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California State Assembly

PUBLIC SAFETY

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AGENDA

Tuesday, April 1, 2025
Upon adjournment of Session -- State Capitol, Room 126

REGULAR ORDER OF BUSINESS

HEARD IN SIGN-IN ORDER

1.	AB 276	Bennett	Background checks.
2.	AB 394	Wilson	Public transportation providers.
3.	AB 458	Stefani	Public contracts: firearms, ammunition, and firearm accessories.
4.	AB 710	Irwin	Theft of a gift card.
5.	AB 788	Quirk-Silva	Prisons: facilities for female offenders.
6.	AB 802	Sharp-Collins	Juvenile justice commission: hunger survey.
7.	AB 824	Stefani	Protective orders: firearms and ammunition.
8.	AB 848	Soria	Sexual battery.
9.	AB 952	Elhawary	Youth Offender Program Camp Pilot Program.
10.	AB 1013	Garcia	Peace officer training: behavioral health.
11.	AB 1036	Schultz	Criminal procedure: postconviction discovery.
12.	AB 1092	Castillo	Firearms: concealed carry licenses.
13.	AB 1094	Bains	Crimes: torture of a minor: parole.

Date of Hearing: April 1, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 276 (Bennett) – As Introduced January 21, 2025

SUMMARY: Authorizes a licensee of a community care facility (CCF) to approve an applicant to care for children before the completion of another state's child abuse and neglect registry check, provided that the following conditions are met:

1) The CCF has submitted a request for the out-of-state abuse and neglect registry check to the Care Provider Management Bureau;

2) The applicant has been cleared for all other aspects of the background check, including the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and the Child Abuse Central Index (CACI);

3) The applicant shall not have unsupervised contact with residents or clients until completion of the check, and the licensee shall take reasonable steps to ensure the safety and well-being of residents during this period. The applicant may be employed to work in the CCF under supervision until a complete caregiver background check is obtained; and,

4) If the out-of-state registry check reveals information that would disqualify the applicant from approval, the licensee shall remove the applicant from the CCF immediately upon receipt of the information and notify the California Department of Social Services (CDSS) of the removal within 3 business days.

EXISTING LAW:

1) Establishes the Community Care Facilities Act, which allows for the licensure and oversight of out-of-home placements for abused and neglected children by CDSS. (Health & Saf. Code, § 1500 *et seq.*)

2) Establishes the Community Care Licensing Division within CDSS and requires CDSS to license group care facilities, private foster family agencies, and foster family homes in order to place children who are in the child welfare system. Further requires, prior to licensure, a foster home provider to undergo a specified criminal background check. (Health & Saf. Code, § 1502.)

3) Defines "community care facility" as any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, and includes: residential facilities, adult day programs, foster family agencies, group homes, and children's crisis residential programs, among others. (Health & Saf. Code, §1502.)

4) Requires, before and, as applicable, subsequent to issuing a license or special permits to a person to operate or manage a CCF, CDSS shall obtain criminal records to determine whether the potential licensee, or any adult who resides, is employed, volunteers, or is responsible for certain duties except as provided, has been convicted or any crime, other than an infraction or arrested for a crime requiring sex offender registration, or for assault, child abuse with force likely to result in great bodily injury, domestic violence, or for a crime for which CDSS is prohibited from granting criminal record exemption. (Health & Saf. Code, § 1522.)

5) Requires an applicant to submit fingerprint images and related information to DOJ and the FBI for a state and federal level background check and requires DOJ to notify CDSS of the applicant's criminal record information within 14 calendar days. (Health & Saf. Code, § 1522, subd. (c).)

6) Permits CDSS to grant an exemption from disqualification for license, employment or residence in a CCF if CDSS has substantial and convincing evidence to support a reasonable belief that the applicant or the person convicted of the crime, if other than the applicant, is rehabilitated and is presently of such good character as to justify issuance of the license or special permit or granting an exemption, with exceptions. (Health & Saf. Code, § 1522, subd. (g).)

7) Requires CDSS, prior to granting a license to, or otherwise approving, any individual to care for or reside with children, to check CACI and investigate any reports received from CACI. The investigation shall include the review of the investigation report and file prepared by the child protection agency which investigated the child abuse report, however, licensure or approval shall not be denied based upon a report from CACI unless child abuse or severe neglect is substantiated. (Health & Saf. Code, § 1522.1, subd. (a).)

8) Requires CDSS to check the child abuse and neglect registry of a different state for a licensee of a CCF who has lived in another state in the preceding 5 years and requires CDSS to develop and promulgate the process and criteria to be used to review and consider other states' findings of child abuse or neglect. (Health & Saf. Code, § 1522.1, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "It is crucial that we ensure that programs impacting Foster Care are successful so that we don't interrupt the continuum of care for our most vulnerable youth. Foster children are the most likely to fall through the cracks. Not having enough staff to help them will only exacerbate this problem. Ensuring the continuum of care will also help disrupt the pipeline to prison in which many foster children end up. This is a failure of the system, but it is one we can help solve."

2) **CCFs and Background Checks**: CDSS's Community Care Licensing Division (CCLD) licenses and oversees community care facilities—including child care facilities, foster family homes, and residential care facilities for the elderly—throughout California. These facilities typically provide non-medical care and supervision for children and adults in need, including individuals with disabilities, older adults in residential care, children in foster care, and

children in child day care facilities. As of June 2021, there are 67,622 licensed CCFs in the state with total capacity to serve approximately 1.4 million Californians. All facilities licensed by CDSS must meet minimum licensing standards, as specified in California's Health and Safety Code and Title 22 regulations. CDSS conducts pre- and post-licensing inspections for new facilities and unannounced visits to licensed facilities under a statutorily required timeframe.

CDSS is responsible for obtaining state and federal criminal history information on any individual applying for a license, certification, registration, or approval; or seeking to work or be present in a licensed facility for adults. CDSS is responsible for processing and approving individuals to work in and around these children. For the children's residential program, there are two forms separated by placement. One for Resource Family Approval (RFA), and the other for foster placements which include group homes, short-term residential therapeutic programs, temporary housing placements, and temporary shelter care facilities.

According to CDSS, the current average wait time is approximately 60 days if no criminal record is found. If a criminal record is present, the case enters the criminal exemption process, extending the total processing time to an average of 120 days. This bill attempts to address long wait times for out-of-state checks after the other elements of clearance are completed by allowing someone to continue working while waiting for out-of-state clearance.

3) **Criminal History Information**: Access to person's summary criminal history information is generally prohibited and only allowed to be disseminated if specifically authorized in statute. "The state constitutional right of privacy extends to protect defendants from unauthorized disclosure of criminal history records. [Citation.] These records are compiled without the consent of the subjects and disseminated without their knowledge. Therefore, custodians of the records, have a duty to 'resist attempts at unauthorized disclosure and the person who is the subject of the record is entitled to expect that his right will be thus asserted.'" (*Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 165-66.)

DOJ is tasked with maintaining state summary criminal history information and requires the Attorney General to furnish state summary criminal history information only to statutorily authorized entities or individuals for employment, licensing, volunteering etc. (Pen. Code, § 11105.) In addition to the specified entities authorized to receive state summary criminal history information, DOJ may furnish state summary criminal history information to other specified employers upon a showing of compelling need for the information and to any person or entity when they are required by statute to conduct a criminal to comply with requirements or exclusions expressly based upon specified criminal conduct. (Pen. Code, § 11105, subds. (a)(13) & (c).)

Local summary criminal history refers to the master record of information complied by any local criminal justice agency pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person. (Pen. Code, § 13300, subd. (a).) Local criminal justice agencies are not allowed to furnish this information except to those specifically authorized in statute. (Pen. Code, § 13300, subd. (b).) Allowing unauthorized access to such records is prohibited and punishable as a misdemeanor. (Pen. Code, § 13302.)

CDSS is statutorily required to seek criminal history information of licensees and other staff, residents, employees and volunteers prior to approval for licensing or employment or placement of residents. (Health & Saf. Code, §§ 1522 and 1569.17.)

According to information provided in the Human Services Committee's analysis of this bill, an applicant or agency typically starts in the Guardian system, which is the online application program CDSS uses for all background checks, including adult programs. After submitting an application, an applicant then gets Live Scan fingerprinted and the information is sent back to the Guardian system. After the fingerprints are received in the Guardian system and, if flagged, CDSS then does a registry research check which can include the Administrative Actions Records System and CACI. Administrative Actions Records System is a database housing information on negative legal actions, and CACI is a system with child abuse information. Once those are finished, CDSS checks if there is a record of arrests and prosecutions (RAP) sheet. If a RAP sheet exists, this means that the individual has a criminal history of some kind, based on the results from the DOJ and/or FBI. CDSS examines criminal history that begins when an applicant turns 18 years of age, regardless if the arrest does not end in a conviction or if the conviction is later dismissed and/or expunged. Depending on whether the arrest or conviction are exemptible under existing law, CDSS will take actions to determine whether an exemption is appropriate.

4) **Argument in Support**: According to *California Alliance of Child and Family Services*, the sponsor of this bill: "To ensure safety of the children and youth, prospective employees must have already cleared rigorous California requirements, including the Department of Justice (DOJ), Federal Bureau of Investigation (FBI), and California Child Abuse Central Index (CACI) checks. At no point would these employees have unsupervised contact with youth until the full background check is complete.

"While federal law under the Family First Prevention Services Act of 2019 (FFPSA) acknowledges these delays, as stated in Section 50745 of the FFPSA, a child abuse and neglect registry maintained by any other state where the applicant has lived within the proceeding five years must only be requested, not completed, before hiring, California law remains outdated and more restrictive than necessary. There is no national database for child abuse registry checks, and each state maintains its own system, often requiring physical mail submissions, checks, and "wet" signatures. Each state's processing time varies. For example, Texas announced in January of this year that their out-of-state child abuse registry check (OCSA) results for other states are on hold until further notice. Without AB 276, the consequences of these delays are devastating to the Children's Residential Programs across California.

. . . .

"AB 276 provides a practical and urgently needed solution to California's children's residential staffing crisis by allowing Children's Residential Agencies, including Short-Term Residential Therapeutic Programs (STRTPs), Community Treatment Facilities (CTFs), and Transitional Housing Programs (THPs), to provisionally hire qualified employees while awaiting their out-of-state child abuse registry check (OCSA). By aligning California law with federal standards and bringing the state in line with best practices from other states, AB 276 will reduce harmful hiring delays while maintaining child safety protections, ensure

foster youth receive stable, high-quality care instead of being placed in unlicensed, inappropriate settings, and allow providers to recruit and retain highly qualified staff without unnecessary administrative roadblocks."

5) **Related Legislation**: AB 277 (Alanis) would require a person who provides behavioral health treatment for a behavioral health center, facility, or program to undergo a background check, as specified. AB 277 is pending hearing in the Assembly Human Services Committee.

6) **Prior Legislation**:

   a) AB 2544 (Low), of the 2023-2024 Legislative Session, was substantially similar to this bill. AB 2544 was held in the Assembly Appropriations' Committee suspense file.

   b) AB 1720 (Holden) Chapter 581, Statutes of 2022, authorized CDSS to grant a simplified criminal record exemption to an applicant seeking a license or position within various community care facilities, as specified.

   c) SB 354 (Skinner), Chapter 687, Statutes of 2021, adopted changes to the criminal background check process during the Resource Family Approval (RFA) process for relatives of children placed in the child welfare system; permitted the court to authorize placement of children with relatives in certain circumstances, regardless of the status of any criminal exemption or RFA.

   d) SB 213 (Mitchell), Chapter 733, Statutes of 2017, streamlined the background check process for prospective and adoptive parents by establishing a list of non-exemptible crimes, a list of crimes for which an exemption may be granted, and a list of crimes for which exemptions must be granted, absent a reasonable belief that the person is not of good character at present.

REGISTERED SUPPORT / OPPOSITION:

Support

California Alliance of Child and Family Services (sponsor)
A Better Way
Allies for Every Child
Association of Community Human Service Agencies
Bill Wilson Center
Boys Republic
California Family Life Center
Casa De Amparo
Casa Pacifica Centers for Children and Families
First Place for Youth
Fosterhope Sacramento
Fred Finch Youth and Family Services
Hillsides
Koinonia Family Services
Newport Healthcare
Olive Crest

Progress Ranch Treatment Services for Children
Seneca Family of Agencies
South Coast Children's Society Dba South Coast Community Services
St Anne's Family Services
Sycamores
Unity Care Group
Vista Del Mar Child and Family Services
Walden Family Services
3 Private Individuals

Opposition

None submitted.

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

Date of Hearing: April 1, 2025
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 394 (Wilson) – As Amended March 27, 2025

SUMMARY: Requires any workplace restraining order issued against an individual who commits battery against, or stalking of, a transit employee, to be enforceable across the entirety of the public transit system where the underlying offense occurred, and expands the heightened criminal penalties that apply to persons that commit battery against certain transit workers to include persons that stalk such transit workers. Specifically, **this bill**:

1) Requires any temporary workplace restraining order or injunction issued against an individual based on a violation of the crime of battery or stalking of a transit official to be enforceable across the entirety of any public transit system where the underlying offense occurred, including all vehicles, stations, stops, and facilities operated by the transit agency.

2) Provides that "unlawful violence," for the purpose of when an employer or collective bargaining representative may seek a temporary workplace restraining order, or order after hearing, on behalf of an employee, includes a violation of the crime of battery or stalking of specified transit officials.

3) Provides that for the purposes of a temporary restraining order or injunction issued against an individual based on a violation of the crime of battery or stalking of a transit official, "public transit system" includes, but is not limited to, a system operated by a transit district, municipal operator, county transportation commission, transportation authority, joint powers authority, or other public transit operator.

4) Provides that a law enforcement agency with jurisdiction over the public transit system shall have the authority to enforce orders, and the system shall be notified of the issuance of the order to assist with enforcement.

5) Expands the heightened criminal penalties that apply to persons that commit battery against certain transit workers to include persons that stalk such transit workers, and expands the persons covered by this crime to include employees and contractors of a public transportation provider.

EXISTING LAW:

1) Workplace Restraining Orders:
   a) Provides that any employer or collective bargaining representative of an employee who has suffered harassment, unlawful violence, or a credible threat of violence from any individual, that can reasonably be construed to be carried out at the workplace, may seek a temporary restraining order and an order after hearing on behalf of the employee. (Cal. Civ. Proc. Code § 527.8, subd. (a).)
   b) Provides that a "temporary restraining order" and "order after hearing" includes:

   i) An order enjoining a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the employee.
   ii) An order enjoining a party from specified behavior that the court determines is necessary to effectuate an order described above. (Cal. Civ. Proc. Code § 527.8, subd. (b)(7).)

c) Provides that upon filing a petition, an employer may obtain a temporary restraining order, for a period not to exceed 25 days, if the employer files a declaration that, to the satisfaction of the court shows:
   i) Reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the respondent, and that great or irreparable harm would result to an employee; or
   ii) Clear and convincing evidence that: 1) an employee has suffered harassment; 2) great or irreparable harm would result to an employee; 3) the course of conduct at issue served no legitimate purpose; and 4) the issuance of the order does not prohibit constitutional, and specified statutory rights. (Cal. Civ. Proc. Code § 527.8, subd. (f).)

d) Provides that in no more than 25 days from the date the petition for a temporary order is granted or denied, a hearing shall be held on the petition. At the hearing, the judge shall receive relevant testimony and make an independent inequity, and if the judge finds by clear and convincing evidence that the respondent engaged in harassment or unlawful violence, or made a credible threat of violence, an order shall issue, for a duration of no more than three years, prohibiting further harassment, unlawful violence, or threats of violence. (Cal. Civ. Proc. Code § 527.8, subd. (f).)

e) Defines "unlawful violence" as any assault or battery, or stalking, as defined, but shall not include lawful acts of self-defense or defense of others. (Cal. Civ. Proc. Code § 527.8, subd. (a)(8).)

2) Stalking:

   a) States that any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for their safety, or the safety of their immediate family is guilty of stalking. (Pen. Code, § 646.9, subd. (a).)

   b) Punishes stalking by imprisonment in county jail for not more than one year, or imprisonment in the state prison, or by two, three, or four years in state prison if a person commits stalking while a temporary restraining order is in effect prohibiting stalking against that same party. (Pen. Code, § 646.9, subds. (a.) & (b).)

3) Battery:

   a) Defines "battery" as the willful and unlawful use of force or violence upon another person, and makes the offense punishable by up to six months in the county jail, by a fine not to exceed $2,000, or by both. (Pen. Code, §§ 242 & 243, subd. (a).)

   b) Provides that when a battery is committed upon any person and serious bodily injury is inflicted upon that person, the offense is punishable as a "wobbler" with a possible

sentence of up to one year in the county jail, or two, three, or four years in the county jail. (Pen. Code, § 243, subd. (d).)

c) Provides when a battery is committed against specified transit workers, and the person who commits the offense knows or reasonably should know that the victim, in the case of an operator, driver, or agent, is engaged in the performance of his or her duties, or is a passenger, the offense shall be punished by up to one year in county jail or a $10,000 fine. (Pen. Code, § 243.3.)

d) Provides if injury is inflicted during a battery against a specified transportation official, as described above, the offense can be charged as a "wobbler" punishable up to a year in county jail or up to a $10,000 fine, or in the state prison for 16 months, or two or three years. (Pen. Code, § 243.3.)

e) Defines, "public transportation provider," for the purpose of the above paragraph, as a publicly or privately owned entity that operates, for the transportation of persons for hire, a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle, including a vehicle operated on stationary rails or on a track or rail suspended in air, or that operates a school-bus. (Pen. Code, § 243.35, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's public transit employees continue to face escalating threats of violence and harassment, creating unsafe conditions for both workers and passengers. Existing laws, such as Penal Code 243.3, provide limited protection, covering only specific transit roles while excluding essential employees like janitors, fare collectors, and station agents. Additionally, the narrow definition of 'transit-related property' under Penal Code 369i limits effective enforcement against trespassing on public transit systems. AB 394 addresses these gaps by broadening legal protections to all transit workers, strengthening trespassing laws, and empowering courts to issue temporary prohibition orders for individuals convicted of violent offenses on transit systems.

   By enhancing safety measures, AB 394 ensures a safer and more welcoming environment for the millions of Californians who rely on public transit—many of whom are from low-income and communities of color. This bill not only improves safety and equity within our transit systems but also contributes to maintaining public confidence, boosting ridership, and supporting a resilient public transportation network for all."

2) **Violence Against Transit Workers**: As noted in the author statement, violence against transit workers is a growing problem. According to the U.S. Department of Transportation "Assaults on transit workers are a significant and growing concern in the transit industry. From 2008 to 2021, the National Transit Database (NTD) documented an average of 241 transit worker assault major events per year, including 192 per year occurring in or on transit vehicles, 44 per year occurring in transit revenue facilities, and five per year occurring in other non-public locations, such as maintenance shops and yards. The number of reported transit worker assaults per 100 million vehicle revenue miles (VRM) increased by an average of eight percent per year from 2008 to 2021—a 121 percent total increase from the 2008

transit worker assault rate. This data may significantly underestimate the true number and rate of assaults on transit workers. Today, NTD reporting requirements focus on the most serious events—those that meet the NTD 'major event' reporting threshold, as defined by the NTD reporting manual."[1]

3) **Effect of this Bill:** AB 394 contains three primary provisions.

First, AB 394 expands the crime of battery against certain transportation officials to include additional transit workers.

Under existing law, battery of specified transportation officials is punishable by up to one year in county jail, a $10,000 fine, or both. (Pen. Code, § 243.3.) In contrast, ordinary battery is punishable by up to six months in county jail. (Pen. Code, §§ 242 & 243, subd. (a).) These additional criminal penalties apply to assault and battery on operators, drivers, or passengers on a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or against a school-bus driver, station agent or ticket agent for the entity providing the transportation. (Pen. Code, § 243.3.) Here, AB 394 creates uniform application of the above transit official battery statute by expanding the crime of battery of a transportation official to also include battery against employees and contractors of a public transportation provider.

Second, this bill creates a new crime of misdemeanor stalking of certain transportation officials.

Under existing law, any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for their safety, or the safety of their immediate family is guilty of stalking. (Pen. Code, § 646.9, subd. (a).) Stalking is generally punishable by imprisonment in county jail for not more than one year, or by "imprisonment in the state prison." (Pen. Code, § 646.9, subd. (a.).) Under existing law, if crime is punishable as a felony, but does not identify a particular sentence, the default prison sentence is 16 months, two years, or three years in state prison. (Pen. Code, § 18.) Here, stalking is punishable as a misdemeanor or by "imprisonment in the state prison." (Pen. Code, § 646.9, subd. (a).) As a result, a person convicted of stalking can therefore be punished by up to a year in county jail or 16 months, two year, or three years in state prison. Further, a person convicted of stalking can face a prison sentence of up to five years, if they commit stalking of person in violation of a specified temporary restraining order, or protective order. (Pen. Code, § 646.9, subds. (a) & (b).)

Here, AB 394 proposes to punish stalking of specific transportation officials by up to one year in county jail, a $10,000 fine, or both. As identified above, stalking is already punishable by up to one year in jail as a misdemeanor or up to three years in state prison as a felony. Creating a new crime of stalking of certain transportation workers, punishable only as a misdemeanor, whereas stalking more generally can be prosecuted as a felony, is arguably

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[1] United States Department of Transportation, *Required Actions Regarding Transit Worker Assault* (Oct. 4, 2022). Available at: https://www.transit.dot.gov/sites/fta.dot.gov/files/2022-10/FTA-Special-Directive-22-21-to-the-Metro-Transit.pdf.

redundant. AB 394 would create lower penalties for a person who stalks certain transportation officials, than for a person who stalks a person generally, which appears to contradict the author's intent to create special protections for transportation officials.

Third, AB 394 expands the restrictiveness of the workplace restraining orders that may be issued against an individual that commits battery against, or stalking of, a transit worker.

Under existing law, any employer or collective bargaining representative of an employee who has suffered harassment, unlawful violence, or a credible threat of violence from any individual, may seek a temporary restraining order, and order after a hearing, behalf of the employee, prohibiting that individual from engaging in harassing or threatening conduct, or coming within a certain distance, of that employee. (Cal. Civ. Proc. Code § 527.8, subd. (a).) Such an order may enjoin a party from harassing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, abusing, telephoning, destroying personal property, contacting, or coming within a specified distance of, or disturbing the peace of, the employee. (Cal. Civ. Proc. Code § 527.8, subd. (b)(7).) Alternatively, an order may enjoin a party from specified behavior that the court determines is necessary to effectuate an order described above. (*Ibid.*) For an order to be issued, a judge must find by clear and convincing evidence that the respondent engaged in harassment or unlawful violence, or made a credible threat of violence, and any potential order shall prohibit further harassment, unlawful violence, or threats of violence. (Cal. Civ. Proc. Code § 527.8, subd. (f).) An order issued after a hearing can last for up to three years. (Cal. Civ. Proc. Code § 527.8, subd. (l)(1).)

Here, an employer or collective bargaining representatives of a transit employee appears to already have the authority to seek such a temporary restraining order on behalf of an employee. This is because, for the purposes of the workplace restraining order statute, an employer includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. (Cal. Civ. Proc. Code § 527.8, subd. (b) (3).)

This bill makes two primary changes to the workplace restraining order statute, as applied to transit officials.

First, it provides that if a temporary workplace restraining order or injunction is issued against an individual based on battery against, or stalking of, a transit worker, the "order shall be enforceable across the entirety of any public transit system where the underlying offense occurred." This would include all vehicles, stations, stops, and facilities operated by the transit agency. For purposes of this bill, transit system would mean a system operated by a transit district, municipal operator, county transportation commission, transportation authority, joint powers authority, or other public transit operator.

This appears to mandate that any workplace restraining orders that are issued against an individual that commits battery against, or stalking of, a transit worker, must apply to the entirety of the public transit system where the underlying offense occurred, irrespective of whether the employee only works at one particular transit facility. Although, the effect is slightly unclear given that the language states that the order "shall be enforceable" transit-wide, rather than the order "must or shall apply" transit-wide.

Additionally, this bill provides that a law enforcement agency with jurisdiction over the public transit system shall have the authority to enforce orders, and the system shall be notified of the issuance of the order to assist with enforcement. In practice, this suggests that if an individual commits battery against, or stalking of, a transit worker at a single transit station, any subsequent restraining order issued by a court could be enforced by law enforcement to prevent that person from using *any portion* of the transit system. As discussed more below, this limits judicial discretion over the restrictiveness of such orders, which functions to prevent offenders from engaging in specific conduct against certain employees.

Second, AB 394 seeks to expand the definition of "unlawful violence," for the purpose of when an employer may seek a temporary workplace restraining order on behalf of an employee, to include any violation of the crime of stalking or battery of a specified transit official.

4) **Restricts Judicial Discretion Over Restraining Orders Issued Based on a Battery or Stalking of a Transportation Official:** This bill's provision requiring any workplace restraining order issued against an individual who batters or stalks a transit employee, to be enforceable across the entirety of the public transit system raises several concerns. Primarily, this limits judicial discretion over the scope of conduct that may be prohibited by a given restraining order.

The value of judicial discretion has long been recognized, as it permits courts to tailor the sentence in the appropriate manner to the facts of the crime, the person's history, and the person's current circumstances. As stated by the California Supreme Court, "[*s]ociety receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case*." (*People v. Williams* (1970) 30 Cal.3d 470,482, citation and internal quotation marks omitted.) "Only the trial judge has the knowledge, ability and tools at hand to properly individualize the treatment of the offender." (*Ibid.*) While this bill's restraining order context pertains to civil restraining orders, rather than criminal sentencing, the function of judicial discretion as described above, is nonetheless informative.

Under the current workplace restraining order framework, if a judge finds by clear and convincing evidence that an individual engaged in prohibited conduct, a judge shall issue an order "prohibiting further harassment, unlawful violence, or threats of violence." (Cal. Civ. Proc. Code § 527.8, subd. (f).) Judges can issue a variety of restraining orders, depending on the type of conduct necessitating the order. These include an order enjoining a party from harassing, battering, or stalking an employee, or from contacting "or coming within a specified distance of, or disturbing the peace of, the employee." Alternatively, an order may enjoin a party from specified behavior that the court determines is "necessary to effectuate" an order described above. (Cal. Civ. Proc. Code § 527.8, subd. (b)(7).)

Existing law gives a judge discretion to issue a restraining order against an individual that is tailored to the particular job of the affected employee. For example, if an individual commits battery against a bus driver who drives every transit route operated by the transit entity, then a court may issue an order prohibiting that individual from coming within a certain distance of that employee, in effect prohibiting the offender from approaching any bus being driven by the employee. Alternatively, if a particular transit employee performs administrative duties at only one train station, that court can prohibit the restrained individual from coming within a certain distance of that employee and station.

Here, this bill would require an order issued pursuant to this bill to be enforceable by law enforcement across an entire transit system, even if the affected employee only works at one given location. For example, take a transit employee who performs administrative duties at one facility. If an individual battered that employee and their employer sought a restraining order, AB 394 would require that order be enforced across every vehicle, station, stops, and facilities operated by that transit agency.

Given that courts have discretion to tailor a restraining order to the needs of the particular employee, including transit employees, it is unclear why an order issued pursuant to this bill should automatically be mandated to apply to the entirety of a transit system. This would impose significant, and unnecessary travel restrictions, for the restrained person, potentially limiting access to life necessities such as food, medical care, and employment. Further, it would not provide any additional protections in situations where an employee only works at one given facility, or otherwise does not work at every single station or route operated by the transit entity. This is particularly true for employees of large transit systems that operate across multiple counties and have dozens of stations. For example, the Bay Area Rapid Transit ("BART") system operates in five counties, has 131 miles of track, and 50 stations.[2] Should an employee convicted of battery of a transit employee who works at a single BART facility in Santa Clara be prohibited from utilizing the entirety of BART transit in San Francisco?

The author may wish to consider amendments that authorize, rather than mandate, a particular restraining to apply transit-wide, subject to a judge's discretion.

5) **Creates Inconsistent Treatment Within the Workplace Violence Restraining Order Statute.** This bill's mandate that a restraining order issued against an individual who batters or stalks a transit employee must be enforceable across the entirety of the public transit system arguably creates some inconsistencies within the workplace restraining order statute. Primarily, the workplace restraining order statute generally functions to protect *specific employees from certain harmful conduct*. For example, the workplace restraining order authorization permits employers to seek an order "on behalf of an employee." (Cal. Civ. Proc. Code § 527.8, subd. (a).) Similarly, the types of orders that may be issued include orders enjoining a party from engaging in harassing, violent, or stalking *conduct*, among others, or prohibiting contact with, "or coming within a specified distance of…the employee." (Cal. Civ. Proc. Code § 527.8, subd. (b)(7).) Alternatively, an order may enjoin a party from "specified behavior" that the court determines is necessary to effectuate such an order. (*Ibid.*) Further, upon a finding that an individual engaged in prohibited conduct, a judge shall issue an order prohibiting certain conduct, specifically – "further harassment, unlawful violence, or threats of violence". (Cal. Civ. Proc. Code § 527.8, subd. (f).)

This bill, on the other hand, requires any order issued under this bill to be enforced across every location operated by a transit entity. As noted earlier, this would appear to apply irrespective of where the employee at issue works. Further, this functions as a broad prohibition applicable to many locations, rather than prohibiting specific conduct. This arguably is inconsistent with the authorization for an order to prohibit a person from "coming

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[2] Bay Area Rapid Transit, *About* (accessed March 26, 2025), available at: https://www.bart.gov/about

within a specified distance of an employee" as this would not be tailored to where the particularly employee works, but to the entirety of the transit system itself. Additionally, it is unclear how a transit-wide ban would be "necessary to effectuate" a given orders prohibitions where an employee only works at a single facility.

Further, this broad-brush approach arguably singles out transit employees for broader protections, while other types of employees are arguably just as deserving. For example, the mandate proposed by this bill could be just as applicable to employees, who responsibilities may also involve travel between different branches or offices owned by their employer.

6) **Restricting Access to Food, Medical Care, and Employment Opportunities.** This bill's proposed application to the entirety of transit systems may create a barrier for persons that utilize public transportation systems to access medical services, visit friends and family, go to food banks, and search for jobs. As previously noted, this burden will be most significant for a person who batters an employee for a very large transit agency that spans multiple counties. Alternatively, it may be just as burdensome in counties that only have one primary means of public transportation. The author may wish to consider either preserving judicial discretion over the scope of the orders that may be issued by this bill, or otherwise create a hardship exemption[3] or permit limited use of a transportation agency for medical care or other urgent needs.

7) **Numerous Penalties Available to Address the Conduct this Bill Seeks to Prohibit**. In addition to the broad scope of restraining order authorized by this bill, there are also numerous criminal consequences that can be leveraged against an individual who commits violence against transit workers. These considerations are more informative to potential restraining orders issued on the basis of battery, rather than stalking, of a transit worker.

a) *Criminal Penalties*

There are multiple battery statutes that can be utilized to prosecute battery of a transit worker. First – general battery under Penal Code section 243(a*)*. Battery is the crime of "any willful and unlawful use of force or violence upon the person of another." (Pen. Code, § 242.) Battery in general is punishable by up to up to six months in the county jail, by a fine not to exceed $2,000, or by both.

Second – aggravated battery. Battery committed against any person that inflicts serious bodily injury, is punishable by up one year in the county jail, or two, three, or four years in the county jail. (Pen. Code, § 243, subd. (d).)

Third, as noted earlier, there are heightened penalties for battery against transit workers, that enable an offender to be charged with an additional six months in jail, for a maximum sentence of up to one year in jail or fine up to $10,000. (Pen. Code, § 243.35.) Further, if any injuries are inflicted during a battery against a specified transportation official, as described above, the crime is punishable by imprisonment in a county jail not exceeding one year or in the state prison for 16 months, or two or three years, as well as up to a $10,000 fine. (Pen.

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[3] *See e.g.* AB 3209 (Berman), Chapter 169, Statutes of 2024, requiring a court, when determining whether to issue a specified retail crime restraining order, to consider whether the retail establishment is the only place that sells food, pharmaceuticals, or other basic life necessities within one mile of where the individual resides, or otherwise creates undue hardship for the individual.

Code, § 243.3.) As such, a person who punches or shoves a transit worker, resulting in any injury, can already be subject to multiple years of imprisonment.

b) Protective Orders

Additionally, multiple legal and statutory basis also authorize protective orders against a person convicted of battery against a transit worker.

First, a protective order can be issued as a condition of probation. This is because courts have broad discretion to fashion and impose additional probation conditions that are particularized to the defendant. (*People v. Smith* (2007) 152, Cal.App.4th 1245, 1249.) Specifically, a valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) As such, a court may issue a protective order against a person convicted of battery against a transit employee.

Second, existing law also authorizes certain transit agencies to directly issue an order prohibiting a person who commits specified violations from entering transit property and facilities. (Pub. Util. Code, § 99171.) This statutory authority has been issued to SacRT, Metro, FAX, BART, VTA, and the Santa Monica Department of Transportation. Specifically, such a prohibition order may be issued against a person who has committed repeated infractions. Specifically, they can be issued against a person who, on at least three separate occasions within a period of 90 consecutive days, is cited for an infraction committed in or on a vehicle, bus stop, or light rail station of the transit district or property upon which BART owes policing responsibilities. The duration of a prohibition order associated with infractions cannot exceed 30 days for a first order, 90 days for a second order within one year, and 180 days for a third order within one year. (*Ibid.*)

They can also be ordered for first-time misdemeanors and felonies and broadly apply to arrests, as well as convictions. A prohibition order can be made against a person arrested or convicted for any misdemeanor or felony committed in or on a vehicle, bus stop, or light rail station of the transit district, for acts involving violence, threats of violence, lewd or lascivious behavior, or possession for sale or sale of a controlled substance, as well as a person convicted of loitering with the intent to commit specified drug offenses. (Pub. Util. Code § 99171, subd. (a)(1).) The duration of such a prohibition cannot exceed 30 days if issued pursuant to an arrest for a misdemeanor or felony offense. Upon conviction for the offense, the order may be extended to a total of 180 days for a misdemeanor and one year for a felony.

8) **Argument in Support**: According to the *California Transit Association*, "Transit employees frequently face threats of violence – and these incidents have steadily climbed over the past several years. Unfortunately, existing laws intended to protect transit employees have proven too narrow and insufficient. AB 394 promotes safer transit environments for both riders and workers in two keys ways. First, the bill expands existing law to protect all transit employees against assaults. Second, AB 394 clarifies that a transit agency may seek a temporary restraining order against a perpetrator for a violation of Penal Code Section 243.3, and that the restraining order shall apply across the entirety of the transit system where the offense occurred.

"Every day, transit workers are spit at, stabbed, hit, sexually assaulted and more. Unfortunately, the vast majority of incidents have historically not even made it into the National Transit Database, which until 2023 only recorded major assaults – meaning they resulted in a fatality or injury requiring medical transport. Major assaults alone on transit workers went up 73% from just 2018 to 2023.

"These incidents have directly impacted daily operations, and as a result, many agencies throughout the state are experiencing severe operator and employee shortages. This has also impacted riders' feelings of safety on public transit systems, and is frequently cited as a leading reason members of the public avoid utilizing public transit.

"CTA has been, and continues to be, a firm advocate of prioritizing public transit and the safety of transit agency employees. For these reasons, we are proud to co-sponsor this common sense measure."

9) **Argument in Opposition**: According to *Californians United for a Responsible Budget*, "While protecting transit operators is an important public policy measure, AB 394 is overly broad and will have myriad negative consequences by eliminating essential access to transportation, employment, healthcare, and housing, which are all "key social determinant[s] of health" and rehabilitation and reentry following incarceration.

"Following a criminal conviction for battery "against an employee or contractor of a public transportation provider," AB 394 creates a pathway for criminalization of using vital transit services – by allowing a subsequent prohibition on the use of public transportation…"

"Despite the car dependence of many Californians, 2.76 million Californians are carless and approximately 2.09 million people utilize public transit. Carless households are disproportionately people of color and low-income. Without vehicles, these households typically spend more time on travel and often have to travel further to access services. Since these same communities are disproportionately represented in both criminal charging and incarceration, AB 394 will disproportionately impact low-income people of color reliant on public transportation.

"As a result of AB 394, many people will be foreclosed from any form of transportation, and it is therefore likely to exacerbate cycles of poverty among California's most vulnerable communities."

10) **Related Legislation**: None.

11) **Prior Legislation**:

a) AB 2824 (McCarty), of the 2023-2024 Legislative session, would have expanded the criminal penalties associated with committing battery against operators, drivers or passengers of specified public transportation vehicles, to include employees and contractors of a public transportation provider. AB 2824 was never heard in this committee.

b) SB 428 (Blakespear), Chapter 286, Statutes of 2023, expands the circumstances under which employers can seek civil restraining orders on behalf of their employees.

c) SB 553 (Cortese), Chapter 289, Statutes of 2023, authorizes a collective bargaining representative of an employee who has suffered unlawful violence from any individual, to seek a temporary restraining order and an order after hearing on behalf of the employee(s) at the workplace.

d) AB 1417 (Allen), Chapter 189, Statutes of 2024, authorized the Santa Monica Department of Transportation to issue prohibition orders to any person cited for committing a specified act.

e) AB 1735 (Low) Chapter 69, Statutes of 2023, added VTA to the transit districts authorized to issue prohibition orders to passengers committing certain illegal behaviors.

f) AB 1337 (Lee), Chapter 534, Statues of 2021, extended the authority of specified transit district entities to issue prohibition orders to include the property, facilities and vehicles on which it owes policing responsibilities to a local government pursuant to agreement, and expands current law to make entering or remaining on those properties without permission a misdemeanor.

g) AB 730 (Quirk), Chapter 46, Statutes of 2017, repealed the sunset on the law that allows BART to issue prohibition orders to passengers committing certain illegal behaviors, making BART's authority to do so permanent.

REGISTERED SUPPORT / OPPOSITION:

Support

AAA Northern California, Nevada & Utah
Arcadia Police Officers' Association
Automobile Club of Southern California
Bay Area Council
Brea Police Association
Burbank Police Officers' Association
California Conference Board of The Amalgamated Transit Union
California District Attorneys Association
California Federation of Labor Unions, Afl-cio
California Police Chiefs Association
California Reserve Peace Officers Association
California Safety and Legislative Board of Smart – Transportation Division (smart – Td)
California School Employees Association
California Teamsters Public Affairs Council
California Transit Association
Claremont Police Officers Association
Cslb-blet-ibt
Culver City Police Officers' Association
Fullerton Police Officers' Association
Los Angeles County Metropolitan Transportation Authority
Monterey-salinas Transit (MST)
Murrieta Police Officers' Association

Newport Beach Police Association
Orange County Transportation Authority
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Assocation
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Sacramento Regional Transit District
San Bernardino County Transportation Authority
San Mateo County Transit District (SAMTRANS)
Santa Ana Police Officers Association
Southern California Regional Rail Authority (METROLINK)
Streets for All
Transport Workers Union of America, Afl-cio
Transportation Communications Union / International Association of Machinists and Aerospace Workers/ Tcu/iam Local 1315

Oppose

ACLU California Action
All of Us or None Los Angeles
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
LA Defensa
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
San Francisco Public Defender
Western Center on Law & Poverty, INC.

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

Date of Hearing: April 1, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 458 (Stefani) – As Introduced February 6, 2025

As Proposed to be Amended in Committee

SUMMARY: Requires a bidder for a contract with a state agency for the procurement of firearms, ammunition, or firearm accessories to take defined actions. Specifically, **this bill**:

1) Requires a bidder for a contract with a state agency for the procurement of firearms, ammunition or firearm accessories, during the bidding process, on an annual basis, and upon request of the Department of General Services (DGS) or a state agency, to do all of the following:

   a) Comply with all applicable local, state, and federal laws, including any licensing, certification, or permitting laws.

   b) Provide proof and a copy of any required valid license, permit, or certificate to the appropriate state agency.

   c) Provide materials documenting both of the following:

      i) The number of trace requests the bidder or contractor received from the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for each year within the past five calendar years; and

      ii) The time between the sale of a firearm subject to a trace request and the crime that generated the trace request, if known.

   d) Provide materials documenting any thefts or losses from the bidder's or contractor's premises for the past five calendar years.

   e) Provide a copy of the two most recent inspection reports of any firearm, ammunition, or firearm accessory inspection conducted by a federal, state, or local agency, including, but not limited to, any follow-up materials documenting administrative actions taken by the agency.

   f) Disclose any violation found from any type of inspection conducted by a federal, state, or local agency during the two most recent firearm, ammunition, or firearm accessory inspections.

   g) Provide any materials documenting the bidder's or contractor's corrective actions taken in response to a finding of noncompliance or violation of any federal, state, or local firearm, ammunition, or firearm accessory law, regulation, or other requirement.

h) Provide, in writing, any practices or policies, including, but not limited to, any amendments to those practices or policies made during the solicitation process, in effect or adopted by the bidder or contractor, or required by any contract term that do any of the following:

i) Prevent, detect, or screen for the transfer of firearms, ammunition, or firearm accessories to straw purchasers or firearm traffickers.

ii) Prevent, detect, or screen against the sale of firearms, ammunition, or firearm accessories to an individual prohibited from possessing a firearm by federal law, state law, local law, or court order.

iii) Prevent, detect, or document the theft or loss of firearms, ammunition, or firearm accessories.

iv) Train employees or subcontractors to ensure compliance with all applicable federal, state, or local firearms, ammunition, or firearm accessories laws and regulations.

v) Assist law enforcement agencies in the investigation or prevention of criminal access to firearms, ammunition, or firearm accessories. Nothing in this subparagraph requires any bidder or contractor to assist law enforcement in a criminal investigation without notice.

vi) Operate a digital video surveillance system.

i) Agree not to sell unserialized gun build kits or firearm precursor parts, including, but not limited to, unserialized firearms, unserialized unfinished frames, and unserialized unfinished receivers.

j) Provide a written, signed statement expressing that the seller or bidder is and will remain in compliance with any applicable federal, state, or local law related to firearm precursor parts.

2) Requires a state agency to reject a bid from a bidder or cancel a contract with a contractor if either of the following conditions is met:

a) The bidder or contractor has not complied with this section; or

b) The state agency or department has determined, using a scoring system, that the bidder or contractor has fallen below the minimum score required for contracting with the State.

3) Mandates that a state agency shall not waive the requirements of this section.

4) States that the department (DGS?), in coordination with the Department of Justice, shall develop processes and procedures to implement this section that include, but are not limited to, a process to administer and assess a bidder's or contractor's compliance with the requirements of this section, including:

i) A prequalification process to prequalify potential bidders.
ii) A scoring system to be used in contracting or purchasing that evaluates a bidder's or contractor's public safety values relating to firearms, ammunition, and firearm accessories.

iii) Terminating contracts for contractors found to not be in compliance with the terms of this section.

5) Provides the following definitions:

a) "Ammunition" means one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles, including, but not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, ammunition feeding device, or projectile capable of being fired from a firearm with a deadly consequence.

b) "Firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion.

c) "Contractor" means any person, firm, corporation, or partnership, or any combination thereof, who enters into a contract or agreement with a state agency.

d) "Firearm accessory" means a supplementary item or component designed to do specific things, as defined.

e) "Firearms precursor parts" means any forging, casting, printing, extrusion, machined body or similar article that has reached a stage in manufacture where it may readily be completed, assembled or converted to be used as the frame or receiver of a functional firearm, or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted.

f) "State agency" means any office, officer, department, division, board, bureau, or commission of the state.

EXISTING FEDERAL LAW:

1) Provides that no state shall pass any law impairing the obligation of contracts. (U.S. Const., art. I, Sec. 10, cl. 1.)

2) Provides that Congress shall have the power to regulate commerce with foreign nations, among states, and with the Indian tribes. (U.S. Const., art. I, Sec. 8, cl. 3.)

EXISTING STATE LAW:

1) Provides that a law impairing the obligation of contracts may not be passed. (Cal. Const. art. I, § 9.)

2) States that all contracts for goods and services above $25,000 shall be made or entered into with the lowest responsible bidder, unless otherwise determined by the needs of the agency or direction from the DGS. (Pub. Cont. Code, § 10301.)

3) Provides that in cases of emergency where immediate purchase of goods without bid is necessary for the protection of the public health, welfare, or safety, whenever the department contracts for goods in excess of $25,000, or a higher amount as established by the director, the DGS shall advertise in the California State Contracts Register the availability of its solicitation, and interested suppliers, upon request, shall be furnished with copies of the solicitation. (Pub. Cont. Code, § 10302.)

4) States that DGS shall adopt, publish and apply uniform standards of rating bidders, on the basis of questionnaires and required statements, with respect to contracts upon which each bidder is qualified to bid. (Pub. Cont. Code, § 10303.)

5) Provides that DGS may remove a bidder who has demonstrated a lack of reliability in complying with and completing previously awarded contracts with the state, based upon his or her performance on contracts previously been awarded by the state. (Pub. Cont. Code, § 10303.)

6) Requires the director to establish statewide acquisition standards, the purpose of which shall be to ensure the necessary quality of goods acquired by or under the supervision of the department and to permit the consolidation of acquisitions in order to effect greater economies in state contracting. (Pub. Cont. Code, § 10307.)

7) Establishes that every acquisition of goods in excess of $100 for any state agency shall be made by or under the supervision of DGS. However, the state agency may specify the quality of the goods to be acquired. (Pub. Cont. Code, § 10308.)

8) Provides that if the agency is of the opinion the interests of the state would not be served by the acquisition of goods of a lesser quality or different than that specified by the agency, the agency may request a hearing before DGS and the department shall determine which goods will best serve the interests of the state, whereupon the department shall issue a contract for the goods specified by the department. (Pub. Cont. Code, § 10308.)

9) Requires that DGS shall delegate purchasing authority, as defined, to any state agency that does all of the following:

    a. Designates an agency officer as responsible and directly accountable for the agency's purchasing program.

    b. Establishes written policies and procedures, including procedures for ensuring and documenting competitive purchasing, complying with purchasing standards, inspecting acquired products for compliance with specifications, reporting contractor failures to deliver products as specified in contracts, ensuring that agency contracting personnel are free from conflict of interest, and complying with other provisions of law as the department may require.

    c. Establishes procedures for complying with the provisions of the Small Business Procurement and Contract Act.

d. Establishes policies for training personnel in purchasing law and procedures, controlling and reviewing purchasing practices, auditing purchasing activities, and delegating purchasing authority within the agency.

e. Reports the data to the office that the department may require. (Pub. Cont. Code, § 10333, subd. (a)(1)-(5).)

10) When it is in the best interests of the state, DGS may negotiate amendments to the terms and conditions of existing contracts for goods and services, whether or not the original contract was the result of competition, on behalf of itself or another state agency. (Pub. Cont. Code, § 6611, subd. (b).)

11) Provides that if the director deems it is for the best interests of the state, he may, on the refusal or failure of the successful bidder to execute the contract, award it to the second lowest responsible bidder. (Pub. Cont. Code, § 10182.)

12) States that if the director deems the acceptance of the lowest responsible bid or bids is not for the best interests of the state, after stating his or her reasons for rejecting the bid or bids, the director may reject all bids and proceed by day's labor or advertise for other bids in the manner required by this part. (Pub. Cont. Code, § 10185.)

13) Defines "ammunition" as one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles, but does not include blanks. (Pen. Code, § 16150, subd. (a).)

14) Defines "firearm" as a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion. (Pen. Code, § 16520, subd. (a).)

15) Defines "firearms precursor part" as any forging, casting, printing, extrusion, machined body or similar article that has reached a stage in manufacture where it may readily be completed, assembled or converted to be used as the frame or receiver of a functional firearm, or that is marketed or sold to the public to become or be used as the frame or receiver of a functional firearm once completed, assembled or converted. (Pen. Code, § 16531, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The State of California has the opportunity to use the power of its purse to incentivize compliance with the laws and implementation of safe business practices for firearms vendors vying for state procurement contracts. Firearms vendors have the ability to promote public safety and help law enforcement prevent gun trafficking and gun violence. Firearm vendors can do this by creating and implementing policies to prevent, detect, and screen for straw purchasers or firearm traffickers, preventing sales to prohibited individuals, protecting against the theft of guns and ammunition, training vendor employees, and by having reasonable policies designed to ensure maximum compliance with state and federal laws. AB 458 takes the important step of ensuring that all State agencies and departments that purchase firearms, ammunition, or firearms accessories

have the information necessary to assess whether potential vendors are in compliance with applicable laws and use the safest business practices shown to reduce the likelihood of trafficking, gun crime, and violence.

2) **Effect of the Bill**: This bill would reshape the State of California's procurement practices as it relates to firearms, ammunition, and firearms accessories.

The author notes a recent Brady campaign report on public agency firearms procurement practices as one of the reasons this bill is needed. The report notes that $18 million of California taxpayer funds was spent at a dealer with a relatively poor compliance history with the ATF. This is a substantial sum and taxpayers should expect that their dollars be used in the most responsible possible ways. The report details another seller with a less desirable compliance history being responsible for multiple document control violations of federal regulations and unlawfully possessing banned firearms. Where more efficient and responsible expending of taxpayer dollars is possible, it is not unreasonable to work towards implementing that possibility.

The report goes on to state evidence that companies with a history of noncompliance with federal firearms laws increase the likelihood that firearms from that dealer's inventory will be found during a criminal investigation. The report found "when ATF inspected the 1% of gun dealers that supplied almost 60% of crime guns nationwide, it found that 75% of these dealers had violated federal law, including significant recordkeeping violations and participation in sales to potential gun traffickers and prohibited persons. In comparison, when ATF inspected a random sample of dealers, the number that were found to be noncompliant dropped to 37%."

As an initial matter, this ATF study was published in November 2000, nearly 25 years ago. The report is not clear about the connection being made with the data. If it is already known that the 1% of least compliant businesses contribute to 60% of the "crime guns nationwide", then a correlation with firearms showing up at crime scenes could be reasonably predicted with that data alone. Assuming that data is known, it could be argued that procurement laws would not be as effective at breaking this correlation as what could be accomplished through more rigorous regulatory enforcement. Based on this example, it is arguably more clear that this bill's efforts to better regulate the State's procurement of firearms could help the State in preventing firearms purchases from contractors with a more checkered compliance history and therefore, the *State's* purchases would be less likely to be found at a crime scene.

Other parts of the report create a somewhat clearer picture for how more effective procurement can positively impact public safety. The report details the results from a New York City lawsuit against regional firearms dealers that had an unusually high number of guns sold recovered at crime scenes. After implementation of better compliance procedures, a follow up study found an 84% decrease in the likelihood of those same dealers' guns being found at crime scenes. While this creates an argument for better compliance practices being correlated with fewer guns found at crime scenes, the improved outcome here was the result of using the threat of legal sanctions to produce compliance, not using procurement standards to produce compliance.

This report does make a relatively clear link between more compliant firearms dealers being connected with a lower likelihood of the compliant dealers' firearms being found at a crime

scene or during a criminal investigation. The connection between procurement laws leading to fewer firearms being found at a crime scene or during a criminal investigation is not as clear from this report. To secure more clarity with this connection, it could be helpful to know whether strong procurement laws lead to more compliant dealers. Not having that data just yet, however, is understandable given the novelty of the legislative idea and the inability to secure data from another state because it appears there are no states with this type of law on the books.

It is not clear whether this bill will accomplish all of its intended policy goals, but it could lead to a more efficient and responsible use of taxpayer dollars.

3) **The Contracts Clause:** This bill would establish significant contractual regulations for purchasing firearms. The US Constitution states that "no state shall . . . pass any . . . law impairing the obligation of contracts." (U.S. Const., art. I, Sec. 10, cl. 1.) Similarly, the California Constitution states that "A . . . law impairing the obligation of contracts may not be passed." (Cal. Const. art. I, § 9.) The Court has advised, "[t]he laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it." (*Wood v. Phillips* (1941) 313 U.S. 362, 370.) As Justice Holmes stated, however, "One whose rights . . . are subject to state restriction, cannot remove them from the power of the State by making a contract about them." *(Hudson County Water Co. v. McCarter* (1908) 209 U.S. 349, 357.) In a case where the Court found states had some power to pass laws that impact private contracts, they also wrote, "[t]he obligations of a contract are impaired by a law which renders them invalid, or releases or extinguishes them . . . ." (*Home Building. & Loan Assn. v. Blaisdell* (1934) 290 U.S. 398, 431.)

The Court applies a two-part test to determine whether a law impairs a contract. (*Sveen v. Mellin* (2018) 584 U.S. 811.) The first part of the test asks whether state law must operate as a "substantial impairment" of a contractual relationship. (*Ibid.*) To determine whether a substantial impairment has occurred, the Court considers the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights. (*Ibid.*) The second part says if substantial impairment is present, then the means and ends of the legislation is analyzed to determine whether the impairment violates the Contracts Clause. (*Ibid.*) Here, courts evaluate whether the state law is an appropriate and reasonable means of advancing "a significant and legitimate public purpose." (*Energy Reserves Group, Ltd. v. Kansas Power and Light Co.* (1983) 459 U.S. 400, 411.)

The requirements under this bill as applied to new contracts would almost certainly not implicate the Contracts Clause. Any attempted retroactive application of the law likely would implicate the Contracts Clause. Because this bill purports to include relatively significant changes to procurement laws, there could also be concern that the State could use its bargaining power to get new contracts, rather than performing until the expiration of the original contract. This could upset the reasonable expectations of sellers. Due to the uncertain reach of the Contracts Clause, it is unclear whether some of the provisions of this bill could operate as a substantial impairment of a contractual obligation.

Ultimately, whether application of this bill would implicate the Contracts Clause is unclear.

4) **The Dormant Commerce Clause:** This bill would impact firearms businesses by establishing various requirements to enter into firearms contracts with the state.

The dormant Commerce Clause is a constitutional rule read into the Commerce Clause. The Supreme Court has interpreted the Commerce Clause to mean any state law that puts unreasonable restrictions on interstate commerce, even in areas without congressional regulation, are unconstitutional.[1]

The Supreme Court has identified two principles for dormant Commerce Clause analysis: 1) states may not discriminate against interstate commerce, and 2) states may not take actions that are facially neutral but unduly burden interstate commerce.[2] The Court has also established an exception to the dormant Commerce Clause for states participating in the market. (*South-Central Timber Development, Inc. v. Wunnicke,* (1984) 476 U.S. 82, 93.)

The market-participant exception provides that where states are acting as a market participant, *rather than as a market regulator*, the dormant Commerce Clause is inapplicable. (*Ibid.*) In *Wunnicke,* the Court wrote, "The limit of the market participant doctrine must be that it allows a State to impose burdens on commerce within the market in which it is a participant, but allows it to go no further. The State may not impose conditions, whether by statute, regulation, or contract, that have a substantial regulatory effect outside of that particular market." (*Id.* at p. 101.)

This bill does not necessarily create a directly similar situation to that in the *Wunnicke* case. The State would be acting as a purchaser, but would not be attempting to control a subsequent buyer's post-purchase behavior. Instead, the State would be the buyer arguably attempting to regulate post-purchase behavior of its *sellers*. What could be a concern, more similar to *Wunnicke*, is the impact of this bill could be the State employing these laws not just as a market participant, but as a regulator of downstream and unrelated affairs.

The dormant Commerce Clause may not even reach the market participant stage. This bill would put regulations on an entire industry but only in a specific setting, which is when a business in the industry desires to do business with the State. There is no requirement that any firearms dealer or manufacturer do business with the State. An argument implicating the dormant Commerce Clause must show discrimination and burden regarding firearms-related products in interstate commerce. Because the bill arguably would only impact state dealers and manufacturers at home, and not necessarily the flow of firearms-related goods into and out of the state, the constitutional violation may not be implicated. With this said, if the burden of the bill is so substantial as to have an impact on the flow of these goods into or out of the State, a constitutional violation seems possible, even if unlikely. Whether the reach of this bill is sufficiently extensive that it sufficiently distorts the market and interstate flow of firearms, ammunition, and other firearms-related goods remains uncertain.

Whether this bill's provisions would violate dormant Commerce Clause is likewise unclear.

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[1] *ArtI.S8.C3.7.1 Overview of Dormant Commerce Clause*, Library of Congress <https://constitution.congress.gov/browse/essay/artI-S8-C3-7-1/ALDE_00013307/#ALDF_00022555> [as of Mar. 25, 2025].
[2] *Ibid.*

5) **Additional Considerations:** Language in the bill applying to amended, renewed, and extended contracts makes it unclear whether the bill's provisions could create retroactivity implications. If an existing contractor and the State agree to an amendment to a contract, would the bill's provisions apply only to the amendment or to the entire contract? This bill potentially could incentivize the State and sellers to leave outdated contracts, or contract provisions, in place to avoid the new requirements.

6) **Argument in Support:** According to the *Silicon Valley Alliance for Gun Safety*, "Research has shown that California law enforcement agencies spend millions of taxpayer dollars buying firearms from manufacturers and dealers with repeated violations of federal firearm regulations. We ask California residents to purchase firearms and ammunition responsibly. Shouldn't the same standard be required of our law enforcement agencies?

   "AB 458 will ensure that firearm vendors who sell to government agencies are vetted for compliance with state and federal regulations, implementation of anti-straw purchase policies, inspection histories, and use the safest business practices shown to reduce the likelihood of trafficking, gun crime, and violence.

   "In 2019, New Jersey's governor issued an executive order requiring responsible firearm procurement for government agencies. This year, New Jersey and Colorado have similar bills before their legislators.

   "In California, Los Angeles, San Francisco, Oakland and San Diego recently passed local legislation requiring government agencies to only purchase firearms and ammunition from responsible dealers. We need a uniform state law that applies throughout California. Let's continue to be a leader in gun safety and require our government agencies to set the example for responsible firearm purchasing."

7) **Argument in Opposition**: According to the *Gun Owners of California*, "One of the most troubling aspects of this bill is its reliance on subjective criteria, specifically requiring contractors to be 'aligned with the state's public safety values.' Public safety values are not concretely defined, and their interpretation can change over time, leading to inconsistent enforcement and potential discrimination against law-abiding businesses. This arbitrary standard opens the door for unfair contract rejections based on political motivations rather than factual compliance with the law. A so-called 'scoring system' to evaluate vendors' compliance with vague public safety values is eerily reminiscent of the social credit system employed by Communist China, where subjective government approval dictates business success or failure.

   "Furthermore, the bill suggests that firearm dealers may be engaging in unethical behavior by requiring them to disclose past ATF trace requests and regulatory infractions, regardless of intent or resolution. If a firearm dealer were truly engaged in unlawful activity, their Federal Firearms License (FFL) would have already been revoked by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Many of the regulatory infractions cited in studies supporting this bill were collected over a 20 period and often consist of minor paperwork errors which are common, unintentional, and not indicative of willful disregard for the law. Punishing businesses for bureaucratic missteps rather than actual misconduct is both unreasonable and unfair.

"Finally, AB 458 has the potential to waste taxpayer dollars by limiting public agencies' ability to choose vendors that best align with their budgetary constraints. By creating additional layers of compliance, the bill could exclude cost-effective and reputable dealers, forcing agencies to contract with vendors who may be less experienced or more expensive simply because they meet the state's ambiguous 'public safety values' requirement. This legislation does not enhance public safety but instead creates unnecessary red tape and restricts the free and fair procurement process."

8) **Prior Legislation**:

a) SB 99 (Umberg), of the 2023-24 Legislative Session, would have added to those standards that the United States Armed Forces has not been prohibited by federal law or regulation from purchasing the military equipment from the manufacturer or seller of the military equipment. SB 99 was held in the Assembly Appropriations Committee.

b) AB 79 (Weber), of the 2023-24 Legislative Session, would have prohibited a person from knowingly manufacturing, modifying, selling, transferring, or operating a robotic device or unmanned aircraft that is equipped or mounted with a weapon, as specified. AB 79 was held in the Assembly Public Safety Committee.

c) AB 1486 (Jones-Sawyer), would have clarified the meaning of standard issue service weapons and ammunition for purposes of this provision and exclude assault weapons from this exception. AB 1486 was held on the Senate Floor.

d) AB 481 (Chiu), Chapter 406, Statutes of 2021, requires a law enforcement agency to obtain approval of the applicable governing body, by adoption of a military equipment use policy, prior to taking certain actions relating to the funding, acquisition, or use of military equipment.

REGISTERED SUPPORT / OPPOSITION:

Support

Board of Supervisors for The City and County of San Francisco
Brady California
Brady Campaign
California Police Chiefs Association
Silicon Valley Alliance for Gun Safety

Oppose

Gun Owners of California, INC.

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

Amended Mock-up for 2025-2026 AB-458 (Stefani (A))

Mock-up based on Version Number 99 - Introduced 2/6/25
Submitted by: Staff Name, Office Name

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

SECTION 1. Section 10334.1 is added to the Public Contract Code, immediately following Section 10334, to read:

10334.1. (a) (1) This section shall be known, and may be cited, as the Ira Sharp Firearm and Ammunition Procurement Act.

(2) The purpose and intent of this section is for the state to develop procurement practices for firearms, ammunition, and firearm accessories.

(3) This section applies to any contract for procuring firearms, ammunition, or firearm accessories a state agency solicits, enters into, awards, amends, renews, or extends on or after January 1, 2026.

(b) For purposes of this section:

(1) "Ammunition" has the same meaning as defined in Section 16150 of the Penal Code.

(2) "Contractor" means any person, firm, corporation, or partnership, or any combination thereof, who enters into a contract or agreement with a state agency.

(3) "Firearm" has the same meaning as defined in Section 16520 of the Penal Code.

(4) "Firearm accessory" means a supplementary item or component designed to do either of the following:

(A) Enhance a firearm's functionality, performance, or user experience.

(B) Modify a firearm or external gear used in conjunction with a firearm, including, but not limited to, any of the following:

(i) Sights and optics.

(ii) Holsters.

(iii) Magazines.

(iv) Grips.

(v) Slings.

(vi) Muzzle devices, suppressors, compensators, and flash hiders.

(vii) Bipods.

(viii) Trigger upgrades and conversion devices.

(ix) Cleaning kits.

(x) Ammunition carriers.

(5) "Firearm precursor part" has the same meaning as defined in Section 16531 of the Penal Code.

(6) "State agency" means any office, officer, department, division, board, bureau, or commission of the state.

(c) During the bidding process, on an annual basis, and upon request of the department or a state agency, as applicable, a bidder for, or party to, a contract with a state agency for the procurement of firearms, ammunition, or firearm accessories shall do all of the following:

(1) Comply with all applicable local, state, and federal laws, including any licensing, certification, or permitting laws.

(2) Provide proof and a copy of any required valid license, permit, or certificate to the appropriate state agency.

(3) Provide materials documenting both of the following:

(A) The number of trace requests the bidder or contractor received from the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives for each year within the past five calendar years.

(B) The time between the sale of a firearm subject to a trace request described in subparagraph (A) and the crime that generated the trace request, if known.

(4) Provide materials documenting any thefts or losses from the bidder's or contractor's premises for the past five calendar years.

(5) Provide a copy of the two most recent inspection reports of any firearm, ammunition, or firearm accessory inspection conducted by a federal, state, or local agency, including, but not limited to, any followup materials documenting administrative actions taken by the agency.

(6) Disclose any violation found from any type of inspection conducted by a federal, state, or local agency during the two most recent firearm, ammunition, or firearm accessory inspections.

(7) Provide any materials documenting the bidder's or contractor's corrective actions taken in response to a finding of noncompliance or violation of any federal, state, or local firearm, ammunition, or firearm accessory law, regulation, or other requirement.

(8) Provide, in writing, any practices or policies, including, but not limited to, any amendments to those practices or policies made during the solicitation process, in effect or adopted by the bidder or contractor or required by any contract term that do any of the following:

(A) Prevent, detect, or screen for the transfer of firearms, ammunition, or firearm accessories to straw purchasers or firearm traffickers.

(B) Prevent, detect, or screen against the sale of firearms, ammunition, or firearm accessories to an individual prohibited from possessing a firearm by federal law, state law, local law, or court order.

(C) Prevent, detect, or document the theft or loss of firearms, ammunition, or firearm accessories.

(D) Train employees or subcontractors to ensure compliance with all applicable federal, state, or local firearms, ammunition, or firearm accessories laws and regulations.

(E) Assist law enforcement agencies in the investigation or prevention of criminal access to firearms, ammunition, or firearm accessories. **Nothing in this subparagraph requires any bidder or contractor to assist law enforcement in a criminal investigation without notice.**

(F) Operate a digital video surveillance system.

(9) Agree not to sell unserialized gun build kits or firearm precursor parts, including, but not limited to, unserialized firearms, unserialized unfinished frames, and unserialized unfinished receivers.

(10) Provide ~~proof of~~ **a written, signed statement expressing that the seller or bidder is and will remain in** compliance with any applicable federal, state, or local law related to firearm precursor parts.

(d) A state agency shall reject a bid from a bidder or cancel a contract with a contractor if either of the following conditions is met:

(1) The bidder or contractor has not complied with this section.

(2) The state agency or department has determined, using a scoring system, that the bidder or contractor has fallen below the minimum score required for contracting with the State.

~~(2) The state agency or the department determines that the bidder or contractor is not aligned with the state's public safety values relating to firearms, ammunition, and firearm accessories.~~

(e) A state agency shall not **waive the requirements of this section**. ~~do either of the following:~~

~~(1) Waive the requirements of this section.~~

~~(2) Make exigent or emergency purchases of firearms, ammunition, or firearm accessories.~~

(f) (1) The department, in coordination with the Department of Justice, shall develop processes and procedures to implement this section that include, but are not limited to, a process to administer and assess a bidder's or contractor's compliance with the requirements of this section.

(2) The processes and procedures required by paragraph (1) may include any of the following:

(A) A prequalification process to prequalify potential bidders.

(B) A scoring system to be used in contracting or purchasing that evaluates a bidder's or contractor's public safety values relating to firearms, ammunition, and firearm accessories.

(C) Terminating contracts for contractors found to not be in compliance with the terms of 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: April 1, 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

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[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 merchandize 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

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[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 disproportionally 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."

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[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), Chaper 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, Statues 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

Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Attractions and Parks Association
California Business Properties Association
California Chamber of Commerce
California District Attorneys Association
California Grocers Association
California Reserve Peace Officers Association

California Retailers 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
National Association of Theatre Owners of California
Newport Beach Police Association
Nfib California
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County District Attorney's Office
San Diego County District Attorney's Office
San Francisco District Attorney Brooke Jenkins
Santa Ana Police Officers Association
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
Fair Chance Project
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
Sister Warriors Freedom Coalition
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: April 1, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 788 (Quirk-Silva) – As Introduced February 18, 2025

As Proposed to be Amended in Committee

SUMMARY: Creates the Division of Female Programs and Services within the California Department of Corrections and Rehabilitation (CDCR), which is solely responsible for female adult institutions and community facilities housing female offenders. Specifically, **this bill**:

1) Establishes the Division of Female Programs and Services to be solely responsible for female adult facilities and community facilities housing female offenders.

2) Requires the Director of the Division of Female Programs and Services to be appointed by the Governor, subject to Senate confirmation, and have a minimum of five years' experience serving the female correctional population.

3) States the Governor shall appoint three subordinate officers, instead of the four required under existing law, who would oversee an identified category of male adult institutions.

4) Requires CDCR to provide and maintain a Female Offender Reform Master Plan (FORMP) report, in conjunction with defined experts in female correctional operations, to the Legislature on the implementation of the plan, and update statistics contained in the plan, by March 1, 2026, and every 3 years thereafter.

5) Requires CDCR to post the FORMP and any updates to the Plan to the department's website.

6) Mandates creation of policies, programs, and operational practices designed to ensure a safe and productive institutional environment for female offenders.

7) States that CDCR is required to provide a staffing analysis to the Legislature, by March 1, 2026, and every 3 years thereafter.

8) Provides that the development of programs and training for department staff in correctional facilities shall include not less than one week of training at the academy and annual training specifically focused on working with a female population.

9) Requires performing a comprehensive review of policies and practices and other aspects of women-centered corrections to enhance safety and rehabilitative efforts with an emphasis on sexual safety and gender-responsive, trauma-informed principles.

10) Establishes that the Division of Female Programs and Services shall manage and provide oversight of adult female programs, including prisons, conservation camps, and parole and community programs, and develop gender-responsive, trauma-informed, culturally sensitive

approaches to program and policy development that will improve recidivism outcomes for the adult incarcerated and paroled female offenders under the supervision of the department.

11) Requires the Division of Female Programs and Services to be led by a person who has relevant professional experience in planning and implementing recidivism reduction programs and services that are gender-responsive and trauma-informed, including at least five years' experience serving the female correctional population.

12) States that CDCR shall establish the Gender Responsive Strategies Commission (GRSC) to develop active partnerships, involving the community, treatment experts, and related agencies in its efforts toward gender-responsive practice, which shall be composed of representatives of community-based organizations, research and policy experts, legislators, union representatives, and formerly incarcerated women.

13) Provides that the GRSC to meet quarterly and publish minutes for each meeting on the department's internet website.

14) Requires CDCR's Undersecretary for Operations to appoint an ombudsperson solely assigned to adult female institutions.

EXISTING LAW:

1) Establishes the Division of Enterprise Information Services, the Division of Facility Planning, Construction, and Management, the Division of Administrative Services, and the Division of Correctional Policy Research and Internal Oversight, all with Directors appointed by the Governor and confirmed by the Senate, under the Undersecretary for Administration in CDCR. (Gov. Code, § 12838.1, subds. (a)(1)-(2).)

2) Establishes the Division of Health Care Operations and the Division of Health Care Policy and Administration, all with Directors appointed by the Governor and confirmed by the Senate, under the Undersecretary for Health Care Services in CDCR. (Gov. Code, § 12838.1, subd. (b).)

3) Establishes the Division of Adult Institutions, the Division of Adult Parole Operations, the Division of Juvenile Justice, and the Division of Rehabilitative Programs, all with Directors appointed by the Governor and confirmed by the Senate, under the Undersecretary for Operations in CDCR. (Gov. Code, § 12838.1, subds. (c)(1)-(2).)

4) Provides that the Governor shall appoint four subordinate officers, subject to Senate confirmation, to the Division of Adult Institutions, who shall oversee an identified category of adult institutions, one of which shall be female offender facilities. (Gov. Code, § 12838.1, subd. (d).)

5) States that CDCR shall provide a Female Offender Reform Master Plan (FORMP) report, and create policies and operational practices designed to ensure a safe and productive institutional environment for female offenders. (Pen. Code, § 3430, subds. (a) & (b).)

6) Requires CDCR to contract with nationally recognized gender responsive experts in prison operational practices to conduct a staffing analysis of all current job classifications assigned

to each prison that houses females, develop programs and training for department staff in correctional facilities, create a gender responsive female classification system, and create a gender responsive staffing pattern for female institutions and community-based offender beds. (Pen. Code, § 3430, subds. (c)-(e).)

7) Requires CDCR to create a needs-based case and risk management tool designed specifically for female offenders, build and strengthen systems of family support and family involvement during the period of the female's incarceration, establish a family service coordinator at each prison that houses only females, and design and implement evidence-based gender specific rehabilitative programs, including wraparound educational, health care, mental health, vocational, substance abuse and trauma treatment programs that are designed to reduce female offender recidivism. (Pen. Code, § 3430, subds. (f)-(i).)

8) Provides that the Director of Corrections shall expand the existing prison ombudsman program to ensure comprehensive deployment of ombudsmen throughout the state prison system with a specific focus on maximum-security institutions. (Pen. Code, § 5066.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's prison system still fails to address the unique needs of incarcerated women. Women in our prisons face violence, trauma, and neglect, and too often they are forgotten. This bill, AB 788, is a declaration that incarcerated women will no longer be overlooked. It requires that the California Department of Corrections takes action to ensure safer conditions, better policies, and stronger leadership. This is about accountability, respect, and changing the future for women who deserve a second chance."

2) **Effect of the Bill**: This bill would create the Division of Female Programs and Services under CDCR, to be led by a Director appointed by the Governor and confirmed by the Senate, with responsibility for all female correctional facilities and adult institutions.

   A variety of Divisions and Directors currently exist within CDCR. Currently, there is a Division of Enterprise Information Services, Division of Facility Planning, Construction, and Management, Division of Administrative Services, and the Division of Correctional Policy Research and Internal Oversight. Additionally, the Division of Adult Institutions, Division of Adult Parole Operations, and Division of Rehabilitative Programs report to Undersecretary for Operations. This bill creates the Division of Female Programs and Services, which would also report to the Undersecretary for Operations.

   Dedicated divisions can lead to increased rehabilitation and public safety. One expert noted that America's correctional facilities fail, among other reasons, due to inadequate staffing and supervision, which exposes incarcerated persons to significant amounts of violence, including sexual violence.[1] The author also implicated prison design that increases social

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[1] Hopwood, *How Atrocious Prisons Conditions Make Us All Less Safe* (Aug. 9, 2021) Brennan Center for Justice <https://www.brennancenter.org/our-work/analysis-opinion/how-atrocious-prisons-conditions-make-us-all-less-safe> [as of Mar. 24, 2025].

isolation and institutional independence, while deprioritizing rehabilitation and educational programs, for our failures to reduce violence and rates of recidivism.[2] Location was also identified as a concern as prisons located far from cities and the families of incarcerated persons causes strained family relationships.[3] On Mother's Day in 2021, more than 150,000 incarcerated mothers spent the day without seeing their children.[4] The author additionally cites that few prison systems have the type of independent oversight and transparency in place to ensure implementation and compliance with existing policies.[5]

By creating a division dedicated to female services and programs in California correctional facilities, this bill could establish the additional layer of focused oversight needed to improve confinement conditions for female incarcerated persons. Improved confinement conditions could lead to reductions in sexual violence and family deterioration, with potential increases in education and rehabilitative programming, for female incarcerated persons that may reduce recidivism and improve public safety.

This bill would also expand the ombudspersons program to include an ombudsperson solely for female correctional institutions. Another expert, focused on the federal prison system, highlighted the importance of a prison ombuds program in helping identify and prevent issues common to correctional facilities.[6] The author wrote that ombudpersons act as a complement to legislative oversight, assist in information gathering, respond to constituent concerns, and provide a customer service mechanism for family members of incarcerated persons.[7]

This bill's expansion of the ombudspersons program may support these goals while providing an additional layer of oversight to female correctional facilities and support.

3) **Committee Amendments:** Under the amended proposal, a clarifying provision is included to advance the author's intent that specifies the Governor shall appoint one subordinate officer dedicated to the Division of Female Services and Programs. Two small technical changes are also included in the amended proposal.

4) **Argument in Support**: According to the California Public Defenders Association (CPDA), "The number of women serving time in a prison or jail has increased over the past several decades. The incarceration of women involves significant unique challenges and many of their needs are ignored. Research shows that most system-involved women have been victims of some form of abuse or trauma and are at high risk of further victimization within the carceral setting. Many suffer from mental health and substance use disorders. More than half of women in prisons are parents to minor children and more than twice as likely to have been the primary caretaker prior to incarceration. The challenges women face upon reentry include, but are not limited to, parenting issues, health struggles, and financial difficulties, all of which can negatively impact their success after release.

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[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*
[6] Ring, Congress should Support Independent Oversight of Federal Prisons (Sept. 14, 2020) The Hill < https://thehill.com/opinion/criminal-justice/515854-congress-should-support-independent-oversight-of-federal-prisons/?rl=1> [as of Mar. 24, 2025].
[7] *Ibid.*

"AB 788 would seek to address this issue by calling for more direct oversight of the care and services provided to women, ensuring experienced professionals are in positions to have positive impacts on the system of incarcerating women. It would also call for accountability in the form of a report to the Legislature on the implementation of a plan that calls for a more gender responsive approach to overseeing prisons and jails, including trauma-informed, culturally sensitive approaches to program and policy development. By focusing specifically on the unique challenges, the reforms can be informed and aimed at the specific difficulties presented. Many of these women are serving time for drug offenses. They will return home at some point and resume their responsibility for raising children and contributing to society. The more support they receive while incarcerated, the better chance of success they will have."

5) **Prior Legislation**:

a) SB 823 (Committee on Budget and Fiscal Review), Chapter 337, Statutes of 2020, established a Juvenile Justice Realignment Block Grant program to provide county-based custody, care, and supervision of youth who are realigned from the Division of Juvenile Justice or who would have otherwise been eligible for commitment to the division.

b) AB 732 (Bonta), Chapter 321, Statutes of 2020, requires, among other things, incarcerated pregnant persons to be provided specified prenatal services and a referral to a social worker, including access to community-based programs serving pregnant, birthing, or lactating inmates.

REGISTERED SUPPORT / OPPOSITION:

Support

California Catholic Conference
California Public Defenders Association (CPDA)
Time for Change Foundation

Opposition

None submitted.

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

AMENDMENTS TO ASSEMBLY BILL NO. 788

Amendment 1
On page 3, in line 34, strike out "expertise" and insert:

experience

Amendment 2
On page 3, in line 35, after "(d)" insert:

(1)

Amendment 3
On page 3, in line 39, strike out "subdivision" and insert:

paragraph

Amendment 4
On page 4, between lines 2 and 3, insert:

(2) The Governor shall, upon recommendation of the secretary, appoint one subordinate officer, subject to Senate confirmation, who shall serve at the pleasure of the Governor. The subordinate officer appointed pursuant to this paragraph shall oversee female adult institutions.

Amendment 5
On page 4, in line 37, strike out "gender responsive" and insert:

gender-responsive

Amendment 6
On page 5, in line 27, strike out "gender responsive" and insert:

gender-responsive

Amendment 7
On page 5, in line 28, strike out "gender responsive" and insert:

gender-responsive

RN2513677

Amendment 8
On page 6, in line 3, strike out "abuse" and insert:

abuse,

Amendment 9
On page 6, in line 18, strike out "following:." and insert:

following:

Amendment 10
On page 6, in line 28, strike out "gender-responsive and", strike out line 29 and insert:

gender responsive and trauma informed.

Amendment 11
On page 6, in line 37, strike out "research and" and insert:

expert researchers,

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 788

CALIFORNIA LEGISLATURE—2025–26 REGULAR SESSION

ASSEMBLY BILL **No. 788**

Introduced by Assembly Member Quirk-Silva

February 18, 2025

An act to amend Section 12838.1 of the Government Code, and to amend Sections 3430 and 5066 of, and to add Sections 3431 and 3432 to, the Penal Code, relating to prisons.

LEGISLATIVE COUNSEL'S DIGEST

AB 788, as introduced, Quirk-Silva. Prisons: facilities for female offenders.

Existing law creates within the Department of Corrections and Rehabilitation, under the Undersecretary for Operations, the Division of Adult Institutions, among others, and requires each division to be headed by a director, who is appointed by the Governor, as specified. Existing law also requires the Governor to appoint 4 subordinate officers to the division, as specified. Existing law requires each subordinate officer appointed to oversee an identified category of adult institutions, one of which oversees female offender facilities.

This bill would instead require the Governor to appoint 3 subordinate officers, as specified, who would oversee an identified category of male adult ~~institutions.~~ *institutions, and one subordinate officer, as specified, who would oversee female adult institutions.* The bill would create within the department, and under the Undersecretary for Operations, the Division of Female Programs and Services. The bill would require the director of this division to be responsible solely for female adult institutions and community facilities housing female offenders. The bill would require the director to report to the undersecretary and to

have a minimum of 5 years of ~~expertise~~ *experience* serving the female correctional population. The bill would also require this new division to manage and provide oversight of adult female programs, including prisons, conservation camps, and parole and community programs and to develop gender-responsive, trauma-informed, culturally sensitive approaches to program and policy development.

Existing law requires the department to create a Female Offender Reform Master Plan and present it to the Legislature by a specified date. Existing law requires the department to, among other things, create policies and operational practices that are designed to ensure a safe and productive institutional environment for female offenders. Existing law also requires the department to contract with nationally recognized ~~gender-responsive~~ *gender-responsive* experts in prison operational practices staffing, classification, substance abuse, trauma treatment services, mental health services, transitional services, and community corrections to, among other things, develop programs and training for department staff in correctional facilities.

This bill would require the department to provide a report to the Legislature on the implementation of the plan, and update statistics contained in the plan, by March 1, 2026, and every 3 years thereafter. The bill would also require the department to post the plan, any reports, and any updates to the plan to the department's internet website. The bill would require the department to establish the Gender Responsive Strategies Commission to develop active partnerships, involving the community, treatment experts, and related agencies in its efforts toward gender-responsive practice.

Existing law requires the secretary of the department to expand the existing prison ombudsperson program to ensure the comprehensive deployment of ombudspersons throughout the state prison system with specific focus on the maximum security institutions.

This bill would instead require the Undersecretary for Operations to perform this duty and would require the undersecretary to appoint an ombudsperson solely assigned to adult female institutions.

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

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

ıge 2 SECTION 1. Section 12838.1 of the Government Code is amended to read:

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12838.1. (a) There is hereby created within the Department of Corrections and Rehabilitation, under the Undersecretary for Administration, the following divisions:

(1) The Division of Enterprise Information Services, the Division of Facility Planning, Construction, and Management, and the Division of Administrative Services. Each division shall be headed by a director, who shall be appointed by the Governor, upon recommendation of the secretary, subject to Senate confirmation, who shall serve at the pleasure of the Governor.

(2) The Division of Correctional Policy Research and Internal Oversight. This division shall be headed by a director, who shall be appointed by the Governor, upon recommendation of the secretary, who shall serve at the pleasure of the Governor.

(b) There is hereby created in the Department of Corrections and Rehabilitation, under the Undersecretary for Health Care Services, the Division of Health Care Operations and the Division of Health Care Policy and Administration. Each division shall be headed by a director, who shall be appointed by the Governor, upon recommendation of the secretary, subject to Senate confirmation, who shall serve at the pleasure of the Governor.

(c) (1) There is hereby created within the Department of Corrections and Rehabilitation, under the Undersecretary for Operations, the Division of Adult Institutions, the Division of Adult Parole Operations, the Division of Female Programs and Services, and the Division of Rehabilitative Programs. Each division shall be headed by a director, who shall be appointed by the Governor, upon recommendation of the secretary, subject to Senate confirmation, who shall serve at the pleasure of the Governor.

(2) The Director for Female Programs and Services shall be responsible solely for female adult institutions and community facilities housing female offenders. The director shall report to the undersecretary and shall and have a minimum of five years of ~~expertise~~ *experience* serving the female correctional population. **Amendment 1**

(d) *(1)* The Governor shall, upon recommendation of the secretary, appoint three subordinate officers, subject to Senate confirmation, who shall serve at the pleasure of the Governor. Each subordinate officer appointed pursuant to this ~~subdivision~~ *paragraph* shall oversee an identified category of male adult institutions. **Amendment 2** **Amendment 3**

Amendment 4

(2) The Governor shall, upon recommendation of the secretary, appoint one subordinate officer, subject to Senate confirmation, who shall serve at the pleasure of the Governor. The subordinate officer appointed pursuant to this paragraph shall oversee female adult institutions.

(e) (1) Unless the context clearly requires otherwise, whenever the term "Chief Deputy Secretary for Adult Operations" appears in any statute, regulation, or contract, it shall be construed to refer to the Director of the Division of Adult Institutions.

(2) Unless the context clearly requires otherwise, whenever the term "Chief Deputy Secretary for Adult Programs" appears in any statute, regulation, or contract, it shall be construed to refer to the Director of the Division of Rehabilitative Programs.

SEC. 2. Section 3430 of the Penal Code is amended to read:

3430. The Department of Corrections and Rehabilitation shall do all of the following:

(a) (1) Create a Female Offender Reform Master Plan, and shall present this plan to the Legislature by March 1, 2008.

(2) No later than March 1, 2026, and every three years thereafter, prepare and submit a report to the Legislature on the implementation of the plan described in paragraph (1), including updated statistics contained in the plan. These reports shall be submitted in compliance with Section 9795 of the Government Code.

(3) Maintain the plan, including all subsequent updates and reports, in consultation with the Gender Responsive Strategies Commission and with nationally recognized experts in gender responsive prison operational practices, staffing, classification, substance abuse, trauma treatment services, mental health services, transitional services, and community corrections.

(4) Post the plan, any reports, and any updates to the plan to the department's internet website.

(b) Create policies, programs, and operational practices that are designed to ensure a safe and productive institutional environment for female offenders.

Amendment 5

(c) Contract with nationally recognized ~~gender responsive~~ *gender-responsive* experts in prison operational practices staffing, classification, substance abuse, trauma treatment services, mental health services, transitional services, and community corrections to do all of the following:

(1) (A) Conduct a staffing analysis of all current job classifications assigned to each prison that houses females. The department shall provide a plan to the Legislature by March 1, 2009, that incorporates those recommendations and details the changes that are needed to address any identified unmet needs of female inmates.

(B) No later than March 1, 2026, and every three years thereafter, the department shall prepare and submit to the Legislature the updated staffing analysis described in subparagraph (A). These reports shall be submitted in compliance with Section 9795 of the Government Code.

(2) Develop programs and training for department staff in correctional facilities to include not less than one week of training at the academy and annual training specifically focused on working with a female population.

(3) Perform a comprehensive review of office's policies and practices and other aspects of women-centered corrections developed to enhance safety and rehabilitative efforts. This review should engage collaboratively with internal experts, community-based organizations, medical and mental health experts, labor, incarceration reform advocates, and national consultants on best practices to improve all aspects of operational practice and treatment, with an emphasis on sexual safety and gender-responsive, trauma-informed principles.

(d) Create a ~~gender responsive~~ *gender-responsive* female classification system. **Amendment 6**

(e) Create a ~~gender responsive~~ *gender-responsive* staffing pattern for female institutions and community-based offender beds. **Amendment 7**

(f) Create a needs-based case and risk management tool designed specifically for female offenders. This tool shall include, but not be limited to, an assessment upon intake, and annually thereafter, that gauges an inmate's educational and vocational needs, including reading, writing, communication, and arithmetic skills, health care needs, mental health needs, substance abuse needs, and trauma-treatment needs. The initial assessment shall include projections for academic, vocational, health care, mental health, substance abuse, and trauma-treatment needs, and shall be used to determine appropriate programming and as a measure of progress in subsequent assessments of development.

(g) Design and implement evidence-based gender specific rehabilitative programs, including "wraparound" educational, health care, mental health, vocational, substance ~~abuse~~ *abuse,* and trauma treatment programs that are designed to reduce female offender recidivism. These programs shall include, but not be limited to, educational programs that include academic preparation in the areas of verbal communication skills, reading, writing, arithmetic, and the acquisition of high school diplomas and GEDs, and vocational preparation, including counseling and training in marketable skills, and job placement information.

Amendment 8

(h) Build and strengthen systems of family support and family involvement during the period of the female's incarceration.

(i) Establish a family service coordinator at each prison that houses only females.

SEC. 3. Section 3431 is added to the Penal Code, immediately following Section 3430, to read:

3431. (a) The Division of Female Programs and Services shall do both of the ~~following:~~ *following:*

Amendment 9

(1) Manage and provide oversight of adult female programs, including prisons, conservation camps, and parole and community programs.

(2) Develop gender-responsive, trauma-informed, culturally sensitive approaches to program and policy development that will improve recidivism outcomes for the adult incarcerated and paroled female offenders under the supervision of the department.

(b) The office shall be headed by a person who has relevant professional experience in planning and implementing recidivism reduction programs and services that are ~~gender-responsive and trauma-informed.~~ *gender responsive and trauma informed.*

Amendment 10

SEC. 4. Section 3432 is added to the Penal Code, immediately following Section 3431, to read:

3432. (a) The department shall establish the Gender Responsive Strategies Commission to develop active partnerships, involving the community, treatment experts, and related agencies in its efforts toward gender-responsive practice.

(b) The commission shall be composed of representatives of community-based organizations, ~~research and~~ *expert researchers,* policy experts, legislators, union representatives, and formerly incarcerated women.

Amendment 11

ıge 7

(c) The commission shall meet quarterly and publish minutes for each meeting on the department's internet website.

SEC. 5. Section 5066 of the Penal Code is amended to read:

5066. The Undersecretary for Operations shall expand the existing prison ombudsperson program to ensure the comprehensive deployment of ombudspersons throughout the state prison system with specific focus on the maximum security institutions. The Undersecretary for Operations shall appoint an ombudsperson solely assigned to adult female institutions.

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Date of Hearing: April 1, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 802 (Sharp-Collins) – As Introduced February 18, 2025

SUMMARY: Requires a juvenile justice commission to administer, at least once every 24 months, a hunger survey of youth younger than 26 years of age who are held in county confinement, as specified. Specifically, **this bill**:

1) States the purpose of the survey is to prevent and address hunger of youth held in county confinement, to ascertain whether the nutritional needs of those youth are being met, to make public recommendations to prevent hunger and to promote healthy development of those youth, and ultimately to provide for the nutritional needs of those youth in county juvenile halls, camps, and other facilities used for the confinement of youth.

2) Authorizes a juvenile justice commission to work with a local community-based organization to administer the survey.

3) Requires the survey to seek to ascertain whether confined youth are chronically or often hungry, whether confined youth have regular access to food between meals, whether confined youth have adequate time for meals, and the quality of the food confined youth are provided.

4) States that if the results of each survey administered indicate that confined youth are often or chronically hungry, the juvenile justice commission shall make recommendations for changes to county policies to address that hunger.

5) Provides that when making recommendations, the juvenile justice commission shall take the following into account:

   a) Providing sufficient calories to meet youths' minimum caloric needs, by itself, is not adequate to address hunger and nutrition in county confinement facilities;

   b) Physically active confined youth who are preparing for, or participating in, rigorous activities, including, but not limited to, support for fire prevention or suppression, shall be assumed to be in need of additional healthy food to prevent hunger and to promote healthy development; and,

   c) Confined youth and their families shall not be responsible for the costs of addressing the hunger and nutritional needs of confined youth and those costs shall not be passed on to confined youth or their families. The cost of meals, snacks, and necessary food is the responsibility of the counties.

6) States that the results of each survey administered and any recommendations shall be published on the internet website of the juvenile justice commission. If the county takes

remedial or corrective actions to address issues found as a result of the survey, a description of the action shall be published on the internet website of the county probation department.

EXISTING LAW:

1) Establishes in each county a juvenile justice commission consisting of not less than 7 and no more than 15 citizens. Two or more of the members shall be persons who are between 14 and 21 years of age, provided there are available persons between 14 and 21 years of age who are able to carry out the duties of a commission member in a manner satisfactory to the appointing authority. (Welf. & Inst. Code, § 225.)

2) Authorizes the boards of supervisors of two or more adjacent counties to agree to establish a regional juvenile justice commission in lieu of a county juvenile justice commission. Two or more of the members shall be persons who are between 14 and 21 years of age, provided there are available persons between 14 and 21 years of age who are able to carry out the duties of a commission member in a manner satisfactory to the appointing authority. (Welf. & Inst. Code, § 226.)

3) Requires the clerk of the court of the appointing judge to immediately notify each person appointed a member of a county or regional juvenile justice commission and such person shall take an oath to faithfully perform their duties. The qualification of each member shall be entered in the juvenile court record. (Welf. & Inst. Code, § 227.)

4) States that a juvenile justice commission shall elect a chairman and vice chairman annually. (Welf. & Inst. Code, § 228.)

5) Requires a juvenile justice commission, among other things, to inquire into the administration of the juvenile court law in the county or region in which the commission serves and to annually inspect any jail or lockup within the county that, in the preceding calendar year, was used for confinement for more than 24 hours of any minor. (Welf. & Inst. Code, § 229.)

6) States, notwithstanding any other provision of law, a juvenile justice commission may inquire into the operation of any group home that serves wards or dependent children of the juvenile court and is located in the county or region that the commission serves. (Welf. & Inst. Code, § 229.5.)

7) States that the Board of State and Community Corrections (BSCC) shall establish minimum standards for local correctional facilities. BSCC shall review those standards biennially and make any appropriate revisions. (Pen. Code, § 6030.)

8) Requires BSCC to, at minimum, inspect each local detention facility, including juvenile facilities, in the state biennially. (Pen. Code, § 6031; Welf. & Inst. Code, § 209.)

9) Authorizes the county grand jury to inquire into the condition and management of the public prisons within the county. (Pen. Code, § 919.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "In order to better address nutritional needs and persistent hunger in the juvenile justice system, AB 802 will require a biennial survey to ascertain whether confined youth are often hungry, have regular access to food between meals, have adequate time for meals, and the quality of the food confined youth are provided. The involvement of juvenile justice commissions ensures that this process remains transparent, community-driven, and responsive to the actual needs of youth in these facilities. These councils—composed of local stakeholders, advocates, and individuals with lived experience—offer an important layer of oversight, preventing neglect and ensuring that nutritional policies are shaped by those who understand both the challenges and solutions. Their leadership in conducting the survey will help build public trust and create accountability mechanisms that push facilities toward better food standards. Ultimately, improving nutrition in juvenile facilities is not just about health—it's about equity, rehabilitation, and setting young people up for success beyond incarceration."

2) **Minimum Standards for Juvenile Facilities**: BSCC was established in 2012 to serve as an independent body providing leadership and technical assistance to the adult and juvenile criminal justice systems.[1] BSCC promulgates regulations for adult and juvenile detention facilities, conducts regular inspections of those facilities, develops standards for the selection and training of local corrections and probation officers, and administers significant public safety-related grant funding.[2] The regulations that set forth minimum standards for juvenile facilities related to food provides that meals shall be served at least three times in any 24-hour period and at least one of those meals shall include hot food. (Cal. Code. Regs., title 15, section 1460.) A minimum of 20 minutes shall be allowed for actual consumption of food, except for youth on medical diets where a physician has prescribed additional time. (*Ibid.*) A snack is to be provided between 2 to 4 hours after the dinner meal is served. (*Ibid.*)

   The minimum diet provided to youths shall be based upon the nutritional and caloric requirements found in the 2011 Dietary Reference Intakes of the Food and Nutrition Board, Institute of Medicine of the National Academies; the 2008 California Food Guide, and the 2015-2020 Dietary Guidelines for Americans. (Cal. Code. Regs., title 15, section 1461.) The regulations specify the nutritional requirements by protein group, dairy group, vegetable-fruit group and grain group and specifies a recommended caloric allowance minimum of 2500 calories, and a maximum of 3000. (*Ibid.*)

   BSCC is currently going through the process of revising regulations related to minimum standards in juvenile facilities.[3] This process is done in partnership with stakeholders who surveyed juvenile facilities and have submitted proposed changes to the regulations for consideration.[4]

3) **Argument in Support**: According to *Legal Services for Prisoners with Children*, "AB 802 would require that County Juvenile Justice Commissions, which are required under state law to inquire into the administration of the juvenile justice system in their jurisdiction, to

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[1] SB 92 (Committee on Budget and Fiscal Review), Ch. 36, Stats. 2011.
[2] https://www.bscc.ca.gov/m_bsccboard/ (accessed Mar. 18, 2025).
[3] https://www.bscc.ca.gov/fso-titles-15-and-24-regulations-revisions/ (accessed Mar. 18, 2025).
[4] https://www.bscc.ca.gov/juvenile-titles-15-and-24-regulations-revision-esc-materials/ (accessed Mar. 18, 2025).

periodically conduct a youth nutrition survey. The survey results would be publicly available on the commissions' websites, and county probation departments would be required to publish their policies for addressing any identified deficiencies.

"Research underscores the importance of proper nutrition in juvenile justice settings. For decades, medical experts have recognized that dietary improvements can positively influence behavior, both in communities and correctional facilities. In order to promote public safety and youth wellbeing, California must implement a system to evaluate whether correctional facilities are meeting the nutritional needs of incarcerated youth and preventing hunger."

4) **Related Legislation**: AB 800 (Ortega) would require the Department of Corrections and Rehabilitation to 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 and to require all food items sold in prison vending machines to be priced at the same average market retail price as in the community. AB 800 is pending hearing by the Assembly Appropriations Committee.

5) **Prior Legislation**: SB 92 (Committee on Budget and Fiscal Review), Chapter 36, Statutes of 2011, among other things, created BSCC and assigned the former duties of the Corrections Standards Authority to BSCC's 12-member board.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
All of Us or None Los Angeles
California Alliance for Youth and Community Justice
California Alliance of Child and Family Services
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Ella Baker Center for Human Rights
Freedom 4 Youth
Fresh Lifelines for Youth
Friends Committee on Legislation of California
Glide
Initiate Justice
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
Pacific Juvenile Defender Center
Prosecutors Alliance Action
Rubicon Programs
Ryse Center
San Francisco Public Defender
Silicon Valley De-bug

Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
Viet Voices

Opposition

None submitted.

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

Date of Hearing: April 1, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 824 (Stefani) – As Introduced February 19, 2025

SUMMARY: Clarifies additions to the procedures relating to protective orders or restraining orders by requiring the restrained person to relinquish *any ammunition, in addition to any firearms,* in their possession and require a statement on defined Judicial Council restraining order forms to include a statement authorizing any party to appear remotely at the hearing. Specifically, **this bill**:

1) Requires a person subject to a temporary restraining order (TRO) or injunction, as defined, to relinquish *ammunition, in addition to any firearms,* in their immediate possession or control, following being served with a protective order, by surrendering the weaponry to law enforcement officials or through sale to a licensed firearms dealer.

2) Provides that violation of the weapons prohibition under a civil injunction or TRO shall be reported to the prosecuting attorney within two business days of the corresponding court hearing and provide a receipt showing compliance with the relinquishment.

3) Includes possession of *ammunition* as information the court shall consider to determine, by a preponderance of the evidence, whether the person subject to a TRO or civil injunction has a firearm or ammunition in or subject to their immediate possession or control in violation of the order.

4) Updates existing procedures that states the court may consider a sales or storage receipt of relinquishment from the restrained person or whether an exemption was granted to the restrained person's prohibition on possessing firearms when making a determination of whether the restrained person is in violation of the relinquishment order to include ammunition.

5) Includes ammunition in existing law that states that if the court makes a determination that the restrained person has a firearm in violation of the relinquishment order, the court must make a written record of the determination and provide a copy to any party who is present at the hearing.

6) Establishes that "firearm" includes the frame or receiver of the weapon, including both a completed frame or receiver, or a firearm precursor part, as the definition of firearm under the relinquishment procedures resulting from civil injunctions or temporary restraining orders.

7) Provides that ammunition-based violation of the weapons prohibition under a gun violence restraining order (GVRO) shall also be reported to the prosecuting attorney within two business days of the corresponding court hearing and provide a receipt showing compliance with the relinquishment.

8) Includes information about ammunition in provisions of law that states that the court when it receives relevant information, at any GVRO hearing, that a restrained person has a firearm, the court shall consider that information to determine, by a preponderance of the evidence, whether the person subject to a defined order has a firearm or ammunition in or subject to their immediate possession or control in violation of the order.

9) Updates existing procedures that provides that the court may consider a sales or storage receipt of relinquishment from the restrained person or whether an exemption was granted to the restrained person's prohibition on possessing firearms when making a determination of whether the restrained person is in violation of the GVRO relinquishment order to include ammunition.

10) Includes ammunition in existing law that states that if the court makes a determination that the restrained person has a firearm in violation of the GVRO relinquishment order, the court must make a written record of the determination and provide a copy to any party who is present at the hearing.

11) Encourages court self-help centers and other stakeholders to provide information on safety planning and their ability to appear remotely at their hearings.

12) Encourages Judicial Council to allow petitioners to request remote appearances directly on the petition forms for civil harassment restraining orders, domestic violence restraining orders, elder or dependent adult abuse restraining orders, gun violence restraining orders, postsecondary school violence restraining orders, and workplace violence restraining orders.

13) Requires the Judicial Council petition form for a protective or restraining order issued pursuant to defined sections to include a statement that any party or witness may request to appear remotely at a hearing on the petition through the use of remote technology.

EXISTING LAW:

1) Requires a person subject to a temporary restraining order (TRO) or injunction, as defined, to relinquish any firearms and ammunition in their immediate possession or control, following being served with a protective order, by surrendering the weaponry to law enforcement officials or through sale to a licensed firearms dealer. (Civ. Code, § 527.9, subd. (b).)

2) Provides that violation of the weapons prohibition under a civil injunction or TRO shall be reported to the prosecuting attorney within two business days of the corresponding court hearing and provide a receipt showing compliance with the relinquishment. (Civ. Code, § 527.9, subd. (b).)

3) States that the court when it receives relevant information, at any noticed civil injunction or TRO hearing, that a restrained person has a firearm, the court shall consider that information to determine, by a preponderance of the evidence, whether the person subject to a defined order has a firearm in or subject to their immediate possession or control in violation of the order. (Civ. Code, § 527.11, subd. (a).)

4) Provides that the court may consider a sales or storage receipt of relinquishment from the restrained person or whether an exemption was granted to the restrained person's prohibition on possessing firearms when making a determination of whether the restrained person is in violation of the relinquishment order. (Civ. Code, § 527.11, subd. (b).)

5) States that if the court makes a determination that the restrained person has a firearm in violation of the relinquishment order, the court must make a written record of the determination and provide a copy to any party who is present at the hearing. (Civ. Code, § 527.9, subd. (b)(3).)

7) Provides that violation of the weapons prohibition under a gun violence restraining order (GVRO) shall be reported to the prosecuting attorney within two business days of the corresponding court hearing and provide a receipt showing compliance with the relinquishment. (Pen. Code, § 16520, subd. (b)(6).)

8) States that the court when it receives relevant information, at any GVRO hearing, that a restrained person has a firearm, the court shall consider that information to determine, by a preponderance of the evidence, whether the person subject to a defined order has a firearm in or subject to their immediate possession or control in violation of the order. (Pen. Code, § 18120.5, subd. (a).)

9) Provides that the court may consider a sales or storage receipt of relinquishment from the restrained person or whether an exemption was granted to the restrained person's prohibition on possessing firearms when making a determination of whether the restrained person is in violation of the GVRO relinquishment order. (Pen. Code, § 18120.5, subd. (b)(1).)

10) States that if the court makes a determination that the restrained person has a firearm in violation of the GVRO relinquishment order, the court must make a written record of the determination and provide a copy to any party who is present at the hearing. (Pen. Code, § 18120.5, subd. (b)(3).)

11) Establishes that "firearm" includes the frame or receiver of the weapon, including both a completed frame or receiver, or a firearm precursor part, as the definition of firearm under the relinquishment procedures resulting from civil injunctions or temporary restraining orders. (Pen. Code, § 16520, subd. (b)(25).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 824 requires the judicial council to expand awareness about the existing protections in law and option of petitioners to appear remotely during requests for protective orders. By making explicitly clear on the petition form for a protective or restraining order that any party may request to appear remotely at a hearing on the petition, lives can be saved. Lack of awareness of this important protection involving potentially dangerous individuals places lives at risk and has resulted in tragedy. Just recently, a couple from San Diego was shot and killed by the very individual they had sought protection from only two blocks from the courthouse. The couple had a hearing scheduled that morning regarding a restraining order against a spurned ex-romantic partner of

the wife which provided the ex-partner with the knowledge of where and when he could target them. Increased awareness of the ability to participate remotely helps to avoid these potentially deadly situations. Importantly, this bill also makes clarifying changes to the procedures relating to protective orders by explicitly requiring a restrained person to relinquish, in addition to any firearm, any ammunition in that person's immediate possession or control."

2) **Effect of the Bill:** This bill adds further conditions upon which ammunition shall be relinquished.

   A requirement to relinquish ammunition in addition to firearms following issuance of a protective order appears to advance public safety. One study found that domestic abusers are roughly five times more likely to kill a female partner when they have firearms.[1] An average of 76 women every month are killed with firearms from intimate partner violence.[2] Federal law also prohibits people who have been found to be abusers, or who have been convicted of misdemeanor domestic violence, from possessing firearms through gun violence restraining orders.[3] The impacts of domestic gun violence does not just remain in the home, impacting families and children, but affects communities as well.[4]

   By requiring relinquishment of ammunition along with firearms through gun violence restraining orders and other orders, this bill could help reduce the risk of intimate partner violence and other forms of violence by disarming those who have a demonstrated history of dangerousness.

3) **The *Bruen* Analysis:** This bill would disarm persons of ammunition, in addition to firearms, where they are subject to civil injunctions, temporary restraining orders, and gun violence restraining orders. Since this bill would regulate plain text Second Amendment conduct, a person's right to keep and bear arms, completing a *Bruen* analysis should help evaluate the law's constitutionality.

   To justify a law or regulation that purports to place restrictions on protected Second Amendment conduct, the government must demonstrate the law is "consistent with the nation's historical tradition of firearms regulation." (*New York State Rifle & Pistol Association, Inc. v. Bruen,* (2022) 597 U.S. 1.) A firearms regulation is constitutional under the Second Amendment if the government establishes the proposed law is "relevantly similar" to historical laws, regulations, and traditions. (*Ibid.*) Relevantly similar means laws that have historical analogues, how the proposed law comparatively burdens a person's Second Amendment rights, and how the proposed law is comparatively justified. (*Ibid.*)

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[1] *Ensuring Effective Implementation of Laws that Disarm Domestic Abusers* (June 27, 2024) Everytown for Gun Safety <https://everytownresearch.org/report/laws-that-disarm-domestic-abusers/> [as of Mar. 25, 2024].
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*

American history is replete with relevantly similar examples prohibiting people with a history of dangerous behavior from possessing, purchasing, and owning weapons of all kinds, including firearms.[5].

The US Supreme Court has already ruled on a similar issue. In a 2023 case, the Court held that when an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be temporarily disarmed consistent with the Second Amendment. (*United States v. Rahimi,* (2024) 602 U.S. 680, 685.) Including ammunition with firearms as required items to relinquish upon issuance of a protective order appears consistent with current Second Amendment jurisprudence.

Since this bill proposes comparable burdens on Second Amendment conduct, which is disarmament of people who are dangerous, this bill constitutionally seems to fit within the nation's historical tradition of Second Amendment regulations.

4) **Argument in Support**: According to the *California Lawyers Association, Family Law Section*, "AB 824 encourages the Judicial Council to allow petitioners to request remote appearances directly on the petition forms for certain restraining orders and requires that the Judicial Council petition forms for certain protective or restraining orders include a statement that any party or witness may request to appear remotely at a hearing on the petition through the use of remote technology. The bill also encourages court self-help centers and other stakeholders that provide information and safety planning support to survivors of violent, abusive, or other dangerous conduct to inform individuals considering protective or restraining orders that they may request to appear remotely at hearings on petitions for these orders through the use of remote technology.

"We have seen the benefits of remote appearances, which promote accessibility to our courts. Among other things, remote access opens up opportunities for working parents and caregivers to participate in proceedings and avoids travel costs and significant time commitments that are associated with in-person court appearances. In-person court appearances where protective or restraining orders are sought can also raise fear and safety concerns for litigants seeking those orders. AB 824 would streamline the process for requesting remote appearances, making that process more beneficial and user-friendly, particularly for self-represented litigants.

"This bill also make clarifying and conforming changes to the procedures relating to protective and restraining orders by explicitly requiring the restrained person to relinquish, in addition to any firearm, any ammunition in that person's immediate possession or control. This will assist in ensuring appropriate implementation when changes to the law made by SB 899 (Skinner) of 2024 take effect on January 1, 2026.

5) **Related Legislation**:

a) AB 1078 (Berman), would require the review of the California Restraining and Protective Order System to include information concerning whether the applicant is reasonably

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[5] Kopel & Greenlee, *The History on Bans of Types of Arms Before 1900* (2024) University of Denver Journal of Legislation <https://scholarship.law.nd.edu/jleg/vol50/iss2/3/> [as of Mar. 25, 2025].

likely to be a danger to self, others, or the community at large. This bill would additionally exempt from the licensure prohibition for applicants previously subject to a restraining order, protective order, or other type of court order, applicants who were previously subject to an order that did not receive notice and an opportunity to be heard before the order was issued. AB 1078 is pending referral in the Assembly.

b) SB 320 (Limon) would require the Department of Justice to develop and launch a system to allow a person who resides in California to voluntarily add their own name to, and subsequently remove their own name from, the California Do Not Sell List, to prevent the sale or transfer of a firearm to a person who adds their name. SB 320 is pending hearing in the Senate Public Safety Committee.

6) **Prior Legislation**:

a) SB 1002 (Blakespear), Chapter 526, Statutes of 2024, expands prohibitions for the ownership, possession, custody, or control of ammunition. Requires a person subject to the prohibition, because they are a danger to themselves or others as a result of a mental health disorder, to relinquish a firearm, other deadly weapon, or ammunition they own, possess, or control within 72 hours of discharge from a facility.

b) SB 899 (Skinner), Chapter 544, Statutes of 2024, requires the court, when issuing protective orders, to provide the person how any firearms or ammunition still in their possession to be relinquished. Requires the court to review the file to determine whether the receipt was filed and inquire whether the person complied with the requirement.

c) AB 2518 (Davies), of the 2023-2024 Legislative Session, would have any minor adjudicated or convicted of murder, attempted murder or manslaughter lose all firearm privileges for life. This bill was held in the Senate Appropriations Committee.

d) SB 715 (Portantino), Chapter 250, Statutes of 2021, amended the available exceptions to include new requirements for loans based upon the type of firearm and the age of the minor. This bill also prohibits the dealer from returning a firearm to the person making the sale, transfer, or loan, if that person was prohibited from obtaining a firearm.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Lawyers Association, Family Law Section
California Police Chiefs Association
Cft- a Union of Educators & Classified Professionals, Aft, Afl-cio
Giffords Law Center to Prevent Gun Violence
San Francisco District Attorney Brooke Jenkins

Opposition

None submitted.
Analysis Prepared by: Dustin Weber / PUB. S. / (916) 319-3744

Date of Hearing: April 1, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 848 (Soria) – As Amended March 18, 2025

SUMMARY: Changes the sentencing calculation for convictions of multiple sexual battery offenses when the touching is falsely represented as serving a professional purpose and committed in a hospital. Specifically, **this bill**:

1) States that in lieu of existing provisions of law that specify how courts shall calculate the aggregate term for defendants convicted of multiple felony offenses, the court may impose a full, separate, and consecutive term for each violation of sexual battery when the touching is falsely represented as serving a professional purpose occurs in a hospital and involve the *same victim* on *same occasion.*

2) Requires the court to impose a full, separate, and consecutive term for each conviction of sexual battery when the touching is falsely represented as serving a professional purpose that occurs in a hospital and involve *separate victims* or involve the *same victim on separate occasions*.

3) Requires the court, in determining whether crimes against a single victim were committed on separate occasions, to consider whether, between the commission of one violation and another, the defendant had a reasonable opportunity to reflect upon the defendant's actions and nevertheless resumed sexually assaultive behavior.

4) States that neither the duration of time between crimes nor whether or not the defendant lost or abandoned the opportunity to attack shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

5) Requires the term imposed pursuant to this bill's provisions to be served consecutively to any other term of imprisonment and commence from the time the person otherwise would have been released from imprisonment.

EXISTING LAW:

1) States that any person who touches the intimate body part of another person while that person is unlawfully restrained by the accused or accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. This act is punishable as an alternate felony-misdemeanor by imprisonment in a county jail for not more than one year, and by a fine not exceeding $2,000; or by imprisonment in the state prison for 2, 3, or 4 years, and by a fine not exceeding $10,000. (Pen. Code, § 243.4, subd. (a).)

2) States that sexual battery of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated is punishable an as alternate felony-

misdemeanor by imprisonment in a county jail for not more than one year, and by a fine not exceeding $2,000; or by imprisonment in the state prison for 2, 3, or 4 years, and by a fine not exceeding $10,000. (Pen. Code, § 243.4, subd. (b).)

3) States that sexual battery of another person when the perpetrator fraudulently represented that the touching served a professional purpose is punishable an as alternate felony-misdemeanor by imprisonment in a county jail for not more than one year, and by a fine not exceeding $2,000; or by imprisonment in the state prison for 2, 3, or 4 years, and by a fine not exceeding $10,000. (Pen. Code, § 243.4, subd. (c).)

4) States that sexual battery while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person is punishable as an alternate felony-misdemeanor by imprisonment in a county jail for not more than one year, and by a fine not exceeding $2,000; or by imprisonment in the state prison for 2, 3, or 4 years, and by a fine not exceeding $10,000. (Pen. Code, § 243.4, subd (d).)

5) Makes all other types of sexual battery, including causing a person to masturbate or touch an intimate part of those persons or a third person against the victim's will, punishable as a misdemeanor by a fine not exceeding $2,000, or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. (Pen. Code, § 243.4, subd. (e)(1).)

6) Provides that "touches," for the purpose of sexual battery, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim. (Pen. Code, § 243.4, subd. (e)(2).)

7) Defines "intimate part" for purposes of sexual battery as the sexual organ, anus, groin, or buttocks of any person, and the breast of a female. (Pen. Code, § 243.4, subd. (g)(1).)

8) Specifies that "sexual battery" does not include rape or sexual penetration. (Pen. Code, §243.4, subd. (g)(2).)

9) Requires a person convicted of sexual battery to register as a sex offender. (Pen. Code, § 290, subd. (c).)

10) Provides that when a person is convicted of two or more crimes, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same judge or by different judges, the second or other subsequent judgment upon which sentence is ordered to be executed shall direct whether the terms of imprisonment or any of them to which the defendant is sentenced shall run concurrently or consecutively. (Pen. Code, § 669, subd. (a).)

11) States that upon failure to determine how the terms of imprisonment on the second or subsequent judgment shall run, the term of imprisonment on the second or subsequent judgment shall run concurrently. (Pen. Code, § 669, subd. (b).)

12) States, except as otherwise provided by law, and subject to prohibitions against double punishment, when any person is convicted by two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and a consecutive term of imprisonment is imposed, the aggregate term of imprisonment for the convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements. (Pen. Code, §1170.1, subd. (a).)

13) States that the principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses. (*Ibid.*)

14) States that when two or more enhancements may be imposed for the infliction of great bodily injury on the same victim in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. (Pen. Code, §1170.1, subd. (g).)

15) States that in lieu of the general sentencing rules for multiple felony convictions, the court *may* impose a full, separate, and consecutive term for each violation of the following offenses if the crimes involve the same victim on the same occasion:

    a) Rape, by force, or if the person is prevented from resisting by an intoxicating substance, or by threats of retaliation or use of the authority of a public official;

    b) Former spousal rape by force or by threats of retaliation or use of the authority of a public official;

    c) Rape or sexual penetration, in concert;

    d) Sodomy by force, or by threats of retaliation or use of the authority of a public official, or acting in concert with another person;

    e) Lewd or lascivious acts on a minor under 14 years of age by force or fear;

    f) Continuous sexual abuse of a child;

    g) Oral copulation by force, or by threats of retaliation or use of the authority of a public official, or acting in concert with another person;

    h) Sexual penetration by force, or by threats of retaliation or use of the authority of a public official;

    i) Assault with intent to commit a specified sexual offense (as a present offense); and,

    j) An offense committed in another jurisdiction that includes all of the elements of one of the specified offenses (as a prior conviction). (Pen. Code, § 667.6, subds. (c) & (e).)

16) Provides that the court *shall* impose a full, separate, and consecutive term for each violation of one of the above offenses if the crimes involve separate victims or involve the same victim on separate occasion. (Pen. Code, § 667.6, subd. (d)(1).)

17) Provides that in determining whether crimes against a single victim were committed on separate occasions, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon the defendant's actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned the opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions. (Pen. Code, § 667.6, subd. (d)(2).)

18) States that the term shall be served consecutively to any other term of imprisonment and shall commence from the time the person otherwise would have been released from imprisonment and shall not be included in any determination pursuant to the general sentencing calculation rules for multiple felony convictions pursuant to Penal Code section 1170.1. (Pen. Code, § 667.6, subd. (d)(3).)

19) States that in lieu of the general sentencing rules for multiple felony convictions, a full, separate, and consecutive term may be imposed for each violation of voluntary manslaughter, whether or not the offenses were committed during a single transaction. (Pen. Code, § 1170.16.)

20) Provides that when a person is convicted of two or more violations of kidnapping involving separate victims, the subordinate term for each consecutive offense of kidnapping shall consist of the full middle term and shall include the full term imposed for specific enhancements applicable to those subordinate offenses. (Pen. Code, § 1170.1, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The medical sector has seen several recent high profile cases across the state of serial sexual abuse in hospitals where medical professionals have preyed on patients while fraudulently disguising their actions as providing critical medical care. At Memorial Hospital Los Banos, an ultrasound technician allegedly sexually battered at least seven women over the course of multiple years during sensitive examinations, and is charged with multiple counts of sexual battery by fraud. However, while current California law allows a prison sentence of up to four years for sexual battery by fraud, a person convicted of multiple counts may only be sentenced to one additional year in prison for each additional victim they violate.

   "When sexual predators misuse their position as trusted medical professionals to serially victimize multiple patients, every victim deserves to receive justice for their suffering. AB 848 ensures these heinous criminals face the full weight of the law by allowing full consecutive sentencing for multiple counts of sexual battery by fraud committed in a hospital, and requiring it when the crimes are committed against multiple victims or on different occasions. This is already the case for other sex crimes like sodomy and rape, and this bill simply provides ensures the law treats sexual battery by fraud in hospitals the same

way. Hospitals are and should always be places of healing and care, and AB 848 protects patient safety by ensuring that those who would violate this trust to sexually abuse multiple patients face appropriate prison sentences for their grievous crimes."

2) **Sexual Battery Laws**: The sexual battery statute, Penal Code section 243.4, includes five subdivisions that define sexual battery based on the defendant's conduct and set the punishment for each respective situation.

   Subdivisions (a), (b), and (c) cover situations where the defendant touches the intimate parts of the victim. These subdivisions require that the victim be unlawfully restrained, institutionalized for medical treatment, or not conscious of the sexual nature of the act because of a fraudulent representation. (*People v. Elam* (2001) 91 Cal.App.4th 298, 310.) Subdivisions (a), (b), and (c) are wobblers., i.e., either a felony or misdemeanor. (*People v. Dayan* (1995) 34 Cal.App.4th 707, 715, fn. 4; Pen. Code, § 17.)

   Subdivision (d) proscribes conduct different from the other sexual batteries. Subdivision (d) covers the situation where the defendant causes the victim to masturbate or touch the intimate part of the defendant or another person. Subdivision (d) is a wobbler, and like the other wobblers, subdivision (d) requires that the victim is unlawfully restrained or institutionalized for medical treatment, and the "touching" requires the victim to touch the skin of the defendant or another person's intimate parts. (Pen. Code, § 234.4, subds. (d) & (f); *People v. Elam* (2001), *supra,* at p. 310; see also CALCRIM No. 953.)

   Subdivision (e) is misdemeanor sexual battery. This subdivision covers situations where the defendant touches the intimate parts of the victim. For misdemeanor sexual battery, unlike subdivisions (a), (b), and (c), there is no requirement that the victim be unlawfully restrained, institutionalized for medical treatment, or not conscious of the sexual nature of the act. (*People v. Dayan* (1995) 34 Cal. App. 4th 707, 715-716.) These differences make the misdemeanor definition broader than the wobbler definition and as such, subdivision (e) proscribes a wider variety of conduct than subdivisions (a), (b), and (c).

3) **Impetus for this Bill**: According to background information provided by the author's office, the impetus for this bill arose out of reported incidents of sexual battery committed against six women who received ultrasound examinations at a hospital in Los Banos between 2020 and 2022.[1] The acts ranged between touching one woman's breasts and simulated sex using an ultrasound probe.[2] Several of the women have filed lawsuits against the hospital alleging that the hospital knew or should have known that the technician was harassing and assaulting female patients. Additionally, criminal charges have been filed against the technician alleging four counts of sexual battery by fraud.

   Cedars-Sinai Medical Center is also facing multiple lawsuits alleging the hospital knew of the patient complaints against a longtime OB-GYN doctor but failed to address the issue.[3]

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[1] Mishanec, *Women Say Ultrasound Technician Sexually Assaulted Them – and Sutter Health Protected Him* (S.F. Chronicle) Mar. 3, 2024.)
[2] *Ibid.*
[3] https://www.cbsnews.com/losangeles/news/107-women-lawsuit-alleging-sexual-misconduct-former-cedars-sinai-obgyn/ (accessed Mar. 26, 2025).)

4) **Existing Sentencing Rules and Removal of Judicial Discretion**: Generally, a sentencing court has discretion to run imprisonment terms either consecutively (served one after the other) or concurrently (served at the same time) when a defendant has committed two or more felonies (Pen. Code, § 669), with some specified exceptions. California Rules of Court 4.425 specify factors that are to be considered when making the decision to impose consecutive rather than concurrent sentences:

Facts relating to crimes, including whether or not:
a) The crimes and their objectives were predominantly independent of each other;
b) The crimes involved separate acts of violence or threats of violence; or,
c) The crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior.

Any circumstances in aggravation or mitigation, whether or not the factors have been stipulated to by the defendant or found true beyond a reasonable doubt at trial by a jury or the judge in a court trial, may be considered in deciding whether to impose consecutive rather than concurrent sentences, except:
a) A fact to impose the upper term;
b) A fact used to otherwise enhance the defendant's sentence in prison or county jail; or
c) A fact that is an element of the crime.

While the court has the discretion to sentence a person to consecutive or concurrent terms, the sentence would have to conform to the sentencing calculation under Penal Code section 1170.1, subdivision (a). That sentencing rule applies to crimes with a determinate triad sentence, which specifies a lower, middle, and higher term of incarceration. The calculation requires the primary offense and any enhancements attached to that offense to be calculated in full and any subordinate offenses, including any enhancements on subordinate offenses, to be one-third the middle term. Any misdemeanor terms may run at full consecutive terms to felony terms including when the felony term is to be served in state prison. (*People v. Brown* (2016) 247 Cal.App.4th 1430.)

An exception to this aggregate sentencing calculation is found in Penal Code section 667.6, which provides that for multiple convictions of specified sex crimes involving force, threats, acting in concert, the court is authorized to impose a full, separate and consecutive term for each violation of one of the specified offenses if the crime involves the same victim on the same occasion. (Pen. Code, § 667.6, subd. (c).) A term may be imposed consecutively if a person is convicted of at least one of the specified offenses. (*Ibid.*) Other exceptions to the one-third midterm rule on subordinate terms include multiple violations of voluntary manslaughter, making threats to use force or violence against witnesses, and kidnapping of multiple victims. (Pen. Code, §§ 1170.1, subd. (c), 1170.13, 1170.15, and 1170.16.)

This bill would create another exception to the general aggregate sentencing rule for sexual battery offenses when the touching was falsely represented as serving a professional purpose and committed in a hospital. For same victims on the same occasion, this bill states that the court *may* impose full, separate and consecutive terms. For acts involving different victims or the same victim on separate occasions, the bill *requires* a court to impose full, separate, consecutive terms. This bill appears to be modeled after Penal Code section 667.6 which requires full, separate and consecutive terms to be imposed for convictions of specified sex offenses involving multiple victims or same victims-separate acts. The majority of the listed

sex crimes involve force or threats. Not included in the list are those offenses committed under different circumstances. For example, rape or sexual penetration that is accomplished by fraudulent representation that the sexual act served a professional purpose when it served no professional purpose is not included in that list authorizing full, separate and consecutive terms. Creating this more severe sentencing calculation for sexual battery by fraudulent representation, which is a lesser included crime of rape by fraudulent representation (Pen. Code, § 261, subd. (a)(4)(D) or sexual penetration by fraudulent representation (Pen. Code, § 289, subd. (d)(4)), creates inconsistencies in the law that do not necessarily follow the level of seriousness of the offenses.

A report on consecutive sentencing in California notes that:

> [W]hile 51% of admissions involving multiple convictions receive consecutive sentences, 72% of those where the offenses occurred on both different days and in different counties receive consecutive sentences. Convictions for crimes in different counties substantially elevates the likelihood of a consecutive sentence, even when the offenses are committed on the same day. By contrast, having committed offenses on different days within the same county does not appear to appreciably increase the likelihood of a consecutive sentence.[4]

The report specified that of those admitted to state prison on a sex offense have the highest share of consecutive sentences – more than half (53%) of those incarcerated as of March 2023 on a sex offense received multiple consecutive sentences.[5]

This bill would remove a court's discretion to make the decision to impose either consecutive or concurrent sentences on its own. This bill would require that the court run terms consecutively for each violation of sexual battery when the touching is falsely represented as serving a professional purpose and is committed in a hospital. As discussed above, courts generally have discretion to decide whether to impose consecutive or concurrent sentences, however, data indicates that persons most likely to receive a consecutive sentence are those being sentenced to state prison on a sex crime. When a court sentences a defendant, the court has before it all of the facts and circumstances surrounding the case. Thus, the court is in a better position than the Legislature to make a case-by-base decision regarding whether to impose a consecutive sentence.

5) **Longer Sentences Impact on Recidivism and Deterrence**: Research shows that increasing the severity of the punishment does little to deter the crime.[6] According to the National Institute of Justice, "Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not 'chasten' individuals convicted of crimes, and prisons may exacerbate recidivism… Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect." [7] Rather,

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[4] Gill, et al., *Consecutive Sentencing in California* (CA Policy Lab) (Feb. 2024), at p. 12.
[5] *Id.* at p. 14.
[6] National Institute of Justice, *Five Things about Deterrence* <https://www.ojp.gov/pdffiles1/nij/247350.pdf> [accessed Mar. 26, 2025].
[7] Ibid.

increasing the perception that an individual will be caught and prosecuted is a vastly more effective deterrent than increased punishment. Studies also show that custodial sanctions have no effect on recidivism or slightly increase it when compared with the effects of noncustodial sanctions such as probation.[8]

6) **Argument in Support**: According to *California District Attorneys Association*, "Current law permits a judge to exercise discretion to sentence a full, separate and consecutive term for each violation of rape, sodomy, lewd act on child, sexual abuse of a child, oral copulation, sexual penetration or assault with intent to commit a sex crime. Full strength, consecutive sentencing is mandatory if the crimes involve separate victims or are committed on separate occasions against the same victim.

   "However, current law does not extend full, separate and consecutive sentencing for sexual battery violations. Consequently, sex offenders who commit sexual battery offenses against multiple victims receive a substantial sentencing reduction for each subsequent victim. For sexual battery offenses, only one count could receive full strength sentencing. The subordinate consecutive sexual battery counts would only be entitled to one-third of the middle term. AB 848 fixes this anomaly and aligns sentencing for multiple sexual battery offenses committed in a hospital with the existing sentencing scheme that applies for other felony sex offenses."

7) **Argument in Opposition**: According to *California Public Defenders Association*, "A person who commits sexual assault against multiple victims is already subject to substantial prison time under existing law, as well as the requirement to register as a sex offender. For example, in the current case of the Irvine doctor who touched the breasts of 17 patients under the guise of medical treatment in a hospital, and who is currently charged with 20 counts of felony sexual battery, he faces a potential sentence of 23 years in state prison under existing law, as well as being required to register as a sex offender. This bill proposes an unnecessary increase in potential state prison sentences for a narrow range of crimes that are relatively rare."

8) **Prior Legislation**:

   a) SB 442 (Limon), Chapter 981, Statutes of 2024, expanded the definition of misdemeanor sexual battery to include when a person for the purpose of sexual arousal causes another, against their will, to masturbate or touch an intimate part of either of those persons or a third person.
   b) SB 1421 (Romero), Chapter 302, Statutes of 2002, made touching an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, if the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, a sexual battery.

REGISTERED SUPPORT / OPPOSITION:

Support

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[8] D.M. Petrich, et al., *Custodial Sanctions and Reoffending: A Meta-Analytic Review* (2021).

California District Attorneys Association
California Police Chiefs Association
County of Orange, Through its Office of The District Attorney/public Administrator
San Diego County District Attorney's Office

Oppose

ACLU California Action
All of Us or None Los Angeles
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy

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

Date of Hearing: April 1, 2025
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 952 (Elhawary) – As Introduced February 20, 2025

SUMMARY: Makes permanent the Youth Offender Program (YOP) Camp Pilot Program. Specifically, **this bill**:

1) Requires the Secretary of the Department of Corrections and Rehabilitation (CDCR) to make permanent the YOP Camp Pilot Program.

2) Authorizes, at the discretion of the secretary, expansion of the program to include some or all of the California Conservation Camps, as defined.

3) Contains Legislative findings and declarations about the YOP Camp Pilot Program and that it showed promise and has been expanded to Pine Grove Youth Conservation Camp.

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).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 952 will make the Youth Offender Camp Pilot Program permanent. This will help reduce recidivism rates and provide a sustainable pathway for young people to participate in this successful program."

2) **Background: 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.[1]

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.[2]

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 and participation in rehabilitative programming.

3) **YOP Camp Pilot Program**: The YOP Camp Pilot Program started on August 7, 2023 and is set to expire August of this year. In order to be eligible for the program, YOP candidates must be between 18-25 years old and possess either a High School Diploma, General Equivalency Degree, or have enough time left to serve to obtain a degree at camp. Participants must meet existing criteria for conservation camp placement, including having eight years or less remaining on their sentence. However, the YOP camp will allow participants who are currently ineligible for the conservation camp program, due to a Level-III classification score or a Violent Administrative Determinant the opportunity to participate on a case-by-case basis if no other exclusionary criteria exist. Similar to conservation camp placement, applicants are automatically disqualified who have been convicted of rape, lewd acts with a child under 14, any felony punishable by death or imprisonment for life, any sex offense requiring registration pursuant to Penal Code section 290, escape from a secure perimeter within the previous 10 years, and arson.[3]

   The initial 17 participants arrived at Growlersburg Conservation Camp in November 2023, after completing training at the Sierra Conservation Center (SCC). Following the success of the pilot program at Growlersburg, the YOP expanded to Pine Grove Conservation Camp, which welcomed its first seven YOP camp volunteer firefighters in August 2024. Throughout its first year, the pilot successfully maintained two full YOP crews and ensured Growlersburg operated with five fully staffed crews.[4]

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[1] See https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program/ (accessed Mar. 18, 2025).
[2] *Ibid.*
[3] https://www.cdcr.ca.gov/youthful-offender-camp-pilot-program/ (accessed Mar. 18, 2025).
[4] *Ibid.*

This bill would require CDCR to make permanent the YOP Camp Pilot Program and authorize expansion of the program into other California Conservation Camps.

4) **Argument in Support**: According to *Initiate Justice Action*, the sponsor of this bill, "The state of California has relied on incarcerated labor since its inception, and specifi cally for fi re response for nearly 100 years. Today, incarcerated hand crews continue to play a vital role in our state's response to wildfire emergencies. In the wake of the devastating Los Angeles fi res of January 2025, over 1,100 incarcerated hand crews1 were deployed to Los Angeles to help the city and county respond. Among the 1,100 who were deployed were young people in CDCR's YOP from the Pine Grove and Growlersburg Conservation Camps.

   "For many years, incarcerated people with higher security classifications were categorically ineligible for conservation camps, as were young people under the age of 25. In 2023, CDCR established a pilot program at the Growlersburg Conservation Camp allowing, for the first time, young people between the ages of 18-25 with Level III security classifi cations to qualify for fi re camp. The program was successful, and in 2024 CDCR expanded the program to the Pine Grove Camp.

   "This program is currently a pilot program. Fire camp programs have been repeatedly shown to foster positive rehabilitation and to significantly lower recidivism rates, especially for people who spend 1 year or longer in the program. According to recent data from CDCR, recidivism rates for fi re camp participants are as much as 14.5 percentage points lower than for the general incarcerated population.

   "By making the Youth Offender Conservation Camp initiative permanent, it provides a sustainable pathway for young people to participate in this successful program. The state of California must do significantly more to promote rehabilitation efforts, and making the YOP program permanent is a strong step in the right direction. AB 952 also gives the Secretary of CDCR discretion to expand the program to all 35 existing conservation camps or future ones." (Fn. omitted.)

5) **Related Legislation**: 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 pending hearing by 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 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.

REGISTERED SUPPORT / OPPOSITION:

Support

Initiate Justice Action (Sponsor)
ACLU California Action

California Police Chiefs Association
California Public Defenders Association (CPDA)
Californians for Safety and Justice (CSJ)
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Ella Baker Center for Human Rights
Grip Training Institute
Initiate Justice
Land Together
Pacific Juvenile Defender Center
Rubicon Programs
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
Vera Institute of Justice

Opposition

None submitted.

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

Date of Hearing: April 1, 2025
Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1013 (Garcia) – As Introduced February 20, 2025

SUMMARY:Requires specified law enforcement officers to complete the Commission on Peace Officer Standards and Training ("POST") continuing training course on law enforcement interactions with persons with specified mental illnesses and disabilities.

1) Makes it mandatory, rather than discretionary, for a law enforcement officer with a rank of supervisor or below and who is assigned to patrol duties or to supervise officers who are assigned to patrol duties to complete the POST classroom-based continuing training course relating to behavioral health and law enforcement interaction with persons with mental illness, intellectual disability, and substance use disorders.

2) Authorizes POST to partner with local departments of behavioral health, community-based organizations, or nonprofit organizations to establish and keep updated the classroom-based continuing training course.

3) Clarifies that POST shall provide the above course to specified law enforcement officers.

4) Requires POST to implement the above provisions by August 1, 2026.

EXISTING LAW:

1) Requires POST to adopt rules establishing minimum standards relating to the recruitment, training and fitness of state and local law enforcement officers. (Pen. Code, §§ 13510, 13510.5.)

2) Requires peace officers to indicate whether a person had a perceived developmental disability and other specified information in monthly use-of-force reports, and creates an advisory council, upon appropriation by the Legislature, to evaluate law enforcement interactions with persons with developmental disabilities. (Gov. Code, § 12525.2; Pen. Code, § 13016.)

3) Mandates that the course of basic training for law enforcement officers include adequate instruction in specified procedures and techniques relating to the handling of persons with developmental disabilities or mental illness. (Pen. Code, § 13519.2, subd. (a).)

4) Requires POST to review its training module in the regular basic training course relating to persons with a mental illness, intellectual disability, or substance use disorder, and analyze existing curricula in order to identify where additional training is needed to better prepare law enforcement to effectively address incidents involving mentally disabled persons. (Pen.

Code, § 13515.26, subd. (a).)

5) Requires POST to establish and keep updated a continuing education classroom training course related to law enforcement interactions with persons with mental disabilities, as specified (Pen. Code, § 13515.25.)

6) Requires POST to establish and keep updated a three-hour classroom-based continuing training course that includes instructor-led active learning, such as scenario-based training, relating to behavioral health and law enforcement interaction with persons with mental illness, intellectual disability, and substance use disorders, and for this course be made available to each law enforcement officer with a rank of supervisor or below, and who is assigned to patrol duties or to supervise officers who are assigned to patrol duties. Mandates this training to include:

   a) The cause and nature of mental illness, intellectual disability, and substance use disorders.

   b) Indicators of mental illness, intellectual disability, and substance use disorders.

   c) Appropriate responses to a variety of situations involving persons with mental illness, intellectual disability, and substance use disorders.

   d) Conflict resolution and de-escalation techniques for potentially dangerous situations.

   e) Appropriate language usage when interacting with potentially emotionally distressed persons.

   f) Resources available to serve persons with mental illness or intellectual disability.

   g) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders. (Pen. Code, § 13515.27.)

7) Requires POST, July 1, 2015, to establish and keep updated a continuing education training course relating to law enforcement interaction with mentally disabled and developmentally disabled persons living within a state mental hospital or state developmental center. (Pen. Code, § 13515.30.)

8) Requires field training officers ("FTOs") to complete at least eight hours of crisis intervention behavioral health training in order to better train new peace officers on how to effectively interact with persons with mental illness or intellectual disability. (Pen. Code, § 13515.28, subd. (a)(1).)

9) Requires POST to establish and keep updated a FTO course relating to competencies of the field training program and police training program that addresses how to interact with persons with mental illness or intellectual disability. (Pen. Code, § 13515.29.)

10) Requires POST by May 1, 2016, to conduct a review and evaluation of the required competencies of the field training program and police training program to identify areas

where additional training is necessary to better prepare law enforcement officers to effectively address incidents involving persons with a mental illness or intellectual disability. (Pen. Code, § 13515.295.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Up to one-half of all people who die at the hands of police officers have some form of mental or physical disability. Further, unnecessary use of force against persons with disabilities has gone largely unreported in news and media coverage, showing a lack of awareness and oversight. This bill requires that all peace officers who engage with the public take necessary crisis training to properly de-escalate a situation involving someone with a mental illness or a disability. Additional education and training is a first step of many in promoting justice and equitability for the disabled community, preventing unnecessary harm and bias, and increasing community trust in our law enforcement."

2) **Existing Training for Officers Related to Intellectual Disabilities and Mental Illness**: California law requires POST to provide, and peace officers to complete, extensive training related to interactions with individuals with intellectual disabilities and mental illness. Most of these requirements were added by SB 11 (Beall), Chapter 468, Statutes of 2015 and SB 29 (Beall), Chapter 469, Statutes of 2015.

   First, officers are required to complete, at a minimum, POST's Regular Basic Course curriculum, which includes 15 hours of instruction on disability laws, developmental disabilities, physical disabilities and mental illness. (Pen. Code, § 13515.26, subd. (a).) The basic training learning domain covering people with disabilities includes recognizing appropriate peace officer responses and methods of communication during field contacts with people with neurological disorders and traumatic disorders, among others.[1] Further, POST is required to conduct a review and evaluation of its existing training, identify critical gaps, and work with the appropriate stakeholders to update the training to help officers effectively address incidents involving persons with mental illness or intellectual disability. (Pen. Code, § 13515.26, subd. (a).)

   Second, FTOs, who are instructors in the field training program, must complete at least eight hours of crisis intervention behavioral health training in order to better train new peace officers on how to effectively interact with persons with mental illness or intellectual disability. (Pen. Code, § 13515.28, subd. (a)(1).). POST must also establish and keep updated a FTO course relating to competencies of the field training program and police training program that addresses how to interact with persons with mental illness or intellectual disability. (Pen. Code, § 13515.29.)

   Third, officers must complete at least 24 hours of Continuing Professional Training every two years, a part of which may be satisfied by a continued education courses pertaining to

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[1] Commission on Peace Officer Standards and Training, *Regular Basic Course Training Specifications: LD-37*, (accessed March 24, 2025), p. 3, available at https://post.ca.gov/regular-basic-course-training-specifications.)

law enforcement interaction with persons with mental illness, developmental disability, intellectual disability, and substance use disorders. However, such courses are not mandated as part of the biennial requirement. The Legislature has required POST to create three such courses pertaining to mental illness and disabilities: 1) a continuing education classroom training course related to law enforcement interactions with persons with mental disabilities; 2) a three-hour classroom-based continuing training course that includes instructor-led active learning, such as scenario-based training, relating to behavioral health and law enforcement interaction with persons with mental illness, intellectual disability, and substance use disorders; and 3) a continuing education training course relating to law enforcement interaction with mentally disabled and developmentally disabled persons living within a state mental hospital or state developmental center. (Pen. Code, §§ 13515.25, 13515.27, 13515.30.)

Existing law additionally requires peace officer contacts with persons with developmental disabilities to be documented and reported. Peace officers must indicate whether a person had a perceived developmental disability and other specified information in monthly use-of-force reports. (Gov. Code, § 12525.2.) Finally existing law also creates advisory council to evaluate law enforcement interactions with persons with developmental disabilities. (Pen. Code, § 13016.)

3) **Effect of this Bill:** AB 1013 makes several changes to the three-hour classroom-based continuing training course that POST is required to offer, that includes instructor-led active learning, such as scenario-based training, relating to behavioral health and law enforcement interaction with persons with mental illness, intellectual disability, and substance use disorders. (Pen. Code, § 13515.27.) Under existing law, this course is discretionary, and is one of numerous courses that a peace officer may take in order to satisfy the 24 hour, two year, continued education requirement. Here, AB 1013 would make it mandatory, rather than discretionary, for law enforcement officers with a rank of supervisor or below and who is assigned to patrol duties or to supervise officers who are assigned to patrol duties, to complete this course. Additionally, it authorizes POST, in establishing and updating this course, to partner with local departments of behavioral health, community-based organizations, or nonprofit organizations.

The author may wish to ensure this bill is consistent with the deliberations and findings of the advisory council that was recently created for the specific purpose of improving law enforcement interactions with persons with intellectual and developmental disabilities. In 2022 the California Legislature enacted SB 882 (Eggman), Chapter 899, Statutes of 2022, which created the Advisory Council on Improving Interactions between People with Intellectual and Developmental Disabilities under the jurisdiction on the Department of Justice, for the purposes of evaluating existing training for peace officers specific to interactions with individuals with mental health disorders, and intellectually and developmentally disabled communities, identifying any gaps in such trainings, and make recommendations to the Legislature for the purpose of improving outcomes of interactions with such individuals. That bill required the Council to submit a report, with recommendations for improving outcomes of interactions between people with intellectual and developmental disabilities and mental health conditions and law enforcement, to the Legislature within 24 months of the first convening. It appears that this council first

convened on April 15, 2024, as such their report to the Legislature will likely be submitted sometime this year.[2] To ensure this bill does not conflict with this broader effort to improve law enforcement interactions with persons with mental health disorders, the author may wish to review the findings of this report once it is issued to ensure this bill is consistent with the Council's recommendations.

4) **Argument in Support**: According to the *Steinberg Institute*, "Law enforcement personnel are often the first responders to situations involving individuals experiencing behavioral health crises. By ensuring that supervisors receive in-depth, specialized training, the bill will significantly improve our community's response to these complex situations. The training will enhance de-escalation techniques that prioritize compassionate, trauma-informed responses, while also deepening understanding of mental health and substance use disorders.

"The proposed training requirements are crucial for creating more effective and empathetic and substance use disorders, implement crisis intervention strategies, and provide meaningful oversight and guidance to line officers. This approach has the potential to reduce unnecessary arrests and hospitalizations, minimizing potential harm during crisis interventions.

"By investing in supervisor-level training, we can create a ripple effect of improved responses throughout law enforcement agencies. This aligns directly with our Vision 2030 objectives of reducing unnecessary system involvement for individuals with behavioral health conditions. This bill represents a critical step toward more compassionate, effective, and humane approaches to behavioral health interventions."

5) **Related Legislation**:

   a) SB 385 (Seyarto and Wahab), would require a peace officer to attain a modern policing degree or bachelor's degree within 36 months of commencing employment as a peace officer. SB 385 is pending a hearing in Senate Appropriations Committee.

   b) AB 992 (Irwin), would require a peace officer to obtain specified degrees within 36 months of receiving their basic certificate from POST. AB 992 is pending a hearing in this Committee.

6) **Prior Legislation**:

   a) AB 21 (Gipson), of the 2023-2024 Legislative Session, would have required POST to revise its training for field-training officers on interacting with persons with mental illness or intellectual disabilities to include instruction on interacting with persons with Alzheimer's disease or dementia. AB 21 was held in Assembly Appropriations Committee.

   b) AB 2583 (Mullin), of the 2021-2022 Legislative Session, would have required POST to revise their training for field-training officers on interacting with persons with mental

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[2] California Department of Justice, *SB 881 Meetings and Materials* (accessed March 26, 2025), available at: https://oag.ca.gov/sb882/meetings

illness or intellectual disabilities to also include instruction on interacting with persons with Alzheimer's. AB 2583 was held in Assembly Appropriations Committee.

c) AB 1170 (Frazier), of the 2019-2020 Legislative Session, would have required POST, in consultation with the State Department of Developmental Services, and the State Council on Developmental Disabilities, and representatives of community, incorporate in-person training provided by individuals with intellectual and developmental disabilities into POST's training program on peace officer interactions with disabilities. AB 1170 was held in Assembly Appropriations Committee.

d) SB 882 (Eggman), Chapter 899, Statutes of 2022, creates an advisory council within the DOJ responsible for evaluating and reporting on existing training for peace officers related to interactions between law enforcement and people with intellectual and developmental disabilities.

a) SB 11 (Beall), Chapter 468, Statutes of 2015, requires POST to establish a training course that is at least 15 hours on law enforcement interaction with persons with mental illness, as part of its basic training course; and to have a three-hour continuing education course on the same subject matter.

b) SB 29 (Beall), Chapter 469, Statutes of 2015, requires law enforcement field training officers to have training from POST regarding law enforcement interaction with persons with mental illness or intellectual disability.

c) AB 1718 (Hertzberg), Chapter 95, Statutes of 2000, required that POST establish and keep updated a continuing education classroom training course relating to law enforcement intervention with developmentally disabled and mentally ill persons and that the course be developed in consultation with specified groups and entities.

REGISTERED SUPPORT / OPPOSITION:

Support

Steinberg Institute

Opposition

None submitted.

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Date of Hearing: April 1, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1036 (Schultz) – As Introduced February 20, 2025

SUMMARY: Authorizes reasonable access, except as specified, to post-conviction discovery materials for felonies resulting in a sentence of one year of incarceration or more. Specifically, **this bill**:

1) Eliminates the requirement that a defendant demonstrate that efforts to obtain discovery from trial counsel were unsuccessful.

2) Expands the definition of "discovery materials" to include materials that tend to negate guilt, the office, the sentence, or otherwise are favorable or exculpatory to the defendants.

3) Specifies "discovery materials" also includes all materials that the convicted person would be entitled to if they were being tried today, irrespective of whether the materials were discoverable at the time of the convicted person's original trial and jury selection notes.

4) Clarifies that a defendant's trial counsel maintain a copy of a former client's case file for any felony for which the defendant was sentenced for up to one year.

5) States, beginning January 1, 2026, the electronic copies are sufficient only if every item in the file is digitally copied in color and preserved.

EXISTING LAW:

1) Requires a court to order that discovery materials be produced to a defendant who has been convicted of a serious felony or a violent felony resulting in a sentence of 15 years or more, upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment, or in preparation to file that writ or motion, if the defendant has shown a good faith effort to obtain the materials from the criminal defense attorney who represented him or her at the time of the conviction. (Pen. Code, § 1054.9, subd. (a).)

2) Defines "discovery materials" in the post-conviction context as "materials in the possession of the prosecution and law enforcement authorities to which the defendant would have been entitled to at the time of trial." (Pen. Code, § 1054.9, subd. (b).)

3) Provides that a court may allow the defendant access to physical evidence relating to the investigation, arrest, and prosecution of the defendant if he or she makes a showing of good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief. (Pen. Code, § 1054.9, subd. (c).)

4) Provides that in response to a writ or motion, the court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief. (Pen. Code, § 1054.9, subd. (d).)

5) Provides that in criminal matters involving a conviction for a serious or violent felony resulting in a sentence of 15 years or more, trial counsel shall retain a copy of a former client's files for the term of imprisonment. (Penal Code, § 1054.9 (g).)

6) Provides that specified changes to the postconviction discovery laws are intended to only apply prospectively. (Penal Code, § 1054.9 (j).)

7) Requires the prosecution to disclose the following evidence, if it is possessed by the prosecution or the prosecutor knows it is possessed by the investigating agencies:

   a) Names and addresses of persons the prosecutor intends to call as witnesses at trial;

   b) Statements made by all defendants;

   c) All relevant real evidence obtained as part of the investigation of the charged offenses;

   d) The existence of felony convictions of material witnesses whose credibility is likely to be critical to the outcome of the trial;

   e) Any exculpatory evidence; and,

   f) Relevant written or recorded statements. (Pen. Code, § 1054.1.)

8) States that before a party may seek court enforcement of any of the required disclosures, the party shall make an informal request of opposing counsel for desired materials and information. (Pen. Code, § 1054.5, subd. (b).)

9) States that if within 15 days of the informal request, opposing counsel fails to provide the materials and information requested, the party may seek a court order and upon a showing that the moving party complied with informal discovery, a court may make any order necessary to enforce compliance, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order. Further, the court may advise the jury of any failure or refusal to disclose and of any untimely disclosure. (Pen. Code, § 1054.5, subd. (b).)

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

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's current post-conviction discovery laws create unnecessary barriers for incarcerated individuals seeking access to critical evidence that could prove their innocence or reduce their sentences. Under existing law, only those convicted of serious or violent felonies with sentences of 15 years or more can request discovery materials, and only after first attempting to obtain them from their trial counsel. This restrictive process often leaves wrongfully convicted individuals without the evidence needed to challenge their convictions, disproportionately impacting marginalized communities and undermining trust in our justice system.

   "AB 1036 seeks to address these inequities by expanding access to post-conviction discovery to all individuals convicted of felonies with sentences of one year or more. It eliminates the burdensome requirement of first seeking discovery from trial counsel and broadens the definition of "discovery materials" to include exculpatory and mitigating evidence and jury selection notes. Additionally, this bill ensures transparency and accountability by requiring trial counsel to maintain digital color copies of case files, preventing the loss of crucial records.

   "By modernizing California's post-conviction discovery laws, AB 1036 enhances fairness in our criminal legal system and helps correct wrongful convictions more efficiently. Providing broader access to evidence will not only prevent innocent individuals from remaining incarcerated but will also strengthen public confidence in the integrity of our legal system. AB 1036 ensures that truth and fairness remain at the core of our system, making California safer and more just for all.

2) **Discovery in Criminal Trials:** In 1963, the U.S. Supreme Court held that the constitutional principle of due process requires prosecutors to ensure the defense receives all evidence that is both favorable to the accused and material to their guilt or punishment. (*Brady v. Maryland* (hereafter *Brady*) (1963) 373 U.S. 831 87-88; *U.S. v. Bagley* (hereafter *Bagley*) (1985) 473 U.S. 667, 674-675.) For evidence to be considered favorable, it must help the defendant or hurt the prosecution, such as by impeachment of the prosecutor's witness. (*In re Miranda* (2008) 43 Cal.4th 541, 575.) For evidence to be material, there must be a reasonable probability that disclosure of the evidence would have led to a different outcome in a proceeding. (*Turner v. U.S.* (2007) 137 S. Ct. 1885, 1893.) This duty imposed upon the prosecutor applies whether or not a defendant requests the evidence, and whether or not the prosecutor intentionally or inadvertently did not disclose the evidence. (*Brady, supra*, 373 U.S. at 87-88.) Such evidence is generally referred to as *Brady* evidence and failure to turn it over will result in a verdict being overturned. (*People v. Uribe* (2008) 162 Cal.App.4th 1457, 1482-83.)

   In 1990, California voters approved Proposition 115 (hereafter Prop 115), which, among other things, established a statutory framework of reciprocal discovery whereby both the prosecution and defense are required to turn over specified information and materials such as the names and addresses of witnesses that will be called to testify at trial, any real evidence, and any exculpatory evidence. (Pen. Code, § 1054 *et seq.*) Generally, discovery must be

given to opposing counsel as soon as possible but no later than 15 calendar days after they are requested. (Pen. Code, § 1054.5, sub. (b).) Additionally, regardless of a request, the law requires discovery to be given to opposing counsel at least 30 calendar days before trial, unless good cause is shown why disclosure should be denied, restricted or deferred. (Pen. Code, § 1054.7.) Failure to disclose evidence under Prop 115's statutory framework can lead to court sanctions such as contempt proceedings, limiting the testimony of a witness, continuing a matter, and informing the jury of any failure or refusal to timely disclose. (Pen. Code, § 1054.5, subd. (b).) However, a court may only prohibit the testimony of a witness when all other sanctions have been exhausted, and a court can never dismiss a charge unless it is required to do so by the Constitution of the U.S. (Pen. Code, § 1054.5, subd. (c).)

3) **Post-Conviction Discovery:** Existing law generally allows for limited discovery in post-conviction proceedings like petitions for habeas corpus or motions to vacate. Penal Code section 1054.9 allows for reasonable access to any discovery available to the defendant at the time of trial, but only in cases where the defendant was sentenced to 15 years or more on a serious or violent felony. However, the defendant must demonstrate that efforts to obtain the trial attorney's file were unsuccessful. Defense attorneys must retain client files when the person was incarcerated for more than 15 years on a serious or violent felony for the period of the person's confinement. (Pen. Code, § 1054.9, subd. (a).) However, California's criminal discovery statutes do not impose any overarching duty for the prosecutor to retain evidence for purposes of post-discovery disputes. (*People v. Coles* (2005) 134 Cal. App. 4th 1049, 1055–56.) Instead, the preservation duties imposed by prosecutors and law enforcement agencies exist in a patchwork of statutes.[1]

   In *People v. Superior Court (Morales)* (2017) 2 Cal.5th 523, 531–32, the California Supreme Court held that courts may issue orders requiring the preservation of items specifically discoverable by statute. (Ibid. acknowledging that Penal Code section 1054.9 carves out particular categories of material as subject to postconviction discovery, and nothing in its language or the legislative history suggests the legislature intended the statute to serve as a predicate for more wide-ranging postconviction discovery.].)

   Additionally, Penal Code section 1054.9, subdivision (b) only allows discovery of materials to which the defendant would have been entitled at time of trial; specifically, the materials came within the prosecution's constitutional or statutory duty to disclose. (See *Kennedy v. Superior Court (Colusa County)* (2006) 145 Cal. App. 4th 359; *Barnett v. Superior Court (Butte County)* (2007) ___Cal.App.4th___ 2007 Cal. App. LEXIS 1, at *5 [Petitioner, a death row inmate, was not entitled to the home addresses of law enforcement witnesses, as he would not have been entitled to such information at the time of trial.].)

   This bill proposes to allow for post-conviction discovery in any felony case – not just serious and violent felonies for which the defendant is sentenced to 15 years or more – and clarifies that discoverable materials includes any evidence that may be available to the defendant today, regardless of whether it would have been available at the time of trial. Finally, this bill proposes to require criminal defense attorneys to retain records for any felony resulting in a sentence of a year or more for the term of the defendant's incarceration. Over the past ten years, California has enacted several post-conviction remedies, including the opportunity for

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[1] See Pen. Code, § 1405; Pen. Code, § 1054.1

re-sentencing if a person is the defendant suffered racial bias during their case, suffered a sentence that is disproportionately harsh giving the facts, was under the age of 18 at the time of sentencing, where it is in the interests of justice, and re-sentencing in gang cases where there was insufficient evidence of gang involvement. (See Pen. Code, §§ 1109, 1172.1, 1385, and 1437.) Given the plethora of new opportunities for post-conviction relief, this bill requires an opportunity for post-conviction discovery beyond just *Brady* material at the time of trial. For instance, the Racial Justice Act (Pen. Code, § 1437) confronts the possibility that a defendant suffered racial bias in their charge, conviction, or sentence. Therefore, something more than just *Brady* material may be necessary to demonstrate the bias.

However, this bill specifically allows access to "jury selection notes" presumably prepared by the prosecuting attorney in determining which jurors to select and which to strike using a peremptory challenge. This information may be protected as attorney work product.

> "Work produced by an attorney's agents and consultants, as well as the attorney's own work product, is protected by the attorney work-product doctrine. The attorney is the holder of this privilege. A party asserting the privilege must prove the preliminary facts to show that the privilege applies. When a party asserts the absolute privilege, the court cannot require the material to be produced for in camera review to evaluate the claim of privilege, but the court can require production for in camera review when the party asserts only the qualified privilege (Evid. Code, § 915)." *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 891; *Mitchell v. Superior Court* (1984) 37 Cal.3d 591, 599 [holding the attorney-client privilege has been a hallmark of Anglo-American jurisprudence for almost 400 years.].)

This information is protected for good reason. "Its fundamental purpose … is to safeguard the confidential relationship between clients and their attorneys so as to promote full and [frank] discussion of the facts and tactics surrounding individual legal matters. … the public policy fostered by the privilege seeks to insure the right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice and a proper defense." (*Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 292 (*Los Angeles County*).)

The author may wish to consider removing access to jury selection notes as it could be viewed as invading the attorney work product. If a party alleges such information is protected absolutely, not even in camera review would be appropriate.

4) **Argument in Support**: According to *Californians for Safety of Justice*: This bill ensures greater fairness in the post-conviction process by allowing individuals convicted of felonies with sentences of one year or more to obtain crucial discovery materials from prosecutors and law enforcement. AB 1036 removes the requirement to seek discovery from trial counsel first and expands the definition of "discovery materials" to include exculpatory, mitigating evidence, and jury selection notes. These changes will modernize and enhance California's post-conviction statutes, ensuring a more efficient and fair justice system, while addressing wrongful convictions.

In California, the current law presents significant barriers to justice by limiting access to discovery materials that could prove a person's innocence. Many wrongfully convicted individuals are unable to access critical evidence that could lead to their exoneration or help mitigate their sentence. The existing requirement for petitioners to prove they attempted to obtain materials from trial counsel before petitioning the court often proves burdensome and inequitable. This system makes it unnecessarily difficult for individuals to access the evidence that could demonstrate their innocence, leaving many incarcerated without the ability to seek justice.

AB 1036 seeks to address this injustice by expanding access to discovery materials in a way that removes these barriers, giving all individuals convicted of felonies resulting in a sentence of one year or more the opportunity to obtain the evidence they need to challenge their conviction or reduce their sentence. By eliminating the requirement to first seek discovery from trial counsel, this bill opens access to the full range of materials that could potentially exonerate a person, including critical exculpatory evidence, newly discovered mitigating information, and even jury selection notes. These materials are often pivotal to revealing the truth in cases of wrongful conviction, and their availability is crucial for a just and fair process. The expansion of this access would ensure that individuals who were wrongfully convicted have a fair chance to challenge their convictions considering new evidence that could prove their innocence.

5) **Argument in Opposition**: According to the *California District Attorneys Association:* Current law provides several ways in which a person pursuing a postconviction writ of habeas corpus may request discovery. For example, any time a court has issued an order to show cause and thus has recognized that if the person's claims are true, they may be entitled to relief, that same court may order discovery. This is true of any petition for writ of habeas corpus brought by any person, regardless of what they were convicted of or how much time they were ordered to serve.

In addition, Penal Code section 1054.9 currently provides enhanced postconviction discovery rights to individuals convicted of a serious or violent felony and sentenced to 15 years or more. These individuals may obtain discovery when pursuing a postconviction writ of habeas corpus or a motion to vacate judgment. Though many discovery requests brought under section 1054.9 are made after a petition for writ of habeas is filed, the requests may be made before filing. AB 1036 would broaden these enhanced discovery rights to any person convicted of a felony who received a sentence of at least a year of incarceration.

Section 1054.9 currently includes safeguards to protect against unnecessarily burdensome requests. For example, the law currently requires a showing that good faith efforts to obtain the materials from trial counsel have been made and were unsuccessful. Moreover, since 2019, defense counsel has been required to maintain discovery materials for this purpose for the duration of the client's imprisonment. AB 1036 would eliminate the requirement that convicted individuals first seek copies of discovery that their defense lawyers have retained specifically for this purpose, and allow them to instead seek the discovery directly from the prosecution.

Further, the bill broadens the definition of "discovery materials" in two ways. First, it requires discovery of materials that "tend to negate guilt, mitigate the offense, or mitigate the

sentence, or otherwise are favorable or exculpatory to the defendant." This attempt to codify existing decisional authority is unnecessary. Prosecutors are already subject to an ongoing obligation upon prosecutors under Brady v. Maryland to supply convicted persons with material favorable evidence. In addition, Rule 3.8 of the California Rules of Professional Conduct requires prosecutors to disclose new, credible and material evidence that creates a reasonable likelihood the convicted person did not commit crime. CDAA believes that these standards do not require codification.

The second way in which AB 1036 expands the definition of discovery is by including as discovery the prosecutor's jury selection notes regardless of whether a colorable – or any claim – of misconduct in jury selection is made. Under current law a convicted person may receive the prosecutor's jury selection notes if they can demonstrate a prima facie case of racial bias in jury selection. This standard recognizes that much of what is contained in a prosecutor's jury selection notes may reflect upon trial strategy or contain other information that qualifies as core work product, and that disclosure of jury selection notes should not be ordered without good cause and judicial review.

CDAA strongly objects to any amendment that would mandate disclosure of jury notes in all cases regardless of whether there is any evidence of bias or misconduct in jury selection. CDAA is deeply concerned that by expanding the pool of convicted persons who may seek pre-filing habeas discovery, by eliminating the requirement that a convicted person first seek copies from defense counsel, and by expanding the definition of discovery materials far beyond current discovery obligations, AB 1036 lacks sufficient safeguards to prevent misuse of discovery requests and may create opportunities for frivolous or abusive litigation that could overwhelm courts and prosecutors' offices.

6) **Related Legislation**: AB 1071 (Kalra) makes changes to the Racial Justice Act pertaining to remedies and discovery procedures. AB 1071 is pending in this Committee.

7) **Prior Legislation**:

   a) 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.

   b) AB 333 (Kamlager), Chapter 699, Statutes of 2021 makes various changes to the California Street Terrorism Enforcement and Prevention (STEP) Act including removing specified offenses that qualify under a "pattern of criminal activity" and requiring bifurcation of gang-related prosecutions from prosecutions that are not gang-related.

   c) 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.

   d) 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.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
All of Us or None Los Angeles
California Attorneys for Criminal Justice
California Coalition of Women Prisoners
California Innocence Coalition
California Public Defenders Association (CPDA)
Californians for Safety and Justice (CSJ)
Communities United for Restorative Youth Justice (CURYJ)
Courage California
Ella Baker Center for Human Rights
Initiate Justice
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Prison Ftio
Restoring Hope California
Rubicon Programs
San Francisco Public Defender
Secure Justice
Smart Justice California, a Project of Tides Advocacy

Oppose

California District Attorneys Association

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

Date of Hearing: April 1, 2025
Counsel: Dustin Weber

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1092 (Castillo) – As Amended March 13, 2025

SUMMARY: Extends the duration of a concealed carry firearms permit from two years to three years, beginning on January 1, 2026, and from three years to four years, beginning on January 1, 2027.

EXISTING LAW:

1) Establishes that a concealed carry firearms permit issued by designated local officials is valid for two years from the date of the license, excluding the process for amending a license for an applicant's change of address, as defined. (Pen. Code, § 22620, subd. (a).)

2) States that if a licensee's place of employment or business was the basis for issuance of a license, the license is valid for any period of time not to exceed 90 days from the date of the license, the license shall be valid only in the county in which the license was originally issued, the licensee shall give a copy of this license to the licensing authority of the city, county, or city and county in which the licensee resides, and the licensing authority that originally issued the license shall inform the licensee verbally and in writing in at least 16-point type of this obligation to give a copy of the license to the licensing authority of the city, county, or city and county of residence. (Pen. Code, § 22620, subd. (b).)

3) Requires that any application to renew or extend the validity of, or reissue, the license may be granted only upon the concurrence of the licensing authority that originally issued the license and the licensing authority of the city, county, or city and county in which the licensee resides. (Pen. Code, § 22620, subd. (b).)

4) Provides that a concealed carry firearms license or license renewal, to carry a pistol, revolver, or other firearm capable of being concealed upon the person, shall be issued or reissued by the sheriff upon proof submitted by the licensee, as defined. (Pen. Code, § 26150.)

5) Provides that a concealed carry firearms license or license renewal, to carry a pistol, revolver, or other firearm capable of being concealed upon the person, shall be issued or reissued by the chief or other head of a municipal police department of any city or city and county upon proof submitted by the licensee, as defined. (Pen. Code, § 26155.)

6) Authorizes a person issued a license pursuant to this article to apply to the licensing authority for an amendment to the license to add or delete authority to carry a firearm, authorize a person to carry a firearm, authorize the licensee to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person, and change any restrictions or conditions on the license, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person. (Pen. Code, § 26215, subd. (a)(1)-(4).)

7) Provides that if the licensing authority amends the license, a new license shall be issued to the licensee reflecting the amendments. (Pen. Code, § 26215, subd. (b).)

8) States that an amendment to the license does not extend the original expiration date of the license and the license shall be subject to renewal at the same time as if the license had not been amended. (Pen. Code, § 26215, subd. (c).)

9) Establishes defined conditions for amending a license due to a change of address. (Pen. Code, § 26210.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's two-year renewal cycle for CCW licenses unfairly penalizes law-abiding citizens with greater costs to maintaining an active license and creates extra hassle for responsible gun owners while straining local government resources. AB 1092 fixes this by extending the license term to four years, cutting down on paperwork, saving taxpayer money, and making the process more efficient -- all without lowering safety standards -- bringing CCW licenses in line with other types of important permits in the state, as well as the CCW license policies of nearly every other state across the country."

2) **Effect of the Bill**: This bill would ultimately extend the duration of a concealed carry license from two years to four years.

   For one year, this bill would authorize licensees to secure a three-year license, while licensees would be authorized to secure a four-year license beginning on January 1, 2027. Extending the license duration to three years for only a single year has the potential to distort the normal ebbs and flows of license applications. By including the one-time three-year license option, many applicants could opt to wait until the next year to secure a four-year license knowing that option is soon to be available. This could create pent up demand, which could create backlogs.

   In contrast, by extending the license duration, there could be longer-term benefits to processing efficiency by what may be a reduction over time in the number of license and renewal applications received each year. Arguably, administrative processing burdens may be eased by extending the license duration period. While staggering the renewal cycle could create pent up demand, it could also create longer-term consistency in the application cycle by issuing new licensees who may want to immediately take advantage of the longer permitting cycle.

   We have witnessed a recent example at the federal level of issues that can be created by distorted application cycles producing pent up demand, which then produce significant application backlogs.

   At the outset of the Covid-19 pandemic the United States State Department faced an unprecedented collapse in demand for passports as the Department initially declined to issue

passports except in life or death emergencies[1] and the stay-at-home orders across most of the country depressed demand for passports.[2] Like passports, concealed carry licenses are issued by government agencies and generally require some amount of processing time to make individualized determinations of whether the document will be issued. Following the rescission of stay-at-home orders, pent up demand for travel caused Americans to apply for passports in record numbers.[3] This caused enormous backlogs, which produced much higher-than-average wait times for passports to be processed.[4] It took until December 2023 for the Department to get control of the backlog and its processing times back to normal.[5]

It is unclear, however, whether staggering the renewal periods will have any significant impact on application cycles.

3) **Permitting Schemes and *Bruen*:** This bill would extend the concealed carry license period from two years currently, to four years beginning in 2027.

One study noted, "As of January 1, 2024, 27 states have laws allowing people to carry concealed weapons without first receiving a permit . . . Twenty-three states and the District of Columbia require permits but have shall-issue laws, under which law enforcement agencies have no or very limited discretion to deny concealed-carry permits to citizens who are otherwise permitted to possess handguns."[6] Louisiana and South Carolina, which were not permitless carry states in January 2024, have since appeared to become permitless carry states.[7]

License renewal times and costs vary widely by state. Idaho, for example, charges $20 for an initial permit and $15 for permit renewal with discretion to the Sheriff to charge for fingerprinting and materials for the license.[8] New permits in Wisconsin require a $40 permit fee and mandatory training.[9] The initial application for a concealed carry permit in San Jose, CA totals $1,328, which includes over $400 in State fees, a mandatory psychological evaluation, and required completion of a training course.[10]

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[1] Karimi, *The US is not Issuing Passport Unless it's a Life-or-Death Family Emergency* (Apr. 3, 2020) CNN <https://www.cnn.com/travel/article/us-passport-emergencies/index.html> [as of Mar. 24, 2025].
[2] Hansler, *Passport Backlog: Americans face Months-long wait as State Dept. Deals with Flood of Applications* (July 15, 2021) CNN <https://6abc.com/passport-backlog-delays-us-passports-summer-travel/10889029/> [as of Mar. 24, 2025].
[3] *Ibid.*
[4] Coleman, *Unprecedented Demand* (May 2024) State Magazine <https://statemag.state.gov/2024/05/0524feat02/> [as of Mar. 2025].
[5] *Ibid.*
[6] *The Effects of Concealed Carry Laws* (July 16, 2024) RAND <https://www.rand.org/research/gun-policy/analysis/concealed-carry.html> [as of Mar. 24, 2025].
[7] *California Concealed Carry Reciprocity and Gun Laws* (Feb. 3, 2025) United States Concealed Carry Association <https://www.usconcealedcarry.com/resources/ccw_reciprocity_map/ca-gun-laws/#changelogs> [as of Mar. 24, 2025].
[8] *Concealed Weapons License Reciprocity,* Idaho State Police <https://isp.idaho.gov/bci/cwl-reciprocity/> [as of Mar. 24, 2025].
[9] *Concealed Carry Weapon Information,* State of Wisconsin Department of Justice <https://www.wisdoj.gov/Pages/PublicSafety/concealed-carry-weapon-license-information.aspx> [as of Mar. 24, 2025].
[10] *Permit Fees* (Mar. 11, 2023) City of San Jose Police Department <https://www.sjpd.org/records/fees/permit-fees> [as of Mar. 24, 2025].

Depending on the type of license, renewal times and costs also see large variations. To use relatively consistent examples, Idaho counties typically take at least 90 days to process a concealed carry permit,[11] Wisconsin completes its process within 21 days,[12] while the process can take six months or more in Placer County, CA.[13]

The differences between California's costs and processing times compared to other states and counties can appear stark, however, California is home to approximately 40 million people, compared to the approximately 2 million in Idaho and 6 million in Wisconsin.[14] In other words, Idaho and Wisconsin combined only have 20% of the population of California alone.[15] While this bill does not make any changes to the fee structure of California's permitting program, this bill's structure could potentially impact the length of processing times, as discussed (See **Effect of the Bill**).

The issue of fees and processing times could implicate the U.S. Supreme Court's decision in *Bruen*, which established the right to carry a firearm outside one's home for self-defense as protected Second Amendment conduct. (*New York State Rifle & Pistol Association, Inc. v. Bruen* (2022) 597 U.S. 1, 1.) A full evaluation of this bill under *Bruen* is likely unnecessary because the burden of this bill is not being placed on those who want to exercise their Second Amendment rights. (*Id.* at p. 20.)

The Court, however, in *Bruen* noted, ". . . because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." (*Id.* at p. 30, fn. 9.)

It is unclear whether some of the California counties with more expensive license applications and lengthier processing times already test the limits of *Bruen*'s footnote 9 warning about "exorbitant fees" and "lengthy wait times" potentially producing an unconstitutional outcome even in a shall issue regime.

Likewise, it is also unclear whether near-term distortions could create even longer wait times, even though extending the duration of the license period could lead to processing time reductions in the long-term. Even longer wait times could also cause questions about our licensing regime's constitutionality under *Bruen*. Arguably, the more expensive the licenses become, and the longer processing times become, in either the short- or long-term, the more likely the risk becomes of the regime being found unconstitutional.

Additionally, while this bill could possibly benefit from an increase in fees to offset the expected losses that will result from extending the duration of the license, any additional fee increase could likewise cause California's permitting scheme to run afoul of *Bruen*'s warning

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[11] *Concealed Weapons License Application*, State of Idaho < https://isp.idaho.gov/wp-content/uploads/BCI/Reciprocity/Training/CWL-Application.pdf> [as of Mar. 24, 2025].
[12] See, *supra,* at note 9.
[13] *How long does the new Concealed Carry Weapon process take?* County of Placer <https://www.placer.ca.gov/FAQ.aspx?QID=832> [as of Mar. 24, 2025].
[14] *State Population Totals and Components of Change: 2020-2024* (Dec. 2024) U.S. Census Bureau <https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html#v2024> [as of Mar. 24, 2025].
[15] *Ibid.*

that even a shall-issue regime like California's could be unconstitutional due to "exorbitant fees."

4) **Concealed Carry Licensure and Public Safety:** By extending the license window from two years to four years, this bill could have an impact on public safety.

   One study reviewed methodologically strong scientific studies to determine the relationship between concealed carry permits and violent crime. While the majority of the twenty-three studies reviewed showed uncertain effects between concealed carry permits and homicide, five of the studies showed states with shall-issue or permitless carry laws were associated with an increase in homicides.[16] Four of those studies found higher rates of *firearms* homicide.[17] For suicide, mass shootings, and unintentional injuries and deaths, however, a review of studies showed uncertain effects.[18]

   States with more permissive carry laws tend to lead to an increase in people publicly carrying concealed firearms.[19] One study estimated that the number of people carrying concealed firearms has doubled from approximately 11 million to 22 million in roughly the past ten years.[20]

   While there is evidence showing that permitted firearms owners are some of the more law-abiding groups in the country and rarely are found responsible for violent crime, there is also evidence showing that criminal access to firearms is greater in more permissive permitting states due to increases in the theft of those firearms.[21]

   This bill would extend the duration for a person to lawfully carry a concealed firearm in California. Extending the license's duration could lead to more people permitted, and more people permitted for longer times, which might create some specific impacts on public safety.

5) **Argument in Support**: According to the *Orange County Sheriff's Department*, California law provides local officials with the discretion to issue concealed carry weapon (CCW) permits to individuals who meet the standards set by state law. As a Sheriff responsible for issuing these permits, my department has a rigorous screening process to ensure all CCW holders meet the standard required by law. This process is time consuming for both my staff and the applicant. While labor intensive, the process has worked in that those who hold CCW permits in Orange County have exercised their rights responsibly. While the Orange County Sheriff's Department has issued over 20,000 CCW permits, we also enjoy some of the safest communities in the state. CCW permit holders do not contribute to violence; they are law-abiding citizens who safely exercise a constitutional right.

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[16] *The Effects of Concealed Carry Laws* (July 16, 2024) RAND <https://www.rand.org/research/gun-policy/analysis/concealed-carry.html> [as of Mar. 24, 2025].
[17] *Ibid.*
[18] *Ibid.*
[19] *Ibid.*
[20] *Ibid.*
[21] *Ibid.*

"As a result of the rigorous permit process and responsible nature of CCW permit holders, I believe the two-year renewal requirement creates unnecessary workload and burden on county resources. The proposal to allow jurisdictions that issue a CCW permit for a longer time period will result in reduced costs and greater efficiencies for local agencies tasked with processing applications. Additionally, extending the life of a CCW permit will bring California in line with most states that require a permit to carry a firearm."

6) **Related Legislation**:

a) AB 458 (Stefani), requires a bidder for, or a party to, a contract with a state agency for the procurement of firearms, ammunition, or firearm accessories to take specified acts, including requiring a state agency to reject a bid or cancel a contract under specified circumstances. AB 458 is set to be heard on April 1, 2025 in the Assembly Public Safety Committee.

b) AB 1078 (Berman) requires the review of the California Restraining and Protective Order System to include information concerning whether the applicant is reasonably likely to be a danger to self, others, or the community at large, as specified, and additionally exempt from the licensure prohibition for applicants previously subject to a restraining order, protective order, or other type of court order, applicants who were previously subject to an above-described order that did not receive notice and an opportunity to be heard before the order was issued. AB 1078 is set to be heard in the Assembly Public Safety Committee.

c) AB 1187 (Celeste Rodriguez) requires a personal firearm importer to obtain a valid firearm safety certificate and include a copy of the valid firearm safety certificate within the report, and require any applicant for a certificate to complete a training course. AB 1187 is set to be heard in the Assembly Public Safety Committee.

d) AB 1316 (Addis) requires that every person who purchases a hunting license receives, at minimum, information on certain topics related to firearms, including the safe storage of firearms, liability for parents and guardians who should have known their child could access a firearm at home, basic California firearm laws, and how to legally transfer or relinquish a firearm. AB 1316 is set to be heard in the Assembly Public Safety Committee.

e) SB 248 (Rubio) requires the Department of Justice to mail to any person who notifies the department of a firearm transaction a letter that includes certain information relevant to firearm ownership, such as information on how to legally transfer or relinquish a firearm and resources regarding gun violence restraining orders, among others. AB 248 is set to be heard in the Senate Appropriations Committee.

f) SB 320 (Limon) requires the Department of Justice to develop and launch a system to allow a person who resides in California to voluntarily add their own name to, and subsequently remove their own name from, the California Do Not Sell List with the purpose of preventing the sale or transfer of a firearm to the person who adds their name. SB 320 is set to be heard in the Senate Judiciary Committee.

7) **Prior Legislation**:

a) AB 3064 (Mainschein), Chapter 540, Statutes of 2024, among other things, requires any person, within 60 days of bringing a firearm into the state, to mail or personally deliver to the Department of Justice a report, describing the firearm and providing personal information.

b) SB 2 (Portantino), Chapter 249, Statutes of 2023, among other things, establishes criteria for a person disqualified from acquiring a carry license, defines the prohibited places where a person cannot carry a firearm even with a license, and requires each licensing authority prior to issuing a carry license, to determine if the applicant is the recorded owner of the particular pistol, revolver, or other firearm capable of being concealed upon the person reported in the application.

c) SB 899 (Skinner), Chapter 544, Statutes of 2024, requires the court, when issuing protective orders, to provide the person subject to the order with information on how any firearms or ammunition still in their possession are to be relinquished, as specified, and requires violations of the firearms or ammunition prohibition to be reported to the prosecuting attorney in the jurisdiction where the order has been issued within 2 business days of the court hearing.

d) AB 1931 (Fong), of the 2017-18 Legislative Session, would have made a license issued to carry a concealed firearm valid for any period of time not to exceed 5 years. AB 1931 did not pass out of the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Gun Owners of California, INC.
Orange County Sheriff's Department
San Diego County Sheriff's Office

Opposition

None

Analysis Prepared by: Dustin Weber / PUB. S. / (916) 319-3747

Date of Hearing: April 1, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1094 (Bains) – As Introduced February 20, 2025

As Proposed to be Amended in Committee

SUMMARY: Requires any person convicted of torture where the victim is 14 years of age or younger and the person is in care or custody of the victim, to serve a minimum term of 20 years before being eligible for release.

EXISTING LAW:

1) States every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury upon the person of another, is guilty of torture. The crime of torture does not require any proof that the victim suffered pain. (Pen. Code, § 206.)

2) States torture is punishable by imprisonment in the state prison for a term of life.

3) States an inmate imprisoned under a life sentence shall not be paroled until they have served the greater of the following:

   a) A term of at least seven calendar years.

   b) A term as established pursuant to any other law that establishes a minimum term or minimum period of confinement under a life sentence before eligibility for parole. (Pen. Code, § 3046, subd. (a).)

4) States that, notwithstanding provisions of law about the minimum term for a life sentence, an inmate found suitable for parole pursuant to a youth offender parole hearing, or an elderly parole hearing, shall be paroled regardless of the manner in which the Board of Parole Hearings (BPH) set release dates pursuant to those laws. (Pen. Code, § 3046, subd. (b).)

5) Mandates the BPH, in considering a parole for an inmate, consider all statements and recommendations which may have been submitted by the judge, district attorney, and sheriff, or in response to notices given pursuant to existing law, and recommendations of other persons interested in the granting or denying of parole. BPH shall enter on its order granting or denying parole to these inmates, the fact that the statements and recommendations have been considered by it. (Pen. Code, § 3046, subd. (d).)

6) States any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment for two, four, or six years, or in a county jail for not more than

one year, or by both that imprisonment and fine. (Pen. Code, § 273d, subd. (a).)

7) States any person who is found guilty of cruel or inhuman corporal punishment or an injury of a child shall receive a four-year enhancement for a prior conviction of that offense provided that no additional term shall be imposed for any prison term or term imposed under the Realignment Act, as specified. (Pen. Code, § 273d, subd. (b).)

8) Provides that any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three years. (Pen. Code, § 12022.7, subd. (a).)

9) States any person who personally inflicts great bodily injury on a child under the age of five years in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for four, five, or six years. (Pen. Code, § 12022.7, subd. (d).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1094 will increase the minimum sentence for individuals convicted of torturing a child under the age of 14. The bill recognizes the extreme harm caused to child victims and the necessity of greater deterrence and punishment for perpetrators who inflict such trauma on vulnerable children. The bill acknowledges the unique and severe impact of torture on children, aligning the penalty with the gravity of the crime and the victim's vulnerability.

2) **Penal Code section 206**: Penal Code section 206 is the torture statute and states "Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of *revenge, extortion, persuasion, or for any sadistic purpose*, inflicts great bodily injury as defined… upon the person of another, is guilty of torture. The crime of torture does not require any proof that the victim suffered pain." (Pen. Code, § 206.) Torture was added to the Penal Code in 1990 when the voters approved Proposition 115. It has not been amended since. This provision of law was spawned by a horrific attempted murder and rape of a young woman for which the defendant served only eight years of a 14-year sentence.[1]

   Penal Code section 206.1, which sets the sentence for torture, does not specify 25-years to life as a punishment, but rather "life." (See Pen. Code, § 206.1) Life, without any further specification, is punishable pursuant to Penal Code section 3046 and means a minimum term of seven years. (Pen. Code, § 3046, subd. (a)(1).) In 2025, the crime that spawned the torture statute would likely be charged as attempt murder or, at least, assault with intent to commit a rape, forcible rape, possibly "one strike sex" depending on the defendant's prior record pursuant to Penal Code section 667.71, with several possible enhancements. The likely sentence would be a minimum of 15 years to life, 25 years to life, or a longer minimum term

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[1] Singleton also severed his victim's forearms and through her off a cliff. See Cynthia Gorney, "*Crime and Banishment: Paroled Rapist Is Welcome Nowhere,"* The Washington Post, August 29, 1987.

to life, depending on how it is charged and convicted. It seems the torture statute is possibly the least aggravated sentence available. Torture cases often involve robbery,[2] attempted murder or manslaughter,[3] severe instances of domestic violence,[4] disputes over drugs,[5] and gang disputes.[6]

Torture requires a showing that the defendant intended to inflict great bodily injury for a specific purpose. "Rather, the Supreme Court has explained the additional punishment is imposed because a defendant's intent to inflict pain for a sadistic purpose is deserving of additional punishment. The focus must be on the defendant's intent to inflict pain for revenge, extortion, persuasion or for any sadistic purpose rather than on the severity of the injuries or the duration of the attack." (*People v. Pre* (2004) 117 Cal.App.4th 413, 424.)

Torture may be charged and convicted along with the "assaultive crimes" forming the basis of the torture charge. However, pursuant to Penal Code section 654, which prohibits punishing the same conduct twice, a defendant may not be consecutively sentenced.

> Torture requires the infliction of great bodily injury with the intent to cause cruel or extreme pain and suffering. To satisfy that element, the statute necessarily requires the intentional commission of one or more assaultive acts, such as infliction of corporal injury on a spouse, committed with the intent to cause cruel or extreme pain and suffering. Accordingly, although a defendant may be convicted of both torture and any or all of the underlying acts (internal citation omitted), section 654 precludes imposition of unstayed sentences for both torture and any of the underlying assaultive offenses upon which the prosecution relies to prove that element. (*People v. Mejia* (2017) 9 Cal.App.5th 1036, 1044.)

In many cases, a longer term of imprisonment may result from multiple charges and consecutive sentencing where the conduct is considered separate acts. (See *People v. Brents* (2012) 53 Cal.4th 599, 609-10 ["A trial court's express or implied determination that two crimes were separate, involving separate objectives, must be upheld on appeal if supported by substantial evidence."].)

In *Brents*, in sentencing the defendant for both the murder and the assault, the trial court expressly concluded that the murder of Gordon was separate from defendant's earlier assault on her. The court said: "Count III, which is assault by force likely to produce great bodily injury; that actually is a separate incident. It was before the kidnapping and before the homicide. Substantial evidence supports that conclusion." (*Ibid.*)

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[2] *People v. Barrera* (1993) 14 Cal.App.4th 1555, 1561
[3] *People v. Pre* (2004) 117 Cal.App.4th 413
[4] *People v. Baker* (2002) 98 Cal.App.4th 1217, 1219 [120 Cal.Rptr.2d 313].
[5] *People v. Misa* (2006) 140 Cal.App.4th 837, 840.
[6] *People v. Jung* (1999) 71 Cal.App.4th 1036, 1039.

According to the California Department of Corrections and Rehabilitation offender data, currently there are only 12 inmates sentenced to state prison for a violation of Penal Code section 206. There are 460 inmates sentenced to state prison on an enhancement of great bodily injury on a child under 5 years old. There are seven inmates sentenced on child abuse resulting in brain damage or permanent paralysis and seven inmates sentenced on child abuse resulting in great bodily injury.

3) **Child Abuse:** As alluded to above, the penalty for felony child abuse resulting in traumatic injury is two, four, or six years in state prison. (Pen. Code, § 273d, subd. (a).) Felony child neglect is also punishable by two, four, or six years in state prison. (Pen. Code, § 273a, subd. (a).) A great bodily injury enhancement is up to three years in state prison in addition to the base term for the abuse. (Pen. Code, § 12022.7, subd. (a).)

   In many circumstances, if a defendant is charged and convicted of multiple counts of child abuse, depending on the facts, the prosecutor may seek, and the court may sentence a defendant consecutively. However, that does not always mean each count will be sentenced to the full term. One of the cases referenced in the Author's background statement is *People v. Chavez*.[7] Chavez significantly abused her 10-year-old step-daughter and two other children. The jury convicted her of torture, two felony counts of child abuse, and one felony enhancement of causing great bodily injury. She was sentenced to life on the torture conviction (meaning a minimum of seven years and a maximum term of life) plus an additional seven years ten months for child abuse with a great bodily injury enhancements.

   Section 654 precludes multiple punishments for a single act or **indivisible course of conduct.** (*People v. Miller* (1977) 18 Cal.3d 873, 885.) The torture conviction and at least one of the child abuse convictions could not be sentenced consecutively assuming it was alleged as the assaultive conduct that formed the basis of the torture charge, but any additional acts of child abuse that may be sentenced consecutively so long as the People are able to convince the sentencing court that abuse is not part of an indivisible course of conduct. However, in many cases, the court will not sentence a defendant consecutively and will, instead, stay imposition of additional sentencing.[8]

   Another example cited in the Author's background material is *People v. Ayala*.[9] Ayala beat a 2-year old into a coma resulting in permanent brain damage. Pursuant to Penal Code section 273ab, the defendant is eligible for a life term same as the torture statute. (See Pen. Code, § 273ab, subd. (b).) Additionally, inflicting great bodily injury on a child under five years old

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[7] https://orangecountyda.org/press/anaheim-stepmother-sentenced-to-7-years-to-life-plus-7-years-10-months-for-torturing-10-year-old-step-daughter-abusing-three-other-children/

[8] Penal Code section 1170.1, subdivision (a) also requires, "The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense shall consist of **one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed**, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses." (Emphasis added.) Even if there are multiple convictions from the same case, sentencing law requires those convictions be sentenced to a subordinate term of one third the middle term on the principle term. This is why each count is not necessarily sentenced to a full term. For a child abuse conviction (Penal Code section 273a), the sentence may be one third the "principle term" – not just two years, four years, or six years.

[9] https://www.cbsnews.com/losangeles/news/orange-county-woman-who-left-2-year-old-stepson-paralyzed-sentenced-to-prison/

may receive an enhancement of up to six years in prison. (Pen. Code, § 12022.7, subd. (d).) She was sentenced to 12 years to life plus seven years.

4) **Juvenile Parole:** Pursuant to Penal Code section 3046, life means 7 years. As introduced, this bill requires any person who is sentenced for torture of a person under the age of 14 serve a minimum of 25 years. If the person sentenced is under the age of 18, this may affect juvenile parole. Penal Code section 3046, subdivision (c) states that, notwithstanding the sentence of "life," juvenile and elderly parole is set pursuant to Penal Code section 3051 and 3055. A person convicted before the age of 18 and is sentenced to less than 25 years to life, may be eligible for parole at 20 years. (Pen. Code, § 3051, subd. (b)(2).) A person sentenced to 25-years to life is eligible for release on parole at a youth offender parole hearing during the person's 25th year of incarceration. (Pen. Code, § 3051, subd. (b)(3).)

   Torture is a violent felony and if alleged as a gang crime, may result in a juvenile being tried and sentenced as an adult. (Pen. Code, § 667.5, subd. (c)(7); Pen. Code, § 186.22, subd. (e)(1)(H); Welf. & Inst. Code, § 707, subd. (b)(21) and (23).) Accordingly, while a minor may be charged with torture of another minor, that minor would usually be eligible for release at 20 years so long as they did not get a 25-life term. However, as introduced, that minor would have to automatically serve 25 years before being eligible for release. The author has agreed to accept an amendment applying the minimum sentence to only an adult with care or custody of the victim.

5) **Argument in Support**: According to the *Orange County District Attorney's Office*: "Under existing law, the punishment for torture does not distinguish between adult and child victims despite the inherent vulnerability of minors and the disproportionate harm children endure, usually at the hands of caretakers. When 10-year-old Natalie F. wasn't hogtied and thrown into ice baths or burned with peppers, she was zip tied to furniture and starved for months by her stepmother, who was ultimately sentenced to 7-life for the torture. Natalie endured 17 surgeries to recover the use of her legs and is permanently disfigured. The trial judge said it was the worst case he'd ever seen and that he regretted not being able to impose more time. Parole after 7 years just isn't enough. Torture involves cruelty, suffering, a sadistic intent, and severe injury, and when inflicted upon a child, the long-term physical, emotional, and psychological impact is particularly devastating.

   "AB 1094 acknowledges this distinction by ensuring that those who commit such heinous acts against children face penalties that reflect the gravity of their crimes, ensuring that young victims can grow into adulthood safe from their torturer. By increasing the minimum sentence, AB 1094 serves as both a deterrent and a measure of justice for victims. Strengthening consequences for those who inflict such severe trauma on children is a necessary step toward protecting our most vulnerable and ensuring accountability for perpetrators of these egregious offenses."

6) **Argument in Opposition**: According to *Smart Justice California*: "While not minimizing the seriousness of the crimes of torturing a minor under 14, or of the crime of torturing any individual, current law already provides sufficient punishments and safeguards on release for anyone convicted of such a crime.

   "Existing law already punishes an individual that commits torture on a minor under the age of 14 with a term of life in prison. Existing law also provides sufficient safeguards to insure

that a person convicted of torture of a minor under 14 is not released back into the public on parole until it is safe to do so. Existing law, while providing a mechanism to eventually review such individuals for the *possibility* of release, does not provide any guarantee or even likelihood of release back to the community. A person cannot be released back into the community without a thorough review by the Board of Parole to ensure the individual presents no danger to the community and has been fully rehabilitated. Any decision by the Parole Board is also subject to review by the Governor."

7) **Prior Legislation**: SB 616 (Rubio) increases and expands ongoing domestic violence and child abuse educational requirements for judges, referees, commissioners, mediators, child custody recommending counselors, and evaluators involved in domestic violence and child custody proceedings. SB 616 died on the Senate Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
County of Orange, Through its Office of The District Attorney/public Administrator

Oppose

ACLU California Action
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Local 148 LA County Public Defenders Union
San Francisco Public Defender
Smart Justice California, a Project of Tides Advocacy

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

AMENDMENTS TO ASSEMBLY BILL NO. 1094

Amendment 1
On page 2, in line 8, after "if" insert:

the defendant is an adult who had care or custody of the victim and

Amendment 2
On page 2, in line 9, strike out "is under" and insert:

was

Amendment 3
On page 2, in line 9, strike out "age," and insert:

age or younger at the time of the crime,

Amendment 4
On page 2, in line 10, strike out "25" and insert:

20

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PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 1094

CALIFORNIA LEGISLATURE—2025–26 REGULAR SESSION

ASSEMBLY BILL **No. 1094**

Introduced by Assembly Member Bains

February 20, 2025

An act to amend Section 206.1 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1094, as introduced, Bains. Crimes: torture of a minor: parole.

Existing law makes a person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury upon the person of another guilty of torture, and makes the crime punishable by imprisonment in the state prison for a term of life. Existing law specifies that an inmate imprisoned under a life sentence shall not be paroled until they have served a term of at least 7 years or as established pursuant to a law that establishes a minimum term.

This bill would prohibit a person imprisoned for committing the crime of torture from being eligible for parole until they have served at least ~~25~~ *20* years, if *the defendant is an adult who had care or custody of the victim and* the victim ~~of the torture was under~~ *was* 14 years of age *or younger* at the time of the crime. By creating a new sentencing enhancement, the bill would impose a state-mandated local program.

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

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

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

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

Page 2

SECTION 1. Section 206.1 of the Penal Code is amended to read:

206.1. (a) Torture is punishable by imprisonment in the state prison for a term of life.

(b) (1) Except as described in paragraph (2), a defendant imprisoned for torture shall not be eligible for parole until they have served at least seven years, pursuant to Section 3046.

(2) For a crime of torture committed after January 1, 2026, if *the defendant is an adult who had care or custody of the victim and* the victim ~~is under~~ *was* 14 years of ~~age,~~ *age or younger at the time of the crime,* the defendant shall not be eligible for parole until they have served at least ~~25~~ *20* years.

Amendment 1

Amendments 2 & 3
Amendment 4

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

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