence;
 - c) Programs that implement evidence-based interventions for pupils impacted by trauma for the improvement in the health and well-being of the youth and school and community stability;
 - d) Youth diversion programs that promote positive youth development by relying on responses that prevent a youth's involvement or further involvement in the justice system; and,
 - e) The creation and operation of school-based health centers.
- 3) Requires the HHSA to develop an application process and criteria for funding.
- 4) Provides that grants shall be made on a competitive basis with preference to cities and local jurisdictions that are disproportionately impacted by violence and gang involvement, and with preference to community-based organizations that serve the residents of those cities and local jurisdictions.
- 5) Requires HHSA, when implementing the grant program, to work with relevant stakeholders to promote and implement the grant program in a manner that effectively reaches a wide geography throughout the state and ensures that regions most impacted by violence and gang involvement are adequately considered with an emphasis on addressing the violence prevention and gang deterrence needs within these regions.

- 6) Requires applicants seeking grant funding to implement evidenced-based interventions for pupils impacted by trauma to demonstrate how they will prioritize interventions for pupils most impacted by trauma and typically unable to access traditional services, including, but not limited to:
 - a) Pupils who are low income or homeless;
 - b) Pupils who display symptoms of post-traumatic stress disorder or severe trauma-related symptoms;
 - c) Pupils who are members of immigrant and refugee groups;
 - d) Pupils with exceptional needs; and,
 - e) Pupils who interact with child protective systems or who have had contact with the juvenile justice system.
- 7) Establishes the CVIG Fund within the State Treasury and states that moneys in the fund shall be made available, only upon appropriation by the Legislature, to HHSA.
- 8) Requires the Director of Finance and the Legislative Analyst's Office (LAO), on or before July 31, 2025, and every year thereafter, to calculate savings that accrued from the closure of state prisons during prior fiscal year.
- 9) Requires the Director of Finance and the Legislative Analyst's Office, when calculating cost savings, to use actual data or best available estimates where actual data is not available.
- 10) Requires the Director of Finance to calculate the average between actual data and best available estimates from prison closures and once finalized, cannot be adjusted.
- 11) Provides that the Director of Finance shall certify the results of the calculation to the Controller no later than August 1 of each fiscal year.
- 12) Provides that before August 15, 2025, and before August 15 of each fiscal year thereafter, upon appropriation by the Legislature, the Controller shall transfer money from the General Fund to the CVIGP based on the final calculations from the Director of Finance.

EXISTING LAW:

- 1) Establishes the Youth Reinvestment Grant Program (YRGP) within the Board of State and Community Corrections (BSCC) for the purpose of granting funds, as specified. (Welf. & Inst. Code, § 1450.)
- 2) Requires that three percent of funds allocated to YRGP be used for the purpose of implementing diversion programs for Native American children that use trauma-informed, community-based, and health-based interventions. (Welf. & Inst. Code, § 1453, subd. (a).)
- 3) States that priority must be given to diversion programs addressing the needs of Native American children who experience high rates of juvenile arrest, suicide, and alcohol abuse,

among other things. (Welf. & Inst. Code, § 1453, subd. (b).)

- 4) Requires that a specified percentage of funds be allocated for the purpose of implementing diversion programs for children throughout local jurisdictions that are trauma-informed, evidence-based, and culturally relevant, among other things. (Welf. & Inst. Code, § 1454 subds. (a) & (b).)
- 5) States that jurisdictions with the highest need must be provide a certain minimum of funds and defines “highest needs” as areas with high juvenile arrest rates and high levels of racial or ethnic disparity in juveniles arrest rates. (Welf. & Inst. Code, §1454, subd. (b).)
- 6) Provides that BSCC is responsible for oversight and accountability of the program and that it must track funding, provide guidance to programs, and contract with a research firm to conduct a statewide evaluation of the grant, as specified. (Welf. & Inst. Code, § 1455.)
- 7) States that the YRGP funds must be allocated by the BSCC through a competitive grant process, as specified. (Welf. & Inst. Code, § 1458.)
- 8) Establishes the Office of Youth and Community Restoration (OYCR) in the California Health and Human Services Agency, whose mission is to promote trauma responsive, culturally informed services for youth involved in the juvenile justice system that support their successful transition to adulthood and help them become responsible, thriving, and engaged members of the community. (Welf. & Inst. Code, § 2200, subds. (a) & (b).)
- 9) Provides that all juvenile justice grant administration functions in the Board of State and Community Corrections shall be moved to the OYCR no later than January 1, 2025. (Welf. & Inst. Code, § 2200, subd. (h).)
- 10) Establishes the California Violence Intervention Program (CalVIP), to be administered by the BSCC. (Pen. Code, § 14131, subd. (a).)
- 11) States that the purpose of CalVIP is to improve public health and safety by supporting effective community gun violence reduction initiatives in communities that are disproportionately impacted by community gun violence. (Pen. Code, § 14131, subd. (b).)
- 12) Defines “community gun violence” to mean intentional acts of interpersonal violence involving a firearm, generally committed in public areas by individuals who are not intimately related to the victim, and which result in physical injury, emotional harm, or death. (Pen. Code, § 14131, subd. (b).)
- 13) States that CalVIP grants shall be used to develop, support, expand, and replicate evidence-based community gun violence reduction initiatives, including, without limitation, hospital-based violence intervention programs, evidence-based street outreach programs, and focused-deterrence strategies, that seek to interrupt cycles of community gun violence and retaliation in order to reduce the incidence of homicides, shootings, and aggravated assaults. (Pen. Code, § 14131, subd. (c).)
- 14) States that CalVIP grants shall be made on a competitive basis to cities that are disproportionately impacted by community gun violence, to community-based organizations

that serve the residents of those cities, including tribal governments, and to counties that have on or more cities disproportionately impacted by community gun violence within their jurisdictions. (Pen. Code, § 14131, subd. (d).)

- 15) States that for purposes of CalVIP, a city is disproportionately impacted by community gun violence if any of the following are true:
 - a) The city experienced 20 or more homicides per calendar year during two or more of the three calendar years immediately preceding the grant application;
 - b) The city experienced 10 or more homicides per calendar year and had a homicide rate that was at least 50% higher than the statewide homicide rate during two or more of the three calendar years immediately preceding the grant application; or,
 - c) An applicant otherwise demonstrates a unique and compelling need for additional resources to address the impact of community gun violence in the applicant's community. (Pen. Code, § 14131, subd. (e)(1)-(3).)
- 16) States that an applicant for a CalVIP grant shall submit a proposal, in a form prescribed by the board, as specified. (Pen. Code, § 14131, subd. (f).)
- 17) States that in awarding CalVIP grants, the board shall give preference to applicants whose grant proposals demonstrate the greatest likelihood of reducing the incidence of community gun violence in the applicant's community, without contributing to mass incarceration. (Pen. Code, § 14131, subd. (g).)
- 18) Requires the amount of funds awarded to an applicant to be commensurate with the scope of the applicant's proposal and the applicant's demonstrated need for additional resources to address community gun violence in the applicant's community. (Pen. Code, § 14131, subd. (h).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "The State Legislature has decreased the number of incarcerated people in California through smart investments in rehabilitative and diversion programs. It is imperative that the resulting savings be reinvested into effective strategies proven to further reduce crime and violence. AB 785 will capture the savings from the closure of prisons and reinvest those funds in programs with proven success. For too long, we have been told that there is not enough money for these programs. By keeping the funding within our crime prevention budget rather than sending it back to the General Fund, we send a message that our efforts to reduce crime are continuous and we provide much needed resources for some outstanding programs."
- 2) **California Prison Closures:** The Realignment Act of 2011 (AB 109), Proposition 47 of 2014, and Proposition 57 of 2016 have all contributed to prison population declines and thus the closures of multiple California prisons over the past decade. Currently the state is operating 32 prisons. According to the LAO "The state could be in a position to deactivate

around five additional prisons by 2028 while still remaining roughly 2,500 people below the court-ordered population limit. Deactivation of five prisons could generate nearly \$1 billion in annual ongoing operational cost savings, depending on which prisons are deactivated.”¹ In addition to prison closures the California Department of Corrections and Rehabilitation (CDCR) states that “In September 2020, Governor Newsom signed Senate Bill 823 requiring state juvenile prisons to close by June 30, 2023, and transfer remaining youth back to their counties. On June 30, CDCR announced the last youths in the Division of Juvenile Justice (DJJ) were transferred to counties, completing juvenile justice realignment”² The funds required to operate these prisons and the DJJ go back to the General Fund.

AB 785 would require the Director of Finance and the LAO to calculate the savings that accrued from the closure of state prisons during the prior fiscal year. After the calculations of these funds are confirmed, the Controller will be required to transfer money from the General Fund to the CVIGP.

- 3) **Programs for Harm Reduction in California:** The CalVIP grant program was established in 2017 and replaced the California Gang Reduction Intervention and Prevention grant program. According to the BSCC website “In October 2019 Governor Newsom signed the Break the Cycle of Violence Act (AB 1603). The grant is an initiative aimed at enhancing public health and safety through support for community-based gun violence reduction efforts in communities that are disproportionately impacted by gun violence. The purpose of the grant is to disrupt cycles of violence and retaliatory actions in order to lower the rates of homicides, shootings, and aggravated assaults in affected communities. CalVIP grants fund a variety of evidence-based programs designed to reduce community gun violence, such as:

- Hospital-based violence intervention programs
- Street outreach initiatives, and
- Focused deterrence strategies.

“Key updates to the program came with the signing of Assembly Bill 762 in September 2023. Eligible applicants now include³:

- Cities disproportionately impacted by violence
- Community-based organizations (CBOs) serving these cities
- Counties with cities facing significant gun violence issues
- Tribal governments experiencing violence

The YRGP also has similar goals. In 2018, the YRGP was established for the purpose of implementing evidence-based and trauma-informed diversion programs for youth who are at risk of juvenile justice involvement.

This bill would establish the CVIGP within the HHSA to help and support communities by providing funding to local community programs for community-driven solutions to decrease violence in neighborhoods and schools.

¹ The 2024-25 Budget: California Department of Corrections and Rehabilitation (Last Accessed March 18th, 2025.)

² Reduction/Closure Information - Prison Closures (Last accessed March 18th, 2025.)

³ California Violence Intervention and Prevention (CalVIP) Program – BSCC (Last accessed March 18th, 2025.)

- 4) **Argument in Support:** According to *Greater Sacramento Urban League*, “Over the last few decades, the California State Legislature has passed numerous bills supporting criminal justice reform, resulting in a major reduction in the prison population and the shutdown of multiple prisons. Since 2021, three planned prison closures have resulted in \$450 million in annual ongoing savings. Additionally, \$170 million in ongoing savings was generated by deactivating six facilities at different prisons.

“AB 785 would ensure that prison closure savings are reinvested into programs known to prevent incarceration, including outreach and supportive service to reduce gang involvement, improve recreational opportunities for youth during peak times of violence, and provide resources for the creation and operation of school-based health centers and trauma-informed care for youth.”

5) **Prior Legislation:**

- a) AB 762 (Wicks), Chapter 421, Statutes of 2023, changed the purpose of the California Violence Intervention and Prevention Grant Program (CalVIP), as well as the eligibility requirements for the grant, and makes the program permanent.
- b) AB 912 (Jones-Sawyer), of the 2023-2024 Legislative Session, would have provided for the establishment, expansion, and funding for early-violence-intervention programs, school-based physical and mental health services, and youth-recreational activities, contingent upon appropriation. AB 912 was vetoed by the Governor and stricken from the file.
- c) AB 1454 (Jones-Sawyer), Chapter 584, Statutes of 2019, revised and recast the Youth Reinvestment Grant Program by increasing the maximum grant award from \$1,000,000 to \$2,000,000 and allowing nonprofit organizations to apply for grants through the program.
- d) AB 1603 (Jones-Sawyer) Chapter 735, Statutes of 2019, codified the establishment of the California Violence Intervention and Prevention Grant Program and the authority and duties of BSCC in administering the program, including the selection criteria for grants and reporting requirements to the Legislature.
- e) AB 2064 (Jones-Sawyer), of the 2023-2024 Legislative Session, would have established the Community Violence Interdiction Grant Program (CVIGP). This bill is a reintroduction of AB 2064. AB 2064 was held on the Senate Appropriations Suspense calendar.
- f) SB 493 (Bradford), of the 2021-2022 Legislative Session, would have revised components of the Juvenile Justice Crime Prevention Act, including by requiring funded programs to be modeled on trauma-informed and youth development approaches in collaboration with community-based organizations (CBOs), requiring no less than 95 percent of specified funds appropriated to counties be allocated to CBOs and non-law enforcement government entities, and changing the composition of county juvenile justice coordinating councils. SB 493 was held on the Senate Appropriations Suspense calendar.

REGISTERED SUPPORT / OPPOSITION:

Support

California Academy of Child and Adolescent Psychiatry
California Public Defenders Association (CPDA)
Californians for Safety and Justice
Ella Baker Center for Human Rights
Greater Sacramento Urban League
Initiate Justice
Initiate Justice Action
Sacramento Lgbt Community Center

Opposition

None on file.

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 799 (Celeste Rodriguez) – As Introduced February 18, 2025

SUMMARY: Requires the Department of Corrections and Rehabilitation (CDCR) to pay a death benefit, as specified, for the death of any incarcerated crew members in the California Conservation Camp program, as specified. Specifically, **this bill:**

- 1) Requires a death benefit be paid within 60 days of the death of an incarcerated crew member to the beneficiary designated by the crew member to receive the death benefit if the crew member dies during any of the following circumstances:
 - a) During the performance of their duties on active deployment fighting fires.
 - b) During performance of their duties completing firefighter training.
 - c) While physically or mentally incapacitated due to their performance of their duties.
- 2) States death benefits shall be:
 - a) Paid in the sum of \$50,000.
 - b) An amount equal to fifty percent of the annual compensation earned by the deceased crew member during the 12 months immediately preceding the death of the crew member.

EXISTING LAW:

- 1) States any department, division, bureau, commission or other agency of the State of California or the Federal Government may use or cause to be used convicts confined in the state prisons to perform work necessary and proper to be done by them at permanent, temporary, and mobile camps to be established under this article. The director may enter into contracts for the purposes of work, as specified. (Pen. Code, § 2780.)
- 2) Requires money received from the rendering of services under the prison camp work program be paid to the Treasurer monthly and shall be credited to the support appropriation of the prison rendering such services, in augmentation thereof. The appropriation to be credited shall be the appropriation current at the time of rendering the services. (Pen. Code, § 2780.1.)
- 3) Authorizes the Director of Corrections, during declared fire emergencies, to allow the Director of the Department of Forestry and Fire Protection to use prisoners for fire suppression efforts outside of the boundaries of California, not to exceed a distance in excess of 25 miles from the California border, along the borders of Oregon, Nevada, or Arizona.

(Pen. Code, § 2780.5.)

- 4) States all money received in the Inmate Welfare Fund of CDCR is hereby appropriated for educational, recreational, and other purposes at the various prison camps and shall be expended by the secretary upon warrants drawn upon the State Treasury by the Controller after approval of the claims by the Department of General Services. It is the intent of the Legislature that moneys in this fund only be expended on services other than those that the department is required to provide to inmates. (Pen. Code, § 2786.)
- 5) Provides that if a defendant successfully participated in the California Conservation Camp program as an incarcerated individual hand crew member, as determined by the Secretary of CDCR, or successfully participated as a member of a county incarcerated individual hand crew, as determined by the appropriate county authority, or successfully participated at an institutional firehouse, as determined by the Secretary of CDCR, and has been released from custody, the defendant is eligible for expungement relief, except that incarcerated individuals who have been convicted of specified violent crimes are automatically ineligible for relief. (Pen. Code, § 1203.4b(a)(1).)
- 6) Mandates that liability for the compensation provided by the workers compensation statutes, in lieu of any other liability whatsoever to any person except as otherwise specifically provided shall without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur: where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this division. (Lab. Code, § 3600, subd. (a)(1).)
- 7) States whenever any firefighter of the state, as defined, is injured, dies, or is disabled from performing his or her duties as a firefighter by reason of his or her proceeding to or engaging in a fire-suppression or rescue operation, or the protection or preservation of life or property, anywhere in this state, including the jurisdiction in which he or she is employed, but is not at the time acting under the immediate direction of his or her employer, their dependents, as the case may be, shall be accorded by their employer all of the same benefits of this division that he, she, or they would have received had that firefighter been acting under the immediate direction of his or her employer. Any injury, disability, or death incurred under the circumstances described in this section shall be deemed to have arisen out of, and been sustained in, the course of employment for purposes of workers' compensation and all other benefits. (Lab. Code, § 3600.1.)
- 8) States if a member registered as an active firefighting member of any regularly organized volunteer fire department, as specified, suffers injury or death while in the performance of their duty as fireman, or if a person engaged in fire suppression suffers injury or death while so engaged, then, irrespective of his remuneration from this or other employment or from both, his average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum fixed for each, respectively. Four times his average annual earnings in disability cases and in death cases shall be taken at the maximum limits provided in existing law, as specified. (Lab. Code, § 4458, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “Fire camp hand crew members, commonly referred to as incarcerated firefighters, provide the crucial public service of responding to fires, fire mitigation, and protecting life and property. Incarcerated hand crew members specifically use shovels and axes to cut down fire lines, clear debris, and chart paths for professional firefighters. During the devastating January 2025 wildfires in Los Angeles, 1,100 incarcerated hand crew members were deployed to help the city and county protect life and property.

“Assembly Bill 799 will provide a survivor death benefit in the amount of fifty thousand dollars to the family member(s) of an incarcerated hand crew member who loses their life while carrying out their duties. Given California’s continued reliance on incarcerated hand crews for firefighting efforts, and the inherent dangers in this work, this legislation extends the next of kin some financial protections and recognizes that their loved one’s life has value.”

- 2) **Inmate Fire and Hand Crews:** According to the California Department of Corrections and Rehabilitation (CDCR):

CDCR initiated the Conservation (Fire) Camp Program to provide able-bodied incarcerated people the opportunity to work on meaningful projects throughout the state. The CDCR road camps were established in 1915. During World War II, much of the work force that was used by the Division of Forestry (now known as CAL FIRE), was depleted.

CDCR provided the needed work force by having incarcerated people occupy “temporary camps” to augment the regular firefighting forces. During WWII, were 41 “interim camps,” which would become the foundation for the network of camps in operation today. In 1946, the Rainbow Conservation Camp opened as the first permanent male conservation camp. Rainbow made history again when it converted to a female camp in 1983. The Los Angeles County Fire Department (LAC), in contract with the CDCR, opened five camps in Los Angeles County in the 1980’s.¹

California Conservation Camp participants make up 27% of the state’s firefighting force. The demographics are similar to the demographics of California’s general incarcerated population: while most people involved are adult males, women and juveniles may also participate in fire camps. CDCR employees oversee the fire camps, which are all minimum-security facilities.

¹ See <https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program/>, last visited March 14, 2025.

When responding to a wildfire or working on conservation projects, a Cal Fire captain is responsible for the incarcerated inmates' custody. The fire captain acts as the supervisor for the hand crew, which can include up to 17 people. Custody transfers back to correctional staff when the hand crews end their shift and return to either the fire location camp or a base camp. Cal Fire assigns conservation projects for the crews. Prior to the start of a project, CDCR and Cal Fire staff members evaluate the project site to ensure there are no security issues.²

Incarcerated people convicted of homicide, kidnapping, rape, child molestation, any offense for which sex offender registration is required, any offense punishable by death or life in prison, escape, or arson are automatically ineligible for fire camps. (Pen. Code, § 1203.4b, sub. (a)(1)(A-H).) Fire camp participants must also have "minimum custody" status, or the lowest-security classification based on their sustained good behavior in prison and participation in rehabilitative programming. Participants must also have eight years or less remaining on their sentence to be considered. Participants also have to be medically cleared to participate in a fire crew.

- 3) **Workers Compensation:** Labor Code section 3370 specifies that inmate fire crews are eligible for workers compensation. Accordingly, workers compensation is the exclusive remedy for industrial injury and death. (See Lab. Code, §§ 3370, subd. (a)(9) and 3600.1.) Labor code section 3370, subdivision (a)(3) states inmates are not entitled to benefits while they are incarcerated. Benefits commence upon release. The amount of benefits are calculated pursuant to Labor Code section 4453, and the average weekly earnings is set at the minimum amount of actual earnings. The minimum total and temporary disability weekly rate is \$242.86.

This bill does not make any mention of the existence of workers compensation laws or the exclusive remedies incorporated therein. It states only that the bill shall be subject to the applicable provisions of state law, which presumably means only the workers compensation statutes will apply. This may render the proposed legislation void. As noted above, where workers compensation applies, it is the exclusive remedy for death and disability benefits when an inmate firefighter is injured or killed in the line of duty. It is unclear how this proposed statute is intended to operate within the framework of workers' compensation exclusivity. Therefore, it is possible it will be unenforceable as applied to CDCR fire crews.

Additionally, this bill provides a minimum of \$50,000 in addition to fifty percent of any annual compensation received in the past 12 months. It is unclear if this amount would be subject to taxation, but in some cases, that may be more than non-incarcerated volunteer Cal Fire service members receive. This committee does not handle workers compensation and death benefit taxation issues, but this may present significant challenges to CDCR and the Workers Compensation Appeals Board to determine what amount is legally required in cases related to the death of an inmate firefighter.

² See <https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program/>, last visited March 14, 2025.

- 4) **Argument in Support:** According to the *California Public Defenders Association*: “Inmate firefighters risk their lives and safety alongside professional firefighters to combat California's increasingly devastating wildfires but are unpaid. This disparity fails to recognize the tremendous value these individuals provide to our state's emergency response system and does nothing to incentivize participation in this public safety program. AB 799 would address this inequity, in part, by guaranteeing inmate firefighter’s next-of-kin a “death benefit” if the firefighter is killed while fighting or training to fight California wildfires. This reform is both a matter of basic fairness and smart public policy for several reasons:

“1. Equal work deserves equal pay. Inmate firefighters face the same risks as other firefighters (and more risk than other inmates) but are not currently compensated for that risk or work in any way.

“2. As climate change drives more frequent and severe wildfires, we need all available trained firefighters to protect our communities. Inmate firefighters are asked to voluntarily risk their lives without any promise that their dependents or loved ones will be compensated if they die. Promising firefighters that their dependents will receive at least some financial compensation if they are killed on the job will encourage participation in this vital firefighting program.

“3. Compensating firefighters for their dangerous but vital work demonstrates our commitment to human dignity and labor rights, regardless of a person's circumstances.”

- 5) **Related Legislation:** AB 247 (Bryan) requires incarcerated individual hand crew members, from county jails, to be paid an hourly wage of \$19 and to have the wage rate updated on an annual basis. AB 247 is pending in the Assembly Appropriations Committee.
- 6) **Prior Legislation:** AB 2147 (Reyes), Chapter 60, Statutes of 2020, allowed a defendant who successfully participated in the California Conservation Camp Program (Fire Camp) or a county inmate hand crew to petition for a dismissal of their conviction.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
 All of Us or None Los Angeles
 California Coalition for Women Prisoners
 California for Safety and Justice
 California Public Defenders Association (CPDA)
 Californians United for A Responsible Budget
 Courage California
 Debt Free Justice California
 Ella Baker Center for Human Rights
 Felony Murder Elimination Project
 Grip Training Institute
 Initiate Justice
 Initiate Justice Action
 Justice2jobs Coalition

LA Defensa
Legal Services for Prisoners With Children
Michelson Center for Public Policy
Rubicon Programs
Ryse Center
San Francisco Public Defender
The Gathering for Justice
Uncommon Law
Vera Institute of Justice

Opposition

None on file.

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

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

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 800 (Ortega) – As Introduced February 18, 2025

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to price all vending machine food items in any CDCR prison the same market retail price as in the community in which the prison is located. Specifically, **this bill:**

- 1) Requires CDCR to take into consideration the research that exists on junk foods and snacks as a cause of obesity in children and families when providing food in the state prison.
- 2) Mandates CDCR encourage the provision of affordable, fresh, and nutritious food items in prison vending machines and the sourcing of food items from local farmers and producers.

EXISTING LAW:

- 1) Permits CDCR to maintain a canteen at any prison or institution under its jurisdiction to sell incarcerated persons toilet articles, candy, notions, and other sundries. (Pen. Code, § 5005.)
- 2) Permits CDCR to provide the necessary facilities, equipment, personnel, and merchandise for the canteen. (Pen. Code, § 5005.)
- 3) Permits CDCR to undertake to insure against damage or loss of canteen and handicraft materials, supplies and equipment owned by the Inmate Welfare Fund (IWF). (Pen. Code, § 5005.)
- 4) Provides that the sale prices of the articles offered for sale in the canteen shall be fixed by CDCR at the amounts that will, as far as possible, render each canteen self-supporting. (Pen. Code, § 5005.)
- 5) Requires all net proceeds from the operation of canteens to be deposited in the IWF. The moneys in the fund shall constitute a trust held by the Secretary of CDCR for the benefit and welfare of all persons incarcerated at CDCR instructions. (Pen. Code, § 5006, subd. (b).)
- 6) Requires the Department of Finance (DOF) to conduct a biennial audit of canteen operations at any prison or institution and requires the audit to be available to incarcerated persons, as specified. (Pen. Code, § 5005.)
- 7) States all moneys now held for the benefit of inmates currently housed in CDCR facilities including those known as the Inmate Canteen Fund of the California Institution for Men; the IWF of the California Institution for Women; the Trust Contingent Fund of the California State Prison at Folsom; the S.P.L. Commissary, Canteen Account, Hobby Association, Camp Account, Library Fund, News Agency of the San Quentin Rehabilitation Center, the Prisoners' Fund; and the Prisoners' Employment Fund, shall be deposited in the Inmate

Welfare Fund of the CDCR, in the State Treasury, which is hereby created. (Pen. Code, § 5006, subd. (a)(1).)

- 8) Requires the money in the IWF be used solely for the benefit and welfare of inmates of prisons and institutions under the jurisdiction of CDCR, including the following:
 - a) The establishment, maintenance, employment of personnel for, and purchase of items for sale to, inmates at canteens maintained at the state institutions;
 - b) The establishment, maintenance, employment of personnel, and necessary expenses in connection with the operation of the hobby shops at institutions under the jurisdiction of the CDCR;
 - c) Educational programs, hobby and recreational programs, which may include physical education activities and hobby craft classes, inmate family visiting services, leisure-time activities, and assistance with obtaining photo identification from the Department of Motor Vehicles; and,
 - d) Funding for innovative programming by not-for-profit organizations offering programs that have demonstrated success and focus on offender responsibility and restorative justice principles. All funding used for this purpose shall go directly to the not-for-profit organizations and shall not be used for department staff or administration of the programming. (Pen. Code, § 5006, subd. (a)(1)(A-D).)
- 9) States money in the IWF shall not be expended to pay charges for any or all of the following purposes:
 - a) Overtime for staff coverage of special events;
 - b) Television repair; or,
 - c) Original complement of television sets and replacement of television equipment. . (Pen. Code, § 5006.1, subd. (a)(1-3))
- 10) CDCR shall pay the above charges out of any money appropriated for these purposes. (Pen. Code, § 5006.1, subd. (b))

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 800 is crucial to reducing the financial burden on families visiting their loved ones in CDCR facilities. Families and children often travel hundreds of miles and many hours to visit parents and loved ones in correctional facilities, where the only food available is that provided in the visiting room vending machines. The lack of regulation on food prices in these facilities results in significant markups compared to local store prices. After CDCR recently increased the allowed amount of money visitors can bring, some vendors further raised their prices, exacerbating the

financial strain. AB 800 will mandate that food prices in prison vending machines align with average market retail prices in the community where the prison is located.

“Food is far more than just a way to provide sustenance. Ethnological studies in prisons show that shared meals provide a sense of solidarity, sociability, and creates positive relationships within prisons. They help provide a viable sense of self control and combat the alienating impact of the prison environment. One scholar noted that food gives prisoners the “chance to figuratively climb the prison wall; it connects him to the world outside and reminds him of the life he is still a part of.”¹ Poor food quality is also viewed as part of the disciplinary and control process, detracting from the prison’s rehabilitative purpose. Food, as designed in the prison system, is designed to break the body and mind when its purpose should be to rebuild a person before re-entering society.² Food, when offered in a dignified and normalized manner, has the power to rehabilitate and rebuild incarcerated individual and their families.

“A research study from the Ella Baker Center for Human Rights has shown that 65% of families with an incarcerated family member are unable to meet their families’ basic needs and that nearly one-half of families are unable to afford conviction-related costs.³ These costs include visitation expenses such as gas, hotels, flights, and even taking pictures with their loved ones.⁴ The financial burdens associated with incarceration tend to fall most heavily on women of color from low-income communities. Visits are an integral part of maintaining family contact and are a rehabilitative mechanism that is recognized to reduce recidivism.⁵ When shared with family, meals are also strongly associated with greater self-esteem, lower levels of depression, and lower stress levels.⁶

“When a loved one is incarcerated, their families are allowed to visit them in person up to once per day. During these visits, families can only bring up to \$70 per adult and \$40 per child to buy snacks and food items in vending machines.⁷ Families also cannot bring any food or beverage with them into visiting facilities.

“Visitors and incarcerated individuals at some facilities have reported food in these vending machines as “unappealing, unhealthy, and overpriced snacks,” similar to the prices found in airports, and sometimes even rotten or moldy.⁸ This pricing adds to the already significant financial burden on families who incur significant costs from incarceration. In fact, the CDCR deemed it necessary to increase the amount of money families are allowed to bring during visitation to compensate for increased vending prices in 2017 and 2019.^{9,10} However,

¹ <https://doi.org/10.1186/s40352-023-00222-z>

² Ibid.

³ Saneta deVuono-Powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi. Who Pays? The True Cost of Incarceration on Families. Oakland, CA: Ella Baker Center, Forward Together, Research Action Design, 2015.

⁴ <https://www.cdcr.ca.gov/visitors/in-the-visiting-room/#:~:text=Prison%20visiting%20rooms%20have%20digital,two%20dollars%20for%20each%20photograph.>

⁵ https://www.prisonpolicy.org/blog/2021/12/21/family_contact/

⁶ <https://pmc.ncbi.nlm.nih.gov/articles/PMC6309329/#:~:text=Children%20and%20young%20people%20who,of%20values%20and%20family%20bonding.>

⁷ [https://www.cdcr.ca.gov/visitors/items-a-visitor-may-bring/#:~:text=Items%20allowed%20without%20prior%20approval,or%20out%20of%20change\)%%3B](https://www.cdcr.ca.gov/visitors/items-a-visitor-may-bring/#:~:text=Items%20allowed%20without%20prior%20approval,or%20out%20of%20change)%%3B)

⁸ <https://impactjustice.org/wp-content/uploads/IJ-Eating-Behind-Bars.pdf>;

<https://www.earhustlesq.com/episodes/2021/3/17/hot-trash>

⁹ <https://www.cdcr.ca.gov/sifc/increase-of-money-amount-allowed-into-the-institutions-by-visitors-2/>

many families reported that food prices in some facilities also increased following the CDCR's decision to allow visitors to bring more money when visiting loved ones. Visitation with family is often the closest experience an inmate has with not only their loved ones, but an experience of a normalized and dignified environment in the prison and with food. Visits with family should be rehabilitative and sustaining, not degrading.

"AB 800 will improve fairness and affordability of food available in prison visiting rooms by mandating that the cost of food products sold in prison vending machines aligns with the average market retail prices in the community where the prison is located. The bill also encourages the CDCR to diversify the foods provided in vending machines and to provide healthier options. AB 800 is one step towards a dignified and normalized atmosphere in the visitation room that strengthens the bonds of the incarcerated and their family members."

- 2) **Prison Canteens and Vending Machines:** Existing law permits, but does not require, CDCR to maintain a canteen at any prison or institution under its jurisdiction for the sale of toilet articles, candy, notions, and other sundries to incarcerated people. (Pen. Code, § 5005.) CDCR is statutorily authorized, but not required, to provide the necessary facilities, equipment, personnel, and merchandise for the canteen. (*Ibid.*) Title 15 regulations require each CDCR facility to establish a canteen enabling incarcerated prisons to make purchases of approved merchandise. (Cal. Code Regs., tit. 15, §§ 3090 – 3095.) Despite the permissive statutory language, canteens are currently operated in all correctional institutions.¹¹

Under current law, the sale prices of the articles offered for sale in a canteen are fixed by the Secretary of CDCR at the amounts that will, as far as possible, "render each canteen self-supporting." (Pen. Code, § 5005.) Pursuant to regulations, facility staff are required to "consult with representatives of the inmate population when determining items to be stocked in the canteen for resale." (Cal. Code Regs., tit. 15, § 3090, subd. (a).) Prison vending machines are accessible by visitors. Visiting family and friends may make purchases for incarcerated person or for themselves.

However, the Penal Code vests CDCR with broad discretion to set the price of items sold in the canteen. (See *In re Hamilton* (1996) 41 Cal.App.4th 926, 934-935.) In *In re Hamilton*, the court of appeal held that the imposition by CDCR of a 10% surcharge on items bought or sold by incarcerated persons is within CDCR's discretion, including purchases at the prison canteen. (*In re Hamilton, supra*, 41 Cal.App.4th at pp. 934-935.) The court observed, "The Legislature has vested [CDCR] with considerable discretionary power by which to attain the goal of a self-supporting program. The subject surcharge clearly falls within the ambit of this power." (*Id.* at p. 933.) The court concluded that the surcharge was necessary to "defray costs." (*Id.* at pp. 934-935.) The court elaborated that Penal Code section 5005 requires only that the canteens "as far as possible" "attempt" to be self-supporting. Thus, prison canteens may price items to generate net proceeds, so long as those proceeds are used in the manner required by law. (*Ibid.*)

¹⁰ <https://www.cdcr.ca.gov/sifc/meeting-minutes/sifc-visiting-workgroup-november-2019/>

¹¹ (DOF, Office of State Audits and Evaluations, *Report No. 22-5225-029* (Jan. 2023) at p. 9 <<https://esd.dof.ca.gov/reports/reportPdf/98602576-41DE-ED11-A820-00224843A957/Department%20of%20Corrections%20and%20Rehabilitation%20Financial%20Combined%20Inmate%20Welfare%20Fund%20for%20the%20Fiscal%20Year%20Ended%20June%202030,%202021>> [June 8, 2023].)

The DOF is required to conduct biennial audits of canteen operations. (Pen. Code, § 5005.) In its most recent audit for Fiscal Year 2021, the DOF reports that the net canteen sales across all CDCR institutions was \$89,465,128. The cost of the goods sold totaled \$54,938,660. The gross margin from canteen sales totaled \$34,526,468 and canteen expenses totaled \$25,180,743. As such, the total income from canteen sales across all CDCR institutions was \$9,345,725.¹² \$9.3 million in proceeds is likely more than adequate to render the canteens “self-supporting” and “defray costs.” Of note, the income from canteen sales is raised directly from incarcerated persons. The combined pay for all incarcerated persons across all of CDCR’s institutions for the fiscal year relating to canteen operations was \$67,705—a mere fraction of a percent of the total income from canteen sales.¹³ Though canteen prices continue to rise, the State has not raised pay for incarcerated persons,¹⁴ including the pay of those that work the canteens.

The size of the prison commissary industry is difficult to estimate, but likely exceeds \$1.6 billion in annual revenue.¹⁵ “It is difficult to see prison-retail prices as anything other than premium rates charged for inexpensive, run-of-the mill goods or services.”¹⁶ Commentators have opined that the prison-retail industry is an exploitative “business model based on using the coercive power of the state to extract revenue from poor people in the form of exorbitant prices for phone calls or junk food.”¹⁷

- 3) **CDCR Contracting for Goods and Services:** CDCR contracts with third party vendors for a variety of goods and services, including vending machines and the products being sold in the machines. These food items, particularly in visitor’s room, are often the only food items visiting family and friends have access to when visiting a person in a CDCR facility. In many cases, where people visit loved ones incarcerated at CDCR, they must wait hours for the inmate to be brought to the visitor’s room. Visitors are generally prohibited from bringing food in from the outside. Also, families often buy items for incarcerated people to enjoy while visiting.

Certainly, demanding market rate for these items does not seem unreasonable. However, CDCR’s website points out that it does not install or stock the vending machines – they contract for that service.¹⁸ Accordingly, CDCR may not have authority to tell the vending

¹² DOF, Office of State Audits and Evaluations, Report No. 22-5225-029, *supra*, at p. 33.

¹³ *Ibid.*

¹⁴ Generally, the average pay for incarcerated people is \$0.08 to \$0.37 an hour before fees and deductions (Cal. Code Regs., tit. 15, § 3041.2.) Recent measures to increase prison pay have failed passage by the Legislature. (See, e.g., SB 1371 (Bradford), of the 2021-2022 Legislative Session [would have required CDCR to adopt a 5-year implementation plan to increase inmate wages; SB 1371 was vetoed]; ACA 3 (Kamlager), of the 2021-2022 Legislative Session [would have removed language in the state Constitution that allows involuntary servitude as punishment to a crime; ACA 3 was ordered to the Senate Inactive File].) The voters rejected Proposition 6 on November 5, 2024, which would have removed the language in the state constitution that allows involuntary servitude as a punishment.

¹⁵ Stephen Rahe, *The Company Store and the Literally Captive Market: Consumer Law in Prisons and Jails* (2020)

¹⁷ Hastings Race & Poverty L.J. 3.

¹⁶ *Id.* at p. 25.

¹⁷ *Ibid.*

¹⁸ Located at <https://www.cdcr.ca.gov/obs/services-goods-types/> [last visited March 16, 2025.]

machine company what to charge for items; however, CDCR may demand market rate on items when negotiating agreements for vending machine services.

The availability of reasonable, low cost food items may encourage more visitors. It is settled policy that family and community visits are crucial to an incarcerated person's success both while in custody and after coming home.

Using multiple measures of visitation (any visit, total number of visits, visits per month, timing of visits, and number of individual visitors) and recidivism (new offense conviction and technical violation revocation), the study found that visitation significantly decreased the risk of recidivism, a result that was robust across all of the Cox regression models that were estimated. The results also showed that visits from siblings, in-laws, fathers, and clergy were the most beneficial in reducing the risk of recidivism, whereas visits from ex-spouses significantly increased the risk. The findings suggest that revising prison visitation policies to make them more "visitor friendly" could yield public safety benefits by helping offenders establish a continuum of social support from prison to the community. It is anticipated, however, that revising existing policies would not likely increase visitation to a significant extent among unvisited inmates, who comprised nearly 40 percent of the sample. Accordingly, it is suggested that correctional systems consider allocating greater resources to increase visitation among inmates with little or no social support. (Minnesota Department of Corrections (2011) "The Effects of Prison Visitation on Offender Recidivism," p. iii.)¹⁹

While CDCR cannot control what third party vendors charge or what those vendors put in the machines, it can prioritize its efforts to contract with third party vendors that have reasonable pricing and healthy food options. Additionally, inmate councils across the state have complained to CDCR and the Legislature that inmates actually struggle just to meet daily caloric intake due to lack of inmate resources to purchase food and not enough food from CDCR.

Finally, the California Automatic Vendors Council notes in its Oppose unless Amended letter, that this bill does not contemplate the contracting requirements in the Randolph-Sheppard Act (RSA). The RSA authorizes, among other things, a vending facility program within the California Department of Rehabilitation for the benefit of persons who are blind. The program provides vision-impaired people with remunerative employment and self-support through the operation of vending facilities on federal and other property. The program, enacted into law in 1936, was intended to enhance employment opportunities for trained, licensed blind persons to operate facilities. The law was subsequently amended in

¹⁹ Located at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/effects-prison-visitation-offender-recidivism>, last visited March 16, 2025.

1954 and again in 1974 to ultimately ensure individuals who are blind a priority in the operation of vending facilities, which included cafeterias, snack bars, and automatic vending machines, that are on federal property. The program priority has broadened in most states through state laws to include state, county, municipal, and private locations as well. Under the RSA, state licensing agencies recruit, train, license, and place individuals who are blind as operators of vending facilities located on federal and other properties. The RSA authorizes a blind individual licensed by the state licensing agency to conduct specified activities in vending facilities through permits or contracts. The Department of Rehabilitation also enforces a six percent revenue return on all vending machines operated on government property for the benefit of the RSA. Additionally, Government Code section 11005.4 already requires that any vending machine on state property comply with nutritional guidelines:

“Accepted nutritional guidelines” as used in this section means the following: (a) Beverages that are the following or meet the following standards: (i) Water. (ii) Milk, including, but not limited to, soy milk, rice milk, and other similar dairy or nondairy milk. (iii) Electrolyte replacement beverages that do not contain more than 42 grams of added sweetener per 20-ounce serving. (iv) One hundred percent fruit juice. (v) Fruit-based drinks that are composed of no less than 50 percent fruit juice and that have no added sweeteners.

“(b) Food that meets the following standards: (i) Not more than 35 percent of its total calories are from fat. This clause does not apply to nuts, seeds, or whole grain products. (ii) Not more than 10 percent of its total calories are from saturated fats. (iii) Not more than 35 percent of its total weight is from sugar. (Gov. Code, 11005.4, subd. (a)(1)(A-B).)

It is not clear what goals this bill will achieve given the existing requirements for nutritional items in vending machines on state property and what impact these changes may have on valuable programs for vision-impaired people pursuant to the RSA.

- 4) **Argument in Support:** According to the *Ella Baker Center for Human Rights*, “AB 800 is a strong next step and continuation of SB 474 by Senator Becker, co-sponsored by the Ella Baker Center (2023), which lowered prison canteen prices by capping the markups on basic canteen items at 35%. In our research for SB 474 (Becker), the feedback by incarcerated people and their loved ones was overwhelming; the cost of basic food items and their exorbitant markups are carried almost entirely by families. AB 800 effectively addresses this issue in visiting rooms by reducing the markup on items sold in vending machines.

“The cost of the markups is paid for by families. Our report, “Who Pays? The True Cost of Incarceration on Families,” revealed that nearly two-thirds of families with an incarcerated loved one couldn’t meet their basic needs, like food and housing, due to the costs of the incarceration of a loved one. In addition, according to the National Library of Medicine, 67% of families with an incarcerated member rely on food stamps. The cost of vending machine markups is just one of the many costs families of incarcerated loved ones face when navigating, supporting, and visiting their loved one. California has taken some key steps to support family connection and visiting, such as the Keep Families Close Act.

“AB 800 is another valiant effort to improve family visiting conditions. Incarcerated families and their loved ones rely on visiting times as one of their only sources of connection. Visiting a loved one inside can be arduous, filled with long drives, long wait times, and lots of bureaucracy. The food provided in the visiting rooms is not only the only sustenance available to loved ones during visiting, but it is often a form of connection.

“For a kid, having the opportunity to share their favorite snack with their incarcerated parent, or for a partner, having the opportunity to share a moment of connection, is paramount; these moments mean the world to families. We know that these positive experiences in visiting drive improved rehabilitative outcomes. Families of incarcerated loved ones bear enough hassle, struggle, and pain caused by the criminal legal system, and CDCR should not continue to exploit them with these markups. We ask that you reduce the burden on families by eliminating these markups; the cost of incarceration on families is steep enough.”

- 5) **Argument in Opposition:** According to the *California Automatic Vendors Council*, “CAVC is an affiliated state council of the National Automatic Merchandising Association (NAMA), representing hundreds of businesses that provide vending, micro market, coffee and refreshment services to many thousands of Californians each day. These companies are large and small businesses that employ thousands of workers in California.

“The current requirements of the Randolph-Sheppard Act, alongside the California Department of Rehabilitation’s enforcement of a 6% revenue return to support the Act, significantly reduce profit margins for our vendors, making the proposed pricing structure in AB 800 untenable. Furthermore, many of our members, operating as small businesses, source their products from local discount and grocery stores. The pricing requirements proposed by AB 800 threaten their continued operations in California.

“Further, the state already requires that all food sold in state facilities comply with the nutritional guidelines in Government Code section 11005.4. Therefore, we request that Penal Code section 5018(c), “encouraging the sourcing of food items from local farmers and producers” be removed from the bill. Our operators that maintain vending machines are simply not able to comply with this requirement as the CDCR requires all food be in sealed packaging.”

6) **Prior Legislation:**

- a) AB 2959 (Ortega), of the 2023-24 Legislative Session, was identical to this bill. AB 2959 died on the Senate Inactive File.
- b) AB 1782 (Jones-Sawyer), of the 2021-2022 Legislative Session, would have renamed the IWF the Incarcerated Peoples’ Welfare fund and would have required money in the fund to be expended solely for the benefit, education, and welfare of incarcerated people. AB 1782 was vetoed by the Governor.
- c) SB 555 (Mitchell), of the 2019-2020 Legislative Session, would have required, in part, that IWF funds be expended solely for the benefit, education, and welfare of the individuals incarcerated in the jail. SB 555 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:**Support**

ACLU California Action
California Alliance for Youth and Community Justice
California Coalition for Women Prisoners
California Innocence Coalition
California Public Defenders Association (CPDA)
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Ella Baker Center for Human Rights
Empowering Women Impacted by Incarceration
Felony Murder Elimination Project
Grip Training Institute
Initiate Justice
Initiate Justice Action
Jesse's Place Org
Jesses Place
Justice Ambassadors
Justice2jobs Coalition
LA Defensa
Land Together
Legal Services for Prisoners With Children
Pillars of The Community
Prosecutors Alliance of California, a Project of Tides Advocacy
Restoring Hope California
Rubicon Programs
Ryse Center
San Francisco District Attorney Brooke Jenkins
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy
The Change Parallel Project
The Collective for Liberatory Lawyering
The Place4grace
Youth Empowerments Finest

Oppose Unless Amended

California Automatic Vendor's Council

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

Date of Hearing: March 25, 2025

Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 809 (Quirk-Silva) – As Amended March 10, 2025

As Proposed to Amended in Committee

SUMMARY: Requires the California Department of Corrections and Rehabilitation (CDCR) to report to the Legislature information on the availability of academic and vocational education space in CDCR facilities. Specifically, **this bill:** Requires CDCR, on or before January 1, 2028, and annually thereafter, to collect and report all of the following information to the Legislature:

- 1) The amount of space available for academic and vocational education;
- 2) The amount of space currently being used for other purposes that reasonably could be converted to be available for academic and vocational education;
- 3) The extent to which that space is being used; and,
- 4) The amount of the deficit or surplus of space available for academic and vocational education at each prison.

EXISTING LAW:

- 1) Provides that it is the intent of the Legislature that CDCR shall regularly provide operational and fiscal information to the Legislature to allow it to better assess the performance of the department in critical areas of operations, including to both evaluate the effectiveness of department programs and activities, as well as assess how efficiently the department is using state resources. (Pen. Code, § 2063, subd. (a).)
- 2) Requires CDCR, no later than January 10 of each year, to provide to the Joint Legislative Budget Committee operational and fiscal information to be displayed in the Governor's proposed budget. (Pen. Code, § 2063, subd. (b).)
- 3) Requires CDCR to include data for the three most recently ended fiscal years, including the number of established teacher and vocational instructor positions and the percent of those positions vacant (Pen. Code, § 2063, subd. (b)(3)(L) & (M).)
- 4) Requires CDCR to also include, for both adult and juvenile facilities, the number of budgeted slots, actual enrollment, and average daily attendance for institutional academic and vocational education and substance abuse programs. (Pen. Code, § 2063, subd. (b)(9).)
- 5) Requires CDCR, no later than January 10 of each year, to provide to the Joint Legislative Budget Committee a supplemental report containing data on the operational level and

outcomes associated with, among other things, both of the following:

- a) Adult prison education and treatment programs, including academic education, vocational training, prison industries, substance abuse treatment, and sex offender treatment; and
- b) Juvenile institutional education and treatment program, including academic education, vocational training, substance abuse treatment, and sex offender treatment. (Pen. Code, § 2063, subd. (c)(2) & (7).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “Prison should be about more than punishment. It should be about rehabilitation and reducing recidivism. Right now, we lack the hard data to make sure our resources are being used effectively. California spends \$14.5 billion on corrections each year, and the public deserves to know how that money is spent. AB 809 will make sure the California Department of Corrections shows us exactly how much space is being used for education and vocational programs and where we can make improvements. This bill will help transform our prisons into places where inmates have the chance to rebuild their lives and reduce the burden on our system.”
- 2) **Space Utilization in CDCR Facilities:** This bill would require CDCR to report to the Legislature information on the availability of academic and vocational education space in CDCR facilities. According to CDCR:

Within the numerous considerations made when appropriately housing incarcerated individuals across CDCR’s system, fundamentally the Department’s goal is to provide access to rehabilitation, while meeting the medical, safety, and security needs of the population at each institution. However, despite site collaboration, creating multi-functional classrooms, utilizing alternative schedules and peer literacy mentors, competition for physical space remains one of the most significant barriers to increasing access.

As the Department continues to increase educational and other programming opportunities with an emphasis on face-to-face classes, there will continue to be challenges across the institutions to appropriately meet the needs of the population with existing infrastructure.

The assessment demonstrates how nearly every institution can achieve robust programming access when their population is near design capacity, but each 10 percent increase in the population beyond its intended design reduces the percentage of the population able to be fully served.¹

¹ CDCR, Capacity Assessment 2024, at p. 3-4 < <https://www.cdcr.ca.gov/research/population-reports-2/> > [last visited Mar. 19, 2025].

Because many facilities were built in an era that placed less emphasis on rehabilitative programming, CDCR acknowledged the need to “deliberately reaffirm its commitment to effectively enhancing access to programming,” which will require “evaluating capacity...at each institution.”²

Similarly, the Legislative Analyst’s Office recent report on community college programs in state prisons observed “a lack of sufficient space to hold-in person courses.”³ LAO reported, “CDCR lacks a comprehensive assessment of its space utilization.”⁴ It recommended “[d]irect[ing] CDCR to collect data and report biennially on space utilization,” as well as the “adopt[ion] of statutory space and utilization standards.”⁵

This bill would require the CDCR to report to the Legislature information on the availability of academic and vocational education space in CDCR facilities. Specifically, it would require reporting on the amount of space available for academic and vocational education, the amount of space currently being used for other purpose that reasonably could be converted to be available for academic and vocational education, the extent to which the space is being used for those purposes, and the amount of the deficit or surplus of space available for those purposes.

3) **Related Legislation:**

- a) AB 701 (Ortega), would require the Department of Justice (DOJ) to study the use of solitary confinement in all jails, prisons, and private detention facilities operating within the State of California. AB 701 is scheduled for hearing today in this committee.
 - b) AB 788 (Quirk-Silva), would create within CDCR, and under the Undersecretary for Operations, the Division of Female Programs and Services. This bill is pending hearing in this committee.
- 4) **Prior Legislation:** AB 857 (Ortega), Chapter 167, Statutes of 2023, required CDCR to provide each inmate, upon release and regardless of speculative eligibility, informational written materials in a format prescribed by the Department of Rehabilitation (DOR) for vocational rehabilitation services and independent living programs, and an application for vocational rehabilitation services.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

² *Id.* at p. 5.

³ Legislative Analyst’s Office, Assessing Community College Programs at State Prisons (July 1, 2024) <<https://lao.ca.gov/Publications/Report/4913 - Recommendations>> [last visited Mar. 19, 2025].

⁴ *Ibid.*

⁵ *Ibid.*

None on file.

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

Amended Mock-up for 2025-2026 AB-809 (Quirk-Silva (A))

Mock-up based on Version Number 98 - Amended Assembly 3/10/25

Submitted by: Staff Name, Office Name

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

SECTION 1. Section 2053.2 is added to the Penal Code, to read:

2053.2. (a) On or before January 1, 2028, and annually thereafter, the department shall collect and report all of the following information to the Legislature:

- (1) The amount of space available for academic and vocational education.
 - (2) The amount of space currently being used for other purposes that **reasonably** could be converted to be available for academic and vocational education.
 - (3) The extent to which the space described in paragraph (1) is being used.
 - (4) The amount of the deficit or surplus of space available for academic and vocational education as described in paragraph (1) at each prison.
- (b) A report submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

Date of Hearing: March 25, 2025

Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 812 (Lowenthal) – As Introduced February 19, 2025

As Proposed to be Amended in Committee

SUMMARY: Authorizes an incarcerated firefighter to petition the court for recall and resentencing. Specifically, **this bill:**

- 1) States that upon receipt of a request, a court shall conduct a hearing to determine if recalling and resentencing the incarcerated firefighter serves the interests of justice.
- 2) Specifies that in making its determination, in addition to the postconviction factors currently listed in the recall and resentencing provisions, the court shall consider an incarcerated person's emergency service during a natural disaster.
- 3) Provides that in recognition of the vital role that incarcerated persons have played protecting the people and property of California from wildfires, the California Department of Corrections and Rehabilitation (CDCR) shall promulgate regulations regarding the referral of incarcerated firefighters for resentencing.
- 4) Contains Legislative findings and declarations regarding California's Conservation Camp Program and recognition of incarcerated firefighters as an essential part of the state's response to wildfires.

EXISTING LAW:

- 1) Defines "California Conservation Camps" as "any camps now or hereafter established, as provided by law, for the purpose of receiving prisoners committed to the custody of the Director of Corrections and wards committed to the Director of the Youth Authority, and in which the work projects performed by the inmates or wards are supervised by employees of the department." (Pub. Resources Code, § 4952.)
- 2) States that CDCR shall utilize inmates and wards assigned to conservation camps in performing fire prevention, fire control, and other work of the department. (Pub. Resources Code, § 4953, subd. (a).)
- 3) Provides that when a defendant has been convicted of a felony offense and imprisoned, the court may, on its own motion and within 120 days of the date of commitment, or at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law, or any time upon the recommendation of the secretary of Board of Parole Hearings (BPH) in the case of state prison inmates, the county correctional administrator in the case of county jail inmates, the district attorney of the county in which the defendant was sentenced, or the Attorney General (AG) if the

Department of Justice (DOJ) originally prosecuted the case, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, whether or not the defendant is still in custody, provided the new sentence, if any, is not greater than the initial sentence. (Pen. Code, § 1172.1, subd. (a)(1).)

- 4) States that the resentencing court shall apply the sentencing rules of the Judicial Council and apply any changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing. (Pen. Code, § 1172.1, subd. (a)(2).)
- 5) Provides that the resentencing court may, in the interest of justice regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:
 - a) Reduce a defendant's term of imprisonment by modifying the sentence; or,
 - b) Vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence the defendant to a reduced term of imprisonment. (Pen. Code, § 1172.1, subd. (a)(3).)
- 6) Specifies that if the court has recalled the sentence on its own motion, the court shall not impose a judgment on any necessarily included lesser offense or lesser related offense if the conviction was a result of a plea bargain without the concurrence of both the defendant and the DA of the county in which the defendant was sentenced, or the AG if DOJ originally prosecuted the case. (Pen. Code, § 1172.1, subd. (a)(4).)
- 7) States that the court shall consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice. (Pen. Code, § 1172.1, subd. (a)(5).)
- 8) Provides that evidence that the defendant's incarceration is no longer in the interest of justice includes, but is not limited to, evidence that the defendant's constitutional rights were violated in the proceedings related to the conviction or sentence at issue, and any other evidence that undermines the integrity of the underlying conviction or sentence. (*Ibid.*)
- 9) Requires the court to consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a youth, as defined, at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense. (*Ibid.*)
- 10) Requires the court to state on the record the reasons for its decision to grant or deny recall and resentencing. (Pen. Code, § 1172.1, subd. (a)(7).)

- 11) Provides that resentencing may be granted without a hearing upon stipulation by the parties. (Pen. Code, § 1172.1, subd. (a)(8).)
- 12) States that resentencing shall not be denied, nor a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection. If a hearing is held, the defendant may appear remotely and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court. (Pen. Code, § 1172.1, subd. (a)(9).)
- 13) Specifies that if a resentencing request is from the Secretary of CDCR, BPH, a county correctional administrator, a DA, or the AG, all of the following shall apply:
 - a) The court shall provide notice to the defendant and set a status conference within 30 days after the date that the court received the request. The court's order setting the conference shall also appoint counsel to represent the defendant; and,
 - b) There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined. (Pen. Code, § 1172.1, subd. (b).)
- 14) States that a defendant is not entitled to file a petition seeking relief from the court and that if a defendant requests consideration for relief, the court is not required to respond. (Pen. Code, § 1172.1, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “‘Second look’ sentencing authorizes courts to revisit sentences of incarcerated people when recommended by certain law enforcement authorities. AB 812 will expand opportunities for resentencing to the incarcerated firefighters who play such a critical role in the prevention of, and response to California Wildfires. Not only will this bill incentivize the participation in programs such as the Conservation (Fire) Camps that offer transferable skills, and pathways to employment outside of incarceration, but it will also reward the heroic behavior shown by these firefighters with the ability to petition for resentencing.”
- 2) **Incarcerated Firefighters:** The recent Southern California fires highlighted California's reliance on incarcerated people to battle wildfires.¹

The men are part of the California Department of Corrections and Rehabilitation's Conservation Fire Camps Program, which operates 35 fire camps throughout the state. Participants respond to natural disasters such as wildfires and floods. When they aren't tending to emergencies, they help maintain parks and assist with sand-bagging.

¹ Lin, 'This has been really devastating': Inside the lives of incarcerated firefighters battling the L.A. wildfires, L.A. Times (Jan. 17, 2025).

As of [January 17, 2025], more than 1,100 incarcerated firefighters were battling the Palisades and Eaton fires, which have claimed the lives of at least 27 people and are shaping up to be one of the costliest natural disasters in U.S. history. Historically, incarcerated firefighters have comprised up to 30% of the California wildfire force.

....

In order to qualify for the program, participants must have eight years or less of their sentence remaining, be physically and mentally fit enough for the required duties and not be convicted for certain charges, such as arson, rape and an escape history.

The program has faced criticism, primarily for the wages that incarcerated firefighters earn — between \$5.80 and \$10.24 a day, plus \$1 an hour from Cal Fire during active emergencies. The program has also be criticized for the associated health risks and the notion that the program exploits the firefighters for “forced labor.”

Incarcerated workers are more prone to being injured than professional firefighters, according to research from the ACLU and the University of Chicago Law School. At least four incarcerated firefighters have died on the front lines and, during a five-year period, more than 1,000 needed hospital care, according to the ACLU report.

- 3) **Conservation (Fire) Camps:** The primary mission of the Conservation Camp Program is to support state, local and federal government agencies as they respond to emergencies such as fires, floods, and other natural or manmade disasters. CDCR, in cooperation with CAL FIRE and the Los Angeles County Fire Department (LAC FIRE), jointly operates 35 conservation camps, commonly known as fire camps, located in 25 counties. All camps are minimum-security facilities and all are staffed with correctional staff.²

Inmates must have eight years or less remaining on their sentence and must have minimum custody status to be considered. Some convictions automatically make an inmate ineligible for conservation camp assignment, even if they have minimum custody status. Those convictions include: sexual offenses, arson and any history of escape with force or violence. Other disqualifiers include active warrants, medical issues, and high-notoriety cases. Inmates considered potential fire crew members are evaluated for their physical fitness by CDCR and are trained in fire-fighting techniques by CAL FIRE, which includes four days of classroom instruction and four days of field exercises.³

Overall, there are approximately 3,100 inmates working at fire camps currently. Approximately 2,150 of those are fire line-qualified inmates. All inmates receive the same entry-level training that CAL FIRE’s seasonal firefighters receive in addition to ongoing training from CAL FIRE throughout the time they are in the program. An inmate must volunteer for the fire camp program; no one is involuntarily assigned to work in a fire camp. Volunteers must have “minimum custody” status, or the lowest classification for inmates based on their sustained good behavior in prison, their conforming to rules within the prison

² See <https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program/> (accessed Mar. 5, 2025).

³ *Ibid.*

and participation in rehabilitative programming.

- 4) **Recall and Resentencing Law:** As a general matter, a court typically loses jurisdiction over a sentence when the sentence begins. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 455.) Once the defendant has been committed on a sentence pronounced by the court, the court no longer has the legal authority to increase, reduce, or otherwise alter the defendant's sentence. (*Ibid.*)

However, the Legislature has created limited statutory exceptions allowing a court to recall a sentence and resentence the defendant. Specifically, within 120 days of commitment for a felony conviction, the court has the ability to resentence the defendant as if it had never imposed sentence, provided the new sentence is no greater than the original sentence. In addition, CDCR, BPH, the county correctional administrator, the district attorney, or the AG can make a recommendation for resentencing at any time. (Pen. Code, § 1172.1, subd. (a).)

The recall and resentencing law was originally added to Penal Code section 1170 related to sentencing but was recast into a separate code section, Penal Code section 1170.03, and amended to include specified procedures for recall and resentencing such as when a hearing is required, that a defendant is entitled to appointment of counsel, and requiring the court to state on the record the reasons for its decision to grant or deny recall and resentencing. (AB 1540 (Ting), Chapter 719, Statutes of 2021.) The statute was again recast into Penal Code section 1172.1 in 2022. (AB 200 (Committee on Budget), Chapter 58, Statutes of 2022.)

The recall and resentencing process set forth in Penal Code section 1172.1 requires a hearing to be set to determine whether the person should be resentenced, unless otherwise stipulated to by the parties, and requires the court's decision to grant or deny the petition to be stated on the record. It also authorizes the court, at any time, to recall the sentence and commitment previously ordered and resentence the defendant if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law.

When resentencing is recommended by one of the specified law enforcement entities statutorily authorized to do so, the court must provide notice to the defendant, set a status conference within 30 days of receiving the petition, and appoint counsel. A presumption in favor of resentencing applies to petitions submitted by law enforcement entities unless overcome by a finding by the court that the defendant poses an unreasonable risk to public safety. Generally, an inmate may not petition for recall and resentencing under subdivision (c) of Penal Code section 1172.1.

This bill states, notwithstanding Penal Code section 1172.1 subdivision (c) that states that inmates are not entitled to petition the court for resentencing, an incarcerated firefighter may request recall and resentencing. Upon receipt of a petition from an incarcerated firefighter, the court is required to conduct a hearing to determine whether recall and resentencing serves the interests of justice. This bill requires the court, in determining whether recall and resentencing is in the interests of justice, to consider an incarcerated person's emergency service during a natural disaster. Additionally, this bill requires CDCR, in recognition of the vital role that incarcerated persons have played protecting the people and property of California from wildfires, to promulgate regulations regarding the referral of incarcerated firefighters for resentencing. A petition submitted by CDCR would be entitled to a presumption in favor of resentencing that currently applies to petitions by CDCR, AG or

other law enforcement entities, whereas a direct petition from the incarcerated firefighter would not.

- 5) **Argument in Support:** According to *Initiate Justice*, the sponsor of this bill, “Incarcerated firefighters (hand crew members) exemplify distinct bravery and service supporting the California Department of Forestry and Fire Protection (CalFIRE) on the front lines of California’s most devastating wildfires—including the recent Eaton and Palisades Fires, designated as the 2nd and 3rd most destructive in our state’s history. Those who serve on these hand crews must already meet rigorous criteria, which includes having “minimum-custody” status, the lowest classification for incarcerated individuals based on sustained good behavior, a demonstrated ability to follow rules, and participation in rehabilitative programming. Additionally, certain convictions automatically disqualify participation. Currently, out of the approximately 91,000 people incarcerated in California’s prisons, less than 2,000 (or 2.2%) are serving in the Conservation (Fire) Camp Program.

“This bill creates a ‘second look’ opportunity for this highly regarded population. It expands the tools made available to CDCR over the past decade to reduce mass incarceration, revisit extreme sentences that would not otherwise be imposed today under current laws, and recognize the rehabilitative efforts of incarcerated people. “Second look” resentencing not only balances our justice system with fairness and equity, but also results in substantial savings for our state. Each year of imprisonment for one person currently costs our state approximately \$133,000.

“AB 812 is not a get-out-of-jail free card for incarcerated firefighters. Judges retain full discretion and prosecutors will be able to argue if someone is an unreasonable risk to public safety and unfit to be resentenced. This bill aligns with California’s desire to end mass incarceration, without jeopardizing public safety.

- 6) **Argument in Opposition:** According to *California District Attorneys Association*, “While we recognize the vital role incarcerated individuals play in California’s firefighting efforts, AB 812 raises significant public safety and sentencing integrity concerns. Under existing law, courts already have broad authority to recall and resentence individuals based on statutory changes, recommendations from the Department of Corrections and Rehabilitation (CDCR), or findings that continued incarceration is no longer in the interest of justice. This bill would create an additional, categorical pathway for incarcerated firefighters, prioritizing sentence reductions based on participation in conservation camps rather than individualized rehabilitation assessments or public safety considerations.”

7) **Related Legislation:**

- a) AB 247 (Bryan) would require an hourly minimum wage of \$19 for incarcerated individual hand crew members in county jail, and require this rate to be updated annually. AB 247 is pending hearing in the Assembly Committee on Appropriations.
- b) AB 799 (C. Rodriguez) would require CDCR to pay a death benefit, as specified, for the death of any incarcerated crew members in the California Conservation Camp program, as specified. AB 799 is scheduled for hearing today in this Committee.

8) **Prior Legislation:**

- a) AB 600 (Ting), Chapter 446, Statutes 2023, authorized the court to recall a sentence, on its own motion, at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed due to new statutory or case law authority and required the court to consider specified postconviction factors including whether the defendant's incarceration is no longer in the interest of justice.
- b) AB 88 (Sanchez), Chapter 795, Statutes of 2023, limited the amount of notice CDCR could require victims, victim's next of kin, members of the victim's family, victim representatives, counsel for any of these persons, and victim support persons to give of their intention to attend a parole hearing to no more than 15 days.
- c) AB 124 (Kamlager) Chapter 695, Statutes of 2021, in relevant part, required courts to consider whether specified trauma to a defendant and other factors contributed to the commission of an offense when making sentencing and resentencing determinations.
- d) AB 1540 (Ting), Chapter 719, Statutes of 2021, required the court to provide counsel for the defendant when there is recommendation from CDCR, the BPH, the sheriff, or the prosecuting agency, to recall an inmate's sentence and resentence that inmate to a lesser sentence. AB 1540 also created a presumption favoring recall and resentencing, as specified, when the recommendation has been made by one of these agencies.
- e) AB 2147 (Reyes), Chapter 60, Statutes of 2020, allowed a defendant who successfully participated in the California Conservation Camp Program or a county incarcerated individual hand crew as an incarcerated individual hand crew member, and has been released from custody, to petition the court to have their conviction expunged.
- f) AB 2942 (Ting), Chapter 1001, Statutes of 2018, allowed the district attorney of the county where a defendant was convicted and sentenced to make a recommendation that the court recall and resentence the defendant.
- g) AB 1156 (Brown), Chapter 378, Statutes of 2015, provided, in pertinent part, that when a defendant is sentenced to the county jail under the 2011 Realignment Act, the court may, within 120 days of the date of commitment on its own motion, or upon the recommendation of the county correctional administrator, recall the sentence previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, provided the new sentence, if any, is no greater than the original sentence.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
All of Us or None Los Angeles
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California for Safety and Justice

California Innocence Coalition
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Ella Baker Center for Human Rights
Famm
Friends Committee on Legislation of California
Grip Training Institute
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Land Together
Legal Services for Prisoners With Children
Local 148 Los Angeles County Public Defender's Union
Rubicon Programs
San Francisco Public Defender
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
University of San Francisco School of Law | Racial Justice Clinic
Vera Institute of Justice

Oppose

California District Attorneys Association

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

AMENDMENTS TO ASSEMBLY BILL NO. 812

Amendment 1

On page 3, in line 5, strike out “the Department of Forestry”, strike out line 6 and in line 7, strike out “subdivision (e),”

Amendment 2

On page 5, in line 21, strike out “an” and insert:

the Department of Corrections and Rehabilitation shall promulgate regulations regarding the referral of incarcerated firefighters for resentencing.

(f) Notwithstanding subdivision (c), an

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PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 812

CALIFORNIA LEGISLATURE—2025—26 REGULAR SESSION

ASSEMBLY BILL

No. 812

Introduced by Assembly Member Lowenthal

February 19, 2025



An act to amend Section 1172.1 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 812, as introduced, Lowenthal. Recall and resentencing: incarcerated firefighters.

Existing law authorizes a court, on its own motion within 120 days of the date of the defendant's commitment, or at any time if the applicable sentencing laws have changed or upon a recommendation from the Secretary of the Department of Corrections and Rehabilitation, the Board of Parole Hearings, or the district attorney, to recall a defendant's sentence and resentence that defendant to a lesser sentence.

Existing law establishes the California Conservation Camps for the purpose of having incarcerated persons work on projects supervised by the Department of Forestry and Fire Protection. Existing law requires the department to utilize incarcerated persons assigned to conservation camps in performing fire prevention, fire control, and other work at the department.

This bill would ~~authorize the court to consider a recall and resentencing request from an incarcerated firefighter upon a recommendation from the department.~~ *an incarcerated firefighter to request recall and resentencing under these provisions.* Upon receipt of a request, the bill would require the court to conduct a hearing to determine whether recall and resentencing would serve the interests of

AB 812

— 2 —

justice based on certain considerations, as specified. *The bill would additionally require the Department of Corrections and Rehabilitation to promulgate regulations regarding the referral of incarcerated firefighters for resentencing.*

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

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

ge 2 1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) The Department of Corrections and Rehabilitation (CDCR),
4 in cooperation with the Department of Forestry and Fire Protection
5 and the Los Angeles County Fire Department, operates 35
6 conservation camps throughout California. All camps are minimum
7 security facilities and staffed with correctional staff.
8 (b) The primary mission of the California Conservation Camp
9 program is to support state, local, and federal government agencies
10 as they respond to emergencies, including fires, floods, and other
11 natural disasters.
12 (c) CDCR health care staff clear participants as physically and
13 mentally fit for vigorous activity to participate in the program.
14 Additionally, inmates, based on behavior in prison, have the
15 lowest-security classification. Inmates with more than eight years
16 remaining on their sentence are ineligible to participate.
17 (d) The work is extraordinarily dangerous. Multiple inmates
18 have died fighting fires.
19 (e) Hundreds of incarcerated firefighters worked, around the
20 clock, to help slow the spread of the massive fires in January 2025
21 in Los Angeles County. These volunteer firefighters cut fire lines
22 and removed fuel to slow the fire spread.
23 (f) According to the Secretary of the CDCR, Jeff Macomber,
24 the incarcerated workers are an “essential” part of the state’s
25 response and “their commitment to protecting lives and property
26 during these emergencies cannot be overstated.”
27 SEC. 2. Section 1172.1 of the Penal Code is amended to read:
28 1172.1. (a) (1) When a defendant, upon conviction for a felony
29 offense, has been committed to the custody of the Secretary of the
30 Department of Corrections and Rehabilitation or to the custody of
31 the county correctional administrator pursuant to subdivision (h)

32 of Section 1170, the court may, on its own motion, within 120
 33 days of the date of commitment or at any time if the applicable
 34 sentencing laws at the time of original sentencing are subsequently
 35 changed by new statutory authority or case law, at any time upon
 1 the recommendation of the secretary or the Board of Parole
 2 Hearings in the case of a defendant incarcerated in state prison,
 3 the county correctional administrator in the case of a defendant
 4 incarcerated in county jail, the district attorney of the county in
 5 which the defendant was sentenced, ~~the Department of Forestry~~
 6 ~~and Fire Protection for an incarcerated firefighter consistent with~~
 7 ~~subdivision (e)~~, or the Attorney General if the Department of
 8 Justice originally prosecuted the case, recall the sentence and
 9 commitment previously ordered and resentence the defendant in
 10 the same manner as if they had not previously been sentenced,
 11 whether or not the defendant is still in custody, and provided the
 12 new sentence, if any, is no greater than the initial sentence. Recall
 13 and resentencing under this section may be initiated by the original
 14 sentencing judge, a judge designated by the presiding judge, or
 15 any judge with jurisdiction in the case.
 16 (2) The court, in recalling and resentencing under this
 17 subdivision, shall apply the sentencing rules of the Judicial Council
 18 and apply any changes in law that reduce sentences or provide for
 19 judicial discretion so as to eliminate disparity of sentences and to
 20 promote uniformity of sentencing.
 21 (3) The resentencing court may, in the interest of justice and
 22 regardless of whether the original sentence was imposed after a
 23 trial or plea agreement, do the following:
 24 (A) Reduce a defendant's term of imprisonment by modifying
 25 the sentence.
 26 (B) Vacate the defendant's conviction and impose judgment on
 27 any necessarily included lesser offense or lesser related offense,
 28 whether or not that offense was charged in the original pleading,
 29 with the concurrence of the defendant, and then resentence the
 30 defendant to a reduced term of imprisonment.
 31 (4) If the court has recalled the sentence on its own motion, the
 32 court shall not impose a judgment on any necessarily included
 33 lesser offense or lesser related offense if the conviction was a result
 34 of a plea bargain without the concurrence of both the defendant
 35 and the district attorney of the county in which the defendant was

Amendment 1

36 sentenced, or the Attorney General if the Department of Justice
37 originally prosecuted the case.
38 (5) In recalling and resentencing pursuant to this provision, the
39 court shall consider postconviction factors, including, but not
40 limited to, the disciplinary record and record of rehabilitation of
1 the defendant while incarcerated, evidence that reflects whether
2 age, time served, and diminished physical condition, if any, have
3 reduced the defendant's risk for future violence, and evidence that
4 reflects that circumstances have changed since the original
5 sentencing so that continued incarceration is no longer in the
6 interest of justice. Evidence that the defendant's incarceration is
7 no longer in the interest of justice includes, but is not limited to,
8 evidence that the defendant's constitutional rights were violated
9 in the proceedings related to the conviction or sentence at issue,
10 and any other evidence that undermines the integrity of the
11 underlying conviction or sentence. The court shall consider if the
12 defendant has experienced psychological, physical, or childhood
13 trauma, including, but not limited to, abuse, neglect, exploitation,
14 or sexual violence, if the defendant was a victim of intimate partner
15 violence or human trafficking prior to or at the time of the
16 commission of the offense, or if the defendant is a youth or was a
17 youth as defined under subdivision (b) of Section 1016.7 at the
18 time of the commission of the offense, and whether those
19 circumstances were a contributing factor in the commission of the
20 offense.
21 (6) Credit shall be given for time served.
22 (7) The court shall state on the record the reasons for its decision
23 to grant or deny recall and resentencing.
24 (8) (A) Resentencing may be granted without a hearing upon
25 stipulation by the parties.
26 (B) Notwithstanding subparagraph (A), if a victim of a crime
27 wishes to be heard pursuant to the provisions of Section 28 of
28 Article I of the California Constitution, or pursuant to any other
29 provision of law applicable to the hearing, the victim shall notify
30 the prosecution of their request to be heard within 15 days of being
31 notified that resentencing is being sought and the court shall
32 provide an opportunity for the victim to be heard.
33 (9) Resentencing shall not be denied, nor a stipulation rejected,
34 without a hearing where the parties have an opportunity to address
35 the basis for the intended denial or rejection. If a hearing is held,

36 the defendant may appear remotely and the court may conduct the
37 hearing through the use of remote technology, unless counsel
38 requests their physical presence in court.
39 (b) If a resentencing request pursuant to subdivision (a) is from
40 the Secretary of the Department of Corrections and Rehabilitation,
1 the Board of Parole Hearings, a county correctional administrator,
2 a district attorney, or the Attorney General, all of the following
3 shall apply:
4 (1) The court shall provide notice to the defendant and set a
5 status conference within 30 days after the date that the court
6 received the request. The court's order setting the conference shall
7 also appoint counsel to represent the defendant.
8 (2) There shall be a presumption favoring recall and resentencing
9 of the defendant, which may only be overcome if a court finds the
10 defendant currently poses an unreasonable risk of danger to public
11 safety, as defined in subdivision (c) of Section 1170.18.
12 (c) A defendant is not entitled to file a petition seeking relief
13 from the court under this section. If a defendant requests
14 consideration for relief under this section, the court is not required
15 to respond.
16 (d) After ruling on a referral authorized by this section, the court
17 shall advise the defendant of their right to appeal and the necessary
18 steps and time for taking an appeal.
19 (e) In recognition of the vital role that incarcerated persons have
20 played protecting the people and property of California from
21 wildfires, ~~an the Department of Corrections and Rehabilitation~~
+ *shall promulgate regulations regarding the referral of incarcerated*
+ *firefighters for resentencing.*
+ (f) *Notwithstanding subdivision (c), an incarcerated firefighter*
22 *may request relief pursuant to subdivision (a). Upon receipt of a*
23 *request, a court shall conduct a hearing to determine if recalling*
24 *and resentencing, pursuant to this section, serves the interests of*
25 *justice. In making its determination, in addition to the*
26 *postconviction factors listed in paragraph (5) of subdivision (a),*
27 *the court shall consider an incarcerated person's emergency service*
+ *during a natural disaster.*

Amendment 2

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Date of Hearing: March 25, 2025

Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 837 (Davies) – As Introduced February 19, 2025

As Proposed to be Amended in Committee

SUMMARY: Makes it a felony to attempt to traffic or to traffic, furnish, or give away ketamine. Specifically, **this bill:**

- 1) Provides that transporting, importing into this state, furnishing, administering, or giving away, or offering to do any of those things, or attempting to transport or import into this state, ketamine is punishable by imprisonment for 16 months, two years, or three years.
- 2) Makes felony possession for sale or sale a realigned felony.

EXISTING LAW:

- 1) Lists controlled substances in five “schedules” - intended to list drugs in decreasing order of harm and increasing medical utility or safety - and provides penalties for possession of and commerce in controlled substances. Schedule I includes the most serious and heavily controlled substances, with Schedule V being the least serious and most lightly controlled substances. (Health & Saf. Code, §§ 11054-11058.)
- 2) Classifies ketamine as a Schedule III controlled substance. (Health & Saf. Code, § 11056, subd. (g).)
- 3) Makes possession of ketamine a misdemeanor punishable in county jail for up to one year. (Health & Saf. Code, § 11377, subd. (a).)
- 4) Provides for punishment by 16 months, 2 years, or 3 three years in state prison for possession of ketamine when the defendant has one or more prior specified “serious” or “violent” felony convictions or a prior conviction requiring sex offender registration. (Health & Saf. Code, § 11377, subd. (a).)
- 5) Makes possession of ketamine for sale or sale of ketamine an alternate felony/misdemeanor punishable by up to one year in county jail or 16 months, two years, or three years in state prison. (Health & Saf. Code, § 11379.2.)
- 6) Makes it felony to transport, import into this state, sell, furnish, administer, or give away, or to offer to do any of those things, or to attempt to import into this state or transport, any Schedule III controlled substance that is not a narcotic, except ketamine, punishable by imprisonment for two, three, or four years. (Health & Saf. Code, § 11379, subd. (a).)

- 7) Makes it a felony to transport any Schedule III controlled substance that is not a narcotic, except ketamine, within this state from one county to another noncontiguous county punishable by imprisonment for three, six, or nine years. (Health & Saf. Code, § 11379, subd. (b).)
- 8) Makes it felony to transport, import into this state, sell, furnish, administer, or give away, or to offer to do any of those things, or to attempt to import into this state or transport, any Schedule III controlled substance that is a narcotic, or a schedule III hallucinogen, punishable by imprisonment for two, three, or four years. (Health & Saf. Code, § 11379, subd. (a).)
- 9) Makes it a felony to transport any Schedule III controlled substance that is a narcotic, or a Schedule III hallucinogen, within this state from one county to another noncontiguous county punishable by imprisonment for three, six, or nine years. (Health & Saf. Code, § 11379, subd. (b).)
- 10) Defines “narcotic drug” as any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
 - a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate; or any salt, compound, isomer, or derivative, whether natural or synthetic of opium or opiate, but not including isoquinoline alkaloids of opium;
 - b) Opium poppy and poppy straw;
 - c) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, but no including deconcanized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine;
 - d) Cocaine or ecgonine, whether natural or synthetic, or any salt, isomer, derivative, or preparation thereof; or,
 - e) Acetylfentanyl, the thiophene analog thereof, derivatives of either, and any salt, compound, isomer, or preparation of acetylfentanyl or the thiophene analog thereof. (Health & Saf. Code, § 11019.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “California has become a leader in cracking down on the illegal drug trafficking that has been negatively affecting our neighborhoods and communities. When sold outside of legitimate medical channels, ketamine use lacks the necessary supervision to ensure safety. Without appropriate dosing and monitoring, it increases the risk of harmful outcomes. Prolonged use of ketamine has been linked to cognitive impairment, memory loss, and psychological issues, including anxiety, depression, and hallucinations. AB 837 is a common-sense measure to ensure this controlled substance is regulated by the appropriate forces when it comes to transporting it into this state and leaves

the ability for it to still be used for legitimate medical purposes.”

- 2) **Ketamine:** Ketamine is a dissociative anesthetic that is used both medically and recreationally. According to the Drug Enforcement Administration (DEA):

Ketamine distorts the perception of sight and sound and makes the user feel disconnected and not in control. It is referred to as a “dissociative anesthetic hallucinogen” because it makes patients feel detached from their pain and environment.

Ketamine can induce a state of sedation (feeling calm and relaxed), immobility, relief from pain, and amnesia (no memory of events while under the influence of the drug) and is used for the dissociative sensations and hallucinogenic effects.¹

Ketamine is used medically to treat psychological disorders, notably treatment-resistant anxiety and depression.² A professor of psychiatry at the Yale School of Medicine said, “Ketamine is possibly the major advance in the area of psychiatry in the past fifty year, but it’s not without risk... The reality is it is an amazing treatment for many people, but we also know that it is a drug that people misuse and will abuse.”³

For decades, ketamine has been popular as a party drug,⁴ and research suggests its use in the United States is on the rise.⁵ Available as a powder or liquid, it can be injected, mixed in drinks, smoked, or snorted.⁶ Although often used in isolation, ketamine has been found in combination with other drugs such as amphetamine, cocaine, fentanyl, MDMA, and methamphetamine.⁷ The DEA has also identified it as a drug used to facilitate sexual assault.⁸

Ketamine use is not without risks. Ketamine has the potential for low to moderate physical dependence or high psychological dependence.⁹ An overdose can cause loss of consciousness and dangerously slowed breathing—and, on rare occasions, death.¹⁰ The DEA reported six deaths from ketamine overdose between 2020 and 2022.¹¹ A recent study found that, of a

¹ Dept. of Justice/Drug Enforcement Administration, Drug Fact Sheet (Dec. 2024)

<<https://www.dea.gov/sites/default/files/2020-06/Ketamine-2020.pdf>> [last visited Mar. 6, 2025].

² Drug Enforcement Administration, Diversion Control Division, Ketamine (Feb. 2024)

<https://www.deadiversion.usdoj.gov/drug_chem_info/ketamine.pdf> [last viewed Mar. 19, 2024].

³ McPhillips, *Illicit ketamine on the rise in the US, research suggests*, CNN.com (May 24, 2023)

<https://www.cnn.com/2023/05/24/health/illicit-ketamine-rise-in-us/index.html> [last viewed Mar. 19, 2025].

⁴ Rogers, *What to Know About Ketamine*, John Hopkins Bloomberg School of Public Health (Jan. 26, 2024)

<https://publichealth.jhu.edu/2024/what-to-know-about-ketamine> [last visited Mar. 19, 2025].

⁵ Palamar, et al., *Trends in Illicit Ketamine Seizures in the US From 2017 to 2022*, JAMA Psychiatry (May 24, 2023) [https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2804864?guestAccessKey=3028fa32-72f0-4705-84de-](https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2804864?guestAccessKey=3028fa32-72f0-4705-84de-d7da9c0b62ee&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfi&utm_term=052423#google_vignette)

[d7da9c0b62ee&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfi&utm_term=052423#google_vignette](https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2804864?guestAccessKey=3028fa32-72f0-4705-84de-d7da9c0b62ee&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tfi&utm_term=052423#google_vignette) [last visited Mar. 19, 2025].

⁶ Drug Fact Sheet, *supra*.

⁷ *Ibid*.

⁸ U.S. Dept. of Justice, Drug Enforcement Administration, Drug-Facilitated Sexual Assault (Apr. 2017)

⁹ Drug Fact Sheet, *supra*.

¹⁰ Vivolo-Kantor, et al. *Notes from the Field: Ketamine Detection and Involvement in Drug Overdose Deaths—United States, July 2019–July 2023*, CDC (Nov. 7, 2024)

<https://www.cdc.gov/mmwr/volumes/73/wr/mm7344a4.htm> [last visited Mar. 19, 2025].

¹¹ Drug Enforcement Administration, Diversion Control Division, Ketamine (Feb. 2024)

<https://www.deadiversion.usdoj.gov/drug_chem_info/ketamine.pdf> [last viewed Mar. 19, 2024].

total of 228,668 drug overdose deaths between July 2019 and June 2023, ketamine was the only drug detected in toxicology reports in just 24 overdose deaths.¹² That same study found that roughly 82% of deaths in which ketamine was detected on toxicology reports involved other drugs.¹³ The majority of those deaths involved illicit fentanyl.¹⁴

- 3) **Effect of the Bill:** Ketamine is a Schedule III controlled substance under the California Uniform Controlled Substances Act. It is not a narcotic. (See Health & Saf. Code, § 11019.) With the exception of ketamine and Schedule III hallucinogenic substances, possession for sale of a non-narcotic Schedule III substance is punishable by imprisonment of up to three years, and sale is punishable by imprisonment of up to four years. (Health & Saf. Code, §§ 11378, subd. (a); 11379, subd. (a).) Existing law also makes transport, import into this state, sale, furnishing, administering, or giving away, or offering to do any of those things, or attempting to import into this state or transporting any non-narcotic Schedule III substance, with the exception of ketamine and Schedule III hallucinogenic substances, punishable by imprisonment for up to four years. (Health & Saf. Code, §§ 11352, subd. (a); 11379, subd. (a).)

Ketamine is treated differently than other non-narcotic Schedule III controlled substances. Existing law makes possession of ketamine a misdemeanor punishable in county jail for up to one year. (Health & Saf. Code, § 11377, subd. (a).) Possession of ketamine for sale or sale of ketamine is a wobbler punishable by up to one year in county jail or 16 months, two years, or three years in state prison. (Health & Saf. Code, § 11379.2.) With the passage of Proposition 36 (2024), a person who sells, furnishes, administers, or gives away ketamine to another who subsequently suffers significant and substantial physical injury from the drug is eligible for an enhancement of up to three years in state prison. (Pen. Code, § 12022.7, subd. (f)(2).) Under existing law, however, ketamine is specifically excepted from penalties for transporting, furnishing, administering, or giving it away.

This bill would make transporting, furnishing, administering, or giving away ketamine punishable by imprisonment for 16 months, two years, or three years. This bill would also make possession for sale and sale of ketamine a realigned felony—people serve their time in county jail rather than state prison unless they have a prior strike or sex-registrable offense.

- 4) **Harsher Sentences for Drug Trafficking Unlikely to Reduce Drug Use or Deter Criminal Conduct:** Ample research on the impact of increasing penalties for drug offenses on criminal behavior has called into question the effectiveness of such measures. In a report examining the relationship between prison terms and drug misuse, PEW Charitable Trusts found “[n]o relationship between drug imprisonment rates and states’ drug problems,” finding that “high rates of drug imprisonment did not translate into lower rates of drug use, arrests, or overdose deaths.”¹⁵

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ PEW, *More Imprisonment Does Not Reduce State Drug Problems* (Mar. 2018) p. 5 <https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf> [last viewed Feb. 6, 2023]; see generally, Przybylski, *Correctional and Sentencing Reform for Drug Offenders* (Sept. 2009) <http://www.ccjrc.org/wp-content/uploads/2016/02/Correctional_and_Sentencing_Reform_for_Drug_Offenders.pdf> [last visited Mar. 20, 2023].

Unduly long sentences are counterproductive for public safety and contribute to the dynamic of diminishing returns as the incarcerated population expands.¹⁶ The Council on Criminal Justice reviewed the evidence on the effect of harsher punishments on criminal behavior and came to the same conclusion, noting specifically with regards to drug crimes:

The empirical evidence on selective incapacitation suggests that long sentences may produce short- and long-term public safety benefits for individuals engaged in violent offending, but may produce the opposite effect for those engaged in drug-related offending...where an incarcerated individual is quickly replaced by a new recruit. This “replacement effect” occurs—and undermines the overall crime-reducing effects of incapacitation—when there is “demand” for a particular criminal activity. The illicit drug business offers the most obvious example: when someone who plays a role in a drug trafficking organization is incarcerated, someone else must take his or her place...¹⁷

According to PEW, “[A] large body of prior research...cast[s] doubt on the theory that stiffer prison terms deter drug misuse, distribution, and other drug-law violations.”¹⁸ PEW concludes:

Putting more drug-law violators behind bars for longer periods of time has generated enormous costs for taxpayers, but it has not yielded a convincing public safety return on those investments. Instead, more imprisonment for drug offenders has meant limited funds are siphoned away from programs, practices, and policies that have been proved to reduce drug use and crime. (Ibid.)

Based on this research, one might reasonably question whether increasing penalties for trafficking ketamine would meaningfully impact the drug’s availability or the number of people who use it.

- 5) **Argument in Support:** According to the *California District Attorneys Association*: “Currently, ketamine is classified as a Schedule III controlled substance under Health and Safety Code Section 11056(f), but it is not included in the existing list of substances covered under Section 11352. This has created a legal loophole, preventing law enforcement and prosecutors from effectively addressing illicit ketamine trafficking under the same penalties applicable to Schedule I and II drugs.

“AB 837 corrects this oversight by ensuring that unauthorized distribution and trafficking of ketamine are subject to felony penalties under Section 11352, bringing it in line with other dangerous and widely abused substances. Specifically, this bill will:

¹⁶ *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 UMKC L.Rev. 1 (Nov. 5, 2018).

¹⁷ Long Sentences Task Force, Council on Criminal Justice, *The Impact of Long Sentences on Public Safety: A Complex Relationship* (Nov. 2022) p. 8 <https://counciloncj.org/wp-content/uploads/2022/11/Impact-of-Long-Sentences-on-Public-Safety.pdf> [last visited Apr. 24, 2023] [internal citations omitted] [emphasis added]; National Institute of Justice, U.S. Department of Justice, *Five Things About Deterrence* (June 5, 2016) <<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>> [last visited Feb. 2, 2023.].

¹⁸ PEW, *supra*.

- *Enhance Public Safety.* Ketamine is increasingly being abused recreationally and has been linked to drug-facilitated sexual assault (“date rape drug”). Strengthening criminal penalties for illegal ketamine distribution will help deter illicit sales and trafficking
- *Close a Legal Loophole.* Despite its classification as a Schedule III substance, ketamine has not been subject to the same penalties as other dangerous drugs. This bill aligns ketamine penalties with those applied to Schedule I and II substances, preventing criminals from exploiting gaps in current law (Section 11352(a)).
- *Increase Criminal Penalties for Unlawful Distribution.* Individuals who unlawfully transport, sell, or distribute ketamine will face three (3), four (4), or five (5) years in county jail, and if the transport occurs between noncontiguous counties, the penalty will increase to three (3), six (6), or nine (9) years (Section 11352(a)-(b))...

“AB 837 is a critical step in addressing the growing threat of illicit ketamine distribution. By amending Section 11352, this bill provides law enforcement and prosecutors with the necessary legal tools to combat illegal ketamine trafficking and protect public safety.”

- 6) **Argument in Opposition:** According to the *Drug Policy Alliance*, “Current Health & Safety Code 11379.2 makes it a criminal offense to possess ketamine for sale, punishable by up to 3 years of incarceration. If an individual is not a U.S. citizen, any conviction related to ketamine transportation, sale, or possession may lead to deportation and family separation, per federal laws. Rather than wasting money and lives on incarceration, California should invest in public education, harm reduction strategies and improved access to drug treatment paid for by private and public medical insurance.

“Increased penalties will not result in a safer California, but will create needless suffering for individuals convicted for sharing, transporting or furnishing ketamine, cause social and financial harms for families of those incarcerated, cost taxpayers for additional criminal and correctional system expenditures, and have significant long term economic and social impacts for individuals and communities. Highly publicized crackdowns and prosecutions of person who shared or furnished ketamine will make it less likely that people will call 911 or seek emergency medical care when they witness a medical crisis involving the drug.

“Ketamine is a Schedule III medication. Classified as a short-acting analgesic, it is used to promote sedation during and after surgery. It is also used to treat severe depression, PTSD, and substance use disorders. In medical settings, ketamine is considered safe and effective and the World Health Organization lists it as an essential medicine. Veterans suffering severe depression, or thoughts of suicide or self-harm, have benefited from medical supervised ketamine treatment. In some areas, it is available from the Veterans Administration Medical Centers.

“Non-prescription use of ketamine has been common in the United States for decades. However, death from ketamine overdose is rare. A review by the US Centers for Disease Control and Prevention found that ketamine was detected in less than one-half of one percent of all drug overdose deaths in the United States from 2019 to 2023 (0.4%), and in the overwhelming majority of those cases, it was used in combination with other drugs, namely fentanyl, methamphetamine, cocaine or alcohol.

“We all want our loved ones and communities to be safe, but the existing criminal penalty for ketamine possession for sale is already draconian and counterproductive. Increasing the penalties on supply-side drug market activity does not reduce the drug supply, reduce suffering associated with drug use or incarceration, or reduce drug use.

“The Drug Policy Alliance is the leading organization in the U.S. focused on addressing harms of drug use and drug criminalization through a holistic approach to drugs that prioritizes health, equity, social supports and community wellbeing. DPA opposes AB 837 (Davies) as a step backward toward the failed drug war approach to drug problems.”

7) **Related Legislation:**

- a) AB 634 (J. Gonzalez), would make tianeptine a Schedule I substance under California’s Uniform Controlled Substances Act (UCSA). AB 634 is pending hearing in this committee.
- b) SB 6 (Ashby), would make xylazine, also known as “tranq,” a Schedule III drug under the UCSA. SB 6 is scheduled for hearing today in the Senate Public Safety Committee.

8) **Prior Legislation:**

- a) AB 3029 (Bains), of the 2023-2024 Legislative Session, would have made xylazine, also known as “tranq,” a Schedule III drug under the UCSA, contingent on the federal government adding xylazine to Schedule III of the federal CSA. AB 3029 was held in suspense in the Senate Appropriations Committee.
- b) SB 1502 (Ashby), of the 2023-2024 Legislative Session, was nearly identical to SB 6 (Ashby). SB 1502 failed passage in the Assembly 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
 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

Oppose

ACLU California Action
California Public Defenders Association (CPDA)
Californians for Safety and Justice (CSJ)
Californians United for A Responsible Budget
Drug Policy Alliance
Ella Baker Center for Human Rights
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
Local 148 Los Angeles County Public Defender's Union
San Francisco Public Defender
Sister Warriors Freedom Coalition
Vera Institute of Justice

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

Amended Mock-up for 2025-2026 AB-837 (Davies (A))

Mock-up based on Version Number 99 - Introduced 2/19/25

Submitted by: Staff Name, Office Name

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

SECTION 1. ~~Section 11352 of the Health and Safety Code is amended to read:~~

~~**11352.** (a) Except as otherwise provided in this division, a person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) a controlled substance specified in subdivision (b), (c), or (e) of, or paragraph (1) of subdivision (f) of, Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (g) or (h) of Section 11056, or (2) a controlled substance classified in Schedule III, IV, or V that is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.~~

~~(b) Notwithstanding the penalty provisions of subdivision (a), a person who transports a controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine years.~~

~~(c) For purposes of this section, “transports” means to transport for sale.~~

~~(d) This section does not preclude or limit the prosecution of an individual for aiding and abetting the commission of, or conspiring to commit, or acting as an accessory to, an act prohibited by this section.~~

SECTION 1. Section 11379.2 of the Health and Safety Code is added to read:

(a) Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale or sells any controlled substance specified in subdivision (g) of Section 11056 shall be punished by imprisonment in the county jail for a period of not more than one year or ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

(b) Except as otherwise provided in this division, a person who transports, imports into this state, furnishes, administers, or gives away, or offers to transport, import into this state, furnish, administer, or give away, or attempts to import into this state or transport a controlled substance specified in subdivision (g) of Section 11056, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(c) For purposes of this section, “transports” means to transport for sale.

(d) This section does not preclude or limit the prosecution of an individual for aiding and abetting the commission of, or conspiring to commit, or acting as an accessory to, an act prohibited by this section.

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
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 938 (Bonta) – As Introduced February 19, 2025

SUMMARY: Expands vacatur relief and affirmative defenses available to victims of human trafficking, intimate partner violence or sexual violence to apply to any crime. Specifically, **this bill:**

- 1) Authorizes vacatur relief for crimes committed by a victim of human trafficking, intimate partner violence or sexual violence to apply to “violent” felonies, which are currently the only excluded crimes under existing law.
- 2) Changes the requirement that the offense for which vacatur relief is requested is related, rather than directly related, to being a victim of human trafficking, intimate partner violence or sexual violence.
- 3) Provides that if the petition for vacatur is granted, unpaid restitution, fines, and fees shall be vacated.
- 4) States if requested by the petitioner for vacatur relief, the court shall file as confidential the final court order granting the petition.
- 5) Requires the court, when issuing a vacatur order for a victim of human trafficking, intimate partner violence or sexual violence, to also order any law enforcement agency that has taken action or maintains records related to or because of the offenses to seal and destroy their records, as specified.
- 6) Requires sealing and destruction of records held by government agencies related to or because of the offense for which vacatur is granted for a victim of intimate partner violence or sexual violence, and requires the Department of Justice (DOJ) to notify the petitioner and the petitioner’s counsel that the department has complied with the order to seal the arrest records by the applicable deadlines, making the remedy conform with the sealing and destruction of records for vacatur relief for victims of human trafficking.
- 7) Authorizes the affirmative defense of coercion for victims of human trafficking, intimate partner violence and sexual violence to apply to “violent” felonies, which are currently the only excluded crimes under existing law.
- 8) Makes other conforming and technical changes.

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, intimate partner violence, or

sexual violence to petition the court for vacatur relief of their convictions, arrests, and adjudications. (Pen. Code, §§ 236.14, subd. (a) and 236.15, 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, intimate partner violence, or sexual violence 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) and 236.15, 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, intimate partner violence, or sexual violence 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) and 236.15, 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, intimate partner violence or sexual violence 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, intimate partner violence or sexual violence; and,
 - c) It is in the best interests of justice. (Pen. Code, §§ 236.14, subd. (g) and 236.15, subd. (g).)
- 5) 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, 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 arrest or conviction; and,
 - c) Notify the DOJ that the petitioner was a victim of human trafficking, intimate partner violence or sexual violence when they committed the crime and of the relief that has been ordered. (Pen. Code, §§ 236.14, subd. (h) and 236.15, subd. (h).)
- 6) Provides that a petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent offense unless it has already been paid. (Pen. Code, §§ 236.14, subd. (i) and 236.15, subd. (i).)
- 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, intimate partner violence or sexual violence who establishes that the arrest or adjudication was the direct result of

being a victim of human trafficking, , intimate partner violence or sexual violence is entitled to a rebuttable presumption that the requirements for relief have been met. (Pen. Code, §§ 236.14, subd. (j) and 236.15, subd. (j).)

- 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 DOJ;
 - 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, intimate partner violence, or sexual violence, or at any time the petitioner has sought services for being a victim of human trafficking, intimate partner violence, or sexual violence, whichever occurs later. (Pen. Code, §§ 236.14, subd. (l) and 236.15, 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) and 236.15, 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).)

- 12) Provides that if a person was arrested for or convicted of any nonviolent offense committed while the person was a victim of intimate partner violence or sexual violence, the person may petition the court for vacatur relief of their convictions, arrests and adjudications. (Pen. Code, § 236.15, subd. (a).)
- 13) Requires a petitioner to 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. Upon this showing, the court shall find that the person lacked the requisite intent to commit the offense and shall therefore vacate the conviction as invalid due to legal defect at the time of the arrest or conviction. (*Ibid.*)
- 14) States that in addition to any other affirmative defense, it is a defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a victim of human trafficking, intimate partner violence, or sexual violence at the time of the offense and had a reasonable fear of harm. This defense does not apply to a violent felony, as defined in subdivision (c) of Penal Code section 667.5. (Pen. Code, §§ 236.23, subd. (a) and 236.24, subd. (a).)
- 15) States that the defendant asserting the affirmative defense above has the burden of establishing the affirmative defense by a preponderance of the evidence. (Pen. Code, §§ 236.23, subd. (b) and 236.24, subd. (b).)
- 16) Provides that the affirmative defense may be asserted at any time before the entry of a guilty or nolo contendere or admission to the truth of the charges and before conclusion of any trial for the offense. If asserted before the preliminary hearing held in a case, the affirmative defense shall, upon request by the defendant, be determined at the preliminary hearing. (Pen. Code, §§ 236.23, subd. (d) and 236.24, subd. (d).)
- 17) States that if the defendant prevails on the affirmative defense above, the defendant is entitled to all of the following relief:
 - a) All records in the case shall be sealed; records that have been sealed may be accessed, inspected, or utilized by law enforcement for subsequent investigatory purposes involving persons other than the defendant; and,
 - b) The person shall be released from all penalties and disabilities resulting from the charge, and all actions and proceedings as provided. (Pen. Code, §§ 236.23, subd. (e) and 236.24, subd. (e).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "California has made progress in protecting survivors of human trafficking, intimate partner violence, and sexual exploitation, yet gaps in the law continue to leave many with criminal records for actions they were coerced into committing. These convictions create lasting barriers to employment, housing, and education.

AB 938 expands access to post-conviction relief, ensuring survivors can present the full context of their victimization in court.

“Marginalized communities—Black, Brown, Indigenous, immigrant, and LGBTQ+ survivors—are disproportionately affected by systemic biases and criminalization. AB 938 strengthens legal protections, recognizing that survivors need support, not punishment.

“Several states, including New York, Georgia, Nebraska, Louisiana, and Wyoming, have already expanded vacatur relief and affirmative defenses for survivors. AB 938 aligns California with these efforts, ensuring a more just and trauma-informed legal process.

“This bill is about fairness and safety. It provides a pathway for survivors to rebuild their lives while reinforcing California’s commitment to a justice system that is responsive to the complexities of human trafficking and intimate partner violence.”

- 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, and shall establish 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, subd. (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).) 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).) 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 of the crime, the arrest or conviction was a direct result of being a victim of human trafficking, and 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).)

Existing law contains a substantially similar vacatur statute applicable to victims of intimate partner violence or sexual violence. (Pen. Code, § 236.15.) This bill makes technical and conforming changes to make this statute operate more similarly to the human trafficking vacatur law in terms of record sealing and destruction and how to proceed on unopposed petitions. For both types of vacatur petitions, this bill provides more specific destruction of records requirements to carry out the purposes of vacatur.

Additionally, existing law under both types of vacatur petitions prohibit a petitioner who is granted vacatur relief from being relieved of any financial restitution order that directly benefits the victim of a nonviolent crime unless it has already been paid. This bill instead provides that if the petition is granted, unpaid restitution, fines, and fees shall be vacated. Because vacatur relief makes it so that the conviction should not have occurred due to the petitioner's lack of intent to commit the crime, the restitution and fines tied to the conviction should not continue to be imposed.

As discussed above, existing law only authorizes vacatur relief for nonviolent offenses which has been defined to include any crime that is not a "violent" felony. This bill allows a person to seek vacatur relief for any crime, including a "violent" felony arrest or conviction. "Violent" felony offenses generally involve some level of force or threats of violence and can range from robbery to murder. Existing law requires the petitioner to show that the arrest or conviction was *directly related* to being a victim of human trafficking, intimate partner violence, or sexual violence. This bill instead requires a showing that the arrest or conviction was *related* to being a victim.

- 3) **Affirmative Defenses:** 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 case 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).) This defense does not apply to a violent felony. (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).) 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).) A substantially similar affirmative defense exists for victims of intimate partner violence or sexual violence who was coerced to commit a nonviolent crime. (Pen. Code, § 236.24.)

There is no requirement in the affirmative defense statutes 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.)

The specific affirmative defense by a human trafficking victim 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.) The affirmative defense for victims of intimate partner violence or sexual violence was enacted in 2020. (AB 124 (Kamlager), Chapter 695, Statutes of 2021.)

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 low 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 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 and affirmative defenses for victims of human trafficking, intimate partner violence and sexual

violence. Allowing the use of the affirmative defense of coercion for victims of specified crimes to apply without limitation conflicts with the rationale behind the defense. 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:** Retroactivity¹ means whether a change in sentencing or constitutional interpretation should be applied to cases where the penalty may already be imposed and appeals exhausted. As a general matter, Penal Code section 3 states “No part of it (meaning the codes) is retroactive, unless expressly so declared.” If retroactivity is not specified, the law is not applied retroactively. However, beginning in 1965, ***if a defendant’s case is still pending at the time of the change and the law seeks to lessen a criminal penalty, they may be eligible for application of the new law.*** (*In re Estrada* (1965) 63 Cal.2d 740, 746 (hereinafter “*Estrada*”).) This is known as the “final judgement rule.”

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

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

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

Recently, we held that ‘a convicted defendant who [was] placed on probation after imposition of sentence [was] suspended, and who [did] not timely appeal from the order granting probation, [could] take advantage of ameliorative statutory amendments that [took] effect during a later appeal from a judgment

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 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.

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 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 allow a victim of human trafficking, intimate partner violence or sexual violence to raise these specific affirmative defenses when charged with a “violent” felony, and if successful, the petitioners would avoid conviction and punishment for those crimes. Thus *Estrada* would apply the benefit of the change to the law retroactively to nonfinal cases without specific direction from the Legislature.

As for the changes to the vacatur provisions made by this bill to authorize its use for “violent” felony arrests and convictions, the existing statutes already provide that a petition for vacatur does not expire with the passage of time, thus it appears the Legislature has provided specific direction that the statutes are to apply retroactively.

- 5) **Argument in Support:** According to *Californians for Safety and Justice*, a co-sponsor of this bill: “Despite California’s commitment to protecting survivors, survivors are often arrested and punished for protecting their or their family’s lives. A 2023 National Survivor Survey by the Polaris Institute found that 90% of trafficked individuals with criminal records had offenses directly tied to their exploitation.⁵ The criminalization of victims by California’s legal system leaves survivors without access to resources for survival, like housing, employment, education, and financial independence, and subjects them to continued cycles of violence, homelessness, and poverty.⁶ The criminalization of survivors exacerbates cycles of trauma and harm and undermines community well being and safety. Additionally, immigrant and refugee survivors face the added threat of detention and deportation when they enter the criminal legal system.

“Too often, victims and survivors of violence are blocked from the opportunity to heal because their trauma is used against them, ignored, or not accounted for during legal proceedings. Vacatur relief and affirmative defense are legal remedies with the legislative intent of preventing the incarceration of individuals who can demonstrate, by clear and convincing evidence, that they were forced to commit a crime.

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

“AB 938 would recognize the trauma and coercion many survivors face, offering a path to justice by acknowledging their criminalization was a result of their experience of intimate partner violence, human trafficking, or sexual violence. It offers a path to justice and empowers survivors to rebuild their lives without the burden of a record tied to their abuse.”

- 6) **Argument in Opposition:** According to *California District Attorneys Association*: “The vacatur relief provisions – Penal Code section 236.14 and 236.15 – were enacted in 2016 and 2021, respectively. The statutes provide that individuals arrested or convicted of a nonviolent offense while they were a victim of human trafficking, intimate partner violence, or sexual violence may petition the court for relief. Importantly, both provisions specifically exclude violent offenders such as murderers, rapists, kidnappers and other serious offenders who committed offenses listed in Penal Code section 667.5(c). In addition, both provisions also require that the commission of an offense was the direct result of being a victim of human trafficking, intimate partner violence, or sexual violence.

“AB 938 removes both the exclusion for violent offenses and the requirement of a direct nexus to the underlying offense. The bill provides that vacatur relief is available for any offense, including violent offenses. Thus, convicted murderers, rapists and kidnappers, among other violent offenders, would be eligible for relief. And, if relief is granted, AB 938 would also require that any victim restitution order be vacated and that the arrest or conviction be deemed never to have occurred with all records sealed. Furthermore, this bill expands existing limited affirmative defenses to apply to all offenses, including violent crimes.

“Because AB 938 mandates such drastic action as expanding relief to violent offenders, removing a direct nexus, and negatively impacting victims’ rights, CDAA must oppose the bill.”

- 7) **Related Legislation:** AB 633 (Krell) would expand vacatur relief for victims of human trafficking to apply to any crime if the petitioner was a minor at the time of the offense. AB 633 is scheduled for hearing today in 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 Suspense File of the Assembly Committee on Appropriations.
- 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 Suspense File of the Assembly Committee on Appropriations.
- c) 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.

- d) 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.
- e) 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.
- f) 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.
- g) 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.
- h) 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.
- i) 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.
- j) 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.
- k) 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

ACLU California Action
California Attorneys for Criminal Justice

California Coalition for Women Prisoners
California Public Defenders Association (CPDA)
Californians for Safety and Justice (CSJ)
Coalition to Abolish Slavery and Trafficking
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Initiate Justice
Initiate Justice Action
Interface Children and Family Services
Justice2jobs Coalition
LA Defensa
Los Angeles Center for Law and Justice
Loyola Law School, the Sunita Jain Anti-trafficking Initiative
National Center for Youth Law
Rubicon Programs
San Francisco Public Defender
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
Southern California Partners for Global Justice
The Change Parallel Project
The Religious Sisters of Charity
Valor US
Vera Institute of Justice

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 Police Chiefs 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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